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Senate Bill 472 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Jud Gilbert, II  
Committee: Transportation

Date Completed: 6-2-03

### **RATIONALE**

Under Section 18 of the county road law, by a resolution adopted by a majority vote, the board of county road commissioners of any county that has adopted the county road system may either relinquish jurisdiction of, or absolutely abandon and discontinue, any county road or any part of a county road. In a resolution of abandonment, the board must determine that it is in the best interests of the public that the road or portion of the road be absolutely abandoned and discontinued. A true copy of the resolution must be recorded in the office of the register of deeds for the county where the land is situated. Despite these requirements, a county road commission occasionally does not follow the formal procedure for road abandonment and simply discontinues maintenance of the road. In a recent court case (discussed in more detail below), the Michigan Court of Appeals upheld the doctrine of common law abandonment by nonuse, and pointed out that the law does not state that the statutory procedure is the only mechanism by which a county road commission can abandon a county road. It has been suggested that the law should be changed to do away with the doctrine of common law abandonment and specify that the procedure in Section 18 is the only way a county road commission can abandon a road.

### **CONTENT**

The bill would amend Section 18 of the county road law to specify that the procedure for abandonment of a county road provided in the statute "is the exclusive procedure by which a road under the jurisdiction of a board of county road commissioners may be absolutely abandoned and discontinued". The bill also provides that a board of county road commissioners "has the exclusive jurisdiction

to decide whether a road under its jurisdiction shall be absolutely abandoned and discontinued". The bill states that it would abrogate application of the doctrine of common law abandonment that permits a road under the jurisdiction of a county road commission to be declared abandoned by reason of nonuse.

MCL 224.18

### **BACKGROUND**

The issue of county road abandonment was addressed by a panel of the Michigan Court of Appeals in an opinion issued on March 13, 2003 (*Ambs, et al. v Kalamazoo Co. Road Commission, et al.*, No. 230107). The Court found that a county road commission may abandon a road either through the procedure in Section 18 of the county road law, or through voluntary abandonment by nonuse.

This case involved a road in Comstock Township, Cooks Drive, that had been bisected by I-94 in 1951. The county abandoned the portion of Cooks Drive located north of I-94 through a resolution adopted and recorded pursuant to Section 18 of the county road law (MCL 224.18). The county evidently did not adopt a similar resolution abandoning the portion of Cooks Drive south of I-94, although the county no longer certified that portion of the road for purposes of receiving State maintenance funds and performed little, if any, maintenance along it.

The case arose when the owners of land on Cooks Drive sought to have the road recertified so they could build a house on the property. (Under a township ordinance, they could not do so because the property did not

have frontage on a publicly maintained road.) After being informed that they would have to share the cost of bringing the road up to county standards before it would be recertified, unless they could prove that Cooks Drive remained a public road, the landowners brought this lawsuit.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would eliminate the problem that arises when a county road commission does not formally abandon a road and is later sued by a landowner or developer who wants the road maintained. The bill would eliminate any ambiguity by revoking the doctrine of common law abandonment and making it clear that a county road commission would have to follow the statutory procedure. The Court of Appeals indicated that it was sympathetic to the public-policy argument that "...it would be better if statutory abandonment through board resolution was the only method available, so that landowners may clearly know which roads have and have not been abandoned without the need for a judicial determination". The Court stated that it was rejecting this public-policy argument, however "as one that must be brought before the Legislature for possible revision of the statute."

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.