



## **Sub. H.B. 299**

125th General Assembly  
(As Passed by the General Assembly)

**Reps. Gibbs, Calvert, Seitz, Gilb, Raussen, Fessler, D. Evans, Faber, Collier, Kearns, Schmidt, Hartnett, Barrett, Wolpert, Wagner, Daniels, McGregor, Domenick, C. Evans, Price, Sferra, Martin, Book, Carano, Carmichael, Cates, Chandler, Clancy, DeBose, Distel, Flowers, Grendell, Hagan, Hollister, Hughes, Niehaus, T. Patton, Peterson, Reinhard, Schneider, Setzer, J. Stewart, Taylor, Walcher, Webster, Willamowski**

**Sens. Zurz, Roberts, Schuler, Goodman, Hottinger, Amstutz, Randy Gardner, Robert Gardner, Harris**

**Effective date: Emergency, June 10, 2004; certain provisions effective September 16, 2004**

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### **ACT SUMMARY**

- Permits a board of county commissioners or a board of township trustees to generally place a graveled or unimproved road under its jurisdiction on a "nonmaintained status."
- Allows a board of county commissioners or board of township trustees, in its discretion, to forgo maintenance and care of a road that it has placed on "nonmaintained status."
- Permits a board of township trustees to petition the board of county commissioners to vacate certain township roads.
- Preserves certain public utility rights of way in vacated roads and extends rights of way protections to electric cooperatives in relation to vacated roads.
- Confers a consistent right of ingress and egress to maintain service facilities when public roads are vacated and a right to trim or remove trees and other matter growing in or encroaching onto a public utility,

railroad, or electric cooperative right of way when a public road is vacated.

- Allows a county prosecuting attorney to serve as legal adviser to a joint fire district at no cost to the district.
- Amends provisions of Sub. H.B. 278 of the 125th General Assembly by: (1) eliminating the more than 15,000 threshold population requirement for notification to municipal corporations and townships of applications for permits for the drilling of oil or gas wells, and (2) changing the township population threshold pertaining to certain rules governing terms and conditions attached to permits for oil or gas wells that the Chief of the Division of Mineral Resources Management in the Department of Natural Resources must adopt from more than 15,000 to more than 5,000.
- Creates the Oil and Gas Advisory Council to provide advice regarding the adoption of certain rules governing oil and gas wells.

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## **CONTENT AND OPERATION**

### **"Nonmaintained status" for county and township roads**

#### **In general**

The act generally allows boards of county commissioners and boards of township trustees to place graveled or unimproved roads or portions of such roads under their jurisdiction on "nonmaintained status." A board would do so by adopting a resolution to that effect. If a road or a portion of a road is placed on nonmaintained status, the board is not required to do any of the following:

- Cause the road or portion to be dragged at any time.
- Cut, destroy, or remove any brush, weeds, briars, bushes, or thistles upon or along the road or portion.
- Remove snow from the road or portion.
- Maintain or repair the road or portion in any manner.

However, despite a nonmaintained status, the board, in its discretion, may cause any of these actions to be performed. (R.C. 5541.05(A) and 5571.20(A) (enacted) and R.C. 5543.01(A)(1), 5555.02, 5571.02, 5571.08, and 5571.12 (amended).)



The act prohibits the placement of a graveled road on "nonmaintained status" if any person resides in a residence adjacent to the road, it is the exclusive means for obtaining access to the residence, and the residence is the person's primary place of residence (R.C. 5541.05(D) and 5571.20(D)).

### **Board's finding**

To place a road or portion of a road other than a graveled road necessary to access a primary place of residence on "nonmaintained status," a board of county commissioners or board of township trustees must find that doing so will not unduly adversely affect the flow of motor vehicle traffic on the road or on any other road located in the immediate vicinity of it. This finding must be determined on the basis of the overall use of the road during the preceding 21 years. (R.C. 5541.05(B) and 5571.20(B).)

### **Termination of nonmaintained status**

A board of county commissioners or a board of township trustees may, in its discretion or upon the request of an owner of land adjoining a "nonmaintained status" road, terminate that status by adopting a resolution to that effect. If the termination is the result of an adjoining landowner's request, the resolution may require the landowner to pay the costs of upgrading the road to locally adopted county or township standards, as applicable. (R.C. 5541.05(C) and 5571.20(C).)

### **Vacation of a township road**

#### **Continuing law**

Under continuing law, there are a variety of ways by which township roads can be vacated by the board of county commissioners. If a township road or part of a township road remains unopened for seven years after an order establishes it or after authority is granted for opening it, it must be vacated by the board of county commissioners (R.C. 5553.10--not in the act). The board of county commissioners, on its own or if petitioned by 12 freeholders residing in the vicinity of a road proposed to be vacated, may vacate a township road after viewing the location and determining that the action is for the public convenience or welfare (R.C. 5553.04). In addition, a board of county commissioners, in its discretion, can vacate (after formal proceedings) a township road that is abandoned and has not been used for a period of 21 years if a petition is filed with the board by any abutting landowner (R.C. 5553.042).

When any street, highway, or road is vacated in any manner mentioned above or in certain other manners and specified railroad or public utility facilities are affected, continuing law deems the railroad or public utility to have a



permanent easement in the vacated portion of the street, highway, or road to maintain its facilities (R.C. 5553.043).

**Changes made by the act**

**Overview.** The act creates a process by which a board of township trustees may petition the board of county commissioners to vacate a township road or a portion of it. The road must be one that the board of township trustees does not certify to the Director of Transportation, in connection with the Director's duties in administering the Auto Registration Distribution Fund, as mileage in the township used by and maintained for the public. (R.C. 5553.045(A) and (B).)

**Resolution.** To begin the process, the board of township trustees must pass a resolution that requests the vacation and includes a description of the general route and termini of the road or portion of it. The township clerk then must file a copy of the resolution with the board of county commissioners and certify another copy of it to the county engineer. (R.C. 5553.045(B).)

**County engineer's duties.** Within 30 days after receipt of the certified copy of the resolution, the county engineer must issue a written report to the board of county commissioners. The report must be similar in content to written reports required of the county engineer for proposed improvements to a public road (see **COMMENT**). However, if the county engineer fails to provide this report, the failure does not affect other actions required under the act (see below) or invalidate a vacation of the road or portion of it. (R.C. 5553.045(B).)

**Public hearing.** Upon receipt of the board of township trustees' resolution, the board of county commissioners must set a date for a public hearing on the proposed vacation. The hearing must occur within 45 days after the date the resolution is filed with the board. (R.C. 5553.045(C).)

The clerk of the board of county commissioners must notify by regular mail the landowners abutting the road or portion of the road proposed to be vacated.<sup>1</sup> The notice must be sent at least 20 days before the public hearing and must (1) state that the board of township trustees has filed a resolution requesting the vacation and (2) inform the landowners of the hearing's time and place. However, failure of the delivery of this notice to any landowner does not invalidate a vacation of the road or portion of it. (R.C. 5553.045(C).)

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<sup>1</sup> The notice is to be mailed to the addresses of the abutting landowners as they appear on the county auditor's current tax list or the county treasurer's mailing list (R.C. 5553.045(C)).

**Decision by the board.** After the public hearing, if the board of county commissioners determines that the proposed vacation would be for the public convenience or welfare, it must adopt, by majority vote, a resolution declaring the vacation. The board also must file a certified copy of the resolution with the board of township trustees, the county recorder, and the county engineer. (R.C. 5553.045(D).)

**Failure to vote on vacation.** If the board of county commissioners fails to vote on the vacation within 60 days after the township's resolution is filed with it, the road or portion of it specified in the resolution *is deemed to be vacated*. If this happens, the board of township trustees must adopt another resolution that describes the "vacated" road or portion of it and explains that the vacation is by action of the statute the act enacts. The board must file a certified copy of that resolution with the board of county commissioners, the county recorder, and the county engineer. (R.C. 5553.045(D).)

**Order of vacation and title passing.** Once the certified copies of the resolutions mentioned under "**Decision by the board**" and "**Failure to vote on vacation**," above, are filed, the board of township trustees must adopt a resolution ordering the road or portion of the road vacated. The road or portion of it then passes in fee to the abutting landowners, subject to the rights described under "**Preservation of rights of way**," below. (R.C. 5553.045(E).)

**Preservation of rights of way.** In relation to the vacation of township roads and certain other public roads, the act extends to electric cooperatives the permanent easement that continuing law provides to railroads and public utilities to maintain their service facilities. Similarly, in those vacation circumstances, it preserves any existing rights of way an electric cooperative may have and also consistently confers upon an electric cooperative, railroad, or public utility a right of ingress and egress to maintain its service facilities and a right to trim or remove any trees, shrubs, brush, or other obstacles growing in or encroaching onto the permanent easement mentioned above or other right of way that may affect the operation, use, or access to their service facilities.<sup>2</sup> (R.C. 5553.04, 5553.042, 5553.043, and 5553.045(E)(1), (2), and (3).)

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<sup>2</sup> An "electric cooperative" is defined as a not-for-profit electric light company that is or has been financed in whole or in part under the Rural Electrification Act of 1936 and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such a company (R.C. 4928.01 --not in the act). And, the act defines "service facilities" as including any conduit, cable, wire, tower, pole, or other equipment or appliance of a public utility or electric cooperative. (R.C. 5553.04, 5553.042(A), 5553.043, and 5553.045(E)(1).)

**County prosecuting attorney authority to represent joint fire district at no cost to the district**

Under continuing law, the prosecuting attorney is required to be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards, including all tax-supported public libraries. In addition, the prosecuting attorney is the legal adviser for all non-home rule townships. A board of park commissioners may contract with the prosecuting attorney and the board of county commissioners for the prosecuting attorney to provide legal services to the park district. All money received under such a contract must be deposited into the prosecuting attorney's legal services fund in the county treasury. (R.C. 309.09(A), (B), and (D).)

The act further authorizes a prosecuting attorney, in his or her discretion, to act as legal adviser to a joint fire district. This legal representation must be at no cost to the district. (R.C. 309.09(E).)

**Changes made to provisions of Sub. H.B. 278 of the 125th General Assembly**

Sub. H.B. 278 becomes effective September 16, 2004. Sub. H.B. 299 makes changes to certain provisions of Sub. H.B. 278 (R.C. 1509.03 and 1509.06) before they take effect. Thus, the provisions of Sub. H.B. 278 as amended by Sub. H.B. 299 will be the operating law on September 16, 2004, when Sub. H.B. 278 takes effect (Sections 3 to 7 of the act).<sup>3</sup>

One provision of Sub. H.B. 278 requires that notice be provided under certain circumstances to certain local governments if an application for a drilling permit is made for a well located or proposed to be located in a municipal corporation or township having a population of more than 15,000. Sub. H.B. 299 eliminates the more than 15,000 population threshold and instead requires the Chief of the Division of Mineral Resources Management in the Department of Natural Resources to give notice of drilling permit applications to any municipal corporation or township whose legislative authority has asked to receive copies of those applications for wells located or proposed to be located in the municipal corporation or township. (R.C. 1509.06.)

Another provision of Sub. H.B. 278 relates to the rules that the Chief of Mineral Resources Management must adopt under the Oil and Gas Law. Those rules must identify subjects that the Chief must address when attaching terms and conditions to a permit for a well and production facilities of a well located within a municipal corporation or within a township with a population of more than 15,000.

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<sup>3</sup> *These are the act's provisions with the delayed effective date of September 16, 2004.*

Sub. H.B. 299 reduces this population threshold for townships to more than 5,000 by applying the requirement to "urbanized areas." The act defines "urbanized area" as an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than 5,000 in the most recent federal decennial census before the issuance of the permit. (R.C. 1509.03.)

### **Creation of Oil and Gas Advisory Council**

The act creates the Oil and Gas Advisory Council to advise and assist the Chief of Mineral Resources Management in identifying in the rules for the Oil and Gas Law the subjects to be addressed by the Chief when attaching terms and conditions to permits for wells and production facilities of wells located in specified areas. The Council will cease to exist when the rules are adopted. (Section 8 of the act.)

The Council consists of the Director of Natural Resources and the Chief of Mineral Resources Management, or their designees, as ex officio members and seven members to be appointed by the Director within 90 days after the act's effective date. The Director or the Director's designee serves as the Council's chairperson. Of the appointed members, one must represent each of the following: the interests of counties, the interests of municipal corporations, the interests of townships, the interests of owners of natural gas wells, the owners of oil wells, the interests of contractors engaged in drilling, fracturing, producing, or servicing oil and gas wells, and a statewide environmental advocacy organization. (Section 8 of the act.)

The act states that serving as a member of the Council does not constitute holding a public office or position of employment and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. Appointed members must serve without compensation for Council meeting attendance. (Section 8 of the act.)

The act's Council provisions will serve to implement the provisions of R.C. 1509.03 as enacted by Sub. H.B. 278 and amended by Sub. H.B. 299 (Section 8 of the act).

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## **COMMENT**

Under R.C. 5553.06 (not in, but referred to in, the act), when an improvement to a public road is proposed and the board of county commissioners considers the improvement "of sufficient public importance" and instructs the county engineer to take specified action, the county engineer must take the actions and make a report in writing to the board on or before the date fixed for the final

hearing on the matter. The report must set forth the opinion of the county engineer for or against the proposed improvement. And, if the proposed improvement includes locating or establishing a road, the report must (1) state the width to which the improvement will be opened, (2) be accompanied by a plat of the improvement and detailed and accurate descriptions of (a) the center line and right of way lines and (b) each tract of land that the county engineer believes must be taken by eminent domain for the improvement, and (3) be filed with the board.

Because a proposal to vacate a township road rarely involves locating or establishing a road, it appears that the county engineer's report under the act may only have to set forth the opinion of the county engineer for or against the proposed vacation.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-14-03	p. 1109
Reported, H. County & Township Gov't	01-21-04	p. 1502
Passed House (94-0)	02-03-04	pp. 1596-1597
Reported, S. State & Local Gov't & Veterans Affairs	05-19-04	p. 1973
Passed Senate (32-0)	05-19-04	pp. 1981-1982
House concurred in Senate amendments (95-3)	05-25-04	pp. 1951-1954

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