



Sub. H.B. 299

125th General Assembly
(As Passed by the House)

Reps. Gibbs, Calvert, Seitz, Gilb, Raussen, Fessler, D. Evans, Faber, Collier, Kearns, Schmidt, Hartnett, Barrett, Wolpert, Wagner, Daniels, McGregor, Collier, Domenick, C. Evans, Price, Sferra, Martin, Aslanides, 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

BILL SUMMARY

- Permits a board of county commissioners or a board of township trustees to 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.

CONTENT AND OPERATION

"Nonmaintained status" for county and township roads

In general

The bill 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 and 5571.20 (enacted) and R.C. 5543.01(A)(1), 5555.02, 5571.02, 5571.08, and 5571.12 (amended).)

Board's finding

To place a road or portion of a road 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 road located in the immediate vicinity of it. This finding must be evidenced by the overall use of the road during the preceding 21 years. (R.C. 5541.05 and 5571.20.)

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 the nonmaintained 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 and 5571.20.)

Vacation of a township road

Current law

Under current 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 bill). 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--not in the bill). 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--not in the bill.)



Changes proposed by the bill

Overview. The bill 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 of the 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 bill (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.¹ 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).)

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

¹ *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.*



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 bill 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).)

COMMENT

Under R.C. 5553.06 (not in, but referred to in, the bill), 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 bill may only have to set forth the opinion of the county engineer for or against the proposed vacation.

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

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