

## DISCONTINUATION OF HIGHWAY BORDERING LAKE OR STREAM

### Act 341 of 1927

AN ACT to prevent the abandonment, discontinuation, vacation, or alteration of the course of any public highway which borders upon, or is adjacent to any lake, or to the general course of any stream, or the course of any portion of such a highway, or bordering upon a lake or general course of any stream, by the public authorities of any village or city, until after the approval thereof by the circuit court of the county in which said highway is situated; to provide for a notice of application for that purpose, and a method of hearing in such court, and the method for review of orders made thereon; and to prescribe powers and duties of certain state agencies.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

*The People of the State of Michigan enact:*

#### **247.41 Highway bordering on lake or stream; abandonment, discontinuation, alteration, or vacation.**

##### Sec. 1.

A public highway or a portion of a public highway that borders upon, crosses, is adjacent to, or ends at a lake, or the general course of a stream, shall not be abandoned, discontinued, vacated, or have its course altered resulting in a loss of public access by the order or action of an official or officials of a city or village in this state, until an order authorizing the abandonment, discontinuation, alteration, or vacation is made by the circuit court for the county in which the highway is situated in the manner provided in this act.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- CL 1929, 3950 ;-- CL 1948, 247.41 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

#### **247.42 Highway bordering on lake or stream; application signed by landowners.**

##### Sec. 2.

If the official or officials having jurisdiction over the highways of a village or city in this state desire to abandon, discontinue, vacate, or alter the course of a public highway referred to in section 1, and the abandonment, discontinuation, vacation, or alteration will result in the loss of public access, before any action is taken by the public official or officials of a village or city, an application signed by not less than 21 landowners of the village or city in which the highway is situated, shall be made to the circuit court for the county in which the highway is located, setting forth the particular circumstances of the case, an accurate description of the highway proposed to be abandoned, discontinued, vacated, or altered, together with the reasons for the proposed abandonment, discontinuation, vacation, or alteration. The application shall be substantiated by oath by 5 or more of the persons signing the application.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- CL 1929, 3951 ;-- CL 1948, 247.42 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

#### **247.43 Highway bordering on lake or stream; hearing; notice; publication; posting; service.**

##### Sec. 3.

Upon the filing of an application required by section 2, the presiding circuit judge shall schedule a hearing on the application not later than 60 days from the date the application is filed. Notice of the application and the time of

hearing on the application shall be published once each week for 3 successive weeks, in a newspaper printed and circulated in the county, unless an affidavit is filed in the case that no such newspaper is published in the county. The notice shall contain an accurate description of the highway described in the application and a brief recital of the reasons for its abandonment, discontinuance, vacation, or alteration. A copy of the notice shall also be posted in 3 of the most public places in the city or village in which the highway is situated, at least 20 days before the date of the hearing on the application. A copy of the notice shall be sent by first-class mail to the owners of record title of each parcel of land located within 300 feet of the highway described in the application and to those persons of record claiming under those owners at their local address and the address appearing on the assessment roll, if different, and to the chief executive officer of the city or village in which the highway is situated, the state transportation department, the department of natural resources, and, if applicable, the township in which the highway is situated at least 30 days before the date fixed for the hearing on the application. The department of natural resources and, if applicable, the township shall review the application to determine whether the property should be retained as an ingress and egress point. Proof by affidavit of the required publication, posting, and mailing shall be filed with the court before the date of hearing.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- CL 1929, 3952 ;-- Am. 1931, Act 40, Eff. Sept. 18, 1931 ;-- CL 1948, 247.43 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

**Compiler's Notes:** For transfer of powers and duties of department of natural resources to department of natural resources and environment, and abolishment of department of natural resources, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

#### **247.44 Highway bordering on lake or stream; court order; operation and maintenance of property; effect of noncompliance with subsection (3); reopening road ending; closure; initiation of proceedings.**

##### **Sec. 4.**

(1) Upon the day of hearing the application or any adjournment of the hearing, testimony may be taken from any person or persons interested in the application, and if it satisfactorily appears to the court that there is no reasonable objection to the application, and that it is necessary for the best interest and welfare of the public that the highway be abandoned, discontinued, vacated, or altered as to its course, as prayed for in the application, or if it appears to the court that the highway or any part of the highway should remain as then established, an order shall be entered in the record of the court in accordance with the determination.

(2) If a circuit court determines pursuant to this act that an official or officials of a city or village in this state may discontinue, abandon, alter the course, or vacate a public highway or portion of a public highway, and the department of natural resources or, if applicable, the township in which the highway is situated decides to maintain the property as an ingress and egress point, the court shall order the official or officials either to relinquish control to the state or township if the interest is nontransferable or to convey by quitclaim deed whatever interest in the property is held by the local unit of government to the state or township. The township shall have first priority to obtain the property or control of the property as an ingress and egress point. If the township obtains the property or control of the property as an ingress and egress point and later proposes to transfer the property or control of the property, it shall give the department of natural resources first priority to obtain the property or control of the property. If the state obtains the property or control of the property under this subsection, the property shall be under the jurisdiction of the department of natural resources. The state may retain title to the property, transfer title to a local unit of government, or deed the property to the adjacent property owners. If the property was purchased by the state from restricted fund revenue, money obtained from sale of the property shall be returned to that restricted fund.

(3) If interest in the property is conveyed or control over the property is relinquished to a local unit or this state under subsection (2), the local unit or this state, as applicable, shall operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion as necessary.

(4) If a person shows substantial noncompliance with the requirements of subsection (3), the circuit court may order the local unit or this state to close the road ending in a manner to prevent ingress and egress to the body of water for a period of up to 30 days.

(5) If a person shows substantial noncompliance with the requirements of subsection (3) and the circuit court has previously closed the road ending for up to 30 days under subsection (4), the circuit court may order the local unit or this state to close the road ending in a manner to prevent ingress and egress to the body of water for 90 days.

(6) If a person shows substantial noncompliance with the requirements of subsection (3) and the circuit court has previously closed the road ending for 90 days under subsection (5), the circuit court may order the local unit or this state to close the road ending in a manner to prevent ingress and egress to the body of water for 180 days.

(7) If a person shows substantial noncompliance with the requirements of subsection (3) and the circuit court has previously closed the road ending for 180 days under subsection (6), the circuit court shall order the local unit or this state to show cause why the road ending should not be permanently closed in a manner to prevent ingress and egress to the body of water. Subject to subsection (8), the circuit court shall permanently close the road ending unless the local unit or this state shows cause why the road ending should not be closed.

(8) After a road ending is closed under subsection (7), and unless the property has been conveyed or relinquished to the adjacent landowners under subsection (9), the local unit or this state may petition the circuit court to reopen the road ending. The circuit court may order the road ending reopened if the local unit or this state presents a management plan to and posts a performance bond with the circuit court, and the circuit court finds that the management plan and performance bond are adequate to ensure compliance with subsection (3).

(9) After a road ending is closed by the circuit court under subsection (7), 1 or more of the adjacent landowners may petition the circuit court to order the local unit or this state to convey any interest in the property that the local unit or this state holds to the adjacent landowners, or, if the interest is nontransferable, to relinquish control over the property to the adjacent landowners.

(10) Proceedings under subsection (4), (5), (6), or (7) shall be initiated by application of 7 owners of record title of land in the local unit who own land within 1 mile of the road ending to the circuit court for the county in which the road ending is located. The applicants in proceedings under subsection (4), (5), (6), (7), (8), or (9) shall give the persons described in section 3 notice of the application by registered mail.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- CL 1929, 3953 ;-- CL 1948, 247.44 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

**Compiler's Notes:** For transfer of powers and duties of department of natural resources to department of natural resources and environment, and abolishment of department of natural resources, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

#### **247.45 Highway bordering on lake or stream; appeal.**

##### **Sec. 5.**

The proceedings required by section 4 are subject to appeal by a taxpayer of the village or city in which the highway is situated. Notice of a claim for appeal shall be served upon the parties to the action including the chief executive officer of the city or village in which the highway is situated, within 10 days after the date of the entry of the order. Further proceedings on the appeal shall be in the same manner as provided by law for appeal of judgments of the circuit court.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- CL 1929, 3954 ;-- CL 1948, 247.45 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996

#### **247.46 "Adjacent" and "highway" defined.**

##### **Sec. 6.**

As used in this act:

(a) "Adjacent" includes any highway, or portion of a highway, lying within 5 rods of the shore of any lake or the general course of any stream.

(b) "Highway" includes, where applicable, local roads or streets.

**History:** 1927, Act 341, Eff. Sept. 5, 1927 ;-- Am. 1929, Act 204, Eff. Aug. 28, 1929 ;-- CL 1929, 3955 ;-- CL 1948, 247.46 ;-- Am. 1996, Act 217, Imd. Eff. May 28, 1996