

- SUBJECT:** Allowing counties to adopt a road map to designate public roads
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 6 ayes — Walker, Crabb, F. Brown, Mowery, Truitt, B. Turner
1 nay — Howard
2 absent — Geren, Krusee
- WITNESSES:** For — Jim Allison and Randy Sims, County Judges and Commissioners Association; Jim Farrar; Nick Gallegos, Edwards County; Donald Lee, Texas Conference of Urban Counties; John Rothermel, Stewart Title Guaranty Co.; Brad Stephenson, Eastland County Commissioners Court

Against — Jimmy Gaines, Texas Landowners Council; Billy Howe, Texas Farm Bureau; Ed Small, Texas and Southwestern Cattle Raisers Association; Rodney D. Taylor, Llano County Farm Bureau
- BACKGROUND:** In 1981, the Legislature enacted Art. 6812h, V.A.C.S. (now Transportation Code, sec. 281.002), allowing a county with a population of 50,000 or less to acquire a public interest in a private road only by purchase, condemnation, dedication, or a court’s final judgment of adverse possession. The law abolished the doctrine of common-law dedication of roads.

Two Texas Supreme Court cases held that this statute “contains no provision which would make it retroactive and, without such as provision, the statute can be given only prospective application” after its effective date of August 31, 1981 (*Linder v. Hill*, 691 S.W. 2d 590, 592 (Tex. 1985) and *Las Vegas Pecan & Cattle Co., Inc. v. Zavala County*, 682 S.W. 2d 254, 256 (Tex. 1984)). A 1985 attorney general’s opinion, JM-842, also determined that a 1985 legislative amendment to the statute did not require the retroactive application of the statute to counties that had acquired a public interest in a private road before August 31, 1981.

While the Supreme Court cases and the attorney general opinion did not require counties to follow the new procedures to acquire roads after

September 1, 1981, the legal status of roads acquired before then remained unclear. The roads may have been used by the public and maintained by the county for several years, or no documentation exists in county commissioners minutes, deed records, or road and bridge department maintenance records showing that a dedication existed before August 31, 1981.

According to the 2000 census, Texas has about 200 counties with populations of 50,000 or less.

DIGEST:

CSHB 340 would allow a county with a population of 50,000 or less to publish a road map showing its claim of public interest in county roads, provide for a review and appeals process for landowners disputing the county's claim. It also would allow a landowner to transfer interest in a road to the county.

A county commissioners court could propose a county road map showing roads acquired by purchase, condemnation, dedication, or a court's final judgment of adverse condemnation under Transportation Code, sec. 281.002, or roads claimed as public roads because of continuous maintenance with public funds since September 1, 1981. The commissioners court would have to hold a public hearing on the proposal and publish notices of the hearing at least once a week for four consecutive weeks in a newspaper of general circulation in the county. The commissioners also would have to display a proposed map showing the roads to be claimed for at least four weeks before the hearing. The map would have to be on a scale of 1 inch to 2,000 feet.

The commissioners court could formally adopt the map, as revised by public comment, only at a public meeting held within 60 days following the hearing. The county clerk would have to keep the map in a place accessible to the public. The omission of a road in which the county had acquired an interest through purchase, condemnation, dedication, or condemnation would not affect the status of the omitted road. The map would be considered conclusive evidence of the public's right of access over a road and the county's authority to use public money to maintain the road.

A person asserting a private right, title, or interest in a road on the county road map could file a written protest with the county judge before the public

hearing. The commissioners would have to appoint a jury of five property owners to consider the claim and rule on it by majority vote. The jury's decision would be binding on the commissioners court. A landowner also could contest inclusion of a road on the county road map by filing a suit in district court within two years of adoption of the map.

The commissioners court would have to include a notice of its intention to adopt a county road map with ad valorem tax statements for the year before the map was considered for adoption. A property owner could tender a warranty deed for any property included the county right-of-way on which the property owner was paying taxes, and the commissioners court would have to accept and file the warranty deed.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 340 would provide a fair and orderly process to clarify the ambiguous legal status of county roads that existed before 1981. In many cases, the public has had access to these roads, and county tax money has been used to maintain these roads for many years. The bill would provide a mechanism to establish the public's rights to these roads.

CSHB 340 could forestall situations such as in Eastland County, where commissioners told the sheriff to cut a fence across a disputed road and the sheriff ultimately was sued and defeated for re-election. One road in Edwards County is subject to three lawsuits over ownership, and similar legal battles occur elsewhere in the state.

Property owners would receive adequate notice of the proposed county road map through the multiple notices in a countywide newspaper and by having the map available for inspection at the courthouse before the hearing. In smaller counties, the "grapevine" and courthouse square conversations would provide even more adequate notice. Absentee landowners would be notified by information included in their yearly tax statements.

The bill would respect rural Texans' commitment to defending their property rights while allowing a fair but final determination of which county roads would be considered public roads. It would offer a way to determine road ownership without complex and costly litigation. Landowners would have an

opportunity to object at the public hearing or to submit written objections. Any dispute would be submitted to an impartial panel of five other landowners, whose decision would be binding. A landowner unsatisfied by the panel's decision would have legal redress through the courts.

The nature of smaller counties also would ensure that the process of determining a county road map was fair and accessible to all. Citizens would keep the commissioners accountable through the ballot box. Informal social controls, such as interaction at the local Dairy Queen, also would serve as a check on commissioners' decisions on a proposed county road map.

CSHB 340 would apply only to old roads. Roads built since 1981 would have to be dedicated or acquired formally. In many cases, because of the lack of county maintenance records, the determination of public use depends on the fading memories of older residents and county road hands. Small counties need to resolve the legal status of pre-1981 roads before access to these memories is lost forever.

The bill also would allow property owners who have been paying taxes on what is, in effect, a county road to deed the property to the county.

OPPONENTS
SAY:

CSHB 340 represents a serious threat to protection of property rights. It would shift the burden to property owners to demonstrate that a particular road belonged to them. County commissioners should not be allowed to circumvent traditional constitutional and legal protections to claim land simply through preparing a county road map.

The bill would create an unwieldy and complex procedure for landowners to assert their basic rights. Individual citizens could be overwhelmed by the commissioners at the public hearing. There would no guarantee that the five property owners selected for the review panel would be impartial.

CSHB 340 would not provide adequate notice to absentee or out-of-county landowners. The required notice in the tax statement could be lost or discarded, or the statement could be sent to a mortgage company or an agent, rather than to the property owner. Out-of-county landowners could return to find that the county had confiscated portions of their property through the county road map process.

The bill's definition of criterion of a road having been "continuously maintained" with public funds would represent too vague a standard. Would running a road grader across the caliche once a year for two decades qualify as being continuously maintained? The bill would leaves such issues unresolved.

NOTES:

A floor amendment is anticipated that would require county commissioners to appoint five property owners with no interest in the outcome of the protest to determine the landowners contest claim and would require the county to provide written records or other information documenting the county's claim of continuous maintenance of the road beginning before September 1, 1981. Other provisions of the floor amendment would require the public hearing to adopt the map as revised by public comment and the determination of the five-member jury in contested claims. The amendment would also define continuous maintenance as "grading or other routine road maintenance beginning before September 1, 1981, and continuing until the date of protest."

HB 340 as filed would have required the county to show that a road had been continuously maintained with county funds since September 1, 1956, and would have established that a property owner would have to prove that the county did not have substantial evidence to claim public interest in the road. The committee substitute added provisions that would allow a written protest, require appointment of a landowner jury to evaluate claims, and require a notice to be included in tax statements.