

BILL ANALYSIS

Senate Research Center
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H.B. 1117
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Engrossed

DIGEST AND PURPOSE

Prescriptive easement is the right to use another person's property if it does not adversely affect the property owner. Case law prior to 1981 found that if a road is used by the public and is maintained by the county for a period of more than ten years, the road becomes public; giving the public the right to use it, and the county the responsibility to maintain it. Since 1981, however, counties of 50,000 or less have not been able to acquire a road by prescriptive easement, only by purchase, condemnation, dedication, or a court judgment of adverse possession. It takes a clear action of a commissioners' court to accept one of those four methods. It is illegal for a county commissioner to maintain a private road with public funds.

Currently, Texas law allows a property owner to challenge the status of a pre-1981 prescriptive easement road by filing a lawsuit, or by placing a locked gate on the road, with the burden of proving that the road was maintained prior to 1981, and acquired by prescriptive easement, falling on the county. There is no statute of limitations. As the years progress, counties will be unable to produce personal testimony. Taking affidavits at the present time for a possible lawsuit in the future is not recommended, as such affidavits are generally not admissible.

In the future, as counties are unable produce personal testimony with firsthand knowledge, they will be more likely lose in court. To lose the right to maintain what the county considers a public road could endanger the rights of those interior landowners who use the road to access their property.

Currently, there is no resource for the county to research the ownership of each piece of land adjoining a county road. The appraisal district can determine who is on the tax rolls of each piece of land, but that does not indicate ownership in all cases. An ownership search for each property could be a substantial financial burden on counties, especially rural counties. If the owners could be determined, the litigation necessary to prove up each road would overwhelm the courts.

H.B. 1117 authorizes the commissioners court of a county to adopt a proposed county road map and include in the map all roads in which the county claims a public interest. This bill requires a county claiming a road to provide notice to all affected landowners by publication in the newspaper, and by two separate mailings in the ad valorem tax notice the year before and the year after the county adopts the map. H.B. 1117 authorizes landowners to protest the county map in a public hearing or by mail. This bill also requires a jury of view to determine the validity of the county's claim. H.B. 1117 provides that after two years, if the landowner does not protest, the road becomes the responsibility of the county; if after that two-year period, the landowner decides to protest, the burden of proof shifts from the county to the landowner.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 6, Transportation Code, by adding Chapter 258, as follows:

CHAPTER 258. CLARIFICATION OF EXISTENCE OF PUBLIC INTEREST IN
ROAD BY ADOPTION OF COUNTY ROAD MAP

Sec. 258.001. CLARIFICATION OF PUBLIC INTEREST IN ROAD. Authorizes a county, notwithstanding Chapter 281, to clarify the existence of a public interest in a road as provided by this chapter.

Sec. 258.002. ADOPTION OF COUNTY ROAD MAP. (a) Authorizes the commissioners court of a county to propose a county road map that includes each road in which the county claims the existence of a public interest under certain circumstances.

(b) Requires a commissioners court that proposes a county road map under this section to hold a public meeting at which a person asserting a private right, title, or interest in a road in which the county has claimed the existence of a public interest is authorized to appear before the commissioners court to protest the county's claim. Authorizes a person asserting a private right, title, or interest in a road to file a written protest with the county judge at any time before the public meeting. Requires the commissioners court to appoint a jury of view consisting of five property owners who have no interest in the outcome of the protest to determine, by a majority vote after a public hearing and an examination of the county's road maintenance records and other information, the validity of the county's claim of the existence of a public interest in the road. Provides that a county has a valid claim of the existence of a public interest in a road if it provides written records or other information documenting the county's continuous maintenance of the road beginning before September 1, 1981. Provides that the determination of the jury of view is binding on the commissioners court, and requires the commissioners court to revise the proposed county road map accordingly.

(c) Requires the commissioners court to publish at least once a week in a newspaper of general circulation in the county for at least four consecutive weeks preceding the date of the public meeting a notice containing certain information.

(d) Requires the commissioners court to display the proposed map at the location and during the time described in the notice from the date on which notice is first published through the date on which the commissioners court formally adopts the proposed map. Requires the map to be legible, and the map scale to be not less than one inch equals 2,000 feet.

(e) Authorizes the commissioners court to formally adopt the proposed map, as revised after public comment and a determination by the jury of view, only at a public meeting held before the 90th day following the date of the initial public meeting required by Subsection (b).

(f) Requires the county clerk to keep a county road map adopted under this section in a place accessible to the public.

(g) Provides that the failure to include on a county road map adopted under this section a road in which the county has previously acquired a public interest by purchase, condemnation, dedication, or a court's final judgment of adverse possession does not affect the status of the omitted road.

(h) Defines "continuous maintenance."

Sec. 258.003. CONCLUSIVE EVIDENCE. Provides that, except as provided by Section 258.004, a county road map adopted under Section 258.002 is conclusive evidence of the public's right of access over a road included on the map and the county's authority to spend public money to maintain a road included on the map.

Sec. 258.004. CONTEST. (a) Authorizes a person asserting a private right, title, or interest in a road in which the existence of a public interest is asserted under this chapter to contest the inclusion of the road in the county road map by filing a suit in a district court in the county in which the road is located, not later than the second anniversary of the date on which the county road map including the road was adopted.

(b) Provides that the county has the burden of proving that the county has continuously maintained, as that term is defined by Section 258.002, the road in question.

Sec. 258.005. TRANSFER OF INTEREST. (a) Requires the commissioners court to include a notice of its intention to consider adoption of the county road map with the ad valorem tax statements for the year before the adoption of a county road map under Section 258.002. Sets forth the required content of the notice. Requires the commissioners court, if a property owner tenders a warranty deed to the county for property included in the right-of-way of a county road, to accept and file the warranty deed.

(b) Requires the commissioners court to include a notice of the adoption of the county road map with the ad valorem tax statements for the year after the year in which the county adopts a map under Section 258.002. Sets forth the required content of the notice.

Sec. 258.006. TAX ABATEMENT; REVERSION OF INTEREST. (a) Exempts from ad valorem taxation by any taxing authority, a private right, title, or interest, other than a mineral interest, held by a person in land underlying a road in which the county has successfully asserted the existence of a public interest under this chapter.

(b) Provides that a right, title, or interest described in Subsection (a) reverts completely to the person who held the right, title, or interest at the time the county successfully asserted the existence of the public interest in the land if the county ceases to maintain the road, and the person is liable for all ad valorem taxes levied on that right, title, or interest on or after the reversion.

(c) Requires the taxing authority, to levy and collect an ad valorem tax on a right, title, or interest described in Subsection (a) that has reverted to the landowner under Subsection (b), to obtain from the county an order stating that the county has ceased to maintain the road. Provides that the owner of the right, title, or interest will be liable for any ad valorem tax levied on the right, title, or interest on or after the date of the county's order.

Sec. 258.007. EXPIRATION OF CHAPTER. Provides that this chapter expires September 1, 2009.

SECTION 2. Effective date: September 1, 2003.