

HOUSE BILL No. 4793

May 10, 1989, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill to amend section 28 of Act No. 156 of the Public Acts of 1851, entitled as amended

"An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act,"

being section 46.28 of the Michigan Compiled Laws; section 3 of chapter XIX of Act No. 283 of the Public Acts of 1909, entitled as amended

"An act to revise, consolidate and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance and use of the public highways and private roads, the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; setting and protecting shade trees, drainage, cutting weeds and brush within this state, and providing for the election or appointment and defining the powers, duties and compensation of state, county, township and district highway officials,"

being section 239.3 of the Michigan Compiled Laws; sections 2, 4, and 7 of Act No. 368 of the Public Acts of 1925, entitled as amended

"An act to prohibit obstructions and encroachments on public highways, to provide for the removal thereof, to prescribe the conditions under which telegraph, telephone, power, and other public utility companies, cable television companies and municipalities may enter upon, construct and maintain telegraph, telephone, power or cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across or under public roads, bridges, streets and waters and to provide penalties for the violation of this act,"

being sections 247.172, 247.174, and 247.177 of the Michigan Compiled Laws; and section 66 of Act No. 59 of the Public Acts of 1915, entitled as amended

"An act to provide for the construction, improvement and maintenance of highways; for the levying, spreading and collecting of taxes and of special assessments therefor; to authorize the borrowing of money and the issuance of bonds under certain restrictions, regulations and limitations; to prescribe the powers and duties of certain officers with reference thereto; and to validate certain proceedings heretofore taken,"

being section 247.466 of the Michigan Compiled Laws, to harmonize provisions of law relating to the abolished office of justice of the peace in regard to highways.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 28 of Act No. 156 of the Public Acts of
2 1851, being section 46.28 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 28. Any person ~~feeling himself~~ WHO IS aggrieved by
5 the action of the board of ~~supervisors~~ COMMISSIONERS by the
6 laying out, altering, or discontinuing OF any road designated by
7 this act — may have his OR HER damage assessed by a jury
8 composed of 12 ~~freeholders~~ PERSONS residing in the township

1 where the land through which ~~said~~ THE road has been laid out,
2 altered, or discontinued. ~~is situated.~~ Such person so com-
3 plaining as against the action of such board, may, within 30 days
4 after receiving notice in writing from the clerk of such board of
5 ~~supervisors~~ COMMISSIONERS of any county that any road has been
6 laid out, altered, or discontinued across lands owned by him ~~—~~
7 ~~go before any justice of the peace in said township~~ OR HER, FILE
8 A COMPLAINT WITH THE DISTRICT OR MUNICIPAL COURT OF THE JUDICIAL
9 DISTRICT OR MUNICIPALITY where such land is located ~~and file~~
10 ~~with such justice a petition,~~ setting forth the fact of the
11 laying out, altering, or discontinuing of such road running
12 through lands owned by him ~~—, whereby he has been,~~ or HER AND
13 HOW HE OR SHE is likely to be damaged. ~~—, and further praying~~
14 ~~the court that a venire be issued summoning a jury of 12 freehol-~~
15 ~~ders of said township to determine the necessity of laying out,~~
16 ~~altering or discontinuing said highway, and the taking of private~~
17 ~~property therefor, and the amount of such damage he has sus-~~
18 ~~tained, or is likely to sustain from the action of such board as~~
19 ~~aforesaid. On the receipt of such petition the said justice~~
20 ~~shall at once give notice to the petitioner in writing of the~~
21 ~~date when said petition will be heard before him, and shall also~~
22 ~~notify in writing the supervisor of said township of the time and~~
23 ~~place when the same will be heard, which shall not be less than 6~~
24 ~~days from the date of the petition, nor more than 12. And on the~~
25 ~~date and at the hour mentioned in said notice the justice shall~~
26 ~~direct any constable of said township then present to write the~~
27 ~~names of 24 freeholders from which to select a jury of 12~~

~~1 persons. On the compliance with such order by the constable, the
2 supervisor, if he be present, and if not present, then the jus-
3 tice aforesaid, together with the person filing such petition,
4 shall proceed to strike each alternately from such list, the
5 names of 6 persons, and the remaining 12 names on said list shall
6 constitute a jury for the purposes aforesaid. But in case any of
7 such jurors on the original list shall be unable to sit, then the
8 court shall direct the officer present to summon talesmen to take
9 their places until such panel is full. When such panel is com-
10 pleted, the justice shall swear said jurors to well and truly
11 determine as to the matters set forth in the petition of the
12 person making the same. Said justice shall have full power to
13 issue subpoenas and to compel the attendance of witnesses, the
14 same as he would have in matters triable before him, and all pro-
15 ceedings on the hearing of said petition shall be conducted as
16 nearly as may be as are trials before justices of the peace. If
17 the jury, on hearing all of the evidence both for and against the
18 allowance of damages, and the necessity for the taking of said
19 lands for private purposes, shall determine that the person
20 claiming to be grieved is entitled to damages, then they shall
21 determine as to the amount, and the necessity for the taking of
22 said lands, and under their hands certify to the justice such
23 sum, and the necessity aforesaid, and, in case they determine
24 that such person is not so entitled, they shall certify this fact
25 to said justice, who shall, upon the rendition of such verdict,
26 file the same, and within 10 days from the date of its rendition,
27 transmit the same to the clerk of said county, and shall also~~

1 ~~serve a copy of the verdict and notice of all proceedings, in~~
2 ~~relation to said application upon all persons whose lands are~~
3 ~~affected by said application, which notice shall be full and~~
4 ~~explicit as to any and all proceedings had therein, and shall at~~
5 ~~the next regular meeting of the board of supervisors of his~~
6 ~~county, present the same to such board and cause it to be entered~~
7 ~~upon the minutes of such board. In case IF damages have been~~
8 ~~awarded, as aforesaid, then such board of supervisors~~
9 COMMISSIONERS shall apportion the amount to the several townships
10 in ~~said~~ THE county, and the same when so raised shall go into
11 and become a part of the general fund of such county, and they
12 shall at the same time issue an order to the person or his OR HER
13 representatives or assigns, as the case may be, for such sum on
14 the county treasurer, and payable out of any fund in the county
15 treasury not otherwise appropriated: Provided, That the person
16 thus claiming damage shall file with ~~such justice~~ THE COURT at
17 the time ~~he files his petition~~ OF THE FILING OF THE COMPLAINT,
18 a bond in the penal sum of 50 dollars conditioned to pay all
19 costs. ~~of such justice, officer and jury, but in~~ IN case dam-
20 ages are awarded, then the costs of such proceedings shall be
21 certified by ~~said justice~~ THE COURT along with the award and
22 become a part and parcel thereof, and payable to said petitioner
23 in addition to the award. ~~of the jury: And provided further,~~
24 ~~That in case the jury first summoned shall not agree, then the~~
25 ~~said cause or hearing shall stand adjourned to some day fixed by~~
26 ~~said justice, but not for a longer period than 10 days, and on~~

~~1 the day to which the same shall be continued a jury shall be
2 empaneled and the matter submitted as hereinbefore directed.~~

3 Section 2. Section 3 of chapter XIX of Act No. 283 of the
4 Public Acts of 1909, being section 239.3 of the Michigan Compiled
5 Laws, is amended to read as follows:

6 CHAPTER XIX

7 Sec. 3. In case any such applicant, heirs, or assigns
8 shall fail to keep his OR HER culvert or cattle-pass already con-
9 structed, or hereafter to be constructed, in good repair, it
10 shall be the duty of ~~such highway commissioner~~ THE STATE TRANS-
11 PORTATION DEPARTMENT to remove such culvert or cattle-pass from
12 such highway at the expense of such applicant, or owner, heirs,
13 or assigns, such expense to be collected by suit ~~in the name of~~
14 ~~such commissioner of highways~~ in an action of trespass on the
15 case ~~before any justice of the peace of such township~~ IN THE
16 DISTRICT OR MUNICIPAL COURT.

17 Section 3. Sections 2, 4, and 7 of Act No. 368 of the
18 Public Acts of 1925, being sections 247.172, 247.174, and 247.177
19 of the Michigan Compiled Laws, are amended to read as follows:

20 Sec. 2. If such encroachment shall not be removed within
21 30 days after the service of a copy of such order, such owner or
22 occupant shall forfeit the sum of 1 dollar for every day after
23 the expiration of that time during which such encroachment shall
24 continue unremoved, to be recovered in an action of trespass
25 ~~before any justice of the peace of the township, or of an~~
26 ~~adjoining township in the same county, and the commissioner or~~
27 ~~commissioners~~ IN THE DISTRICT OR MUNICIPAL COURT, AND THE STATE

1 TRANSPORTATION DEPARTMENT may proceed to remove such encroachment
2 in such manner as to cause the least damage to the property or
3 loss to the owner, and the person at fault shall be liable for
4 the costs and expenses of such removal. The ~~highway commis-~~
5 ~~sioner or commissioners~~ STATE TRANSPORTATION DEPARTMENT shall
6 keep an accurate account of the expenses incurred ~~by him or them~~
7 ~~in carrying out the provisions hereof~~ and shall present a full
8 and complete statement thereof, verified by oath, together with a
9 full and legal description of the lands entered upon, to the
10 occupants of such lands, requiring the ~~said~~ occupant to pay the
11 amount therein set forth; and in case such owner or occupant
12 shall refuse or neglect to pay the same within 30 days after such
13 notice and demand, the ~~highway commissioner or commissioners~~
14 STATE TRANSPORTATION DEPARTMENT shall present a duly verified
15 copy of ~~said~~ THE statement to the township clerk of the town-
16 ship in which such expense was incurred, and thereupon the amount
17 of all such costs and expenditures shall be certified to the
18 supervisor and shall be assessed and levied on the lands
19 described in the statement ~~of the commissioner or commissioners~~
20 STATE TRANSPORTATION DEPARTMENT, and shall be collected in the
21 same manner as other taxes are collected, but no person shall be
22 required to remove any fence under the provisions of this section
23 between the first day of May and the first day of September
24 unless such fence shall have been made within 3 months next
25 before the making of the order for the removal thereof, or inter-
26 feres with the construction, improvement, or maintenance of the
27 road.

1 Sec. 4. Such action shall be brought by the ~~commissioner~~
2 ~~or commissioners in his or their name of office,~~ STATE TRANSPOR-
3 TATION DEPARTMENT claiming nominal damages only in the sum of 6
4 cents ~~, before any justice of the peace of the township, or of~~
5 ~~any adjoining township~~ in the ~~same county~~ DISTRICT OR MUNICI-
6 PAL COURT. The summons in such action may be in the same form,
7 and shall be issued and served, and a jury shall be impaneled
8 when demanded, and all proceedings had as near as may be, as in
9 cases of personal actions of trespass, and full costs shall be
10 taxed by the ~~justice~~ COURT and paid by the losing party, except
11 that if the ~~commissioner or commissioners demand~~ STATE TRANS-
12 PORTATION DEPARTMENT DEMANDS a jury, ~~he or they~~ IT shall not be
13 required to advance the jury fee.

14 Sec. 7. Either party may appeal to the circuit court of
15 the proper county in the same manner that appeals are taken from
16 ~~justices' courts~~ THE DISTRICT OR MUNICIPAL COURT in other
17 cases, but in case of an appeal taken by the ~~commissioner or~~
18 ~~commissioners, he or they~~ STATE TRANSPORTATION DEPARTMENT, IT
19 shall not be required to pay the costs or furnish an appeal
20 bond. In case of such appeal, trial shall be had on the issue
21 joined in the ~~justice~~ DISTRICT court, and in case of a judgment
22 in any court against the ~~commissioner or commissioners~~ STATE
23 TRANSPORTATION DEPARTMENT no execution shall issue, but the judg-
24 ment shall be certified to the proper supervisor and the amount
25 thereof assessed and collected as in case of judgments against
26 townships and counties.

1 Section 4. Section 66 of Act No. 59 of the Public Acts of
2 1915, being section 247.466 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 66. The proceedings herein provided for improving any
5 highway, shall be subject to review upon certiorari. Notice of
6 such certiorari shall be served upon the county commissioners, or
7 1 of them or upon the state ~~highway commissioner~~ TRANSPORTATION
8 DEPARTMENT, within 10 days after the making of their apportion-
9 ment of benefits for such improvement has been filed with the
10 county clerk in the same manner as notice is required to be given
11 of certiorari for reviewing judgments returned by the ~~justice of~~
12 ~~the peace~~ DISTRICT OR MUNICIPAL COURT, and the writ shall be
13 issued and served, and the bond given and approved, and all
14 subject matter brought to issue in the same way and manner as in
15 such case provided, except that such certiorari may be heard by
16 the court during term, or at chambers, upon 5 days' notice given
17 to the opposing party; and the circuit court of the county shall
18 hear and determine the same without ~~necessary~~ UNNECESSARY
19 delay; and if any material defect be found in the proceedings,
20 such proceedings shall be set aside in so far as erroneous with
21 consent to the county road commissioners, or the state ~~highway~~
22 ~~commissioner~~ TRANSPORTATION DEPARTMENT, to proceed anew with
23 their proceedings from the point where the defect occurs. The
24 entire proceedings shall not be set aside except where the county
25 road commissioners, or the state ~~highway commissioner~~
26 TRANSPORTATION DEPARTMENT, are found to have no jurisdiction to
27 act upon the petition presented. If the proceedings be

1 sustained, the party bringing the certiorari shall be liable for
2 the costs thereof; and if they be not sustained in whole, or in
3 part, the parties petitioning for the proposed improvement, shall
4 be liable for the costs. If no certiorari be brought within the
5 time herein described, the improvements shall be deemed to have
6 been legally ordered and established, and its legality shall not
7 thereafter be questioned in any suit at law, or in equity. When
8 such proceedings are brought, the county road commissioners, or
9 the state ~~highway commissioner~~ TRANSPORTATION DEPARTMENT, shall
10 postpone the letting of contracts if they have not been let, and
11 of all other proceedings until after the determination of the
12 court.