



**House
Legislative
Analysis
Section**

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STATE TRAILWAYS SYSTEM

AS ENROLLED

**Senate Bill 203 as passed by the Senate
Sponsor: Sen. Vern Ehlers**

**Senate Bill 224 with House committee
amendments
Sponsor: Sen. Robert Geake**

**Senate Bill 225 as passed by the Senate
Sponsor: Sen. John Pridnia**

**Senate Committee: Natural Resources &
Environmental Affairs
House Committee: Tourism & Recreation**

First Analysis (3-24-93)

THE APPARENT PROBLEM:

Since 1987, a number of people representing different recreational interests have worked in conjunction with the Department of Natural Resources (DNR) toward establishing a state-wide system of trailways that would run from the southern border of Michigan up to the Mackinac Bridge and through the Upper Peninsula up to Michigan's northern-most border. Those involved in planning for the trailways system envision it to be an interconnecting group of trails that would run through the centers of cities, towns and villages as well as through remote countryside, and be situated along both public and private lands. The declining use of trains along certain railway lines has presented an opportunity for the state, its local governments and private citizens to purchase the railroad rights-of-way and convert them for use as trails in the system. Using funds out of the Natural Resources Trust Fund, the department has authority to purchase land or the rights to it for use by the public. Also, with creation of the Recreation Improvement Fund under Public Act 221 of 1987, the DNR has access to funds set aside for recreational purposes so that trailways could be built and maintained. As more railroad rights-of-way are made available for purchase, however, the department feels it must move quickly to secure them before others do. The department's Recreation Division created six advisory committees in 1989 to begin planning for the statewide trailways system that included representatives from various recreational groups. After input from the

committees and the general public about how the trailways system should be established and maintained and how it could be used by the public, an initial document was drafted containing a specific proposal. The state Natural Resources Commission (NRC), after reviewing the plan last year, drafted a final version of the proposal, and legislation has been introduced patterned after the NRC's final draft that would bring these plans to fruition.

THE CONTENT OF THE BILLS:

The bills would provide for the creation of a trailway system in Michigan under which the Natural Resources Commission could designate "Michigan trailways" on publicly owned or controlled land, and would allow for such trailways to be established and used. Among other things, the bills would create a Michigan Trailways Fund to receive money that could be spent for purposes relating to the trailways system, authorize a group of local governments to establish a Michigan trailway management council that could provide for managing a portion of the trailway in their jurisdiction, and provide immunity from liability for the owner or lessee of land on which a trailway user was injured. Senate Bill 224 is tie-barred to Senate Bill 203, and Senate Bills 225 and 203 are tie-barred to Senate Bill 224.

Senate Bill 224 would create the Michigan Trailways Act to authorize the Natural Resources

Senate Bill 203 (3-24-93)

Commission, upon petition by any person or on its own motion, to designate a trailway in the state as a "Michigan trailway" if the trailway met the following criteria or would meet them when it was completed.

A Michigan trailway would have to be on land that was owned by the state or a governmental agency, or was under the long-term control of a governmental agency through a lease, easement, or other arrangement. If a governmental agency owned the land, the NRC would have to obtain the agency's consent before designating the land as part of a Michigan trailway. (Under the bill, "governmental agency" would mean the federal government or a county, city, village, or township, or any combination of these entities.)

The design and maintenance of a trailway and its related facilities would have to meet generally accepted standards of public safety. A trailway also would have to meet appropriate standards for its designated recreation uses, and be available for those uses on a nondiscriminatory basis. Further, a trailway:

- * would have to be a multiuse trail suitable for use by pedestrians, people with disabilities, and other users, as appropriate;
- * would have to be, or have the potential to be, a segment of a statewide network of trailways, or attract a substantial share of its users from beyond the local area;
- * would have to be marked with an official Michigan trailway sign and logo at major access points; and
- * could not be directly attached to a roadway, except at roadway crossings.

Where feasible, a trailway would have to offer adequate support facilities for the public, including parking, sanitary facilities, and emergency telephones, that were accessible to disabled persons and were at reasonable frequency along the trailway. Potential negative impacts of trailway development on owners or residents of adjacent property would have to be minimized through all of the following: adequate enforcement of trailway rules and regulations; continuation of access for trailway crossings for agricultural and other purposes; construction and maintenance of fencing, where necessary, by the trailway owner or operator; and other means as deemed appropriate, and other conditions required by the NRC.

Public Hearing. The NRC could not designate a Michigan trailway unless a public hearing had been held in the area of the proposed trailway that took testimony and gathered public opinion on the proposal, including the proposed uses of the trailway and whether or not motorized uses would be appropriate for it. The hearing would have to be held at a time and place "calculated to attract a fair representation of opinions" on the matter, and a transcript or summary of testimony given at the hearing would have to be forwarded to the commission.

The NRC could revoke a designation if it determined that the trailway failed to meet the bill's requirements. Before revoking a designation the NRC would have to give notice to all entities involved in the trailway's management, but if the trailway were brought into compliance with the bill within 90 days after the notice was given the commission could not revoke the designation.

Trailway Connector. Upon petition by any person or on its own motion, the commission could designate as a "Michigan trailway connector" a trailway, bicycle path, sidewalk, road or other suitable route that did not meet the bill's requirements for a Michigan trailway if:

- * the connector met appropriate standards for its designated uses;
- * the connector linked directly to a Michigan trailway;
- * the public agency having jurisdiction over the connector had agreed in writing to the designation; and
- * the connector was marked with an official Michigan trailway connector sign and logo at major access points.

An aquatic corridor capable of accommodating watercraft that connected to a Michigan trailway could be designated as a trailway connector if it met the preceding requirements.

Trailway Uses. At the time a trailway was designated, the NRC, in consultation with governmental agencies in which a trailway was located, would have to establish uses to be permitted on it. In establishing permitted uses, the NRC would have to consider the safety and enjoyment of trailway uses, impacts on adjacent residents, landowners and businesses, and applicable local ordinances. A change in the permitted uses of a trailway relative to whether or not a motorized

use was to be allowed on it could not be made without NRC approval after a public hearing was held on the matter.

Trailway Operation and Maintenance. The DNR could operate and maintain Michigan trailways that were located on state-owned land, and could enter into an agreement with a council or one or more governmental agencies to provide for the operation and maintenance of a Michigan trailway. An agreement could include provisions for construction, maintenance and operation of the trailway, enforcement of trailway rules and regulations (including permitted trailway uses), and other provisions consistent with the bill.

In agricultural areas, a Michigan trailway could be temporarily closed by the entity operating it to allow pesticide application on adjoining lands. The operating entity would have to post the closure of the trailway or arrange with a landowner, or other person, for the posting of signs or the closure of the trailway during pesticide application and appropriate reentry periods.

Local Council. Two or more governmental agencies could establish a Michigan trailway management council to oversee the development and management of a trailway pursuant to the Urban Cooperation Act (UCA). Upon formation, a council would have to adopt operating procedures and elect officers as it felt were appropriate. As authorized in an interlocal agreement entered into pursuant to the UCA, a council could:

- * operate and maintain that portion of one or more trailways that were owned or controlled by the governmental agencies that established the council;
- * pursuant to an agreement made with the state, operate and maintain parts of a trailway located on state land;
- * coordinate the enforcement of trailway rules and regulations, and other applicable laws and ordinances, included permitted trailway uses of the trailway on locally controlled trails or, pursuant to an agreement with the state, on state land;
- * receive any grant made from the fund or other funding related to that portion of a trailway within its jurisdiction;
- * acquire or hold real property for purposes of operating a trailway; and
- * perform other functions consistent with the bill.

A council could be dissolved by the governmental agencies that participated in creating the council,

but if an agreement had been entered into with the DNR it would have to specify how the council could be dissolved.

Trailways Fund. The Michigan Trailways Fund would be created in the state treasury and, except as provided by law, the state treasurer could receive money or other assets from any of the following for deposit into the fund:

- * fees collected from users of trailways on state forest lands;
- * payments to the state for easements, use permits, leases or other use of state-owned trailway property;
- * payments to the state for concessions operated by private vendors on state-owned property located on or adjacent to a trailway;
- * federal funds;
- * gifts or bequests;
- * state appropriations; or
- * money or assets from other sources as allowed by law.

The state treasurer would direct the fund's investment and would have to credit interest and earnings of fund investments to it. Money in the fund at fiscal year end would remain in the fund and could not lapse to the general fund. Fund money could be spent for any of the following purposes:

- * expenses of the DNR in operating and maintaining the trailway system and enforcing trailway rules and regulations;
- * grants to or contracts with councils or governmental agencies to operate and maintain segments of state trailways and to enforce trailway rules and regulations;
- * funding of state trailway construction and improvements;
- * acquisition of land or rights in land; and
- * publications and promotions of the trailways system.

In determining how fund monies should be spent, the DNR would have to consider the need for funding for each purpose listed above; the estimated cost of trailway management for each governmental agency that managed a portion of it, based on previous costs, trailway mileage, level of use and other relevant factors; the need of each governmental agency that managed a trailway for financial assistance in managing it, and the amount of money from the fund previously received by the agency; the amount of revenue accruing to the fund

that was generated from each trailway; and other factors considered appropriate by the department.

The DNR would have to report to the legislature on or before December 1 of each year describing the use of money appropriated from the fund in the previous fiscal year.

NRC Authority. The commission could grant easements or use permits, or lease land owned by the state that was being used for a state trailway for a use that was compatible with the use of the trailway. The commission also could enter into contracts for concessions along a state-owned trailway, and lease land adjacent to a state-owned trailway for operating concessions. If the commission approved of the acquisition of land by the department, it could state that the acquisition of specified land was for purposes of the trailway system. Following such an acquisition, any revenue that was derived from the land pursuant to the bill, except as provided by law, would have to be deposited into the trailways fund. The commission could promulgate rules necessary to implement the bill.

Trailways Advisory Council. The bill would create the Michigan trailways advisory council within the department, which would have to make recommendations to the NRC and the DNR on how money in the trailways fund should be spent and advise them both on how to implement the bill and establish and operate state trailways. The council would have to be composed of the following members (all of whom would have to be appointed by the NRC):

- * someone involved with the establishment or operation of a multiple use trailway;
- * two individuals who represented trailway user groups;
- * one local government official from a governmental agency in which a multiple use trailway was located; and
- * someone from the general public.

The members first appointed to the council would have to be appointed within 90 days of the bill's effective date, and members would serve staggered four-year terms. The commission would have to appoint a member when a vacancy occurred in the same way specified for original appointments. After the council's first meeting, it would have to meet at least annually, or more frequently at the call of the chairperson or if requested by three or more

members. A majority of members would constitute a quorum for the council to transact business and would have to be present and serving for it to take official action. The council would be subject to the Open Meetings Act, and any writings prepared, owned, used, in possession of, or retained by the council as it performed its official function would be subject to the Freedom of Information Act.

Council members would serve without compensation, though members could be reimbursed for the "actual and necessary" expenses which they incurred in performing their official duties.

Other Provisions. All state agencies would have to cooperate with the commission and the DNR in implementation of the bill.

Senate Bill 225 would amend the State Transportation Preservation Act (MCL 474.60) to permit the Department of Transportation, in preserving a railroad right-of-way, to transfer it, for appropriate reimbursement, to the DNR for use as a Michigan trailway pursuant to Senate Bill 224, if the deed included restrictions on the use of that property that would assure that the property remained viable for future rail usage. The deed also would have to include a clause requiring the DNR to transfer the right-of-way, for appropriate reimbursement, to the Department of Transportation, upon a determination of the transportation department director that the right-of-way was needed for use as a railroad line.

Senate Bill 203 would amend the recreational land users act (MCL 300.201) to provide immunity from suit for the owner, tenant, or lessee of land or premises on that land for injuries to a person who was on the land or premises--without having paid the land's owner, tenant or lessee a valuable consideration--in order to enter or exit from or use a Michigan trailway or other public trail, unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

The bill also would define "land" as any tract of land of any size including, but not limited to, urban, suburban, subdivided, and rural land.

(Under the act, a person who is injured while on another person's land, without having paid the land's owner, tenant, or lessee to be on the land for

certain purposes including fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, cannot sue the owner, tenant, or lessee unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.)

HOUSE COMMITTEE ACTION:

The House Tourism and Recreation Committee added language to Senate Bill 224 that would provide for the creation of a trailways advisory council within the DNR, made up of persons representing various interests related to the designation of trailways, that would make recommendations to the NRC and the department on how money was to be spent from the trailways fund, and advise them on the implementation of the bill and the establishment and operation of state trailways. The committee also adopted a number of technical amendments to the bill. (3-17-93)

FISCAL IMPLICATIONS:

The Department of Natural Resources says Senate Bill 224 would have indeterminate fiscal implications for the state and local governments. Although the bill would not affect general fund expenditures, it could increase state and local government revenues through the collection of trail user fees, lease payments, concession payments or other money for deposit into the Michigan Trailways Fund. The fee amounts and number of potential users, leases or concession contracts cannot be determined at this time. The bill also could increase state costs through administrative expenses, issuance of grants or contracts, trail maintenance and improvement, or land acquisition. The department says it expects to administer the program using current personnel and resources, which are paid for out of existing restricted fund sources dedicated to recreational trail purposes.

In addition, Senate Bill 224 could increase revenues to local governments through their receipt of grants from the trailways fund, which would have to be used for maintenance/enforcement purposes related to trails in their jurisdiction. (Local involvement in the trailways system would, of course, be entirely optional.) Locals also could have increased costs in providing for the establishment and operation of trailway management councils; and if one or more local governments agreed under contract with the

DNR to operate and maintain a trailway, there could be additional costs. According to a nationwide survey of trails by the Rails-to-Trails Conservancy, the average cost of operating and maintaining one mile of trailway is about \$1,300 annually. However, the actual cost to operate and maintain any given stretch of trail would vary based on how the trail was constructed, the number of personnel used to maintain the trail and how much they were paid (including fringe benefits), and whether a user fee was charged—which would add costs for collection, accounting and enforcement activities.

According to the department, Senate Bills 203 and 225 would not have fiscal implications for the state or local governments. (9-22-92)

ARGUMENTS:

For:

Creating and operating state trailways in Michigan would provide an expanded array of recreational opportunities for its citizens and tourists who visit the state; to this end, the Department of Natural Resources has been working over the last few years on plans to develop an extensive statewide trailways system. As envisioned by the department, trailways will be situated near larger cities as well as meander through rural counties to give people opportunities to walk, run, bicycle, hike, ski or ride horses over long distances through natural settings in rural areas, as well as in urban and suburban areas. On some parts of the planned trailway users would be able to drive off-road vehicles or snowmobiles, but the bill ensures that local governments would ultimately determine what uses would be permitted on trailways within their jurisdictions. By enabling the DNR to purchase railroad rights-of-way that lie along railroad tracks no longer in use, establish trails along these lands, and connect them with trails set up along federal, state, local, and, occasionally, private lands, the bills would allow the DNR to expand Michigan's already numerous prospects for partaking in the great outdoors. Among other things, the bills would set up a special fund to receive monies from various public and private sources to pay for obtaining land and rights to land, building the trailways system, maintaining it (either by the DNR or by local governments with land in the system), and allowing the DNR to administer the trailways program. Also, depending on how a portion of the trail was to be used, funds could come from other sources as well (i.e., the

Snowmobile Trail Improvement Fund, or the ORV Fund).

For:

Senate Bill 224 would allow local governments to determine what activities would be permitted on trailways within their jurisdictions. Thus, ORVs, snowmobiles or other motorized vehicles could be prohibited if local residents felt such uses would disrupt the natural setting of a trail area or could disrupt environmentally sensitive areas nearby. As the bill would require a local public hearing to be held before a trailway could be designated and its uses determined, these concerns could be expressed to local officials who would decide the matter. On the other hand, if local residents would support motorized uses of prospective trailways (as is the case in many northern areas of the state) they could voice their support to local governing officials, who would resolve the issue based on local opinion.

For:

To ensure wise and cost-effective use of money from the trailways fund, the House Tourism and Recreation Committee added language to Senate Bill 224 that would provide for the establishment of a trailways advisory council. The council not only would be charged with advising the DNR and NRC on how money from the fund should be spent, but also would have to advise them on implementation of the bills and how to establish and operate the entire trailways system, as well as portions of it. Members of the council would have to be appointed by the NRC and represent various interests related to establishment and operation of a trailways system (i.e., two individuals from trailway user groups, someone involved in operating multiple use trailways, a local government official from a local government where a multiple use trailway was located, and someone representing the public).

For:

Senate Bill 203 would provide immunity from liability to those who owned or leased land that was within or adjacent to the trailways system. By specifically addressing this issue in the package of bills, landowners whose property was on or near proposed trails and who were interested in participating in the program could do so without fear of being sued for injuries suffered by trail users on or near their land.

For:

Senate Bill 225 may be the most important part of the package as it would permit MDOT to transfer to the DNR (for appropriate reimbursement) a railroad right-of-way currently under its jurisdiction so that it could be included within the statewide trailways system planned by the DNR. The DNR already has authority to create trailways (on state land or, in some instances, in agreement with local governments and private citizens); Senate Bill 224 merely would provide the department statutory guidance as it attempts to implement this idea statewide. A good part of its plans, however, involve the use of many miles of abandoned railroad rights-of-way that easily could be used for public recreational purposes. Senate Bill 225 would allow such transfers to occur but only if the transfer deed restricted use of a right-of-way for trailway purposes, and provided for its transfer back to MDOT if, at some later date, MDOT's director felt the right-of-way was needed for use as a railroad line.

Against:

Senate Bill 225 could affect the outcomes of pending court cases involving ownership rights to railroad rights-of-way that run adjacent to land owned by people other than railroad companies. Some of these rights-of-way are targeted by the DNR for inclusion into the trailways system. The cases will be decided on whether courts conclude that railroad rights-of-way should revert to the descendants of landowners with whom the railroad companies made agreements long ago. Apparently, the agreements often provided that upon abandonment or discontinued use of the railroad rights-of-way for railway service, the lands in question would revert to the original owner(s). If this bill were enacted, attempts by descendants of these people to seek ownership rights in court based on agreements made long ago could be weakened.

Against:

Though it is difficult to argue against the bills' purpose of providing for establishment of a statewide trailways system, the bills could establish a troubling precedent of putting public interests ahead of private property rights. Especially in southern Michigan where the DNR expects that a large part of the trailway system will fall on or along

private property, the bills could create a situation in which private landowners--particularly those owning smaller parcels, such as small farmers--would have little control over what trailways users did on or near their property. One farmer who testified on a similar package of bills before a House committee last year said he feared that such a trail system could create increased problems with, for instance, littering, vandalism and theft that now occur only occasionally on or along his and other property owners' lands.

POSITIONS:

The Department of Natural Resources supports the bills. (3-18-93)

The Rails to Trails Conservancy supports the bills. (3-19-93)

The Michigan Railroad Association supports the bills. (3-19-93)

The Michigan United Conservation Clubs generally supports the bills. (3-19-93)

The Michigan Farm Bureau is not opposed to the bills as provisions within them address some of the concerns expressed by those who own property (especially farmers) on or adjacent to potential trailways. (3-19-93)

Thornapple View Farms, Incorporated, of Lansing says it opposes the bills primarily because it believes the establishment of trailways throughout the state could affect the private property rights of persons who own land and other property on or adjacent to the railway system. (3-19-93)