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RECREATIONAL TRAIL VIOLATIONS

Senate Bill 312 with House committee amendments

Sponsor: Sen. Vern Ehlers

Senate Bills 313, 316, 414 & 415 with House committee amendments

Sponsor: Sen. Robert Geake

Senate Bill 314 with House committee amendments

Sponsor: Sen. John Pridnia

Senate Bill 315 with House committee amendments

Sponsor: Sen. Paul Wartner

First Analysis (5-26-93)

Senate Committee: Local Government & Urban Development

House Committee: Local Government

THE APPARENT PROBLEM:

A package of recently enrolled bills, Senate Bills 203, 224, and 225, provides for the creation of a statewide trailways system in which the Department of Natural Resources (DNR) could designate "Michigan trailways" throughout the state and make use of hundreds of miles of abandoned railroad rights-of-way for conversion to trailways. This legislation stems from concerns for proper trailway development, public support for new recreational opportunities, and growing interest in urban "greenways", as well as the declining use of trains and the resulting abandonment of railroad rights-of-way. Although these measures are widely supported, several concerns were raised during their passage through the legislature. In particular, some people fear that the trailways--which would run through private as well as public property, and traverse both urban and rural settings--could lead to increased problems with vandalism, theft and trespassing, as well as damage to natural resources. These fears are heightened by the fact that permitted uses of a trailway potentially could include motorized vehicles--a circumstance that evidently was not originally contemplated by those planning the Michigan trailways system. Adding to these concerns is the apparent reluctance of local

law enforcement officials to take action against such relatively minor offenders as vandals and trespassers. To alleviate these fears, some people have suggested giving local units of government increased enforcement mechanisms that would provide an incentive to prosecute trailway violators.

THE CONTENT OF THE BILLS:

The bills would amend various laws to specify that if the use of a vehicle on a recreational trail or other facility or area where use of a vehicle was prohibited were an element of a violation of a local rule or ordinance, all of the following would apply:

- * A peace officer could impound the vehicle and any personal property on or in it, and the prosecuting attorney would have to give notice of the impoundment as required under the Revised Judicature Act;

- * A court could order the impounded property returned to the owner or, in addition to other sanctions provided for in the law and upon the prosecutor's recommendation, forfeited to the local unit;

- * In addition to other sanctions provided for in the law, a court could order the violator to restore to its

Senate Bills 312-316 and 414-415 (5-26-93)

previous condition, as nearly as possible, any land, water, stream bank, streambed or other natural or geographic formation that was damaged as a result of the violation.

A person who neither had prior knowledge of nor consented to the commission of the violation and who had an ownership or security interest in the property that was seized could move that the court return the property. The court would have to hear the motion within 30 days after its filing, and the prosecuting attorney would have to establish probable cause to believe that the person filing the motion had prior knowledge of, or had consented to, the commission of the violation. If the prosecuting attorney failed to sustain that burden of proof, the court would have to order the return of the property.

If property were forfeited, it would be subject to the interest of any secured party of record and the proceeds would have to be disposed of in the following order of priority: 1) to pay any outstanding security interest of a secured party who neither had prior knowledge of, nor consented to, the commission of the violation; 2) to satisfy any order of restitution in the prosecution of the violation; 3) if the local unit and any other governmental entity employing peace officers who enforced its rules had an agreement pertaining to the distribution of proceeds, to be distributed by the local unit pursuant to the agreement; 4) if no such agreement existed, to be deposited for the local unit's use.

Senate Bill 312 would amend Public Act 261 of 1965 (MCL 46.364), which authorizes the creation and prescribes the powers of county and regional parks and recreation commissions, and would apply to a rule of a commission; Senate Bill 313 would amend Public Act 90 of 1913 (MCL 123.68), which authorizes a county board of supervisors to make reasonable rules and regulations relative to the public use of park property; Senate Bill 314 would amend Public Act 278 of 1909 (MCL 78.24), which provides for the incorporation of charter villages; Senate Bill 315 would amend Public Act 3 of 1895 (MCL 66.2), which provides for the incorporation of villages; Senate Bill 316 would amend Public Act 157 of 1905 (MCL 41.422), which provides for the management of township parks; Senate Bill 414 would amend the home rule cities act (MCL 117.4i); and Senate Bill 415 would amend Public Act 246 of

1945 (MCL 41.183), which prescribes the powers and duties of township boards.

HOUSE COMMITTEE ACTION:

The House Committee on Local Government amended all the bills to define the term "prosecuting attorney" as the prosecuting attorney for the affected local governmental unit.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that the bills would not affect state budget expenditures but could have fiscal implications for local governments depending on the number and severity of violations that occurred and the amount of local enforcement activity. (4-16-93)

ARGUMENTS:

For:

As envisioned by the DNR, the Michigan trailways system will be an interconnected group of trails running through both remote countryside and the centers of cities and villages, from Michigan's southern border up to the Mackinac Bridge and through the Upper Peninsula to the state's northernmost border. While this system could create an array of new recreational opportunities for Michigan's citizens and tourists, it also provides new opportunities for property damage and other criminal activity. This is particularly the case when designated trailways are to be used by motorized vehicles, such as cars, motorcycles and off-road vehicles, which will be determined upon a trailway's designation. Apparently, the presence of motorized vehicles had not been anticipated in the early stages of the trailway planning process, and motorized vehicles cannot be used on commuter trails established by the Department of Transportation on abandoned railroad rights-of-way or on recreational trails on abandoned rights-of-way leased by the DNR from the transportation department. Because the use of motorized vehicles would significantly multiply the potential for property damage, particularly to the trailway itself and to surrounding natural resources, and other criminal activity on adjacent property, it is necessary to encourage local law enforcement agencies to enforce trailway ordinances or rules and prosecute violators.

Under the bills, a motorized vehicle that was involved in a local trailway violation could be impounded and possibly forfeited, and the local unit ultimately could receive the proceeds of a forfeited vehicle and property in it (after payment to an innocent secured party or satisfaction of a restitution order). In addition, the violator could be ordered to restore damaged property to its previous condition. These provisions would both create an economic incentive to prosecute trailway violators, and protect natural resources threatened by the use of motorized vehicles on trailways. In addition, these enforcement mechanisms would parallel those under current law for off-road vehicle (ORV) violations, under which the DNR or any peace officer may impound an ORV, it can be forfeited, and the violator can be ordered to restore property to its undamaged condition.

Response:

It is questionable whether a judge actually would order the forfeiture of a person's vehicle for the violation of a local trailway ordinance or rule. Property forfeiture is a serious matter that is not taken lightly by the courts. Rather than using property forfeiture as a means to encourage local governments to prosecute trailways violators, the bills perhaps could provide a disincentive to would-be violators, which would accomplish the same purpose.

POSITIONS:

The Department of Natural Resources supports the bills (5-25-93)

The Michigan Townships Association supports the bills. (5-25-93)