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RECREATIONAL TRAIL VIOLATIONS

Senate Bill 312 (Substitute H-2)
Sponsor: Sen. Vern Ehlers

Senate Bills 313, 316, 414 & 415 (Substitutes
H-1)
Sponsor: Sen. Robert Geake

Senate Bill 314 (Substitute H-1)
Sponsor: Sen. John Pridnia

Senate Bill 315 (Substitute H-1)
Sponsor: Sen. Paul Wartner

Senate Committee: Local Government &
Urban Development
First House Committee: Local
Government
Second House Committee: Tourism &
Recreation

House Bill 4350 (Substitute H-2)
Sponsor: Rep. Beverly Bodem

House Bill 5177 (Substitute H-1)
Sponsor: Rep. Tracey Yokich

Committee: Tourism & Recreation

Second Analysis (12-7-93)

THE APPARENT PROBLEM:

Public Acts 26, 27 and 28 of this year provided for the creation of a statewide trailways system in which the Department of Natural Resources (DNR) will designate "Michigan trailways" throughout the state and make use of hundreds of miles of abandoned railroad rights-of-way for conversion to trailways. Even though many groups generally supported the concept of establishing a trailways system, several concerns were raised during the discussion of this legislation. In particular, some people said they feared 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 may include motorized vehicles (if such use is authorized by a local government entity having jurisdiction over that part of the trailway that will pass through it). Apparently, some local government entities interested in the trailways concept do not favor allowing motor vehicles to be used on any trails under their jurisdiction. To provide them the means of deterring illegal motorized vehicle use on trailways within their jurisdiction, it has been suggested that local governmental units be given authority to make such a violation a "municipal civil infraction" that could be punished by a fine of up to \$500.

Senate Bills 312-316, 414-415, House Bills 4350 and 5177 (12-7-93)

THE CONTENT OF THE BILLS:

The bills would amend the enabling acts of local units of government to specify that the operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by a local ordinance, rule or regulation would be a "municipal civil infraction", whether or not the ordinance, rule or regulation explicitly said so. (House Bills 4350 and 5177 and Senate Bills 314, 315, 414 and 415, however, include language specifying that, except for a violation involving illegal use of a vehicle on a trailway, a violation of an ordinance would be a municipal civil infraction only if the ordinance explicitly stated this.) A local rule or ordinance regulating a recreational trailway would not be effective unless it was posted and maintained near each gate or principal entrance to the trailway. A fine ordered for a municipal civil infraction involving illegal use of a motorized vehicle on a trailway could not exceed the maximum amount provided by the rule or ordinance or \$500, whichever was less. None of the bills could take effect unless Senate Bill 731 was enacted, and all of them would take effect when Senate Bill 731 did.

In addition, House Bills 4350 and 5177 and Senate Bills 314, 315, 414 and 415 specify that an ordinance could not make an act or omission a municipal civil infraction if that act or omission constituted a crime under any of the following:

- * Provisions of the Public Health Code that regulate controlled substances and anabolic steroids;
- * The Michigan Penal Code;
- * The Michigan Vehicle Code;
- * The Michigan Liquor Control Act;
- * The Marine Safety Act;
- * The Aeronautics Code of the State of Michigan;
- * Public Act 74 of 1968, which provides for the registration and regulation of snowmobiles;
- * Public Act 319 of 1975, which provides for the titling, licensure and regulation of off-road vehicles;
- * Public Act 4 of 1986, which prohibits the operation of a locomotive while the operator is

impaired by or under the influence of liquor or a controlled substance;

* Any Michigan law punishable by more than 90 days' imprisonment.

(Note: The additional provisions contained in House Bills 4350 and 5177 and Senate Bills 314, 315, 414 and 415 are intended to track similar provisions contained in a package of Senate bills that are currently pending before the House. These bills--Senate Bills 731-737 and 739-745--would create a new type of civil infraction, to be known as a "municipal civil infraction," that would apply to violations of certain local ordinances.)

House Bill 4350 would amend the Charter Township Act (MCL 42.1, 42.20 and 42.21); House Bill 5177 would amend Public Act 215 of 1895 (MCL 81.1a et al.), which provides for the incorporation of fourth class cities; 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 Tourism and Recreation adopted House substitutes for all of the bills that propose a different approach to responding to illegal vehicle use on recreational trailways than that proposed in earlier versions of the bills. The bills as substituted would allow local governmental units to adopt ordinances, rules or regulations prohibiting illegal use of a vehicle on a recreational trailway, would make a violation of such laws a municipal civil infraction, and provides for fines up to \$500 to

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be levied for violations. Earlier versions of the bills proposed, among other things, to permit forfeiture of a violator's vehicle and other personal property on it as well as the imposition of sanctions requiring restoration of damaged trailways resulting from a violation. All of the substitutes also contain language tiebarring the bills to Senate Bill 731 and specifying that all of them would take effect upon the enactment of Senate Bill 731. Senate Bill 731 is the primary bill within the so-called "municipal civil infractions" package of bills now pending before the House.

FISCAL IMPLICATIONS:

The Department of Natural Resources says the bills would not affect state budget expenditures but could have minimal fiscal implications for local governments depending on the number of violations that occurred and the amount of fines levied for them. (12-3-93)

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 give local governmental units the means to discourage people

from using them on recreational trailways that may fall under their jurisdiction.

As substituted in the House Tourism and Recreation Committee, the bills would make illegal use of a vehicle on a recreational trailway a "municipal civil infraction" subject to a fine of up to \$500. This idea makes more sense than the idea initially proposed of subjecting a violator to forfeiture of his or her vehicle and other personal property on it, which some people felt would give local authorities unnecessarily broad powers to confiscate private property and could possibly be ruled unconstitutional. Instead, the bills as substituted in committee would use the potential threat of a significant fine to deter would-be violators of using vehicles on trailways in areas where local law prohibited this.

Against:

The bills would permit local governmental units to levy fines up to \$500 for a violation that involved illegal operation of a "vehicle" on a recreational trailway. Thus, a person who, say, rode their bicycle on a trailway that passed through a jurisdiction with an ordinance, rule or regulation prohibiting the use of such a vehicle on a trailway could be subject to a substantial fine. In fact, not only is bicycling a quiet activity with little or no impact to the environment, initial plans for the trailway system included bicycling as one of the activities that would be permitted on the trails. Obviously, motorized vehicles could pose a threat to the trailways system and its surrounding environment. But if the bills' intent is simply to give local governmental units a means to deter people from using motorized vehicles on trailways under their jurisdiction, they should be amended to specify that a violation would involve the illegal use of a motorized vehicle on a recreational trailway.

POSITIONS:

The Department of Natural Resources supports the bills. (12-3-93)

The Michigan Municipal League supports the bills. (12-3-93)

The Michigan Townships Association supports the bills. (12-3-93)

The Michigan United Conservation Clubs supports the bills. (12-3-93)

**The Michigan Recreation and Park Association
supports the bills. (12-3-93)**

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