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BILL



ANALYSIS

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Senate Bill 499 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Energy and Technology
House Committee: Energy and Technology

PUBLIC ACT 138 of 2012

Date Completed: 7-23-12

CONTENT

The bill added Section 72116 to Part 721 (Michigan Trailways) of the Natural Resources and Environmental Protection Act to do the following:

- **Require the Department of Natural Resources (DNR) to authorize the installation of telecommunication facilities on rail-trail land under State ownership or control, upon payment of a maximum application fee of \$500.**
- **Require the authorization to prescribe certain conditions, including that the telecommunication provider pay to the DNR a one-time use fee of five cents per longitudinal linear foot of the space to be occupied by the facilities.**
- **Require the DNR to use the application fees for administrative purposes.**
- **Require the use fees from land purchased with money from the Michigan Natural Resources Trust Fund (NRTF) to be deposited in that Fund, and require the balance to be deposited in the Michigan Trailways Fund to provide grants for the development and maintenance of rail-trails.**

The bill took effect on May 22, 2012.

Specifically, if the State owns the land on which a rail-trail is located, or if the land is under the long-term control of the State or a State governmental agency through a lease, easement, or other arrangement, upon a

telecommunication provider's application, the DNR must authorize the installation of telecommunication facilities on that land upon payment of not more than \$500 in application fees, unless the installation is inconsistent with or prohibited by the lease, easement, or arrangement. (Part 721 defines "rail-trail" as a former railroad bed that is in public ownership and used as a trailway.)

The authorization must be granted within 45 days, and must require all of the following:

- The use of the land for telecommunication facilities and their installation or repair may not unreasonably interfere with the use or uses of the rail-trail.
- All telecommunication facilities must be installed underground or be attached to existing aboveground structures consistent with the requirement that they not interfere with the rail-trail's use.
- At least 30 days before beginning installation of facilities, the telecommunication provider must notify the DNR in writing of the installation and the anticipated completion date.
- Following installation of and any repairs to the facilities, the land must be reasonably restored to its condition before the installation or repair.

Within five days after receiving the notice of installation, the DNR must notify the telecommunication provider in writing of any use of the rail-trail for which the Department has issued a permit.

The provider must pay to the DNR a one-time use fee of five cents per longitudinal linear foot of the space to be occupied by the telecommunication facilities. This fee may not be required after May 22, 2018. At no time before or after that date may a provider that pays the fee be charged with any additional fee for the use of the land for telecommunication facilities.

The DNR must forward the use fees to the State Treasurer. If money from the NRTF was used to purchase the land or rights in land on which the facilities are installed, the State Treasurer must deposit the use fee money in that Fund. Otherwise, the State Treasurer must deposit the money in the Michigan Trailways Fund.

(Money in the Trailways Fund may be spent for any of the following purposes:

- The DNR's expenses in operating and maintaining the Michigan railway system and enforcing railway rules and regulations.
- Grants to or contracts with councils or governmental agencies to operate and maintain segments of trailways and to enforce rules and regulations.
- Funding railway construction and improvements.
- Acquisition of land or rights in land.
- Publications and promotions of the Michigan trailways system.)

Notwithstanding any other provision of Part 721, money from the Trailways Fund that is collected under Section 72116 must be spent, upon appropriation, as follows:

- The DNR must use money collected from application fees for the administrative costs of implementing this section.
- In each county where use fees are collected for the installation of telecommunication facilities on motorized use rail-trails, the DNR must spend the money for grants to organizations operating in that county that are involved with the motorized use of rail-trails, if such organizations exist.
- In each county where use fees are collected for the installation of telecommunication facilities, but are not spent as described above, the DNR must spend the money for grants to local units of government or other organizations

operating in that county that are involved with the use of rail-trails.

Money provided to organizations involved with the motorized use of rail-trails must be used for the development and maintenance of rail-trails located within the county for motorized recreational uses. All other money provided to local units of government and organizations involved with the use of rail-trails must be used for the development and maintenance of rail-trails located within the county for motorized and nonmotorized recreational uses.

The bill specifies that Section 72116 does not affect the rights and duties set forth in any arrangements or agreements for the installation of telecommunication facilities in a rail-trail between the DNR and a telecommunication provider entered before the bill's effective date. Also, the section does not create a right for either the Department or a provider to terminate any preexisting arrangements or agreements.

(The bill defines "telecommunication facilities" and "telecommunication provider" as those terms are defined in Section 2 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act. Under that section, "telecommunication facilities" means the equipment or personal property that is used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. The term does not include antennas or their supporting structures, equipment shelters or houses, or any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile services and service provided by any wireless, two-way communications device.

The METRO Act defines "telecommunication provider" as that term is defined in Section 102 of the Michigan Telecommunications Act. Under that Act, the term means a person that for compensation provides one or more telecommunication services, excluding commercial mobile service.)

MCL 324.72116

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill will have an indeterminate effect on Michigan's finances. The bill establishes fees to be paid by telecommunications companies for easements on rail-trails owned by the State. These fees consist of an application fee of not more than \$500, and a one-time use fee of five cents per linear foot, or \$264 per mile (not specified in the bill, but easily calculated) of the easement. It is unknown how many applications will be filed or how many linear feet of telecommunications lines will be granted easements under the bill. After six years, the DNR will no longer be allowed to charge a use fee on new telecommunication easements.

Money generated from these fees on rail-trails that were purchased with revenue from the Michigan Natural Resources Trust Fund will be allocated to the NRTF for recreational land acquisition or improvement. All other revenue from the fees will be credited to the Michigan Trailways Fund, from which it will be spent, upon appropriation, on grants to local units of governments and other organizations involved with rail-trails and for maintenance and development of rail-trails owned by the State as well as on the administration of the program.

The bill will result in some new administrative costs to the DNR. Department personnel will have to review and approve the applications provided for in the bill. It is likely that for at least the first six years while the DNR is allowed to charge use fees, new fee revenue will be sufficient to cover the expenses of administering the program.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.