

RAILROAD LIABILITY ON NATIONAL TRAILS SYSTEM

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Senate Bill 118 as enacted
Public Act 39 of 2017
Sponsor: Sen. Goeff Hansen
House Committee: Tourism and Outdoor Recreation
Senate Committee: Outdoor Recreation and Tourism
Complete to 7-20-17

BRIEF SUMMARY: Senate Bill 118 amends Parts 721 (Michigan Trailways) and 733 (Liability of Landowners) of the Natural Resources and Environmental Protection Act (NREPA) to limit liability for railroads that contract with the Michigan Department of Natural Resources (DNR). The bill takes effect August 21, 2017.

FISCAL IMPACT: Senate Bill 118 would not affect costs or revenues for the DNR and would have no fiscal impact on the department. The bill would also not affect costs or revenues for local units of government.

THE APPARENT PROBLEM:

The DNR operates a rail banking program in Michigan, allowing use of the property for recreation while retaining the possibility for the rail to be reactivated (which has only occurred once, in 2014).¹ According to committee testimony, federal changes to rail banking law, requiring railroads to assume liability, have necessitated these changes at a state level to preserve the state rail banking program.

THE CONTENT OF THE BILL:

Section 72108 of NREPA charges the DNR with certain land management responsibilities. The bill provides that, if the DNR agreed with a railroad that the railroad would become a trail sponsor under federal law, the DNR would assume responsibility for any liability for the transfer or use of the railroad right-of-way. In return, the railroad and DNR would determine the fair value for that assumption of liability, and the railroad would compensate the DNR in that amount.

Section 73301 of NREPA describes the causes of action that arise from various relationships or actions. In addition to other exempted acts, the bill provides that a cause of action does not arise against a contractor (a person other than a for-profit legal entity with whom the owner contracts to construct, maintain, or operate a trail), for injuries to

¹ This reactivation occurred for a 1.9-mile railroad spur in Humboldt Township. It is one of nine nationwide reactivations since the federal Rails to Trails law was signed in 1976. <http://detroit.cbslocal.com/2013/08/03/plan-would-convert-stretch-of-trail-back-to-rail/>

another person, unless the contractor caused the injuries through gross negligence or willful or wanton misconduct.

Likewise, if a person is injured on a trail that formerly operated as a rail line during the period of time between its dedication for interim trail use and its reactivation as a rail line, there is not a cause of action against the railroad that owns, formerly owned, or operated the rail line. (This rule would apply whether the rail line is dedicated under federal law or set aside under state law, for interim trail use.)

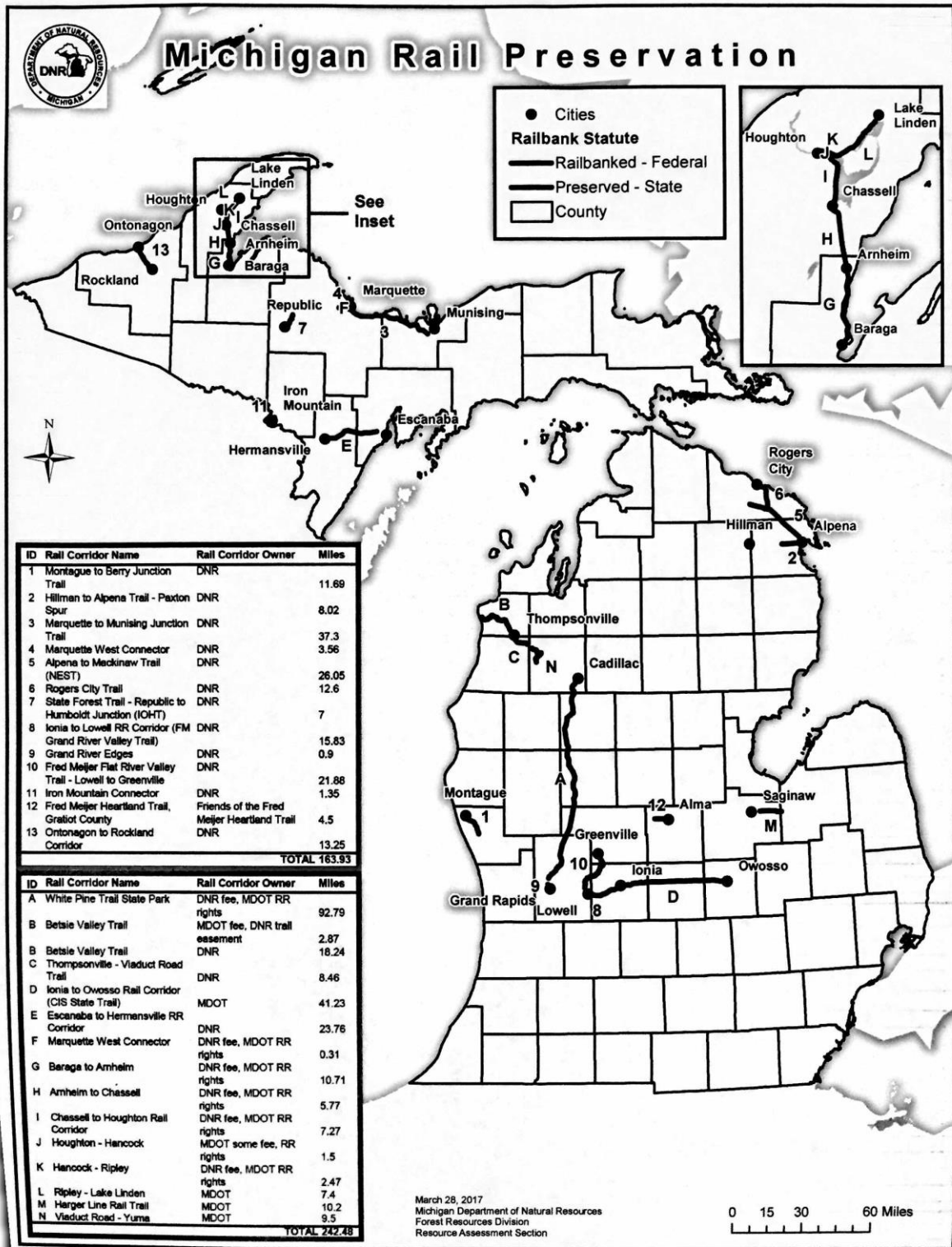
MCL 324.72108 and 324.73301

HOUSE COMMITTEE ACTION:

The House Tourism and Outdoor Recreation committee adopted an H-1 substitute, which carves out an exemption for for-profit legal entities from the prohibition on causes of action for injuries to another person (unless the injuries were caused by gross negligence or willful or wanton misconduct).

BACKGROUND:

The graphic from the DNR on the next page shows the scope of federal and state rail preservation in Michigan. The top box in the graphic lists the federal rail banked corridors, and the bottom box lists the state preserved corridors. Although the graphic as presented is not color-coded, see the lists for the numbers corresponding with federal rail corridors and letters corresponding with state rail corridors.



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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.