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BILL ANALYSIS

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Senate Bill 118 (as introduced 2-8-17)
Sponsor: Senator Goeff Hansen
Committee: Outdoor Recreation and Tourism

Date Completed: 2-22-17

CONTENT

The bill would amend Part 721 (Michigan Trailways) and Part 733 (Liability of Landowners) of the Natural Resources and Environmental Protection Act to do the following:

- Specify that if the Department of Natural Resources (DNR) entered into negotiations with a railroad for the Department to become a trail sponsor under Federal law, the DNR would have to comply with a Federal regulation requiring it to assume responsibility for any liability arising out of the transfer.**
- Specify that a cause of action would not arise for injuries to a person against a person with whom the owner, tenant, or lessee of land contracted to construct, maintain, or operate a trail or other land improvement used by the injured party, unless the injuries were caused by the gross negligence or willful and wanton misconduct of the contractor.**
- Specify that a cause of action would not arise for injuries to a person would not against a railroad that owned or operated a rail line right-of-way that had been dedicated for interim trail use, for injuries that occurred after the dedication and before reactivation for rail service.**

The bill would take effect 90 days after its enactment.

Assumption of Liability, Pure Michigan Trailways

Part 721 allows the DNR Director to designate a trail as "Pure Michigan Trail" if it meets certain requirements. The Department also may do any of the following: a) grant easements or use permits or lease land owned by the State that is being used for a Pure Michigan Trail for a use that is compatible with the use of the Pure Michigan Trail; b) enter into contracts for concessions along a State-owned Pure Michigan Trail; or c) lease land adjacent to a State-owned Pure Michigan Trail for the operation of concessions. If the Department acquires land, the DNR Director may state that it is acquired for use as a Pure Michigan Trail. Following the acquisition, any money derived from that land, except as otherwise provided by law, must be deposited into the Pure Michigan Trails Fund.

Under the bill, if the Department entered into negotiations with a railroad for the DNR to become a trail sponsor under 16 USC 1247(d), the Department would have to comply with 49 CFR 1152.29(a)(2)(ii). The Department would have to assume full responsibility for any potential legal liability arising out of the transfer or use of the railroad right-of-way. In exchange for the assumption of liability, the railroad would have to provide the Department with the fair value of the DNR's assumption of liability. "Fair value" would mean the value that

the Department and the railroad mutually agreed accurately reflected the risk of liability assumed by the DNR.

(Section 1247(d) of Title 16 of the U.S. Code provides for the interim use of railroad rights-of-ways as trails. Under that section, if such interim use is subject to restoration or reconstruction for railroad purposes, it may not be treated as an abandonment of the use of the rights-of-way for railroad purposes. Under 49 CFR 1152.29(a)(2)(ii), if a state, political subdivision or qualified private organization is interested in acquiring or using a rail line right-of-way for interim trail use and rail banking, it must file a request to do so, and the filing must include a statement indicating the trail sponsor's willingness to assume full responsibility for any legal liability arising out of the transfer or use of the right-of-way, unless the user is immune from liability, in which case, it need only indemnify the railroad against any potential liability.)

Limited Liability, Trails

Generally, under Part 733, a cause of action does not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a consideration for the purpose of outdoor recreational use or trail use, or for the purpose of entering or exiting from or using a Michigan Trailway or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

Under the bill, a cause of action also would not arise, for injuries to a person, against a person with whom the owner, tenant, or lessee of land contracted to construct, maintain, or operate a trail or other land improvement used by the injured party as described above, unless the injuries were caused by the gross negligence or willful and wanton misconduct of the person with whom the owner, tenant, or lessee contracted.

In addition, a cause of action would not arise against a railroad that owned or formerly owned or operated a right-of-way of a rail line that had been dedicated or set apart for interim trail use and rail banking under 16 USC 1647(d) for injuries to a person who was on the right-of-way that occurred after the Surface Transportation Board approved the dedication of the right-of-way, or after the dedication of the right-of-way under the State Transportation Preservation Act, and before the right-of-way was reactivated for return to rail service.

MCL 324.72108 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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.