



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 596 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Goeff Hansen
Committee: Outdoor Recreation and Tourism

Date Completed: 11-21-17

RATIONALE

It is commonly understood that the Michigan Constitution allows a local unit of government to spend money only for a public purpose. There is some concern as to whether the expenditure of local funds for certain trail amenities might violate this restriction. Part 721 of the Natural Resources and Environmental Protection Act allows the creation of Pure Michigan Trails to provide fitness and constructive recreational opportunities, and to protect open spaces, wildlife and plant habitats, and cultural and historical resources. The Act states that the planning, acquisition, development, and operation of these trails are a public purpose. Evidently, there is increased interest among trail managers and users for the construction of trail amenities to facilitate access to food, lodging, and information. Due to concerns about a potential conflict with the Constitution, however, some local units of government apparently have expressed reluctance to fund the construction of such amenities.

In addition, many planned or constructed trails pass through multiple local units of government. Current law permits the creation of a trail management council to develop and manage a multijurisdictional trail, and allows the council to enter into an interlocal agreement to administer the trail. Evidently, there is increased interest in allowing interlocal agreements to be used for additional aspects of trail management, such as developing trail etiquette rules or reviewing permissible uses for a trail.

It has been suggested that these, and other, issues should be addressed through amendments to the Act.

CONTENT

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

- **Allow a Pure Michigan Trail to include amenities related to trail usage such as connectors and access to rest areas, lodging, and eating facilities, as well as park benches and signage.**
- **Allow the Department of Natural Resources (DNR) to develop recommendations for local trail managers on researching and providing historical, cultural, or natural resource information related to the area that a trail traversed.**
- **Allow an agreement executed to provide for the operation and maintenance of a trail on State-owned land to include provisions for construction, maintenance, and operation of amenities related to trail usage.**
- **Allow a trail management council established under the Urban Cooperation Act to review and consider permitted uses of a trail and establish protocols for the development and management of a trail under an interlocal agreement.**

The bill would take effect 90 days after its enactment.

Pure Michigan Trail; Amenities

Part 721 allows the Director of the DNR to designate a trail in the State as a "Pure Michigan Trail". The Director may not designate a trail as a Pure Michigan Trail unless it meets, or will meet when completed, certain criteria. Among these is a requirement that the trail, where feasible, offer adequate support facilities for the public, including parking, sanitary facilities, and emergency telephones, that are accessible to individuals with disabilities and are at reasonable frequency along the trail. Under the bill, the trail could include amenities related to trail usage such as connectors and access to rest areas, lodging, and eating facilities, as well as park benches and signage. Support facilities and trail amenities described in these provisions would be public goods.

Trail Manager Recommendations

The bill would allow the DNR to develop recommendations for local trail managers on researching and providing historical, cultural, or natural resource information related to the area that a trail traversed using interpretive signage, online materials, or other appropriate means.

Trail Operation & Maintenance Agreement; Amenities

Under Part 721, the Department of Natural Resources may operate and maintain a trail that is located on State-owned land or enter into an agreement with a council or one or more governmental agencies to provide for the operation and maintenance of the trail. An agreement for those purposes may include provisions for construction, maintenance, and operation of the trail. Under the bill, provisions for construction, maintenance, and operation could include amenities related to trail usage such as connectors and access to rest areas, lodging, and eating facilities, as well as park benches and signage.

Interlocal Agreement for Trails

Two or more governmental agencies may establish a trail management council for the development and management of a trail under the Urban Cooperation Act. A trail management council may do one or more of the following as authorized in an interlocal agreement entered into under the Act:

- Operate and maintain the portion of one or more trails that are owned or under the control of the governmental agencies that established the council.
- Operate and maintain the portion of one or more trails that are located on State-owned land under an agreement entered into for that purpose.
- Coordinate the enforcement of trail rules and regulations and other applicable laws and ordinances, including permitted uses of trails owned or under the control of the governmental agencies establishing the council or trails located on State-owned land.
- Receive any grant made from the Pure Michigan Trails Fund or other funding related to that portion of a trail within its jurisdiction.
- Acquire or hold real property for the purpose of operating a trail.
- Perform other functions consistent with Part 721.

The bill also would allow a council to do the following as authorized under an interlocal agreement: a) review and consider current and potential permitted uses of each trail and trail segment and provide an easily understood plan for trail users; and b) establish protocols for the development and management of a trail, which could include any of the following:

- Signage.
- Trail etiquette and safety guidance.
- A historical and cultural interpretive plan.
- A formula for sharing costs of maintenance.
- A plan for linking the trail to nearby water trails, where appropriate.

- A plan for providing transit-based access for trail users in order to enhance access for those who may not reside in the vicinity of the trail.

A council could hold one or more public hearings to receive input and provide information on the development and management of a trail.

(The Urban Cooperation Act allows the joint exercise of power between a public agency of this State and another public agency of this State, or a public agency of another state, Canada, or the Federal government, and requires any joint exercise of power under the Act to be made by an interlocal agreement.)

MCL 324.72103 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Article 7, Section 26 of the Michigan Constitution prohibits a city or village from loaning its credit "for any private purpose or, except as provided by law, for any public purpose". According to Michigan appellate court opinions, this provision, together with other language of the Constitution and longstanding public policy, prohibits local units of government from spending money except for public purposes. In addition, the courts have indicated that the Legislature can decide what constitutes a public purpose. The legislative findings under Part 721 of the Natural Resources and Environmental Protection Act state, in part, that "the planning, acquisition, development, operation, and maintenance of trails are...a public purpose". Within many local units of government, there is interest in using public money to construct local trail amenities or support facilities. There is some question, however, as to whether the development of trail amenities would be considered a public purpose. In many cases, an interested local unit of government must seek a legal opinion from its attorney if it wishes to proceed with funding the amenity. This process delays projects and can be costly for many small local units of government. The bill's designation of support facilities and trail amenities as public goods would resolve this issue.

In addition, the statute allows the creation of a trail management council to manage a trail that crosses two or more political jurisdictions. There is increased interest among the membership of these councils in having additional tools to manage trails, including agreements for sharing costs or adopting trail etiquette rules, and consideration of multiple uses for a trail, such as for electric bicycles or other modes of transportation. The bill would allow interlocal agreements to address these issues.

Also, there is increased interest in using trails for education and promotion of local history and culture. These uses would broaden the appeal for trails in Michigan and allow for increased educational and recreational opportunities. According to testimony before the Senate Committee on Outdoor Recreation and Tourism, the Michigan History Center is developing guidance for local trail managers to use for such purposes. The bill would support this effort.

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.