

# Legislative Analysis



## LIABILITY FOR TREBLE DAMAGES FOR INJURY TO A PUBLIC BRIDGE OR ROAD

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**House Bill 4973 as introduced**  
**Sponsor: Rep. Graham Filler**  
**Committee: Transportation**  
**Revised 10-23-21**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4973 would amend 1909 PA 283, which addresses public highways and private roads, to revise provisions that govern actions for liability for damage to a public bridge or road. The bill would specifically allow a civil action to be brought by the governmental entity with jurisdiction over the bridge or road.

Currently, a person who damages a public road or a bridge maintained at public expense is liable for three times the amount of the damage. The law currently states that the amount is recoverable in an action of trespass or on the case, by *the commissioner of highways of the township where the damage occurred*, in the name of that office. The recovered amount must be spent by that commissioner on the repair of roads in that township. (Note that townships no longer have jurisdiction over public roads and the office of township commissioner of highways no longer exists.)

The bill would not change the cause of action (damage to a public road or bridge) or the amount of the liability (three times the damage), but it would provide that the amount is recoverable in a civil action brought by the *governmental entity with jurisdiction over the bridge or road* and that it must be spent on the repair of roads under the jurisdiction of that governmental entity.

MCL 230.7

### BACKGROUND:

According to its title, the purpose of 1909 PA 283 is “to revise, consolidate, and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance, and use of the public highways and private roads...” The act recodified a number of prior acts dealing with public highways and private roads. The act is divided into 20 chapters, most of which are no longer operative: 12 have been fully repealed; sections in four other chapters have been repealed; and Chapter IX, dealing with the opening of private roads, was declared unconstitutional.<sup>1</sup>

The most significant and currently operative chapter of 1909 PA 283 is Chapter IV, compiled as the County Road Law, which establishes the authorities of county road commissions.

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<sup>1</sup> According to a note on the Michigan legislative website, “The Opening of Private Roads and Temporary Highways Act [i.e., Chapter IX of 1909 PA 283], MCL 229.1 et seq. is unconstitutional because the act authorizes a taking and the taking primarily benefits a private rather than a public purpose and provides for an unconstitutional taking under Const 1963, art X, § 2. *Tolksdorf v Griffith*, 464 Mich 1; 626 NW2d 163 (2000).”  
<http://legislature.mi.gov/doc.aspx?mcl-229-1>

Chapter X of 1909 PA 283, compiled as Penalties and Forfeitures, has five operative sections that generally establish penalties for damages to public highways. These sections are, to some extent, anachronistic. Section 4 deals with obstructions to navigable streams, section 5 deals with injury to signs and guideposts, and section 6 deals with injury to trees and shrubs planted along a public highway. Each provides a \$25 penalty per violation. Section 8, which deals with the felling of trees into a highway, establishes a penalty of 50 cents per day for each day the trees are in the highway.

House Bill 4973 would amend section 7 of Chapter X. The section refers specifically to injury caused “by drawing logs or timber on the surface of any such road or bridge,” but then expands the scope to include injury caused “by any other action.” The reference to the drawing of logs or timber appears to be a carry-over from the original 1881 public act. The section indicates that a person who injures a bridge or public road is liable in damages to three times the amount of the injury and authorizes the “commissioner of highways of the township within which the injury was done” to recover this penalty. The reference to “commissioner of highways of the township” is an anachronism, as townships do not have jurisdiction over public roads in Michigan and townships no longer have the office of highway commissioner.

#### **FISCAL IMPACT:**

House Bill 4973 does not appear to have a fiscal impact on the state or on local units of government.

Section 7 of 1909 PA 283 effectively provides for treble damages arising from “injury” to public roads and bridges. However, it is not clear if this section has any actual effect in the recovery of damage to public roads and bridges.

Generally, injury or damage to public roads and bridges is the result of vehicular accident. It is our understanding that road agencies generally attempt to recover the actual costs of repair or replacement of facilities damaged in accidents through claims against the responsible motorist’s insurance company. Those claims are governed by section 3121 the Insurance Code, which states: “Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use. However, property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed \$1,000,000.00.”<sup>2</sup>

As a result of section 3121 of the Insurance Code, road agencies are effectively limited in the recovery of damages to public roads and bridges to reasonable repair or replacement costs up to \$1.0 million per occurrence. There have been instances in which trucks striking highway overpasses have caused damages in excess of the \$1.0 million threshold.

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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.

<sup>2</sup> <http://legislature.mi.gov/doc.aspx?mcl-500-3121>