

# Legislative Analysis



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

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**House Bill 4973 as reported from committee**  
**Sponsor: Rep. Graham Filler**  
**Committee: Transportation**  
**Complete to 11-2-21**

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. (The bill also would replace the archaic reference to common law tort actions, “action of trespass or on the case,” with the phrase “civil action.”)

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 The act is divided into 20 chapters, most of which are no longer operative: 12 have been fully repealed; sections in four other chapters have been repealed; and Chapter IX, dealing with the opening of private roads, was declared unconstitutional.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>

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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>

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.

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:**

The changes House Bill 4973 would make to section 7 of Chapter X of 1909 PA 283 appear to be primarily technical in nature. The bill replaces a reference to an office that no longer exists, that of "commissioner of highways of the township," with a reference to "the governmental entity with jurisdiction over the bridge or road." Under Michigan law, the political entities with jurisdiction over public roads are the Michigan Department of Transportation, county road agencies, and cities and villages, as applicable. Although the reference to "commissioner of highways of the township" is an anachronism, it has apparently not prevented road agencies, and specifically county road agencies, from recovering for damages to roads and bridges.

As a result, it does not appear that this technical change will have a material impact on the ability of road agencies to collect, under the provisions of section 7, for damage to public roads and bridges. The bill thus does not appear to have a material fiscal impact on the state or local units of government.

We note that section 7 provides for the recovery of treble damages arising from "injury" to public roads and bridges. However, it is not clear if this section is actually used to recover treble damages from persons who damages public roads and bridges or whether, under most circumstances, road agencies simply recover the actual costs of facility repair or replacement.

It appears that the provisions of section 7 generally come into play only when damage to roads and bridges is caused something other than a motor vehicle accident. When damage to public roads and bridges is the result of vehicular accident, road agencies generally attempt to recover the actual costs of repair or replacement of facilities through claims against the responsible motorist and, effectively, the motorist's insurance company. Those claims are governed by section 3121 of the Insurance Code, which provides: "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>

Section 3136 of the Insurance Code provides for additional recovery, of up to an additional \$4.0 million, under specific circumstances, including the demonstration of tort liability.<sup>3</sup>

## **POSITIONS:**

A representative of Michigan County Road Commission Self Insurance Pool testified in support of the bill. (10-19-21)

The following entities and organizations indicated support for the bill:

- Department of Transportation (10-19-21)
- Michigan Association of Counties (10-26-21)
- County Road Association of Michigan (10-19-21)

Fiscal Analyst: William E. Hamilton

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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.

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

<sup>3</sup> <http://legislature.mi.gov/doc.aspx?mcl-500-3136>