

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.443 Name of Bill: An act relating to maintenance of class 4 town highways and public trails

Agency/ Dept: VTFPR Author of Bill Review: Jessica Savage/Jim Horton

Date of Bill Review: 3/12/2015 Related Bills and Key Players: _____

Status of Bill: (check one): Upon Introduction _____ As passed by 1st body _____ As passed by both

Recommended Position:

Support Oppose Remain Neutral Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill proposes to establish in statute an obligation of "persons who enjoy a common benefit from a class 4 town highway or public trail to contribute to maintenance costs of the highway or trail not borne by the municipality" unless there already exists an agreement requiring such maintenance contribution. The clear language of this bill would require all people who use or enjoy a benefit from a class 4 town highway or legal trail to contribute to maintenance costs. However, some towns have agreements with abutting landowners that use class 4 town highways to access their property to contribute proportionally to maintenance costs. Therefore, the bill may be intended to address maintenance costs on trails in connection to private landowners who benefit from them.

This bill also proposes to prohibit municipalities from issuing land use permits in connection with a property benefited by a class 4 town highway or a public trail unless the responsibility for maintenance costs not borne by the municipality is defined in a covenant or an agreement.

2. Is there a need for this bill? *Please explain why or why not.*

Yes and No. Yes: there is no direct funding/maintenance mechanism for maintaining public trails and class 4 town highways. Municipalities are not legally required to maintain class 4 town highways or legal trails and do not receive state highway funds for maintenance.

No: this mechanism has potential negative implications for public access and significantly negative implications to FPR and other owners of land through which class 4 town highways and legal trails traverse by requiring such users to "contribute proportionally to the cost of maintenance not borne by a municipality" which is likely to be most of the maintenance costs. For FPR, use includes management and public access uses. FPR already contributes to some maintenance of class 4 town highways and legal trails through limited funding for forest highways, but this state funding is extremely limited..

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

The Department would end up with the potential for several different agreements for maintenance obligations on class 4 TH or public trails. The details of each maintenance agreement likely would vary by municipality. On page 3 lines 1 thru 9 is a partial list of factors used to determine proportionate share of each person benefited. There is the potential to have a series of road agreements for each class 4 road or trail. Depending on the number and location of each party these agreements could take time to finalize.

Please return this bill review as a Microsoft Word document to laura.gray@state.vt.us and jessica.mishaan@state.vt.us

There are implications for the forest highway budget: if we are to accommodate this legislation we would need some additional language to protect us from having to meet the obligations of these maintenance agreements if they exceed our capacity to do so. This legislation has the potential as written to redirect our much needed Forest Highway Funds to roads that may not be a priority to FPR and the public purposes FPR must support.

There is also a potential impact related to the Recreation Trail Program funds (especially our in-house projects): if we had to meet the obligations laid out for maintenance in this bill ("Maintenance" means activities related to the upkeep of a class 4 town highway or public trail in its usual condition or that are necessary to allow safe passage, and may include capital improvements"). This could quickly deplete all trail funds and leave nothing for off-road trails (hiking, mountain biking etc.)

There are also many areas on FPR lands accessed by class IV roads and/or public trails. The bill as written could obligate all members of the public who access our land via these roads and trails to pay for the maintenance of the roads and trails. How would this use be monitored? How would the public be charged? Example: Stevensville Road in Underhill is not maintained by the town at a certain point. Private landowners on the road could potentially bring a civil action against FPR to require us to share the cost for maintaining this road, and potentially at a higher rate than any other landowner given the amount of public use (would we be responsible for all users given that they are accessing our facilities?)

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Department of Fish and Wildlife would be similarly impacted by this legislation

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

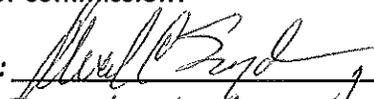
Many of our partners, as well as the public, access both public and private land for recreation via Class IV roads and public trails. If there is no maintenance agreement for these roads or trails, each person using such class 4 town highways or public trails could be subject to litigation to require contribution if they do not voluntarily contribute. [See P 2 L 14 – 19 "...shall have the right to bring a civil action to enforce the requirement of this subsection."]. Also, users are obligated to pay for damage resulting from negligence or intentional acts or omissions. Another concern relates to the determination of how costs are allocated or calculated. The bill provides a list of factors to be used to determine proportionate share of the costs but does not state to what condition the road must be maintained and does not address how costs will be calculated. There is no provision addressing how to address conflicts between users related to the maintenance standard to be applied. Different users may desire different maintenance levels.

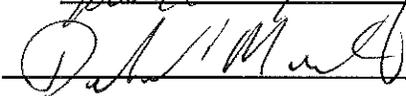
6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Private landowners who want to share the cost of maintaining class IV roads and trails used to access their properties. Municipalities most likely will support this bill as it would result in maintenance of class 4 town highways without impacting their budgets. Also potentially developers as it makes property more valuable when there is access and maintenance.

6.2 Who else is likely to oppose the proposal and why? GMC, VASA, VAST, VMBA, CTA, Trails and Greenways Council and other trail partners due to reasons in number 5 above. Also, some landowners may oppose having to contribute to maintenance of class 4 roads and trails.

7. **Rationale for recommendation:** *Justify recommendation stated above.* The Department Opposes this bill as draft. The Department may support a bill that only requires maintenance contributions of private landowners that use class 4 town highways or public trails to access their property or to developers seeking to develop property that would result in future use of class 4 town highway or public trail. This bill is worded far too broadly in requiring "all persons" who derive a benefit from use of a class 4 TH or public trail to pay their proportionate share of maintenance costs. The State should be exempt from the requirement to contribute also. FPR already conducts maintenance on some class 4 roads associated with state forest and park use. Also, FPR maintains miles of roads on state forest and park land that is open seasonally for public use, some of which is used by private landowners as a "shortcut" for their daily commute to work. The State should be exempt from this bill.
8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.* FPR Opposes this bill as written. The bill should be amended to specify that it is intended to apply only to private landowners who derive a benefit from use of a class IV town highway or public trail to access their private property, or developers seeking permits to develop private land that would be accessed via a class 4 town highway or public trail must also include a requirement for each lot to contribute to maintenance of the class 4 town highway or public trail. . The bill should also be amended to specifically exempt the state from the requirements of this bill, even if the state uses class 4 town highways or public trails to access state land.
9. **Gubernatorial appointments to board or commission?**

Commissioner has reviewed this document:  Date: 3/20/15

Secretary has reviewed this document:  Date: 3-31-15