

# Legislative Analysis



## REMOVE DEED RESTRICTIONS ON MUNICIPAL FORESTLAND CONVEYED BY STATE

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5114 (Substitute H-1)**

**Sponsor: Rep. Rich Brown**

**1<sup>st</sup> Committee: Natural Resources, Great Lakes, Land Use, and Environment**

**2<sup>nd</sup> Committee: Conservation, Forestry, and Outdoor Recreation**

### **First Analysis (2-24-06)**

**BRIEF SUMMARY:** The bill would amend Part 527 of the Natural Resources and Environmental Protection Act to require the DNR to relinquish its reversionary interest in lands it conveyed to municipalities under Part 527, except for land considered to be "prime land."

**FISCAL IMPACT:** Approximately 15,500 acres, or about 20 percent of the total 75,000 acres, would be eligible for sale. Actual revenue to the conveying unit and impact on the budget of the State of Michigan would depend on the value of the properties and the fiscal year when the sale occurs. The fair market value in some instances may exceed \$20,000/acre, but other parcels could have a value that is considerably less than this amount, depending on the real estate market in the affected area.

The proceeds from the sale of these lands would be distributed as follows:

- First 50 percent of sale revenue would be retained by the conveying unit
- The remaining revenue would go to the State General Fund

Any amount in excess of \$18.0 million would be deposited into the Fire Protection Fund and would be available for Fire Protection Grants to local governmental units.

### **THE APPARENT PROBLEM:**

In 1931, the legislature and governor enacted Public Act 217, which established a municipal forest system in order to promote forestry and foster the development of forests in local communities across the state. These municipal forest systems are also a rich educational tool for school districts, enabling students to gain hands-on experience in the environmental sciences.

Now incorporated as Part 527 (Municipal Forests) of the Natural Resources and Environmental Protection Act (NREPA), the act permits the Department of Natural Resources and the Department of Treasury to sell certain land to be used solely for forestry purposes to municipalities (counties, villages, townships, cities, and school districts), with the requirement that when such land is no longer used for forestry purposes, it reverts to the state.

Approximately 3,000 parcels of land encompassing 75,000 acres have been conveyed to municipalities under Part 527. The vast majority of that land is held in northern counties of the state, with over one-third in Gogebic County in the far western Upper Peninsula. Some people believe that many of these parcels no longer serve the purpose for which they were conveyed to the public agency and could be put to better use. However, the existence of the state's reversionary interest prevents these parcels from being used for other purposes.

During the previous legislative session, Public Act 377 of 2004 was enacted into law because it was believed that if some of the state's reversionary interest was lifted, these lands could be sold and put to better use. The Department of Natural Resources and many of its stakeholders objected to a blanket provision lifting the reversionary interest because in many instances the land subject to the reversionary interest, though perhaps inadequate for forestry purposes, still has some sort of natural resources or environmental significance, such as providing access to public body of water. As a result, Public Act 377 was crafted so that it lifted the state's reversionary interest in parcels of municipal forestland not deemed to be "prime land."

The effective date of Public Act 377 of 2004 was October 12, 2004. Because of the manner in which the legislation was drafted, it has been interpreted by the Office of the Attorney General to apply only to those conveyances of municipal forestland from the DNR made between May 24, 1995 and October 12, 2004.

Legislation has been proposed so the new law would also apply to conveyances made before May 24, 1995 under the former Municipal Forest Act of 1931.

### ***THE CONTENT OF THE BILL:***

House Bill 5114 would amend the Natural Resources and Environmental Protection Act (MCL 324.52706) to make technical changes in the provisions to remove deed restrictions on municipal forest property conveyed by the state.

On May 24, 1995, when the Natural Resources and Environmental Protection Act was enacted into law, it repealed the Municipal Forest Act of 1931, and Section 324.52706 of NREPA was adopted instead. During the last legislative session, that section of NREPA was amended, with the intent that the Department of Natural Resources release its reversionary interest in municipal forestland conveyed to a public agency. The effective date of this new act was October 12, 2004. Consequently, the section of the law that was amended applied only to those conveyances of municipal forestland from the DNR made between May 24, 1995 and October 12, 2004.

House Bill 5114 clarifies that the DNR would be required to release its reversionary interest in municipal forestland conveyed to a public agency before May 1995, and pursuant to the Municipal Forest Act of 1931, by adding to the existing phrase "under this section", the words "**or section 6 of former 1931 PA 217.**" Under the bill, this change

would be made both in subsection 324.52706, and in the definition of "municipal forestland."

Currently under the law, "municipal forestland" means homestead, tax, swamp, or prime school land sold to a public agency solely for a forestry purpose. The law also defines "prime land" to mean land that meets one or more of three requirements: it is within a boundary of a program administered by the department; it provides access to a public body of water; and it is not less than 80 acres in size and, at any time during the preceding 10 years, had a basal area of not less than 90 square feet per acre. House Bill 5114 would change this definition to specify that the prime land be **not less than 121 acres in size**.

The bill also specifies that the Department of Natural Resources would be required to prescribe a form that would be used by those writing to request relinquishment. Further, the department could charge the public agency to which it was relinquishing land an amount equal to the charge for recording the release.

Finally, under the law, a public agency (such as a school district) to which a reversionary interest is relinquished by the state cannot convey the forestland for less than fair market value, and the law specifies how the proceeds from the sale must be distributed: 50 percent of the proceeds are retained by that public agency and the remaining 50 percent submitted to the Department of Treasury (the first \$18 million of which is deposited in the General Fund, and any excess into the Fire Protection Fund). House Bill 5114 would revise this provision to include any public agency that was a successor in interest.

Further, the bill **would allow the conveyance of relinquished land to a public agency for \$1** or to a public agency or any other person for fair market value. If the conveyance were to a public agency for \$1, the deed would be required to recite: "MCL 324.52706 requires an accounting and specifies how proceeds are to be distributed when the property is subsequently conveyed for fair market value." If the conveyance were to a public agency or other person for fair market value, the public agency conveying the property would be required to first have an accounting taken, then retain 50 percent of the sale proceeds, and submit the remaining 50 percent to the Department of Treasury for allocation to the General Fund and Fire Protection Fund.

### ***BACKGROUND INFORMATION:***

#### Summary of Public Act 377 of 2004

Part 527 (Municipal Forests) of the Natural Resources and Environmental Protection Act permits the Department of Natural Resources and the Department of Treasury to sell certain land used solely for forestry purposes to "municipalities" (counties, villages, townships, cities, and school districts), with the requirement that when such land is no longer used for forestry purposes, it reverts to the state.

Public Act 377 permits the DNR and Department of Treasury to sell certain land used solely for forestry purposes (unless the land was later conveyed) to "public agencies"

(school districts, public educational institutions, governmental units and agencies of the state, and municipalities).

The act requires that "prime land" sold to a public agency be used solely for forestry purposes, and requires that when that land is no longer used for forestry purposes, it revert to the state. The act defines "prime land" to mean land that is within the boundary of a program administered by the DNR, provides access to a public body of water, or is at least 80 acres and had a basal area of at least 90 square feet per acre during the preceding 10 years.

It was intended that Public Act 377 would require the Department of Natural Resources to relinquish any reversionary interest in any municipal forestland, except prime land, conveyed to a public agency prior to the act's effective date. The reversionary interest had to be relinquished within three years after the bill's effective date or within 90 days of receiving a request for the relinquishment from the public agency. Relinquishing the reversionary interest was conditioned on a requirement that, beginning four years after the bill's effective date, the public agency could not convey that land without departmental approval. If the land was conveyed within four years after the bill's effective date, the public agency had to notify the DNR within 60 days of the conveyance (but no DNR approval was required).

Any conveyance of the municipal forestland by the public agency must be for at least fair market value. If the public agency conveys the municipal forest land, 50 percent of the proceeds would be retained by the public agency. Initially, the remaining 50 percent is deposited in the state General Fund until total General Fund proceeds reach \$18 million. After that point, the remaining 50 percent is deposited in the Fire Protection Fund established in the Michigan Vehicle Code.

A public agency cannot convey the land without first holding a public hearing, with notice of the hearing provided in a newspaper of general circulation in the county where the municipal forestland is located. The notice must describe the location, approximate size, and current use of the land, and identify prospective purchasers, if known.

The act also specifies that if the municipal forest land is conveyed by the public agency to the DNR, the land would not be considered to be reacquired by the department on or after January 1, 1933 for the purposes of swamp tax and PILT payments pursuant to subparts 13 and 14 of Part 21 of NREPA, unless such land was originally acquired by the department on or after January 1, 1933 and later conveyed to the public agency pursuant to Part 527 (or Public Act 217 of 1931).

## ***ARGUMENTS:***

### ***For:***

Many parcels throughout the state that have been conveyed to school districts and local governments under Part 527 (and Public Act 217 of 1931) no longer serve the original purposes for which they were conveyed. This includes property surrounded by

undeveloped land away from core cities when conveyed, but now surrounded by developed land. Removing a reversionary interest in this land provides local communities and school districts with greater flexibility by increasing the allowable uses of the land. Land subsequently sold to another entity would return to the tax rolls and generate revenue for the local communities, school districts and the state.

***Against:***

This bill, like House Bill 5313 in the last legislative session (since enrolled into law as Public Act 377 of 2004) is troublesome to many because it allows local communities and school districts to sell long-term, public assets to meet short term financial obligations. Some have likened this financial decision to cashing in your retirement savings to pay for a phone bill. Moreover, the bill directly contravenes the original purpose of the Municipal Forest Act, which dates back to 1931, by diminishing opportunities for schoolchildren to actively learn environmental sciences.

***POSITIONS:***

The Michigan Townships Association supports the bill. (2-23-06)

The Department of Natural Resources is neutral on the bill. (2-23-06)

Legislative Analyst: J. Hunault  
Fiscal Analyst: Kirk Lindquist

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.