

Legislative Analysis



EASEMENTS OVER STATE-OWNED LAND

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House Bill 4201

Sponsor: Rep. Steven Lindberg

Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 2-12-10

A SUMMARY OF HOUSE BILL 4201 AS INTRODUCED 2-5-09

The bill would revise the law governing the granting of easements over state-owned land to individuals owning nearby private land. It amends Part 21 (General Real Estate Powers), Subpart 8 (Easements Over State Owned Lands), of the Natural Resources and Environmental Protection Act (NREPA). Among other things, the bill would:

- Require, rather than permit, the Department of Natural Resources and Environment (DNRE) to grant an easement for a roadway over state-owned land provided that certain conditions were met (and no disqualifying conditions were present).
- Revise the conditions that would qualify or disqualify property for an easement.
- Allow an easement document to prohibit the parcel of land being served by the easement over state land from being partitioned or split into parcels of fewer than 40 acres.
- Require the DNRE to provide a written notice and an explanation if it denied an easement request.

MCL 324.2123 & 324.2124

[Note: The bill is similar to House Bill 4981, also sponsored by Rep. Lindberg, as passed by the House in the 2007-2008 legislative session.]

FISCAL IMPACT:

House Bill 4201 would have no fiscal impact on the State of Michigan or on local units of government.

DETAILED SUMMARY:

Make granting of easement mandatory. Part 21 (MCL 324.2123) currently allows, but does not require, the DNRE to grant an easement over state-owned land under its jurisdiction if all of the following conditions are met:

- The individual does not have other access to his or her land.

- The easement does not conflict with an existing DNRE program or management plan or a local ordinance.
- The roadway for which the easement is granted is open to public access and is not for the exclusive use of the grantee.
- The easement provides the logical and most feasible access to the individual's land.
- The width of the roadway is restricted to the minimum consistent with the quality of the road required.
- The individual agrees to construct the road, if necessary, and to maintain it.
- The individual offers a similar roadway easement to the DNRE across his or her land.

The bill would change the first sentence of Section 2123 to provide that, *subject to Section 2124* (the section setting forth disqualifying conditions), the department *shall grant or otherwise provide for* an easement for a *roadway* over state-owned land under the jurisdiction of the department to an individual *who requests it*, but only if all of the specified conditions were met. These changes would appear to (1) make the grant of the easement mandatory if all the specified conditions were met (and none of the disqualifying conditions in Section 2124 applied); (2) clarify that the provision applies to a *roadway* easement; and (3) require that person seeking an easement make an affirmative request for it.

Revisions to conditions for an easement over state-owned land. The bill would retain existing conditions for obtaining an easement with the following changes:

- The easement request would have to be made on a DNRE form.
- The individual could not have other *legal* access to the individual's land, as confirmed by a title insurance policy or an attorney's written opinion.
- Although an individual seeking a roadway easement from the DNRE would still have to offer the DNRE a similar roadway easement across his or her own land, the DNRE could not accept a roadway easement that would end at a body of water.

Easement restriction barring the land from being split into parcels of fewer than 40 acres. The bill would allow, but not require, the document granting the easement to prohibit the parcel of land benefiting from the easement from being partitioned or split into parcels of fewer than 40 acres.

[Note: Existing Section 2128(1) of NREPA, MCL 324.2128(1), provides that if land to which an easement is granted by the DNR is subsequently subdivided within the meaning of the Subdivision Control Act, the easement automatically terminates. Generally speaking, "subdivision" within the meaning of that statute means partitioning or splitting land (for sale, a lease of more than one year, or building development) resulting in one or more parcels of fewer than 40 acres and to which platting procedures apply. By contrast, if a partitioning or splitting is an allowed "division" of land, instead of a "subdivision," it

may be exempt from platting requirements under Sections 108 and 109. It would appear, then, that under current law, if an owner of the land benefiting from an easement over state land *subdivided* his or her land (which by definition would result in at least one parcel of fewer than 40 acres), the subdivision would terminate the easement. On the other hand, if the owner *divided* the land within the meaning of Sections 108 and 109 (which could also produce parcels of fewer than 40 acres in size), the division would not require platting, and would *not* terminate the easement.

In any event, under the bill, the easement document could explicitly prohibit partitions or splits of the land served by the easement that would result in lots of fewer than 40 acres in size, whether or not the partition or split were a subdivision or a division for purposes of Section 2128(1). If the easement document explicitly prohibited partitions or splits resulting in lots of fewer than 40 acres, existing Section 2128(2) would come into play. Under that section, if an individual with an easement over state land violates the terms of the easement, the easement and any rights in the easement terminate, after an opportunity for a hearing.]

Written notice of denial with reasons. When denying a request for a roadway easement over state land the DNRE would have to provide written notice and the reasons for a denial.

Disqualifying conditions. Under Part 21, the DNRE may not grant an easement if any of the following apply:

- The proposed easement is over land designated as a wilderness area, wild area, or natural area under Part 351 (Wilderness and Natural Areas) of NREPA.
- The proposed easement is over land in an area closed to vehicular traffic under a management plan approved by the DNRE.
- The construction or use of the new or existing roadway will result in unnecessary damage to or destruction of the surface, soil, animal life, fish or aquatic life, or property.

The bill would change the third disqualifying condition to read: The construction or use of the new or existing roadway will result in *unreasonable* (instead of *unnecessary*) damage to or destruction of the surface, soil, animal life, fish or *other* aquatic life, or property.

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