

DNR: CAP ON STATE OWNED LAND

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Senate Bill 248 (Substitute H-4)

Sponsor: Sen. Tom Casperson

House Committee: Natural Resources, Tourism, and Outdoor Recreation

Senate Committee: Natural Resources, Environment, and Great Lakes

First Analysis (6-12-12)

BRIEF SUMMARY: The bill would place a cap on the total acreage for which the Department of Natural Resources (DNR) can acquire surface rights that would remain in effect until 2015, and would then shift to a cap that only applies to the Upper Peninsula until a strategic plan is implemented in accordance with the bill. The statewide cap would shift to a U.P. specific cap on May 1, 2015, and that cap would remain in place until the Legislature acts to remove it.

The bill would also require the DNR to compile, report, and post information on its website detailing the number of acres the state owns and the uses of that land, in addition to the estimated payments in lieu of taxes (known as PILT) on the land, and the change of property tax revenue likely to be experienced by local units of government as a result of the acquisition.

FISCAL IMPACT: Senate Bill 248 (H-4) would have an indeterminate fiscal impact on the Department of Natural Resources. The department would incur additional administrative costs related to the bill's requirements concerning information to be reported and posted on the DNR website. In addition, the bill requires the DNR to develop a strategic plan for land acquisition and disposition by October 1, 2014. The plan must be updated in eight years after the bill goes into effect and every 6 years thereafter. For additional information, see *Fiscal Information*, later in the analysis.

THE APPARENT PROBLEM:

Section 503 of the Natural Resources and Environmental Protection Act (NREPA) grants the Department of Natural Resources (DNR) power and jurisdiction over the management, control, and disposition of all land under the public domain, except for land managed by other state agencies. As part of that jurisdiction the DNR may accept gifts and grants of land and may buy, sell, exchange, or condemn land and other property. Additionally, DNR owns a large amount of land that it received through tax reversion.

There is a growing concern in some quarters over the number of acres of land the state owns and manages. Some wonder if the DNR can effectively manage all of its land considering the current economic climate. There is also significant concern regarding what some perceive as policies that limit public access to state owned land and restrict certain uses. Many communities, especially in the Upper Peninsula (U.P.), continue to be concerned with the financial impact of state owned land. According to testimony, in

some counties in the U.P, a majority of the land is owned by some level of government, including local, county, state, and federal entities. This has a large impact on property tax revenues as the state, through PILT payments, only pays a portion of what would be realized through private ownership of the land (in most circumstances).

In response to these concerns it has been suggested the amount of land the DNR can own or control be capped until a strategic acquisition and disposition plan be developed and implemented, among other things.

THE CONTENT OF THE BILL:

The bill would amend Parts 5 (General Powers and Duties) and 21 (General Real Estate Powers) of the Natural Resources and Environmental Protection Act to do the following:

PILT Estimates on Website

Beginning 90 days after the effective date of the bill, and before acquiring future surface rights to land, the DNR would be required to estimate payments in lieu of taxes (known as PILT) on the land, and the change of property tax revenue likely to be experienced by local units of government as a result of the acquisition. The information must be posted on its website for at least 21 days.

Acreage Cap and Exemptions

Prior to May 1, 2015, the DNR could acquire surface rights to no more than 4.65 million acres. From May 1, 2015 onward, the cap would shift to only affect the Upper Peninsula. Specifically, beginning May 1, 2015, the DNR could not acquire surface rights to land in the Upper Peninsula if the acquisition would result in the DNR owning more than 3.91 million acres. The bill states it is the Legislature's intent to remove the Upper Peninsula cap if the strategic plan (which is described below) is approved.

However, the following would **not** fall under either of the acreage limits:

- Land in which the DNR has a conservation easement.
- Land platted under the Land Division Act before the effective date of this bill.
- Land that was commercial forest land on the effective date of this bill.
- Land acquired by gift.
- Land acquired through litigation.
- Any of the following if acquired on or after the effective date of the bill:
 - Land with an area of not more than 80 acres, or a right-of-way, used for access other land owned by the DNR.
 - A trail. The land excluded is limited as follows: (1) to the railroad right of way if the traveled portion is contained within an abandoned railroad right of way, and (2) to the utility easement if the traveled portion is contained within a utility easement. If neither of the above conditions applies, the excluded land is limited to the traveled portion of the trail and contiguous land, and the area of the contiguous land could not exceed the product of 100 feet multiplied by the length of the trail in feet.

The DNR would be required to maintain a record of the land described above. The record must include the location, acreage, date of acquisition, and use of the land.

DNR-owned Acreage on Website

The DNR would be required to post on its website the number of acres of land for which it owns surface rights in the Upper and Lower Peninsulas, in total, and by program, including the number of excluded acres described above.

The DNR would also be required to post on its website the number of acres of land for which it owns surface rights in the Upper and Lower Peninsulas, in total, and by program, excluding the number of excluded acres described above.

Strategic Acquisition and Disposition Plan

The DNR would be required to develop a written strategic plan by October 1, 2014, to guide the acquisition and disposition of state lands under its management. The plan would have to be submitted to both the Senate and House committees with natural resources and outdoor recreation responsibility, to the corresponding Appropriations Committee subcommittees, and post the plan on its website. The bill also states the DNR would have to solicit input from the public and local units of government in developing the plan.

The plan would be required to do all of the following:

- Divide the state into regions.
- Identify DNR-managed land in each region.
- Establish measurable strategic performance goals with respect to all of the following for DNR-managed land:
 - Maximizing availability of access points to the land and water on or adjacent to the land.
 - Maximizing outdoor recreation opportunities.
 - Forests.
 - Natural features.
- To help achieve the goals of the strategic plan, identify land to be acquired, disposed of, and plans for natural resource management, including the restoration and protection of resources and harvesting of timber and other resources.
- Identify public lands in each region that are not managed by the DNR but affect the achievement of the above goals, as feasible.
- Identify ways the DNR can better coordinate the achievement of goals recognizing that public lands are subject to multiple uses, including motorized and non-motorized uses.

The strategic plan described above would not apply to land in the Upper Peninsula. The bill states it is the intent of the Legislature to remove this prohibition if the strategic plan is approved. Additionally, the DNR would be required to report on the implementation of the strategic plan and submit it to both the Senate and House committees with natural resources and outdoor recreation responsibility, to the corresponding appropriations subcommittees, and post the report on its website.

Updating the Strategic Plan

The DNR would have to update the plan eight years after the bill takes effect and every six years thereafter. The plan would have to be submitted to both the Senate and House committees with natural resources and outdoor recreation responsibility, to the corresponding Appropriations subcommittees, and post the report on its website. At least 60 days before posting the updated plan the DNR would be required to prepare, submit, and post in the same manner as described above, a progress report toward the goals set forth in the plan (for areas of the state subject to the plan) and any proposed changes to the goals, including rationale for those changes. The report must include departmental contact information for public input.

Statement of Intent to Acquire or Dispose of Land

At least 21 days before acquiring or disposing of land, the DNR would be required to submit a statement to both the Senate and House committees with natural resources and outdoor recreation responsibility, to the corresponding Appropriations subcommittees, identifying the land and describing the effect the land would have on achieving the goals established in the strategic plan. The statement would have to contain departmental contact information for public comment and be in a standard format. The statement would have to be posted for 21 days on the DNR's website before the acquisition or disposition took place. These requirements would not apply before the DNR submits its initial strategic plan.

Sale of Surplus Land

The DNR could sell surplus lands at a price established using a method the DNR determines is most appropriate, including

- Appraisal.
- Appraisal consulting.
- A schedule adopted by the DNR for pricing property with uniform characteristics and low utility.
- The true cash value of nearby land as determined by the local assessor.

Section 2132 of NREPA prohibits the DNR from selling surplus land at less than fair market value. Senate Bill 248 would stipulate that if the DNR offers tax-reverted land for sale and the land is not sold within nine months, the DNR could sell the land to a qualified buyer who submits an offer that represents a reasonable price as determined by the DNR. The bill would also remove a provision stating "*a bid shall not be accepted for less than the fair market value of the surplus land as determined by an appraisal.*"

MCL 324.503 and 324.2132

HOUSE COMMITTEE ACTION:

The committee reported the bill as an H-4 substitute. The major changes includes a separate cap for the Upper Peninsula until a strategic plan is developed, the requirement for the DNR to develop a strategic plan, and the requirement the DNR submit a statement of intent to purchase or dispose of land to the legislature before executing the transaction.

BACKGROUND INFORMATION:

The DNR currently owns 4,472,175 acres of land. Twenty percent of Michigan's total land area is owned and managed as public land by the federal, state, or local governments. The DNR's total managed land area accounts for 12% of the total land area in Michigan. The DNR manages land with which it has been entrusted as State Forests, State Wildlife Areas, State Parks and Recreation Areas, Boating and Fishing Access Sites, and other public purposes.

DNR Administered Land		
Program	Acres	Percent
State Forest Lands	3,866,266	86.4%
State Wildlife Areas	300,300	6.7%
State Park & Recreation Areas	259,969	5.8%
Water Access Sites	27,961	0.6%
Other Department Land	17,697	0.4%
Total	4,472,175	100.0%

State Forest Lands. The Department manages State Forest lands for timber and mineral production, fish and wildlife habitat, environmental quality, and recreation. Currently, Michigan has 3.9 million acres managed as State Forest lands, which covers 43 counties. State forest land is equally split between the Lower and Upper Peninsulas.

State Wildlife Areas. The Department's Wildlife Division manages 294,000 acres in 63 State Wildlife Areas - mostly in southern Michigan. These lands are purchased primarily with state and federal funds received from hunting licenses and the excise tax on firearms and ammunition.

State Park and Recreation Areas. Michigan has 96 State Park and Recreation Areas that contain 260,000 acres of recreation land, 142 miles of Great Lakes shoreline, and 462 miles of inland lakes, rivers, and streams.

Boating Access Sites. Currently there are more than 1,100 public boating access sites in the state, 700 of which are owned and operated by the DNR.

Fishing Access Sites, Fish Habitat and Support Facilities. The state holds title to 24 million acres of Great Lakes bottomlands which were transferred to the state from the federal government at statehood. These lands are held as public trust lands, and the state exercises both proprietary and regulatory authority over them.

(Information from DNR website)

FISCAL INFORMATION:

Senate Bill 248 (H-4) would have an indeterminate fiscal impact on the Department of Natural Resources.

The bill prohibits the Department of Natural Resources from owning the surface rights to more than 4.65 million acres of land until May 1, 2015. The bill further provides that after May 1, 2015, the DNR may not acquire land in the Upper Peninsula if the total acreage the Department owns in the Upper Peninsula will total more than 3.9 million acres.

The Department would incur additional administrative costs related to the bill's requirements concerning information to be compiled, reported, and posted on the DNR website, including: calculated PILT payments and the loss of property tax revenue to local units of government from the acquisition of any new property; and the total number of acres to which the DNR owns surface rights, broken out by land owned in the Upper Peninsula, in the Lower Peninsula, in total for the state, and by program area. In addition, the bill requires the DNR to develop a strategic plan for land acquisition and disposition by October 1, 2014. The plan must be updated in eight years after the bill goes into effect and every 6 years thereafter.

Senate Bill 248 also makes changes to current law concerning the sale of state surplus land by the Department. Under current law, the DNR may not sell surplus land at less than fair market value. The bill would allow the Department to use other additional standards to establish the price of such land and allows tax reverted land that has been for sale and not sold within 9 months to be sold for a "reasonable price" as determined by the Department - in place of the currently required fair market value criteria.

Revenue from the sale of state surplus land that was not originally purchased with funding from the Michigan Natural Resource Trust Fund is deposited into the Land Exchange Facilitation Fund. This fund is used for the purchase of additional state lands and to support the services of the DNR Real Estate Division which oversees the management and sale of state lands.

ARGUMENTS:

For:

The bill would require the DNR to develop a comprehensive management and acquisition plan. Many feel the state unfairly competes with private citizens when purchasing land, and some question whether the DNR has a stated plan for newly acquired land, or whether it purchases land when it comes up for sale simply because it can. According to testimony, there are many instances where certain user groups have been denied access to state-owned land. This bill would force the DNR to develop a strategic plan that addresses these concerns.

By capping the amount of land the DNR can acquire and manage and requiring the development of a strategic acquisition and disposition plan, the department will be forced to live within its means. A significant tax burden is placed on local units of government

in areas where state ownership is high. According to testimony, some townships in the Upper Peninsula are over 85% owned by government at various levels. This is a financial strain on the local unit, especially when PILT payments are reduced. Many feel the state should not own more land than it can make full PILT payments for.

Against:

While the state owns a large percentage of land in the Upper Peninsula, many outdoor enthusiasts in the Lower Peninsula have limited or no access to public land. Placing a cap on the total acreage the state is permitted to acquire would further limit opportunities for those living in metropolitan areas, specifically southeast Michigan. Those communities may want to have more public land but would be prevented from doing so until the cap on the Lower Peninsula is lifted.

Opponents feel the cap on state-owned land is an arbitrary number and question whether the bill would achieve its desired goals. For example, as reported, the bill contains a number of exceptions for land acquisitions that would not count against the cap. This includes land acquired through litigation and gift.

Placing a cap on how much land the DNR can acquire will not address land holdings within any local jurisdiction. For example, even with a cap the DNR could still amass large amounts of land in a particular county or township provided it stays under the overall statewide or U.P. specific cap. Many believe it would be more beneficial to address these issues at the local level and look at land acquisitions by jurisdiction, instead of a blanket cap. Additionally, the bill would institute a statewide cap until May 1, 2015, and then replace it with a cap exclusive to the U.P. until the development of a strategic plan. The bill would not specifically address land acquisitions in the U.P. prior to May 1, 2015, other than in a larger context of land acquisitions statewide.

Opponents also have concerns with the requirement that future legislative action be needed to remove the cap on the U.P. and then subject it to the strategic plan. Once the cap is in place it could prove very difficult to change. The bill has two subsections with legislative intent language: Section 503(4), where it is the Legislature's intent to remove the cap on the U.P. once the strategic plan is approved; and Section 503(9), where it is the Legislature's intent to subject the U.P. to the strategic plan once it is developed.

POSITIONS:

Americans for Prosperity - Michigan supports the bill. (10-11-11)

Great Lakes Timber Professionals Association supports the bill. (12-6-11)

Lake States Lumber Association supports the bill. (12-6-11)

Michigan Association of Counties supports the bill. (11-29-11)

Michigan Farm Bureau supports the bill. (11-29-11)

Michigan Townships Association supports the bill. (12-6-11)

Upper Peninsula Sportsmen's Alliance supports the bill. (12-6-11)

Michigan Biomass supports the bill. (6-5-12)

Michigan Department of Natural Resources is neutral on the bill. (12-6-11)

Great Lakes Timber is neutral on the bill. (11-29-11)

Michigan Association of Timbermen is neutral on the bill. (11-29-11)

Michigan Trout Unlimited is neutral on the bill. (6-5-12)

Michigan United Conservation Clubs is neutral on the bill. (6-5-12)

Ducks Unlimited opposes the bill. (10-11-11)

Heart of the Lakes Center for Land Conservation Policy opposes the bill. (6-5-12)

Michigan Environmental Council opposes the bill. (11-29-11)

Michigan League of Conservation Voters opposes the bill. (6-5-12)

National Wild Turkey Federation opposes the bill. (10-11-11)

North American Waterfowl Management Plan Steering Committee opposes the bill. (10-11-11)

Sierra Club submitted written testimony opposing the bill. (11-28-11)

The Nature Conservancy opposes the bill. (6-5-12)

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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.