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Senate Bill 248 (Substitute S-1 as reported)
Sponsor: Senator Tom Casperson
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 6-13-11

RATIONALE

The Natural Resources and Environmental Protection Act authorizes the Department of Natural Resources (DNR) to accept gifts and grants of land, and to buy land on behalf of the people of Michigan. In addition, the Department owns a significant amount of land that it received through tax reversion, much during the Great Depression. Over the years, a number of concerns have arisen regarding the amount of land under the DNR's ownership or control.

Some people question whether the Department can manage so much land properly, especially under significant budgetary constraints. In addition, some have expressed concern that the DNR has adopted policies limiting public access to and use of the land. The impact of State-owned land on the coffers of the local units of government in which it is located also has been identified as problematic.

In response, it has been suggested that the amount of land the DNR may own or control be capped; that tax reverted land that cannot be sold within six months be auctioned; and that the Department be required to consider the impact of a potential land purchase on its budget and local government tax collections before proceeding with an acquisition.

CONTENT

The bill would amend Part 5 (Department of Natural Resources) of the Natural Resources and Environmental Protection Act to do the following:

- **Prohibit the Department of Natural Resources from acquiring surface rights to more than 4.6 million acres of land.**
- **Require the DNR to offer for sale at a public auction tax reverted land that had not sold after six months.**
- **Require the DNR to consider the expenses it would incur in managing new land and the loss of tax revenue to local governments, before acquiring surface rights.**

Specifically, the DNR could not acquire surface rights if it owned or controlled, or as a result of the acquisition would own or control, the surface rights to more than 4.6 million acres of land. For the purposes of this restriction, the number of acres in which the Department owned or controlled surface rights would not include any of the following, if acquired after the bill took effect:

- A right-of-way for gaining access to other land owned by or under the control of the DNR.
- Land that was commercial forestland on the bill's effective date.
- Land acquired by the DNR through gift or litigation.
- Land in which the Department had acquired a conservation easement.
- A trail.

If the traveled portion of a trail were located within an abandoned railroad right-of-way, the land excluded from the total would be limited to that right-of-way. Otherwise, the excluded land would be limited to the traveled portion of the trail and contiguous land. The area of the contiguous land could

not exceed the product of 40 feet multiplied by the length of the trail in feet.

The DNR would have to maintain a record of acquired land excluded from the total. The record would have to include the location, acreage, date of acquisition, and use of the land.

The Department would have to post and maintain on its website the following information:

- The number of acres of land, including the land excluded from the total for purposes of the 4.6 million-acre limit, in which the DNR owned or controlled surface rights, in total and by program.
- The number of acres of land, disregarding the excluded land, in which the DNR owned or controlled surface rights, in total and by program.

If the DNR offered tax reverted land for sale and the land were not sold within six months, the Department would have to offer it for sale at a public auction with no minimum bid requirement and sell the property to the qualified bidder making the highest bid.

Before acquiring surface rights to land, the Department would have to consider the expense it was likely to incur in managing the land, including payments in lieu of taxes, and the loss of tax revenue likely to be incurred by local units of government as a result of the acquisition. The DNR would have to post this information on its website for at least 21 days.

MCL 324.503

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under current circumstances, it is unclear whether the people of Michigan are receiving the greatest possible benefit from the land owned by the Department of Natural Resources. The DNR might not be able to oversee its land properly, especially while operating under significant budget cuts. For example, the Department recently proposed the closure of a number of State forest

campgrounds that the DNR thought it could not afford to maintain (although the campgrounds will remain open for the present). It would not be prudent for the DNR to acquire more land when resources to manage existing parcels are limited and some land is underused or unused.

In addition, the DNR may be limiting access to some of its land in the name of stewardship to the detriment of outdoor enthusiasts and the timber industry. For instance, the Department is involved in several initiatives to preserve the State's biodiversity and protect threatened or endangered species. Some people have complained that human use is being constrained in areas where this conservation work is occurring, through either restrictions on activity or bans on entry. In some cases, the regulation is excessive and diminishes the utility of the land to the residents of Michigan. The DNR should not continue to acquire property if it does not plan to use the parcels to enhance opportunities for the industries and individuals who play an important role in the State's economy. Under these conditions, the people of the State would benefit more if the land were under private ownership.

State ownership of land also has ramifications for the local units of government in which it is located. The local units lose the property taxes that they would otherwise collect if that land were available for development. To offset the revenue loss, State statute requires the DNR to make payments in lieu of taxes (PILT) to local governments. These payments, however, amount to much less than a private landowner would pay in property taxes. In addition, the State has not been able to make full PILT over the last several years due to budget shortfalls, and instead has made prorated payments. These circumstances have exacerbated local units' existing financial difficulties, especially where the majority of land is owned by the State.

In a related matter, the DNR remains in possession of a number of parcels that it received through the tax reversion process. Because this land was not acquired strategically, it may not enhance the Department's conservation or recreation efforts, although it could be valuable to private interests for other purposes. The

Department could look to this surplus first in designating land to sell in order to comply with the proposed cap.

While the DNR needs flexibility to acquire land identified as valuable to its mission, the concerns regarding its budget and management practices, as well as the impact of State-owned land on local governments, demonstrate that the Department's authority should not be completely unrestrained. The proposed limit of 4.6 million acres would be a reasonable cap that would still allow the DNR to make decisions regarding the purchase and sale of its property and give Michiganders adequate recreational opportunities.

Opposing Argument

While concerns about the DNR's current land management practices and local fiscal stability may be well-founded, the solution is more complex than simply capping the number of acres the DNR may own or control. A more effective response would be the adoption of a comprehensive land management strategy that takes regional needs into account. The strategy should include clear criteria to guide the DNR in purchasing land that furthers its mission and selling land that is underused or that does not contribute to the Department's conservation and recreation goals. Such a strategy would enable the Department to deploy its resources more effectively, maximize the public benefit of the land, and provide a measure of accountability. The limit proposed by the bill could hinder the DNR's ability to take advantage of time-sensitive opportunities to acquire high-value land and create recreational opportunities where they are most needed. Ultimately, the bill could have negative consequences for the State's outdoor enthusiasts.

Establishing a five-year average cap would be better than setting a hard cap. If the Department were nearing a total of 4.6 million acres, a rolling average limit would allow for the acquisition of valuable land if the opportunity arose while giving the Department time to identify other parcels to be sold.

In addition, it is questionable whether including certain land in the total would be appropriate. In some cases, the DNR leases private land; whether that land should be counted against the cap is uncertain. In the

case of Camp Grayling, a National Guard training facility, the DNR owns the land but does not control its use. The practical implications of the bill's language referring to land the Department "owns or controls" should be examined further.

The bill would exclude trails from the 4.6 million-acre limit only if they met specific criteria. These conditions potentially would prevent the DNR from acquiring land that could increase the connectivity of the trail system. The bill should allow for the acquisition of all trails, regardless of the amount of land the Department owned. Also, the exclusion of conservation easements should apply to easements the Department currently owns, as well as those gained in the future. Under the bill, existing easements would count against the cap.

The bill also should exclude from the cap land considered valuable because of special natural resource features. The DNR should not be prevented from obtaining land that furthers its stewardship mission, which is one of the Department's principal functions, simply because the limit was reached.

In addition to requiring the DNR to evaluate the potential cost of land acquisition to the Department and the applicable local unit of government, the bill should require the DNR to evaluate the potential benefits. Often, State-owned land promotes tourism and economic activity for surrounding communities. In some local units, the improved quality of life and revenue generated from the public recreational opportunities available on State-owned land might outweigh the loss of property tax revenue. Reportedly, some communities have adopted resolutions to waive PILT for nearby State parks and recreation areas. Stakeholders should have a full understanding of the potential impact--the positive as well as the negative--of a proposed land purchase by the DNR. It also might make sense to exclude a DNR acquisition from the cap if the affected local unit expressed support for it.

With regard to the requirement that unsold tax reverted land be sold at a public auction, the time frame should be extended. Six months might not be enough time for a prospective purchaser to arrange financing and close on the sale. Furthermore, without a minimum bid requirement, the land could

be sold for pennies on the dollar. The bill should require tax reverted land to be sold at auction after 18 months, rather than six, and also should include a right of first refusal for the local unit of government in which a parcel was located.

Response: Based on the DNR's rate of acquisition over the last 10 years, it would be another five years before the proposed limit was reached--ample time for the Department to evaluate its portfolio and sell land if needed. For the DNR's purposes, 4.6 million acres would be sufficient; carving out additional exclusions would be unwarranted. In addition, requiring tax reverted land to remain on the market for 18 months before it could be auctioned would serve only to prolong the sale process unnecessarily. The bill aims to ensure that the DNR could manage its land properly and maintain public access; additional exceptions to the cap and a protracted divestment process for tax reverted land would diminish the bill's effectiveness.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate impact on State and local finances. According to its website, the Department currently owns 4,472,175 acres of land.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.