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BILL  ANALYSIS

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Senate Bill 248 (as enacted)

**PUBLIC ACT 240 of 2012**

Sponsor: Senator Tom Casperson

Senate Committee: Natural Resources, Environment and Great Lakes

House Committee: Natural Resources, Tourism, and Outdoor Recreation

Date Completed: 4-25-13

**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, all of the following were suggested: that the amount of land the DNR may own or control be capped; that a strategic plan be developed to guide the DNR's land acquisition and divestment decisions; that tax reverted land that cannot be sold within nine months be auctioned; and that the Department be required to notify affected local units of government of the estimated payment in lieu of taxes on a proposed DNR acquisition.

**CONTENT**

**The bill amended Parts 5 (Department of Natural Resources) and 21 (General**

**Real Estate Powers) 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 4.626 million acres of land statewide before May 1, 2015.**
- **Beginning May 1, 2015, prohibit the DNR from acquiring surface rights to more than 3.91 million acres of land in northern Michigan, unless the strategic plan (described below) is approved and the Legislature deletes this limit.**
- **Require the DNR to estimate the amount of annual payments in lieu of taxes (PILT) on land it proposes to acquire and notify affected local units at least 30 days before the acquisition.**
- **Require the DNR, by October 1, 2014, to develop a strategic plan to guide the acquisition and disposition of State land managed by the Department and submit it to the Legislature.**
- **Require the DNR to report on implementation of the plan annually, and, beginning in 2020, update the plan every six years.**
- **Require the DNR to submit to the Legislature a statement describing the effect of a proposed acquisition on achieving the performance goals set forth in the strategic plan.**

- **Eliminate a provision requiring surplus land managed by the DNR to be sold at fair market value.**
- **Require the DNR to offer for sale at a public auction tax reverted land that has not sold after nine months.**

The bill took effect on July 2, 2012.

#### PILT Estimate

The bill prohibits the DNR from acquiring surface rights unless it has estimated the amount of annual payments in lieu of taxes on the land, posted the estimated payments on its website for at least 30 days, and notified the affected local units of the estimated payments at least 30 days before the acquisition. This restriction began 90 days after the bill's effective date.

#### Surface Rights Cap

Under the bill, before May 1, 2015, the DNR may not acquire surface rights if it owns, or as a result of the acquisition will own, the surface rights to more than 4,626,000 acres of land.

Beginning on May 1, 2015, the DNR may not acquire surface rights to land north of the Mason-Arenac line if the Department owns, or as a result of the acquisition will own, the surface rights to more than 3,910,000 acres of land north of the line. The bill specifies a legislative intent to amend the Act to remove this limitation if the Legislature approves the strategic plan. Under the bill, "Mason-Arenac line" means the line formed by the north boundaries of Mason, Lake, Osceola, Clare, Gladwin, and Arenac Counties.

For the purposes of the restrictions, the number of acres in which the Department owns surface rights does not include either of the following:

- Land in which the DNR has a conservation easement.
- Land platted under the Land Division Act or a predecessor act before the bill's effective date, if acquired by the DNR before that date.

The following also are excluded from the restrictions, if acquired on or after the bill's effective date:

- Land with an area of not more than 80 acres, or a right-of-way for gaining access to other land owned by the DNR.
- Land that was commercial forestland on the bill's effective date, if the land continues to be used in a manner consistent with Part 511 (Commercial Forests).
- Land acquired by the DNR through litigation or gift, including the gift of funds specifically dedicated to land acquisition.

A trail acquired after the bill's effective date also is excluded from the restrictions, subject to the provisions described below.

If the traveled portion of a trail is located within an abandoned railroad right-of-way, the land excluded from the total is limited to that right-of-way. If the traveled portion is located in a utility easement, the excluded land is limited to the easement. If neither of those apply, the excluded land is limited to the traveled portion of the trail and contiguous land. The area of the contiguous land may not exceed the product of 100 feet multiplied by the length of the trail in feet.

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

The Department must 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 acreage limits, in which the DNR owns surface rights north of the Mason-Arenac line, south of the line, in total for the State, and by program.
- The number of acres of land, disregarding the excluded land, in which the DNR owns surface rights both north and south of the Mason-Arenac line, in total for the State, and by program.

#### Strategic Plan

The bill requires the DNR, by October 1, 2014, to develop a written strategic plan to guide the acquisition and disposition of State land managed by the Department, submit the plan to the Senate and House committees with primary responsibility for natural resources and outdoor recreation and the corresponding Appropriation

subcommittees, and post the plan on the Department's website. In developing the plan, the DNR must solicit input from the public and local units of government.

The strategic plan must divide the State into regions and identify land managed by the DNR in each region. In addition, the plan must set forth for each region measurable strategic performance goals with respect to all of the following for land managed by the Department:

- Maximizing outdoor recreation opportunities.
- Forests.
- Wildlife and fisheries.

To assist in achieving the goals, the plan must identify land to be acquired and disposed of, and plans for natural resource management. To the extent feasible, the plan must identify public land in each region that is not managed by the DNR but affects achievement of the goals. Also, the plan must identify ways that the DNR can better coordinate achievement of the goals, recognizing that public land is subject to multiple uses and both motorized and nonmotorized uses.

The Department may not implement the strategic plan as it applies to land north of the Mason-Arenac line. The bill states a legislative intent to amend the Act to remove this prohibition if the Legislature approves the plan.

The Department annually must report on the implementation of the plan and submit it to the Legislature and post it on the Department's website.

Beginning July 2, 2020, and every six years after that, the DNR must update the strategic plan and submit it to the Legislature and post it on the Department's website in the same manner prescribed for the original plan. At least 60 days before posting the updated plan, the Department must prepare, submit, and post a report on progress toward the prescribed goals in portions of the State where the plan is being implemented and any proposed changes to the goals, including the rationale for the changes. The submittal and posting must include DNR contact information for people who wish to comment on the report.

At least 30 days before acquiring or disposing of land, the DNR must submit to the Senate and House committees with primary responsibility for natural resources and outdoor recreation and the corresponding Appropriations subcommittees a statement identifying the land and describing the effect of the proposed transaction on achieving the goals set forth in the strategic plan. The statement must include DNR contact information for people who wish to comment on the acquisition or disposition, and be in a standard format. The Department also must post the statement on its website for at least 30 days before the acquisition or disposition. These requirements do not apply before the DNR submits the initial plan to the legislative committees as required.

### Surplus Land Sales

Previously, under Part 21, the DNR could sell surplus land at a price of not less than its fair market value as determined by an appraisal. The bill eliminated this provision. Instead, subject to the provision regarding tax reverted land sales described below, the DNR may sell surplus land at a price established using the method that it determines to be most appropriate, such as any of the following:

- 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.

Under the bill, if the DNR offers tax reverted land for sale and the land is not sold within nine months, the Department may sell it to a qualified buyer who submits an offer that represents a reasonable price for the property as determined by the Department.

The sale of surplus land must be conducted through a public auction sale or a negotiated sale, and a sale through a public auction sale must be to the highest bidder. The bill eliminated specific references to a "sealed or oral bid" public auction sale. The bill also eliminated a provision prohibiting acceptance of a bid for less than the fair market value of the surplus land as determined by an appraiser.

## **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, in the past, the Department proposed the closure of a number of State forest campgrounds that the DNR thought it could not afford to maintain (although the campgrounds remain open for the present). It is not 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, some people are concerned that the DNR might limit 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 might be constrained in areas where this conservation work is occurring, through either restrictions on activity or bans on entry. In some cases, the regulation might be excessive and diminish 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 can look to this surplus first in designating land to sell in order to comply with the caps.

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 limit of 4,626,000 acres statewide is a reasonable cap that still allows the DNR to make decisions regarding the purchase and sale of its property and give Michiganders adequate recreational opportunities.

Furthermore, by requiring the DNR to develop a comprehensive land management strategy, the bill recognizes that the solution to concerns about Department practices and local fiscal stability is more complex than simply capping the number of acres the Department may own or control. Presumably, the strategy will take regional needs into account, and the cap will be lifted in the southern part of the State in 2015, when implementation of the strategic plan should be under way. The plan will 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. The plan also will enable the Department to deploy its resources more effectively, maximize the public benefit of the land, and provide a measure of accountability.

### **Opposing Argument**

The establishment of an acreage restriction specific to northern Michigan might hinder the DNR's ability to take advantage of time-sensitive opportunities to acquire high-value land and create recreational opportunities where they are needed. While the statewide limit will be lifted in 2015 and the strategic plan will be implemented, the plan may not be implemented north of the Mason-Arenac line without legislative approval. Furthermore, the cap in that part of the State will be lifted only after the plan is approved and the Legislature amends the statute. Ultimately, the bill may have negative consequences for the State's outdoor enthusiasts.

In addition, a five-year average cap would be better than a hard cap. If the Department is nearing the restrictions set by the bill, 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.

Land considered valuable because of special natural resource features should be excluded from the cap. 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 is reached.

In addition to requiring the DNR to estimate PILT with regard to a proposed acquisition, the bill should require the DNR to evaluate the potential benefits to affected local units. 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 expresses support for it.

**Response:** Based on the DNR's rate of acquisition over the last decade or so, it will be another few years before the statewide

limit is reached--ample time for the Department to evaluate its portfolio and sell land if needed. For the DNR's purposes, 4.6 million acres is sufficient; carving out additional exclusions is unwarranted. The bill aims to ensure that the DNR can manage its land properly and maintain public access; additional exceptions to the cap would diminish the bill's effectiveness.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill will have an indeterminate impact on State and local finances. According to its website, the Department currently owns 4,586,922 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.