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BILL ANALYSIS



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House Bill 4201 (Substitute H-1 as passed by the House)
Sponsor: Representative Steven Lindberg
House Committee: Tourism, Outdoor Recreation and Natural Resources
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 6-29-10

CONTENT

The bill would amend Part 21 (General Real Estate Powers) of the Natural Resources and Environmental Protection Act to revise the conditions under which the Department of Natural Resources and Environment (DNRE) may grant an easement over State-owned land; and require the DNRE to grant an easement under certain conditions.

Discretionary Easement

Part 21 permits the DNRE to grant an easement over State-owned land under its jurisdiction to an individual only 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 maintain it.
- The individual offers a similar roadway easement to the DNRE across the land to which the easement is to provide access.

The bill would allow the DNRE to grant or otherwise provide for an easement for a roadway over State-owned land under its jurisdiction to an individual who requested it, if the specified conditions were met. With regard to the first condition, the individual could not have other "legal" access to his or her land. With regard to the last condition, the DNRE could not accept a roadway easement if it would end at a body of water. Additionally, the bill would require the individual to make the request on a form provided by the Department.

If the DNRE denied a request for an easement, the Department would have to give the person who requested it written notice of the denial and the reasons for the denial.

Mandatory Easement

Under the bill, subject to provisions prohibiting easements under certain conditions, the DNRE would have to grant or otherwise provide for an easement for a roadway over State-

owned land under its jurisdiction to an individual who requested it, but only if all of the following conditions were met:

- The request was made on a form provided by the Department.
- The individual did not have other legal access to his or her land, as confirmed by a policy of title insurance or the written opinion of an attorney and by the Department.
- The easement did not cross an environmentally sensitive area, including a wetland or a critical dune area.
- The individual offered a similar roadway easement to the DNRE across the land to which the easement granted by the Department was to provide access.

With regard to the last condition, the DNRE could not accept a roadway easement if it would end at a body of water.

Also, the easement could not conflict with an existing DNRE program or management plan; with a local ordinance; or, if the land were acquired with revenue from hunting and fishing license fees, Federal funds from a wildlife or sport fish restoration program, or other State or Federal program funds, with State or Federal laws governing the use of the land acquired through the respective program.

The DNRE could impose conditions on an easement granted under these provisions. If the Department denied a request, it would have to notify the individual in writing of the denial and the reasons for it.

Prohibited Easement

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).
- The proposed easement is over land in an area closed to vehicular traffic pursuant to 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 refer to unreasonable, rather than unnecessary, damage.

MCL 324.2123 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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.