

Legislative Analysis



CONVEYANCE OF PROPERTY IN CALHOUN COUNTY

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Senate Bill 18

Senate Bill 19 (Substitute S-1)

Sponsor: Sen. Mike Nofs

House Committee: Appropriations

Senate Committee: Local Government

Complete to March 9, 2015

A SUMMARY OF SENATE BILL 18 AS PASSED THE SENATE 2-19-15 AND SENATE SUBSTITUTE S-1 FOR SENATE BILL 19 AS PASSED THE SENATE 2-19-15

Senate Bill 18 would amend the Natural Resources and Environmental Protection Act to require the Department of Natural Resources (DNR) to convey certain properties in Clarence Township in Calhoun County to the current occupants and de facto owners under color of title if certain conditions are met. Approximate descriptions of the property are described in the bill.

If the Governor of the State of Michigan applies to the Bureau of Land Management of the U.S. Department of the Interior, the provisions of the bill would require the DNR, in consultation with the Department of the Attorney General, to use its best efforts to identify the de facto owners of the lands. The DNR may require a person claiming to be a de facto owner of any of the lands in question under the bill to reimburse the DNR in advance of any conveyance for any expense incurred by the DNR or the Department of Attorney General in determining the de facto owner and for conveying the property to the de facto owner. Once a de facto owner was identified, the DNR would be required to convey the property to the de facto owner by quitclaim deed.

The provisions of the bill would require the DNR to take the steps it deemed necessary to determine the de facto owner. If the DNR could not determine a de facto owner for a portion of land or is unable to determine which of one or more potential de facto owners has the most legitimate claim to a portion of the land, the DNR would not be required to bring or participate in a quiet title action or any other legal action on the property. The bill would allow the DNR to convey the property to an adjacent de facto owner by quitclaim deed if the DNR determined that no de facto owner existed for the property.

The bill states that the legal descriptions are approximate and the DNR, as directed by the Department of Attorney General, may adjust the description to address any legal description discrepancies in the deeds. The DNR would not be responsible for recording a deed or for any costs or fees associated with that recording under the bill.

Any interests or rights in, or obligations connected to, land conveyed under the bill created before the conveyance under the bill would have the same legal effect as if the conveyance

under the bill preceded the creation of the interest, right, or obligation. The State would not retain any interest in the land. The bill makes explicit that the provisions included are intended to affirm title to real property and would not create a cause of action for or constitute a basis for a tax refund or a property tax appeal.

The bill defines a “de facto owner” as any person that could reasonably be considered the owner of the land despite not having good legal title, as indicated by one or more of the following:

- A purported chain of title that would show marketable title in the person if a valid governmental patent or other conveyance had been given to the appropriate predecessor in the chain of title.
- Payment of property taxes on the land by the person.
- Possession of and improvement to or maintenance of the land by the person.
- Any other similar factor the DNR determines should be considered.

Senate Bill 18 is tie-barred to Senate Bill 19 (S-1).

Senate Bill 19 (S-1) would amend the General Property Tax Act, 1893 PA 206, to include a conveyance of property under Section 2120A (6) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as an exception to the definition of “transfer of ownership.” Senate Bill 18, explained above, would create Section 2120A as a new section in the Natural Resources and Environmental Protection Act, 1994 PA 451.

Senate Bill 19 (S-1) is tie-barred to Senate Bill 1056.

BACKGROUND INFORMATION:

The current occupants and de facto owners under color of title would like to pursue leasing the oil, gas, and mineral rights on the properties in question. Upon executing a clear title search, it was determined that neither the current occupants nor the State ever acquired a swampland patent from the Federal Government. The bills would address this issue, in part.

When Michigan became a state in 1837 the parcels of land subject to the provisions of Senate Bills 18 and 19 (S-1) were considered federally-owned swampland. Individuals eventually settled the land, made improvements, and paid taxes. In 1850, the Federal Government passed the Swamp Land Act of 1850 which provided a mechanism for transferring title of federally-owned swamplands into private ownership through swampland patents for the purposes of development, presumably for agriculture.

While the parcels of land were eligible for conveyance to the State under the Swamp Land Act of 1850, it was discovered that the State never executed the formal request for the swampland patent. Under the Swamp Land Act of 1850, the Governor is required to apply to the Bureau of Land Management (BLM) requesting the swampland patents for the State.

Upon receipt of the application, the BLM would be required to issue the swampland patent to the State, including all oil, gas, and mineral rights.

Following a successful application for swampland patent by the Governor, the provisions of Senate Bills 18 and 19 (S-1) would require conveyance of the swampland patents to the de facto landowners thereby clearing the title issues that currently exist.

FISCAL IMPACT:

House Bill 18 would have no significant fiscal impact to the State of Michigan and no fiscal impact to local units of government. This bill provides for the DNR to require reimbursement of any administrative costs incurred in determining de facto ownership; reimbursement would come from the de facto owners. The bill also specifies that the department is not responsible for costs associated with recording deeds.

Senate Bill 19 (S-1) would have no fiscal impact on state and local government. The provisions of the bill would ensure no change in taxable value for property conveyed under the provisions of Senate Bill 18 because the conveyance of the property would not be included in the definition of “transfer of ownership.”

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