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BILL ANALYSIS



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Senate Bills 18 and 19 (as introduced 1-20-15)

(enacted version)

Sponsor: Senator Mike Nofs

Committee: Local Government

Date Completed: 2-9-15

CONTENT

Senate Bill 18 would add Section 2120a to Part 21 (General Real Estate Powers) of the Natural Resource and Environmental Protection Act to do the following:

- Require the Department of Natural Resources (DNR) to determine the identity of current de facto owners of certain land in Calhoun County, if the Governor applied to the U.S. government for conveyance of that land to the State.
- Require the DNR to convey a portion of the property to a de facto owner after determining the identity of that owner.
- Allow the DNR to convey a portion of the land to an adjacent de facto owner if it determined there was no de factor owner of that portion.
- Allow the DNR to require a person claiming de facto ownership of any of the land to reimburse the Department for any expenses it or the Department of Attorney General incurred in determining de facto ownership and conveying the property.
- Provide that interests or rights in, or obligations connected to, land conveyed under Section 2120a were created before the conveyance would have the same legal effect as if the conveyance preceded the creation of the interest, right, or obligation.
- Specify that Section 2120a would not create a cause of action for or serve as a basis for a tax refund or a property tax appeal.
- Specify that other sections of the Act, dealing with the conveyance of swamp land from the United States, would not apply to the property addressed by the bill.
- State legislative findings and intent.

Senate Bill 19 would amend the General Property Tax Act to exclude from "transfer of ownership" a conveyance of property to a de facto owner as required under proposed Section 2120a.

The bills are tie-barred.

Senate Bill 18 would define "de facto owner" as a 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.
- The person's payment of property taxes on the land.
- The person's possession of and improvement to or maintenance of the land.
- Any other similar factor that the DNR, in its discretion, determines should be considered.

Senate Bill 18

Conveyance of Property

If the Governor applied to the Bureau of Land Management in the U.S. Department of the Interior, or to any other U.S. official or agency that he or she determined appropriate, for the conveyance to the State of certain land in Clarence Township, Calhoun County, by patent or otherwise, and if the land were conveyed to the State, the DNR would have to use its best efforts to determine the identity of the current de facto owners of the land. In making that determination, the DNR would have to consult with the Department of Attorney General.

(Subsection (1) of Section 2120a contains a legal description of the property to which the bill would apply.)

The DNR could require a person claiming to be a de facto owner of any of the land in question to reimburse the Department, before the conveyance of the property, for any expense incurred by either the DNR or the Attorney General in determining the identity of the de facto owners and in conveying the property to them.

The DNR would not have to take any steps to make a determination of the identity of the de facto owners other than those that it determined were reasonably necessary. If the DNR were unable to determine a de facto owner for a portion of the land, or were unable to determine which of one or more potential de facto owners had the most legitimate claim to a portion of the land, the Department would not have to bring or actively participate in a quiet title action or any other legal action with respect to the property. If the DNR determined that there was no de facto owner for a portion of the property, it could convey the portion to an adjacent de facto owner.

After determining the identity of de facto owners, the DNR would have to convey a portion or portions of the property to a de facto owner. The DNR would have to make the conveyance by quitclaim deed, approved by the Attorney General.

Any interests or rights in, or obligations connected to, land conveyed to a de facto owner of property, as required under Section 2120a, that were created before the conveyance would have the same legal effect as if the conveyance preceded the creation of the interest, right, or obligation, including any of the following:

- A street or highway right of way.
- A utility, drain, or other easement.
- A mortgage.
- A leasehold.
- Mineral rights.
- A construction lien.
- An interest resulting from an attachment, execution, or other judicial process.
- A Federal, State, or local tax or tax lien.
- A special assessment.
- Any other governmental lien.
- Any other lien.

The bill states that this provision "is intended to affirm title to real property and does not create a cause of action for or otherwise constitute a basis for a tax refund or property tax appeal".

The DNR would not be responsible for recording a deed prepared under Section 2120a or any costs or fees for or associated with the recording.

Swamp Land

Section 2120a would apply, and Sections 2120 and 2121 of the Act would not apply, to the receipt of land described in subsection (1), by patent or otherwise, from the United States or to the conveyance of that land by the DNR.

(Section 2120 pertains to swamp land granted to the State by an act of Congress of September 28, 1850. The swamp land may be sold only in the same legal subdivision in which it was received by the State, and the land is not subject to private entry until it has been offered for sale at public auction.

Section 2121 allows the State Treasurer to receive from the United States any money received for any of the swamp land donated to the State. The DNR may assign all bounty land warrants received for any swamp land sold in Michigan since the act of Congress approved September 28, 1850, and release the interest of the State in any land sold or entered with the warrants to purchasers or their assigns.)

Legislative Findings & Intent

The bill includes the following legislative findings:

- "Under statutes of the United States enacted in 1850 and subsequently, the governor of this state has had the power to request the conveyance of swamplands from the United States to this state."
- "Some [of those] conveyances...have been requested and made to this state in the past."
- "However, although the property described subsection (1) has been eligible for a request and conveyance, no such request and conveyance has ever been made."
- "A number of citizens of this state are occupants and de facto owners under color of title of portions of the property described in subsection (1). These individuals have made improvements to, maintained, and paid taxes on those portions of the property held under color of title."

The bill states, "It is the intent of the legislature, through this section, to obtain title from the United States to the property described in subsection (1) and to convey the property to the appropriate citizens."

Senate Bill 19

Under the General Property Tax Act, the taxable value of a parcel of property (adjusted for additions and losses) may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership. At that time, the assessment is "uncapped" and the parcel is taxed upon its State equalized valuation (50% of its true cash value). The Act defines "transfer of ownership" for this purpose and identifies transactions that do not constitute a transfer of ownership.

Under the bill, "transfer of ownership" would not include a conveyance of property from the DNR to a de facto owner as required by proposed Section 2120a.

Proposed MCL 324.2120a (S.B. 18)
MCL 211.27a (S.B. 19)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 18

The bill would have a neutral fiscal impact on the Department of Natural Resources, and no fiscal impact on local units of government. The process of requesting conveyance from the United States Bureau of Land Management and then conveying the parcels to their de facto owners would likely result in new administrative costs for the DNR; however, the bill would allow the DNR to request reimbursement from the de facto property owners for any costs incurred during the process.

Senate Bill 19

The bill would have no fiscal impact on State or local government. The exemption from the definition of "transfer of ownership" would apply only to the parcels listed in Senate Bill 18, which are already on the tax roll. The exemption would prevent the assessment from being "uncapped" at the time of conveyance. As a result, there would be no change in State or local property tax revenue.

Fiscal Analyst: Elizabeth Pratt
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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.