



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 39 and 40 (as introduced 1-27-15)
Sponsor: Senator Tom Casperson (S.B. 39)
Senator Darwin L. Booher (S.B. 40)
Committee: Natural Resources

Date Completed: 5-11-16

CONTENT

Senate Bill 39 would amend Parts 5 (Department of Natural Resources), 21 (General Real Estate Powers), 525 (Sustainable Forestry on State Forest Lands), and 721 (Michigan Trailways) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Prohibit the Department of Natural Resources (DNR) from owning more than 4,262,000 acres of land, if legislation were not enacted approving the Department's most recent strategic plan to guide the acquisition and disposition of State land or the State did not make its full required payments in lieu of taxes (PILT) to local governments.
- Establish a similar limit of 3,910,000 acres specific to northern Michigan.
- Delete a provision prohibiting the DNR from implementing the strategic plan in northern Michigan before the enactment of legislation adopting the plan.
- Require the DNR's strategic plan to identify the authorized uses of land managed by the Department, and specify that the plan's performance goals pertaining to maximizing access to the land would include the removal of human-made barriers.
- Shorten the DNR's time frame for updating the strategic plan.
- Require the DNR to provide public access to all land under its control for outdoor recreation activities.
- Prohibit the DNR from issuing an order to protect and preserve property under its control that limited the use of or access to any land, unless the land was acquired with certain Federal funds or the State's Game and Fish Protection Account or the order was in response to an emergency.
- Allow a land owner or lessee to recover damages and attorney fees connected to a cause of action against the DNR for trespassing by an officer or employee.
- Prescribe procedures for the DNR's processing of an application to exchange or purchase State-owned land.
- Allow the DNR to sell surplus land if the sale would promote economic activity in the State, and other conditions were met.
- Prohibit the DNR from rejecting an appraisal of surplus land from an appraiser who has been approved by the Department.
- Allow the DNR to charge an application fee for the exchange or purchase of State-owned land or an easement over State-owned land only if the application were approved, and limit the fee to the lesser of \$300 or the actual cost of processing the application.
- Prohibit the DNR from giving preference to a qualified conservation organization over another private entity in administering Part 21.

- **Require local approval for any DNR purchase of land in a county or township where at least 33% of the land was owned by the State, the Federal government, or a qualified conservation organization.**
- **Authorize the DNR, upon request, to consider selling land that was not designated as surplus, subject to the criteria and procedures that apply to the designation and sale of surplus land.**
- **Require the DNR's forestry development, conservation, and recreation management plan to include an "allowable sale quantity" ("ASQ") that could be harvested from State forest every 10 years, the minimum sale quantity necessary to achieve a harvest of at least 95% of the ASQ, and management goals based on the minimum sale quantities.**
- **Revise the information that must be included in the DNR's annual report to the Legislature on the State's timber harvest.**
- **Require DNR roads and trails related to forest management purposes to remain open for public use when timber was not being harvested, and require the Department to attempt to site such roads and trails so that they served as connecting trails in the statewide trail network.**

Senate Bill 40 would amend Parts 21 and 511 (Commercial Forests) of NREPA to do the following:

- **Expand the allowed uses of money in the Land Exchange Facilitation Fund to include the maintenance costs of natural resource management activities, the payment of special assessments levied on land owned by the DNR, and State PILT.**
- **Eliminate a provision allowing the DNR to make a proposed land purchase if the Michigan Natural Resources Trust Fund (MNRTF) Board does not act on the Department's recommendation to purchase the land within 60 days.**
- **Include the Fund as a source for PILT on property that was not purchased with MNRTF money, for any balance remaining after other sources had been used.**

The bills are tie-barred. Each bill would take effect 90 days after enactment.

Senate Bill 39

Strategic Plan

Part 5 required by 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 it to the Legislature, and post it on the Department's website. Among other things, the strategic plan must do all of the following:

- Divide the State into regions.
- For each region, identify by parcel land managed by the DNR.
- Set forth for each region measurable strategic performance goals with respect to maximizing availability of points of access to the land and to bodies of water on or adjacent to it.

With regard to the identification of DNR-managed land in each region, the bill also would require the plan to identify the authorized uses of the land. The bill also would require the goals related to maximizing access to include removal of gates, berms, and other human-made barriers.

Part 5 requires the DNR to update the strategic plan beginning July 2, 2020, and every six years after that. Under the bill, the DNR would have to update the plan by October 1, 2018, and every five years after that.

Statewide Land Acquisition Cap

Until May 1, 2015, Part 5 prohibited the DNR from acquiring surface rights to land if the Department owned, or as a result of the acquisition would own, surface rights to more than 4,626,000 acres of land. The bill would reinstate this prohibition, and specifies that it would apply under either of the following circumstances:

- Beginning May 1, 2019, and every five years after that, until legislation was enacted improving the most recent strategic plan.
- If any payment under Subpart 13 (Tax on Tax Reverted, Recreation, and Forest Lands) or 14 (Payment in Lieu of Taxes on Certain State Owned Lands) of Part 21 or Section 51106 were not made in full and on time, until December 31 of that year, or until full payment was made, whichever occurred later.

(Under Subpart 13 of Part 21, on December 1 of each year, the Department of Treasury must pay a tax to each county that contains tax reverted, recreation, forest, or other land under the control and supervision of the DNR (commonly referred to as swamp and tax-reverted land). The tax is in lieu of all other taxes levied against the land under any existing law. The tax does not apply to land purchased after January 1, 1933, for natural resource purposes or State land on which PILT are made (as described below).

Under Subpart 14 of Part 21, the DNR must give the State Tax Commission a list of all real property owned by the State and controlled by the DNR that was or is acquired by purchase on or after January 1, 1933. The Commission must determine the valuation of this property annually, and report to the assessing districts in which the property is located. Upon receiving the valuation, the assessing officer must enter it upon the assessment rolls of each municipality or assessing district, and assess the property at the same rate as other real property in the district. The treasurer or other officer charged with collecting taxes for an assessing district annually must forward a single statement of the assessment of all property for which PILT are claimed to the respective county by December 1. The county must forward the statements to the Lansing DNR office by December 15. The Lansing office must review each one and, if the assessment has been determined properly, authorize the State Treasurer to pay the amount of the assessment. The State Treasurer annually must forward a separate payment to each affected assessing district in the county by February 14.

Under Part 511 of NREPA, at least 40 contiguous acres or a survey unit consisting of $\frac{1}{4}$ of $\frac{1}{4}$ of a section of forestland may be classified as a commercial forest. To be eligible for the classification, the land must be capable of producing all of the following:

- At least 20 cubic feet per acre per year of forest growth upon maturity.
- Tree species that have economic or commercial value.
- A commercial stand of timber within a reasonable period of time.

Commercial forest property is exempt from ad valorem property taxation, and instead is subject to a specific tax currently set at \$1.25 per acre. Additionally, under Section 51106, local governments receive another \$1.25 per acre from the State as a PILT, which generally must be distributed in the same manner and proportions as ad valorem property taxes.)

Northern Michigan Land Acquisition Cap; Plan Implementation

Part 5 prohibits the DNR from acquiring 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 north of that line. This prohibition does not apply after the enactment of legislation adopting the strategic plan. The bill provides instead that the prohibition would apply under either of the following circumstances:

- Beginning May 1, 2019, and every five years after that, until legislation was enacted improving the most recent strategic plan.
- If any payment under Subpart 13 or 14 of Part 21 or Section 51106 for land north of the Mason-Arenac line were not made in full and on time, until December 31 of that year, or until full payment was made, whichever occurred later.

("Mason-Arenac line" means the line formed by the north boundaries of Mason, Lake Osceola, Clare, Gladwin, and Arenac Counties.)

Until the enactment of legislation adopting the strategic plan, Part 5 prohibits the DNR from implementing the plan as it applies to land north of the Mason-Arenac line. The bill would delete this provision.

Public Access to DNR Land

The bill would require the DNR to promote public enjoyment of the State's wildlife and other natural resources by providing public access to all land under the Department's control for all natural resource-dependent outdoor recreation activities, including motorized and nonmotorized activities. The bill provides that this requirement would not do either of the following:

- Invalidate a DNR rule or order regulating the use of State park land in effect on the bill's effective date.
- Require the DNR to authorize the use of an off-road recreation vehicle (ORV) on surfaces other than forest roads, forest trails, routes, or designated areas.

Part 5 requires the DNR to promulgate rules to protect and preserve land and other property under its control from depredation, damage, or destruction or wrongful or improper use or occupancy. Under the bill, the Department could not issue an order that limited the use of or access to any land unless at least one of the following conditions applied:

- The land was acquired with money appropriated from funds made available to the State under the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act.
- The land was acquired with money from the Game and Fish Protection Account or the former Game and Fish Protection Fund.
- The order was in response to an environmental or public health emergency.

In the case of an emergency, the bill specifies that a DNR order would expire 90 days after its effective date, unless an earlier expiration date were set forth in the order. The Department could not reissue an emergency order.

(Public Act 587 of 2004 eliminated the Game and Fish Protection Fund, and replaced it with the Game and Fish Protection Account, a restricted account within the newly established Michigan Conservation and Recreation Legacy Fund. The Account consists of revenue from the former Fund, as well as revenue from hunting and fishing licenses, passbooks, permits, fees, concessions, leases, contracts, and activities; damages paid for the illegal taking of game and fish; and revenue derived from fees, licenses, and permits related to game, game areas, and game fish. Money in the Account may be spent, upon appropriation, only as provided in Part 435 (Hunting and Fishing Licensing) and for the administration of the Account, including PILT on State owned land purchased through the Account or the former Fund.)

Trespass by DNR Officer/Employee

Under the bill, if an officer or employee of the Department were responsible for an act of trespass as described in Section 552 of the Michigan Penal Code committed in the course of

employment or service, the owner or lessee of the land or premises could recover in a cause of action against the Department \$750 or actual property damages, whichever was greater, and actual and reasonable attorney fees. This provision would apply notwithstanding the governmental immunity law.

(Section 552 of the Penal Code prohibits a person from doing any of the following:

- Entering the land or premises of another without lawful authority after having been forbidden to do so by the owner or occupant, or the agent of the owner or occupant.
- Remaining without lawful authority on the land or premises of another after being notified to depart.
- Entering or remaining without lawful authority on fenced or posted farm property of another person without the consent of the owner or his or her lessee or agent.)

DNR Land Exchange

Under Subpart 3 (Exchange of State Lands) of Part 21, any of the land under the Department's control may be exchanged for land of equal area or approximately equal value belonging to the United States or owned by private individuals if, in the Department's opinion, it is in the State's interest to do so. The bill would delete the reference to the Department's opinion.

Currently, if the DNR charges an application fee for a proposed sale of land and the State land proposed for sale is sold to another party within three years after the Department receives a completed application, the Department fully must refund the application fee to an applicant who has informed the Department of his or her current address. The bill would delete this requirement.

Under the bill, effective 30 days after the DNR received an application from a private individual to exchange his or her land for surplus State land, the application would be considered complete unless the Department proceeded as described below.

If the Department notified the applicant in writing before the 30-day period expired that the application was not complete, specifying the information necessary to make it complete, the running of the 30-day period would be tolled until the applicant submitted the specified information, at which time the application would be considered complete.

Within 90 days after the application was considered complete, the DNR would have to approve or deny it and notify the applicant in writing. If the Department denied the application, the notice would have to set forth the reasons for the denial. If the Department failed to approve or deny the application in a timely manner, the application would be considered approved.

The Department could charge a fee for an application for the exchange of State land only if the application were approved. The fee could not exceed the actual reasonable cost of processing an application or \$300, whichever was less.

Under Part 21, if it is in the State's best interest to exchange land under the DNR's control for land of an equal area or approximately equal value belonging to private individuals, the DNR must maintain a description of land to be conveyed and land belonging to individuals to be deeded to the State. Under the bill, however, the Department could not designate land as surplus only for the purpose of being exchanged for other land. If land were designated as surplus, the Department would have to sell it for cash or exchange it for other land of equal area or approximately equal value that the Department had designated for acquisition, at the option of the person seeking to acquire the surplus land. Upon request, the Department would have to consider the exchange of land that was not designated as surplus land, applying the same criteria as apply to the designation of land as surplus land. Exchange of the land would be subject to the same procedures that apply to the exchange of surplus land. The bill would

require the DNR to maintain on its website and make available in writing to people seeking to purchase land from, sell land to, or exchange land with the Department information about these requirements and other relevant requirements and procedures under Part 21.

Before any land is deeded to an individual, the person or people owning land to be deeded to the State must execute a conveyance of that land to the State. The bill would require the DNR to accept delivery of the deed. The Attorney General must examine the title to the land deeded to the State and certify to the DNR whether the conveyance is sufficient to vest in the State a good and sufficient title to the land free from any liens and encumbrances. If the Attorney General certifies that the conveyance is sufficient, the DNR must execute a deed to the individual of the land to be conveyed by the State. The bill would require the Department to execute the deed within 30 days.

The bill provides that Subpart 10 (Land Exchange Facilitation Fund) would not limit the DNR's authority to sell or exchange land as provided in Subpart 3.

Individual Easement

Part 21 authorizes the DNR to grant an easement for a road over State-owned land under the Department's jurisdiction to an individual who does not have other legal access to his or her land, if certain conditions are met. Before such an easement may be granted, the applicant must pay charges required by the Department. The charges must be the same as those required for the granting of an easement to a public utility. Under the bill, the Department could charge a fee for an application for an easement only if the application were approved. The fee could not exceed the actual reasonable cost of processing an application or \$300, whichever was less.

Sale of Surplus Land

Under Part 21, the DNR may designate as surplus land any State-owned land that is under the Department's control and that has been dedicated for public use, and may sell the land on behalf of the State if various requirements are satisfied and the Department determines that one or more of certain conditions are met. One of these conditions is that the sale will promote the development of the forestry or forest products industry or the mineral extraction and use industry in Michigan. The bill also would refer to other economic activity.

Part 21 authorizes the DNR to sell surplus land at a price established using the method that the Department determines to be most appropriate, including appraisal. The bill would prohibit the Department from rejecting an appraisal from an appraiser who was included on a list of appraisers approved by the Department.

Effective 30 days after the DNR received an application to purchase surplus land, the application would have to be considered complete unless the Department proceeded as provided below.

If the DNR notified the applicant in writing before the 30-day period expired that the application was not complete, specifying the information necessary to make the application complete, the running of the 30-day period would be tolled until the application submitted the specified information. At that time, the application would be considered complete.

Within 90 days after the application was considered complete, the DNR would have to either approve the application and sell the land to the applicant through a negotiated sale, or deny the application and give the applicant a written notice setting forth the reasons for the denial. If the Department failed to approve or deny an application in a timely manner, the application would be considered approved.

The DNR could charge a fee for an application for the purchase of surplus land only if the application were approved. The fee could not exceed the actual reasonable cost of processing an application or \$300, whichever was less.

If a person who submitted an application to purchase land or bid on land at a public auction owned land contiguous to the land the person sought to purchase offered fair market value for the land, and were not a qualified conservation organization, the DNR would have to give preference to that person over others who did not meet those criteria. This requirement would apply only if the fair market value of the land were less than \$250,000.

The bill would prohibit the DNR from giving preference to a qualified conservation organization over another private entity or an individual in the administration of Part 21.

("Qualified conservation organization" would mean that term as it is defined in Section 7o(5) of the General Property Tax Act, i.e., a nonprofit charitable institution or a charitable trust that meets all of the following conditions:

- Is organized or established for the purpose of acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in Michigan, that predominantly contain natural habitat for fish, wildlife, and plants.
- Is required under its articles of incorporation, bylaws, or trust documents to hold in perpetuity property acquired for the purposes described above, unless the property is no longer suitable for those purposes and sale of the property is approved by a majority vote of the members or trustees.
- Its articles of incorporation, bylaws, or trust documents prohibit any officer, shareholder, board member, employee, or trustee or the family member of any of those individuals from benefiting from the sale of property acquired for the purposes described above.)

County/Local Approval for DNR Land Purchase

Under the bill, if land owned by the State, the Federal government, or qualified conservation organizations and land that was commercial forestland constituted more than at least 33% of the land in a county or township, the DNR could not purchase land in that county or township unless it was approved by a resolution adopted by the legislative body of the county, the township or city and, if applicable, the village where the land was located.

Sale of Nonsurplus Land

The bill would permit the DNR, upon request, to consider selling land that was not designated as surplus land, applying the same criteria that apply to the designation of land as surplus land. The sale would be subject to the same procedures that apply to the sale of surplus land.

Forestry Development, Conservation, & Recreation Mgmt. Plan

Part 525 requires the DNR to adopt a forestry development, conservation, and recreation management plan for State-owned land owned or controlled by the Department. Parks and recreation areas, State game areas, and other wildlife areas on that land must be managed according to their primary purpose. Among other things, the plan and any updates must identify the annual capability of the State forest, as well as management goals based on that level of productivity. The bill would delete this requirement. Instead, the plan and any updates would have to include an allowable sale quantity for each forest management area and for the State in total. The ASQ would have to be established based on accumulated growth and sustainable yields, and could not exceed the sustainable growth rate. In establishing the ASQ, the DNR also could consider physical, biological, environmental, and recreational objectives for each State forest.

Additionally, the plan and any updates would have to include the following:

- For each forest management area and for the State, a minimum sale quantity for each of the next 10 State fiscal years necessary to achieve a harvest of at least 95% of the ASQ for that management area and for the State.
- Management goals for each forest management area based on the established minimum sale quantities.

The DNR must prepare and submit to the Natural Resources Commission and the Legislature an annual report that details certain information related to the State's timber harvest from the previous fiscal year. The required information includes the following:

- The number of harvestable acres in the State forest, as determined by the program to certify the sustainable management of the State forest and other State-owned land under the DNR's control.
- The number of acres of the State forest that were harvested and the number of cords of wood that were harvested from the State forest.
- The number of acres of State-owned land owned or controlled by the DNR other than State forestland that were harvested and the number of cords of wood that were harvested from that land.

The bill would require the report to include this information with regard to each forest management area and the State in total.

The bill also would require the report to include the following:

- The minimum sale quantity for the year and the ASQ for each forest management area and for the State as set forth in the management plan.
- The number of acres of State forest that were not harvested in each forest management area and in the State in total, and the reasons the acreage was not harvested.
- The number of acres of State-owned land owned or controlled by the DNR other than State forestland that were not harvested in each forest management area and in the State in total, and the reasons the acreage was not harvested.

Forest Mgmt. Road & Trail Access

Under the bill, any road or trail approved, used, or developed by the DNR for forest management purposes on land owned or controlled by the Department would have to remain open for motorized and nonmotorized public use when timber was not being harvested. The DNR could not erect any gate, berm, or other barrier limiting access to such a road or trail.

Additionally, the DNR would have to site roads and trails needed for forest management purposes so that they served as connecting trails in the statewide trail network.

Senate Bill 40

Land Exchange Facilitation Fund

Part 21 creates the Land Exchange Facilitation Fund and allows the Department to use Fund money only for the following purposes:

- Upon the recommendation of the Department and authorization of the Michigan Natural Resources Trust Fund Board, the purchase of land for natural resources management, administration, and public recreation that has been approved by the Legislature for purchase.

- The costs of advertising, appraisals, negotiations, and closings incurred by the DNR in the sale of surplus land.
- The costs of appraisals, negotiations, and closings incurred by the DNR in the purchase of land.

The bill also would allow Fund money to be used for the following:

- The cost of maintenance and natural resource management activities, including trail development and maintenance, recreation and development projects, aquatic invasive and aquatic nuisance species control, game management, fish stocking, and dredging.
- The payment of special assessments levied on land owned by the DNR.
- State PILT on swamp and tax-reverted land.
- The portion of PILT on other State-owned land authorized to be made from the Fund (as described below).
- State PILT to local governments under the commercial forest program.

The bill would eliminate a provision allowing the DNR to purchase land identified in a Department recommendation if the MNRTF Board does not authorize or reject the recommendation within 60 days.

For DNR property that was not purchased with MNRTF money, the aggregate amount for all PILT to all assessing districts under Subpart 13 of Part 21 must be charged as follows:

- The portion of the payment that represents an assessment by a local school district, intermediate school district (ISD), or community college district must be charged against the State School Aid Fund.
- A maximum of 50% of the remaining balance must be charged from restricted revenue sources of the DNR.

Any balance remaining after these two charges must be charged from the General Fund. Under the bill, the remaining balance could be charged from the General Fund or the Land Exchange Facilitation Fund.

Commercial Forest Certification

On December 1 of each year, the DNR must certify to the State Treasurer the number of acres that are commercial forestland in each county, and the State Treasurer must transmit to each county treasurer a warrant on the State Treasurer for an amount equal to \$1.25 per acre of commercial forest in the county. Under the bill, the DNR would have to make the certification by November 1, and the State Treasurer would have to transmit the warrant to each county by December 1.

MCL 324.503 et al. (S.B. 39)
324.2135 et al. (S.B. 40)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 39

The bill would have an indeterminate fiscal impact on the Department of Natural Resources and no fiscal impact on local units of government.

The bill would require the DNR to add to its land database the authorized use for each parcel of land it owns. This would introduce some new administrative costs including one-time costs related to database development as well as ongoing staff costs required to keep the database up to date. The Senate and House-passed versions of the fiscal year 2016-17 DNR budget

contain \$4.0 million for the replacement of the DNR's Land Ownership Tracking System (LOTS). Assuming that the appropriation remains in the budget through the remainder of the budget process, some of the technology costs associated with authorized use reporting could be mitigated as part of the LOTS replacement, but other ongoing staffing costs to keep the database updated with new information could still exist.

The bill would allow a property owner to recover the greater of \$750 or actual damages plus attorney fees if DNR personnel were found guilty of trespassing on private property. It is unknown how many cases would be affected by this provision each year, but it is likely not many. Therefore, this provision would not have a significant fiscal impact on the DNR.

The bill also would allow for the DNR to charge a fee of actual processing costs up to \$300 to process an application to exchange private land for State-owned land deemed as surplus, buy surplus land directly, or acquire an easement. Over the last three years, the average number of applications received for each type of transaction was 18 exchanges, 23 direct sales, and 19 easements. According to the DNR, each application costs the Department at least \$1,000, depending on the actual amount of staff time spent on each one. While cost-recovery provision in the bill apparently would not cover all of these costs, it would generate about \$18,000 to help offset some of the costs.

Senate Bill 40

The bill would have a neutral fiscal impact on the Department of Natural Resources, and no fiscal impact on local units of government. The bill would allow the Land Exchange Facilitation Fund (LEFF) to be used to make payments in lieu of taxes for both purchased land and tax-reverted land, pay special assessments on land owned by the DNR, and pay the State's share of payments to local units for land enrolled in the Commercial Forest Program. Current law allows the LEFF to be used to purchase land with natural resource or recreational value. The LEFF receives revenue from the proceeds of the sale of surplus State-owned land. In fiscal year 2014-15, the LEFF received about \$3.5 million in revenue, had \$1.7 million in expenditures, and ended the year with a balance of about \$4.9 million.

Currently, PILT and payments under the Commercial Forest Program are made at their full amounts as determined by statutory formula, so the bill itself would not have a significant fiscal impact on local units of government. From the standpoint of State government, the Legislature through the appropriations process could use the LEFF to supplant GF/GP revenue or other State restricted funds that are currently used for PILT or other purposes, and in that case those funds would be available for other uses. Any use of the LEFF for the purposes made allowable under the bill would reduce the amount available for land purchases in the future.

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.