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## BILL ANALYSIS



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Senate Bill 39 (Substitute S-1)  
Senate Bill 40 (Substitute S-1)  
Sponsor: Senator Tom Casperson (S.B. 39)  
          Senator Darwin L. Booher (S.B. 40)  
Committee: Natural Resources

Date Completed: 5-18-16

**CONTENT**

**Senate Bill 39 (S-1) would amend Parts 3 (Definitions), 5 (Department of Natural Resources), 19 (Natural Resources Trust Fund), 20 (Michigan Conservation and Recreation Legacy Fund), 21 (General Real Estate Powers), 355 (Biological Diversity Conservation), 405 (Wildlife Restoration, Management, and Research), 525 (Sustainable Forestry on State Forest Lands), and 721 (Michigan Trailways) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Require the Department of Natural Resources (DNR) to consider access to and use of public land and the existence of natural resources-based industries on the land, before officially designating or classifying any of its land.**
- **Require the DNR's strategic plan regarding the acquisition and disposition of State land managed by the Department to identify trail connectors to enhance outdoor recreation activities.**
- **Provide for legislative approval of the strategic plan, and require legislative approval of future updates to the plan.**
- **Require the DNR to update the plan every five years beginning in 2021, rather than every six years beginning in 2020.**
- **Require the DNR's report to the Legislature in connection with a plan update to include the Department's progress in engaging and collaborating with local units of government.**
- **Eliminate a 3,910,000-acre limit on the DNR's acquisition of land in northern Michigan, and prohibit the Department from acquiring the surface rights to additional acreage in that part of the State if the State did not make its full required payments in lieu of taxes (PILT) to local governments.**
- **Require local approval for any DNR purchase of land in a county or township where at least 33% of the land was commercial forestland, or was owned by the State or the Federal government.**
- **In all other counties and townships, require the DNR to notify the local unit and provide an opportunity for local representatives to discuss a proposed land acquisition by the Department.**
- **Prohibit the DNR from promulgating a rule or 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.**
- **Prescribe procedures by which a local unit of government or an organization could request that the DNR remove a human-made barrier to Department land,**

- and require the DNR to remove a barrier within 180 days after approving a request.
- Require the DNR to work with a local unit upon request to allow use of State land that would benefit the local community by increasing access to outdoor recreation and natural resources, and allow the DNR to charge the local unit a reasonable fee for the use.
  - Allow a land owner or lessee to recover damages in a cause of action against the DNR for trespassing by an officer or employee.
  - Require the DNR to manage land acquired with money from the Game and Fish Protection Account or certain Federal funds to enhance game and fish populations to ensure increased recreational hunting and fishing opportunities.
  - Prohibit expenditure of Account money and certain Federal funds, as well as forest treatments on land acquired with money from either of those sources, to benefit nongame species, unless the DNR could demonstrate that the primary purpose was to benefit game species.
  - Require the DNR to consider a request to sell or lease Department land if the prospective buyer or lessee were a business seeking expansion that was limited by adjacent State land, and other conditions were met.
  - Require proceeds from the sale to be deposited in the fund that provided the revenue for the DNR's initial acquisition of the land, or, if the land had been acquired with other than with restricted fund revenue, in the Land Exchange Facilitation and Management Fund.
  - Allow the DNR to charge an application fee for the exchange or purchase of State-owned land or an easement over State-owned land, and limit the fee to the lesser of \$300 or the actual cost of processing the application.
  - Allow the DNR to sell surplus land if the sale would promote economic activity in the State, and other conditions were met.
  - Delete a provision prohibiting the DNR from authorizing the sale of surplus land if the proceeds will cause the balance of the Land Exchange Facilitation Fund to exceed \$25.0 million.
  - Prohibit the DNR from giving preference to a qualified conservation organization over another private entity in administering Part 21.
  - Prescribe procedures for determining the value of land for purposes of a purchase, sale, or exchange involving the DNR, if two or more appraisals that met Department standards were made.
  - Require the DNR, upon request, to consider selling land that was not designated as surplus land.
  - Provide that Part 355 would not require a State department or agency to designate or classify an area of land specifically for the purpose of achieving or maintaining biological diversity.
  - Revise the DNR's duties with regard to sustainable management of State forestland, and require the Department to balance certain duties with economic values.
  - Require the DNR's forestry development, conservation, and recreation management plan, by October 1, 2017, to include yearly harvest objectives for all State-owned land by forest management area for a 15-year period, and require the DNR to prepare for sale at least 90% of the yearly harvest objective for each forest management area.
  - Require the DNR to evaluate whether a timber harvest activity planned for a particular area offered the opportunity to connect existing forest roads and trails.

**Senate Bill 40 (S-1)** would amend Parts 21 and 511 (Commercial Forests) of NREPA to do the following:

- **Change the name of the Land Exchange Facilitation Fund to the "Land Exchange Facilitation and Management Fund".**
- **Expand the allowed uses of money in the Fund to include the costs of surveys and environmental assessments incurred by the DNR in land transactions, the costs of natural resource management and public recreation activities, and the payment of special assessments levied on land owned by the DNR.**
- **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.**

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

### **Senate Bill 39 (S-1)**

#### Designation/Classification of DNR Land

Under the bill, before issuing an order or promulgating a rule that would designate or classify land managed by the DNR for any purpose, the Department or its Director would have to consider, in addition to any other matters required by law, both of the following:

- Providing for access to and use of the public land for recreation and tourism.
- The existence of natural resources-based industries, including forest management, mining, or oil and gas development on the public land.

#### 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 divide the State into regions; identify by parcel land managed by the DNR in each region; set forth for each region measurable strategic performance goals; and, to assist in achieving the goals, identify land to be acquired and disposed of and plans for natural resource management. Under the bill, the plan also would have to identify critical trail connectors to enhance motorized and nonmotorized natural-resource-dependent outdoor recreation activities for public enjoyment.

The DNR annually must report on implementation of the plan and submit the report to the Legislature and post it on the Department's website. The bill would delete this requirement. The bill states, "The legislature approves the strategic plan entitled 'Department of Natural Resources Managed Public Land Strategy' issued by the department and dated July 1, 2013." The bill would require the DNR to implement the most recent legislatively approved strategic plan. The Department could not change the plan except by a proposed update (as described below) that subsequently was approved by the Legislature.

Annually, the DNR would have to submit to the Senate and House Committees with primary responsibility for natural resources and outdoor recreation, as well as the corresponding Appropriations subcommittees (the "relevant legislative committees"), and post and annually update on the Department's website, all of the following:

- A report on implementation of the plan.
- The number of acres of land, including land that did not count against the limit applicable north of the Mason-Arenac line, in which the Department owned surface rights north of that line, south of that line, and in total for the State.
- The number of acres of land, excluding land that did not count against the limit applicable north of the Mason-Arenac line, in which the Department owned surface rights north of that line, south of that line, and in total for the State.

-- Information on the total number of acres of land managed by the DNR, acres of State park and State recreation area land, acres of State game and State waterfowl areas, acres managed by the DNR and open for public hunting, acres of State-owned mineral rights managed by the DNR that were under a development lease, acres of State forestland, public boating access sites managed by the DNR, miles of motorized and nonmotorized trails managed by the DNR, and acres of land managed by the DNR that were closed to motorized vehicles.

"Mason-Arenac line" means the line formed by the north boundaries of Mason, Lake Osceola, Clare, Gladwin, and Arenac Counties. Under the bill, for land north of that line, the DNR would have to update the information on its website as of the dates that payments in lieu of taxes and payments under the commercial forest program (described below) were due. (Currently, the Department must maintain and post on its website the number of acres of land in which it owns surface rights north and south of the Mason-Arenac line and in total for the State, by program).

Part 5 requires the DNR to update the strategic plan beginning July 2, 2020, and every six years after that, and submit the update to the relevant legislative committees and post it on the Department's website. Under the bill, instead, the DNR would have to propose an update to the plan for legislative consideration and approval by July 1, 2021, and every five years after that. The Department would have to submit the proposed updated plan to the relevant legislative committees and post it on the Department's website.

At least 60 days before posting the updated plan, the DNR must prepare, submit to the relevant legislative committees, and post on the Department's website a report on progress toward the performance goals set forth in the strategic plan and any proposed changes to the goals, including the rationale for any changes. Under the bill, the report also would have to include progress on the DNR's engagement and collaboration with local units of government.

#### 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 would delete these provisions. Instead, 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, the DNR could not acquire surface rights to land north of the line if the Department owned, or as a result of the acquisition would own, the surface rights to more acres of land north of the line than the Department owned when the payment became due.

(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.)

Part 5 contains a number of exceptions to the current 3,910,000-acre limit. These exceptions would apply to the proposed limit under the bill, and also would include land acquired from a private owner under an option agreement in effect on the date when the required payment became due.

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

#### County/Local Approval for DNR Land Purchase

Under the bill, if land owned by the State or the Federal government and land that was commercial forestland constituted 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 or township, respectively, and, if applicable, the city or village where the land was located.

Approval would not be required from any local unit of government, however, if the land to be acquired were owned by the Federal government or were commercial forestland. Also, county or township approval would not be required if, within 60 days before the acquisition, the DNR sold at least the same number of acres of land located in the same county or township.

If land owned by the State or Federal government and land that was commercial forestland did not constitute at least 33% of the land in a county or township, the DNR could not acquire land in that county or township unless the Department had done both of the following:

- At least 45 days before the acquisition, notified the county or township in writing of the location and acreage of the land, how the land would be used and estimated PILT, the anticipated effect of the proposed acquisition on achieving the performance goals set forth in the strategic plan, and DNR contact information and the duration of the comment period, for people who wished to comment on the proposed acquisition.
- Provided an opportunity for representatives of all local units of government where the land was located to meet in person with a DNR representative to discuss the proposed acquisition.

## Public Access to DNR Land

Under the bill, the DNR would be "urged" to promote public enjoyment of the State's wildlife and other natural resources by providing public access to land under the Department's control for all outdoor recreation activities dependent on natural resources, including motorized and nonmotorized activities.

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; and to issue orders necessary to implement the rules. Under the bill, the Department could not promulgate a rule or 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.
- In the case of an order, the order was in response to an environmental or public health emergency.

With regard to land acquired with money under the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act, the DNR could allow recreational activities and related facilities that were not fish and wildlife dependent on such land if the Department determined that the activities would not interfere with the purpose for which the land was acquired, was developed, or was being managed. The DNR would have to take steps to mitigate any interference in order to allow reasonable recreational activities and related facilities that were not fish and wildlife dependent on the land.

In the case of an environmental or public health emergency, an initial DNR order would expire 90 days after its effective date, unless the order set forth an earlier expiration date. The DNR could reissue an emergency order if the Department did all of the following:

- Determined, after conducting a public hearing on the matter in the vicinity of the emergency, that the emergency had not been resolved.
- Considered suggestions made at the public hearing and took steps within its authority to mitigate or resolve the emergency.
- Documented in writing the reasons for the order and the Department's steps taken to mitigate or resolve the emergency.

(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 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.)

If the DNR received a written request from an organization or a local unit of government to remove a berm, gate, or human-made barrier on land under the Department's control, the Department would have to notify the requestor in writing within 60 days of either of the following:

- That the barrier would be removed, in which case the Department would have to remove it within 180 days after receiving the request.
- The reasons the Department believed the barrier should not be removed and the requestor's right to request, within 21 days after the Department sent the notice, a public meeting on the matter.

If the person requested a public meeting, the Department would have to conduct a meeting within the city, village, or township where the barrier was located to explain the Department's position and receive comments on the proposed removal. After the meeting and within 180 days after receiving the removal request, the Department would have to approve or deny the request and notify the requestor in writing, including the reasons for a denial. If the request were approved, the Department would have to remove the barrier within 180 days after receiving the request.

A local unit's request to the DNR would have to be made by resolution of the local governing body.

Upon a local unit's request, the DNR would have to work with the local unit to allow use of State land located within the local unit that would benefit the local community by increasing outdoor recreation opportunities and expanding access to and use of the natural resources and outdoors. The DNR could charge the local unit a reasonable fee for the use that did not exceed the costs incurred by the Department for the use.

#### Trespass by DNR Officer/Employee

Under the bill, if an officer or employee of the DNR engaged in the exercise or discharge of a governmental function committed an act of trespass as described in Section 552 of the Michigan Penal Code, the owner or lessee of the land or premises could recover actual property damages in a cause of action against the Department.

(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.)

#### Natural Resources Trust Fund

Under Part 19 and in accordance with Article IX, Section 35 of the State Constitution (described below), the interest and earnings of the MNRTF in a fiscal year may be spent in subsequent fiscal years only for the following purposes:

- The acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty.
- The administration of the MNRTF, including payments in lieu of taxes on State-owned land purchased through the Trust Fund.
- The development of public recreation facilities.

In addition, Part 19 allows one-third of the money, excluding interest and earnings, received by the MNRTF in any fiscal year to be spent in subsequent fiscal years for the specified purposes. This authorization, however, does not apply after the fiscal year in which the total balance of the Trust Fund, excluding interest and earnings and amounts authorized for expenditure, exceeds \$500.0 million. (The \$500.0 million cap was reached in May 2011.)

Under the bill, Part 19 would be subject to proposed Section 2132a. Under that section, if land were proposed for sale or exchange with the DNR based on its appraised value, if two or more appraisals that met Department standards were made on behalf of the parties to the proposed transaction, and if the high appraisal were less than 10% higher than the low appraisal, the accepted value for purposes of the purchase, sale, or exchange would have to be the average of all of the appraised values. If the high appraisal were at least 10% higher than the low appraisal, the parties could agree upon a new appraiser, whose appraisal or determination based on review of the existing appraisals would be the accepted value. The DNR would be responsible for the new appraiser's fee.

(In 1984, Michigan voters approved a ballot proposal to add Section 35 to Article IX of the State Constitution to establish the Michigan Natural Resources Trust Fund, require revenue from the sale and lease of the State's mineral rights to be deposited into the MNRTF, and prescribe the use of Trust Fund money.

Under Section 35 and Part 19 of NREPA (which was enacted to implement the amendment), in addition to the expenditures described above regarding land acquisition, public recreation, and administration, until the MNRTF reached a balance of \$500.0 million, a maximum of 50% of the money received annually had to be allocated to the Michigan State Parks Endowment Fund. This deposit was capped at \$10.0 million per year. (Endowment Fund money may be used for operations, maintenance, and capital improvements at State parks and for the acquisition of land for State parks.)

As required by Section 35 and Part 19, since the \$500.0 million limit has been reached, all revenue that the MNRTF otherwise would receive must be deposited into the State Parks Endowment Fund until that Fund accumulates a balance of \$800.0 million.)

#### Game & Fish Protection Account

Money in the Account must be spent, upon appropriation, only as provided in Part 435 (Hunting and Fishing Licensing) and for the Account's administration, which may include PILT on State-owned land purchased through the Account or the former Game and Fish Protection Fund.

The bill would require the DNR to manage land acquired with money from the Account or the former Fund to enhance game and fish populations to ensure increased recreational hunting and fishing opportunities. Unless the DNR could demonstrate that the primary purpose of the expenditure was for game species, and benefits to nongame species were a result of the primary purpose, both of the following would apply:

- Money in the Account could not be spent for management of nongame species.
- Forest treatments on land acquired with money from the Account or the former Fund could not be undertaken to benefit nongame species.

Money in the Account may be spent for grants to State colleges and universities to implement programs funded by the Account. Under the bill, this provision would apply if the DNR did not have the staff or other resources to implement the programs itself.

#### Sale or Lease of Tax-Reverted Land for Public Purposes

Part 21 authorizes the DNR to sell sites to school districts and churches, sell land for public purposes to public educational institutions, and sell land to the United States and to governmental units of Michigan and their agencies from tax-reverted State land under the Department's control. The bill would refer to other religious organizations in addition to churches.



Part 21 requires this tax-reverted land to be sold at a price fixed by a formula determined by the State Tax Commission. Under the bill, instead, the land would have to be sold at a price determined by an appraisal, subject to the bill's provisions regarding situations in which two or more appraisals were made.

The DNR may sell tax-reverted land to any agency prescribed in Part 21, and the transfer of the land is not subject to a reverter clause. If a conveyance or transfer is made to any governmental unit without a reverter clause, the DNR may convey or transfer the land at an appraisal value as determined by the State Tax Commission. Under the bill, instead, the DNR could convey or transfer the land at a price determined by an appraisal, subject to the bill's provisions regarding situations in which two or more appraisals were made.

#### Request to Sell or Lease DNR Land

Upon request, the bill would require the DNR to consider selling or leasing land if all of the following requirements were met:

- The prospective buyer or lessee was a business seeking expansion, but was limited by adjacent State land.
- The sale or lease would result in an economic or other benefit for a local unit of government or region.
- The DNR had considered any comments on the proposed sale or lease from local units of government.

In making its decision on the request, the DNR would have to consider the impact on natural resources and outdoor recreation in the State, giving due regard to the variety, use, and quantity of land then under the Department's control.

The DNR could enter into a confidential agreement with the person making the request until review was completed and a recommendation for decision was made.

The price for the sale would have to be established by a method determined appropriate by the DNR, including appraisal (subject to the provisions regarding multiple appraisals), fee schedule, or true cash value of adjoining land as agreed to by the applicant.

Notice of the sale or lease would have to be given as provided in Section 2133(2) (which prescribes notice requirements for the negotiated sale of surplus land).

Proceeds from sale of the land would have to be deposited in the fund that provided the revenue for the DNR's acquisition of the land. If there were more than one, the revenue would have to be deposited in the funds in amounts proportionate to their respective contributions for the acquisition. To the extent that the land was in whole or in part acquired other than with restricted fund revenue, a proportionate amount of the proceeds would have to be deposited in the Land Exchange Facilitation and Management Fund.

#### 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.

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 180 days after the application was considered complete, or a later date agreed to by the applicant and the DNR, the Department 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.

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.

The Department could charge a fee for an application for the exchange of State land. 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.

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.

#### 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 individual easement. 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. The bill would eliminate the reference to dedication for public use.

One of these conditions is that the land has been dedicated for public use for at least five years preceding its sale and is not needed to meet a DNR objective. The bill would delete this condition.

Another condition 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.

Currently, the DNR may not authorize the sale of surplus land if the proceeds from the sale will cause the balance of the Land Exchange Facilitation Fund to exceed \$25.0 million. The bill would delete this provision.

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. Under the bill, an appraisal would be subject to the proposed provisions regarding multiple appraisals.

Effective 30 days after the DNR received an application to purchase surplus land through a negotiated sale, 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 180 days after the application was considered complete, or a later date agreed to by the applicant and the Department, the DNR would have to approve or deny the application and notify the applicant in writing, setting forth the reasons for any denial.

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

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.)

#### Sale/Exchange of Nonsurplus Land

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

These provisions would not apply to land in a State park, recreation area, or game area, and would not apply to a request to sell land if the request met the bill's criteria related to a proposed business expansion that was limited by adjacent State land.

### Biological Diversity

Part 355 contains a number of legislative findings related to biological diversity, including a finding that "most losses of biological diversity are unintended consequences of human activity". The bill would delete this finding. ("Biological diversity" means the full range of variety and variability within and among living organisms and the natural associations in which they occur. The term includes ecosystem diversity, species diversity, and genetic diversity.)

Part 355 states, "It is the goal of this state to encourage the lasting conservation of biological diversity." "Conservation" means measures for maintaining natural biological diversity and for restoring natural biological diversity through management efforts in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of native species and communities. The bill would delete the term and definition. Instead, the bill would define "conservation of biological diversity" as measures for maintaining, managing, or enhancing biological diversity while ensuring accessibility, productivity, and use of the natural resources for present and future generations.

The bill provides that Part 355 would not require a State department or agency to designate or classify an area of land specifically for the purpose of achieving or maintaining biological diversity.

### Pittman-Robertson Wildlife Restoration Act Money

Part 405 requires the DNR to perform acts necessary to conduct and establish wildlife restoration, management, and research projects in areas in cooperation with the Federal government under the Pittman-Robertson Wildlife Restoration Act and regulations promulgated by the U.S. Secretary of the Interior under that Act. In compliance with that Act, funds accruing to the State from hunting license fees may not be used for any purpose other than game and fish activities under the DNR's administration.

The bill would require the DNR to manage land acquired with money received under the Pittman-Robertson Wildlife Restoration Act to enhance game and fish populations to ensure increased recreational hunting and fishing opportunities. Unless the DNR could demonstrate that the primary purpose of the expenditure was for game species, and benefits to nongame species were a result of the primary purpose, both of the following would apply:

- Money received under that Act could not be spent for management of nongame species.
- Forest treatments on land acquired with the money received under that Act could not be undertaken to benefit nongame species.

### Sustainable Management of State Forest

Under Part 525, the DNR must manage the State forest in a manner that is consistent with principles of sustainable forestry.

In fulfilling this requirement, the Department must manage forests with consideration of their economic, social and environmental values by engaging in a number of prescribed actions, including planning and managing plantations in accordance with sustainable forestry principles and in a manner that complements the management of and promotes the restoration and conservation of natural forests. The bill would delete this requirement.

The bill would include the following among the DNR's required actions:

- Managing forest resources to improve forest health and sustainability.
- Promoting working forests for the production of forest products.
- Actively managing for enhanced wildlife habitat.

The bill provides that managing for enhanced wildlife habitat should not take precedence over forest management.

The DNR also must conserve and protect forestland by taking certain actions, including managing the quality and distribution of wildlife habitats, contributing to the conservation of biological diversity, and developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals. Under the bill, this requirement would apply subject to the bill's prohibition against DNR rules and orders that limited public access. Additionally, the bill would require the Department to perform these functions while balancing economic values.

The Department is required to manage activities in high conservation value forests by maintaining or enhancing the attributes that define them. Under the bill, the Department would have to do this while balancing economic values.

The bill would require the DNR to inform the public of the positive aspects of managed forests.

Part 525 also requires the DNR to consider the local community surrounding State forestland by requiring that forest management plans and operations comply with applicable Federal and State law. Under the bill, the Department also would have to require plans and operations to comply with voluntary silvicultural practices.

#### 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.

By October 1, 2017, the plan and any updates would have to include yearly harvest objectives for all State-owned land by forest management area for a 15-year period. At least every five years, the DNR would have to update the yearly harvest objectives for a new 15-year period commencing when the plan was updated. The DNR would have to post and maintain the current objectives on the Department's website. For each forest management area, the objectives could not exceed the sustainable yields, would have to be based on accumulated growth, and could consider physical, biological, environmental, and recreational objectives.

Beginning October 1, 2017, the DNR would have to prepare for sale a minimum of 90% of the yearly harvest objective for each forest management area.

#### Forest Mgmt. Road & Trail Access

Under the bill, if a timber harvest were planned for a particular area, the DNR would have to evaluate whether the harvest activity offered the opportunity to connect existing forest roads and trails in the area.

## **Senate Bill 40 (S-1)**

### **Land Exchange Facilitation & Management Fund**

Part 21 creates the Land Exchange Facilitation Fund. The bill would change the name of the Fund to the Land Exchange Facilitation and Management Fund.

The Fund exists in the State Treasury and is administered by the DNR. Under the bill, the State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it any interest and earnings from the investments.

The DNR may use Fund money only for the following purposes:

- Upon the recommendation of the DNR and authorization of the MNRTF 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, surveys, and closing incurred by the DNR in the sale of surplus land.
- The costs of appraisals, negotiations, and closing incurred by the DNR in the purchase of land.

Under the bill, Fund money also could be used for the costs of surveys incurred by the Department in the sale of surplus land, and the costs of environmental assessments and surveys incurred by the Department in the purchase of land. Additionally, the money could be used for the following:

- The costs of natural resources management and public recreation activities, including administration, maintenance, development projects including trails and other facilities, aquatic invasive and aquatic nuisance species control, game management, and fish stocking.
- The payment of special assessments levied on land owned by the DNR.

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.

### **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 324.301 et al. (S.B. 39)  
324.2130 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 allow a property owner to recover actual damages 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 change the name of the Land Exchange Facilitation Fund to the Land Exchange Facilitation and Management Fund and allow it to be used for environmental assessments, surveys, various natural resource-related activities, and payment of special assessments on land owned by the DNR. Current law allows the Fund to be used to purchase land with natural resource or recreational value. The Fund receives revenue from the proceeds of the sale of surplus State-owned land. In fiscal year 2014-15, the Fund 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.

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.