

## EASEMENTS OVER STATE-OWNED LAND

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**House Bill 4298 (Substitute H-4)**

**Sponsor: Rep. Steven Lindberg**

**Committee: Natural Resources, Tourism, and Outdoor Recreation**

**Complete to 6-24-11**

### A SUMMARY OF HOUSE BILL 4298 AS REPORTED FROM COMMITTEE 6-21-11

The bill would amend Part 21 of the Natural Resources and Environmental Protection Act to revise the conditions under which the Department of Natural Resources (DNR) can grant an easement over state-owned land. The bill also would *require* the DNR to grant an easement under certain conditions.

#### Discretionary Easement

Currently, the DNR is permitted to grant an easement over state-owned land to an individual only if all of the following conditions are met:

- The individual does not have other access to the individual's land.
- The easement does not conflict with an existing program or department management plan or a local ordinance.
- The roadway for which the easement is granted is open to public access and is not a roadway for the exclusive use of the grantee.
- The easement provides the logical and most feasible access to the individual's land.
- The width of the roadway is restricted to the minimum consistent with the quality of the road.
- The individual agrees to construct and maintain the road.
- The individual offers a similar roadway easement to the DNR across the land to which the easement is to provide access.

House Bill 4298 would continue to allow the DNR to grant or provide for an easement to a requesting individual if the specified conditions were met. All requests would have to be made on a form provided by the department. The bill would make several changes to these provisions. (1) The first condition would be changed to refer to an individual's "legal" access. (2) The last condition would be changed by adding that the individual offers a similar road easement to the DNR to provide public access to state-owned land across the individual's land to which the easement is granted. Additionally, it would add the specification that the department could not accept a roadway easement if it would end at a body of water. Also, (3) the DNR would have to provide a written notice of denial, including reasons for the denial, if it denies a request for an easement. (4) The bill would also add a provision requiring the individual to do all of the following:

- Pay the cost of a survey.

- Pay the DNR the fair market value of the easement. The fair market value of the easement granted by the DNR would have to be offset by the fair market value of any easement granted to the department by the individual.
- Pay all costs incurred by the DNR in granting the easement, including the costs of public notice and departmental review.

#### Mandatory Easement

Under House Bill 4298, the DNR would be required to grant or provide for an easement to a requesting individual, if all the following conditions are met:

- A request for an easement is submitted on a form provided by the department.
- The individual does not have other legal access to the individual's land.
- The easement does not conflict (1) with an existing program or management plan as described in an existing plan of the department; (2) with applicable state or federal laws governing the use of lands acquired using revenue from hunting and fishing license fees, federal funds from a wildlife or sport fish restoration program, or other state or federal program funds; (3) or with a local ordinance.
- The easement does not cross an environmentally sensitive area, including wetlands as defined in Sec. 30301 or critical dune areas as defined in Sec. 35301.
- The individual offers a similar road easement to the DNR to provide public access to state-owned land across the individual's land to which the easement is granted by the DNR, where applicable. The DNR cannot accept an easement if it would end at a body of water.
- The bill would also add a provision requiring the individual to do all of the following:
  - Pay the cost of a survey.
  - Pay the DNR the fair market value of the easement. The fair market value of the easement granted by the DNR would have to be offset by the fair market value of any easement granted to the department by the individual.
  - Pay all costs incurred by the DNR in granting the easement, including the costs of public notice and departmental review.

The DNR could impose conditions on an easement. If it denies an easement request, the DNR would be required to provide a written notice of denial, including reasons for the denial.

The DNR must provide a written notice, including the reasons for denial, to the individual in the case of an easement request being denied.

#### Prohibited Easement

Currently, the DNR cannot grant an easement if any of the following apply:

- The proposed easement is over land designated as a wilderness area, wild area, or natural area under Part 351 (Wilderness and Natural Areas).
- The proposed easement is over land in an area closed to vehicular traffic under a management plan approved by the department.

- The construction or use of the new or existing roadway will result in *unnecessary* damage to or destruction of the surface, soil, animal life, fish or aquatic life, or property.

This bill would change the third condition to refer to *unreasonable*, instead of *unnecessary*, damage.

MCL 324.2123 et al.

***BACKGROUND:***

According to committee testimony, large portions of land in Northern Michigan are owned by the state. In some cases the opportunity to own private land is very limited and there is no way to avoid landlocked parcels of land. In situations where a private parcel of land is landlocked on all sides by state or federal owned land, it can be very difficult to obtain an easement to access the private parcel. Currently, NREPA gives the DNR discretion in granting easements over state-owned land. Testimony revealed that property owners have had difficult experiences trying to obtain an easement over state-owned land from the DNR. This bill would force the DNR to issue an easement over state-owned land when certain requirements are met by the applicant. Proponents believe that this bill will improve the process by which the DNR grants easements.

***POSITIONS:***

Michigan Forest Products Council supports the bill. (6-21-11)

Michigan Environmental Council opposes the bill. (6-9-11)

Sierra Club Michigan opposes the bill. (6-14-11)

Michigan Department of Natural Resources has no position at this time. (6-24-11)

***FISCAL IMPACT:***

House Bill 4298 would have no fiscal impact on the State of Michigan or on local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.