



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4298 (Substitute H-4 as passed by the House)  
Sponsor: Representative Steven Lindberg  
House Committee: Natural Resources, Tourism, and Outdoor Recreation  
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 9-7-11

### **CONTENT**

**The bill would amend Part 21 (General Real Estate Powers) of the Natural Resources and Environmental Protection Act to revise the conditions under which the Department of Natural Resources (DNR) may grant an easement over State-owned land; and require the DNR to grant an easement under certain conditions.**

#### Discretionary Easement

Part 21 permits the DNR to grant an easement over State-owned land under its jurisdiction to an individual only if all of the following conditions are met:

- The individual does not have other access to his or her land.
- The easement does not conflict with an existing DNR program or management plan or a local ordinance.
- The roadway for which the easement is granted is open to public access and is not 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 required.
- The individual agrees to construct the road if necessary, and maintain it.
- The individual offers a similar roadway easement to the DNR across the land to which the easement is to provide access.

The bill would allow the DNR to grant or otherwise provide for an easement for a road over State-owned land under its jurisdiction to an individual who requested it, if the specified conditions were met. With regard to the first condition, the individual could not have other "legal" access to his or her land.

With regard to the last condition, the individual would have to offer a similar road easement to the DNR to provide public access to State-owned land across the individual's land to which the easement was granted by the Department, where applicable. Also, the DNR could not accept a road easement if it would end at a body of water.

The bill also would require the individual to do all of the following:

- Pay the cost of a survey.
- Pay the DNR the fair market value of the easement.

- Pay all costs incurred by the DNR in granting the easement, including the costs of public notice and Department review.

(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.)

Additionally, the bill would require the individual to make the request on a form provided by the Department.

If the DNR denied a request for an easement, the Department would have to give the person who requested it written notice of the denial and the reasons for the denial.

#### Mandatory Easement

Under the bill, subject to provisions prohibiting easements under certain conditions, the DNR would have to grant or otherwise provide for an easement for a road over State-owned land under its jurisdiction to an individual who requested it, but only if all of the following conditions were met:

- The request was made on a form provided by the Department.
- The individual did not have other legal access to his or her land.
- The easement did not cross an environmentally sensitive area, including a wetland or a critical dune area.
- The individual offered a similar road easement to the DNR to provide public access to State-owned land across the individual's land to which the easement was granted by the Department, where applicable.

With regard to the last condition, the DNR could not accept a roadway easement if it would end at a body of water.

Also, the easement could not conflict with an existing DNR program or management as described in an existing Department plan; with a local ordinance; or, if the land were acquired with revenue from hunting and fishing license fees, Federal funds from a wildlife or sport fish restoration program, or other State or Federal program funds, with State or Federal laws governing the use of the land acquired through the respective program.

In addition, the individual would have to do all of the following:

- Pay the costs of a survey.
- Pay to the DNR the fair market value of the easement, offset by the fair market value of any easement granted to the DNR by the individual.
- Pay to the DNR all costs incurred by the Department in granting the easement, including the costs of public notice and Department review.

The DNR could impose conditions on an easement granted under these provisions. If the Department denied a request, it would have to notify the individual in writing of the denial and the reasons for it.

#### Prohibited Easement

Under Part 21, the DNR may not 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 pursuant to a management plan approved by the DNR.

-- 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.

The bill would refer to unreasonable, rather than unnecessary, damage.

MCL 324.2123 et al.

Legislative Analyst: Julie Cassidy

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

S1112\4298sa.

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.