

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

DEC 6 1988

Senate Bill 375 (as enrolled)

PUBLIC ACT 35 of 1988

Sponsor: Senator Vern Ehlers

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Judiciary

Date Completed: 11-3-88

RATIONALE

"Adverse possession" refers to the method by which a person can gain legal title to the land of another by possessing the property exclusively and continuously for a certain length of time, in a manner that is adverse to the interests of the owner, and under circumstances that give clear notice to the owner of the possession. Once the period of limitations expires, the original owner can no longer assert his or her right to the property. Under Michigan law, 15 years is both the general period of limitations on adverse possession claims, and the period for adverse possession claims against property owned by the State. Some people contend that State land should not be subject to adverse possession, on the grounds that the State has far too much land to monitor constantly, and adverse possession costs the State and the public valuable land.

CONTENT

The bill would amend the Revised Judicature Act to eliminate claims of adverse possession against the State. The bill provides that actions for the recovery of land to which the State was a party would not be subject to the periods of limitations, or laches. ("Laches" generally refers to the inequity of allowing a right to be enforced because of neglect or delay.) The bill also provides, however, that a person who could have asserted an adverse possession claim would be "entitled to seek any other equitable relief in an action to determine title to the land".

MCL 600.5821

FISCAL IMPACT

This bill would have minimal fiscal impact, but would have saved parcels of land under the jurisdiction of the Department of Natural Resources and the Mackinac State Park Commission valued at \$300,000 to \$350,000 over the last 10 years. The bill would assist in settling approximately 50 potential cases. The Departments of Military Affairs and Transportation — the only other State departments with significant land holdings — have not lost land by adverse possession.

ARGUMENTS**Supporting Argument**

State land is held in trust for the use and benefit of the people of the State and is vital to the State's tourist industry. The State owns vast amounts of land and, unlike individual property owners, simply cannot constantly monitor the use of each and every parcel. Although, as a general rule, the statute of limitations for the recovery of real property does not run against the State and, therefore, land held by the

State cannot be acquired by adverse possession, that rule applies only in the absence of legislation to the contrary (Caywood v Department of Natural Resources, 71 Mich App 322 (1976)). Such legislation does exist under Michigan law, and adverse possession of State land has been upheld by Michigan courts. Thus, it is necessary to remove the statutory basis for these claims, in order to protect the public ownership of valuable land, eliminate squatters' rights to property that is in the public domain, and resolve the uncertainty of potential claims against the State.

Opposing Argument

The Michigan Supreme Court recognized as early as 1884 the injustice in allowing the State to sit on its rights while a possessor occupies, improves, and holds the land for the statutory period (Chamberlain v Ahrens, 55 Mich 111). One hundred years later, a 1984 case illustrated this unfairness, when the State attempted to deny the claim of a party who, in addition to clearing, fencing, using and posting "No Trespassing" signs on the property, paid taxes on it for years, while the State not only failed to assert its interest, but acquired an easement over the parcel (Mackinac Island Development Co., Ltd. v Burton Abstract and Title Co., 132 Mich App 504).

Response: Under the bill, a person who could have brought an adverse possession claim against the State could still seek other equitable relief in an action to determine title to the land. For example, a claimant could seek to recover back taxes paid or reimbursement for improvements made upon the land.

Legislative Analyst: S. Margules

Fiscal Analyst: A. Rich

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.