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LAND EXCHANGE FACILITATION FUND CAP

House Bill 4753 as introduced First Analysis (10-16-01)

Sponsor: Rep. David Mead
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

In 1989, the process by which the state buys and sells parcels of land under the control of the Department of Natural Resources (DNR) underwent important changes. At that time, if the owner of an adjacent property wanted to purchase land adjacent to the state-owned land, and the DNR had no objections to giving it up, the process required by law was quite cumbersome. Under the law regulating such exchanges, the DNR could exchange parcels "for lands of equal area or approximately equal value," but the act did not authorize the *sale* of land. Often, these exchanges were accomplished only when the DNR located such an "equal" parcel owned by yet another – third – party. The interested buyer would then have to purchase that land and "exchange" it for the state-owned land for which he or she had originally sought ownership.

Public Acts 86 and 87 of 1989 were enacted to resolve these problems and to both simplify the above process and to establish a new fund to provide for the sale and purchase of small parcels of land by the DNR. Public Act 87 of 1989 amended the act that regulated the sale of state land to exempt from that act the sale of surplus land. Public Act 86 created the Land Exchange Facilitation Fund Act, which allowed the Natural Resources Commission (NRC) to designate any state-owned land under DNR control as "surplus land" and authorize its sale. The land can be dedicated as surplus land if it were dedicated for public use and the NRC can authorize the DNR to sell the land if certain conditions, as determined by the NRC, are met. These include a requirement that the sale must not diminish the quality or utility of other state-owned lands, a requirement that the land either has been dedicated for public use for at least five years, and was not needed to meet a DNR objective, or was occupied for a private use through inadvertent trespass. The NRC cannot authorize the sale of surplus land, however, if the sale's proceeds would cause the balance of the Land Exchange Facilitation Fund to exceed \$500,000. Money in the

fund can be used only to purchase land for natural resources management and public recreation, and for costs incurred by the DNR in selling or purchasing surplus land.

The DNR now administers state-owned land that is comprised of 4.5 million acres and covers more than 12 percent of the state's total land area. More than half of these parcels were acquired as a result of tax reversions during the Great Depression of the 1930s. Such lands today form our state forests and other state recreation areas. However, due to the method by which they were acquired, the lands also form a "checkerboard" ownership pattern, and many parcels represent lands that the state neither needs to own nor desires to manage. They could be sold, and the proceeds from the sales could be used to acquire lands that would help fill in the blanks in the checkerboard or were more desirable from a management perspective. However, in order to accomplish this, the cap on the Land Exchange Facilitation Fund would have to be raised. Consequently, legislation has been proposed to raise the cap to \$5 million.

THE CONTENT OF THE BILL:

Public Act 86 of 1989 created a Land Exchange Facilitation Fund Act (later incorporated into the Natural Resources and Environmental Protection Act). The 1989 legislation allows the Department of Natural Resources (DNR) to designate state land as surplus (under certain limited circumstances). Once designated, the DNR may sell such land at fair market value, with proceeds to be deposited into the land exchange facilitation fund to be used to purchase land for natural resources management, administration, and public recreation that has been approved by the legislature for purchase under the Natural Resources Trust Fund provisions of the NREPA.

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The statute caps the land exchange facilitation fund at \$500,000. That is, surplus land cannot be sold under these provisions if the sale's proceeds would cause the balance of the fund to exceed \$500,000. House Bill 4753 would amend these provisions of the NREPA to increase the fund cap to \$5 million.

MCL 324.2131

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bill would result in an indeterminate increase in state revenues. Under the bill, the Department of Natural Resources (DNR) can designate as "surplus" any state owned land that is under its control, provided that the land had been dedicated for public use for five or more years. The act provides that only land purchases authorized in a Natural Resources Trust Fund (NRTF) appropriations bill may be acquired with Land Exchange Facilitation Fund revenue. These appropriation bills usually include lump sum appropriations for state parks, inland lake access sites, or boating projects. The fund was established to make it possible for the department to purchase or exchange holdings, or to purchase highly desirable parcels within or adjacent to DNR-owned property. The bill would allow the department to declare as "surplus" a parcel valued at \$5 million or less, and to use the proceeds to buy recreational or scenic land, provided the parcel is authorized for purchase in a Natural Resources Trust Fund appropriation act. (9-10-01)

ARGUMENTS:

For:

According to the Department of Natural Resources (DNR), which controls the land, the current ceiling on the cap is too low, and poses a problem for citizens who want to purchase state-owned land for business purposes, gaining road access, resolving trespass problems, or obtaining easements for road access to land-locked property. The DNR also points out that these are surplus lands, and that the legislative intent of the act was that they should be sold, and the proceeds from the sale used to acquire lands that are more desirable from a management perspective.

The bill would increase on the cap in the Land Exchange Facilitation Fund from \$500,000 to \$5 million. The fund is used to deposit money for sales of state-owned land. However, the price of land has risen in the more than ten-year period since these

provisions were established, especially in desirable locations in northern Michigan. Now, according to the DNR, many sales exceed \$100,000, and some have been as high as \$250,000. It is not unreasonable to assume that, in the near future, many sales will exceed \$500,000. Should this happen, under current law the department's hands would be tied, and desired transactions could not be conducted. Under the bill, however, the department maintains that, under the bill, it would be able to consolidate its holdings, enhance natural resource values and public benefits, while improving the efficient delivery of government services.

Against:

An amendment was proposed, but not adopted by the House committee, that would have established a cap of \$2 million, rather than the \$5 million cap proposed under the bill. Proponents of the amendment point out that a more modest cap would compel the DNR to buy replacement land, rather than sit on the cash acquired from one sale until the fund reached its \$5 million cap. It is argued that it makes more sense to buy several smaller, less expensive parcels of land, than to invest in larger, more expensive parcels. This way, a "rollover" effect would be created, whereby the proceeds from each sale would be used to prepare other land for sale. Moreover, since the \$500,000 cap on the fund has been in place for more than a decade, and ten-fold increase would not seem to be necessary.

Also, it should be noted that some might question raising the cap to \$5 million, since the move could be linked to the controversial sales and purchase agreements involving Fox Island.

Response:

Since the department receives an annual appropriation of approximately \$5 million, the bill would merely acknowledge the fact that the legislature recognizes the need for a higher cap.

Against:

In testimony before the House committee, the DNR stated that the department makes sales and purchase decisions regarding surplus land internally. Some would prefer that a legislative committee be formed to decide these matters because public comment should be invited on the DNR's total management plan for each area of the state. This is important because people who are interested in the recreational possibilities of a parcel of land will offer different opinions than those interested in the environmental aspects of the property.

The department submitted as typical examples of its purchase and sales agreements copies of two proposed transactions, one consisting of the purchase an 80-acre parcel in Emmet County, north of Harbor Springs, within the Gaylord Forest Management Unit, that would cost \$242,000; and the other consisting of the sale of 14 lots in Livingston County, for a price of less than \$500,000. Some people questioned the wisdom of the proposed purchase of the 80-acre tract, arguing that it is not in the public interest to purchase a parcel of land if the land is isolated and is surrounded by private property.

The Michigan Farm Bureau (MFB) has no position on the bill. (10-15-01)

Against:

Some have questioned the absence of language specifying that the state retain mineral rights on land sales. Others have suggested that a sunset date be added to the bill, so that the legislature can review this increase in the fund cap to answer such questions as “how often the department was able to turn lands over under purchase and sales agreements.”

Response:

The act, as written, originally included language requiring that the state reserve all rights to coal, oil, gas, and other minerals found on, within, or under surplus land sold under the provisions of the act. However, the provision was deleted by Public Act 117 of 1998, which was enacted to allow the department to divest itself of all severed oil and gas rights and reunite those rights with the surface rights.

With regard to a provision that would add a sunset date to the act, some have pointed out that that long-term implications of such an amendment should be considered. For example, should the sunset date occur during a downturn in the state’s economy, the legislature might be under pressure to end the program of buying and selling surplus land, or to lower the cap.

POSITIONS:

The Department of Natural Resources (DNR) supports the bill. (10-15-01)

The Michigan United Conservation Clubs (MUCC) supports the concept of the bill, but would prefer that the bill provide for a \$2 million, rather than \$5 million, cap. (10-11-01)

A representative of the Michigan Association of Conservation Districts testified before the House committee, supporting the bill’s concept, but stating that the cap should be \$2 million, rather than \$5 million. (10-15-01)

Analyst: R. Young.

■ 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.