

REMOVE REQUIREMENT THAT A PORTION OF CLEARWATER TOWNSHIP PARK BE USED EXCLUSIVELY FOR PUBLIC RECREATION

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House Bill 4965 without amendment

Sponsor: Rep. Howard Walker

Committee: Tourism, Outdoor Recreation, and Natural Resources

First Analysis (7-17-07)

BRIEF SUMMARY: The Department of Natural Resources (DNR) conveyed public land in Kalkaska County to Clearwater Township in 2002 with the requirement that it be used exclusively for public recreation or revert to the state. The bill would require the DNR to convey its reversionary interest as to .24 acres (just under one-quarter of an acre) of this land to Clearwater Township for one dollar, in effect removing the restriction that it be used only for public recreation. The bill would free Clearwater Township to sell this portion of the land for one dollar to private landowners who mistakenly built an addition to their house on it.

FISCAL IMPACT: The state would receive one dollar in consideration for releasing its reversionary interests as to approximately one-quarter acre of recreational property. Clearwater Township reportedly plans to convey the encroached-upon land to private landowners for one dollar.

THE APPARENT PROBLEM:

Private landowners purchased a home in northwestern Kalkaska County near the Rapid River in 1996 by means of a land contract. A few years later, in about 1999, they took out a mortgage and purchased the house outright. When obtaining their mortgage financing, they reportedly obtained a mortgage survey, which, generally speaking, is basic survey done without staking. (In contrast, a boundary survey with stakes is somewhat more expensive and accurate.)

Reportedly the homeowners later that year relied on the mortgage survey while building an addition on their home and fencing their property. A portion of the addition was apparently built on public land then belonging to the state of Michigan.

In 2002, the state of Michigan conveyed a little over 20 acres of public land, including the encroached-upon land to Clearwater Township for one dollar. (Record No. 3038896, Kalkaska County). The conveyed parcels totaling more than 20 acres located in northwestern Kalkaska County (near Torch and Elk Lakes and Lake Skegemog) contain a public park known as "Freedom Park" on the Rapid River. The conveyance required that the land be used for public recreation, fishing, and boating or the state of Michigan would have the right to reenter and repossess it.

As part of a 2004 survey and remonumentation, Clearwater Township discovered that the homeowners' addition encroached on almost a quarter acre of the park. The township wishes to resolve the encroachment issue by selling the encroached-upon land to the private landowners for one dollar.

THE CONTENT OF THE BILL:

Public Act 138 of 2002, authorized the conveyance of about 20 acres of park land from the state to Clearwater Township. The conveyance required the property to be used exclusively for public recreation, boating, and fishing open to both resident and non-resident members of the public on equal terms. It also required the state to reserve the right to repossess the property (and authorized the Attorney General to bring suit to quiet title and repossess the property), if it were used for other purposes.

House Bill 4965 would authorize the state to convey its right to reenter and repossess a portion of the property (.24 acres out of the original conveyance of just over 20 acres, presumably containing the encroachment) to Clearwater Township in return for \$1. This conveyance would free Clearwater Township to transfer the land to the private owners who mistakenly built on public land.

ARGUMENTS:

For:

This bill would allow Clearwater Township to resolve an encroachment issue which has been unresolved since approximately 2004. As the landowners' mistake was apparently made in good faith reliance on a faulty mortgage survey, it would be unfair to require them to remove their addition or to pay fair market value for the land.

Against:

Is this bill in the public interest? It would essentially authorize the township to give almost a quarter acre of valuable recreational land (and the state of Michigan to relinquish its right to repossess it if not used for public recreation) to private landowners for nominal consideration. Such a conveyance would result in a loss of public recreation land with neither the state nor the township receiving fair market value in return. Could this generous resolution of an encroachment on public land embolden other landowners to build near public lands without paying for stake surveys?

POSITIONS:

The Department of Natural Resources is neutral on the bill. (7-17-07)

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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.