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BILL ANALYSIS



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Senate Bill 1056 (as introduced 9-11-14)
Sponsor: Senator Mike Nofs
Committee: Local Government and Elections

Date Completed: 10-1-14

CONTENT

The bill would add Section 2120a to Part 21 (General Real Estate Powers) of the Natural Resource and Environmental Protection Act to do the following:

- **Require the Department of Natural Resources (DNR) to determine the identity of current de facto owners of certain land in Calhoun County, if the Governor applied to the U.S. government for conveyance of that land to the State.**
- **Allow the DNR to require a person claiming de facto ownership of any of that land to reimburse the Department for any expenses it or the Department of Attorney General incurred in determining de facto ownership and conveying the property.**
- **Require the DNR to convey a portion of the property to a de facto owner after determining the identity of that owner.**
- **Allow the DNR to convey a portion of the land to an adjacent de facto owner if it determined there was no de factor owner of that portion.**
- **Provide that interests or rights in land conveyed under the bill that were created before the conveyance would have the same legal effect as if the conveyance preceded the creation of the interest.**
- **Specify that other sections of the Act, dealing with the conveyance of swamp land from the United States, would not apply to the property addressed by the bill.**
- **Specify legislative findings and intent.**

The bill would define "de facto owner" as a person that could reasonably be considered the owner of the land despite not having good legal title, as indicated by one or more of the following:

- A purported chain of title that would show marketable title in the person, if a valid governmental patent or other conveyance had been given to the appropriate predecessor in the chain of title.
- The person's payment of property taxes on the land.
- The person's possession of and improvement to or maintenance of the land.
- Any other similar factor that the DNR, in its discretion, determines should be considered.

Conveyance of Property

If the Governor applied to the Bureau of Land Management in the U.S. Department of the Interior, or to any other U.S. official or agency that he or she determined appropriate, for the conveyance to the State of certain land in Clarence Township, Calhoun County, by patent or otherwise, and if the land were conveyed to the State, the DNR would have to use

its best efforts to determine the identity of the current de facto owners of the land. In making that determination, the DNR would have to consult with the Department of Attorney General.

The DNR could require a person claiming to be a de facto owner of any of the land in question to reimburse the Department, before the conveyance of the property, for any expense incurred by either the DNR or the Attorney General in determining the identity of the de facto owners and in conveying the property to them.

The DNR would not have to take any steps to make a determination of the identity of the de facto owners other than those that it determined were reasonably necessary. If the DNR were unable to determine a de facto owner for a portion of the land, or were unable to determine which of one or more potential de facto owners had the most legitimate claim to a portion of the land, the Department would not have to bring or actively participate in a quiet title action or any other legal action with respect to the property. If the DNR determined that there was no de facto owner for a portion of the property, it could convey the portion to an adjacent de facto owner.

After determining the identity of de facto owners, the DNR would have to convey a portion of the property to a de facto owner. The DNR would have to make a conveyance to a de facto property owner by quitclaim deed, approved by the Attorney General.

Any interests or rights in land conveyed to a de facto owner of property under the bill that were created before the conveyance would have the same legal effect as if the conveyance preceded the creation of the interest, including any of the following:

- A street or highway right of way.
- A utility, drain, or other easement.
- A mortgage.
- A leasehold.
- Mineral rights.
- A construction lien.
- An interest resulting from an attachment, execution, or other judicial process.

The DNR would not be responsible for recording a deed prepared under the bill or any costs or fees for or associated with the recording.

Scope of the Bill

The bill specifies that Section 2120a would apply, and Sections 2120 and 2121 of the Act would not apply, to the receipt of certain land in Clarence Township, Calhoun County, by patent or otherwise, from the United States or to the conveyance of that land by the DNR. Subsection (1) of Section 2120a contains a legal description of the property to which the bill would apply.

(Section 2120 pertains to swamp lands granted to the State by an act of Congress of September 28, 1850. Those swamp lands may be sold only in the same legal subdivision in which they are received by the State, and the land is not subject to private entry until it has been offered for sale at public auction.)

Section 2121 allows the State Treasurer to receive from the United States any money received for any of the swamp land donated to the State. The DNR may assign all bounty land warrants received for any swamp land sold in Michigan since the act of Congress approved September 28, 1850, and release the interest of the State in any land sold or entered with the warrants to purchasers or their assigns.)

Legislative Findings

The bill includes the following legislative findings:

- "Under statutes of the United States enacted in 1850 and subsequently, the governor of this state has had the power to request the conveyance of swamplands from the United States to this state."
- "Some [of those] conveyances...have been requested and made to this state in the past."
- "However, although the property described subsection (1) has been eligible for a request and conveyance, no such request and conveyance has ever been made."
- "A number of citizens of this state are occupants and de facto owners under color of title of portions of the property described in subsection (1). These individuals have made improvements to, maintained, and paid taxes on those portions of the property held under color of title."

The bill states, "It is the intent of the legislature, through this section, to obtain title from the United States to the property described in subsection (1) and to convey the property to the appropriate citizens."

Proposed MCL 324.2120a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have a neutral fiscal impact on the Department of Natural Resources, and no fiscal impact on local units of government. The process of requesting conveyance from the United States Bureau of Land Management and then conveying the parcels to their de facto owners would likely result in new administrative costs for the DNR; however, the bill would allow the DNR to request reimbursement from the de facto property owners for any costs incurred during the process.

Fiscal Analyst: Josh Sefton

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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.