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PUBLIC LAND MANAGEMENT AND STRATEGIC PLANNING

House Bill 4475 as enrolled
Public Act 240 of 2018
Sponsor: Rep. Gary Howell

Senate Bill 302 as enrolled
Public Act 238 of 2018
Sponsor: Sen. Sen. Tom Casperson

Senate Bill 303 as enrolled
Public Act 239 of 2018
Sponsor: Sen. Darwin L. Booher

House Committee: Natural Resources
Senate Committee: Natural Resources

Complete to 7-2-18

BRIEF SUMMARY: House Bill 4475 and Senate Bill 302 would amend various sections within the Natural Resources and Environmental Protection Act (NREPA) relating to natural resources management and strategic plans for public lands. In general, the bills would do the following:

- Require the Department of Natural Resources (DNR) to consider the public and private access to and use of state-owned land.
- Allow the DNR to acquire surface rights north of the Mason-Arenac line if certain conditions are met.
- Amend and expand the practices for strategic planning, state forests, and acquisition, development, and sale of land.
- Create a public process to remove human-made barriers blocking access to state-owned land.
- Amend the Game And Fish Protection Account, the Land Exchange Facilitation Fund, and the Pittman-Robertson Wildlife Restoration Act.

Senate Bill 303 would amend the allowable uses and procedures for use approval of the Land Exchange Facilitation Fund.

FISCAL IMPACT: The likely fiscal impact of House Bill 4475 and Senate Bill 302 on the DNR and local units of government is unclear. Senate Bill 303 would have a neutral fiscal impact on the DNR. More information can be found below under ***FISCAL INFORMATION***.

THE APPARENT PROBLEM:

The Natural Resources and Environmental Protection Act (NREPA) grants the Department of Natural Resources (DNR) power and jurisdiction over the management, control, and disposition of all land under the public domain, except for land managed by other state agencies. As part of that jurisdiction, the DNR may accept gifts and grants of land and may

buy, sell, exchange, or condemn land and other property. Additionally, the DNR owns a large amount of land that it received through tax reversion.

There are concerns in some quarters over the number of acres of land the state owns and manages. Some wonder if the DNR can effectively manage all of its land considering the current economic climate. There is also significant concern regarding what some perceive as policies that limit public access to state owned land and restrict certain uses. Many communities, especially in the Upper Peninsula, continue to be concerned with the financial impact of state owned land.

Public Act 240 of 2012 (Senate Bill 248) was enacted to address these concerns. The Act added provisions capping the acreage of land to which the DNR can acquire surface rights above the Mason-Arenac county lines, as that part of Michigan is where the DNR manages the most land in the state. The Act also requires the DNR to develop a written strategic plan for the acquisition and disposition of land. At the time of enactment, it was the legislature's intent to repeal the land cap once the strategic plan was written and legislatively adopted.[1]

Because the same concerns continue today, these bills seek to implement the 2013 DNR Managed Public Land Strategy for the proper management of public lands in Michigan.

More information regarding the history of Michigan public lands and the DNR Managed Public Land Strategy can be found below under ***BACKGROUND***.

THE CONTENT OF THE BILLS:

Land classification considerations

NREPA currently lists general duties for the Department of Natural Resources (DNR). To these, House Bill 4475 would add that the DNR must consider all of the following before it issues an order or promulgates a rule that will designate or classify land that it manages for any purpose:

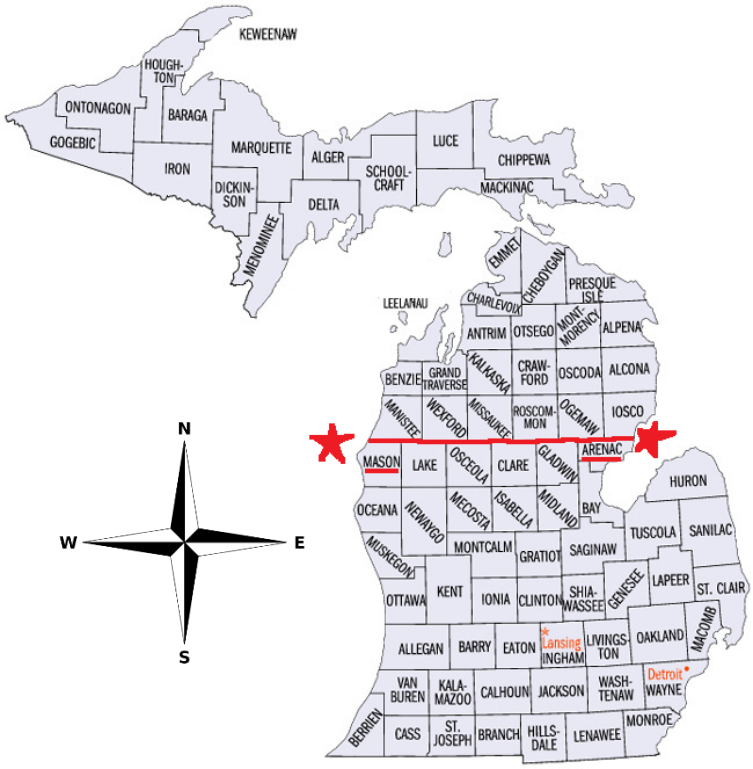
- Providing for access to and use of the public land for recreation and tourism.
- The existence of or potential for natural resource-based industries, such as oil and gas development, mining, or forest management, on the public land.
- The potential impact of the designation or classification on private property in the immediate vicinity.

Surface rights limitations

Currently, the DNR cannot acquire surface rights to land north of the Mason-Arenac line if the DNR owns, or as a result of the acquisition will own, the surface rights to more than 3,910,000 acres of land in that area. Current law states that this restriction will not apply after the enactment of legislation adopting the DNR's strategic plan (see **Strategic Plan**, below).

[1] http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-0248-8.pdf

The picture below illustrates the Mason-Arenac line, which is the line formed by the northern boundaries of Mason, Lake, Osceola, Clare, Gladwin, and Arenac Counties.



House Bill 4475 would strike the restriction described above and instead mandate that if any payment for land located north of the line is *not* made in full and on time during a fiscal year under Subpart 13 of Part 21 (regarding tax-reverted, recreation, forest, or other lands), under Subpart 14 of Part 21 (regarding real property), or under Section 51106 (regarding commercial forestlands), then the DNR cannot purchase surface rights to land located north of the Mason-Arenac line until the end of that fiscal year unless 1 or both of the following apply:

- Full payment is made later during that fiscal year.
- The specific acquisition was approved by resolution adopted by the township board if the land is located in a single township, *or* by the county board of commissioners of the county where the land is located if the land is in two or more townships.

For purposes of this new provision (and for purposes of **Reports**, below), HB 4475 would specify that land in which the DNR acquires or owns surface rights does not include the following:

- Land acquired under an option agreement in effect on the date when the payment described above became due if the acquisition takes place within 120 days after the payment became due.
- Land in which the DNR has a conservation easement.

- Land that was platted before July 2, 2012 under the Land Division Act and acquired by the DNR.
- Land acquired after July 2, 2012 that:
  - Was acquired by the DNR through litigation or by gift, including a gift of money dedicated to land acquisition.
  - Was commercial forestland on July 2, 2012 and continues to be used consistently with Part 511 (Commercial Forests).
  - Has an area of less than 80 acres or is a right-of-way for accessing other DNR land or for accessing the waters of the state as defined in Section 3101.
  - Is land for a trail, including only the land within the utility easement or railroad right-of-way that is the basis for the trail or, if neither of those applies, including a maximum of 50 feet of land to each side of the trail's main- traveled way.

Strategic plan

House Bill 4475 would add to the requirements for the strategic plan that it must identify critical trail connectors to enhance motorized and nonmotorized natural-resource-dependent outdoor recreation activities for public enjoyment.

HB 4475 also would mandate that the legislature approve the strategic plan, entitled "Department of Natural Resources Managed Public Land Strategy," issued by the DNR and dated July 1, 2013.[2] The DNR would implement the most recent legislatively approved plan and could not change the plan, except by plan update approved by the legislature. A proposed update would be required by October 1, 2021 and every 6 years thereafter. It would be submitted to the ***relevant legislative committees*** and posted on the DNR's website.

> (Currently, the DNR submits strategic plan updates to "senate and house committees with primary responsibility for natural resources and other outdoor recreation and the corresponding appropriation subcommittees." HB 4475 would replace that long description with ***relevant legislative committees***. The shortened phrase would have the same meaning, and it is used throughout all three bills.)

At least 60 days before posting the proposed updated plan, the DNR must prepare, submit to the relevant legislative committees, and post on its website a report on progress toward the goals set forth in the strategic plan and any proposed changes to the goals, including the rationale for any changes. Under HB 4475, the report also would have to include progress on the DNR's engagement and collaboration with local units of government.

The bill also would eliminate a provision requiring the DNR to submit to relevant legislative committees a statement identifying land it proposes to acquire or dispose of and describing the effect of the proposed transaction.

[2] https://www.michigan.gov/documents/dnr/Draft_DNR_Public_Land_Management_Strategy-5-24-13_422381_7.pdf

Reports

Currently, the DNR is required to post and maintain on its website the number of acres of land, *including and excluding* land that did not count against the limit applicable north of the Mason-Arenac line, in which the DNR owned surface rights north of that line, south of that line, and in total for the state. The bill would eliminate this requirement.

Under HB 4475, the DNR annually would have to submit to the relevant legislative committees, post, and update on its website all of the following:

- A report on implementation of the plan.
- The number of acres of land in which the DNR owns surface rights north of the Mason-Arenac line, south of that line, and in total for the state.
- Information on the total number of acres of the following:
    - Land managed by the DNR.
    - State park and state recreation area land.
    - State game and state waterfowl areas.
    - Land managed by the DNR that is open for public hunting.
    - State-owned mineral rights managed by the DNR that are under a development lease.
    - State forestland.
- Public boating access sites managed by the DNR.
- Miles of motorized and nonmotorized trails managed by the DNR.

Acquisition of land in certain counties

Under House Bill 4475, if 40% or more of the land in a county is owned by this state and managed by the DNR, is owned the federal government, or is commercial forestland, then the DNR could not acquire land in that county if, within 60 days after it sends notice of its proposed acquisition to local legislative bodies (see **Notice requirements**, below), the DNR receives a copy of a resolution rejecting the proposed acquisition adopted by the following, as applicable:

- The township board if the land is located in a single township.
- If the land is located in two or more townships, the county board of commissioners.

However, this provision would not apply to land acquired by the DNR on or after July 2, 2012, as described above.

The DNR also would be charged with maintaining on its website and making available in writing to persons seeking to purchase land from, sell land to, or exchange land with the DNR information about the relevant requirements and procedures under NREPA.

DNR duties

Currently, NREPA requires the DNR to promulgate rules to protect and preserve lands and other property under its control from depredation, damage, or destruction or wrongful or improper use or occupancy. Senate Bill 302 would add to these duties that, not more than 10 days after promulgating a rule, the DNR must provide a copy of the rule to the relevant legislative committees. Within 6 months after the effective date of a rule that limits the use

of or access to more than 500 acres of state forest, the DNR, if requested by the chair of a relevant legislative committee, would have to provide testimony to the committee on the implementation and effects of the rule.

The DNR is also currently required to submit a report to the legislature that includes the location and acreage of land under its control previously open to hunting that the DNR closed to hunting, with the reasons for the closure, as well as land previously closed to hunting the DNR opened to hunting to compensate for land closed to hunting. However, SB 302 would eliminate this requirement.

SB 302 also would add a clause urging the DNR to promote public enjoyment of the state's wildlife and other natural resources by providing public access to lands under its control for outdoor recreation activities dependent on natural resources while providing reasonable consideration for both motorized and nonmotorized activities.

Land use and access

Senate Bill 302 would require the DNR to work with a requesting local unit of government to allow use of state land within that local unit that would benefit the local community by increasing outdoor recreation opportunities and expanding access to and appropriate use of natural resources and the outdoors. The DNR could charge the local unit a reasonable fee for the use, as long as the fee would not exceed the costs incurred by the DNR for the use.

Removal of human-made barrier

Senate Bill 302 would mandate that if the DNR receives a written resolution from a recreational users organization or the legislative body of a local unit of government requesting the removal of a berm, gate, or other human-made barrier on land under the DNR's control, the DNR would have to notify the requestor in writing within 60 days that it will either remove the barrier, not remove the barrier, or not consider the request.

If the DNR notifies the requestor that the barrier will be removed, the DNR would have to remove the barrier within 180 days after receiving the written request.

If the DNR notifies the requestor that the barrier will not be removed, the DNR would have to notify the requestor the reasons why the DNR believes the barrier should not be removed and of the right of the organization or local unit to request in writing a public meeting on the matter. The meeting would have to take place within 21 days after the DNR sends the written notice. If the recreational users organization or local unit of government requests a public meeting, the DNR would have to conduct a public meeting in the city, village, or township where the barrier is located to explain the DNR's position and receive comments on the proposed removal. After the meeting, and within 180 days after receiving the request to remove the barrier, the DNR would have to approve or deny the request and notify the requestor in writing again. If the request is again denied, the notice would have to include the reasons for denial. If the request is instead approved, the barrier would be removed as follows:

- By the DNR within 180 days after the public meeting.

- By the recreational users organization or legislative body requesting the removal of the barrier, if it agrees with the DNR to remove the barrier under the DNR's oversight and at the requestor's expense, within 30 days.

The DNR may also not consider the request for removal of the barrier, but only if, within the three-year period preceding receipt of the request, the DNR received another request for removal and acted according to the provisions above for approving or denying it. The notice of nonconsideration would have to explain why the request is not being considered and specify the date after which the DNR is required, if the barrier has not been removed, to consider a new request.

Natural resources trust fund

Under Part 19 (Natural Resources Trust Fund) and in accordance with Section 35 of Article IX of the State Constitution,[3] the interest and earnings of the Michigan Natural Resources Trust Fund (MNRTF) in a fiscal year may be spent in subsequent fiscal years only for the following purposes:

- The acquisition of land or rights in land for recreational uses or for protection of the land because of its environmental importance or scenic beauty.
- The administration of the MNRTF, including payments in lieu of taxes (PILT) on state-owned land purchased through the MNRTF.
- The development of public recreation facilities.

Furthermore, Part 19 allows one third of the money received by the MNRTF in any fiscal year, excluding interest and earnings, to be spent in subsequent fiscal years for the specified purposes. This authorization, however, does not apply after the fiscal year in which the total balance of the MNRTF, excluding interest and earnings and amounts authorized for expenditure, exceeds $500.0 million. (The $500.0 million cap was reached in May 2011.)

Senate Bill 302 would eliminate the authorization and cap described above, as well as eliminating the definitions for ***economic development revenue bonds*** and ***total expenditures*** that are in current law. Additionally, the bill would stipulate that Part 19 is subject to proposed Section 2132a (see **Sale or lease of state lands for public purposes**, below).

[3] In 1984, Michigan voters approved a ballot proposal to add Section 35 to Article IX of the State Constitution to establish the Michigan Natural Resources Trust Fund, to require revenue from the sale and lease of the state's mineral rights to be deposited into the MNRTF, and to prescribe the use of MNRTF money. Under Section 35 and Part 19 of NREPA (which was enacted to implement Section 35), in addition to the expenditures described above regarding land acquisition, public recreation, and administration, until the MNRTF reached a balance of $500.0 million, a maximum of 50% of the money received annually had to be allocated to the Michigan State Parks Endowment Fund. This deposit was capped at $10.0 million per year. (Endowment Fund money may be used for operations, maintenance, and capital improvements at state parks and for the acquisition of land for state parks.) As required by Section 35 and Part 19, since the $500.0 million limit has been reached, all revenue that the MNRTF otherwise would receive must be deposited into the State Parks Endowment Fund until that Fund accumulates a balance of $800.0 million.

Game and fish protection account

Money in the Game and Fish Protection Account must be spent, upon appropriation, only as provided in Part 435 (Hunting and Fishing Licensing) and for the Account's administration, which may include payments in lieu of taxes (PILTs) on state-owned land purchased through the Account or the former Game and Fish Protection Fund.

Senate Bill 302 would require the DNR to manage land acquired with money from the Account or the former Fund through the use of scientific game species management for the primary purpose of managing habitat and thereby enhancing recreational hunting opportunities. Unless the DNR could demonstrate that the expenditure was for the primary purpose, and that benefits to nongame species were a result of that primary purpose, both of the following would apply:

- Money in the Account could not be spent for management of nongame species.
- Forest treatments on land acquired with money from the Account or the former Fund could not be undertaken to benefit nongame species.

Money in the Account may currently be spent for grants to state colleges and universities to implement programs funded by the Account. Under the bill, this provision would apply only if the DNR did not have the appropriate staff or other resources to implement the programs itself.

Sale or lease of state lands for public purposes

Subpart 1 of Part 21, relating to the sale or lease of state lands, now allows tax reverted lands under DNR control to be sold to school districts, to churches, to public educational institutions for public purposes, to the United States, and to governmental units of this state and their agencies. Senate Bill 302 would add "and other religious organizations" after "churches" in this list of eligible entities.

Currently, the State Tax Commission determines the price of land using a formula. SB 302 would change this so the value is determined by an appraisal under proposed ***Section 2132a***. Under that section, if land were proposed for sale or exchange with the DNR based on its appraised value, if two or more appraisals that met DNR standards were made on behalf of the parties to the proposed transaction, and if the high appraisal were less than 10% higher than the low appraisal, the accepted value for purposes of the purchase, sale, or exchange would have to be the average of all of the appraised values. If the high appraisal were at least 10% higher than the low appraisal, the parties could agree upon a new appraiser, whose appraisal or determination based on review of the existing appraisals would be the accepted value. The DNR would be responsible for half of the new appraiser's fee, while the other party or parties would be responsible for the balance.

Land exchange facilitation and management fund

Subpart 10 of Part 21 pertains to purchasing, selling, and exchanging surplus land and establishes the Land Exchange Facilitation Fund.

Senate Bill 303 would rename the fund the "Land Exchange Facilitation *and Management* Fund." The fund would continue to reside in the state treasury and be administered by the

DNR. The bill would allow the state treasurer to receive money or other assets from any source for deposit into the fund and require the state treasurer to direct the investment of the fund and credit to the fund the interest and earnings derived from those investments.

SB 303 would amend the purposes for which the fund can be used, and the procedure for approval of those purposes. Currently, one of the purposes for which the fund can be used is the purchase of land for natural resources management, administration, and public recreation, upon the recommendation of the DNR, authorization of the Michigan Natural Resources Trust Fund Board, and approval by the legislature under the terms and conditions of the Kammer Recreational Land Trust Fund Act of 1976. Under SB 303, money from the fund could be used for the purchase of land for natural resources management as long as the land meets the needs outlined in the latest strategic plan approved by the legislature (see **Strategic plan**, above).

Additionally, SB 303 would allow fund money to be used for the costs of environmental assessments and surveys incurred by the DNR when purchasing land. It would also add that the fund money could be used for the costs of managing the natural resources for public recreation activities and public recreation development projects on DNR-managed land.

Exchange of state land

Currently, any land under DNR control that is allowed to be sold or conveyed may be exchanged for land of equal area or approximately equal value belonging to the U.S. government or owned by private individuals if, in the opinion of the DNR, doing so is in the interest of the state. Senate Bill 302 would delete "in the opinion of the DNR" from the preceding provision.

SB 302 would add several provisions relating to the submission and processing of applications for an exchange for state land. Sixty days after the DNR receives an application from a private individual to exchange that individual's land for state land, the application would be considered complete. However, if the DNR notifies the applicant in writing before the end of the 60-day period that the application is not complete, and specifies the information necessary to make the application complete, including any unpaid fees, then the 60-day period is tolled until the applicant submits to the DNR the specified information, at which time the application would be considered complete.

Within 180 days after an application is complete, or a later date agreed to by the applicant and the DNR, the DNR would have to approve or deny the application and notify the applicant in writing. If the application is denied, the notice would have to contain the specific reasons for the denial.

The DNR would also have to charge a fee for an application for the exchange of state land, which would be $300 plus, if the state land is more than 300 acres in size, the actual reasonable cost of processing the application.

Easement fee

Under Senate Bill 302, the DNR could charge a fee for an application for the grant of an easement. This fee could not exceed the actual reasonable cost of processing an application for an easement or $300, whichever is less.

Surplus land

Currently, the DNR may designate any state-owned land as surplus land as long as it meets certain criteria. Senate Bill 302 would amend these criteria by removing that the land must have been dedicated for public use. One of the determinations that the DNR can currently make is whether the land is occupied for a private use through inadvertent trespass; the bill would instead require the DNR to consider whether sale of the land could resolve an inadvertent trespass. The bill would also require the DNR to consider whether the sale could promote other economic activity beyond forest products and mining.

Presently, the DNR cannot authorize a sale if the proceeds from the sale cause the balance of the Land Exchange Facilitation Fund to exceed $25.0 million. SB 302 would eliminate that requirement. The DNR also cannot presently cannot designate as surplus any land within a state park or recreation area. SB 302 would expand this prohibition to include state wildlife research areas, state fish hatcheries, or state public boating access sites.

SB 302 would add several provisions relating to the submission and processing of applications for surplus land. Sixty days after the DNR receives an application from a private individual to purchase surplus land through a negotiated sale, the application would be considered complete. However, if the DNR notifies the applicant in writing before the end of the 60-day period that the application is not complete, and specifies the information necessary to make the application complete, the 60-day period is tolled until the applicant submits to the DNR the specified information, at which time the application would be considered complete.

Within 180 days after an application is complete, or a later date agreed to by the applicant and the DNR, the DNR would have to approve or deny the application and notify the applicant in writing. If the application is denied, the notice would have to contain the specific reasons for the denial.

The DNR would also have to charge a fee for an application for the purchase of surplus land, which would be $300 plus, if the surplus land is more than 300 acres in size, the actual reasonable cost of processing the application. However, the DNR *may* charge a fee for an application for the grant of an easement. This fee could not exceed the actual reasonable cost of processing an application for an easement or $300, whichever is less.

However, if an application is not complete or the above fee has not been paid within 60 days after notice, the DNR would have to consider and act upon a completed application that was submitted at a later date.

The DNR could give preference to a local unit of government in a land transaction, but no other person.

SB 302 also would subject appraisals of surplus land to the newly created Section 2132a (see **Sale or lease of state lands for public purposes**, above).

Sale/exchange of nonsurplus land

Senate Bill 302 would require the DNR, upon request, to consider selling or exchanging land that is not designated as surplus land. The sale or exchange would be subject to the procedures that apply to the sale of surplus land (see above).

The DNR would not be required to consider selling nonsurplus land in a state park, recreation area, or game area, fish hatchery, or public boating access site. These provisions also would not apply to a request to sell land if the request met the bill's criteria related to a proposed business expansion that was limited by adjacent state land (see below).

Sale or lease for business expansion

Senate Bill 302 would require the DNR, upon request, to consider selling or leasing land if both of the following requirements were met:

- The prospective buyer or lessee was a business seeking expansion, but was limited because of adjacent state land.
- The sale or lease would result in a net economic benefit or other benefit for a local unit of government or region.

Notice of the proposed sale or lease would have to be given as provided in **Notice requirements**, below. In making its decision on the request, the DNR would have to consider any comments on the proposed sale or lease from local units of government or others, as well as the impact on natural resources and outdoor recreation in the state, giving due regard to the variety, use, and quantity of land then under the DNR's control.

The price for the sale would have to be established by a method determined appropriate by the DNR and agreed to by the applicant, including appraisal (subject to the provisions regarding multiple appraisals), fee schedule, or true cash value of adjoining land.

Proceeds from sale of the land would have to be deposited in the fund that provided the revenue for the DNR's acquisition of the land. If there were more than one, the revenue would have to be deposited in the several funds in amounts proportionate to their respective contributions to the acquisition. To the extent that the land was in whole or in part acquired other than with restricted fund revenue, a proportionate amount of the proceeds would have to be deposited in the Land Exchange Facilitation and Management Fund.

Notice requirements

House Bill 4475 would eliminate current land management notice requirements and instead add a new Subpart 17 to Part 21 to detail when and how the DNR would have to give notice in such matters. This new part would require the DNR to do *all* of the following 30 days before disposing of, acquiring, leasing, or significantly developing land more than 80 acres in size:

- Provide notice in writing to the legislative bodies of the county and the local units of government where the land is located.

- Post the notice on its website.
- Publish the notice in a newspaper of general circulation in the county where the land is located. [***Newspaper*** would refer only to a newspaper published in the English language for the dissemination of local or transmitted news and intelligence of a general character, or for the dissemination of legal news, and which meets certain additional factors as described in the Revised Judicature Act (MCL 600.1461).]

The notices above would have to contain all of the following information:

- The acreage, location by address or by distance and direction from specified roads or highways, and the legal description of the land.
- The proposed timing of the transaction.
- The proposed use for the land.
- The opportunity for the legislative body of a local unit of government where the land is located, or 5 or more residents or owners of the land in the county where the land is located, to request a general public meeting on the proposed transaction. The DNR would have to receive the request within 15 days after providing notice. The DNR would then send to the meeting a representative who is familiar with the proposal. Notice of a meeting would have to occur by all of the following means:
    - A written notice to the legislative body of each local unit of government where the land is located, as well as to each resident or owner of land that requested the meeting.
    - A posting on the DNR's website.
- A website address where additional information on the proposed transaction can be found. The following additional information would have to be provided at the website:
    - For the acquisition, lease from another person, or ***development*** of land, the funding source that will be used. ***Development*** would be defined as development that would significantly change or impact the current use of the land. "*Developing*" would have a corresponding meaning. Notably, the removal of a berm, gate, or other human-made barrier would not be considered development.
    - For the acquisition of land, the estimated annual PILTs.
    - The effect the proposal is expected to have on achieving the strategic performance goals set forth in the strategic plan.
- The name, telephone number, electronic mail address, and mailing address of a department contact person.

The DNR would provide an opportunity for representatives of all local units of government where the land is located to meet in person with a DNR representative who is familiar with the proposed disposition, acquisition, lease, or development to discuss the proposal.

Finally, these notice requirements would not apply to a lease with a term of 10 years or less or to a lease limited to exploration for, and production of, oil and gas.

Issuing orders

The DNR is currently allowed to issue orders necessary to implement the rules it is authorized to promulgate; the orders are effective upon posting. Senate Bill 302 would add that, when issuing an order (except orders for emergency management purposes that are in effect for 90 days or less), the DNR would have to comply with the following procedures:

- The DNR prepares the order after considering comments from DNR field personnel.
- The DNR conducts two public meetings and otherwise provides an opportunity for public comment on the order.
- Beginning at least 30 days before the first meeting and continuing through the public comment period, the Natural Resources Commission (NRC) includes the order on a public meeting agenda and the DNR posts the order on its website. If the order would result in a loss of public land open to hunting, then the agenda and website posting would have to specify the number of acres affected. This would not apply to an order that would not alter the substance of a lawful provision that exists in the form of a statute, rule, regulation, or order at the time the order is prepared.
- At least 30 days before issuing an order that would alter a lawful statute, rule, regulation, or order at the time the order is prepared, the DNR provides a copy of the order to the relevant legislative committees.
- The DNR approves, rejects, or modifies the order.

If an order limits the use of or access to more than 500 acres of state forest, the DNR would have to provide a copy of the order to the relevant legislative committees not more than 10 days after the order is issued. If requested by the chair of a relevant legislative committee, the DNR would have to provide testimony on the implementation and effects of such an order at a committee hearing held within 6 months after the effective date of the order.

The DNR could revise an issued order, as long as the revision complies with the above procedures.

Pittman-Robertson Wildlife Restoration Act

Part 405 (Wildlife Restoration, Management, and Research) requires the DNR to perform acts necessary to conduct and establish wildlife restoration, management, and research projects in areas in cooperation with the federal government under the Pittman-Robertson Wildlife Restoration Act and regulations promulgated by the U.S. Secretary of the Interior under that act. In compliance with that act, funds accruing to the state from hunting license fees may not be used for any purpose other than game and fish activities under the DNR's administration.

Senate Bill 302 would require the DNR to manage land acquired with money received under the Pittman-Robertson Wildlife Restoration Act to manage game and fish populations to ensure increased recreational hunting and fishing opportunities. Expenditures to enhance game and fish habitat would have to be primarily for the management of game species, but could benefit nongame species.

Commercial forestlands

Senate Bill 303 would amend Part 511 (Commercial Forests) to change the timeline for reporting and payment for commercial forestlands. Currently, on December 1 of each year, the DNR must certify the number of commercial forestlands *and* the state treasurer must transmit the required amount to the treasurer of each county based on that count. SB 303 would require DNR reporting by November 1 of each year and payment by December 1 of each year.

Sustainable management of state forest

Under Part 525 (Sustainable Forestry on State Forestlands), the DNR must manage the state forest in a manner that is consistent with principles of sustainable forestry. In fulfilling this requirement, the DNR is required to manage forests with consideration of their economic, social, and environmental values by engaging in a number of prescribed actions.

Senate Bill 302 would delete the requirement that the DNR plan and manage plantations in accordance with sustainable forestry principles and in a manner that complements the management of and promotes the restoration and conservation of natural forests. The bill would add the following to the DNR requirements:

- Promote working forests for the production of forest products and ecological value, where appropriate.
- Actively manage for enhanced wildlife habitat.

The DNR also must currently conserve and protect forestland by taking certain actions, including managing the quality and distribution of wildlife habitats, contributing to the conservation of biological diversity, and developing and implementing stand and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals. The bill would require the DNR to perform these functions *while giving due consideration to loss of economic values*.

The DNR is required to manage activities in high conservation value forests by maintaining or enhancing the attributes that define them. Under the bill, the DNR would have to do this *while giving due consideration to loss of economic values*.

SB 302 would also require the DNR to inform the public of the positive aspects of managed forests.

Forestry development, conservation, and recreation management plan

Currently, Part 525 requires the DNR to adopt a forestry development, conservation, and recreation management plan for state-owned land owned or controlled by the DNR. Parks and recreation areas, state game areas, and other wildlife areas on that land must be managed according to their primary purpose. Among other things, the plan and any plan updates must identify the annual capability of the state forest, as well as management goals based on that level of productivity. Senate Bill 302 would delete this requirement.

SB 302 also would require the plan and any updates to include yearly harvest objectives for all state forestland by forest region for a 10-year period. At least every five years, the

DNR would have to review the yearly harvest objectives. At least once every ten years, the DNR would have to update the yearly harvest objectives for all state forestland for a ten-year period. The DNR would have to post and maintain the current yearly harvest objectives on its website. For each forest region, the harvest objectives could not exceed the sustainable yields. In setting harvest objectives, the DNR could consider physical, biological, environmental, and recreational objectives.

Beginning October 1, 2018, and each subsequent year, the DNR would have to prepare for sale a minimum of 90% of the yearly statewide harvest objective.

Finally, all of the bills propose numerous technical fixes throughout for concise language and correct references to other parts of Michigan law.

MCL 324.301 et seq.

BACKGROUND INFORMATION:

The following history of managed public land in Michigan is reprinted in its entirety from *Managed Public Land Strategy: Appendices*, prepared and published by the DNR:[4]

> From the beginning of statehood, the State of Michigan has been in the real estate business and the owner of substantial acres of land. State policy shaped by public opinion determined how Michigan's public lands were viewed and how much land was retained in state ownership. The current DNR managed state land holdings -- state parks and recreation areas, game and wildlife areas and state forests -- were acquired through a deliberative process that reflected state policy and public opinion at the time. Early state policy supported the sale of publicly-held land for settlement and development, changed to support the sale of land for timber harvest and agriculture, and then evolved to a policy of owning and managing public lands for public benefits.
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> When Michigan was admitted to the Union in 1837, the federal government granted land to the state which was sold to help raise revenues for government operations, build roads and provide public services (6 million acres) and build schools and universities (1,357,000 acres). In addition, the federal government granted land to the state to sell to individuals for the construction of highways, railroads, canals and bridges. For example, 750,000 acres were granted from the federal government to the state and transferred to individuals to pay for the construction of the St. Mary's ship canal and 250,000 acres for military wagon roads. Through these grants, 12 million acres passed from the federal government to the state.
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> To process this land, the State Land Office was established in 1843, charged with the responsibility of moving land as quickly as possible into private ownership to encourage settlement of the state. By 1890, all but 500,000 acres of government-

[4] https://www.michigan.gov/documents/dnr/Public_Land_Mgt_Strategy_Appendices_422382_7.pdf

owned lands were sold to private owners. Much of the land was sold because of its natural resource values; timber, minerals, or for waterways.

The forested landscape of northern Michigan drew entrepreneurs who recognized the value of the forest to build the great cities, towns, and roads required by the rapidly growing nation. The lands were quickly acquired from the state and almost as quickly harvested and the timber was shipped to Chicago and other growing areas of the country. In 40 short years, the timber was gone and by 1870s the cut-over lands were being promoted and sold for agriculture purposes in attempt to lure immigrants from around the world to settle in Michigan. Poor soils, distance from markets, topography, and short growing seasons caused much of the farms to fail and the lands to go tax delinquent. The state policy at that time was to resell as fast as possible.

From the 1890s through the 1930s, the state underwent a series of economic downturns which caused lands to return to the state for non-payment of taxes -- over 116 million acres over a 22-year period. Public Act 206 of 1893, known as the General Property Tax Law, recognized the absolute taxing power of the state. Under this law, title on foreclosed property went to the state and a new chain of title was created allowing the state to sell the land and share the proceeds with local governments. By 1913, over two million acres of these lands had been turned over to the state and 1.8 million acres were transferred to private ownership through homesteading and sales. Whatever timber was remaining was harvested, and the land was again allowed to go tax delinquent. Other northern Michigan lands were purchased for farming, and because of poor soils were unsuccessful and were also allowed to go tax delinquent.

In an effort to stop this cycle of tax delinquencies, the legislature created a Forestry Commission in 1899 and began to set aside forest reserves. Further expansion of the state forests occurred with the creation of the Public Domain Commission in 1909. The creation of the Public Domain Commission was sparked by the gigantic forest fire in 1908 that roared across the state, burning more than 2.3 million acres of forest "slash" (the remnants left from logging) and costing the lives of 25 people. In 1911, the legislature provided the state with the authority to exchange lands to consolidate ownership, and in 1909 legislative action required the state to reserve the mineral rights on all lands sold or homesteaded.

In the early 1920s, the emerging state park system benefitted from the gifts of land to establish individual state parks, including D. H. Day in Leelanau County (now part of Sleeping Bear Dunes National Lakeshore), Hoeft State Park in Presque Isle County, Mears State Park in Oceana County, Wells State Park in Menominee County and ten sites in Livingston, Monroe and Oakland counties donated by the Dodge Brothers Automobile company and four sites in Oakland County donated by Howard Bloomer.

The exploitation of land and resources triggered the rise of the conservation movement and state policy then changed to a focus on wise allocation of land, rather than sale for shortterm gain. Various commissions including the Forestry (1899), Public Lands and Fishery (1873), and Parks (1919) Commissions were created to manage resources and to conserve resources. The commissions were eliminated with the creation of the Department of Conservation in 1921.

In 1922, the Michigan Land Economic Survey was created to survey the lands in northern Michigan to determine their value for agriculture or were more suitable for recreation or other public uses. The USDA (Land Use Planning Program) also had a land planning effort which lasted until the 1950s. These planning effort were also intended to stop the exploitation/tax delinquency cycle.

In the late 1920s and early 1930s, the federal government began a major resettlement effort purchasing marginal farmland and resettling occupants on more productive lands. The marginal lands were set aside for state or national forests. The Civilian Conservation Corp was then used to reforest much of these lands. Under this program, "Recreation Demonstration Areas" were created at Waterloo and Yankee Springs which were later transferred to the state and became Waterloo and Yankee Springs Recreation Areas.

The economic depression of the 1930 saw another major round of tax delinquencies. In 1933, up to 80 percent of the taxable property in Michigan was delinquent for at least one year. In an effort to assist ailing local units of government, the state purchased large amounts of tax delinquent lands, and paid off local assessments. By 1937, 80 percent of the taxable land in Michigan was delinquent for three or more years. The land was offered for sale and if not sold or the taxes paid prior to November 29, 1930, it became the property of the state. Through this process, the state took title to 2.2 million acres of land and a million subdivided parcels.

Land Use Planning Committees were organized for each county in the state, comprised of some 1,700 local, county, township and school officials. In the 47 counties of northern Michigan, the Department of Conservation requested that the committees review all state land holdings, including those that had recently become property of the state due to tax delinquency, and make recommendations as to their future as:

- State lands for recreation or forest purposes
- Locally controlled lands by counties, townships, or schools
- Private property.

As a result of this review, by 1950, over 1.3 million acres were offered for sale and sold and 130,000 acres were turned over to private ownership. The remaining acres were added to the state forest, wildlife areas or state park systems. Between 1950 and 1980, 62,000 additional acres of land reverted to the state and 200,000 acres of tax reverted lands were disposed of through sale, exchange or redemption.

In the 1940s the legislature recognized that the southern one-third of the state needed additional access to recreation and hunting lands and recreation facilities to attract tourists to the state. Several bond issues were passed, providing the resources to acquire marginal farmlands, turning them into state parks and wildlife areas. In 1944, $3 million was appropriated to acquire recreation areas in southeast Michigan and $1 million to acquire the Porcupine Mountains.

The Michigan Natural Resources Trust Fund was established by the legislature in 1976, heralded for the visionary purpose of the fund -- to replace the loss of one non-renewable resource (oil and gas) with another non-renewable resource (land). The Michigan Natural Resources Trust Fund was placed in the Constitution through a ballot proposal in 1984. The program specifies that royalties derived from the sale of land and lease of mineral rights owned by the state should be used for the acquisition, development or conservation of lands.

In 1984 and 1996, there were two extensive studies conducted on Michigan's public land policy. The Report of The Task Force on Public Lands Policy was presented to Governor James Blanchard in 1984 and provided a series of 24 recommendations regarding the state's public land policy. The primary point of this report was that the state needed to block in its ownership of land and the task force "did not find a need for major changes to land management practices and philosophies."

In 1996, the Senate Select Committee on Public Land Ownership, Purchase and Management also did an extensive study of the DNR's land acquisition policy as well as other state land-holding agencies. The select committee proposed seven "principle changes" in the state's land acquisition policy including improving outreach, greater flexibility in state programs to allow for shifts in land policy, regular review of Departments' mission statements as they relate to land policy, adopt new attitudes and incentives to work with the private sector; legislature should reaffirm its role as the chief conservator of the state's natural assets, and better coordination of all state agencies land management practices.

The DNR created a portfolio of how public land is currently acquired, sold, and used in Michigan. Additional information was gathered on economic activity involving state land, including how state land was sold to aid major economic activity by Michigan businesses.[5]

FISCAL INFORMATION:

House Bill 4475 and Senate Bill 302

The likely fiscal impact of these bills on the DNR and local units of government is unclear. The bills create reporting requirements for the DNR to maintain regarding its public land management. The bills also require the DNR to keep certain records and give periodic legislative updates, as well as communicate with local units of government regarding

[5] https://www.michigan.gov/documents/dnr/Draft_DNR_Public_Land_Management_Strategy-5-24-13_422381_7.pdf.

certain types of land use and management transactions. The extent of these administrative costs is unknown and likely to vary.

The bills also designate the primary purpose of the Game and Fish Protection Account as "managing habitat and thereby enhancing recreational hunting opportunities" and focus expenditure of the fund on game species to the exclusion of nongame species.

The DNR would be required to charge an application fee of $300 for the exchange of state land or the purchase of surplus land, plus the cost of application processing for parcels in excess of 300 acres. The DNR would also be allowed to charge an application fee not to exceed $300 or the actual cost of application processing to grant an easement. The amount of revenue likely to be generated by these application fees is uncertain at this time.

Senate Bill 303

Senate Bill 303 would have a neutral fiscal impact on the DNR. The administrative changes made to the Land Exchange Facilitation Fund would not necessarily affect departmental costs or revenues. This fund has been used to purchase land for natural resources management and to administer the sale of surplus state lands. The FY 2017-18 DNR budget includes $5.0 million in appropriations from the fund. The bill is unlikely to have a fiscal impact on local units of government.

ARGUMENTS:

For:

Supporters of the bills argued that, when taken together, the bills enable the DNR to carry out its purpose of managing Michigan lands. The bills address the public's needs for access to public lands, timely notice of land acquisitions and sales, and economic growth. Most notably, the bills would require the DNR to justify the construction of barriers impeding public access to public lands, require the DNR to provide public notice when buying or selling land, and prohibit the state from purchasing more land when it does not make full PILT payments.

Against:

Opponents of the bills argued that the bills don't do enough to ensure PILT payments or notice to interested parties. Critics argued that all PILT payments should be paid in full before other lands above the Mason-Arenac county lines can be leased or sold by the state, and not just when purchased by the state. Critics also would like to halt timber harvests on those lands until the PILTs are paid in full. These extra prohibitions would serve as incentives for the legislature to ensure timely and full PILT payments.

Response:

Proponents of the bills argued that these prohibitions would hinder the state's ability to pay the PILTs, thus prohibiting the state from properly managing public lands. If the state is behind in PILT payments because it does not have enough revenue to pay them, then prohibiting revenue generation through leasing and selling land and harvesting timber on those lands and thus prohibiting the state from earning revenue would ultimately prevent the state from making full PILT payments.

Against:

Opponents argued that when the DNR is selling or leasing lands, there should be personal notice requirements to adjacent landowners, in addition to the public notice required by the bills. The extra notice requirements would ensure that all interested parties have proper notice of the sale, as it could greatly impact adjacent landowners.

Against:

Critics also argued that the bills give too much control to townships in allowing them to stop a land sale to the DNR in the county where the township is located. In this scenario, a county could approve the sale, but if a single township opposed the sale, then the sale could not occur. Additionally, placing this ultimate veto power upon townships could prove to be too much of a burden on a small township's local government.

Response:

Supporters of the bills have responded to this argument by stating support for the positive relationships that the DNR has developed with townships across the state. Those relationships, taken with the ability for townships to approve or deny a sale, gives townships a voice in matters that could potentially have a serious impact on their economic livelihoods.

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