



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

House Bill 4475 (Substitute H-5 as passed by the House)  
Sponsor: Representative Gary Howell  
House Committee: Natural Resources  
Senate Committee: Natural Resources

Date Completed: 5-30-18

### **CONTENT**

**The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Legislatively approve the strategic plan for the acquisition and disposition of State-owned land issued by the Department of Natural Resources (DNR) in July 2013.**
- **Require the DNR to consider access to and use of public land and the existence of natural resources-based industries on the land, before issuing an order or promulgating a rule that would designate or classify land.**
- **Prohibit the DNR from acquiring land if the State did not make its full required payments in lieu of taxes (PILT) to local governments**
- **Require the strategic plan to identify trail connectors to enhance outdoor recreation activities.**
- **Require the DNR annually to submit to the relevant legislative committees and post and annually update on the Department's website information about the strategic plan.**
- **Require the DNR to update the plan every six years beginning in 2020 and require legislative approval of future updates.**
- **Require the DNR to notify the relevant legislative committees, post notification on its website, and publish notification in a newspaper before disposing of, acquiring, leasing, or developing certain land.**

The bill is tie-barred the Senate Bills 302 and 303. (Senate Bill 302 also would amend NREPA regarding land acquisition. Senate Bill 303 would amend NREPA regarding use of the Land Exchange Facilitation Fund.) House Bill 4475 (H-5) would take effect 90 days after enactment.

### **Northern Michigan Land Acquisition Cap**

Part 5 of NREPA governs the Department of Natural Resources and requires the DNR to protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forestland belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protection and propagation of game and fish.

The bill also would require the DNR, before issuing an order or promulgating a rule under NREPA that would designate or classify land managed by the DNR for any purpose, to consider all of the following:

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

The Department has the power and jurisdiction over the management, control, and disposition of all land under the public domain, except for land that is managed by other State agencies to carry out their assigned duties and responsibilities. On behalf of the people of the State, the Department may accept gifts and grants of land and other property and may buy, sell, exchange, or condemn land and other property, for any of the purposes of Parts. The Department is prohibited from acquiring surface rights to land unless it has estimated the amount of annual payments in lieu of taxes (PILT) on the land, posted the estimated payments on its website for at least 30 days, and notified the affected local units of the estimated payments at least 30 days before the acquisition. The bill would delete this prohibition.

The Department also is prohibited from acquiring 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 north of the Mason-Arenac line. The bill would delete this prohibition.

("Mason-Arenac line" means the line formed by the north boundaries of Mason, Lake Osceola, Clare, Gladwin, and Arenac Counties.)

The bill provides that if any payment for tax-reverted, recreation, or State forest land or PILT payments for land located north of the Mason-Arenac line were not made in full and on time during a fiscal year, then, until the end of that fiscal year, the DNR would be prohibited from purchasing surface rights to land located north of the Mason-Arenac line unless full payment was made later during that fiscal year or the specific acquisition was approved by resolution adopted by the following, as applicable:

- If the land were located in a single township, the township board.
- If the land were located in two or more townships, the county board of commissioners of the county where the land was located.

For the purpose of prohibiting the Department from acquiring surface rights to land north of the Mason-Arenac line, the number of acres of land in which the DNR owns surface rights does not include any of the following:

- Land in which the DNR has a conservation easement.
- Land platted under the Land Division Act, or a predecessor act before July 2, 2012, if acquired by the Department before that date.

The number of acres of land also does not include land acquired on or after July 2, 2012, if any of the following apply:

- Land with an area of less than 80 acres, or a right-of-way, for access to other land owned by the DNR.
- Land that, on July 2, 2012, was commercial forestland if the land continues to be used in a manner consistent with Part 511 (Commercial Forests).

- Land acquired by the DNR by gift, including the gift of funds specifically dedicated to land acquisition.
- Land acquired by the DNR through litigation.

The number of acres of land also does not include land for a trail, if acquired on or after July 2, 2012, subject to all of the following:

- If the traveled portion of the proposed trail is located within an abandoned railroad right-of-way, the land excluded is limited to the abandoned railroad right-of-way.
- If the traveled portion of the proposed trail is located in a utility easement, the land excluded is limited to the utility easement.
- If the traveled portion of the proposed trail is neither of these, the land excluded is limited to the traveled portion of the proposed trail and contiguous land, subject to a limit on the area of the contiguous land that is the product of 100 feet multiplied by the length of the proposed trail in feet.

Under the bill, for the purpose of prohibiting the Department from acquiring surface rights to land north of the Mason-Arenac line, land in which the DNR acquired or owned surface rights also would not include either of the following:

- Land acquired under an option agreement in effect on the date when the PILT became due if the acquisition took place within 120 days after the payment became due.
- Land for access to the water of the State as defined under Part 31 (Water Resources Protection).

The Department is required to maintain a record of land in which it owns surface rights but is not counted for the purpose of the prohibition against acquiring surface rights to land north of the Mason-Arenac line. The record must include the location, acreage, date of acquisition, and use of the land. The Department must post and maintain on its website all of the following information:

- The number of acres of land, including land not counted for the purpose of the prohibition, in which the DNR owns surface rights north of the Mason-Arenac line, south of the Mason-Arenac line, in total for the State, and by program.
- The number of acres of land, excluding land not counted for the purpose of the prohibition, in which the DNR owns surface rights north of the Mason-Arenac line, south of the Mason-Arenac line, in total for the State, and by program.

Under the bill, the record would be required to include only the location, acreage, date of acquisition, and use of the land. The requirement that the Department post the other information would be deleted.

The Act requires the Department, at least 30 days before acquiring or disposing of land, to submit to the Senate and House committees with primary responsibility for natural resources and outdoor recreation and the corresponding Appropriations subcommittees a statement identifying the land and describing the effect of the proposed transaction on achieving the goals set forth in the strategic plan. The statement must include Department contact information for people who wish to comment on the acquisition or disposition and be in a standard format. The Department also must post the statement on its website for at least 30 days before the acquisition or disposition. These provisions do not apply before the Department submits the strategic plan to legislative committees. The bill would delete these requirements.

If land owned by the State and managed by the DNR, land owned by the Federal government, and land that was commercial forestland constituted 40% or more of the land in a county, the bill would prohibit the Department from acquiring land in that county if, within 60 days after the DNR sent the notice of the proposed acquisition to the board, the Department received a copy of a resolution rejecting the proposed acquisition adopted by the following, as applicable:

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

The prohibition would not apply to land in which the DNR owns surface rights but is not counted for the purpose of the prohibition acquiring surface rights to land north of the Mason-Arenac line.

### Strategic Plan

The Act requires the Department to develop a written strategic plan to guide the acquisition and disposition of State land managed by the DNR, submit the plan to the Senate and House committees with primary responsibility for natural resources and outdoor recreation and the corresponding Appropriation subcommittees, and post the plan on the DNR's website. In developing the plan, the Department must solicit input from the public and local units of government.

The bill would require the strategic plan to identify critical trail connectors to enhance motorized and nonmotorized natural-resource-dependent outdoor recreation activities for public enjoyment.

The Act prohibits the Department from implementing a strategic plan as it applies to land north of the Mason-Arenac line. The Act also requires Department to report annually on the implementation of the plan and submit and post the report in on the Department's website. The bill would delete these provisions.

The bill states the Legislature approves the strategic plan entitled "Department of Natural Resources Managed Public Land Strategy" issued by the Department and dated July 1, 2013. The Department would have to implement the most recent legislatively approved strategic plan and could not change the plan except by a plan update proposed pursuant to procedures proposed by the bill and subsequently approved by the Legislature.

The bill would require the DNR annually to submit to the relevant legislative committees and post and annually update on the Department's website all of the following:

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

-- Information on the total number of miles of nonmotorized trails managed by the DNR.

"Relevant legislative committees" would mean the Senate and House committees with primary responsibility for natural resources and outdoor recreation and the corresponding subcommittees.

Under NREPA, beginning July 2, 2020, and then every six years, the DNR is required to update the strategic plan and submit and post the updated plan on the Department's website. At least 60 days before posting the updated plan, the DNR must prepare, submit, and post on the website a report on progress toward the strategic performance goals in portions of the State where the plan is being implemented and any proposed changes to the goals, including the rationale for the changes. The submittal and posting must include Department contact information for people who wish to comment on the report.

Under the bill, instead for legislative consideration and approval, by July 1, 2021, and then every six years, the Department would be required to propose an update to the strategic plan, submit the proposed updated plan to the relevant legislative committees, and post the proposed updated plan on the DNR's website. At least 60 days before posting the proposed updated plan, the Department would have to prepare, submit to the relevant legislative committees, and post on the DNR's website a report that covered all of the following and included Department contact information for people who wished to comment on the report:

- Progress toward the goals set forth in the strategic plan.
- Any proposed changes to the goals, including the rationale for the changes.
- The Department's engagement and collaboration with local units of government.

#### Sale of State Land

The bill would require the Department to maintain on its website and make available in writing to people seeking to purchase land from, sell land to, or exchange land with the DNR information about relevant requirements and procedures.

The Act provides that if the Department determines that it is in the best interests of the State to exchange any State-owned land for land of an equal area or of approximately equal value belonging to private individuals, the Department must maintain a description of the land to be conveyed and a description of the land belonging to individuals to be deeded to the State.

The bill would remove the reference to the Department determining whether it is in the best interest of the State to exchange and State-owned land for land of an equal area or of approximately equal value belonging to private individuals.

Under NREPA, before any of the land is deeded to an individual, the person or people owning the land must execute a conveyance of the land to the State. The Attorney General must examine the title to the land and certify to the DNR whether the conveyance is sufficient to vest in the State a good and sufficient title free from any liens or encumbrances. If the Attorney General certifies that the deed does so, the DNR must execute a deed to the individual of the land to be conveyed by the State selected by the DNR in lieu of the land.

The bill would require the Department to accept delivery of the deed and, if the Attorney General certified that the deed vested in the State a good and sufficient title free from any liens or encumbrances, execute a deed to the individual within 30 days.

The Act provides that a notice of a sealed or oral bid public auction sale of surplus land or a notice of a negotiated sale of surplus land must be published at least once in a newspaper as defined in the Revised Judicature Act, not less than 10 days before the sale or 10 days before the Department authorizes the sale. The newspaper must be published in the county where the surplus land is located. If a newspaper is not published in that county, the notice must be published in a newspaper in a county nearest to the county in which the land is located. A notice must describe the general location of the surplus land to be offered at the sale and the date, time, and place of the sale or that the Department will meet to authorize the sale. The bill would delete these requirements.

#### Notice of Land Acquisition

Under the bill, at least 30 days before disposing of, acquiring, leasing, or developing land that was more than 80 acres in size, the Department would have to do all of the following:

- Provide notice in writing to the legislative bodies of the local units of government where the land was located.
- Post the notice on its website.
- Publish the notice in a newspaper of general circulation in the county where the land was located.

The notice would have to contain all of the following information:

- The acreage, the 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 land transaction.
- The proposed use for the land.
- The opportunity for the legislative body of a local unit of government where the land was located, or five or more residents or owners of land in the county where the land was located, to request a general public meeting on the proposed transaction and the date by which the DNR would have to receive the request.
- A website address where additional information on the proposed transaction could be found.
- For people who wished to comment on or ask questions about the proposed transaction, the name, telephone number, electronic mail address, and mailing address of a DNR contact person.

The website notice would have to contain the following information:

- For the acquisition, lease from another person, or development of land, the fund source that would be used.
- For the acquisition of land, the estimated annual PILT.
- The effect the proposal was expected to have on achieving the strategic performance goals set forth in the strategic plan.

If the legislative body of a local unit of government where the land was located or five or more residents of or land owners in the county where the land was located requested a general public meeting and the DNR received the necessary request or requests within 15 days after providing notice, the DNR would have to meet with the general public in the county where the land was located to discuss the proposed disposition, acquisition, lease, or development. The Department would have to send to the meeting a representative who was familiar with the proposal.

The bill would require the Department to provide notice of a meeting by all of the following ways:

- Written notice to the legislative body of each local unit of government where the land was located.
- Written notice to each resident or owner of land who requested the meeting.
- Posting of the notice on the Department's website.

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

The bill's requirements would not apply to either of the following:

- A lease with a term of 10 years or less.
- A lease limited to exploration for and production of oil and gas.

Under the bill, "development" would mean development that would significantly change or have an impact on the current use of the land subject to development. "Developing" would have a corresponding meaning. The removal of a berm, gate, or other human-made barrier would not constitute development.

MCL 324.301 et al.

Legislative Analyst: Nathan Leaman

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

SAS\S1718\s4475sa

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.