

## EASEMENTS OVER STATE-OWNED LAND

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### House Bill 4298

**Sponsor: Rep. Steven Lindberg**

**Committee: Natural Resources, Tourism, and Outdoor Recreation**

**Complete to 6-6-11**

## A SUMMARY OF HOUSE BILL 4298 AS INTRODUCED 2-17-11

The bill would amend Part 21 of the Natural Resources and Environmental Protection Act to revise the conditions under which the Department of Natural Resources (DNR) can grant an easement over state-owned land. The bill also would *require* the DNR to grant an easement under certain conditions.

### Discretionary Easement

Currently, the DNR is permitted to grant an easement over state-owned land to an individual only if all of the following conditions are met:

- The individual does not have other access to the individual's land.
- The easement does not conflict with an existing program or department management plan or a local ordinance.
- The roadway for which the easement is granted is open to public access and is not a roadway for the exclusive use of the grantee.
- The easement provides the logical and most feasible access to the individual's land.
- The width of the roadway is restricted to the minimum consistent with the quality of the road.
- The individual agrees to construct and maintain the road.
- The individual offers a similar roadway easement to the DNR across the land to which the easement is to provide access.

House Bill 4298 would continue to allow the DNR to grant or provide for an easement to a requesting individual if the specified conditions were met. All requests would have to be made on a form provided by the department. The bill would make several changes to these provisions. (1) The first condition would be changed to refer to an individual's "legal" access. (2) The last condition would be changed by adding the specification that the department could not accept a roadway easement if it would end at a body of water. Also, (3) the DNR would have to provide a written notice of denial, including reasons for the denial, if it denies a request for an easement.

### Mandatory Easement

Under House Bill 4298, the DNR would be required to grant or provide for an easement to a requesting individual, if all the following conditions are met:

- A request for an easement is submitted on a form provided by the department.

- The individual does not have other legal access to the individual's land, as confirmed by a policy of title insurance or the written opinion of an attorney or the department.
- The easement does not conflict (1) with an existing program or management plan of the department; (2) with applicable state or federal laws governing the use of lands acquired using revenue from hunting and fishing license fees, federal funds from a wildlife or sport fish restoration program, or other state or federal program funds; (3) or with a local ordinance.
- The easement does not cross an environmentally sensitive area, including wetlands or critical dune areas.
- The individual offers a similar roadway easement to the DNR across the land to which the easement granted by the DNR was to provide access. The DNR cannot accept an easement if it would end at a body of water.

The DNR could impose conditions on an easement. If it denies an easement request, the DNR would be required to provide a written notice of denial, including reasons for the denial.

#### Prohibited Easement

Currently, the DNR cannot grant an easement if any of the following apply:

- The proposed easement is over land designated as a wilderness area, wild area, or natural area under Part 351 (Wilderness and Natural Areas).
- The proposed easement is over land in an area closed to vehicular traffic under a management plan approved by the department.
- The construction or use of the new or existing roadway will result in *unnecessary* damage to or destruction of the surface, soil, animal life, fish or aquatic life, or property.

This bill would change the third condition to refer to *unreasonable*, instead of *unnecessary*, damage.

MCL 324.2123 et al.

#### **FISCAL IMPACT:**

House Bill 4298 would have no fiscal impact on the State of Michigan or on local units of government.

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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.