

# Legislative Analysis

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## EASEMENTS ACROSS STATE-OWNED LAND

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**House Bill 4622 as introduced**

**Sponsor: Rep. Stephen F. Adamini**

**Committee: Natural Resources, Great Lakes, Land Use, and Environment**

### **First Analysis (4-20-06)**

**BRIEF SUMMARY:** The bill would amend the Natural Resources and Environmental Protection Act to require the DNR to provide private road easements through state land if certain conditions are met.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local governmental units.

### **THE APPARENT PROBLEM:**

There are many landlocked parcels of land in the state to which there is no legal access. If these parcels are within state-owned land, often the landowner is allowed to use roads maintained by the Department of Natural Resources. This, however, does not provide the legal access necessary to obtain financing to purchasing land. The Natural Resources and Environmental Protection Act provides landowners with legal access by permitting the DNR to provide an easement over state land.

Typically, requests for private access easements are made to the DNR informally through the local forester or other DNR field staff. In most instances the DNR staff, following discussions with the landowner, denies the request for an easement, and the matter is often settled. However, a fair number of easement requests are forwarded on to the Lansing office for a more thorough review. (The Department of Natural Resources notes that in 2005 it received 16 "formal" requests and approved 11.) As with other DNR land transactions, easement requests are reviewed by field staff, Lansing staff, and an internal review committee for their impacts on natural resources and public benefit before a determination is made by the department's director.

The current system of reviewing easement requests – where field staff effectively "pre-screen" requests - is problematic. Given that many requests are not formally made to the department, the department often does not fully review easement requests. Further, many requests are denied without citing specific reasons for the denial, giving the appearance that the department's decisions are made arbitrarily. Legislation has been introduced to clarify how requests for private access easements are to be made and granted has been introduced.

## ***THE CONTENT OF THE BILL:***

Subpart 8 (Easements Across State Land) of Part 21 (General Real Estate Powers) of the Natural Resources and Environmental Protection Act permits the Department of Natural Resources to grant an easement for a private roadway across state-owned land controlled by the department if the following conditions are met:

- The individual does not have other access to his or her land.
- The easement does not conflict with existing DNR management plans or programs or local ordinances.
- The roadway is open to public access and is not for the exclusive use of the grantee.
- The easement provides the logical and most feasible access to the land.
- The width of the roadway is restricted to the minimum necessary for the quality of the road required.
- The individual agrees to construct, if necessary, and maintain the road.
- The individual offers a similar roadway easement to the DNR across the land.

House Bill 4622 would require, rather than allow, the Department of Natural Resources to grant an easement if all of the above criteria are met. The bill also provides that when a request for an easement is denied, the department would be required to provide the individual who requested the easement with written notification that the request was denied and the reasons for that denial.

Additionally, the act currently provides that the department shall not grant an easement if, among other criteria, the construction or use of the roadway will result in "**unnecessary**" damage to or destruction of certain wildlife and property. House Bill 4622 specifies instead that the request would be denied if the construction or use of the roadway would result in "**unreasonable**" damage to or destruction of wildlife and property.

[In addition to the above provision to be amended, the act provides that the department shall not grant an easement if the proposed easement is over land designated as a wilderness area, wild area, or natural area under Part 351 or is over land in an area closed to vehicular traffic. Also, the act provides that if the land to which an easement is granted is subsequently subdivided, the easements shall be terminated.]

MCL 324.2123 and 324.2124

## ***BACKGROUND INFORMATION:***

Representative Adamini has offered a floor substitute (H-2). In addition to the changes proposed by the bill as introduced, the substitute makes the following changes:

- Requires that the request for an easement be made on a form approved by the DNR.
- Specifies that the individual does not have other *legal* access to his or her land.

- Permits the document granting the easement to include a requirement that the parcel benefiting from the easement not be split into parcels of less than 40 acres. [Note: This provision appears to conflict with Section 2128 which provides that if the land to which an easement is granted is subsequently subdivided, the easements shall be terminated.]

## ***ARGUMENTS:***

### ***For:***

The current practices employed in reviewing private road easement requests are particularly troublesome for many property owners seeking to obtain legal access to their land. Apparently most requests are denied, which prevents property owners from obtaining legal access to their land. The lack of legal access depresses property values and makes it difficult for others to obtain financing if the landowner seeks to sell the land. The bill, then, makes a number of amendments to current law designed to facilitate the granting and administration of private road easements by the DNR.

The bill requires, rather than permits, the DNR to grant easements if certain criteria are met. As currently written, all of the conditions for granting an easement can be met, yet the DNR could still deny the request, leaving the landowner without legal access to the land. It's not clear what, if anything, the landowner could do to obtain access if he or she meets the criteria specified in statute and the DNR denies to easement request.

Additionally, the bill requires the DNR to provide the landowner with written notification that an easement request has been denied, and the reasons for that denial. Reportedly, the DNR does not currently do this, and landowners may not be fully aware of why the easement request was denied. Quite simply, the landowner cannot remedy a deficient request if he or she is not apprised of the reasons for the denial.

Finally, the bill provides that an easement request would be denied if the construction or use of the roadway would result in "unreasonable," rather than "unnecessary," damage to or destruction of wildlife and property. This change recognizes that some damage will occur through the use or construction of the roadway. The apparent intent is to clarify that an easement request won't be denied simply because some damage may result from the use or construction of the road.

### ***Response:***

Requiring the DNR to provide landowners with written notification when an easement request is denied is problematic for the department given that many requests are informal in nature, with the landowner discussing the possibility of an easement with the local field staff. The DNR receives numerous requests of this nature, and it is not clear if these requests also require notification.

### ***Rebuttal:***

This situation is remedied by the provision in the proposed floor substitute that would require requests to be made on a form approved by the DNR.

***Against:***

The DNR typically denies most easement requests out of concern that an easement will result in increased private development of land within and adjacent to state land, fragmented ownership, the proliferation of roads, and will hinder the department's land consolidation efforts. The department grants a request for an easement where there is a true demonstrated need and no alternatives obtaining access, and where the impact on wildlife and natural resources can be minimized. Departmental procedures also require that the landowner agree to other restrictions on the use of the property, such as limiting development to a single family residence and not further subdividing the land. The bill does not take these other criteria into consideration, and potentially grants easements irrespective of any adverse impacts on the natural resources, wildlife, or departmental programs.

The DNR prefers the flexibility currently provided for in the act, as it often seeks alternatives to an easement. Often the department will offer to buy or exchange land, if a parcel is landlocked by state land. If the department is required to grant an easement, individual landowners may be less inclined to seek alternatives. Further, the department, in furtherance of its responsibility for the conservation, protection, and management of the state's natural resources, is working on consolidating its land holdings. This bill confounds these efforts by proliferating the number of easements.

Further, the DNR has stated that granting an easement has the effect of encumbering title of the affected land, reducing the land's market value. If this land is purchased with federal funds, it could be considered a diversion of those funds and require approval of the federal agency.

***POSITIONS:***

The Department of Natural Resources opposes the bill as introduced (2-16-06)

The Michigan United Conservation Clubs opposes the bill as introduced. (2-16-06)

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