

## ROADWAY EASEMENTS OVER STATE LAND

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### House Bill 4981

**Sponsor: Rep. Steven Lindberg**

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

**Complete to 7-16-07**

### A SUMMARY OF HOUSE BILL 4981 AS INTRODUCED 6-27-07

The bill would amend Part 21 (General Real Estate Powers), Subpart 8 (Easements Over State Owned Lands) of the Natural Resources and Environmental Protection Act (NREPA), to revise the law governing the grant of roadway easements over state-owned land to individuals owning nearby private land.

Among other things, the bill would (1) make the grant of such a roadway easement mandatory provided that all of the specified conditions were met (and none of the disqualifying conditions were present); (2) revise the conditions that would qualify or disqualify property for such an easement; (3) allow an easement document to prohibit a parcel of land being served by the easement from being partitioned or split into parcels of less than 40 acres; and (4) require the Department of Natural Resources (DNR) to provide a written notice and an explanation when denying a request for an easement over state land.

Grant of easement would be mandatory if certain conditions met (and certain disqualifying conditions not present). Existing Section 2123 of NREPA, MCL 324.2123, provides that the DNR *may* grant an easement over state owned land under the jurisdiction of the department 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 management plan of the department or a local ordinance.
- The roadway for which the easement is granted is open to public access and is not a public 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 required.
- The individual agrees to construct, if necessary, and maintain the road.
- The individual offers a similar roadway easement to the department across the land to which the easement is to provide access.

The bill would change the first sentence of Section 2123 to provide that, *subject to Section 2124* (the section setting forth disqualifying conditions), the department *shall*

*grant or otherwise provide for an easement for a roadway over state owned land under the jurisdiction of the department to an individual who requests it, but only if all of the specified conditions were met. These changes would appear to (1) make the grant of the easement mandatory if all the specified conditions were met (and none of the disqualifying conditions in Section 2124 applied); (2) clarify that the provision applies to easements for roadways; and (3) require that an affirmative request be made for the easement.*

Revisions to conditions for an easement over state-owned land. While most of the conditions in Section 2123 (set forth above) for an easement over state-owned land would remain the same, the bill would make the following changes:

- The roadway easement request would have to be made on a DNR form.
- The individual could not have other *legal* access to the individual's land. (The word "legal" is new.)
- The roadway for which the easement is granted is open to public access and not for the exclusive use of the grantee. (This provision already exists but the wording has been revised slightly.)
- The individual offers a similar roadway easement to the department across the land to which the easement *granted by the department* is to provide access. (This provision already exists but the wording has been revised slightly.)

Easement restriction barring the land from being split into parcels of less than 40 acres. In addition, the bill would allow, but not require, the document granting the easement to prohibit the parcel of land benefiting from the easement from being partitioned or split into parcels that are less than 40 acres in size.

[Note: Existing Section 2128(1) of NREPA, MCL 324.2128(1), provides that if land to which an easement is granted by the DNR is subsequently subdivided within the meaning of the Subdivision Control Act, the easement automatically terminates. Generally speaking, "subdivision" within the meaning of that statute means partitioning or splitting land (for sale, a lease of more than one year, or building development) resulting in one or more parcels of less than 40 acres and to which platting procedures apply. By contrast, if a partitioning or splitting is an allowed "division" of land, instead of a "subdivision," it is exempted from platting requirements under Sections 108 and 109.<sup>1</sup> It would appear,

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<sup>1</sup> The full definition found in MCLA 560.102, is as follows: "'Subdivide' or 'subdivision' means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109. 'Subdivide' or 'subdivision' does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance."

Sections 108 and 109, MCL 560.108 and 109, are complex provisions exempting certain "divisions"—as opposed to "subdivisions"—from platting requirements. In general, Section 108 describes the frequency and number of divisions allowed under the statute without following platting procedures; Section 109 specifies conditions that, if met, obligate a municipality to approve a proposed division.

then, that under current law, if an owner of the land benefiting from an easement over state land *subdivided* his or her land (which by definition would result in at least one parcel of less than 40 acres), the subdivision would terminate the easement. On the other hand, if the owner *divided* the land within the meaning of Sections 108 and 109 (which could also produce parcels of less than 40 acres in size), the division would not require platting, and would *not* terminate the easement.

In any event, if the bill were enacted, the easement document could explicitly prohibit partitions or splits of the land served by the easement that would result in lots less than 40 acres in size, whether or not the partition or split were a subdivision or a division for purposes of Section 2128(1). In this case, existing Section 2128(2), MCL 624.2128(2), would come into play. Under that section, if an individual who obtains an easement over state land violates the terms of the easement, the easement terminates, and any rights in the easement terminate, after opportunity for a hearing.]

Written notice of denial. If a request for a roadway easement over state land were denied, the DNR would have to provide written notice of the denial and the reasons for it.

Disqualifying conditions set forth in Section 2124. Existing Section 2124 sets forth the conditions that, if existing, would prevent the DNR from granting an easement:

- The proposed easement is over land designated as a wilderness area, wild area, or natural area under Part 351 (Wilderness and Natural Areas) of NREPA.
- 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.

The bill would change the third disqualifying condition to read: The construction or use of the new or existing roadway will result in *unreasonable* (instead of unnecessary) damage to or destruction of the surface, soil, animal life, fish or *other* aquatic life, or property.

## **FISCAL IMPACT:**

There would be no fiscal impact on the state 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.