

STATE FOREST RECREATION

Senate Bill 728 (Substitute H-3) First Analysis (6-4-98)

Sponsor: Senator Philip E. Hoffman
**House Committee: Conservation,
Environment and Recreation**
**Senate Committee: Natural Resources
and Environmental Affairs**

THE APPARENT PROBLEM:

Michigan's forest system is made up of approximately 3.9 million acres of land, making it the largest state forest system in the nation. It provides numerous recreational, economic, and ecological benefits to the state. However, despite the value of this resource, the state's forest system has experienced reductions in funding and personnel. For example, the state's general fund budget for state forests decreased from 1979 to 1984, and has remained largely unchanged since 1985. The State Forest Recreation Advisory Committee was formed in 1990 to address key recreation issues facing the state's forests, and, in 1995, issued "Forest Recreation 2000," a report that confronted recreation issues, and outlined a number of recommendations.

Some of the recommendations outlined in "Forest Recreation 2000" have been incorporated into legislation: Senate Bill 727 would add a new Forest Recreation Category to the Natural Resources and Environmental Protection Act (NREPA) to require the Department of Natural Resources (DNR) to develop an integrated state forest recreation system; House Bill 5254 would amend Part 503 of the NREPA, which outlines the DNR's powers and duties, to conform to the provisions of Senate Bill 727; and House Bill 5278 would amend Part 509 of the NREPA, which outlines the use of state parks, state forest campgrounds, and other state forest areas, to separate state park from state forest permit programs, and to establish a Forest Land User Fund to cover the costs of monitoring and reviewing state forest permit applications. (For further information, see the House Legislative Analysis Section's analysis of House Bills 5254 and 5278 and Senate Bill 727 dated 11-13-97).

House Bills 5254 and 5278 are pending in the Senate Committee on Natural Resources and Environmental Affairs. However, Senate Bill 727 was vetoed on January 2, 1998, since, among other things, it specifies that snowmobile trails be developed and operated by the DNR under the direction of the Michigan Snowmobile Advisory Committee (MSAC).

This provision is considered by the governor to be an "unconstitutional delegation of authority." However, legislation is still required if the proposed state forest recreation system is to be developed. Consequently, it has been suggested that some of the recommendations proposed in Senate Bill 727, with the exception of the problematic provision, be re-enacted.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to require the Department of Natural Resources (DNR) to develop an integrated state forest recreation system; to permit the DNR to grant concessions on lands it owns or controls; to require that the department promulgate rules to implement the provisions of the bills; and to establish a Forest Recreation Fund, which would be used by the DNR to develop, maintain, operate, and promote forest recreation activities and to implement the provisions of the bill.

Senate Bill 728 is tie-barred to House Bill 5254, which would amend Part 503 of the NREPA, which outlines the DNR's powers and duties, to conform to the provisions of Senate Bill 728, and is also tie-barred to House Bill 5278, which would amend Part 509 of the NREPA, which outlines the use of state parks, state forest campgrounds, and other state forest areas, to separate state park from state forest permit programs. House Bill 5278 would delete references to state forest campgrounds and other state forest areas, which, under the provisions of Senate Bill 728, would be specified in Part 831, and would establish a Forest Land User Fund, which would be used to cover the costs of monitoring and reviewing state forest permit applications.

Senate Bill 728 (MCL 324.83101 et al.) would add a new Forest Recreation category (Subchapter 7) to Chapter 2 of NREPA, which pertains to the management of renewable resources. Part 831 of the new section would require the following:

Department Responsibilities. The DNR would be required to develop, operate, maintain, and promote an integrated recreation system that provided opportunities for hunting, fishing, camping, hiking, snowmobiling, off-road vehicle trail riding, boating, trail-related activities, and other forms of recreation within each state forest. The bill would specify that, in implementing these provisions, the department would have to focus on maintaining the integrity of the forest while supporting recreational activities and experiences for which a large land base, rustic nature, and the forest and its values were critical to the activity. The DNR could also grant concessions; enter into contracts; lease property; and accept gifts and grants to implement these provisions. All money collected by the department under these provisions would be deposited into the Forest Recreation Fund, which the bill would create.

Concessions. In granting a concession within state forest boundaries, the department would have to ensure the following:

- That the concession, or any related structure, facility, equipment, or service, was compatible with the natural resource values of the surrounding forest area and was appropriate for the forest recreation system.
- That each concession was awarded at least every seven years, based on extension, renegotiation, or competitive bidding. (However, if the department determined that a concession required a capital investment in which a reasonable financing or amortization necessitated a longer term, then the department could grant up to a fifteen-year term.)
- That all buildings and equipment would be removed from the state forest property at the end of the concession term, unless the department authorized otherwise.
- That no concession or concession operator would be authorized to charge a fee for access to public land or a public recreation resource.
- That all prices, rates, and charges, and all services or items offered in the operation of the concession, would be approved by the department.

The bill would also specify that the DNR would be required to submit a report to the legislature by December 31st of each year, providing details on all concessions awarded during the previous year.

Volunteers. The DNR could appoint volunteers to assist in forest recreation activities. A volunteer would

be treated in the same manner and would have the same immunity from civil liability as a department employee, as specified under Public Act 170 of 1964, which pertains to governmental liability for negligence. They would, however, be prohibited from carrying firearms when functioning as a volunteer.

Camping Permits. The DNR could require that fees be established for camping permits in designated state forest campgrounds. However, the DNR would have to provide written notice of its intent to increase camping permit fees six months before doing so to the Senate and House standing committees with jurisdiction over natural resources and environmental legislation. The DNR could also require that a permit would have to be obtained to use state forest lands and facilities that were designated by the department for recreational use. Money from fees would be deposited in the Forest Recreation Fund.

Enforcement. Compliance with the provisions of Part 831 would be governed by the state land use rules provided in the Administrative Code (R 299.331 to R 299.335), and any orders of the director. In addition, the director could commission state forest officers to enforce these rules and any laws of the state upon properties administered by the department. The officers would be vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under state law while performing these enforcement activities.

Penalties. A violation of Part 831, or a rule promulgated under Part 831, would be a civil infraction, punishable by a possible civil fine of up to \$500.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate impact on state funds, depending on the amount of revenue received from concession contracts at state forests. (6-2-98)

ARGUMENTS:

For:

The bills could help create an integrated forest recreation system. For example, the new Forest Recreation Fund would receive state forest campground fees, permit fees for other recreational uses of state forests, revenue from concessions, and

lease payments, as well as grants from any other public or private source. The money in this fund would be dedicated to the development and maintenance of state forests and the implementation of Part 831. The bill would also make it clear that the Department of Natural Resources could grant concessions. Canoe liveries, mountain bike rentals, and facilities such as warming sheds are currently allowed in state parks and should be encouraged in state forests to generate funds. In addition, the bill would recognize volunteers by granting them official status. In testimony before the House Conservation, Environment and Recreation Committee, a representative of a state mountain biking association stressed the need for liability protection for volunteers who work on forest trails. The bill would accomplish this by providing them with the same immunity from civil liability as current DNR employees.

Against:

It is not clear that creating more use in state forest lands -- as contemplated under the proposed forest recreation system -- would be beneficial for state forests. The creation of more trails would certainly attract more visitors, but this could lead to the destruction of forest habitat. In addition, it is feared that the development of more state forest trails could compromise private lands adjacent to state forest lands, since off-road vehicle (ORV) and snowmobile users might be tempted to stray over property lines. But perhaps the most important concerns are those expressed by people who are troubled that the proposed concessions could result in a "commercialization" of areas that are best left essentially wild. While the bill does require that each concession must be compatible with the natural resource values of the surrounding area, it is also true that public values often change over time. This provision of the bill could ultimately open the door for a greater business presence in areas that survive only if left essentially wild.

Against:

Senate Bill 727 would have allowed the DNR to provide a diverse range of recreational opportunities within the proposed forest system. However, it was

vetoed, in part, because the proposed activities conflicted with current law. In his veto message, the governor noted that such activities as off-road vehicle (ORV) riding needed more restrictive management than would have been required under the bill.

However, as written, Senate Bill 728 includes a similar provision for ORVs. This provision should be deleted.

POSITIONS:

The Department of Natural Resources supports the bill. (6-2-98)

The Michigan United Conservation Clubs supports the bill. (6-2-98)

The North American VASA, Inc., a cross country skiing association named after the Swedish Vasaloppet cross country ski race, supports the bill. (6-2-98)

The Michigan Mountain Biking Association supports the bill. (6-2-98)

The State Forest Recreation Advisory Committee supports the bill. (6-2-98)

The Michigan Townships Association opposes the bill. (6-2-98)

Analyst: R. Young

■ 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.