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STATE LAND RESERVES

House Bill 4060 as enrolled
Public Act 114 of 1998
Second Analysis (8-28-98)

Sponsor: Rep. William Bobier
House Committee: Forestry
and Mineral Rights
Senate Committee: Economic
Development, International Trade
and Regulatory Affairs

THE APPARENT PROBLEM:

The state does not permit drilling for oil or gas within state parks. However, it was recently revealed by the news media that oil and gas reserves located *beneath* Muskegon, Duck Lake, and Silver Lake state parks -- all of which are located along the Lake Michigan shoreline -- might soon be leased by the Department of Natural Resources (DNR). The department has scheduled an auction on December 16th to auction off the state-owned mineral rights. If the mineral rights are leased, and the companies who obtain the leases also secure drilling permits from the Department of Environmental Quality (DEQ), drilling would be conducted on an angle (called "directional drilling") from just outside park boundaries to reach oil and gas beneath the parks. Although the department has expressed assurances that drilling rigs could operate on the perimeter of the state parks without harming the environment, the proposed drilling has outraged many in the environmental community. In response, legislation has been proposed to encourage the development of state land reserves, under which areas of special environmental significance, such as wilderness areas, critical dunes, and wetlands would be purchased by the state and where development would be barred. The concept of state land reserves and the legislature's supervisory jurisdiction over them has been recognized in the state constitution since 1963. Section 5, Article X of the constitution specifies:

The legislature by an act adopted by two-thirds of the members elected to and serving in each house may designate any part of such lands as a state land reserve. No lands in the state land reserve may be removed from the reserve, sold, leased or otherwise disposed of except by an act of the legislature.

THE CONTENT OF THE BILL:

The bill would amend the section of the Natural Resources and Environmental Protection Act (NREPA) that regulates rules, powers, and contracts pertaining to the Natural Resources Commission to specify that state-owned property could be designated as "reserved property." The provision would be contingent upon concurrence by the legislature by resolution, adopted by a two-thirds vote of the members of each house of the legislature. The provisions of the bill would apply to property involving at least 640 contiguous acres of land. The bill would also delete obsolete language from the act.

Natural Resources Commission. The commission would have to place the question of designation of a state land reserve on its agenda upon petition by a person, recommendation of the Department of Natural Resources (DNR), or on its own motion. The petition, recommendation, or motion would have to include the land proposed for inclusion within the state land reserve, and a rationale for its inclusion. A tract of land would be eligible for commission consideration for designation if it included at least 640 contiguous acres of state-owned land and contained one or more of the following areas that were regulated or protected under the Natural Resources and Environmental Protection Act (NREPA): a critical dune; a high-risk area; a wetland; an endangered species; a wilderness area or natural area; a natural river; or any other significant surface or subsurface natural feature or area of environmental sensitivity.

Public Testimony. Prior to making a recommendation on the designation of a state land reserve, the commission would have to receive public testimony on the issue. After considering the testimony, the commission would submit a written recommendation to the legislature on whether or not it believed a state land reserve should be designated. The commission could also expand or restrict the proposed land area. The

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commission's recommendation would have to include a rationale for its decision.

Resolution. As specified in Section 5, Article X of the state constitution, a member of the legislature could offer a resolution to create a state land reserve upon receiving the commission's recommendation. However, the resolution would not have to conform to the commission's recommendation. When considering the resolution, the legislature would also have to consider the need for a buffer zone surrounding the land to eliminate the potential drainage of oil and gas. A state land reserve would be designated if the legislature adopted the resolution by a two-thirds vote. As also specified under the state constitution, land within a state land reserve could not be removed from the reserve, sold, leased or otherwise disposed of except by another resolution of the legislature.

Department of Natural Resources (DNR). When a state land reserve had been designated, the DNR would attempt to purchase, trade, or otherwise acquire any holdings within the contiguous area of the reserve that improved ownership patterns, including any severed mineral rights. The owner of an inholding who wanted to sell or lease it, or his or her interest in it, would have to first offer the land or interest in it to the state, and give the state a right of first refusal, if that parcel of land was subject to the state transfer tax.

MCL 324.502a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the bill would have an indeterminate impact on state funds. The HFA reports that the state would lose oil and gas revenues. However, the precise amount of the loss of revenues cannot be calculated, since it is now known how many parcels of land would be reserved in the proposed state land reserve. (12-9-97)

ARGUMENTS:

For:

The provisions of the bill would prevent the type of controversy that recently occurred at the site of the Nordhouse Dunes Wilderness Area, a 4,500 acre tract of forest and sand dunes along the Lake Michigan shoreline. Oil and gas exploration was banned from the area in 1987, and it was claimed at the time that such drilling would cause pollution and other damage to the wilderness area. The companies that owned the oil and gas reserves beneath the area sued the state, claiming that its ban constituted a "taking" of their property. In 1995, after the state lost in court, it

agreed to a \$90 million settlement with the companies. However, although it was assumed that this costly settlement would prevent future efforts to drill beneath the dunes, such was not the case. The agreement prohibited drilling within the wilderness area, but there are parcels of land adjacent to the wilderness area where the mineral rights are held by private property owners. Reportedly oil companies are exploring the possibility of leasing the mineral rights from these property owners. They could then set up drilling systems outside the wilderness area and use slant, or directional, drilling to get to the minerals. Similar situations have been occurring, with increasing frequency, in other areas of the state, that involve environmentally sensitive land. Under the provisions of the bill, the state would prevent this from happening by purchasing contiguous parcels of such property, designating the land a state land reserve, and then establishing a buffer zone around the reserved land so that it could not be developed.

Against:

The proposed lease of state-owned mineral rights does not ensure that the oil and gas companies will be allowed to drill near the Muskegon, Duck Lake, and Silver Lake state parks, as critics maintain. In order for drilling to take place, the companies would first have to own or lease the minerals to be drilled; own or lease the surface area where the drilling would take place; and obtain a drilling permit from the DEQ. In any case, should oil and gas companies be successful in obtaining control over surface and subsurface mineral rights, and obtain a permit to drill, it is unlikely that sensitive environmental areas would be disturbed. The DNR's decision to lease state-owned mineral rights was based on a review of computerized maps and databases that show the location of critical sand dunes, wetlands, and endangered species; presumably, the mineral rights would not be auctioned off if the proposed drilling would have a negative impact on such environmental areas. In addition, state policy requires that drilling rigs be kept at least 1,500 feet from the Lake Michigan shoreline.

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.