

Legislative Analysis



COMMERCIAL FOREST & QUALIFIED FOREST LANDS

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House Bill 4969 (Substitute H-2)
Sponsor: Rep. Frank Foster

House Bill 4970 (Substitute H-1)
Sponsor: Rep. Matt Huuki
Committee: Natural Resources, Tourism, and Outdoor Recreation
(Substitutes Referred by the Subcommittee on Forestry and Mining)

Complete to 2-6-12

A SUMMARY OF PROPOSED COMMITTEE SUBSTITUTES FOR HB 4969 & 4970

BACKGROUND INFORMATION:

Part 511 (Commercial Forestland) of NREPA allows land to be registered as commercial forest and to be subject to a specific tax of \$1.25 per acre, rather than the standard ad valorem property tax. Land enrolled in this **Commercial Forest Program** must be open to the general public for hunting and fishing. According to the department, there are approximately 2.2 million acres enrolled in the CF Program, and all but roughly 45,000 are located in the Upper Peninsula. The Commercial Forest Program provides a property tax reduction to private landowners as an incentive to retain and manage forestland for long-term timber production.

In 2006, the General Property Tax Act was amended to add the **Qualified Forest Property** tax exemption (Public Acts 378-380 of 2006). The program was intended to encourage private land owners to manage their land for forestry by exempting qualified land from some school operating taxes. Land owners participating in this program do not have to allow access to the general public, and land must be managed according to a department-approved forest management plan. The amount of land eligible statewide for the qualified forest property tax exemption was capped at 1.2 million acres for the fiscal year ending September 30, 2011. According to the department, the Qualified Forest Property Program currently has approximately 70,000 enrolled acres.

The Commercial Forest Program and the Qualified Forest Program are two separate property tax incentive programs. Land cannot have both a Commercial Forest and a Qualified Forest Property tax designation.

Generally speaking, the bills would allow land owners in the Commercial Forest Program to move to the Qualified Forest Property Program without penalty, under certain conditions, and would allow some land owners in the Qualified Forest Property Program to leave that program without penalty, under certain conditions.

BRIEF SUMMARY:

House Bill 4969 (Proposed Substitute H-2) would amend the Natural Resources and Environmental Protection Act (NREPA) to add a new section for **Qualified Forest Property**, substantially revising the provisions of that program, and to make various changes to the **Commercial Forest Program**. In general, the bill provides a new framework for the Department of Natural Resources (DNR) to operate the Qualified Forest Program, which is currently contained in the General Property Tax Act.

House Bill 4970 makes various amendments to the General Property Tax Act concerning qualified forest property. Among other things, the bill removes the process and administrative responsibilities of the Qualified Forest Program from the General Property Tax Act to allow it to be re-established in NREPA. The bill also removes the cap placed on the total number of acres of land allowed to be exempted under the program.

House Bills 4969 and 4970 are tie-barred to each other and to House Bill 4302. House Bill 4302, which is described in a separate summary, would change the formula used to determine the recapture tax in the Qualified Forest Program

A detailed section-by-section summary of House Bill 4969 follows later.

FISCAL IMPACT:

As written, the bill would reduce local school operating revenue by an unknown amount depending on the taxable values of the parcels converted into qualified forest property. As a result, the School Aid Fund (SAF) would be required to make up for the reduction to maintain the foundation allowance. In the event that there is inadequate SAF revenue to make up for the shortfall, the foundation allowance would be reduced on a pro rata basis.

Because the bills allow landowners with land that is enrolled in the Commercial Forest Program to move their property into the Qualified Forest Program with no penalty, under specific conditions, the state's annual payments to County Treasurers may be reduced. The amount of any reduction would be depended upon the amount of land that might be transferred. Owners of land enrolled in the Commercial Forest Program must currently pay a tax of \$1.25 per acre. In addition, the State is required to pay an additional \$1.25 tax per acre in an annual payment to county treasurers from the state's General Fund. Any reduction in land enrolled in the Commercial Forest would result in a direct savings to the state through a reduced annual General Fund payment.

In addition, any land that is transferred from the Commercial Forest Program to the Qualified Forest Program should result in an increase in local tax revenue overall because while the land would still be exempt from the taxes levied by local school districts, the land would be added to the ad valorem tax roll of the local unit of government.

In addition, House Bill 4969 would make changes to the required duties of the DNR with regard to the Commercial Forest Program and the Qualified Forest Program. These changes are not anticipated to have a significant fiscal impact on the Department.

According to the DNR, in FY 2011 there were 2.2 million acres in the Commercial Forest Program and approximately 70,000 acres enrolled in the Qualified Forest Program.

Under the provisions of the bill, land owners with land enrolled in the Qualified Forest Program would be required to have a forest management plan prepared by a qualified forester. The requirement that the DNR must develop management plans when requested has been eliminated. Owners would also be required to hire qualified foresters to perform audits of their management plan's implementation every ten years, while the DNR would be authorized to only conduct random audits on properties. The bill also stipulates that the Department must notify each county and township and land owner that has land enrolled in the Commercial Forest Program of the changes to the program.

House Bill 4969 creates the Qualified Forest Fund within the State Treasury and requires that land owners pay a \$200 program fee when an submitting application to enroll a piece of property in the Qualified Forest Program and a \$200 program fee with a reassessment application every 10 years after enrollment. These revenues must be deposited into the new Qualified Forest Fund and may be used by the DNR to pay for program administration and forest property audits.

DETAILED SUMMARY (HOUSE BILL 4969):

The following is a section-by-section description of the changes affecting the Commercial Forestland Program.

Section 51102 - Approval for Expenses

The bill removes a provision requiring the approval of the State Administrative Board for all expenses incurred and staff employed to implement the Commercial Forest Program.

Section 51103 - Minimum Acreage

The bill increases the minimum amount of land needed in order to qualify for the Commercial Forest Program to at least 160 total acres, composed of parcels of not less than 40 contiguous acres. Currently, land owners are required to own a minimum of 40 contiguous acres to qualify. The owner of at least 40 contiguous acres that was commercial forestland on the effective date of this bill would be permitted to remain as commercial forestland even though it does not meet the minimum total acreage, provided the land is otherwise in compliance with the act. Additionally, the department would be required to notify all counties, townships, and land owners of commercial forestland who are on record with the department of the amendments these bills would make.

The department would no longer be responsible for preparing a forest management plan for land owners that are unable to secure the services of a registered forester or natural resources professional to prepare a management plan.

All forest management plans submitted to the department would also be exempt from disclosure under the Freedom of Information Act (FOIA).

Section 51108 - Penalty-free Transfer and Withdrawal

Up until one year after the effective date of the bill, land owners would be exempt from the withdrawal penalty for withdrawing land from the Commercial Forest Program if (1) the land is withdrawn from the program as provided for in the act, (2) the land is placed on the assessment roll in the local taxing collecting unit in which it is located, and (3) the land owner enrolls the land in the Qualified Forest Property Program. The land owner would be required to submit a receipt of tax exemption to the department by December 31 of the year in which the land is withdrawn.

Commercial forestland is required to be withdrawn from the Commercial Forest Program if a transfer of title results in the land not meeting minimum acreage requirements. However, the land owner is not subject to the withdrawal penalty if he or she complies with all the conditions described above.

An application to withdraw commercial forestland from the program that meets all of the following requirements would not be subject to the withdrawal penalty:

- Evidence is submitted to the department that the land meets the legal requirements to be exempt from ad valorem property tax in the tax year in which the application is submitted and approved.
- The application is submitted to the department by the same land owner that submitted the application to designate the land commercial forestland.
- Reimbursement is made by the land owner to the state treasurer for the payments made by the state to the county treasurer, as provided in Section 51106(1), for each tax year the land was commercial forestland.

[These are the same provisions contained in House Bill 4913, which was reported out of committee on September 13, 2011.]

Section 51113 - Denying Access to Commercial Forestland

If the department determines that the owner of a commercial forest property has taken an action that has the effect of denying or inhibiting access to the commercial forest for public hunting and fishing, the department can require withdrawal of the land from the program unless the owner corrects the action and allows access for public hunting and fishing.

If there is not access to the land when this bill takes effect and the lack of access is not the consequence of an action taken by the owner, the land may remain in the CF Program, provided all the following apply:

- There is no transfer of title for the parcel of commercial forestland, other than as a part of a larger sale of 10,000 or more acres.
- The land owner has not done anything following the acquisition of the commercial forestland that has the effect of denying or inhibiting access to the land for public hunting and fishing.
- The commercial forestland is in compliance with the act.

The bill would also expand the ability of an owner of commercial forestland to remove sand and gravel from the property without jeopardizing its status within the program, to include gravel removed for the purpose of selling to the state, a local unit of government, a federal agency, or a contractor or other agent undertaking a project for one of these entities.

Section 51115 - Mandatory Withdrawal

Land must be withdrawn from the Commercial Forest Program if a transfer in title causes the land to no longer meet the minimum acreage requirements of the Commercial Forest program and the land owner does not transfer the land to the Qualified Forest Program. In this instance the land owner would be subject to the Commercial Forestland withdrawal penalty.

County equalization offices would be required to notify the department in writing within 30 days of receiving notice of a transfer of title or transfer of any interest in a land contract concerning Commercial Forestland.

House Bill 4969 would add **Part 514 (Qualified Forest Properties)** to NREPA.

Section 51401 - Definitions

This section contains a number of definitions. Some of the notable definitions include:

- *"Commercial Harvest"* means a harvest conducted by a commercial logger, with a minimum of five cords of wood per acre.
- *"Converted by a Change in Use,"* as defined in the Qualified Forest Property Recapture Act, means that due to a change in use the property is no longer qualified forest property as determined by the assessor of the local tax collecting unit based on a recommendation from the department of natural resources.
- *"Harvest Records"* mean a report of timber products harvest that is completed at time of harvest and submitted to the department and includes, but is not limited to, volume of timber harvested.
- *"Qualified Forester"* means a registered forester, a forester certified by the Society of American Foresters, a forest stewardship plan writer, or other forester qualified by the State Forester and posted on the department's website.

Section 51402 - Designation as Qualified Forest Property

An owner of productive forestland that meets the qualifications of this new part and submits the proper information to the department may apply to have the property designated as Qualified Forest property and receive a property tax exemption.

Section 51403 - Qualified Forest Program Application

An owner of productive forestland that wishes to designate property as qualified forestland is required to submit an application to the department and the local tax collecting unit. Each application must be accompanied by a \$200 program fee that will be deposited into the newly created Qualified Forest Fund (created in Sec. 51418). Each application must contain the following information:

- A signed statement from a qualified forester that prepared a forest management plan for the property indicating the plan, property, and any buildings meet the requirements of this new part.
- A signed statement from the property owner that he or she understands the requirements of this new part and agrees to follow the management plan prepared for that particular piece of property.
- The legal description and parcel identification number of the property.
- A map showing the location and size of any buildings and a list of its amenities as described in Sec. 51417, if applicable.
- Total amount of acreage being applied for the tax exemption.

The local tax collecting unit would be required to designate the property as qualified forest property and apply the tax exemption if the application meets all of the above requirements. However, the property is not required to be given the tax exemption if the property owner is not the person that submitted the application or if the parcel number of legal description does not match the information on the local tax collecting unit's records.

If approved, the land owner would be required to file a receipt of the tax exemption with the appropriate Register of Deeds and provide a copy to the local tax collecting unit and to the department.

Section 51404 - Maintenance of Documents

The land owner must retain the current management plan, the signed statement from the qualified forester, audits of the forest management plan, harvest records, a recorded copy of the receipt of the tax exemption, and a map showing the location and size of any structures for the duration the tax exemption is claimed. Additionally, the land owner is required to make the documents available to the department and the local tax collecting unit upon request.

Section 51405 - Reassessment Application after 10 Years

In order to continue to receive a tax exemption for Qualified Forest property the land owner will be required to submit a reassessment application to the department and the local tax collecting unit 10 years after the date of enrollment into the program. The application must be accompanied by a \$200 program fee that will be deposited into the newly created Qualified Forest Fund. The application must contain a signed statement from a qualified forester that an audit has been conducted of the management plan and must also certify the property is being managed according to the plan, the plan is current, the property continues to meet the requirements of this new part, that any buildings on the property meets the requirements of Sec. 51417, and that harvest reports have been submitted to the department, as appropriate.

If a reassessment application is not submitted, the local tax collecting unit will be required to notify the land owner in writing that the owner must submit a reassessment application within 60 days of the date of the notice or the Qualified Forest Property tax exemption will expire. If a reassessment application is not received within the 60 day period the tax exemption will be removed and the owner will be responsible to pay the recapture tax, as calculated by the Qualified Forest Property Recapture Tax Act.

Section 51406 - 10-Year Compliance Audit

Land owners will be required to have an audit completed by a qualified forester of the implementation of the forest management plan every 10 years after the date of enrollment to determine if the management activities are being conducted as specified in the plan and to ensure the plan continues to meet the requirements of the act.

Section 51407 - Violations and Reporting Process

Within 45 days after conducting the audit, the qualified forester will be required to notify the department, the Department of Treasury, and the local taxing collecting unit if the audit reveals any of the following:

- Property is not being managed according to the management plan, including harvesting and thinning.
- The management plan was not completed as required.
- The management plan is not current.
- An audit was not conducted at the appropriate time interval.
- A building exists on the property in violation of eligibility requirements.
- All or a portion of the property has been converted by a "change in use," resulting in the property no longer meeting eligibility requirements.
- A harvest occurred without a harvest record being submitted to the department.
- A copy of the receipt of the tax exemption was not filed with the Register of Deeds or a copy was not provided to the local tax collecting unit or to the department.

Qualified foresters will be required to provide land owners 30 days to provide documentation of actions taken to resolve any issues of noncompliance before reporting violations. If a violation is reported to the local tax collecting unit, the local unit must rescind the tax exemption and notify the Department of Treasury and the DNR. At that point, Treasury would levy the recapture tax and penalty on the land owner, as applicable.

Section 51408 - Audit by DNR

The department would be permitted to conduct an audit at any time of any property receiving a tax exemption under this part and must be provided access to the property by the land owner. The department would have to notify the land owner at least 45 days in advance of conducting the audit and the land owner would be required to provide all required documents to the department within 30 days of the receipt of the audit request. Land owners would be provided with the completed audit to be retained as part of his or her records.

The department would be required to report any violations to the local tax collecting unit and Treasury within 45 days. The department would be required to provide the land owner 30 days to provide documentation of actions taken to resolve any issues of noncompliance before reporting violations. If a violation is reported, the tax exemption would be rescinded and the appropriate agencies would be notified. At that point Treasury would levy the recapture tax and penalty on the land owner.

When performing audits, the department must take into consideration whether the property has been third party certified or is enrolled in the tree farm program under AFF 2010 - 2015 standards of sustainability for forest certification through the American Tree Farm System.

Section 51409 - Notification of New Buildings

Land owners would be required to notify the local tax collecting unit of any new buildings placed on the property after a tax exemption is approved. The land owner must submit a copy of a map that shows the location and size of the building and any amenities as described in the act. It would be up to the local tax collecting unit to determine if the building is permitted by the act and to make any necessary changes to the assessment of the property, which would be effective for the succeeding tax year.

Section 51410 - Notice of Change in Use

Land owners would be required to notify the DNR, Treasury, and the local tax collecting unit if all or a portion of the property is converted by a "change in use." Having received the notice, the local tax collecting unit would be required to rescind the tax exemption and place the property on the tax roll for the succeeding tax year. Treasury would also immediately begin collection of the recapture tax and penalty, as applicable.

Section 51411 - Harvest Report

Land owners would be required to report any harvest conducted on the property to the department and the local tax collecting unit. The report must include the volume of timber harvested, name and contact information of the harvester, number of acres on which the harvest occurred, and the date of the harvest. The report must be submitted to the department within 30 days after the harvest was completed and all harvest records must be retained by the land owner.

Section 51412 - Maximum Acreage Allowed for Exemption

Land owners would be permitted to claim a tax exemption for *no more than* 640 acres of qualified forest property in each local tax collecting unit. The local tax collecting unit would be required to exempt qualified forest property until the property is no longer qualified.

Section 51413 - Online Timber Harvest Reports

The department would be required to post the annual volume of timber harvested each calendar year on qualified forest properties on its website, based on the harvest reports received from land owners.

Section 51414 - Forest Management Plan Requirements

Land owners would be required to have a current forest management plan prepared by a qualified forester that includes all of the following:

- Name, address, and dated signature of each owner of the property.
- Expiration date of the plan.
- Legal description and parcel identification number of the property.
- Statement of the owner's forest management objectives, which must include commercial timber production.

- A map, diagram, or aerial photograph that identifies both forested and un-forested areas of the property, using conventional map symbols indicating species, size, and density of vegetation.
- A narrative description of each management unit that includes:
 - Acreage, cover type, stand density, measured by basal area of trees per acre, and age of main stand.
 - A measure of the site quality and productivity that shows the stand is capable of growing 20 cubic feet per acre per year.
 - A description of the silvicultural practices such as shelterwood, seed tree, or selection employed to achieve the unit objective and promote successful regeneration
- A description of the forestry practices, including harvesting, thinning, and reforestation, that will be undertaken, specifying the approximate period of time before each is completed.
- A description of activities that may be undertaken for the management of forest resources other than trees, including wildlife habitat, watersheds, and aesthetic features.
- A summary table or spreadsheet of all stands listing their prescribed practices, treatment schedule, and dates of accomplishment.
- A description of soil conservation practices that may be necessary to control any soil erosion.
- A harvest schedule, including a commercial harvest within 30 years of receipt of the tax exemption. For an owner transferring commercial forestland to qualified forest property, if a qualified forester determines that more than 30 years is needed for a viable commercial harvest, the harvest schedule may extend beyond 30 years but must include a commercial harvest within 40 years.
- Any other relevant information required by the department.

The management plan must include a statement signed by a qualified forester and notarized by a notary public that the plan was prepared by the qualified forester. Once a commercial harvest has occurred the management plan must be updated to manage the property for commercial timber harvests commensurate with the forest cover on the property. In the case that property is negatively impacted by weather, disease, or other act of God, a revised management plan must be written.

Section 51415 - Requirements to Receive Tax Exemption

Land owners must agree to do all of the following in order to receive a tax exemption for qualified forest property:

- Conduct forest management practices as outlined in the management plan and following all time frames outlined in the plan.
- Conduct a forest thinning or harvest as outlined in the management plan within 30 years of receiving the tax exemption.
- Have an audit prepared by a qualified forester every 10 years.
- Allow the department to enter the property to conduct an audit.
- Submit and retain all necessary paperwork and forms.

Section 51416 - Conditions for Property to be Exempt

All property must meet the following conditions in order to be considered for a tax exemption as qualified forest property:

- Property is not less than 10 contiguous acres in size, of which at least 80% is productive forest capable of producing forest products. Contiguity cannot be broken by a road, right-of-way, or property purchased by a public utility for power transmission lines if the two parcels were a single parcel prior to the sale.
- Has no buildings located on real property, except as provided under the act.
- Is subject to a forest management plan as provided under the act.
- If the property contains a building as provided under the act, the property cannot be less than 20 acres in size.

Section 51417 - Building Requirements

Buildings developed for human residence are not allowed on qualified forest property. Any building containing five or more of the following characteristics would be considered developed for human residence. Any building with fewer than five characteristics would be eligible for a tax exemption. However, the building and one acre of property would not receive the tax exemption. The characteristics are:

- The building is 800 square feet or more in total area using exterior dimensions of living space including each level, but excluding porches, decks, or un-insulated screen porches.
- The building contains indoor plumbing, including water and sewer piped to either a municipal or septic system.
- The building has a full or partial basement.
- The building has electrical service connected to the lines of a power company.
- The building has central heating or cooling, including electric, wood, biofuels, or gas furnace.
- The building is insulated using products designated for that purpose.
- The building has landline telephone service.
- The building has an attached or separate garage, not including buildings for vehicles used primarily for work or recreation on the property.

Section 51418 - Qualified Forest Fund

The bill would create the Qualified Forest Fund within the state treasury. Money in the fund would remain in the fund at the end of the fiscal year and not lapse to the General Fund. The department would be the administrator of the fund and would be able to expend money from the fund, by appropriation, to administer this new part, including supporting data management and forest property audits.

Section 51419 - Exemption under General Property Tax Act

Within 90 days of the effective date of this act, the department would be required to notify all owners of forest property receiving an exemption under the General Property Tax Act of the changes to the program. Land owners receiving a tax exemption under the General Property Tax Act on the effective date of this bill would be required to meet all harvesting requirements of this new part within 30 years of the effective date, and, within

180 days, provide a signed statement from a qualified forester to the department and to the local tax collecting unit.

If land owners receiving the tax exemption under the General Property Tax Act do not wish to conduct a commercial harvest, the property is incapable of production of a commercial harvest, or the requirements of this new part cause material burden to the land owner, they may petition the department and the local tax collecting unit to remove the exemption on the property and have the property placed back on the tax roll. This would have to be done within 180 days of the effective date of the bill. Under that scenario the land owner would not be charged the recapture tax.

Section 51420 - Transfer of Title

A land owner that acquires property that is receiving a tax exemption must, within 60 days of the transfer of the title, (1) certify to the department or the local taxing unit that the land owner is assuming the previous land owner's forest management plan and will manage the land according to the plan or (2) provide the department with (a) a signed statement by the certified forester who prepared the forest management plan certifying that the plan and property meet the requirements of the act and (b) a signed statement from the property owner indicating he or she understands the requirements of the act and agrees to manage the land as described in the plan.

The local tax collecting unit would be required to rescind the tax exemption and place the property back on the tax roll if the new land owner does not comply with the requirements above. The land owner would be responsible for the recapture tax and penalty as provided under the act.

A title transfer does not change the requirement that a harvest must be conducted within 30 years of the date in which the property first received the tax exemption.

Section 51421 - Fraudulent Activity

A person claiming a tax exemption would be prohibited from doing any of the following:

- Making a false or fraudulent affidavit claiming an exemption or a false statement on an affidavit claiming an exemption.
- Aiding, abetting, or assisting another person in an attempt to wrongfully obtain an exemption.
- Making or permitting to be made a false affidavit claiming an exemption or a false statement on an affidavit claiming an exemption, either in whole or in part for himself or herself or any other person.
- Failing to rescind an exemption after the property is no longer eligible to receive the exemption.

Any person found in violation with the intent to wrongfully obtain or attempt to obtain an exemption would be guilty of a misdemeanor punishable by imprisonment for a maximum of one year, and \$5,000 maximum fine or up to 1,500 hours of community service, or both.

Additionally, a person who knowingly swears to an affidavit claiming an exemption that contains a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the state or political subdivision of the state, would be guilty of perjury, which is a misdemeanor punishable by up to one year imprisonment and a maximum fine of \$5,000 or up to 1,500 hours of community service, or both.

A person that does not commit a violation as described above but knowingly violates another part of the act with the intent to defraud the state would be guilty of a misdemeanor punishable by a maximum fine of \$1,000 or up to 500 hours of community service, or both.

Unless otherwise provided, a person who violates this part would be responsible for a state civil infraction and could be ordered to pay a maximum civil fine of \$500.

The Attorney General and the prosecuting attorney of each county would have concurrent power to enforce this act.

Section 51422 - Recovery of Costs

A court may allow the department to recover reasonable costs and attorney fees incurred during a prosecution resulting in a conviction for a violation of this act.

Enacting Section 1

House Bills 4969, 4970 and 4302 are all tie-barred to each other, meaning none of the bills can take effect unless all are signed into law. House Bill 4302, which is described in a separate summary, would change the formula used to determine the recapture tax in the Qualified Forest Program.

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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.