

Legislative Analysis



AGRICULTURAL REAL PROPERTY

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House Bill 4072 as enrolled
Public Act 376 of 2006
Sponsor: Rep. Dave Hildenbrand

House Bill 4271 as enrolled
Public Act 214 of 2006
Sponsor: Rep. Joe Hune

House Bill 4468 as enrolled
Public Act 278 of 2006
Sponsor: Rep. John Stahl

House Committee: Tax Policy
Senate Committee: Agriculture, Forestry, and Tourism

Second Analysis (12-20-06)

BRIEF SUMMARY: Each of the bills would amend the General Property Tax Act to classify certain types of agriculture-related property as being "agricultural real property."

FISCAL IMPACT: Given that the amount of property that would qualify for the 18-mill exemption is not known, the fiscal impact of these bills cannot accurately be determined. To the extent that additional property becomes eligible for the 18-mill exemption, local property tax revenue that would be earmarked for local education would decline. Although there is no direct impact on state revenue, there is an indirect burden on the School Aid Fund in that it must compensate for reduced educational funding at the local level.

THE APPARENT PROBLEM:

The General Property Tax Act provides tax benefits to agricultural property, including an exemption from the 18 local school operating mills and allowing the valuation of such property to remain capped upon a transfer of ownership so long as it continues to be used for an agricultural purpose. Generally speaking, the act classifies property as being agricultural property if it is used for an agricultural operation. The act defines "agricultural operation" to mean, among other things, raising livestock and performing any practices on a farm incident to, or in conjunction with, farming operations.

Reportedly, there has been some inconsistency among local taxing units in the state regarding the classification of property used for equine and cervidae operations and game bird hunting preserves, as it is not entirely clear as to whether these activities are commercial in nature or agricultural in nature. Property used to board and train horses, for example, often is a commercial activity. However, such property clearly has an agricultural component as well. Legislation has been introduced to make it clear that raising equines (horses) and cervidae (deer, elk, and moose) and operating a game bird hunting preserve are to be considered to be agricultural operations.

THE CONTENT OF THE BILL:

Under the General Property Tax Act (MCL 211.34c), "agricultural real property" includes parcels used partially or entirely for certain "agricultural operations," which the act defines to mean:

- Farming in all its branches, including cultivating soil.
- Growing and harvesting any agricultural, horticultural, or floricultural commodity.
- Dairying.
- Raising livestock, bees, fish, fur-bearing animals, or poultry.
- Turf and tree farming.
- Performing any practices on a farm incident to, or in conjunction with, farming operations.

House Bill 4271 (2006 PA 214)

The bill would specify that raising livestock includes farming operations that harvest cervidae on site where at least 60 percent of the cervidae were born as part of the farming operation. In addition, the bill would define "livestock" to include cattle, sheep, new world camelids, goats, bison, privately owned cervides, ratites, swine, equine, poultry, aquaculture, and rabbits. Livestock would not include dogs or cats.

House Bill 4468 (2006 PA 278)

The bill would add that raising livestock includes operating a game bird hunting preserve licensed under Part 417 of the Natural Resources and Environmental Protection Act.

House Bill 4072 (2006 PA 376)

The bill would add that "agricultural operation" includes raising, breeding, training, leasing, or boarding horses.

BACKGROUND INFORMATION:

School Millage Exemption

Under the General Property Tax Act "qualified agricultural property" is exempt from the 18 local school operating mills, and is defined to mean unoccupied property and related buildings classified as agricultural, or other unoccupied property and related buildings located on that property devoted primarily to "agricultural use" as defined in Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act. (The bills described in this analysis each expand what is considered to be agricultural real property.)

“Agricultural Use” is defined under the NREPA to mean the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Part 361 further notes that “agricultural use” does not include the management and harvesting of a woodlot. In addition, property used for commercial storage, commercial processing, commercial distribution, commercial marketing, or commercial shipping operations or for other commercial or industrial purposes is not eligible for the exemption. A parcel is considered to be devoted primarily to agricultural use only if more than 50 percent of the parcel’s acreage is devoted to agricultural use. Owners of property that is not classified as agricultural real property who are seeking such a classification must file an affidavit with the local assessing unit by May 1.

Pop-Up Tax

In addition to the reduced millage rate, agricultural property is also exempt from the "pop-up" in taxable value that occurs when property is transferred. Under Proposal A of 1994, year-to-year increases in a property's taxable value are capped at five percent or the rate of inflation, whichever is less. But when ownership of the land is transferred (e.g. sold), the taxable value "pops-up" to the state equalized value (50 percent of market value). However, the pop-up does not apply to qualified agricultural property if the transferee files an affidavit with the assessor of the local tax collecting unit and the county register of deeds. The General Property Tax Act generally defines "qualified agricultural property" to mean unoccupied property and related buildings classified as agricultural, or other unoccupied property and related buildings located on that property devoted primarily to an agricultural use as defined in NREPA-Part 361.

ARGUMENTS:

For:

By clarifying what is considered to be agricultural property, the bills keep the General Property Tax Act in line with emerging trends in agriculture. Today, more and more farmers are engaging in a variety of "value-added" agricultural operations, such as game preserves and equine-related operations. These alternative production and marketing strategies are more "commercial" in nature than traditional agricultural operations. In the future, as these types of agricultural practices develop, the line of demarcation between commercial and agricultural activities becomes blurred. This increases the likelihood that such property would no longer receive the tax benefits currently provided under the statute, and undermines efforts to retain and preserve farmland in the state.

The bill clarifies that raising equines and raising cervidae are considered to be agricultural operations, thus enabling property used for such purposes to qualify for the exemption from school operating taxes. This change is consistent with a variety of other state laws with respect to how such activities are classified. The breeding and grazing of

captive cervidae is considered to be an "agricultural use" under Part 361 of the Natural Resources and Environmental Protection Act (more commonly known as PA 116). A similar definition is included in Part 362 (Agricultural Preservation Fund). Part 327 (Great Lakes Preservation) defines "agricultural purpose" to mean the agricultural production of those plants and animals, including cervidae and the breeding and grazing of equine. Perhaps most importantly, the Animal Industry Act, which regulates equine and cervidae operations, defines "livestock" to mean those species of animals used for human food and fiber or those species of animals used for service to humans, including privately owned cervids and equine.

Further, the bill also clarifies that game bird hunting preserves are considered an agricultural operation. While not specifically related to taxation, the Court of Appeals issued an unpublished opinion, *Milan Township v. Jaworski*, in December 2003 that held that a pheasant and quail hunting preserve was a "farm" as that term is used in the Right to Farm Act, because it is used for the breeding, raising, and selling of game birds for commercial purposes. House Bill 4468 is consistent in spirit with the court's decision. Additionally, the Commission on Agriculture adopted a resolution in June 2002 recognizing game bird hunting preserves as an agricultural activity and value-added farm opportunity.

Against:

Agricultural operations have special treatment under the school financing plan first put in place by Proposal A over a decade ago. They are exempt from paying local school operating taxes (which other businesses must pay) and they are exempt from having the taxes on property increase when it is sold (increases that other property owners must face). Expanding the nature of agricultural exemptions, then, results in reduced revenue for schools and for local units of government as more and more property becomes entitled to these benefits. As the distinction between agricultural and commercial property classifications becomes more blurred, and as more different kinds of operations become classified for tax purposes as agricultural rather than commercial, it may be more practical to re-examine these tax exemptions in their entirety rather than expanding the amount of property that enjoys them.

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