

Legislative Analysis



COMMERCIAL FOREST & QUALIFIED FOREST LANDS

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House Bill 4969

Sponsor: Rep. Frank Foster

House Bill 4970

Sponsor: Rep. Matt Huuki

Committee: Natural Resources, Tourism, and Outdoor Recreation
(Subcommittee on Forestry and Mining)

Complete to 10-18-11

A SUMMARY OF HOUSE BILLS 4969 & 4970 AS INTRODUCED 9-14-11

House Bill 4969 would amend the Natural Resources and Environmental Protection Act (NREPA) to add a new section for Qualified Forest Property and 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. Additionally, the bill expands the definition of qualified agricultural property to include parcels where 50% of the acreage is devoted to a combination of agricultural use and use as qualified forest property, provided that no more than 25% of the acreage is qualified forest property.

House Bills 4969 and 4970 are tie-barred to each other.

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

FISCAL IMPACT:

A fiscal analysis is in process.

DETAILED SUMMARY (HOUSE BILL 4969):

The following sections highlight changes impacting 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 landowners 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 landowners 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 51008 - Penalty-free Transfer and Withdrawal

Up until one year after the effective date of the bill, landowners 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 this section, (2) the land is placed on the assessment roll in the local taxing collecting unit in which it is located, and (3) the landowner claims and is granted an exemption for that land from the tax levied by a local school district for school operating purposes under Sec. 7hh of the General Property Tax Act. The landowner 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 landowner 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 landowner that submitted the application to designate the land commercial forestland.
- Reimbursement is made by the landowner 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 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 landowner does not transfer the land to the Qualified Forest program. In this instance the landowner 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 his or her 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 \$200.00 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.

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

Section 51405 - Reassessment Application

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 consistent with the requirements of the Qualified Forest Property Recapture Tax Act and the owner will be liable for the recapture tax under the act.

Section 51406 - 10 Year Compliance Audit

Landowners 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 of 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.
- Audits were not conducted at the appropriate time intervals.
- 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 landowners 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 tax exemption 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 landowner 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 landowner.

When performing audits, the department must take into consideration whether the property has been 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

Landowners 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." Upon receipt of 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 *not 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 - DNR to Post Timber Harvest Reports Online

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.

- 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, inducing 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 things in order to receive a tax exemption for qualified forest property:

- Conduct forest management practice 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 not less than 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.

If a parcel is receiving an exemption as qualified agricultural property and as qualified forest property, the qualified forest portion cannot be less than 10 contiguous acres of which not less than 80% is productive forest capable of producing forest products.

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 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

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 60 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 landowner, he or she 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. Under that scenario the land owner would not be charged the recapture tax.

Section 51420 - Violations

Any person violating this new part would be guilty of a misdemeanor and subject to a fine up to \$1,000 per day. Anyone that knowingly makes a false statement, representation, or attestation in applying for a tax exemption would be guilty of a misdemeanor and punishable by a fine up to \$1,000 per day for each day of violation.

Section 51421 - Ability of DNR to Recover Costs

A court may allow the department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for any violation under this new part.

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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.