Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4302 (Substitute S-1 as reported)
House Bill 4969 (Substitute S-2 as reported)
House Bill 4970 (Substitute S-3 as reported by the Committee of the Whole)
Sponsor: Representative Ed McBroom (H.B. 4302)
Representative Frank Foster (H.B. 4969)
Representative Matt Huuki (H.B. 4970)
House Committee: Natural Resources, Tourism and Outdoor Recreation
Senate Committee: Natural Resources, Environment and Great Lakes

CONTENT

House Bill 4302 (S-1) would amend the Qualified Forest Property Recapture Tax Act to revise the calculation of the tax that is imposed when property is no longer qualified forest property (which is exempt from school operating taxes under the General Property Tax Act).

The Qualified Forest Property Recapture Tax Act provides for the recapture of taxes owed on property that is converted by a change in use and is no longer qualified forest property. The calculation of the recapture tax depends on whether there have been any harvests of forest products on the property consistent with the approved forest management plan. If there have been any harvests of forest products, the tax is calculated as follows:

-- The property's State equalized valuation (SEV) at the time of the change in use is multiplied by the total millage rate levied by all taxing units in the local tax collecting unit where the property is located.
-- The product of the first calculation is multiplied by seven.

If there have been no harvests of forest products, the tax is determined in the same manner, with the product of the second calculation multiplied by two.

Under the bill, if there had been any harvests of forest products, the tax would be calculated as follows:

-- The property's taxable value at the time of the change in use would be multiplied by the number of operating mills levied by the local school district in which the property was located.
-- The product of the first calculation would be multiplied by the number of years the property had been exempt as qualified forest property under the General Property Tax Act before the change in use, not to exceed the seven years immediately before the year in which the property was converted by a change in use.

If the property, however, were eligible for exemption as a result of its withdrawal from the operation of Part 511 (Commercial Forests) of the Natural Resources and Environmental Protection Act (NREPA) (as provided by House Bill 4969 (S-2) for one year after that bill's effective date), and the property were converted by a change in use within seven years after the withdrawal, the recapture tax would be an amount equal to the application fee and

penalty that would have been assessed under Part 511 to withdraw the property in the year in which it was converted, calculated as if the property had not been withdrawn. If the property were converted by a change in use more than seven years after being withdrawn, the recapture tax would have to be calculated under the formula described above, as applicable.

As currently provided, if there had been no harvests of forest products, the tax would be doubled.

House Bill 4969 (S-2) would amend Part 511 of NREPA to do the following with regard to tax-exempt commercial forest property:

-- Allow an owner of commercial forestland to withdraw from the program without penalty, under certain circumstances.
-- Eliminate a requirement that the Department of Natural Resources (DNR) prepare a forest management plan upon request of an applicant who cannot secure the services of a registered forester or natural resources professional to prepare a plan, and charge the owner a fee.
-- Specify that forest management plans submitted to the DNR or a local tax collecting unit would be exempt from disclosure under the Freedom of Information Act.
-- Include wind energy development among the prohibited uses of a commercial forest, but permit exploration for wind energy development under certain circumstances.

Part 511 allows the owner of forestland to apply to the DNR to have that land classified as a commercial forest. Commercial forests are not subject to the ad valorem general property tax, but instead are subject to an annual specific tax per acre.

The owner of a commercial forest may withdraw all or part of his or her land from the commercial forest program upon application to the DNR and payment of a withdrawal application fee and penalty. Under the bill, for one year after its effective date, an owner would not be subject to a withdrawal penalty if the withdrawn commercial forestland were placed on the assessment roll in the local tax collecting unit in which the land was located; and the owner claimed and received an exemption for the land from school operating taxes under the General Property Tax Act, and submitted a copy of the recorded qualified forest school tax affidavit to the DNR by December 31 of the year in which the land was withdrawn.

The bill also would allow the Department to withdraw forestland from the classification as commercial forest if it had been acquired by a federally recognized Indian tribe and the associated property taxes subsequently were preempted under Federal law. In this case, a withdrawal would not be subject to the withdrawal application fee or penalty.

If the DNR determined that an owner had taken an action that had the effect of denying or inhibiting access to the commercial forest for public hunting and fishing, except as specifically provided in the part, the Department could require withdrawal of the land from the program unless the owner corrected that action and allowed access.

Under certain circumstances, sand and gravel may be removed from a commercial forest with the DNR's approval. The sand and gravel must be used by the owner as specified or by the State, a local unit, or a county road commission for governmental use. Under the bill, the sand and gravel would have to be used by the owner or be for sale to the State, a local unit, a Federal governmental agency, or a county road commission for governmental use, or a contractor or other agent undertaking construction, maintenance, or a project for one of those governmental entities.

The bill would take effect on December 31, 2012.

House Bill 4970 (S-3) would amend the General Property Tax Act to allow the owner of property enrolled as qualified forest property before January 1, 2013, to execute a new qualified forest school tax affidavit without paying a required fee; and provide for rescission of the existing affidavit without subjecting the property to the recapture tax, if a landowner opted not to execute a new affidavit.

Under the Act, except as otherwise provided, property is assessed at 50% of its true cash value. Generally, a parcel's taxable value is the lesser of the following:

-- The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions.
-- The property's current SEV.

Upon a transfer of ownership, the taxable value for the following calendar year is the property's SEV for the calendar year following the transfer. "Transfer of ownership" does not include a transfer of qualified forest property, if the person to whom the property is transferred files an affidavit with the assessor of the local tax collecting unit and with the county register of deeds attesting that the property will remain qualified forest property. If qualified forest property ceases to be qualified forest property after being transferred, both of the following must occur:

-- The taxable value must be adjusted as of December 31 in the year that the property ceased to be qualified forest property.
-- The property is subject to the recapture tax under the Qualified Forest Property Recapture Tax Act.

Under the bill, between January 1, 2013, and September 30, 2013, owners of property enrolled as qualified forest property before January 1, 2013, could execute a new qualified forest taxable value affidavit with the Michigan Department of Agriculture and Rural Development. A landowner who chose to do so would not have to pay the required $50 fee. If a landowner chose not to execute an affidavit, the existing one would be rescinded without subjecting the property to the recapture tax, and the taxable value of the property would have to be adjusted as provided in the Act for a transfer of ownership.

Also, beginning December 31, 2013, the bill would exclude from the definition of "transfer of ownership" a transfer of residential real property if the transferee were related to the transferor by blood or affinity to the first degree and the use of the property did not change following the transfer.

House Bills 4302 (S-1) and 4970 (S-3) are tie-barred to each other and to House Bill 4969 and Senate Bills 1057, 1058, 1059, 1061, and 1062. The Senate bills would amend various parts of NREPA and the General Property Tax Act to revise provisions pertaining to soil conservation districts, land management, development and promotion of the State's forest products industry, and qualified agricultural property.

MCL 211.1034 (H.B. 4302)
324.51102 et al. (H.B. 4969)
211.7jj & 211.27a (H.B. 4970)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on local governments and a positive fiscal impact on the State.

The bills would reduce State revenue by an unknown and likely minimal amount by reducing revenue received from penalties, depending on the characteristics of any property that

could be withdrawn from classification as commercial forest property or qualified forest property without a penalty.

To the extent that the bills would decrease the willingness of property owners to keep property classified as commercial forest property or qualified forest property, the bills would also increase property tax revenue to the State and local units and reduce School Aid Fund expenditures. School Aid Fund expenditures would be reduced because, to the extent that local school districts received more property tax revenue from affected properties, the State would need to provide less in order to meet per-pupil funding allowances. The aggregate magnitude of these secondary effects would likely be minimal.

Under the bills, landowners with forestland in the Commercial Forest program would be allowed to transfer the land into the Qualified Forest program with no penalties, under certain circumstances. Currently, counties with Commercial Forest parcels receive a $1.25 per acre specific tax from the landowner and a $1.25 per acre payment from the Department of Treasury. Transfers from the Commercial Forest program to the Qualified Forest program would benefit local units of government in that, while they would no longer receive the flat $2.50 per acre total annual payments from the Department of Treasury and the landowner, they would receive ad valorem property taxes on any land transferred to the Qualified Forest program, which almost certainly would be more than the $2.50 received under the Commercial Forest program. The State also would stand to save the $1.25 per acre payment made by the Department of Treasury for each parcel that changed from Commercial Forest to Qualified Forest. It is unknown how many, if any, participants in the Commercial Forest program would be qualified for and choose to transfer to the Qualified Forest program.

The provision in House Bill 4970 (S-3) regarding transfers to those related to the first degree would reduce State and local property tax revenue by an unknown amount. To the extent the provision did not lower per-pupil funding guarantees, it also would increase School Aid Fund expenditures by an unknown amount. The actual amount of revenue loss, and increased School Aid Fund expenditures, would depend on the number of properties that would be transferred to relatives and the specific characteristics of the transferred properties.

Date Completed: 12-13-12

Fiscal Analyst: Josh Sefton
David Zin

floor\sb4302