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BILL



ANALYSIS

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House Bill 4302 (Substitute H-3 as passed by the House)

House Bill 4969 (Substitute H-3 as passed by the House)

House Bill 4970 (Substitute H-1 as passed by the House)

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

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## **CONTENT**

**House Bill 4302 (H-3)** 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.

**House Bill 4969 (H-3)** would amend Part 511 (Commercial Forests) of the Natural Resources and Environmental Protection Act (NREPA) to revise provisions concerning tax-exempt commercial forest property, and allow a commercial forest owner to transfer to a proposed qualified forest program. The bill would add Part 514 (Qualified Forest Properties) to do the following:

- Allow a property owner to apply for the designation of productive forest property as qualified forest property, which would be exempt from school operating taxes.
- Require the payment of a \$200 program fee upon application.
- Establish requirements for a forest management plan, audits, and harvests reports.
- Require a reassessment after 10 years and payment of the \$200 fee.
- Create the "Qualified Forest Fund" to cover administrative costs.
- Limit the eligibility of property with buildings.

-- Provide for the imposition of the recapture tax under certain circumstances.

-- Establish criminal and civil penalties for violations.

**House Bill 4970 (H-1)** would amend the General Property Tax Act to allow the owner of qualified forest property to claim a tax exemption as provided in proposed Part 514 of NREPA.

House Bills 4302 (H-3) and 4969 (H-3) are tie-barred to each other and to House Bill 4970. House Bill 4970 (H-1) is tie-barred to House Bill 4969.

### **House Bill 4302**

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 (which is exempt from school operating taxes under the General Property Tax Act). 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 sum of the number of years the property had been exempt as qualified forest property under the General Property Tax Act before the change in use and, if applicable, the number of years the property had been exempt as a commercial forest under NREPA, not to exceed the seven years immediately before the year in which the property was converted by a change in use.

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

### **House Bill 4969 (H-3)**

#### **Part 511: Commercial Forests**

Part 511 of NREPA allows the owner of forestland to apply to the Department of Natural Resources (DNR) to have that land determined to be 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.

To apply, a person must own at least 40 contiguous acres or a survey unit consisting of one-quarter of one-quarter of a section of forestland. The bill would require a person to own at least 160 acres, composed of parcels of at least 40 contiguous acres or

units consisting of one-quarter of one-quarter of a section. If a person met the current requirements, however, the land would remain commercial forestland as long as it otherwise was in compliance with Part 511.

To be eligible for determination as commercial forest, forestland must meet specified criteria, and the applicant must submit an application fee, a statement certifying that a forest management plan covering the forestland had been prepared and is in effect, and other items.

If an applicant cannot secure the services of a registered forester or natural resources professional to prepare a forest management plan, the DNR must prepare a plan upon request and charge the owner a fee. The bill would delete this provision.

The bill specifies 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.

Part 511 allows the owner of a commercial forest to 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, an owner would not be subject to a withdrawal penalty if the former 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 was granted an exemption for the land from school operating taxes under Section 7jj of the General Property Tax Act (the section House Bill 4970 (H-1) would amend), and submitted a copy of the recorded receipt of tax exemption to the DNR by December 31 of the year in which the land was withdrawn.

If a transfer of title caused commercial forestland to no longer meet the minimum acreage or access requirements of Part 511, the forestland would have to be withdrawn from the program. The owner would not be subject to a withdrawal penalty, however, if he or she met the criteria described above.

The bill would require an application to withdraw commercial forestland from the program to be granted without payment of the withdrawal application fee or penalty if

the application met certain requirements, including reimbursement by the landowner to the State Treasurer for the specific tax that the Treasurer paid to the county treasurer for each tax year the land was commercial forestland.

Part 511 prohibits the owner of a commercial forest from using that land in certain manners. Under the bill, 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.

#### Part 514: Qualified Forest Properties

Application for Tax Exemption. The owner of productive forest that meet the qualifications of proposed Part 514 and submitted the required information could apply to have his or her property designated as a qualified forest property and receive an exemption from property taxes as allowed under the General Property Tax Act. "Productive forest" would mean real property capable of growing at least 20 cubic feet of wood per acre per year.

The owner would have to submit an application to the local tax collecting unit and give a copy to the DNR, along with a program fee of \$200. Program fees would have to be forwarded to the State Treasurer for deposit into the proposed Qualified Forest Fund. The application would have to contain information specified in the bill, including a signed statement from a qualified forester who prepared a forest management plan for the property,

indicating that the plan met the requirements of Part 514, and that any building on the property met the proposed requirements.

If the application contained the required information, the local tax collecting unit would have to designate the property as qualified forest property and apply the tax exemption to it. The owner would have to file a receipt of the exemption with the appropriate register of deeds and send a copy of the recorded form to the local unit and the DNR.

For the 10-year enrollment period of the current tax exemption, the owner would have to retain the current management plan, the forester's signed statement, audits of the plan, harvest records, the recorded copy of receipt of the tax exemption, and a map showing the location and size of any buildings. The owner would have to make these documents available to the DNR and the local tax collecting unit.

An owner could claim a tax exemption for up to 640 acres of qualified forest property in each local tax collecting unit.

Reassessment. In order to continue receiving a tax exemption, the owner would have to submit a reassessment application to the DNR and the local unit 10 years after the date of enrollment, and pay a \$200 program fee to the DNR for deposit into the Qualified Forest Fund. The application would have to contain a signed statement of a qualified forester that an audit had been conducted of the forest management plan and the property was being managed according to the plan, the plan was current, the property continued to meet the requirements of Part 514, any buildings met the part's requirements, and harvest reports had been submitted as appropriate.

If an owner failed to submit a reassessment application 10 years after the date of enrollment, the local unit would have to notify the owner that he or she would have to do so within 60 days or the tax exemption would expire. If the owner did not comply, the local unit would have to remove the property tax exemption according to the requirements of the Qualified Forest Property Recapture Tax Act and notify the State Treasurer that the owner was liable for the recapture tax.

Audits. An owner would have to have a qualified forester audit the implementation of his or her forest management plan every 10 years after the date of enrollment. The forester would have to notify the DNR, the local unit, and the Department of Treasury if the audit revealed that the property was not being managed according to the plan, the plan was not produced as required, the plan was not current, an audit was not conducted in the required time frames, a building existed in violation of eligibility requirements, all or part of the property had been converted by a change in use so that it did not meet the requirements of Part 514, a harvest occurred without a record being submitted, or a copy of the receipt of tax exemption was not filed or submitted as required.

If a violation were reported, the local tax collecting unit would have to rescind the tax exemption and notify the DNR and the Department of Treasury. The State Treasurer would have to levy the recapture tax and penalty, if applicable on the property owner.

The DNR could conduct an audit of any qualified forest property receiving a tax exemption, and be given access to the property for this purpose upon request. The DNR would have to give the owner at least 45 days' advance notice. If the audit revealed any of the violations described above, the DNR would have to report to the local unit and the Treasury Department. The taxing unit would have to rescind the exemption and the State Treasurer would have to levy the recapture tax.

Change in Use. If all or part of the property were converted by a change in use, the owner immediately would have to notify the local tax collecting unit, the DNR, and the Treasury Department. The local unit would have to rescind the tax exemption and place the property on the tax roll, and the State Treasurer would have to begin collecting the recapture tax and penalty, if applicable.

Forest Management Plan. An owner would have to have a current forest management plan prepared by a qualified forester. The plan would have to contain information specified in Part 514, including the owner's forest management objectives, which would have to include commercial timber production; a measure of the site quality

and productivity showing that the stand was capable of growing 20 cubic feet per acre per year; a description of silvicultural and forest practices; a description of activities that could be undertaken for the management of forest products other than trees; a description of necessary soil conservation practices; and a harvest schedule.

Once a commercial harvest had occurred, the plan would have to be updated.

Conditions of Exemption. In order for an owner to receive a tax exemption, he or she would have to agree to conditions specified in Part 514, including conducting forest management practices as prescribed in the plan.

The property also would have to meet the following criteria:

- Be at least 10 contiguous acres in size, of which at least 80% was productive forest capable of producing forest products, except as provided below.
- Have no buildings located on the property, except as provided below.
- Be subject to a forest management plan.

If the property had a building as allowed, the property would have to be at least 20 acres in size.

A building developed for human residence would not be allowed on qualified forest property. A building would be considered developed for human residence if it contained at least five of the characteristics listed in the bill. A building with fewer than five characteristics could be included in the property, but the building and one acre could not receive the tax exemption.

Fund. The bill would create the Qualified Forest Fund within the State Treasury. The DNR could spend money in the fund, upon appropriation, only to administer Part 514, including to support data management and forest property audits.

Notice to Property Owners. Within 90 days after the effective date of Part 514, the DNR would have to give written notice of the amendments to all owners of forest property receiving a tax exemption under Section 7jj of the General Property Tax Act on that date, who were on record with the

Department. An owner would have to meet the harvesting requirements of Part 514 within 30 years of the effective date of the part, and give a signed statement to the DNR and the local unit from a qualified forester within 180 days of that date.

An owner could petition to remove the tax exemption within 180 days after Part 514 took effect if he or she did not wish to conduct a commercial harvest, or the property were not capable of production of a commercial harvest as required, or if the requirements of Part 514 caused material burden to the owner. The owner could not be charged the recapture tax and penalty.

Transfer of Title. A landowner that acquired property that was receiving a tax exemption, within 60 days of transfer of title, would have to certify to the DNR and the local unit that the owner was assuming the previous owner's forest management plan and would manage the land according to the plan, and give the DNR and the local unit certain signed statements.

If the owner failed to comply, the local unit would have to rescind the tax exemption and place the property on the tax roll, and the property owner would be subject to the recapture tax and penalty.

Prohibited Conduct; Penalties. A person claiming a tax exemption under Part 514 would be prohibited from making a false or fraudulent affidavit claiming the exemption; assisting another in an attempt to wrongfully obtain an exemption; make a false affidavit claiming an exemption; or fail to rescind an exemption after the property was no longer eligible for it.

A person who violated these provisions with the intent to wrongfully obtain an exemption would be guilty of a misdemeanor punishable by imprisonment for up to one year and a fine of up to \$5,000 or public service of up to 1,500 hours, or both.

A person who knowingly swore to or verified an affidavit claiming an exemption with the intent to defraud the State or a political subdivision would be guilty of perjury, subject to the same penalty.

A person who knowingly violated any other provision of Part 514 with intent to defraud the State or a political subdivision would be

guilty of a misdemeanor punishable by a maximum fine of \$1,000 or up to 500 hours of public service, or both.

Any other violation would be a State civil infraction subject to a civil fine of up to \$500.

### **House Bill 4970 (H-1)**

Under the General Property Tax Act, qualified forest property is exempt from the tax levied by a local school district for school operating purposes, to the extent provided in the Revised School Code.

To claim an exemption, the property owner must file an affidavit and an approved forest management plan or a certificate provided by a third-party certifying organization with the local tax collecting unit by December 31.

The bill would require the property owner, instead, to submit an application for the exemption as provided in proposed Part 514 of NREPA.

The bill would delete provisions that limit the total amount of qualified forest property to 1.2 million acres per fiscal year; limit an owner's exemption to 320 acres in each local tax collecting unit; require a forest management plan to be approved by the Department of Natural Resources (DNR) or a third-party certifying organization; allow the DNR to charge a fee of up to \$200 for considering a plan; and require an owner of exempt property to report annually on the amount of timber produced.

The Act requires a property owner, within 90 days after all or part of exempted property is no longer qualified forest property, to rescind the exemption for the applicable portion of the property. An owner who fails to do so is subject to a penalty of \$5 per day for each separate failure beginning after 90 days have elapsed, up to a maximum of \$1,000. Under the bill, this penalty also would apply to an owner who was found guilty of failing to comply with requirements under Part 514 of NREPA that a landowner take certain actions after acquiring property that was receiving a tax exemption.

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

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact local governments and a positive fiscal impact on the State. The bills would establish a \$200 program fee to enroll in the proposed Qualified Forest program, and another \$200 program fee for reassessment every 10 years thereafter. House Bill 4969 (H-3) would establish the Qualified Forest Fund, and all revenue from the program fees would be deposited into it. The DNR would be able to use the Fund, upon appropriation, for the administration and management of the Qualified Forest program. Revenue from the Fund also could be used for random audits of qualified forest property, as specified in the bill. It is unknown whether the amount of revenue raised by the program fees would be sufficient to cover the expenses of the Qualified Forest program.

Under the bills, landowners with forest land 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 bills would affect local school district revenue and School Aid Fund expenditures by an unknown amount that could grow to as much as \$28.0 million per year, assuming approximately 2.0 million acres ultimately

qualified as qualified forest property. The bills would potentially increase the number of properties that receive an exemption from locally levied mills for school operating purposes as a result of being qualified forest property.

The bills would expand the number of properties potentially eligible for the exemption. The local school district of any property that became qualified forest property would experience a loss equal to 18 mills times the taxable value of the property. To the extent that per-pupil funding guarantees were not reduced as a result of the bills, the bills would require increased expenditures of an equal magnitude to affected school districts from the School Aid Fund.

The bills also would reduce General Fund revenue by an unknown and likely minimal amount by reducing the recapture tax levied when property ceases to be treated as qualified forest property. However, to the extent that additional properties were classified as qualified forest property, this decline in revenue per property could be offset by revenue from the additional properties.

Finally, House Bill 4969 (H-3) would prescribe criminal penalties for fraudulent violations of the Qualified Forest program, and a State civil infraction fine for other violations. It is unknown how many individuals would be found guilty or responsible and subject to these penalties, but local units would incur costs of incarceration or community supervision. Revenue from the fines would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.