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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 51 (as enacted)  
Senate Bills 54 through 58 (as enacted)  
House Bill 4069 (as enacted)  
House Bills 4243 and 4244

Sponsor: Senator Darwin L. Booher (S.B. 51 & 56)  
Senator Tom Casperson (S.B. 54)  
Senator Mike Green (S.B. 55)  
Senator Arlan Meekhof (S.B. 57)  
Senator John Moolenaar (S.B. 58)  
Representative Frank Foster (H.B. 4069)  
Representative Ed McBroom (H.B. 4243)  
Representative Bruce Rendon (H.B. 4244)

Senate Committee: Natural Resources, Environment and Great Lakes  
House Committee: Natural Resources

Date Completed: 9-1-15

**PUBLIC ACT 42 of 2013**  
**PUBLIC ACTS 43-47 of 2013**  
**PUBLIC ACT 48 of 2013**  
**PUBLIC ACTS 49 & 50 of 2013**

**CONTENT**

**Senate Bill 51 amended the General Property Tax Act to do the following regarding qualified forest property:**

- **Revise procedures for the exemption of qualified forest property from school operating taxes, and provide for the execution and recording of a qualified forest school tax affidavit.**
- **Transfer responsibilities from the Department of Natural Resources to the Michigan Department of Agriculture and Rural Development (MDARD).**
- **Require a local tax collecting unit to collect an annual fee on each parcel of qualified forest property located in that unit for deposit in the "Private Forestland Enhancement Fund" (which Senate Bill 56 created).**
- **Require the fee to be determined by multiplying two mills by the taxable value of the qualified forest property.**
- **Exclude buildings, structures, and land improvements located on qualified forest property from the property's exemption from school operating taxes.**
- **Require a property owner to submit a forest management plan to MDARD, along with an application fee of \$50, before claiming an exemption for qualified forest property.**
- **Require a forest management plan to be developed by a qualified forester and approved by MDARD, and be for a maximum of 20 years.**
- **Increase the maximum acreage for which an owner may claim an exemption in each local tax collecting unit from 320 to 640 acres.**
- **Require at least 50%, rather than 80%, of a parcel of property of at least 40 acres to be productive forest.**
- **Revise provisions for the rescission of an exemption when property is no longer qualified forest property, and require the collection of taxes under the Act or under the Qualified Forest Property Recapture Tax Act.**
- **From June 1, 2013, through November 30, 2013, allow an owner of property that was exempt before January 1, 2013, to execute a new qualified forest school tax affidavit; and eliminate the rescission penalty for an owner who chose not to do so, and exempt the property from the recapture tax.**

- Require the penalty imposed for failing to file a required rescission of exemption to be deposited in the Private Forestland Enhancement Fund, rather than the General Fund.
- Require the owner of qualified forest property to report when a forest practice or timber harvest occurs; and allow MDARD to collect a fine of \$500 from a property owner if a required report is not filed.
- Require MDARD to maintain a database of qualified forest properties and notify the owner and the conservation district in the year the harvest is to occur according to the management plan.
- Provide that the property is not eligible for exemption and must be placed on the tax roll and subject to repayment if an owner does not accomplish forest practices and harvests within three years after the time specified in the forest management plan.
- Require MDARD to submit to the Legislature a report on qualified forest property annually, rather than every three years, and expand the information that must be included in the report.

**House Bill 4244** amended the General Property Tax Act to revise the requirements for a transferee to file an affidavit upon the transfer of qualified forest property, in order to avoid an adjustment in the property's taxable value.

**House Bill 4243** amended the Qualified Forest Property Recapture Tax Act to revise the calculation of the recapture tax that is imposed on qualified forest property that is converted by a change in use.

**Senate Bill 54** amended the Qualified Forest Property Recapture Tax Act to redirect recapture tax proceeds from the General Fund to the Private Forestland Enhancement Fund.

**Senate Bill 55** amended the definition of "qualified agricultural property" in the General Property Tax Act to provide that a parcel is devoted primarily to agricultural use if more than 50% of its acreage is devoted to a combination of agricultural use and is exempt under the Act as qualified forest property.

**Senate Bill 56** amended Parts 93 (Soil Conservation Districts) and 513 (Private Forestry) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Create the "Private Forestland Enhancement Fund" to support private forestland management assistance.
- Authorize MDARD to review soil conservation district budgets and financial information.
- Prescribe criteria that a soil conservation district must meet to be eligible for a grant of at least \$50,000 from MDARD.
- Permit MDARD to promulgate rules to implement the grant provisions, and provide that the rules will not remain in effect for more than three years after the bill's effective date.
- Prohibit a professional forester employed under an MDARD grant from competing with a private sector business or developing a client base for forestry consultation outside of his or her employment with the conservation district.
- Include references to forestland in provisions prescribing a conservation district's powers regarding farmland and natural resources.
- Include in the powers of a conservation district evaluating nonindustrial private forestland and providing forestry assistance to landowners.
- Prohibit a conservation district from developing a management plan for nonindustrial private forestland, unless the landowner is unable to identify a private forester willing to develop a plan.
- Allow a conservation district to cooperate with a local unit of government or other subdivision of State government to implement forestland management projects.

- Authorize MDARD to enter into cooperative agreements with Federal agencies to assist landowners in management of their nonindustrial private forestland.
- Require MDARD to prepare and maintain a list of qualified foresters in Michigan and publish it on the Department's website.

The bill also repealed sections of Part 501 (Forest Improvements) that defined terms used in provisions regarding forest restoration pilot projects, prescribed specific requirements for the Western Upper Peninsula Forest Improvement District, and required State agencies to cooperate with a forest improvement district board.

**Senate Bill 57** amended Part 87 (Groundwater and Freshwater Protection) of NREPA to provide for the assessment of managing areas of land not used for traditional or production agriculture purposes, for environmental, ecological, and economic benefits. The bill does the following:

- Includes this assessment in requirements for the voluntary evaluation of farms under the Michigan Agriculture Environmental Assurance Program (MAEAP).
- Requires the Environmental Assurance Advisory Council to include representatives of a private consulting forester, the forest products industry, and the logging profession.
- Requires the Council to recommend a tool for the assessment described above.
- Expands the responsibilities of environmental assurance teams.

**Senate Bill 58** amended Part 503 (State Forest Products Industry Development Council) of NREPA to require the Department of Natural Resources (DNR) to carry out a number of tasks related to the development and promotion of the State's forest products industry jointly with MDARD; and revise the tasks.

**House Bill 4069** amended Part 511 (Commercial Forests) of NREPA to do the following with regard to commercial forest property:

- Allow an owner of commercial forestland to withdraw from the commercial forest program without penalty, under certain circumstances, for one year after the bill took effect.
- Eliminate a requirement that the 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 are exempt from disclosure under the Freedom of Information Act.
- Allow the DNR to require withdrawal of commercial forestland from the program if an owner takes action that denies or inhibits access to the commercial forest for public hunting and fishing, unless the owner corrects the action and allows access.
- Revise the conditions under which sand and gravel may be removed from a commercial forest.
- Include wind energy development among the prohibited uses of a commercial forest, but permit exploration for wind energy development under certain circumstances.

The bills took effect on June 6, 2013.

### **Senate Bill 51**

#### Tax Exemption Claim; Forest Management Plan

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.

Previously, the Act permitted a property owner to submit a proposed forest management plan to the DNR for approval. The DNR could charge a fee of up to \$200 for considering the plan, and had to review and either approve or disapprove it. The Act defined "approved forest management plan" as a forest management plan approved by either the DNR or a third-party certifying organization. The bill deleted these provisions.

Under the bill, if a property owner is interested in obtaining an exemption for qualified forest property, the owner may contact the local conservation district (i.e., a conservation district organized under Part 93 of NREPA) or MDARD, which must advise the owner on the exemption process. If requested by the property owner, the conservation district or MDARD must give the owner a list of qualified foresters to prepare a forest management plan. The Department must maintain a list of qualified foresters throughout the State and make it available to conservation districts and interested property owners.

The bill requires a property owner to obtain a forest management plan from a qualified forester and submit a digital copy of the plan, an application for exemption as qualified forest property, and a fee of \$50 to MDARD by September 1 before the tax year in which the exemption is requested. A forest management plan is not subject to the Freedom of Information Act. The Department must forward a copy of the application to the local conservation district for review and to the local tax collecting unit for notification.

The conservation district must review the application to determine if the property meets the minimum requirements for enrollment in the qualified forest program, and respond within 45 days after receiving the application, indicating whether the property is eligible. If the conservation district does not respond within 45 days, the property will be considered eligible.

The Department must review the application, comments from the conservation district, and the forest management plan to determine whether the property is eligible for the exemption. The Department must review the forest management plan to determine if the required elements (described below) are in it. Within 90 days after receiving the application, forest management plan, and fee, MDARD must review the application and, if the application and supporting documents are in compliance with the bill's requirements, approve it and prepare a qualified forest school tax affidavit, in recordable form, indicating all of the following:

- The property owner's name.
- The legal description of the property.
- The year the application was submitted for the exemption.
- A statement that the property owner is attesting that the property is qualified forest property and will be managed according to the approved forest management plan.
- Any other information pertinent to the parcel and the property owner.

The 90-day review period may be extended upon the owner's request.

The Department must send the affidavit to the property owner for execution. The owner must execute the affidavit and have it recorded by the county register of deeds, and give a copy to MDARD. The Department must give one copy of the affidavit to the conservation district and one to the Department of Treasury. These copies may be sent electronically.

If the application is denied, the property owner has 30 days from the date of notification by MDARD to initiate an appeal. An appeal must be by certified letter to the MDARD Director.

Previously, to claim an exemption, the property owner had to 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. Under the bill, instead, the owner must provide a copy of the recorded affidavit attesting that the land is qualified forest property to the local tax collecting unit and assessor by that date.

Previously, the Act required an assessor to determine if property was qualified forest property based on a recommendation from the DNR and confirmation that the statewide acreage limit had not been reached. If the property was qualified forest property, the assessor had to exempt it from the collection of school operating taxes until December 31 of the year in which the property was no longer qualified forest property. The bill deleted these provisions, and instead requires an assessor to exempt the property if the owner provides a copy of the qualified forest school tax affidavit.

Previously, an owner could claim an exemption for up to 320 acres of qualified forest property in each local tax collecting unit. The bill increased the acreage allowed in a local tax collecting unit to 640 acres or the equivalent of 16 survey units consisting of one-quarter of one-quarter of a section of qualified forest property. As previously allowed, if an exemption is granted for less than maximum acreage in a local tax collecting unit, the owner may subsequently claim an exemption for additional eligible property in that local unit.

Under the Act, there is a limit of 1.2 million acres of exempt forest property per fiscal year. Beginning in fiscal year 2012-13 and each fiscal year after that, real property eligible for the exemption as qualified forest property as a result of the withdrawal of that property from the operation of Part 511 (Commercial Forests) of NREPA under Section 51108(5) of that Act may not be credited against the 1.2 million-acre limit.

(As amended by House Bill 4069, Section 51108(5) exempts from a penalty a commercial forest owner who withdraws his or her land from the commercial forest program if the land is placed on the local assessment roll and the owner claims and is granted a qualified forest property exemption.)

Under the previous law, an owner of property that was qualified forest property on May 1 for which the assessor denied an exemption in the year the affidavit was filed could file an appeal with the July board of review for summer taxes or, if there were no summer levy of school operating taxes, with the December board of review. The bill deleted this provision.

Also, if the local assessor believed that exempted property was not qualified forest property based on a recommendation from the DNR, the assessor could deny or modify an existing exemption by giving written notice to the owner. The owner could appeal the assessor's determination to the board of review, and a decision of the board of review could be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal. The bill deleted these provisions.

#### Private Forestland Enhancement Fee

Under the bill, beginning in the year that qualified forest property is first exempt and each following year, the local tax collecting unit must collect a fee on each parcel of exempt qualified forest property located in that unit. The fee must be determined by multiplying two mills by the taxable value of the qualified forest property, and must be collected at the same time and in the same manner as general property taxes. Each local tax collecting unit must disburse the fee to the Department of Treasury for deposit in the Private Forestland Enhancement Fund. If property is no longer exempt as qualified forest property, the fee may not be collected on it. The fee is subject to the property tax administration fee established by the local tax collecting unit.

#### Qualified Forest Property

Previously, the Act defined "qualified forest property" as a parcel of real property that met all of the following conditions as determined by the DNR:

- Was not less than 20 contiguous acres in size, of which not less than 80% was productive forest capable of producing wood products.
- Was stocked with forest products.
- Had no buildings or structures located on the property.
- Was subject to an approved forest management plan.

Under the bill, "qualified forest property" means a parcel of real property that meets all of the following conditions as determined by MDARD:

- Is not less than 20 contiguous acres in size and is stocked with productive forest as described below.
- Is subject to an approved forest management plan.

For parcels less than 40 acres, at least 80% must be stocked with productive forest capable of producing forest products. For parcels 40 acres or more, at least 50% must be stocked with productive forest capable of producing forest products.

For a parcel exempt as qualified agricultural property under the Act, the qualified forest portion must be at least 20 contiguous acres. If the qualified forest portion of the parcel is less than 40 acres, at least 80% must be stocked with productive forest capable of producing forest products. If the qualified forest portion is at least 40 acres, at least 50% must be stocked with productive forest capable of producing forest products.

"Forest products" includes, but is not limited to, timber and pulpwood-related products.

#### Termination of Exemption; Recapture

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, by filing a rescission form. The bill requires the owner to file the form with the register of deeds rather than with the local tax collecting unit, as was required previously. Under the bill, the form must include a legal description of the exempted property and a copy of the form must be given to the assessor.

An owner who fails to file a rescission as required is subject to a penalty of \$5 per day for each separate failure beginning after the 90 days have elapsed, up to a maximum of \$1,000. Previously, this penalty had to be deposited in the General Fund. Under the bill, it must be deposited in the Private Forestland Enhancement Fund.

Under the previous law, if property for which an exemption had been granted was converted by a change in use and was no longer qualified forest property, the property was subject to the qualified forest property recapture tax. Under the bill, if all or a portion of property for which an exemption has been granted is converted by a change in use and is no longer qualified forest property, the owner immediately must notify the local tax collecting unit, the assessor, MDARD, and the Department of Treasury on a form created by MDARD, which must include a legal description of the property. A copy of the form must be filed with the register of deeds.

Upon notice that property is no longer qualified forest property, the bill requires the local tax collecting unit and assessor immediately to rescind the exemption and place the property on the tax roll for the next tax year. The Department of Treasury immediately must begin collection of any applicable tax and penalty under the General Property Tax Act or under the Qualified Forest Property Recapture Tax Act.

Between June 1, 2013, and November 30, 2013, however, the bill allowed owners of property exempt as qualified forest property before January 1, 2013, to execute a new qualified forest school tax affidavit. If an owner elected to do so, he or she was not required to pay the \$50 application fee. If the owner elected not to execute a new affidavit, the existing one was rescinded without penalty and the property was placed on the tax roll as though the exemption had not been granted. If a landowner chose not to execute a new affidavit, the property was not subject to the recapture tax provided for under the Qualified Forest Property Recapture Tax Act.

The bill deleted a requirement that an owner of qualified forest property inform a prospective buyer of the property that it was subject to the recapture tax if it was converted by a change in use.

## Reporting & Record-Keeping

Previously, the owner of qualified forest property was required to report annually to the DNR the amount of timber produced on the property and whether any buildings or structures had been constructed on it. The bill deleted this requirement. Instead, the owner must report to MDARD when a forest practice or timber harvest has occurred on the property during a calendar year. The report must indicate the forest practice completed or the volume and value of timber harvested. One copy of the report must be forwarded to the conservation district, and MDARD must keep a copy for seven years. If MDARD determines that a forest practice or harvest has occurred and no report was filed, the Department may collect a fine of \$500.

Previously, the DNR was required to provide a report every three years to the standing committees of the Senate and House of Representatives with primary jurisdiction over forestry issues. The report had to include the number of acres of qualified forest property in each county and the amount of timber produced on qualified forest property each year. Under the bill, MDARD must provide a similar report every year. The report also must include the number of forest management plans completed by conservation districts and the total number of plans submitted for approval each year.

While qualified forest property is exempt, the bill requires the owner to retain the current management plan, most recent harvest records, recorded copy of a receipt of the tax exemption, and a map showing the location and size of any buildings and structures on the property. The owner must make the documents available to MDARD upon request.

The bill also requires the Department to maintain a database listing all qualified forest property, including the dates indicated for forest practices and harvests in the forest management plan, and to notify the property owner and the conservation district in any year that they are to occur. If an owner does not accomplish forest practices and harvests within three years of the time specified in the current management plan, and the plan has not been amended to extend the date, the property will not be eligible for the qualified forest property exemption, must be placed on the tax roll, and will be subject to repayment as indicated in the Qualified Forest Property Recapture Tax Act.

Information in the database specific to an individual property owner's forest management plan is exempt from disclosure under the Freedom of Information Act. Database information in the aggregate, however, including how much timber would be expected to be on the market each year as a result of enrollees, is not exempt from disclosure.

### **House Bill 4244**

Under the General Property Tax Act, the taxable value of a parcel of property (adjusted for additions and losses) may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership. At that time, the assessment is "uncapped" and the parcel is taxed upon its State equalized valuation (50% of its true cash value). The Act defines "transfer of ownership" for this purpose and identifies transactions that do not constitute a transfer of ownership.

The term "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 the register of deeds, attesting that the property will remain qualified forest property.

The bill requires the affidavit to include all of the following:

- A legal description of the property.
- The name of the new property owner.
- The year the transfer occurred.

- A statement indicating that the owner is attesting that the property for which the exemption is claimed is qualified forest property and will be managed according to the approved forest management plan.
- Any other information pertinent to the parcel and the property owner.

The bill requires the property owner to give a copy of the affidavit to MDARD, which must give one copy each to the local tax collecting unit, the conservation district, and the Department of Treasury. These copies may be sent electronically.

The bill specifies that this exception to the recognition of a transfer of ownership extends to the land only of the qualified forest property; if qualified forest property is improved by buildings, structures, or land improvements, those improvements must be recognized as a transfer of ownership in accordance with the provisions of Section 7jj (which Senate Bill 51 amended).

Under the Act, if property ceases to be qualified forest property at any time after being transferred, both of the following must occur:

- The property's taxable value must be adjusted as described above as of December 31 in the year that the property ceases to be qualified forest property.
- The property is subject to the recapture tax provided for under the Qualified Forest Property Recapture Tax Act.

Under the bill, the requirement to adjust the property's taxable value applies except to the extent that the transfer of the property would not have been considered a transfer of ownership.

Additionally, the bill created an exception to the second requirement beginning June 1, 2013, and ending November 30, 2013. Between those dates, owners of property enrolled as qualified forest property before January 1, 2013, could execute a new qualified forest taxable value affidavit with MDARD. If a landowner elected to do so, he or she did not have to pay the \$50 application fee (established by Senate Bill 51). If a landowner chose not to execute a new affidavit, the existing affidavit was rescinded without subjecting the property to the recapture tax, and the taxable value of the property had to be adjusted as prescribed in the Act.

### **House Bill 4243**

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 (as defined in 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.

Under the previous law, if there had been any harvests of forest products, the tax was calculated as follows:

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

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

Under the bill, if there have been any harvests of forest products, the tax is calculated as follows:

- The property's taxable value at the time of the change in use is multiplied by the number of operating mills levied by the local school district in which the property is located, reduced by the number of mills collected as a fee for qualified forest property under the General Property Tax Act.



-- The product of the first calculation is multiplied by the number of years the property was exempt as qualified forest property 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.

As previously provided, if there have been no harvests of forest products, the tax is doubled.

Under the bill, if the property was eligible for exemption as qualified forest property as a result of the withdrawal of the property from the operation of Part 511 of NREPA, and the property is converted by a change in use within seven years after the withdrawal, the recapture tax is an amount equal to the application fee and penalty that would have been assessed under Part 511 to withdraw the property from the operation of that part in the year in which the property was converted by a change in use, calculated as if the property had not been withdrawn. If the property is converted by a change in use more than seven years after the withdrawal, the recapture tax must be calculated according to the bill's formula based on the property's taxable value.

Previously, "converted by a change in use" meant that due to a change in use the property was no longer qualified forest property as determined by the assessor of the local tax collecting unit based on a recommendation from the DNR. Under the bill, the term means that due to a change in use the property is no longer eligible for an exemption as qualified forest property under Section 7jj of the General Property Tax Act.

#### **Senate Bill 54**

As discussed above, under the General Property Tax Act, when qualified forest property is converted by a change in use and is no longer exempt from school operating taxes, it is subject to the recapture of taxes under the Qualified Forest Property Recapture Tax Act. Previously, the proceeds of the recapture tax had to be credited to the State's General Fund.

Beginning January 1, 2014, the bill requires the proceeds to be credited, instead, to the Private Forestland Enhancement Fund.

#### **Senate Bill 55**

Under the General Property Tax Act, qualified agricultural property is exempt from school operating taxes to the extent provided in the Revised School Code. The Act defines "qualified agricultural property" as unoccupied property and related buildings located on that property devoted primarily to agricultural use.

A parcel of property is devoted primarily to agricultural use only if more than 50% of its acreage is devoted to agricultural use. Under the bill, a parcel also is devoted primarily to agricultural use if more than 50% of its acreage is devoted to a combination of agricultural use and is exempt from school operating taxes as qualified forest property.

#### **Senate Bill 56**

##### **Part 93: Soil Conservation Districts**

**MDARD Powers & Duties.** The bill included among MDARD's duties and powers under Part 93 of NREPA the review of conservation district budgets and financial information, including audit reports.

**MDARD Grant to Conservation District.** Previously, a conservation district board had to provide for an annual audit of the accounts of receipts and disbursements, and maintain accurate financial records of receipts and disbursements of State funds and make the records available to MDARD. The bill deleted these requirements.

Under the bill, to be eligible for a grant of at least \$50,000 from MDARD, a conservation district must do all of the following:

- Submit to MDARD an annual budget setting forth the purpose and amount of the expenses expected to be incurred and the source and amount of revenue expected to be received during the ensuing fiscal year.
- Maintain accurate financial records of receipts and disbursements and uniform accounting in accordance with generally accepted accounting principles under procedures prescribed by MDARD.
- Provide for a biennial independent certified audit by a certified public accountant of the district's financial records, accounts, and procedures.
- Agree to comply with restrictions (described below) applicable to a professional forester employed under an MDARD grant, and agree to return any grant funds received if this requirement is violated.

The audit report must show profits and losses and the district's financial condition.

The Department may promulgate rules to implement these provisions. The rules, however, will not remain in effect later than three years after the bill's effective date.

The bill prohibits a professional forester employed under an MDARD grant from using his or her position to compete with a private sector business, or develop a client base for forestry consultation during hours when he or she is not employed by the conservation district.

Conservation District/Board Powers. Part 93 establishes the powers of a conservation district and its board, including the following:

- To conduct surveys, investigations, and research relating to the conservation of farmland, forestland, and natural resources, and to publish the results and disseminate the information.
- To conduct projects within the district on State land, and on any other land within the district with the owner's consent, to demonstrate by example the means, methods, and measures by which farmland, forestland, and natural resources may be conserved and soil erosion may be prevented and controlled.
- To make available to landowners within the district and to other districts agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and other material or equipment to assist landowners in the conservation of farmland, forestland, and natural resources and for the prevention and control of soil erosion.
- To develop comprehensive plans for the conservation of farmland, forestland, and natural resources and for the control and prevention of soil erosion within the district or other districts.
- To take over and administer any farmland, forestland, or natural resource conservation project located within the district's boundaries undertaken by the United States or the State, or a U.S. or State agency, and to manage such a project or act as an agent of the State or U.S. on such a project.

The bill added the references to "forestland" in the provisions described above.

In addition, the bill added to a district's and board's powers the evaluation of nonindustrial private forestland, in cooperation with MDARD; collaboration with MDARD in reviewing applications for qualified forest property exemptions under the General Property Tax Act; and giving landowners any of the following:

- Technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat, and wetland development and restoration.
- Contact information for qualified foresters and other forest resource professionals who may have voluntarily provided information to MDARD.

The bill specifies that the exercise of powers related to providing technical assistance and contact information does not affect the regulatory authority of any State department.

Under the bill, except as otherwise provided, a conservation district may not develop management plans for nonindustrial private forestland. Upon request, a district must give a landowner a list of

qualified foresters to develop management plans. The Department must develop and maintain the list. If requested by a landowner, a conservation district must post on its website notice that the landowner is seeking forest management plan preparation; timber harvesting, marketing, or thinning; or similar services. If a landowner is unable to identify a private forester willing to develop a plan after the notice is posted for at least 30 days, the conservation district may prepare a plan for the landowner upon approval by MDARD.

Local Unit Cooperation. Under Part 93, a conservation district may cooperate with and enter into agreements with a county, township, municipality, or other subdivision of State government in implementing soil, water, and related land-use projects. Under the bill, this also applies to forestland projects.

### Part 513: Private Forestry

Intent & Purpose of Part 513. The bill states, "This part is intended to stimulate improved management and utilization of private forestland and private forest resources within this state. Economic and community development opportunities based on the private forest resource will be enhanced by ensuring adequate future high-quality timber supplies, increased employment opportunities, a diversified economy, and other economic benefits and the conservation, maintenance, and enhancement of a productive and stable forest resource system for the public benefit of present and future generations."

The bill also states, "The primary purpose of this part is to assist private landowners to understand the value of forest resources and the potential threats to forest resources and to provide management guidance."

The bill defines "forestland" as "a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest", whose owner agrees to develop, maintain, and actively manage as a private forest through planting, natural reproduction, or other silvicultural practices. The term includes land from which forest tree species have been removed and not restocked, but does not include land converted to uses other than the growing of forest tree species or land zoned currently for uses incompatible with forest practices.

"Forest resources" means those products, uses, and values associated with forestland, including recreation and aesthetics, fish, forage, soil, timber, watershed, wilderness, and wildlife.

"Landowner" means a person who holds an ownership interest in nonindustrial private forestland.

"Nonindustrial private forestland" means a privately owned tract of land consisting of at least 20 acres, or the timber rights in the land if they have been severed, that has the productive capacity to grow at least on average 20 cubic feet per acre per year and that meets either of the following conditions:

- For a tract of land that contains less than 40 acres, at least 80% of the land is occupied by forest tree species.
- For a tract of land that contains 40 or more acres, at least 50% of the land is occupied by forest tree species.

"Forest practice" means that term as defined in the General Property Tax Act. (Under that Act, as amended by Senate Bill 51, the term includes any of the following:

- The preparation of forest management plans for forestland.
- The improvement of species of forest trees.
- Reforestation.
- The harvesting of species of forest trees.
- Road construction associated with the improvement or harvesting of forest tree species or reforestation.
- Use of chemicals or fertilizers for the purpose of growing or managing species of forest trees.

- Applicable silvicultural practices.
- Any other actions intended to improve forestland or forest resources.)

Cooperative Agreements. The bill allows MDARD to enter into cooperative agreements with the Federal agencies that have been authorized by Congress to assist landowners in management of their nonindustrial private forestland.

Private Forestland Enhancement Fund. The bill created the Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund, including General Fund/General Purpose appropriations, gifts, grants, and bequests. The Treasurer must direct the investment of the Fund, and credit to it any interest and earnings.

The Department is the Fund administrator for auditing purposes. The Department may spend Fund money, upon appropriation, only for one or more of the following purposes:

- Direct assistance.
- Indirect assistance.
- Administrative costs.

"Direct assistance" includes any of the following:

- Programs devoted to nonindustrial private forestland to encourage the judicious management of forestland to maximize economic and ecological value.
- Incentive and cost-sharing programs to assist landowners.
- Programs that enhance investment of private and Federal funds in sustainable forest management.
- Other programs established pursuant to Part 513.

"Indirect assistance" includes the following:

- Public education and demonstration programs on sustainable management of private forestland for increasing value for wildlife habitat and/or timber management.
- Educational programs.
- Technical assistance programs.
- Programs that provide for the promotion and implementation of on-site evaluation systems and management practices.

"Administrative costs" include costs incurred in administration of the qualified forest program developed in the General Property Tax Act.

The Department must establish criteria and procedures for approving proposed expenditures from the Fund.

Before November 1 of each year, the Department of Treasury must notify MDARD of the balance in the Fund at the close of the preceding fiscal year. Money in the Fund at the close of the fiscal year will remain in the Fund and will not lapse to the General Fund.

Qualified Foresters. The bill requires MDARD to prepare and maintain a list of qualified foresters in Michigan. An individual who wishes to be included on the list must submit a registration to MDARD on a form prepared by the Department. The form must include all of the following:

- The category of qualified forester for which the individual meets the necessary requirements.
- The continuing education required for the individual to maintain his or her status as a qualified forester, including the date on which the continuing education must be completed.
- A place for an individual to certify with his or her signature that he or she meets the requirements of a qualified forester and is current with any required continuing education.
- A place to designate whether the individual is submitting a new registration or a renewal.

An individual may update his or her registration at any time by submitting a renewal.

A person who no longer meets the requirements to be considered a qualified forester must notify MDARD in writing, and the Department must remove him or her from the list.

The Department must publish the list on its website.

### Part 501: Forest Improvement

Part 501 provides for the establishment of forest improvement districts. Generally, the process for creation of a district involves the filing of a petition, a public hearing, a determination by the Department of Natural Resources of the need for the district's creation and whether its operation is administratively and economically feasible, and certification by the Secretary of State. Part 501 also authorizes the DNR to fund a forest restoration pilot project or any other forest improvement district created to implement the part, and provides for a pilot project organized as a forest improvement district consisting of the western six counties of the Upper Peninsula. This pilot project is known as the "Western Upper Peninsula Forest Improvement District" (WUPFID).

The bill repealed Section 50110, which contained definitions of terms used in the provisions regarding pilot projects. The bill reenacted some of these definitions in Part 513.

The bill also repealed Section 50112, which required the WUPFID to be managed by a board of directors and prescribed the board's membership and duties, as well as the powers, responsibilities, duties, and authority of a profit corporation having a contract as agent for the District.

In addition, the bill repealed Section 50136, which required each State agency with jurisdiction over or charged with the administration of State-owned land within the boundaries of a forest improvement district to cooperate to the fullest extent with the district board in implementing Part 501.

## **Senate Bill 57**

### On-Site Evaluations

Under Part 87 of NREPA, the Michigan Agriculture Environmental Assistance Program is a voluntary program available to farms throughout the State to promote natural resources conservation through education, technical assistance, and verification. Part 87 requires the MDARD Director, in conjunction with Michigan State University (MSU), the Department of Environmental Quality (DEQ), and other appropriate people, to develop protocols for voluntary on-site evaluations designed to do certain things, such as enabling farmers to determine the degree to which farm operations are in accordance with MAEAP standards and applicable law.

Under the bill, the evaluations also must enable landowners to assess voluntarily the value of managing areas of the land that are not used for traditional or production agriculture practices for environmental, ecological, and economic benefits.

### Advisory Council

Part 87 requires the MDARD Director to establish an Environmental Assurance Advisory Council to advise him or her on a number of issues. The Council includes the Director, as well as the Directors of the DEQ, MSU Extension, and the MSU Agricultural Experimentation Station; representatives of certain agencies and organizations; and a member representing each regional environmental assurance team (described below).

Under the bill, the Council also must include representatives of a private consulting forester, a member of the forest products industry, and a member of the logging profession.

In addition to the issues on which the Council already had to provide advice, the bill requires it to advise on on-site evaluations of potential environmental, ecological, and economic benefits that could be realized by managing areas of the land that are not used for traditional or production agriculture practices.

The bill required the Council, within one year after the bill's effective date, to recommend to the MDARD Director an assessment tool designed to assist landowners to assess voluntarily the value of managing areas of the land that are not used for traditional or production agriculture practices, for environmental, ecological, and economic benefits. At a minimum, the tool must assess all of the following:

- Forest management for timber and/or habitat development.
- Wetland development potential.
- Habitat restoration development.

#### Environmental Assurance Teams

Part 87 requires the MDARD Director to establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other necessary people for implementation of Part 87 programs. The teams are responsible for implementation of the programs, including providing access to technical assistance related to either of the following:

- On-site evaluation of practices that might have an impact on natural resources.
- The development and implementation of conservation plans and activity plans for people making conservation practice changes.

Under the bill, the teams' responsibilities also include providing access to technical assistance related to on-site evaluation of potential environmental, ecological, and economic benefits that could be realized by managing areas of the land that are not used for traditional or production agriculture practices.

#### **Senate Bill 58**

As amended by the bill, Part 503 of NREPA requires the DNR and MDARD to do all of the following jointly:

- Advise the Legislature and the Governor on forest management and development and other matters relevant to the development of the forest products industry in Michigan.
- Develop a forestry development plan to improve the State's business climate for forestry, assure a stable timber supply, and coordinate public and private forestry activities.
- Identify the needs of the forest products industry.
- Promote and encourage the expansion of the forest products industry in Michigan.
- Promote and encourage the retention and expansion of existing forest products companies in Michigan and attract new forest products companies to locate in the State.
- Perform other functions considered necessary for the development of the forest products industry in Michigan.
- Report annually to the Governor and the Legislature on the Departments' activities to promote the development of the forest products industry in Michigan.

Previously, the DNR was required to perform generally the same duties.

The bill eliminated a requirement that the DNR promote and encourage the use of Michigan's forest products by other states and for export. Instead, the bill requires the DNR and MDARD to promote and encourage the use of the State's value-added forest products in Michigan, in other states, and internationally.

## House Bill 4069

### Classification & Withdrawal of Commercial Forest

Part 511 of NREPA 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.

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. To be eligible for classification 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 has been prepared and is in effect, and other items.

Previously, if an applicant could not secure the services of a registered forester or natural resources professional to prepare a forest management plan, the DNR had to prepare a plan upon request and charge the owner a fee. The bill deleted this provision.

The bill specifies that a forest management plan submitted to the DNR or a local tax collecting unit is 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. An application must be granted without payment of the withdrawal application fee or penalty if the application meets 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.

Under the bill, for one year after its effective date, an owner was not subject to a withdrawal penalty if the former commercial forestland was 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 Senate Bill 51 amended), 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 allows the DNR to withdraw forestland from the classification as a commercial forest if it is acquired by a federally recognized Indian tribe and the associated property taxes subsequently are preempted under Federal law. The withdrawal is not subject to the application fee or penalty.

### Restricted Use

Part 511 prohibits the owner of a commercial forest from using that land in certain manners. Under the bill, if the DNR determines that an owner has taken an action that has 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 may require withdrawal of the land from the program unless the owner corrects that action and allows access. On the bill's effective date, if there was no access and the lack of access was not the consequence of an action taken by the owner, the forestland was allowed to remain commercial forestland if all of the following applied:

- There was not a transfer of title for the parcel of commercial forestland, other than as part of a larger sale of at least 10,000 acres.
- The landowner had not taken an action following acquisition of commercial forestland that had the effect of denying or inhibiting access to the public for hunting and fishing.
- The commercial forestland was otherwise in compliance with Part 511.

Under certain circumstances, Part 511 allows sand and gravel to be removed from a commercial forest with the DNR's approval. Previously, the sand and gravel had to 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 must 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.

A commercial forestland owner may not use the land for wind energy development, except as prescribed in the bill. Upon application to and approval by the DNR, meteorological towers may be erected and wind energy exploration or development leases, easements, or license agreements may be entered into without affecting the land's classification as a commercial forest. A landowner may be paid compensation for the leases, easements, or agreements. Before any wind turbines are erected to generate electricity for commercial purposes, the owner must withdraw the portion of the commercial forest directly affected as follows:

- The actual physical footprint of each wind turbine, associated buildings, and adjacent areas that will be permanently removed from forest production must be removed from the classification as a commercial forest.
- Forestland under a wind energy development lease, easement, or license agreement where forest production will continue may remain classified as commercial forest.
- Forestland containing road and utility rights-of-way may continue to be classified as commercial forest.

MCL 211.7jj (S.B. 51)  
211.1035 (S.B. 54)  
211.7dd (S.B. 55)  
324.9301 et al. (S.B. 56)  
324.8703 et al. (S.B. 57)  
324.50301 & 324.50302 (S.B. 58)  
324.51102 et al. (H.B. 4069)  
211.1032 & 211.1034 (H.B. 4243)  
211.27a (H.B. 4244)

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

### **Senate Bills 51 and 55**

The bills reduce revenue to local units of government, reduce General Fund revenue, direct revenue to the Private Forestland Enhancement Fund, and likely increase School Aid Fund expenditures.

At the time the bills were enacted, approximately 70,000 to 80,000 acres were enrolled in programs that treat the property as qualified forest property. It is unknown how many owners of property chose or will choose to seek qualified forest property status under the bills. Given the acreage when the bills were enacted, property enrolled in the program received an exemption that increased School Aid Fund expenditures by between \$1.3 million and \$1.4 million per year, assuming an average property tax rate of 33 mills and average taxable value of \$1,000 per acre. If the property remained or remains in the program under the bills, the bills will generate fee revenue of between \$140,000 and \$160,000 per year for the Private Forestland Enhancement Fund. However, School Aid Fund expenditures will remain between \$1.3 million and \$1.4 million above the level they would be if the property were not enrolled in the program.

To the extent that acreage ceased or ceases to be qualified forest property as a result of the bills, the bills decrease School Aid Fund expenditures because the property becomes subject to the 18-mill school operating levy and less expenditure is needed in order to meet per-pupil funding guarantees.

The bills also decrease General Fund revenue by an unknown amount, and increase revenue to the Private Forestland Enhancement Fund by an identical amount, by redirecting penalty revenue from the General Fund to the Private Forestland Enhancement Fund. It is not known how many parcels are subject to any penalties, or the specific characteristics that affect their liability.



In addition, the bills shift application fee revenue from the Department of Natural Resources to the Department of Agriculture and Rural Development. To the extent that the bills increase the number of acres categorized as qualified forest property, application fee revenue increases by an unknown, and likely minimal, amount. The bills also result in additional administration for the Department of Treasury. The magnitude of these additional costs is unknown but likely minimal.

#### **Senate Bill 54**

The bill reduces General Fund revenue by an unknown amount beginning January 1, 2014, by redirecting recapture tax revenue from the General Fund to the Private Forestland Enhancement Fund. The actual amount of revenue redirected depends on the specific number and characteristics of parcels subject to the recapture tax under the Act.

#### **Senate Bill 56**

The bill requires MDARD to assume a greater role in providing for the availability of evaluation, potential management, and use of nonindustrial forestland in the State. The Department has additional administrative costs, in an undetermined amount. The bill also created the Private Forestland Evaluation Fund and requires MDARD to administer and spend money from the Fund for various purposes.

#### **Senate Bill 57**

The bill has no fiscal impact on State or local government. The additional responsibilities required under the bill can be accomplished with existing resources.

#### **Senate Bills 58 and 59**

The bills have no fiscal impact on State or local government.

#### **House Bill 4069**

The bill has a minor, but positive fiscal impact on State and local governments.

Under the bill, for one year, landowners with forestland in the commercial forest program were allowed to transfer the land into the qualified forest program with no penalties, under certain circumstances. 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 benefit local units of government in that, while they no longer receive the flat \$2.50 per acre total annual payments from the Department of Treasury and the landowner, they receive ad valorem property taxes on any land transferred to the qualified forest program, which almost certainly is more than the \$2.50 received under the commercial forest program. The State also saves the \$1.25 per acre payment made by the Department of Treasury for each parcel that changes from commercial forest to qualified forest. It is unknown how many, if any, participants in the commercial forest program were qualified for and chose to transfer to the qualified forest program.

#### **House Bill 4243**

The bill reduces 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 parcels are classified as qualified forest property, this decline in revenue per parcel may be offset by revenue from the additional property.

## **House Bill 4244**

The bill reduces General Fund revenue by an unknown amount that depends on the specific characteristics of property affected by the bills.

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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.