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Senate Bill 912 (Substitute S-3 as passed by the Senate)
Senate Bill 913 (Substitute S-2 as passed by the Senate)
Senate Bill 914 (as passed by the Senate)
Sponsor: Senator Gerald Van Woerkom (S.B. 912)
Senator Tony Stamas (S.B. 913)
Senator Jason E. Allen (S.B. 914)
Committee: Agriculture, Forestry and Tourism

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RATIONALE

Michigan has 19 million acres of forestland. Private landowners own almost 57% of that land, but produce only about 37% of the timber harvested in the State, a percentage said to be much lower than in other states such as Wisconsin. Because of its large forested areas, historically Michigan has had a vibrant timber industry, but some are concerned that the State is not taking full advantage of its natural advantage in this area. Currently, the rate of forest growth in the State is approximately twice the rate of harvest.

State law offers some tax incentives to private woodlot owners so they will actively manage their forestland, but the program has not attracted a significant number of participants. Part 513 of the Natural Resources and Environmental Protection Act (NREPA) allows landowners to establish private forest reservations, which are subject to a reduced tax rate. Initially enacted as the Private Forest Reserve Act in 1917 and later subsumed under NREPA in 1995, Part 513 permits the owner of a tract of land of up to 160 acres to designate one quarter of the land as a private forest reservation, which is exempt from all taxes above \$1 per acre. The owner must meet certain requirements in maintaining the land as a private forest reservation, and before harvesting any timber on the site, he or she must pay 5% of the appraised value of the timber as a harvest license fee. Reportedly, only about 5,000 acres in the State have been designated as private forest reservations. Some believe that the

program under Part 513 should be replaced with one that would encourage more private landowners actively to manage and harvest the timber on their forestland.

CONTENT

Senate Bill 912 (S-3) would amend the General Property Tax Act to do the following:

- **Exempt a limited amount of qualified forest property from taxes levied by local school districts, with some exceptions.**
- **Require a property owner to file an approved forest management plan, or a certificate from a third-party organization, in order to receive an exemption.**
- **Exempt the transfer of qualified forest property, under certain conditions, from a provision requiring the taxable value of property to be adjusted upon transfer.**

The bill also would repeal Part 513 (Private Forestry) of the Natural Resources and Environmental Protection Act.

Senate Bill 913 (S-2) would create the "Qualified Forest Property Recapture Tax Act", effective January 1, 2007, to provide for the recapture of taxes owed on qualified forest property that was converted by a change in use after

December 31, 2006, and no longer qualified for a tax exemption. The recapture tax would be doubled if no harvests of forest products had been conducted on the land consistent with the approved forest management plan.

Senate Bill 914 would amend the Revised School Code to exempt qualified forest property from taxes levied by local school districts.

The bills would define "qualified forest property" as a parcel of real property that met all of the following conditions, as determined by the Department of Natural Resources (DNR):

- Is not less than 20 contiguous acres in size, of which at least 80% is productive forest capable of producing wood products.
- Is stocked with forest products.
- Has no buildings or structures on the real property.
- Is subject to an approved forest management plan.

"Productive forest" would mean real property capable of growing at least 20 cubic feet of wood per acre per year. "Forest products" would include timber and pulpwood-related products.

The three bills are tie-barred to each other.

Senate Bill 912 (S-3)

Exemption for Qualified Forest Property

The bill would exempt a limited amount of qualified forest property from the tax levied by a local school district for school operating purposes to the extent provided under Section 1211 of the Revised School Code (which Senate Bill 914 would amend).

The amount of forest property that would be eligible for an exemption under the bill would be limited as follows:

- In the 2007-08 fiscal year, 300,000 acres.
- In the 2008-09 fiscal year, 600,000 acres.
- In the 2009-10 fiscal year, 900,000 acres.

- In the 2010-11 fiscal year and each subsequent fiscal year, 1.2 million acres.

To claim an exemption, the owner of the property would have to file an affidavit claiming the exemption 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. An owner could claim an exemption for up to 320 acres in each local tax collecting unit. If an exemption were granted for less than that amount, the owner could subsequently claim an exemption for additional property in that local tax collecting unit if that property met the bill's requirements.

The affidavit would have to be on a form prescribed by the Treasury Department and would have to attest that the property for which the exemption was claimed was qualified forest property, and would be managed according to the approved forest management plan.

The assessor would have to determine if the property was qualified forest property based on a recommendation from the DNR and confirmation that the acreage limit specified above had not been reached, and if so, would have to exempt the property from the collection of the tax until December 31 of the year in which the property was no longer qualified forest property.

If all or a portion of the property were no longer qualified forest property, the owner would have to rescind the exemption for that portion of the property within 90 days by filing with the local tax collecting unit a rescission form prescribed by the Treasury Department. An owner who failed to do so would be subject to a penalty of \$5 per day for each failure beginning after the 90 days had passed, up to a maximum of \$1,000. The penalty would have to be collected under the revenue Act and deposited in the State's General Fund.

Appeals; Modification

An owner of property that was qualified forest property on December 31, for which no exemption was on the tax roll, could file an appeal with the July or December board of review under Section 53b in the year the exemption was claimed or the next year.

(Section 53b permits either a taxpayer or an assessing officer to petition the board of review if there has been a clerical error or a mutual mistake in the assessment, computation, or rate of taxation. The bill would amend Section 53b to permit the board of review to hear appeals provided for in the bill.)

An owner of property that was qualified forest property on May 1, for which an exemption was denied, could file an appeal with the July board of review for summer taxes or, if there were not a summer levy of school operating taxes, with the December board of review.

If the local tax assessor believed that the property for which an exemption had been granted was not qualified forest property based on a recommendation from the DNR, the assessor could deny or modify an existing exemption by notifying the owner in writing as required under Section 24c. (That section requires the assessor to notify the owner or owners by certified mail of an increase in the tentative taxable value for the year. The notice must contain specific information on the change, including the current tentative taxable value, the net change from the preceding year, the classification of the property, and the time and place where the board of review will be meeting.) A taxpayer could appeal the assessor's determination to the board of review. A decision of the board of review could be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal.

If property for which an exemption had been granted were not qualified forest property, the property would have to be placed immediately on the tax roll by the local tax collecting unit or by the county treasurer as though the exemption had not been granted. A corrected tax bill would have to be issued for each tax year being adjusted.

Change in Use

If property exempted under the bill were converted by a change in use and were no longer qualified forest property, the property would be subject to the qualified forest property recapture tax under the proposed Qualified Forest Property Recapture Tax Act. An owner of qualified forest property would have to inform a prospective buyer of the

property that if the property were converted by a change in use, it would be subject to the recapture tax.

Reporting Requirements

An owner of qualified forest property that was exempt under the bill would have to report annually to the DNR, on a form prescribed by the Department, the amount of timber produced on that property and whether any buildings or structures had been constructed on the property.

Every three years, beginning in 2008, the DNR would have to provide to the House and Senate standing committees with primary jurisdiction over forestry issues a report that included the number of acres of qualified forest property in each county, and the amount of timber produced on qualified forest property each year.

Transfer of Ownership

Under the Act, upon transfer of ownership of property, the property's taxable value for the following calendar year is that property's State equalized valuation (SEV) for the year following the transfer. The bill specifies that "transfer of ownership" would not include a transfer of qualified forest property, if the person to whom the qualified forest property was transferred filed an affidavit with the local tax assessor and with the register of deeds for the county where the qualified forest was located, attesting that the property would remain qualified forest property. The affidavit would have to be on a form prescribed by the Treasury Department.

If property ceased to be qualified forest property after being transferred, the taxable value of the property would be adjusted as described above, as of December 31 of the year when the property ceased to be qualified forest property. In addition, the property would be subject to the proposed recapture tax.

Forest Management Plan; Third Party Certificate

Under the bill, "approved forest management plan" would mean either a forest management plan certified by a third-party certifying organization, or a forest management plan approved by the DNR.

"Third-party certifying organization" would mean an independent third-party organization that assesses and evaluates forest management practices according to the standards of a certification program that measures whether forest management practices are consistent with principles of sustainable forestry. The term would include the Forest Stewardship Council and the Sustainable Forest Initiative.

To obtain the DNR's approval, an owner could submit to the Department a proposed forest management plan and a statement signed by the owner that he or she agreed to comply with all terms and conditions in the plan. The DNR could charge a maximum \$200 fee for the consideration of each plan submitted. The DNR would have to review and either approve or disapprove each plan submitted. If the DNR disapproved a proposed forest management plan, the Department would have to indicate the changes necessary to qualify the proposed plan for approval on subsequent review. At the request of the owner submitting the plan, the DNR could agree to complete a proposed forest management plan. An owner and the DNR could mutually agree to amend a proposed plan or an approved plan. A plan submitted for approval could not extend beyond 20 years. An owner could submit a succeeding proposed forest management plan to the DNR for approval.

"Proposed forest management plan" would mean a proposed plan for sustainable forest management, prepared by a qualified forester, that included at least harvesting, planting, and regeneration of forest products on a parcel of property. A proposed management plan would have to include all of the following:

- The name and address of each owner of the property.
- The legal description and parcel identification number of the property or the parcel on which the property was located.
- A statement of the owner's forest management objectives.
- A map, diagram, or aerial photograph that identified forested and unforested areas of the property using conventional map symbols indicating the species, size, and density of vegetation and other major features of the property.

- A description of the forestry practices, including harvesting, thinning, and reforestation, that would be undertaken, and the approximate period of time before each would be completed.
- A description of soil conservation practices that could be necessary to control any soil erosion that could result from the forestry practices described.
- A description of activities that could be undertaken for the management of forest resources other than trees, including wildlife habitat, watersheds, and aesthetic features.

"Natural resources professional" would mean that term as defined in Section 51101 of NREPA, i.e., a person who is acknowledged by the DNR as having the education, knowledge, experience, and skills to identify, schedule, and implement appropriate forest management practices needed to achieve the purposes of Part 511 (Commercial Forests).

"Registered forester" would mean that term as defined in Section 51101 of NREPA, i.e., a person registered under Article 21 of the Occupational Code. (Under Article 21, to qualify as a certified forester, one must graduate from an accredited university or college, have two or more years of experience in forestry work, and be of good moral character.)

Repeal of Part 513

The bill would repeal Part 513 of NREPA, effective September 1, 2007. Part 513 provides an exemption from all taxation for the value of private forest reservations over \$1 per acre. Land may be designated a private forest reservation if it meets certain size requirements and if the owner plants at least 1,200 trees per acre, or a sufficient number of forest trees to assure a spacing of six feet by six feet on the open areas. Before removing any trees, the owner must pay a license fee of 5% of the appraised valuation of the cut timber. If the owner withdraws land from the classification of a private forest reserve, or fails to comply with Part 513, he or she must pay a fee of 5% of the appraised value of the timber on the stump. All taxes and fees collected under Part 513 that are allocated to the local school district where the reservation is located must be paid to the State Treasurer and credited to the School Aid Fund.

Senate Bill 913 (S-2)

The bill would create the Qualified Forest Property Recapture Tax Act.

Beginning January 1, 2007, the qualified forest property recapture tax would be imposed as provided under the bill if the property were converted by a change in use after December 31, 2006. "Converted by a change in use" would mean 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.

The recapture tax would be the obligation of the person who owned the property at the time the property was converted by a change in use. If a recapture tax were imposed, it would be a lien on the property subject to the recapture tax until paid. If the recapture tax were not paid within 90 days of the date the property was converted by a change in use, the State Treasurer could bring a civil action against the property owner as of the date the property was converted by a change in use. If the recapture tax remained unpaid on March 1 in the year after the property was converted, the property would have to be returned as delinquent to the county treasurer of the county in which the property was located. Property upon which the recapture tax, interest, penalties, and fees remained unpaid after the property was returned as delinquent would be subject to forfeiture, foreclosure, and sale for the enforcement and collection of delinquent taxes as provided in the General Property Tax Act.

The local tax assessor would have to notify the State Treasurer of the date the property was converted by a change in use. The State Treasurer would have to collect the recapture tax and credit the proceeds to the State's General Fund. The Department of Treasury would have to administer the proposed Act.

If property were converted by a change in use and there had been one or more harvests of forest products on that property consistent with the approved forest management plan, the recapture tax would be calculated as follows:

- Multiply the property's SEV at the time the property was converted by a change in use, by the total millage rate levied by all taxing units in the local tax collecting area where the property was located.
- Multiply the product of that calculation by seven.

If property were converted by a change in use and there had not been any harvests of forest products consistent with the approved forest management plan, the recapture tax would equal the product of the calculation described above multiplied by two.

In addition to the recapture tax calculated above, the tax would have to include the benefit received on that property, if property were converted by a change in use and the taxable value of the property were not adjusted under Section 27a(3)(o) of the General Property Tax Act after a transfer of ownership (under an exemption proposed by Senate Bill 912 (S-3)).

"Benefit received on that property" would mean the sum of the number of mills levied in the local tax collecting unit on the qualified forest property in each year of the benefit period multiplied by the difference in each year between the true cash taxable value of the property and the property's taxable value as determined under Section 27a of the Act. "Benefit period" would mean the number of years between the date of the first exempt transfer and the conversion by a change in use, up to a maximum of 10 years immediately preceding the year in which the property was converted by a change in use.

"True cash taxable value" would refer to the taxable value the property would have had if the exemption under Section 27a(3)(o) were not in effect. (Section 27a(3) states that upon transfer of ownership of property, the property's taxable value for the following calendar year is that property's SEV for the year following the transfer. Senate Bill 912 (S-3) would exclude a transfer of qualified forest property from that provision.)

Senate Bill 914

Under Section 1211 of the Revised School Code, the board of a school district may levy a limited number of mills for school operating purposes. Principal residences and qualified agricultural property are

exempt from the levied mills except as the exemption is reduced by a school board. The bill also would exempt qualified forest property from the mills.

The Code permits the board of a school district that had a foundation allowance of more than \$6,500 for fiscal year (FY) 1994-95 to reduce the exemption for a primary residence and qualified agricultural property by the number of mills required to generate sufficient revenue for the school district's combined State and local revenue to be equal to the district's foundation allowance in FY 1994-95. Under the bill, the board also could reduce that exemption for qualified forest property.

A school district may levy additional mills on all classes of property if the Department of Treasury determines that the maximum number of mills allowed to be levied is not sufficient to generate a certain minimum amount of revenue. If the number of mills a school district is allowed to levy is less than the number allowed during the previous year, any reduction in the school district's millage rate must be calculated by first reducing any additional mills the school district had levied on all classes of property, and then increasing the mills from which a principal residence and qualified agricultural property are exempted. The bill would include qualified forest property in that provision.

MCL 211.27a (S.B. 912)
380.1211 (S.B. 914)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although Michigan has an abundance of forestland, there actually is less timber harvested in this State than in other Midwestern states that have fewer acres of forest. A significant portion of the forest in Michigan is held by private landowners, who may not be concerned primarily with timber harvests, or may not be aware of sustainable management methods or how to get the best long-term economic benefits from the land. The bills would encourage small woodlot owners to develop active management plans that would include

harvesting in a sustainable way, bringing more timber to market and benefiting landowners. Michigan has a natural advantage in the timber and forest products industries, because of its extensive forestland. Currently, though, the State is not taking full advantage of its timber supply, and Michigan is losing jobs in an area that could be a growth industry. Several saw mills and paper mills in the State have either shut down or laid off significant numbers of workers, because of competition from other states or countries. An increase in the supply of timber could help Michigan to gain a competitive advantage in the industry.

Many believe that the cost of timber in Michigan is artificially high because of constricted supply. Encouraging more landowners to harvest their woodlots could lower the cost of timber, allowing Michigan's forest products industry to compete with other states and countries. With the difficult economic situation Michigan is facing, the State should pursue this opportunity for growth that could create high-paying jobs and boost the State's economy.

The current growth rate of timber in Michigan is about twice the rate of harvest. The State could increase the harvest rate without harming the health of the forests. To qualify for a tax exemption under the bills, woodlot owners would have to adopt a forest management plan that was approved by the DNR or by a nationally recognized third party certification organization such as the Forest Stewardship Council or the Sustainable Forest Initiative. These are respected organizations that promote sustainable forest management. Property certified by these organizations would be subject to management audits and periodic inspections, ensuring that participants followed the approved management plan, and helping to enforce the requirements specified in the bills.

If a landowner lost his or her third-party certification, failed to harvest according to the management plan, or otherwise violated the terms of the bills, the property would lose its designation as qualified forest property and would be subject to the recapture tax. The recapture tax would prevent the use of forestland as a tax shelter or other abuse of the program. The bills would encourage the responsible

harvest of wood products and sustainable land management while establishing penalties to discourage misuse of the program.

Opposing Argument

If the State reimbursed local schools for the lost revenue under the bills, the program could create significant additional expenses for the State, depending on how many landowners participated in the program. Projections of the likely participation rate vary, but any additional expense could be problematic, given the tight budget situation. It would be unwise to enact new tax incentives right now without specifying how the State would pay for the program.

Opposing Argument

The bills would limit the tax incentive to forestland that had no buildings or structures, which would disqualify many acres of high-quality forestland. The presence or absence of buildings has no influence on the effectiveness of a forest management plan, and would unnecessarily restrict the scope of the proposed program.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

It is estimated that these bills would reduce the revenue generated by the 18-mill local school tax about \$4.0 million in FY 2007-08, \$8.1 million in FY 2008-09, \$12.2 million in FY 2009-10, and \$16.2 million in FY 2010-11 and after.

This loss in revenue would affect the School Aid Fund. The reduction in local school property tax revenue, as proposed in Senate Bill 912 (S-3), would directly reduce the tax revenue going to local school districts; however, due to the State's guaranteed foundation allowance, this loss in local school revenue would be made up dollar-for-dollar through increased payments from the School Aid Fund.

The recapture tax proposed in Senate Bill 913 (S-2) probably would generate very little if any revenue initially, but gradually would generate as much \$2 million to \$3 million annually in 10 years or so. This revenue would go to the General Fund, so it would help offset the General Fund cost of reimbursing the School Aid Fund for its increased expenditures to local schools due

to their loss of 18-mill local school tax revenue.

A provision in Senate Bill 912 (S-2) would preclude qualified forestland from being counted as a property transfer when it changed ownership. Therefore, the new owner of qualified forestland would not experience an upward adjustment in the property's taxable value. This change would have a negative impact on all property taxes, and the magnitude of the impact would depend on the amount of qualified forestland that changed ownership in a given year and the difference between these properties' taxable values and State equalized values (50% of market value). It is estimated that on an average basis, this change would reduce the State education tax and non-school local taxes by a very small amount in the initial years.

This bill also would repeal a tax reduction program called the Private Forest Reservation Program. This program was first established in 1917 and was intended to help preserve forestland on farms. Under this program, the owner of land with not more than 160 acres with at least half of the land devoted to agricultural uses may designate up to one-fourth of the land as a private forest reservation. The land in this forest reservation is not taxed on the value that is in excess of \$1 per acre. This is entirely a local government program, so there are no up-to-date statewide aggregate data available on the amount of land that is in this program or how much of a tax reduction this land is receiving. What little data there are suggest that this is a very small program on a statewide basis; however, individual land owners participating in this program could be receiving a substantial tax reduction.

Fiscal Analyst: Jay Wortley

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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.