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BILL ANALYSIS

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Senate Bills 912, 913, and 914 (as enrolled)

**PUBLIC ACTS 378-380 of 2006**

Sponsor: Senator Gerald Van Woerkom (S.B. 912)

Senator Tony Stamas (S.B. 913)

Senator Jason E. Allen (S.B. 914)

Senate Committee: Agriculture, Forestry and Tourism

House Committee: Conservation, Forestry, and Outdoor Recreation

Date Completed: 2-21-07

**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. Michigan historically has had a vibrant timber industry because of its large forested areas, but some are concerned that the State is not making full use 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 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 is required to pay 5% of the appraised value of the timber as a harvest license fee. Reportedly, in 2006 only about 5,000 acres in the State were designated as private forest reservations. It was suggested that the program under Part 513 be replaced

with one that may encourage more private landowners actively to manage and harvest the timber on their forestland.

**CONTENT**

**Senate Bill 912 amended 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 requirement that the taxable value of property be adjusted upon transfer.

The bill also repeals Part 513 (Private Forestry) of the Natural Resources and Environmental Protection Act as of September 1, 2007.

**Senate Bill 913 created the "Qualified Forest Property Recapture Tax Act" to provide for the recapture of taxes owed on qualified forest property that is converted by a change in use after December 31, 2006, and no longer qualifies for a tax exemption; and require the recapture tax to be doubled if no harvests of forest products have been conducted on the land consistent**

**with its approved forest management plan.**

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

The bills define "qualified forest property" as a parcel of real property that meets 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" means real property capable of growing at least 20 cubic feet of wood per acre per year. "Forest products" includes timber and pulpwood-related products.

The bills took effect on September 27, 2006, and were tie-barred to each other.

**Senate Bill 912**

**Exemption for Qualified Forest Property**

The bill exempts 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 (as amended by Senate Bill 914).

The following amounts of forest property are eligible for an exemption under the bill:

- 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 under the bill, the owner of the property must file with the local tax collecting unit, by December 31, an affidavit claiming the exemption and an

approved forest management plan or a certificate provided by a third party certifying organization. An owner may claim an exemption for up to 320 acres in each local tax collecting unit. If an exemption is granted for less than that amount, the owner subsequently may claim an exemption for additional property in that local tax collecting unit if that property meets the bill's requirements.

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

The assessor must determine if the property is qualified forest property based on a recommendation from the DNR and confirmation that the yearly acreage limit has not been reached. If those criteria are met, the assessor must exempt the property from the collection of tax under the General Property Tax Act until December 31 of the year in which the property is no longer qualified forest property.

If all or a portion of the property is no longer qualified forest property, the owner must 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 fails to do so will be subject to a penalty of \$5 per day for each failure beginning after the 90 days have passed, up to a maximum of \$1,000. The penalty must be collected under the revenue Act and deposited in the State's General Fund.

**Appeals; Modification**

An owner of property that is qualified forest property on December 31, for which no exemption is on the tax roll, may file an appeal with the July or December board of review under Section 53b of the General Property Tax Act 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 amended Section 53b to permit the board of review to hear appeals provided for in the bill.)

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

If the local tax assessor believes that the property for which an exemption has been granted is not qualified forest property based on a recommendation from the DNR, the assessor may 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 may appeal the assessor's determination to the board of review. A decision of the board of review may be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal.

If property for which an exemption has been granted is not qualified forest property, the property must 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 must be issued for each tax year being adjusted.

#### Change in Use

If property exempted under the bill is converted by a change in use and is no longer qualified forest property, the property is subject to the qualified forest property recapture tax under the Qualified Forest Property Recapture Tax Act. An owner of qualified forest property must inform a prospective buyer of the property that if the property is converted by a change in use, it will be subject to the recapture tax.

#### Reporting Requirements

An owner of qualified forest property that is exempt under the bill must 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 have been constructed on it.

Every three years, beginning in 2008, the DNR must provide to the House and Senate standing committees with primary jurisdiction over forestry issues a report that includes 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" does not include a transfer of qualified forest property, if the person to whom the qualified forest property is transferred files an affidavit with the local tax assessor and with the register of deeds for the county where the qualified forest is located, attesting that the property will remain qualified forest property. The affidavit must be on a form prescribed by the Department of Treasury.

If property ceases to be qualified forest property after being transferred, the taxable value of the property must be adjusted as described above, as of December 31 of the year when the property ceases to be qualified forest property. In addition, the property is subject to the recapture tax under the Qualified Forest Property Recapture Tax Act.

#### Forest Management Plan; Third Party Certificate

Under the bill, "approved forest management plan" means 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" means 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 includes the Forest Stewardship Council and the Sustainable Forest Initiative.

To obtain the DNR's approval of a plan, an owner may submit to the Department a proposed forest management plan and a statement signed by the owner that he or she agrees to comply with all terms and conditions in the plan. The DNR may charge a maximum \$200 fee for the consideration of each plan submitted. The DNR must review and either approve or disapprove each plan submitted. If it disapproves a proposed forest management plan, the Department must 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 may agree to complete a proposed forest management plan. An owner and the DNR may agree mutually to amend a proposed plan or an approved plan. A plan submitted for approval may not extend beyond 20 years. An owner may submit a succeeding proposed forest management plan to the DNR for approval.

The bill defines "proposed forest management plan" as a proposed plan for sustainable forest management, prepared by a qualified forester, that includes at least harvesting, planting, and regeneration of forest products on a parcel of property. A proposed plan must 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 is located.
- A statement of the owner's forest management objectives.
- A map, diagram, or aerial photograph that identifies 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 will be undertaken, and the approximate period of time before each will be completed.
- A description of soil conservation practices that may be necessary to control any soil erosion that may result from the forestry practices described.
- A description of activities that may be undertaken for the management of forest resources other than trees, including

wildlife habitat, watersheds, and aesthetic features.

"Natural resources professional" means 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" means 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 repeals 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**

The bill created the Qualified Forest Property Recapture Tax Act.

Beginning January 1, 2007, the qualified forest property recapture tax will be imposed as provided under the Act if the property is converted by a change in use after December 31, 2006. "Converted by a change in use" means that due to a change

in use the property is no longer qualified forest property as determined by the assessor of the local tax collecting unit, based on a recommendation from the DNR.

The recapture tax is the obligation of the person who owns the property at the time the property is converted by a change in use. If a recapture tax is imposed, it is a lien on the property subject to the tax until paid. If the recapture tax is not paid within 90 days of the date the property is converted by a change in use, the State Treasurer may 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 remains unpaid on March 1 in the year after the property was converted, the property must be returned as delinquent to the county treasurer of the county in which the property is located. Property upon which the recapture tax, interest, penalties, and fees remain unpaid after the property is returned as delinquent is 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 must notify the State Treasurer of the date the property is converted by a change in use, and the State Treasurer must collect the recapture tax and credit the proceeds to the State's General Fund. The Department of Treasury must administer the Qualified Forest Property Recapture Tax Act.

If property is converted by a change in use and there has been at least one harvest of forest products on that property consistent with the approved forest management plan, the recapture tax must be calculated as follows:

- Multiply the property's SEV at the time the property is 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 is located.
- Multiply the product of that calculation by seven.

If property is converted by a change in use and there has not been at least one harvest of forest products consistent with the approved forest management plan, the recapture tax is double the amount described above.

In addition, the tax must include the benefit received on the property if the property is converted by a change in use and the taxable value of the property was not adjusted under Section 27a(3)(o) of the General Property Tax Act after a transfer of ownership. (Under Section 27a, upon the transfer of ownership of property, the property's taxable value for the following calendar year equals the property's SEV for the year following the transfer. Senate Bill 912 added subsection (3)(o) to exempt a transfer of qualified forest property from that provision.)

The new Act defines "benefit received on that property" as 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 General Property Tax Act. "Benefit period" means 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 is converted by a change in use.

"True cash taxable value" refers to the taxable value the property would have had if the exemption under Section 27a(3)(o) were not in effect.

### **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 exempts 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 may reduce that exemption for qualified forest property.

The Code also permits a school district to 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 district's millage rate must be calculated by first reducing any additional mills the 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 includes qualified forest property in that provision.

MCL 211.27a (S.B. 912)  
211.1031-211.1036 (S.B. 913)  
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 will encourage small woodlot owners to develop active management plans that 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, but the State is not taking full advantage of its timber supply, and is losing jobs in an area that could be a growth industry. Several saw mills and paper mills in Michigan 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.

In addition, many believe that the cost of timber in Michigan is artificially high because of constricted supply. Encouraging more landowners to harvest their woodlots may 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 bills offer an opportunity for expansion in an area that may create high-paying jobs and boost the State's economy.

These benefits can be had while maintaining sustainable growth in Michigan forests. The current growth rate of timber in Michigan is about twice the rate of harvest, which indicates that the State may not be taking full advantage of this resource. The State can increase the harvest rate while staying below the rate of timber growth, meaning that the forestland will be preserved for future generations.

The bills also will encourage responsible harvesting of timber in an environmentally sustainable way. Currently, many private woodlots are not actively managed, or the owners do not have the necessary expertise to gather the maximum benefit of the timber on their land while preventing erosion, soil damage, or other negative effects of logging. The bills will encourage more private owners to adopt sound harvesting practices and actively manage their woodlots, by requiring them to submit a written management plan before receiving the tax exemption under Senate Bill 912. In order to qualify, an owner must adopt a forest management plan that is 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 is subject to management audits and periodic inspections, ensuring that participants follow the approved management plan, which will help to enforce the requirements specified in the bills.

If a landowner loses his or her third-party certification, fails to harvest according to the management plan, or otherwise violates the terms of the bills, the property will lose its

designation as qualified forest property and will be subject to the recapture tax. The recapture tax will prevent the use of forestland as a tax shelter or any other abuse of the program.

### **Opposing Argument**

If the State reimburses local schools for lost revenue under the bills, the program may create significant additional expenses for the State, depending on how many landowners participate in the program. Projections of the likely participation rate vary, but any additional expense may be problematic, given the tight budget situation.

### **Opposing Argument**

The bills limit the tax incentive to forestland that has no buildings or structures, which may 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 will unnecessarily restrict the scope of the program.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

It is estimated that these bills will 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 will affect the School Aid Fund. The reduction in local school property tax revenue in Senate Bill 912 will 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 will be made up dollar-for-dollar through increased payments from the School Aid Fund.

The recapture tax created in Senate Bill 913 probably will generate very little if any revenue initially, but gradually will generate as much as \$2 million to \$3 million annually in 10 years or so. This revenue will go to the General Fund, so it will 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 will preclude qualified forestland from being counted as a property transfer when it changes ownership. Therefore, the new owner of qualified forestland will not experience an upward adjustment in the property's taxable value. This change will have a negative impact on all property taxes, and the magnitude of the impact will depend on the amount of qualified forestland that changes 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 will reduce the State education tax and non-school local taxes by a very small amount in the initial years.

This bill also will 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 landowners 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.