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BILL ANALYSIS

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Senate Bills 915 and 916 (as introduced 12-1-05)
Sponsor: Senator Jud Gilbert, II (S.B. 915)
Senator Bruce Patterson (S.B. 916)
Committee: Agriculture, Forestry and Tourism

Date Completed: 1-25-06

CONTENT

The bills would amend Part 511 (Commercial Forests) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Establish a minimum size for land to be classified as commercial forest.**
- **Revise the current application fee of \$1 per acre for a commercial forest classification application to include a minimum fee of \$200.**
- **Require the owner of commercial forestland to provide documentation that he or she would provide access to the general public for hunting and fishing.**
- **Require the owner to notify the Department of Natural Resources (DNR) if the location of public access changed.**
- **Specify that failure to maintain public access to commercial forestland would subject the commercial forestland to declassification.**
- **Revise the penalty for the withdrawal of acreage from commercial forestland classification.**
- **Repeal Section 51107 of the Act, which requires the tax rate for commercial forestland to be adjusted in 2006 and every 10th year after that.**

The bills are tie-barred together.

Senate Bill 915

Part 511 allows the owner of forestland to apply to the DNR to have that land determined to be a commercial forest. Commercial forests are not subject to the ad valorem general property tax, but instead are subject to an annual specific tax of \$1.10 per acre, as adjusted by Section 51107. (That section requires the tax rate to be adjusted in 2006 and every 10 years after that based on the State equalized value of timber cutover lands in the State.) The bill would remove the provision for adjustments to the tax rate, and would repeal Section 51107.

Under Part 511, an owner of a commercial forest may withdraw his or her land, in whole or in part, from the operation of the part upon application to the DNR and payment of a withdrawal application fee and penalty. The penalty per acre is currently equal to the product of the current average ad valorem property tax per acre on timber cutover real property within the township where the commercial forest land is located multiplied by the number of years, up to 15, that the land was subject to Part 511.

If the township where the commercial forestland is located does not contain any timber cutover real property, then the per-acre average of the ad valorem property tax for all timber cutover real property in the county must be used in calculating the penalty. If no timber cutover real property is located in the county, the per-acre average of the ad valorem property tax for all timber cutover real property in townships contiguous to the country where the commercial forest land is located must be used in calculating the penalty.

The bill would remove these provisions. Instead, the penalty per acre would be the sum of the ad valorem general property tax from which the forestland was exempted under Part 115 for the previous 15 years, but not longer than the period for which the property had been designated as commercial forestland.

Under Part 511, the owner of a commercial forest may not deny the general public the privilege of hunting and fishing on commercial forestland unless the land is closed to hunting and/or fishing by DNR order or by statute. The bill would require the owner of land classified as commercial forestland on or after March 30, 1995, to give the Department documentation that he or she would provide access to the general public for hunting and fishing as required.

If the public access would be provided through land owned by the owner of the commercial forestland, the documentation would have to include a statement certifying the area or areas through which the general public could gain access to the commercial forestland. If the public access would be provided through land owned by another person, the owner of the commercial forestland would have to provide a copy of an easement granting rights to the general public to have access to the commercial forestland. If the public access would be provided through public land accessible to the general public, the commercial forestland owner would have to provide a statement identifying those public lands.

For land classified as commercial forestland on or after March 30, 1995, if an act of the owner changed the location of the public access to the land, the owner would have to give the DNR updated documentation regarding public access. Failure by an owner of commercial forestland to maintain access to the general public for hunting and fishing would be a violation of Part 511, and would subject the commercial forestland to declassification under the part.

Part 511 specifies that if an owner of a commercial forestland uses his or her commercial forest in violation of Part 511, fails to pay any specific tax under the part, fails to report to the DNR prior to the cutting, harvesting, or removal of forest products from the commercial forest as required, or removes minerals in violation of Section 51113 (which requires that the owner withdraw the portion of the land directly affected before removing any minerals), the DNR, upon notice to the owner and after a hearing, may declassify all or a portion of the commercial forest. Additionally, if an owner, after certifying that a forest management plan is in effect, fails to plant, harvest, or remove forest products in compliance with the forest management plan, the DNR may declassify all or a portion of the commercial forest, upon notice and a hearing.

The bill would include as cause for declassification the failure of an owner to maintain public access for hunting or fishing.

Senate Bill 916

Under the bill, a person would have to own at least 40 contiguous acres or a survey unit consisting of 1/16 of a section of forestland, in order to apply for it to be determined to be a commercial forest under Part 511. "Contiguous" would mean land that touched at any point. A public or private road, railroad, or utility right-of-way that separated any part of the land would not make the land noncontiguous.

For land to be designated as commercial forest, Part 511 requires an application to be submitted on a form prescribed by the DNR. The bill would require an application to be postmarked or delivered not later than April 1 to be eligible for approval as commercial forest for the following tax year.

The applicant also must pay an application fee of \$1 per acre, not to exceed \$1,000. The bill would establish a minimum fee of \$200.

The bill would require that, with the application, the owner submit documentation that he or she would provide access to the general public for hunting and fishing as required under Part 511.

Currently, if an applicant is unable to secure the services of a registered forester or a natural resources professional to prepare a forest management plan, the DNR upon request must prepare the forest management plan on the owner's behalf, and charge the owner a fee not to exceed the actual cost of preparing the plan. The bill would remove the reference to a natural resources professional.

Upon receipt of all required application materials, the DNR must evaluate the forestland offered and fix a date for a public hearing. The bill would include the public access documentation among the materials required before the DNR may establish a hearing date.

MCL 324.51105 et al. (S.B. 915)
324.51101 et al. (S.B. 916)

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 915

This bill would increase the revenue collected from the penalty assessed when a landowner withdraws forestland from the commercial forest program. For some landowners who entered the program prior to 1994, their penalty for withdrawing could more than double under this bill. The information and data needed to make a reasonable estimate of the fiscal impact of this bill are not yet available.

Senate Bill 916

Setting a minimum of \$200 for the commercial forest classification application fee would increase revenue to the Commercial Forest Fund by an undetermined amount. Applications regarding forestland of 199 acres or less would have to be accompanied by a minimum fee of \$200 instead of using the rate of \$1 per acre to calculate the fee. The Commercial Forest Fund receives annual revenue of approximately \$35,000 and statute designates its use for enforcement, administration, and monitoring of compliance with Part 511 (Commercial Forests) of NREPA.

The repeal of Section 51107 would eliminate the recalculation of payments in lieu of taxes on commercial forest lands and would result in savings for the State. In FY 2005-06, there were 2,209,700 acres of land in the State certified by the DNR as commercial forest land, for which the DNR paid \$1.20 per acre for a total of \$2,651,600 in payments in lieu of taxes. Since counties are not required to report the number of timber cutover acres, sufficient information is not available to calculate the per-acre amount of the State equalized valuation (SEV) of timber cutover for the required adjustment ratio. Using the true cash value of timber cutover land statewide as an approximation, the statutory increase would raise the rate paid by the State by 400.0% from \$1.20 to \$4.80 per acre, for a total payment of \$10,606,600. The payments are supported entirely with General Fund revenue.

Using the true cash value of timber cutover land to estimate the increase, the rate paid by owners of commercial forests would increase under statute from \$1.10 to \$4.40 per acre, for a total payment of \$9,722,700. Since it would maintain the amounts paid by commercial foresters and the State at current levels, the bill would result in a collective loss to counties of \$15,246,900 in additional revenue anticipated in FY 2006-07, and savings for commercial foresters of \$7,292,000 and savings for the State of \$7,954,900.

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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.