Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4069 (Substitute H-1 as passed by the House)
House Bill 4243 (Substitute H-2 as passed by the House)
House Bill 4244 (Substitute H-2 as passed by the House)
Sponsor: Representative Frank Foster (H.B. 4069)
Representative Ed McBroom (H.B. 4243)
Representative Bruce Rendon (H.B. 4244)
House Committee: Natural Resources
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 4-17-13

CONTENT

House Bill 4069 (H-1) would amend Part 511 (Commercial Forests) of the Natural Resources and Environmental Protection Act (NREPA) to do the following with regard to tax-exempt commercial forest property:

- **Allow an owner of commercial forestland to withdraw from the program without penalty, under certain circumstances.**
- **Eliminate a requirement that the Department of Natural Resources (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.**
- **Exempt from disclosure under the Freedom of Information Act forest management plans submitted to the DNR or a local tax collecting unit.**
- **Allow the DNR to require withdrawal of commercial forestland from the program if an owner took action that denied or inhibited access to the commercial forest for public hunting and fishing.**
- **Revise the conditions under which sand and gravel may be removed from a commercial forest.**
- **Prohibit the use of commercial forestland for wind energy development under certain circumstances.**

House Bill 4243 (H-2) would amend 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.

House Bill 4244 (H-2) would amend 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. The bill also would create an exception to the recapture tax requirements for property that is no longer qualified forest property, if the owner enrolled it as qualified forest property with the Department of Agriculture and Rural Development between June 1 and November 30, 2013.

The bills would take effect on June 1, 2013.

House Bill 4069 (H-1)

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.

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

The bill specifies that a forest management plan submitted to the DNR or a local tax collecting unit would be exempt from disclosure under the Freedom of Information Act.

Part 511 allows the owner of a commercial forest to withdraw all of 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 fee or penalty if certain conditions are met; these include a requirement that the landowner reimburse 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 would not be subject to a withdrawal penalty if the former commercial forestland were placed on the assessment roll in the local tax collecting unit in which the land was located; and the owner claimed and were granted an exemption for the land from school operating taxes under Section 7jj of the General Property Tax Act (described below), 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.

(Under Section 7jj of 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. Section 7jj defines "qualified forest property" as a parcel of real property that meets all of the following conditions as determined by the DNR:

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

Senate Bill 51 would amend Section 7jj to revise this definition, transfer responsibility for administering the qualified forest property program from the DNR to the Michigan Department of Agriculture and Rural Development, and make other changes to that program.)

The bill would allow the DNR to withdraw forestland from the classification as a commercial forest if it were acquired by a federally recognized Indian tribe and the associated property taxes subsequently were preempted under Federal law. The withdrawal would not be 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 determined that an owner had taken an action that had the effect of denying or inhibiting access to the commercial forest for public hunting and fishing, except as specifically provided in the part, the Department could require withdrawal of the land from the program unless the owner corrected that action and allowed access. If there were no access to a particular parcel and an action of the owner did not cause the lack of access, the forestland could 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 after acquiring the commercial forestland that had the effect of denying or inhibiting public access for hunting and fishing.

-- The commercial forestland was otherwise in compliance with Part 511.

Under certain circumstances, sand and gravel may be removed from a commercial forest with the DNR's approval. The sand and gravel must be used by the owner as specified or by the State, a local unit, or a county road commission for governmental use. Under the bill, the sand and gravel would have to be used by the owner or be for sale to the State, a local unit, a Federal governmental agency, or a county road commission for governmental use, or a contractor or other agent undertaking construction, maintenance, or a project for one of those governmental entities.

A commercial forestland owner could not use the land for wind energy development, except as prescribed in the bill. Upon application to and approval by the DNR, meteorological towers could be erected and wind energy exploration or development leases, easements, or license agreements could be entered into without affecting the land's classification as a commercial forest. A landowner could be paid compensation for the leases, easements, or agreements. Before any wind turbines were erected to generate electricity for commercial purposes, the owner would have to 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 would be permanently removed from forest production would have to be removed from the classification as a commercial forest.
-- Forestland under a wind energy development lease, easement, or license agreement where forest production would continue could remain classified as commercial forest.
-- Forestland containing road and utility rights-of-way could continue to be classified as commercial forest.

House Bill 4243 (H-2)

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. If there have been any harvests of forest products, the tax is calculated as follows:

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

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

Under the bill, if there had been any harvests of forest products, the tax would be calculated as follows:

-- The property's taxable value at the time of the change in use would be multiplied by the number of operating mills levied by the local school district in which the property was located, reduced by the number of mills collected as a fee for qualified forest property (under Section 7jj of the General Property Tax Act).
-- The product of the first calculation would be multiplied by the number of years the property had been 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 currently provided, if there had been no harvests of forest products, the tax would be doubled.

If the property were eligible for exemption as qualified forest property as a result of its withdrawal from the operation of Part 511 of NREPA, and the property were converted by a change in use within seven years after the withdrawal, the recapture tax would be 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 Part 511 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 were converted by a change in use more than seven years after the withdrawal, the

recapture tax would have be calculated according to the bill's formula based on the property's taxable value.

Currently, "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. Under the bill, instead, the term would mean 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.

House Bill 4244 (H-2)

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 would require 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 was attesting that the property for which the exemption was claimed was qualified forest property and would be managed according to the approved forest management plan.
-- Any other information pertinent to the parcel and the property owner.

The property owner would have to give a copy of the affidavit to the Michigan Department of Agriculture and Rural Development (MDARD), which would have to give one copy each to the local tax collecting unit, the conservation district, and the Department of Treasury. These copies could be sent electronically.

The exception to the recognition of a transfer of ownership would extend to the land only of the qualified forest property. If qualified forest property were improved by buildings, structures, or land improvements, the improvements would have to be recognized as a transfer of ownership in accordance with Section 7jj.

The Act requires the owner of qualified forest property to inform a prospective buyer of the property that it is subject to the recapture tax provided in the Qualified Forest Property Recapture Tax Act if the property is converted by a change in use. The bill would refer to a change in use as defined in Section 2 of that Act (which House Bill 4243 (H-2) would amend).

Currently, 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 first requirement would apply except to the extent that the transfer of the property would not have been considered a transfer of ownership.

The bill would create 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 would not have to pay the $50 fee (proposed by Senate Bill 51) for a qualified forest property exemption application. If a landowner chose not to execute a new affidavit, the existing affidavit would be rescinded without subjecting the property to the recapture tax, and the taxable value of the property would have to be adjusted as prescribed in the

General Property Tax Act (for the transfer of ownership).

MCL 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

These bills are part of a package of legislation, although the bills are not tied-barred to each other or several other related bills. Some of the changes in the bills would be relevant and/or have a fiscal impact only if other bills in the package were adopted. This fiscal analysis assumes that all bills in the package would be adopted.

House Bill 4069 (H-1) would have a minor, but positive fiscal impact on State and local governments.

Under the bill, landowners with forestland in the Commercial Forest program would be allowed to transfer the land into the Qualified Forest program with no penalties, under certain circumstances. Currently, counties with Commercial Forest parcels receive a $1.25 per acre specific tax from the landowner and a $1.25 per acre payment from the Department of Treasury. Transfers from the Commercial Forest program to the Qualified Forest program would benefit local units of government in that, while they would no longer receive the flat $2.50 per acre total annual payments from the Department of Treasury and the landowner, they would receive ad valorem property taxes on any land transferred to the Qualified Forest program, which almost certainly would be more than the $2.50 received under the Commercial Forest program. The State also would stand to save the $1.25 per acre payment made by the Department of Treasury for each parcel that changed from Commercial Forest to Qualified Forest. It is unknown how many, if any, participants in the Commercial Forest program would be qualified for and choose to transfer to the Qualified Forest program.

House Bill 4243 (H-2) would reduce General Fund revenue by an unknown and likely minimal amount by reducing the recapture tax levied when property ceases to be treated as qualified forest property. However, to the extent that additional parcels were classified as qualified forest property, this decline in revenue per parcel could be offset by revenue from the additional property.

House Bill 4244 (H-2) would reduce revenue to local units of government, and likely increase School Aid Fund expenditures if per-pupil funding guarantees were maintained, by an unknown amount that would depend on the specific characteristics of property affected by the bills. The reduction in revenue would affect intermediate school districts, revenue from school debt mills, and sinking fund mills, as well as units such as cities, counties, townships, and villages. The revenue loss under these provisions could be significant depending on the changes in market conditions affecting the underlying land.

Fiscal Analyst: Josh Sefton
David Zin

S1314\s4069sa