Legislative Analysis

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FARMLAND TAX CREDITS

House Bill 5189 (H-1 as reported from committee)
House Bill 5191 (H-1 as reported from committee)
Sponsor: Rep. Dan Lauwers

House Bill 5190 (H-1 as reported from Committee)
Sponsor: Rep. Brett Roberts

Committee: Agriculture
Complete to 3-1-16

BRIEF SUMMARY: The bills would amend three separate acts to address the Farmland and Open Space Preservation Program. Under the Farmland and Open Space Preservation Program, found in NREPA, farm owners enter into agreements with the state to keep land in agricultural use for ten or more years and can receive an income tax credit (and be exempt from certain special assessments). In 2014, $44 million in tax credits were issued.

The bills address the administration of the program by the Department of Agriculture and Rural Development (MDARD) and the issuance of refunds by the Department of Treasury.

FISCAL IMPACT: The bill would reduce General Fund revenue by diverting a portion of income tax collections to the Agricultural Preservation Fund, as described below. Based on estimates for FY 2015-16, roughly $1.6 million of income tax revenue would be diverted. The bill also would increase costs to the state to the extent interest would be added to credit refunds to participants in the agriculture preservation tax credit program.

THE APPARENT PROBLEM:

According testimony reduction in MDARD staff administering the farmland preservation program, due to reduced revenue to the Agricultural Preservation Fund, has caused processing delays for the required enrollment or amending paperwork, resulting in a backlog. Additional funding has been proposed from an income tax earmark.

Also, according to testimony, the Department of Treasury has been slow to issue refunds from credits under the program. The committee heard testimony from individuals who own farms and have land enrolled in the program but have waited more than a year in some instances to receive their refund. It has been proposed that these refunds should be treated like other income tax refunds, with interest added when they are late.

THE CONTENT OF THE BILL:

House Bill 5190 would amend the Income Tax Act to direct an amount equal to 3.5% of the total value of farmland tax credits claimed in the immediately preceding fiscal year to the Agricultural Preservation Fund.

The Fund, which was created by Section 36202 of NREPA, is used for (1) administrative costs of the Department of Agriculture and Rural Development (up to $1.4 million); (2) grants to local units of government for the purchase of agricultural conservation easements; and (3) if the money in the Fund exceeds $5 million after the first two kinds of expenditure, then the purchase of development rights to farmland or the acquisition of agricultural conservation easements by the state. This diversion of income tax revenue would begin October 1, 2016.

The bill also would allow a taxpayer, regardless of the number of development rights agreements entered into, to electronically file a farmland preservation tax credit claim with the taxpayer's annual return.

House Bill 5191 would amend the Revenue Act and specifies that the interest calculations for income tax refunds also apply to interest on farmland tax credit refunds.

The bill also specifies that if the state does not pay or refund a credit within 45 days from the date the return was received by the Department of Treasury, the department must notify the taxpayer of the status of the return and whether the taxpayer has filed a complete return.

House Bill 5189 would amend Sections 36101, 36104, 36109, and 36110 of the Natural Resources and Environmental Protection Act (NREPA) to do the following.

The bill would amend Section 36110 to increase the amount of a fee, to $50 from $25, which the state land use agency may charge and collect to process each change of ownership or subdivision. The fee would then be forwarded to the state treasurer for deposit into the Agricultural Preservation Fund. Currently this section states that the proceeds of the fee are to be used by the agency to administer NREPA.

Section 36101 makes technical changes to existing definitions that do not substantially impact their current meaning, and adds a definition to refer to the Agricultural Preservation Fund.

Section 36104 outlines how a landowner may apply for a farmland development rights agreement. This section would be amended by removing a requirement that if land that is part of the agreement is located within three miles of the boundary of a city or within one mile of the boundary of a village, the county or township governing body having jurisdiction must notify the governing body of that city or village. The bill also would make other technical changes.

Section 36110 contains provisions that deal with the sale or transfer of land involved in a development rights agreement or easement. The bill would amend this section by removing language which says that if the land in a development rights agreement is subdivided, each subdivided parcel must be covered by a separate agreement, each of which would be eligible for subsequent renewal. HB 5189 make this provision say that land described in a development rights agreement could be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. [New language underlined.]

In addition, the bill would modify the definition of the term "individual essential to the operation of the farm" by making the term refer to a co-owner, partner, shareholder, farm manager, or family member who, to a material extent, cultivates, operates, or manages farmland under this part (Part 361 of NREPA). Currently, the term means one of the aforementioned individuals under this act.

HB 5189 also would repeal Section 36117 of NREPA, which contains an obsolete reporting requirement (with the report due no later than January 30, 1976).

House Bill 5189 is tie-barred to House Bill 5190.

BACKGROUND INFORMATION:

Under the program, landowners apply to enroll their farmland in an agreement with the state that restricts the use of the land to farming. These agreements last anywhere from 1 year to 90 years. As a benefit in exchange for restricting land use, the land is then exempt from certain special assessments. In addition, participating landowners receive a tax credit on their state income taxes. Presently, there are more than 42,900 development rights in the state, covering 3.2 million acres of farmland that are held by approximately 20,000 landowners.

Under the act, the landowner is required to pay back the previous seven years of tax credits they received under the program when the agreement expires. However, a landowner may avoid this penalty if they forgo claiming the credit during those last seven years, and the department is required to notify landowners of this option.

In 1996, statutory changes were made requiring the department to notify landowners that they may avoid this repayment if they forgo claiming these tax credits during those last seven years of the agreement. This has resulted in declining repayments into the Agriculture Preservation Fund and a reduction in staffing.

Staffing for the program was reduced in FY 2014 from 7.0 FTEs to the current level of 3.5. This reduction in staff has caused processing delays for the required enrollment or amending paperwork, resulting in a backlog of 9-16 months, depending on the type of agreement. MDARD has utilized part time/temporary students to assist with the staffing issues. In 2014, $44 million in tax credits were issued.

ARGUMENTS:

For:

Proponents of the bill say the delay in processing and receiving credits has led to financial hardships for those enrolling land in the agreements. To increase funding for the administration of the program, the intent of the bill is to take a portion of income tax revenue that would have otherwise gone to the General Fund and dedicate it to the Agricultural Preservation Fund. Also interest payments would be added to delayed payments of refunded credits.

Against:

Critics of the bill have suggested that if improved administration of this program is a priority then funding should be sought through the regular appropriation process, for both state departments involved.

POSITIONS:

The following indicated <u>support</u> for the bills:

Greenstone Farm Credit Services (2-3-16)
Michigan Farm Bureau (2-3-16)
Potato Growers of Michigan (2-3-16)

The Department of Treasury testified in opposition to HB 5191 and has not position of HB 5189 and 5190. (2-3-16)

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