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BILL



ANALYSIS

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Senate Bills 651, 652, and 653 (as introduced 12-9-15)
Sponsor: Senator Darwin L. Booher (S.B. 651 & 652)
Senator Tom Casperson (S.B. 653)
Committee: Natural Resources

Date Completed: 2-9-16

CONTENT

Senate Bill 651 would create the "Transitional Qualified Forest Property Specific Tax Act" to establish procedures under which commercial forest property (which is exempt from ad valorem property taxes and taxed at \$1.25 per acre) could be determined to be "transitional qualified forest property", which would be exempt from ad valorem property taxes but taxed over a 10-year phase-in period as qualified forest property (which is exempt from local school operating taxes and subject to a two-mill annual fee). Specifically, the bill would do the following:

- Allow the owner of property classified as commercial forestland to apply to the Michigan Department of Agriculture and Rural Development (MDARD) to have the forestland determined to be transitional qualified forest property.
- Create a 10-year exemption from ad valorem property taxes for transitional qualified forest property, i.e., land that was previously classified as commercial forestland and meets the criteria for qualified forest property; and instead impose on that property a specific tax calculated as prescribed in the bill.
- Require the specific tax revenue to be disbursed in the same proportions as required for the disbursement of property taxes.
- Impose an annual fee on each parcel of transitional qualified forest property for deposit in the Private Forestland Enhancement Fund.
- Exempt property from local school operating taxes and from the penalty for withdrawing the land from the Commercial Forest Program under Part 511 (Commercial Forests) of the Natural Resources and Environmental Protection Act (NREPA), if the property were subject to the specific tax for 10 years and still eligible for a tax exemption as qualified forest property.
- If transitional qualified forest property were converted by a change in use, require rescission of the property tax exemption and payment of the application fee and penalty that would have been assessed to withdraw the property from the Commercial Forest Program; and require the revenue to be deposited in the Fund.
- Require the owner of transitional qualified forest property to report to the MDARD when a forest practice or timber harvest occurred on the property, and authorize the Department to collect a fine of \$500 from an owner who did not report as required.
- Require MDARD to report annually to the Legislature on transitional forest property.
- Require the owner of transitional qualified forest property to retain the current forest management plan and other records and make them available to MDARD upon request.

- **Require MDARD to maintain a database listing all transitional qualified forest property and notify the property owner and conservation district when forest practices or harvests were to occur.**
- **If an owner did not accomplish harvests and forest practices within three years after the time specified in the forest management plan, provide that the property would no longer be transitional qualified forest property; and require the placement of the property on the tax roll and collection of a recapture tax.**

Senate Bill 652 would amend the General Property Tax Act to do the following:

- **Exempt transitional qualified forest property from the collection of ad valorem property taxes for up to 10 years.**
- **Exempt transitional qualified forest property from the collection of local school operating taxes if it were subject to the transitional qualified forest property specific tax for 10 years and remained eligible for exemption.**
- **Provide that transitional qualified forest property could not be credited against the statewide acreage limit on exempt qualified forest property.**

Senate Bill 653 would amend Part 511 (Commercial Forests) of NREPA to exempt the withdrawal of land from the Commercial Forest Program from the withdrawal penalty, if the land were classified as transitional qualified forest property.

All of the bills are tie-barred.

Senate Bill 651

General Property Tax Exemption

For taxes levied after December 31, 2015, the proposed Act would exempt transitional qualified forest property from ad valorem property taxes collected under the General Property Tax Act for a period of up to 10 years. "Transitional qualified forest property" would mean forestland that meets all of the following conditions:

- The forestland was classified as commercial forest under Part 511 of NREPA.
- The forestland meets the definition of qualified forest property under Section 7jj of the General Property Tax Act.
- The owner of the forestland has applied to and the application has been approved by MDARD, as described below.

(Under Part 511 of NREPA, at least 40 contiguous acres or a survey unit consisting of ¼ of ¼ of a section of forestland may be classified as a commercial forest. To be eligible for the classification, the land must be capable of producing all of the following:

- At least 20 cubic feet per acre per year of forest growth upon maturity.
- Tree species that have economic or commercial value.
- A commercial stand of timber within a reasonable period of time.

Under Section 7jj of the General Property Tax Act, "qualified forest property" means a parcel of real property that is at least 20 contiguous acres in size and is subject to an approved forest management plan, as determined by MDARD. For parcels less than 40 acres, at least 80% must be stocked with productive forest capable of producing forest products. For parcels of at least 40 acres, at least 50% must be stocked with productive forest capable of producing forest products. Parcels that contain both productive forest and agricultural use property also may be designated as qualified forest property under certain conditions.)

Under the proposed Act, an owner of forestland that was classified as commercial forestland under Part 511 of NREPA could apply to MDARD to have the forestland determined to be transitional qualified forest property. The application process would have to include an application from the owner on a form created by the Department, a forest management plan, and a fee of \$50. ("Forest management plan" would mean that term as defined in Section 7jj of the General Property Tax Act, i.e., a written plan prepared and signed by a qualified forester that prescribes measures to optimize production, use, and regeneration of forest resources. The plan must include a schedule and timetables, which must be a maximum of 20 years, for the various silvicultural practices used on forestlands.) The applicant would have to file the application by September 1 before the tax year in which transitional qualified forest property would be taxed under the proposed Act.

The Department would have to review the application and management plan and determine whether the forestland was transitional qualified forest property, and review the management plan to determine if it included the elements required by the General Property Tax Act. Within 90 days after receiving the application materials, MDARD would have to review them and, if the application and supporting documents were not in compliance, deny the application and notify the property owner. If the application and supporting documents were in compliance, MDARD would have to approve the application and prepare a transitional qualified forest property affidavit, in recordable form, indicating all of the following:

- The property owner's name.
- The tax parcel identification number of the property.
- The legal description of the property.
- The year the application was submitted for the exemption.
- A statement that the owner was attesting that the property was transitional qualified forest property and would be managed according to the approved forest management plan.

The Department would have to send an affidavit to the property owner for execution. The 90-day review period could be extended upon the owner's request. The owner would have to execute the affidavit and have it recorded by the county register of deeds, and give a copy to MDARD. The Department would have to give one copy of the affidavit to the conservation district and one to the Department of Treasury. The copies could be sent electronically.

If the application were denied, the property owner would have 30 days from the date of notification by MDARD to initiate an appeal. An appeal would have to be by certified letter to the MDARD Director.

For property to be eligible as transitional qualified forest property, the owner would have to give a copy of the affidavit to the local tax collecting unit and assessor by December 31. An owner could claim an exemption for not more than 640 acres or the equivalent of 16 survey units consisting of $\frac{1}{4}$ of $\frac{1}{4}$ of a section of transitional qualified forest property in each local tax collecting unit. If an exemption were granted for less than 640 acres in a local tax collecting unit, the owner subsequently could claim an exemption for additional property in that unit if it met the proposed Act's requirements.

If the owner gave a copy of the recorded affidavit to the assessor, the assessor would have to exempt the property from the collection of the general property tax until December 31 of the year in which the property was no longer transitional qualified forest property.

The assessor of each local tax collecting unit in which there was transitional qualified forest property would have to determine annually as of December 31 the value and taxable value of each parcel of that type of property located in that local unit.

Transitional Qualified Forest Property Specific Tax

The proposed Act would levy upon the owner of each parcel of transitional qualified forest property the transitional qualified forest property specific tax. The amount of the tax in each year would have to be determined as follows:

- Multiply the number of mills that would be assessed in the local tax collecting unit if the property were subject to the collection of ad valorem property taxes and, if the property were exempt as provided under Section 7jj of the General Property Tax Act (described below), by the transitional qualified forest property's taxable value.
- Multiply the result of the above calculation by a factor prescribed in the bill, beginning with 0.1 for the first year the property was subject to the proposed Act and increasing by 0.1 each year to a maximum of 1.0 for the 10th year the property was subject to the Act.
- If a new millage were approved in the local tax collecting unit after the Act's effective date, multiply the number of mills that were approved and that would be assessed if the property were subject to ad valorem property taxes by the property's taxable value (repeating this calculation for each individual new millage approved after the Act's effective date).
- Add the results of the previous two calculations.

("New millage" would not include the renewal of some or all of a millage in existence on the Act's effective date.

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.)

The transitional qualified forest property specific tax would be an annual tax, payable at the same time, in the same installments, and to the same collecting officer or officers as taxes collected under the General Property Tax Act.

The collecting officers would have to disburse the specific tax to and among the State and cities, townships, villages, school districts, counties, or other taxing units, at the same times and in the same proportions as required by law for the disbursement of taxes collected under the General Property Tax Act. The officers would have to send a copy of the amount of disbursement made to each taxing unit to the State Tax Commission.

Beginning in the year that transitional qualified property was subject to the specific tax under the proposed Act and each following year, a fee would be imposed on each parcel of transitional qualified forest property. The fee would have to be calculated and disbursed in the same manner as the fee provided for under Section 7jj(9) of the General Property Tax Act. (Under that section, the local tax collecting unit must collect a fee on each parcel of exempt qualified forest property located in that unit. The fee must be determined by multiplying two mills by the property's taxable value. Each local taxing unit must disburse the fee to the Department of Treasury for deposit in the Private Forestland Enhancement Fund.)

Within 90 days after all or a portion of the exempted property was no longer transitional qualified forest property, the owner would have to rescind the exemption for the applicable portion of the property by filing with the register of deeds a rescission on a form prescribed by MDARD. A copy of the form would have to be given to the assessor. An owner who failed to file a rescission form as required would be subject to a penalty of \$5 per day for each separate failure beginning after the 90 days had elapsed, up to a maximum of \$1,000. The penalty would have to be collected under Public Act 122 of 1941 (which governs the Revenue Division of the Department of Treasury), and would have to be deposited in the Private Forestland Enhancement Fund.

Unpaid specific taxes would be subject to forfeiture, foreclosure, and sale in the same manner and at the same time as taxes returned as delinquent under the General Property Tax Act.

If the forestland were subject to the specific tax for a period of 10 years as determined by MDARD and the Department determined that the property was still eligible for the exemption as qualified forest property, both of the following would apply:

- The forestland would be exempt from the tax levied by a local school district for school operating purposes as qualified forest property, upon completion of procedures under the General Property Tax Act (as proposed by Senate Bill 652).
- The owner would not be responsible for the penalty for withdrawal of land from the operation of Part 511 of NREPA.

Placement of Property on Tax Roll

If forestland that was subject to the specific tax were not transitional qualified forest property as determined by MDARD, the property immediately would have to be placed on the tax roll by the local tax collecting unit or by the county treasurer, as applicable, as though the exemption had not been granted. The local tax collecting unit or the county treasurer would have to issue a corrected tax bill for each tax year being adjusted.

If all or a portion of transitional qualified forest property were converted by a change in use and were no longer transitional qualified forest property, the owner immediately would have to notify the local tax collecting unit, the assessor, and MDARD on a form created by the Department. A copy would have to be filed with the county register of deeds. Upon notice that the property was no longer transitional qualified forest property, the local tax collecting unit and assessor immediately would have to rescind the exemption and place the property on the tax roll as though the exemption had not been granted for the following tax year and the Department of Treasury immediately would have to begin collection of any applicable tax and penalty under the General Property Tax Act. The Department of Treasury also would have to begin collecting an amount equal to the application fee and penalty that would have been assessed under Part 511 of NREPA to withdraw the property from the operation of Part 511 in the year in which the property was converted, calculated as if the property had not been withdrawn from the operation of Part 511. The State Treasurer would have to credit these proceeds to the Private Forestland Enhancement Fund.

("Converted by a change in use" would mean that term as defined in Section 7jj of the General Property Tax Act. Under that section, the term means both of the following:

- That due to a change in use, the property is no longer eligible for an exemption as qualified forest property.
- That due to a change in use of either productive forest property or agricultural use property, the property is no longer eligible for exemption as qualified forest property.)

Reporting Requirements

An owner of transitional qualified forest property would have to report to MDARD when a forest practice or timber harvest occurred on the property during a calendar year. The report would have to indicate the forest practice completed and the volume and value of timber harvested. One copy would have to be forwarded to the conservation district, and MDARD would have to retain one copy for seven years. If MDARD determined that a forest practice or harvest had occurred and no report was filed, the Department could collect a fine of \$500.

("Forest practice" and "harvest" would mean those terms as they are defined in Section 7jj of the General Property Tax Act. Under that section, "forest practice" means any action intended to improve forestland or forest resources. "Harvest" means the point at which timber that has

been cut, severed, or removed for purposes of sale or use is first measured in the ordinary course of business as determined by reference to common practice in the timber industry.)

Each year, MDARD would have to report to the standing committees of the Senate and House of Representatives with primary jurisdiction over forestry issues. The report would have to include all of the following:

- The number of acres of transitional qualified forest property in each county.
- The amount of timber produced on transitional qualified forest property each year.
- The number of forest management plans completed by conservation districts and the total number of plans submitted for approval each year.

Forest Practices & Harvests; Database

The owner of transitional qualified forest property would have to retain the current management plan, most recent harvest records, recorded copy of a receipt of the tax exemption, and a map that showed the location and size of any buildings and structures on the property, and would have to make the documents available to MDARD upon request. The Department would have to maintain a database listing all transitional qualified forest property, including the dates indicated for forest practices and harvests in the forest management plan, and notify the property owner and the conservation district in any year that forest practices or harvests were to occur. Information in the database specific to an individual property owner's forest management plan would be exempt from disclosure under the Freedom of Information Act, but information in the aggregate, including the amount of timber expected to be on the market each year as a result of enrollees, would not be.

If an owner did not accomplish forest practices and harvests within three years after the time specified in the management plan, and the plan were not amended to extend the date of the forest practices and harvests, the property would no longer be transitional qualified forest property, would have to be placed on the tax roll as though the exemption had not been granted, and would be subject to repayment as indicated in the Qualified Forest Property Recapture Tax Act.

(Under that Act, a recapture tax is imposed on qualified forest property that is converted by a change in use. If there has not been at least one harvest of forest products on the property consistent with the approved forest management plan, the recapture tax is calculated according to a formula set forth in the Act.)

Senate Bill 652

Transitional Qualified Forest Property Exemption

Except as otherwise limited, 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. Under the bill, notwithstanding other provisions to the contrary, property would qualify for this exemption if all of the following conditions were met:

- The property was subject to the transitional qualified forest property specific tax for a period of 10 years as determined by MDARD under the proposed Transitional Qualified Forest Property Specific Tax Act.
- Pursuant to the proposed Act, MDARD determined that the property was still eligible for the qualified forest property exemption.
- The property owner, with MDARD's assistance, executed a recordable qualified forest school tax affidavit, had it recorded by the county register of deeds, and gave copies of it to other interested parties as required by the Department.

The bill also provides that transitional qualified forest property would be exempt from the collection of taxes under the General Property Tax Act for a period of up to 10 years, and instead would be subject to the specific tax levied under the proposed Transitional Qualified Forest Property Specific Tax Act.

The amount of qualified forest property in Michigan that is eligible for the exemption from school operating taxes is 1.2 million acres. Real property eligible for exemption as qualified forest property as a result of its withdrawal from the operation of Part 511 of NREPA may not be credited against the 1.2 million-acre limit. Under the bill, real property eligible for exemption as a result of its eligibility for exempt status under the proposed Transitional Qualified Forest Property Specific Tax Act also would not count against the cap.

Senate Bill 653

Under Part 511 of NREPA, the owner of at least 40 contiguous acres or a survey unit consisting of $\frac{1}{4}$ of $\frac{1}{4}$ of a section of forestland may apply to the Department of Natural Resources (DNR) to have that forestland classified as a commercial forest. To be eligible for classification as a commercial forest, the land must be capable of producing all of the following:

- At least 20 cubic feet per acre per year of forest growth upon maturity.
- Tree species that have economic or commercial value.
- A commercial stand of timber within a reasonable period of time.

Commercial forests are not subject to the ad valorem general property tax. Instead, they are subject to an annual specific tax of \$1.25 per acre. (This tax rate took effect on January 1, 2012, and must be increased by five cents per acre every five years.)

A commercial forest owner may withdraw his or her forestland from the classification as commercial forest upon application to the DNR and payment of a withdrawal application fee of \$1 per acre, with a minimum fee of \$200 and a maximum fee of \$1,000 per application. Additionally, the owner must pay the township treasurer a penalty according to a formula prescribed in Part 511.

The owner is not subject to the withdrawal penalty if he or she withdraws the forestland from classification as commercial forest as provided in Part 511, the withdrawn forestland is placed on the assessment roll in the local tax collecting unit, and the owner claims and is granted an exemption for the land from the tax levied by a local school district for school operating purposes under the General Property Tax Act. Under the bill, this exception to the penalty would apply if the former commercial forestland were made subject to the General Property Tax Act as qualified forest property because the prescribed conditions were met.

The bill would create an additional exception to the withdrawal penalty if the former commercial forestland were made subject to the proposed Transitional Qualified Forest Property Specific Tax Act as a result of all of the following:

- The owner withdrew his or her forestland from the classification as commercial forest as provided in Part 511.
- The former commercial forestland was transitional qualified forest property exempt from the collection of general ad valorem property taxes
- The owner applied to the DNR, and the Department approved the application, for a determination that the forestland was transitional qualified forest property subject to the proposed Act.

The owner would have to submit to the DNR a copy of the recorded transitional qualified forest property affidavit by December 31 of the year in which the land was withdrawn from Part 511.

FISCAL IMPACT

Senate Bills 651 and 652

The bills would have a minimal impact on State and local government revenue. The bills would decrease State costs to the General Fund, initially reduce and then increase School Aid Fund revenue, increase local revenue over time, assuming the proposed transitional specific tax worked as an incentive for property owners to change property from the commercial forest (CF) program to the qualified forest (QF) program and that property already in the QF program was not eligible for transitional tax treatment. Assuming that 1.0% of land in the CF program transferred to QF via the transitional tax, the fiscal impacts would be relatively small, although they could be significant to an individual local unit. The amount and timing of the revenue changes would depend on the taxable value of the property that transferred from the CF specific tax to the proposed transitional qualified forest property specific tax, growth in taxable value, the number of acres transferred, and local millage rates.

Under current law, owners of forest property who meet statutory requirements can apply for favorable tax status in the CF or QF program. Participants in both of these programs are required to manage the land according to an approved forest management plan. Public access to CF property is required to allow for hunting and fishing, which is not required for QF property.

Property in the CF program, currently more than 2.2 million acres, is exempt from ad valorem property taxation. Instead, owners pay a specific tax currently set at \$1.25 per acre. For property in the CF program, local governments also receive another \$1.25 per acre from the State as a payment in lieu of taxes (PILT); PILT payments are appropriated annually in the budget for the Department of Treasury. The total of the CF payments from landowners and the State is distributed to local governments in the same proportions as ad valorem property taxes, with a noteworthy exception for local and intermediate school district (ISD) operating millage. For local school districts and those ISDs that are considered "in-formula", a portion of the CF specific tax revenue is returned to the School Aid Fund. In FY 2014-15, the State paid approximately \$2.8 million in General Fund/General Purpose (GF/GP) revenue in CF payments under PILT and received back an estimated \$3.4 million to the School Aid Fund.

For tax year 2015, 217,223 acres received tax benefits under the QF program. Property in the QF program is exempt from local school operating millage, but is still subject to other property taxes, including the State Education Tax which is deposited in the School Aid Fund. Property enrolled in the QF program also is subject to an additional fee of two mills annually. The revenue from that fee is deposited into the Private Forestland Enhancement Fund, which the Michigan Department of Agriculture and Rural Development uses to operate the program and provide education and technical services related to management of forestlands. In 2015, approximately \$146,400 was deposited in the Fund from the two-mill fee. Over the last three years, approximately 18,600 acres moved from CF to QF.

The proposed Transitional Qualified Forest Property Specific Tax Act would phase in the shift from a payment of flat fee per acre under the Commercial Forest program, to payment of local property taxes (excluding school operating millage) and the State Education Tax over 10 years. Owners of parcels subject to the specific tax also would be required to pay a fee of two mills levied on the taxable value of the property, the same fee currently assessed under the QF program, which is deposited in the Private Forestland Enhancement Fund. The bill also can be read as permitting owners of property that was previously in the CF program and is currently taxed under the QF program, to apply for the specific tax. Under this scenario, there would be an incentive to transfer existing QF property to the transitional qualified forest

property specific tax in order to achieve a 90% tax reduction in the first year, which would decline during the phase-in period.

For each parcel that transferred from CF to QF via the transitional tax, the State would save \$1.25 per acre in PILT. The State also would lose CF revenue to the School Aid Fund that on average is about \$1.54 per acre in the CF program. The revenue loss would be offset by the additional revenue that the State would receive from the State Education Tax under the transitional tax, and later under the QF program. Assuming that 22,000 acres transferred from CF to QF pursuant to the bill, the State would save \$27,500 GF/GP in PILT payments each year. The new revenue to the School Aid Fund from the transition tax and then the QF tax would depend on the taxable value of the parcels that transferred. While the taxable value of property that would be affected by the bill is unknown, the Michigan Department of Agriculture and Rural Development (MDARD) has indicated that the current average taxable value of property in the QF program is approximately \$600 per acre. Table 1 below illustrates the impact on the General Fund and timing and direction of School Aid Fund revenue changes assuming the taxable value of transferred property is \$600 per acre. The General Fund savings are a straightforward \$1.25 per acre transferred. The table shows that the School Aid Fund impact would vary over time. At taxable value of \$600 per acre, revenue reductions would become smaller each year as the percentage of taxes paid under the transition tax increased and become positive beginning in the fifth year. There also would be an increase in revenue to the Private Forestland Enhancement Fund under the bill. At taxable value of \$600 per acre, this would be \$26,400 per year.

The net impact on local government revenue also would depend on the assumption of the taxable value of property that moved to the specific tax. Again assuming that about 1.0% or approximately 22,000 acres of current CF property would be moved to QF, and that the property has an average taxable value of \$600 per acre, it is estimated that local revenue would decline slightly in the first year of the transition tax, and then increase annually until the transition tax expired. At that time, total local revenue would be approximately \$97,600 higher on an annual basis. At lower taxable values, there would be a longer period of declines before the change in State and local revenue became positive. At higher taxable values, revenue increases would occur sooner than shown in this example.

Table 1
Estimated Change in State and Local Revenue under Senate Bill 651
Assume Taxable Value of \$600 per Acre,
Transfer of 22,000 Acres, and Average Non-School Millage of 9 Mills

Year	GF/GP Savings	School Aid Fund Revenue	Private Forestland Enhancement Fund	Local
1	\$27,500	(\$25,900)	\$26,400	(\$9,300)
2	27,500	(17,900)	26,400	2,500
3	27,500	(10,000)	26,400	14,400
4	27,500	(2,100)	26,400	26,300
5	27,500	5,800	26,400	8,200
6	27,500	13,700	26,400	50,100
7	27,500	21,700	26,400	61,900
8	27,500	29,600	26,400	73,800
9	27,500	37,500	26,400	85,700
10	27,500	45,400	26,400	97,600

Senate Bill 651 would have a minimal fiscal impact on MDARD. The Department would be required to provide administrative support for proposed activities concerning "transitional qualified forest property", including reviewing applications, maintaining a database, and reporting annually to the Legislature. The Department estimates that the administrative costs of the bill could be assumed within existing resources already dedicated for the current qualified forest program, which includes a staff of 3.5 FTEs and an annual staff/administrative budget of \$500,000 GF/GP. Also, through a proposed annual fee on each parcel of transitional qualified forest property, the bill would generate funds that would be deposited in the Private Forestland Enhancement Fund. The Fund, originally created under the qualified forest program, is to be used to support MDARD administrative efforts for qualified forest programs. During the past two calendar years, approximately \$210,000 in fees has been collected under the program, and the similar proposed fee is estimated to generate increased fee revenue which also would depend on the taxable value of the transitional property. The existing fee collections with the added fees under the bill would be used to supplant existing GF/GP funding for MDARD administration. The Department also could receive fine revenue from landowners who failed to file required annual reports. The fine revenue presumably would be deposited in the General Fund.

Senate Bill 653

The bill would have an indeterminate fiscal impact on the State and local units of government. Under the bill, a property owner wishing to remove property from the commercial forest program would be exempt from the withdrawal penalty for doing so if the property were either entered into the qualified forest program or made subject to the Transitional Qualified Forest Property Specific Tax Act, proposed by Senate Bill 651. To the extent that this would create an incentive for property owners to remove property from the commercial forest program, local property tax revenue would increase, as would revenue to the State School Aid Fund.

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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.