

REGISTERED FORESTERS

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House Bill 5001 (reported from committee as H-2)

House Bill 5002 (reported from committee w/o amendment)

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Rep. Daire Rendon

Committee: Natural Resources

(Enacted as Public Acts 116 and 117 of 2018)

Complete to 1-16-18

BRIEF SUMMARY: House Bill 5001 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding a new Part 535 to regulate foresters. The bill would also repeal a section of the State License Fee Act and an article of the Occupational Code, both of which currently regulate foresters.

House Bill 5002 would amend the General Property Tax Act to reference the Part 535 proposed by HB 5001 and to update references to the Transitional Qualified Forest Property Specific Tax Act, enacted into law in 2016.

House Bills 5001 and 5002 are tie-barred to one another, which means that neither bill can take effect unless both are enacted. Each bill would take effect 90 days after being enacted.

FISCAL IMPACT: House Bills 5001 and 5002 would increase revenue for the Department of Natural Resources (DNR) and decrease revenue for the Department of Licensing and Regulatory Affairs (LARA) by transferring the registered forester program from LARA to DNR. These bills would also increase administrative costs for the DNR and reduce administrative costs for LARA by virtue of the program transfer. Local government revenues and costs are unlikely to be affected by these bills. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

Many professions have formal standards and require registration or certification in order to practice, including attorneys, police officers, teachers, doctors, and mechanics. This enables the profession to regulate its practitioners and ensure that any bad actors are sanctioned and unable to harm the public.

Even though the forestry industry can include many professions, they all hold themselves to a high standard of quality and professionalism. However, like other professions, a few bad actors can blemish the profession and harm the public. Moreover, a program of registration or certification can ensure that practitioners have appropriate education and training to uphold the highest standards of the profession and ensure proper forest management practices throughout the state. Some have proposed legislation that would enable the forestry industry to regulate the profession of forestry through a voluntary registered forester program that would establish standards of education, experience, and ethics for its members and would assure the public that any interactions with a registered forester will result in quality, professional work.

THE CONTENT OF THE BILLS:

House Bill 5001

This bill would create Part 535 (Registered Foresters) within NREPA (proposed MCL 324.53501 to 324.53519). The new part would contain the following parameters.

Board of Foresters

The Board of Foresters (“board”) would be created within the Department of Natural Resources (“department”) to be an independent and self-directed body whose members are appointed by the state forester.

As used in Part 535, “*state forester*” would mean the individual designated by the director of the department as described in Section 50502 of NREPA. Under that section, the state forester must be an employee of the department who has a 4-year degree in forest management from an accredited college or university and experience in forest management.

A “*forester*” would mean an individual who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of forestry, acquired by forestry education and practical experience, is qualified to engage in the practice of professional forestry.

The “*practice of professional forestry*” would mean the science, art, and practice of creating, managing, using, planning and researching, and conserving forests and associated resources for human benefit and in a sustainable manner to meet desired goals, needs, and values.

Membership

To serve on the board, an individual would be required to:

- Be a citizen of the United States.
- Be a full-time resident of the state.
- Have at least 10 years of professional forestry experience.
- Meet the registered forester compliance requirements, as described below.

The board would consist of 5 to 7 individuals representing various groups, who would be nominated by, and appointed by the state forester from, the group they are representing. An individual representing the following could be nominated and appointed to the board:

1. The Association of Consulting Foresters.
2. The Society of American Foresters (SAF).
3. The forestry program faculty of a university whose forestry program is accredited by the SAF.
4. State agencies that have forestry staff.
5. Forest products advocacy or the forest products industry, including logging.
6. Private forest landowners.
7. A municipal, urban, or community forestry field.

Service

Members first appointed to the board would be appointed within 60 days after the effective date of HB 5001. Members would serve 4-year terms, or until a successor is appointed, whichever is later, although 3 of the members first appointed would serve 2-year terms.

If a vacancy were to occur, the state forester would make an appointment for the unexpired term in the same manner as the original appointment. The state forester also could remove a board member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Board members would serve without compensation, but could be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Meetings

The state forester would call the first meeting of the board, at which the board would elect from among its members a chairperson, vice-chairperson, secretary, and other officers as considered appropriate. Officers of the board would have 2-year terms.

After the first meeting, the board would meet twice annually: once in person, and once by conference call or video conference. The board could meet more frequently at the call of the chairperson or if requested by 2 or more members.

A quorum, consisting of 5 or more members of the board, would be needed for business transactions, while a majority of the members present and serving would be required for official action of the board. Any business that may be performed would be conducted at a public meeting held in compliance with the Open Meetings Act (MCL 15.261 to 15.275). The secretary of the board would record all proceedings of the board. The board could call witnesses and receive evidence in hearings.

A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would be subject to the Freedom of Information Act (MCL 15.231 to 15.246).

Duties

The board would be required to do all of the following:

- Adopt bylaws.
- Make a list of registered foresters available and posted on its website.
- Make an annual report to the state forester on proceedings, applications, renewals, complaints, and hearings under Part 535.
- Every 2 years, provide the department an evaluation of the program, including both of the following:
 - The number of registered foresters, economic data, and other relevant program data.
 - The sufficiency of the forester registration fee to operate a fiscally sound program. The department could recommend to the legislature changes in the fee.

- Determine whether members of affiliated professional organizations within and outside of this state are eligible for automatic registration.
- Register an applicant who is a registered or licensed forester in another state or country, if the board considers the requirements of the other state or country to be equivalent to the registration requirements of this state.

Review Evaluation and Cease Administration

The department would review each biennial evaluation of the program provided by the board. The department could cease administering the forester program if either of the following applies:

- The revenue available from registered forester fees is not sufficient to administer Part 535.
- The department and the board agree to separate and cease operations under Part 535.

Registered Forester

An individual could not use the title “Registered Forester” without being registered under Part 535. To be a registered forester, an individual would submit an application to the board on a form provided by the department. The application would include all of the following:

- The applicant’s name, address, telephone number, and email address.
- Evidence that the applicant has 1 or more of the following combinations of education and experience:
 - An associate's degree in forestry from an SAF-accredited university program or board-approved program, plus 4 years of experience under the guidance of a registered forester, an SAF-certified forester, or a member of the Association of Consulting Foresters.
 - A bachelor's degree in forestry from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience as described above.
 - A bachelor's degree in a natural resources field from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience as described above.
 - A graduate degree in forestry from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience as described above.
- References or endorsements from 3 registered foresters.
- Verification of successful completion of any continuing education required by the board.
- Other relevant information required by the board.

Within 30 days after an applicant files a completed application, the board would grant or deny registration and notify the applicant of its determination in writing, including the reasons for denial if the application is denied. If an application were approved, the department would issue to the applicant a registration certificate and certification number, which are valid for 2 years.

To maintain the forester registration, an individual would have to do the following every 2 years:

- Pay the department a \$200 fee. The first payment would be paid within 30 days after the application is accepted.
- Successfully complete at least 24 hours of continuing education and demonstrate completion within 60 days of a request to do so.

Registered Forester Compliance Requirements

A registered forester also would be required to maintain good standing with the board by complying with all of the following:

- In his or her professional capacity, performing the following general forestry activities as necessary for the practice of sustainable forest management and silviculture (the practice of controlling the establishment, growth, composition, health, and quality of forests to meet diverse needs and values):
 - Forest management planning, stand improvement, economics, utilization, renewable energy production, product development, protection, restoration, regeneration, reforestation and afforestation, nursery production, recreation and environmental studies, and research and monitoring.
 - Forest mensuration (the science of measurement applied to forest vegetation and forest products), inventory, forest products appraisal, and timber sale administration.
 - Reconnaissance and mapping of forest and watershed lands; investigation of wildland soils; delineation and mapping of forestlands and forest management boundaries, not including the establishment of property corners or boundaries.
 - Preparation and utilization of Geographic Information System (GIS)/Global Positioning System (GPS) maps, equipment, and software to assist in forest management planning, planting, harvesting, and protection. GIS/GPS maps created for forest management purposes are not official survey maps.
 - Application of best management practices.
 - Addressing legal and social aspects of forestry and forestlands.
 - Preparation of forest management related contracts, litigation reports, timber trespass investigation, and testimony.
 - Development, maintenance, conservation, and protection of wildlife habitat and forest range resources.
 - Development of access for protection and management of the resource.
 - Adaptation of forests and forest practices related to climate change.
 - Urban forestry and arboriculture.
 - Utility forestry and utility vegetation management.
 - Teaching collegiate-level forestry courses or forestry outreach based on sound scientific principles or conducting scientific research in forestry at an SAF-accredited university or board-approved program.
- Fully disclosing personal or financial interests in any forestry project undertaken by the registered forester if there is a potential conflict of interest.

- Not accepting compensation or expenses from more than 1 client or employer for the same service, unless the parties involved are informed and consent.
- Not making exaggerated, false, misleading, or deceptive written or verbal statements, including statements on the value of individual trees, timber, or timberlands, in the conduct of professional practice.
- Clearly and accurately representing his or her qualifications, the extent of the forestry services offered, and the basis for charges for those services.
- Not offering or making bribes or unlawful inducements to those responsible for letting forestry contracts.
- Not interfering with competitive bidding for forestry projects, including making false representations or misleading statements about bidders, prospective bidders, or competitors.
- Not issuing a forestry plan, map, specification, or report prepared by that registered forester or under his or her actual supervision unless it is endorsed with the registered forester's name and certificate of registration number.
- Not endorsing a forestry plan, specification, estimate, or map unless it is prepared by that registered forester or under his or her actual supervision.
- Providing forestry services in a manner that will ensure the public health, safety, and welfare; if, in his or her professional judgment, any of these are endangered, notifying the client or employer and giving appropriate recommendations or instructions; and, if a client or employer fails or refuses to follow those recommendations or instructions, notifying the responsible governmental department or agency of the threat.
- Not violating or concealing violations of Part 535 or knowingly permitting others to do so.
- Reporting violations of Part 535 to the board.
- Not conspiring or colluding to restrain trade through price arrangement with other registered foresters or forestry firms, and not engaging in price-fixing activities.
- Not taking forestry project funds under false pretenses, and not abandoning a forestry project without notifying the client or employer.

Board members also would be required to comply with these requirements, as mentioned above under “Membership.”

Complaints and Violations

A violations committee would be formed to determine whether violations of the registered forester compliance requirements, described above, have occurred. The committee would consist of 3 members of the board, appointed by the chairperson. Members of the violations committee would serve for 2-year terms. However, the board would make the final determinations, which could include revoking or temporarily suspending a registered forester’s status for a violation of the registered forester compliance requirements.

A person could submit a complaint regarding a violation of the registered forester compliance requirements. The department would be tasked with maintaining a complaint

form on its website and at DNR customer service centers that could be completed and submitted to the chairperson of the board online or by mail.

The complaint process could take up to 270 days to resolve. If the chairperson of the board were to receive a completed complaint form, the chairperson would, within 30 days, submit the complaint to the members of the violations committee. Within 30 days after receiving the complaint from the chairperson, the violations committee would determine whether there is a sufficient reason to believe that a violation had occurred. Within 30 days of making a determination, the violations committee would either:

- Notify the complainant in writing the reasons for determining no violation occurred.
OR
- Notify by mail the registered forester who is the subject of the complaint if the committee believes a violation had occurred. The violations committee must include in its notification all of the following:
 - The allegations in the complaint.
 - That the registered forester may respond to the allegations in writing.
 - That the response must be received within 60 days after the date the notice was mailed.

Within 30 days after receiving a response from the registered forester accused of violating compliance, the board would continue investigating the allegations and do 1 of the following:

- Dismiss the complaint and notify the complainant and registered forester in writing.
- Issue a letter of caution to the registered forester and provide a copy to the complainant.
- Issue to the registered forester a proposed order that, together with preliminary findings, includes proposed sanctions, a proposed negotiated resolution, or a proposed consent agreement and provide a copy to the complainant.

If the board issued a proposed order, the registered forester would have 30 days to submit to the board 1 of the following in writing:

- A statement accepting the proposed order, at which point the board must issue the order as a final order.
OR
- A statement objecting to the proposed order and providing reasons for the objection.

Failure of the registered forester to timely respond would be considered acceptance of the proposed order.

If the registered forester objected to the proposed order, the board would review the objections and issue a final order, amending the preliminary findings as necessary, within 90 days. A copy of the final order would be provided to the complainant.

Revenue

The fees owed by a registered forester would be deposited into the Licensing and Regulation Fund under Section 3 of the State License Fee Act (MCL 338.2203). Revenue from the registered forester fees in this fund would then be deposited in the Forest Development Fund created under Section 50507 of NREPA (Michigan Forest Finance Authority).

HB 5001 also would amend Section 50507 of NREPA (MCL 324.50507), to refer to the new Part 535 in the creation of the Forest Development Fund and to remove an outdated provision.

Finally, HB 5001 would repeal the following:

- Section 29 of the State License Fee Act (MCL 338.2229), which would remove the fee schedule for foresters within that Act.
- Article 21 of the Occupational Code (MCL 339.2101 to 339.2108), which currently regulates foresters.

House Bill 5002

This bill would amend Section 7jj of the General Property Tax Act (MCL 211.7jj[1]), to change the definition of “registered forester” to refer to the new Part 535 in NREPA, described above. The bill would also update references throughout the Act to the Transitional Qualified Forest Property Specific Tax Act, enacted into law in 2016.

BACKGROUND INFORMATION:

In 2014, Governor Snyder vetoed a package of bills (SBs 481 and 484 and HBs 4379 and 4380) that would have repealed the forester registration article of the Occupational Code and generally deregulated the profession of forestry. In his veto message, the governor said, “I am convinced that improving—not eliminating—Michigan’s Licensed Forestry statute is necessary. We need to assure both the public and private landowners that services are being provided by professionals with appropriate education, skills, and a commitment to a code of ethics.” The governor called for legislation that would transfer the oversight of professional foresters from the Department of Licensing and Regulatory Affairs to the Department of Natural Resources.

FISCAL INFORMATION:

Registered foresters pay a \$50 application processing fee followed by \$40 in an annual registration fee to the Department of Licensing and Regulatory Affairs (LARA) in order to maintain current registration; there are 228 registered foresters at present. House Bill 5001 would restructure this program by moving it to the Department of Natural Resources (DNR) and requiring a registration fee of \$200 be paid every two years. Any existing balance from by registered forester fees would also be transferred from the Licensing and Regulation Fund in LARA to the Forest Development Fund in the DNR; LARA estimates that there will be no balance to transfer as program expenditures met revenue.

These bills would also increase administrative costs for the DNR and reduce administrative costs for LARA by virtue of the program transfer. Members of the Board of Foresters created by HB 5001 would be eligible for reimbursement of qualifying expenses incurred in the course of their duties. The DNR would also be responsible for maintaining a list of registered foresters on the departmental website, providing an evaluation of the program, process applications, and make complaint forms available at DNR Customer Service Centers. The extent of this cost increase for DNR and cost reduction for LARA is unclear.

ARGUMENTS:

For:

Supporters of the bill argue that membership in the registration program is not required in order to work in the profession, but enrollment in the program could bolster a forester's image to the public and ensure that members within the program are holding themselves to a "gold" standard that will ultimately elevate the entire profession. Foresters work with forest habitats and minerals, which are for the benefit of the public, and a registration program would help ensure that professionals continue to put the public's needs first.

Additionally, the continuing education program, which would be new to the profession, would help the industry stay current on important issues, including new diseases, invasive species, and practices or standards. Staying up-to-date on important issues that affect the industry would enable foresters to do their best work. The registration fee to become a registered forester, which represents a cost of about \$1.92 per week, would be put toward the continuing education program.

Against:

Concerns were raised during committee about the application process. Critics of the bill noticed that there is no appeals process in place if an applicant to become a registered forester is denied. An amendment to create an appeals process was introduced, but was not adopted by the committee.

Response:

Supporters of the bill responded that there is already language in the bill that would address this: "within 30 days after an applicant files a completed application, the board would grant or deny registration and notify the applicant of its determination in writing, including the reasons for denial if the application is denied." With requiring the reasons for the denial, an applicant would be able to address those specific concerns in their next application. The bill does not set a limit on how many times an applicant may reapply. Additionally, the bill leaves open the option for an appeals process to be created within the bylaws of the board of foresters.

Against:

Another concern was raised during committee regarding the lack of a time frame for listing approved applicants into the program on the website. As it stands, an applicant could be accepted into the program but not be listed on the website for some time. This could hinder that applicant's workload if they are being overlooked by the public. An amendment was

introduced to require the board of foresters to post a registered forester's name on its website within 10 business days after his or her application has been approved, but it was not adopted by the committee.

POSITIONS:

Representatives from the following entities indicated support for House Bill 5001:

- Department of Natural Resources (12-6-17)
- Michigan Association of Timbermen (12-6-17)
- Suchovsky Logging, LLC (12-6-17)
- Packaging Corporation of America (12-6-17)
- Association of Consulting Foresters, Michigan Chapter (12-6-17)
- Grossman Forestry Company (12-6-17)
- Society of American Foresters (12-6-17)
- Michigan Farm Bureau (12-6-17)
- Michigan Association of Timbermen Self Insurers Fund (12-6-17)
- Michigan Forest Association (12-13-17)
- Michigan Forest Products Council (12-13-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.