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BILL



ANALYSIS

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House Bill 5001 (Substitute H-2 as passed by the House)  
House Bill 5002 (as passed by the House)  
Sponsor: Representative Daire Rendon  
House Committee: Natural Resources  
Senate Committee: Natural Resources

Date Completed: 3-14-18

### **CONTENT**

**House Bill 5001 (H-2) would add Part 535 (Registered Foresters) to the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Provide for the registration of foresters by the Department of Natural Resources (DNR).**
- **Create the Board of Foresters within the DNR to evaluate the registered forester program and maintain a list of registered foresters.**
- **Establish forester registration application procedures.**
- **Establish minimum requirements to be a registered forester.**
- **Set forester registration fees, and require the fees to be deposited in the Forest Development Fund.**
- **Specify general professional activities and requirements for registered foresters.**
- **Establish a procedure for complaints about registered foresters.**

**The bill also would amend NREPA to allow money in the Forest Development Fund to be spent for the administration and enforcement of Part 535.**

**In addition, the bill would repeal Part 21 of the Occupational Code, which provides for the registration of foresters of by the Department of Licensing and Regulatory Affairs.**

**House Bill 5002 would amend the General Property Tax Act to refer to a registered forester under Part 535 of NREPA, rather than Part 21 of the Occupational Code, in the definition of "registered forester".**

The bills are tie-barred. Each bill would take effect 90 days after enactment.

House Bill 5001 (H-2) is described in detail below.

### **Repealed Sections**

Currently, foresters are regulated by the Occupational Code and subject to fees under the State License Fee Act.

The bill would repeal Section 29 of the State License Fee Act, which specifies fees for a person registered or seeking registration as a forester. The bill also would repeal Article 21 of the

Occupational Code which defines "forester" and "practice of professional forestry" and provides for the registration of foresters by the Department of Licensing and Regulatory Affairs.

### Forester Program

Under the bill, an individual would be prohibited from using the title "Registered Forester" unless he or she was registered under Part 535.

"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.

"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.

The DNR would be required to timely review each registered forester program evaluation, as described below.

The DNR could cease administering Part 535 if either of the following applied:

- The revenue available from registered forester fees was not sufficient to administer the part.
- The DNR and the Board agreed to separate and cease operations under the part.

### Board of Foresters

The bill would establish the Board of Foresters as an independent self-directed body appointed by the State Forester and created within the DNR. (The State Forester is an employee of the DNR who is designated the State Forester by the Department Director.)

To be eligible to serve on the Board, an individual would have to be a U.S. citizen and a full-time resident of Michigan and have at least 10 years of professional forestry experience. The Board would have to consist of between five and seven individuals representing the following groups, who would have to be appointed by the State Forester from and nominated by the group represented:

- The Association of Consulting Foresters.
- The Society of American Foresters.
- The forestry program faculty of a university whose forestry program was accredited by the Society of American Foresters.
- State agencies with forestry staff.
- Forest products advocacy or the forest products industry, including logging.
- Private forest landowners.
- A municipal, urban, or community forestry field.

The members first appointed to the Board would have to be appointed within 60 days after the effective date of the bill.

Members of the Board would serve for terms of four years or until a successor was appointed, whichever was later, except that, of the members first appointed, three would serve for two years.

If a vacancy occurred on the Board, the State Forester would be required to make an appointment for the unexpired term in the same manner as the original appointment. The State Forester could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or another good cause.

The State Forester would be required to call the first meeting of the Board. At the first meeting, the Board would have to elect from among its members a chairperson, vice-chairperson, secretary, and other officers as it considered appropriate. Officers would have to serve for terms of two years. After the first meeting, the Board would have to meet once annually in person and once annually by conference call or video conference, or more frequently at the call of the chairperson or if requested by two or more members.

Five or more members of the Board would constitute a quorum for the transaction of business at a meeting of the Board. A majority of the members present and serving would be required for official action of the Board.

The Board would be subject to the Open Meetings Act and the Freedom of Information Act.

Members of the Board would have to serve without compensation. However members could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Board members.

If the Board received a complaint about a registered forester, the chairperson of the Board would have to appoint a Violations Committee, which would consist of three members of the Board. Members of the Violations Committee would have to serve on it for terms of two years.

#### Board Duties; Registered Forester Application Process

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

- Adopt bylaws.
- Comply with the registered forester compliance requirements listed below.
- Make available a list of registered foresters, which the DNR would have to post on its website.
- Make an annual report to the State Forester on proceedings, applications, renewals, complaints, and hearings under Part 535.

The Board also would be required, on a biennial basis, to provide the DNR with an evaluation of the registered forester 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 DNR could recommend to the Legislature changes in the fee.

The Board could call witnesses and receive evidence in hearings under Part 535.

#### Forester Registration

To be registered as a forester, an individual would be required to submit an application to the Board on a form provided by the DNR. The application would have to include all of the following:

- The name, address, telephone number, and electronic mail address of the applicant.

- References or endorsements from three registered foresters.
- Verification of successful completion of any continuing education required by the Board.
- Other relevant information required by the Board.

The application also would have to include information demonstrating that the individual met one or more of the following educational requirements:

- An associate's degree in forestry from a university accredited by the Society of American Foresters (SAF) or Board-approved program, plus four years of forestry 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 two years of forestry experience as described above.
- A bachelor's degree in a natural resource field from an SAF-accredited university program or a Board-approved program, plus two years of forestry experience described above.
- A graduate degree in forestry from an SAF-accredited university program or a Board-approved program, plus two years of forestry experience described above.

The Board would have to grant or deny registration within 30 days after a complete application was filed and notify the applicant of its determination in writing. If an application were denied, the notification would have to include the reasons for the denial. If the application were approved, the DNR would have to issue a registration certificate and certification number to the applicant. The registration would be valid for two years.

To maintain registration as a forester, an individual would have to do all of the following:

- Pay the DNR a fee of \$200 for the registration period, and make the first payment within 30 days after the application for registration was granted.
- Successfully complete at least 24 hours of continuing education every two years as approved by the Board.
- Demonstrate completion of continuing education requirements as a condition for registration renewal by submitting evidence of fulfillment to the Board within 60 days of a request to do so.
- Maintain good standing with the Board by complying with the registered forester compliance requirements listed below.

The Board would have to determine whether members of affiliated professional organizations within and outside of the State were eligible for automatic registration under Part 535.

The Board would have to register an applicant who was a registered or licensed forester in another state or country if the Board considered the requirements of the state or country to be equivalent to the requirements for registration in Michigan.

(Under Part 21 of the Occupational Code, an individual is qualified to receive a certificate of registration as a forester if he or she graduated from an accredited college or university, has two or more years of experience in forestry work, and is of good moral character. The State License Fee Act requires a \$50 application fee for registration as a forester as well as a per-year registration fee of \$40 until September 30, 2019, and \$25 after that date.)

#### Registered Forester Compliance Requirements

A registered forester would be required, in his or her professional capacity, to perform the following general forestry activities as necessary for the practice of sustainable forest management and silviculture:

- Forest management planning.
- Forest stand improvement.
- Forest mensuration, inventory, forest products appraisal, and timber sale administration.
- Reconnaissance and mapping of forest and watershed land; investigation of wildland soils; and delineation and mapping of forestland and forest management boundaries, not including the establishment of property corners and boundaries.
- Preparation and use of GIS/GPS maps, equipment, and software to assist in forest management planning, planting, harvesting, and protection.
- Forest economics.
- Forest use, renewable energy production, and forest product development.
- Forest protection and restoration.
- Forest regeneration, reforestation, and afforestation.
- Forest nursery production.
- Application of best management practices.
- Addressing legal and social aspects of forestry and forestland.
- 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.
- Forest recreation and environmental studies.
- The development of access for protection and management of the resource.
- Adaptation of forests and forest practices related 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.
- Forest research and monitoring.

The bill specifies that GIS/GPS maps created for forest management purposes would not be official survey maps.

A registered forester also would have to comply with all of the following:

- Fully disclose personal or financial interests in any forestry project undertaken by the registered forester if there were a potential conflict of interest.
- Not accept compensation or expenses from more than one client or employer for the same service, unless the parties involved were informed and consented.
- Not make exaggerated, false, misleading, or deceptive written or verbal statements, including statements on the value of individual trees, timber, or timberland, in the conduct of professional practice.
- Clearly and accurately represent his or her qualifications, the extent of the forestry services offered, and the basis for charges for those services.
- Not offer or make bribes or unlawful inducements to those responsible for letting forestry contracts.
- Not interfere with competitive bidding for forestry projects, including making false representations or misleading statements about bidders, prospective bidders, or competitors.
- Not issue a forestry plan, map, specification, or report prepared by that registered forester or under his or her actual supervision unless it was endorsed with the registered forester's name and certificate of registration number.
- Not endorse a forestry plan, specification, estimate, or map unless prepared by that registered forester or under his or her actual supervision.

- Provide forestry services in a manner that would ensure the public health, safety, and welfare and if, in his or her professional judgment, any of these were endangered, notify the client or employer and give appropriate recommendations or instructions.
- If a client or employer failed or refused to follow recommendations or instructions, notify the responsible governmental department or agency of the threat to public health, safety, or welfare.
- Not violate or conceal violations of Part 535 and not knowingly permit others to.
- Report violations of Part 535 to the Board.
- Not conspire to collude to restrain trade through price arrangement with other registered foresters or forestry firms and not engage in price-fixing activities.
- Not take forestry project funds under false pretenses and not abandon a forestry project without notifying the client or employer.

#### Violations of the Forester Program

A person could submit to the chairperson of the Board a complaint about a violation of the requirements described above. The Department would be required to maintain on its website a complaint form that could be completed and submitted to the chairperson of the Board online or printed and completed. The DNR also would have to make complaint forms available at customer service centers. Unless the complaint form was submitted online, the complainant would have to submit the form by mailing it to the chairperson of the Board.

If the chairperson received a completed complaint form, he or she would be required, within 30 days, to submit the complaint to the members of the Violations Committee. Within 30 days after receiving the complaint from the chairperson, the Violations Committee would have to determine if there was sufficient reason to believe that a violation had occurred.

If the Violations Committee determined that there was not sufficient reason to believe that a violation had occurred, the Committee, within 30 days after its determination, would have to notify the complainant in writing of its determination and the reasons for its determination. No further action would be taken on that complaint.

If the Violations Committee determined that there was sufficient information to believe that violation had occurred, the Committee, within 30 days after its determination, would have to notify, by U.S. mail, the registered forester who was the subject of the complaint of all of the following:

- The allegations in the complaint.
- That the registered forester could respond to the allegations in writing.
- That the response would have to be received within 60 days after the date the notice was mailed.

The Board would have to consider the allegations of the complaint and any written response to the allegations timely received from the registered forester and could further investigate the complaint. Within 30 days after the deadline for a response from the registered forester, the Board would have to do one 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, included proposed sanctions (described below), 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, within 30 days, would have to submit to the Board one of the following in writing:

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

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

If the registered forester objected to the proposed order, the Board would have to review the objections and issue to the registered forester a final order, amending the preliminary findings as necessary, within 90 days after issuance of the proposed order, and provide a copy of the final order to the complainant.

The Board could permanently revoke or temporarily suspend registered forester status for violation of Part 535 or issue an order.

#### Forest Development Fund

The Act requires the Michigan Forest Finance Authority to establish the Forest Development Fund. Any money from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands must be deposited in the Fund. In addition, the Fund may receive revenue from any other source. The Authority must use money in the Fund for one or more of the following:

- To provide for the payment of principal of and interest on any bonds or notes issued by the Authority.
- For reforestation, forest protection, and timber stand improvement.
- To obtain and maintain certification of sustainable forestry standards in the State forest.
- For any other purposes authorized by Part 505 (Michigan Forest Finance Authority) of NREPA.

The bill would require that revenue from registered forester fees be deposited in the Forester Development Fund. The State Treasurer would have to promptly transfer to the Fund the balance from registered forester fees in the Licensing and Regulation Fund.

MCL 50507 et al. (H.B. 5001)  
211.7jj[1] (H.B. 5002)

Legislative Analyst: Nathan Leaman

#### **FISCAL IMPACT**

The bills would have a small, but potentially positive fiscal impact on the Department of Natural Resources, a small negative fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), and no fiscal impact on local units of government. Data from LARA indicate that in fiscal year 2015-16, \$18,670 in registration fee revenue from registered foresters was collected by LARA during the most recent registration renewal cycle. During the same period, the cost to maintain that registry was estimated to be about \$11,837. Since that report was issued, the cost has increased due to labor cost inflation, but it is likely that the registration of foresters remains a revenue-positive endeavor for LARA. The removal of forester registration for LARA, therefore, would result in a net loss of a few thousand dollars to the Licensing and Regulation Fund each renewal cycle. That revenue loss would not significantly affect LARA's operations as the Fund receives about \$9.0 million to \$18.0 million annually, depending on which professions have large numbers of renewals in a given year.

The bills would effectively move forester registration to the DNR, and increase the registry fee from \$40 per year (\$80 per biennial renewal cycle) to \$100 per year (\$200 per biennial renewal cycle). This would increase the amount of revenue the DNR would receive from registration fees relative to LARA, and, assuming that the DNR's cost to register foresters would be similar to LARA's, the fees would provide a level of revenue that would be more than sufficient to operate the program. However, the registration criteria in House Bill 5001 (H-2) appear to be more stringent and potentially more work for the Department than those in current law, so at least some portion of that additional revenue would be used to cover those additional costs.

Fiscal Analyst: Josh Sefton

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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.