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BILL ANALYSIS



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Senate Bills 51 through 59 (as introduced 1-16-13)  
Sponsor: Senator Darwin L. Booher (S.B. 51, 52, 53, 56, and 59)  
Senator Tom Casperson (S.B. 54)  
Senator Mike Green (S.B. 55)  
Senator Arlan Meekhof (S.B. 57)  
Senator John Moolenaar (S.B. 58)  
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 1-23-13

**CONTENT**

**Senate Bill 51 would amend the General Property Tax Act to do the following regarding qualified forest property:**

- Revise procedures for the review and approval of an application for an exemption from school operating taxes.
- Transfer responsibilities from the Department of Natural Resources (DNR) to the Michigan Department of Agriculture and Rural Development (MDARD).
- Require a local tax collecting unit to collect an annual fee of two mills per acre of qualified forest property located in that unit for deposit in the "Private Forestland Enhancement Fund" (proposed by Senate Bill 56).
- Exclude buildings or structures located on qualified forest property from the property's exemption from school operating taxes.
- Require a property owner to submit a forest management plan to MDARD, along with an application fee of \$50, before claiming an exemption for qualified forest property.
- Require a forest management plan to be developed by a qualified forester and approved by MDARD, and be for a minimum of 30 years.
- Increase the number of acres eligible for the exemption statewide from 1.2 million to 2.4 million.
- Increase the maximum acreage for which an owner may claim an exemption in each local tax collecting unit from 320 to 640 acres.
- Reduce the minimum size of qualified forest property from 20 to 10 contiguous acres.
- Require at least 50%, rather than 80%, of the property to be productive forest if a parcel were qualified agricultural property.
- From January 1, 2013, through September 30, 2013, allow an exempt property owner to execute a new affidavit; and eliminate the rescission penalty for an owner who chose not to execute a new affidavit, and provide that the property would not be subject to the recapture tax.
- Require the collection of taxes under the Act or under the Qualified Forest Property Recapture Tax Act when property was no longer exempt.
- Require the penalty imposed for failing to file a required rescission of exemption to be deposited in the Private Forestland Enhancement Fund, rather than the General Fund.
- Require the owner of qualified forest property to report when a forest practice or timber harvest occurred; and allow MDARD to collect a fine of \$500 from a property owner if a required report were not filed.

- Require MDARD to maintain a database of qualified forest properties and notify the owner and the conservation district in the year the harvest was to occur according to the management plan.
- Provide that the property would not be eligible for exemption and would have to be placed on the tax roll and subject to repayment if an owner did not accomplish forest practices and harvests within three years of the forest management plan.

**Senate Bill 52** 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.

**Senate Bill 53** 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.

**Senate Bill 54** would amend the Qualified Forest Property Recapture Tax Act to redirect recapture tax proceeds from the General Fund to the proposed Private Forestland Enhancement Fund.

**Senate Bill 55** would amend the definition of "qualified agricultural property" in the General Property Tax Act to provide that a parcel would be devoted primarily to agricultural use if more than 50% of its acreage were devoted to a combination of agricultural use and were exempt under the Act as qualified forest property.

**Senate Bill 56** would amend Parts 93 (Soil Conservation Districts) and 513 (Private Forestry) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Authorize MDARD to review soil conservation district budgets and financial information.
- Prescribe criteria that a soil conservation district would have to meet to be eligible for a grant of at least \$50,000 from MDARD.

- Permit MDARD to promulgate rules to implement the grant provisions, and provide that the rules would not remain in effect for more than three years after the bill's effective date.
- Prohibit a professional forester employed under an MDARD grant from competing with a private sector business or developing a client base for forestry consultation outside of his or her employment with the conservation district.
- Include references to forestland in provisions prescribing a conservation district's powers regarding farmland and natural resources.
- Include in the powers of a conservation district evaluating nonindustrial private forestland and providing forestry assistance to landowners.
- Prohibit a conservation district from developing a management plan for nonindustrial private forestland, unless the landowner were unable to identify a private forester willing to develop a plan.
- Allow a conservation district to cooperate with a local unit of government or other subdivision of State government to implement forestland management projects.
- Authorize MDARD to enter into cooperative agreements with Federal agencies to assist landowners in management of their nonindustrial private forestland.
- Create the "Private Forestland Enhancement Fund" to support private forestland management assistance.
- Require MDARD to prepare and maintain a list of qualified foresters in Michigan and publish it on the Department's website.

The bill also would repeal sections of Part 501 (Forest Improvements) that define terms used in provisions regarding forest restoration pilot projects, prescribe specific requirements for the Western Upper Peninsula Forest Improvement District, and require State agencies to cooperate with a forest improvement district board.

**Senate Bill 57** would amend Part 87 (Groundwater and Freshwater Protection) of NREPA to provide for the assessment of managing areas of land not used for traditional or production agriculture purposes, for environmental, ecological, and economic benefits. The bill would do the following:

- Include this assessment in requirements for the voluntary evaluation of farms under the Michigan Agriculture Environmental Assurance Program (MAEAP).
- Require the Environmental Assurance Advisory Council to include representatives of a private consulting forester, the forest products industry, and the logging profession.
- Require the Council to recommend a tool for the assessment described above.
- Expand the responsibilities of environmental assurance teams.

**Senate Bill 58** would amend Part 503 (State Forest Products Industry Development Council) of NREPA to require the DNR to carry out a number of tasks related to the development and promotion of the State's forest products industry jointly with MDARD; and revise the tasks.

**Senate Bill 59** would amend Part 511 (Commercial Forests) of 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 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.
- Specify that forest management plans submitted to the DNR or a local tax collecting unit would be exempt from disclosure under the Freedom of Information Act.
- 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.
- Include wind energy development among the prohibited uses of a commercial forest, but permit exploration for wind energy development under certain circumstances.

Senate Bill 52 is tie-barred to Senate Bill 59. Senate Bills 51 and 52 would take effect on December 31, 2013.

### **Senate Bill 51**

#### **Tax Exemption Claim; Forest Management Plan**

Under 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 Act permits a property owner to submit a proposed forest management plan to the DNR for approval. The DNR may charge a fee of up to \$200 for considering the plan, and must review and either approve or disapprove it. The Act defines "approved forest management plan" as a forest management plan approved either by the DNR or a third-party certifying organization. The bill would delete these provisions.

The bill would require a property owner to obtain a forest management plan from a qualified forester and submit a digital copy of the plan, an application for exemption as qualified forest property, and a fee of \$50 to MDARD by August 1 for the tax year in which the exemption was requested. A forest management plan would not be subject to the Freedom of Information Act. The Department would have to forward a copy of the application to the local conservation district (i.e., a conservation district organized under Part 93 of NREPA) for review and to the local tax collecting unit for notification.

The conservation district would have to review the application to determine if the property met the minimum requirements for

enrollment in the qualified forest program, and respond within 45 days after receiving the application, indicating whether the property was eligible. If the conservation district did not respond within 45 days, the property would have to be considered eligible.

The Department would have to review the application, comments from the conservation district, and the forest management plan to determine whether the property was eligible for the exemption. The Department would have to review the forest management plan to determine if the required elements (described below) were in it. Within 90 days after receiving the application, forest management plan, and fee, MDARD would have to review the application and, if the application and supporting documents were in compliance with the bill's requirements, approve it and prepare a qualified forest school tax affidavit, in recordable form, indicating all of the following:

- The landowner's name.
- The legal description of the property.
- The year the application was submitted for the exemption.
- A statement that the landowner was attesting that the property 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 90-day review period could be extended upon the owner's request.

The Department would have to send the affidavit to the property owner for execution. 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. These 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.

Under the Act, to claim an exemption, the property owner must file an affidavit and an approved forest management plan or a certificate provided by a third-party certifying organization with the local tax collecting unit by December 31. Under the bill, instead, the owner would have to provide a copy of the recorded affidavit attesting that the land was qualified forest property to the local tax collecting unit by that date.

If a property owner were interested in claiming the exemption, the bill would allow the owner to contact the local conservation district or MDARD, which would have to advise the owner on the exemption process. If requested by the owner, the conservation district or MDARD would have to provide a list of qualified foresters to prepare a forest management plan. The Department would have to maintain a list of qualified foresters throughout the State and make it available to conservation districts and interested landowners.

The Act requires an assessor to determine if property is qualified forest property based on a recommendation from the DNR and confirmation that the statewide acreage limit has not been reached. If the property is qualified forest property, the assessor must exempt it from the collection of school operating taxes until December 31 of the year in which the property is no longer qualified forest property. The bill would delete these provisions, and would require an assessor to exempt the property if the owner provided a copy of the qualified forest school tax affidavit.

Currently, an owner may claim an exemption for up to 320 acres of qualified forest property in each local tax collecting unit. If an exemption is granted for less than 320 acres in a local tax collecting unit, the owner may subsequently claim an exemption for additional eligible property in that local unit. The bill would increase the acreage allowed in a local tax collecting unit to 640 acres or the equivalent of 16 survey units consisting of one-quarter of one-quarter of a section of qualified forest property.

Under the Act, there is a limit of 1.2 million acres of exempt forest property per fiscal year. The bill would increase the limit to 2.4 million acres. Beginning in fiscal year 2012-

13 and each fiscal year after that, real property eligible for the exemption as qualified forest property as a result of the withdrawal of that property from the operation of Part 511 (Commercial Forests) of NREPA under Section 51108(5) of that Act could not be credited against the 2.4 million-acre limit.

(Under subsection 5, an application to withdraw land from the commercial forest program must be granted without payment of the withdrawal application fee or penalty if the land has been donated to a public body for public use, or exchanged for property belonging to a public body, or condemned for public use. Senate Bill 59 would retain this provision in a different subsection. Under that bill, subsection 5 would exempt from the penalty a commercial forest owner who withdrew his or her land from the program if the land were placed on the local assessment roll and the owner claimed and were granted a qualified forest property exemption.)

#### Private Forestland Enhancement Fee

Beginning in the year that qualified forest property was first exempt and each following year, the local tax collecting unit would have to collect a fee equal to two mills per acre of exempt qualified forest property located in that unit at the same time and in the same manner as general property taxes. Each local tax collecting unit would have to disburse the fee to the Department of Treasury for deposit in the proposed Private Forestland Enhancement Fund. If property were no longer exempt as qualified forest property, the fee could not be collected on that property. The fee would be subject to the property tax administration fee established by the local tax collecting unit.

#### Qualified Forest Property

The Act 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.

Under the bill, "qualified forest property" would mean a parcel of real property that meets all of the following conditions as determined by MDARD:

- Is not less than 10 contiguous acres in size, of which not less than 80% is productive forest capable of producing forest products.
- Is subject to an approved forest management plan.

For a parcel exempt as qualified agricultural property under the Act, the qualified forest portion would have to be at least 10 contiguous acres of which not less than 50% was productive forest capable of producing forest products.

#### Termination of Exemption; Recapture

The Act requires a property owner, within 90 days after all or part of exempted property is no longer qualified forest property, to rescind the exemption for the applicable portion of the property, by filing a rescission form with the local tax collecting unit. The bill would require the owner to file the form with the register of deeds. The form would have to include a legal description of the exempted property.

An owner who fails to file a rescission as required is subject to a penalty of \$5 per day for each separate failure beginning after the 90 days have elapsed, up to a maximum of \$1,000. This penalty must be deposited in the General Fund. Under the bill, it would have to be deposited in the Private Forestland Enhancement Fund.

Currently, if the assessor of the local tax collecting unit believes that exempted property is not qualified forest property based on a recommendation from the DNR, the assessor may deny or modify an existing exemption by giving written notice to the owner. The owner may appeal the assessor's determination to the board of review, and a decision of the board of review may be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal. The bill would delete these provisions.

If property for which an exemption has been granted is converted by a change in use and is no longer qualified forest property, the property is subject to the qualified forest property recapture tax. Under the bill, if all or a portion of property for which an exemption had been granted were converted by a change in use and were no longer qualified forest property, the owner immediately would have to notify the local tax collecting unit, MDARD, and the Department of Treasury on a form created by MDARD, which would have to include a legal description of the property. A copy of the form would have to be filed with the register of deeds.

Upon notice that property was no longer qualified forest property, the local tax collecting unit immediately would have to rescind the exemption and place the property on the tax roll for the next 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 or under the Qualified Forest Property Recapture Tax Act.

Beginning January 1, 2013, and ending September 30, 2013, however, owners of property exempt as qualified forest property before January 1, 2013, could execute a new qualified forest school tax affidavit. If an owner elected to do so, he or she would not be required to pay the \$50 application fee. If the owner elected not to execute a new affidavit, the existing one would be rescinded without penalty and the property would have to be placed on the tax roll as though the exemption had not been granted. If a landowner chose not to execute a new affidavit, the property would not be subject to the recapture tax provided for under the Qualified Forest Property Recapture Tax Act.

#### Reporting & Record-Keeping

Currently, the owner of qualified forest property is required to report annually to the DNR the amount of timber produced on the property and whether any buildings or structures have been constructed on it. The bill would delete this requirement. Instead, the owner would have to report to MDARD when a forest practice or timber harvest had occurred on the property during a calendar year. The report would have to indicate the forest practice completed or the volume and

value of timber harvested. The bill would require that one copy of the report be forwarded to the conservation district, and that MDARD keep a copy of 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.

While qualified forest property was exempt, the bill would require the owner to retain the current management plan, most recent harvest records, recorded copy of a receipt of the tax exemption, and a map showing the location and size of any buildings and structures on the property. The owner would have to make the documents available to MDARD upon request.

The Department would have to maintain a database listing all qualified forest property, including the dates indicated for forest practices and harvests in the forest management plan, and notify the landowner and the conservation district in any year that they were to occur. If an owner did not accomplish forest practices and harvests within three years of the current management plan, and the plan were not amended to extend the date, the property would not be eligible for the qualified forest property exemption, would have to be placed on the tax roll, and would be subject to repayment as indicated in the Qualified Forest Property Recapture Act.

#### **Senate Bill 52**

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 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.

Under the Act, 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.

The bill would create an exception to the second requirement beginning January 1, 2014, and ending September 30, 2014. Between those dates, owners of property enrolled as qualified forest property before January 1, 2014, 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 application fee (proposed by Senate Bill 51). 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 Act.

### **Senate Bill 53**

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.
- 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 the withdrawal of the property 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 been calculated according to the bill's formula based on the property's taxable value.

#### **Senate Bill 54**

Under the General Property Tax Act, when qualified forest property is converted by a change in use and is no longer exempt from school operating taxes, it is subject to the recapture of taxes under the Qualified Forest Property Recapture Tax Act. The proceeds of the recapture tax must be credited to the State's General Fund.

Beginning January 1, 2014, the bill would require the proceeds to be credited, instead, to the Private Forestland Enhancement Fund.

#### **Senate Bill 55**

Under the General Property Tax Act, qualified agricultural property is exempt from school operating taxes to the extent provided in the Revised School Code. The Act defines "qualified agricultural property" as unoccupied property and related buildings located on that property devoted primarily to agricultural use.

A parcel of property is devoted primarily to agricultural use only if more than 50% of its acreage is devoted to agricultural use. Under the bill, a parcel also would be devoted primarily to agricultural use if more than 50% of its acreage were devoted to a combination of agricultural use and were exempt from school operating taxes as qualified forest property.

#### **Senate Bill 56**

##### **Part 93: Soil Conservation Districts**

**MDARD Powers & Duties.** The bill would include among MDARD's duties and powers under Part 93 of NREPA the review of conservation district budgets and financial information, including audit reports.

**MDARD Grant to Conservation District.** Currently, a conservation district board must provide for an annual audit of the accounts of receipts and disbursements, and maintain accurate financial records of receipts and disbursements of State funds and make the

records available to MDARD. The bill would delete these requirements.

Under the bill, to be eligible for a grant of at least \$50,000 from MDARD, a conservation district would have to do all of the following:

- Submit to MDARD an annual budget setting forth the purpose and amount of the expenses expected to be incurred and the source and amount of revenue expected to be received during the ensuing fiscal year.
- Maintain accurate financial records of receipts and disbursements and uniform accounting in accordance with generally accepted accounting principles under procedures prescribed by MDARD.
- Provide for a biennial independent certified audit by a certified public accountant of the district's financial records, accounts, and procedures.

The audit report would have to show profits and losses and the district's financial condition.

The Department could promulgate rules to implement these provisions. The rules, however, would not remain in effect later than three years after the bill's effective date.

The bill would prohibit a professional forester employed under an MDARD grant from using his or her position to compete with a private sector business, or develop a client base for forestry consultation during hours when he or she was not employed by the conservation district.

**Conservation District/Board Powers.** Part 93 provides that a conservation district and its board have certain powers, including the following:

- To conduct surveys, investigations, and research relating to the conservation of farmland and natural resources, and to publish the results and disseminate the information.
- To conduct projects within the district on State land, and on any other land within the district with the owner's consent, to demonstrate by example the means, methods, and measures by which farmland and natural resources may be conserved and soil erosion may be prevented and controlled.



- To make available to landowners within the district and to other districts agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and other material or equipment to assist landowners in the conservation of farmland and natural resources and for the prevention and control of soil erosion.
- To develop comprehensive plans for the conservation of farmland and natural resources and for the control and prevention of soil erosion within the district or other districts.
- To take over and administer any farmland or natural resource conservation project located within the district's boundaries undertaken by the United States or the State, or a U.S. or State agency, and to manage such a project or act as an agent of the State or U.S. on such a project.

The bill would refer to "farmland, forestland, and natural resources" in these provisions.

In addition, the bill would add to a district's and board's duties the evaluation of nonindustrial private forestland, in cooperation with MDARD; collaboration with MDARD in evaluating forest management plans under Section 7jj[1] of the General Property Tax Act (which Senate Bill 51 would amend); and giving landowners any of the following:

- Technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat, and wetland development and restoration.
- Contact information for qualified foresters and other forest resource professionals that may have voluntarily provided information to MDARD.

The exercise of powers related to providing technical assistance and contact information would not affect the regulatory authority of any State department.

Except as otherwise provided, a conservation district could not develop management plans for nonindustrial private forestland. Upon request, a district would have to give a landowner a list of qualified foresters to develop management plans. The Department would have to develop and maintain the list. If requested by a landowner, the conservation district would

have to post on its website notice that the landowner was seeking forest management plan preparation; timber harvesting, marketing, or thinning; or similar services. If a landowner were unable to identify a private forester willing to develop a plan because of the scope or scale of the project, the conservation district could prepare a plan for the landowner upon approval by MDARD.

Local Unit Cooperation. Under Part 93, a conservation district may cooperate with and enter into agreements with a county, township, municipality, or other subdivision of State government in implementing soil, water, and related land-use projects. The bill would include forest management projects in this provision.

Legislative Policy. Part 93 states, "It is the policy of the legislature to provide for the conservation of the natural resources of the state, including soil, water, farmland, and other natural resources...". The bill would include the conservation of forestland in the policy.

#### Part 513: Private Forestry

Intent & Purpose of Part 513. The bill states, "This part is intended to stimulate improved management and utilization of private forestland and private forest resources within this state. Economic and community development opportunities based on the private forest resource will be enhanced by ensuring adequate future high-quality timber supplies, increased employment opportunities, a diversified economy, and other economic benefits and the conservation, maintenance, and enhancement of a productive and stable forest resource system for the public benefit of present and future generations."

The bill also states, "The primary purpose of this part is to assist private landowners to understand the value of forest resources and the potential threats to forest resources and to provide management guidance."

"Forestland" would mean "a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest", whose owner agrees to develop, maintain, and actively manage as a private forest through

planting, natural reproduction, or other silvicultural practices.

"Forest resources" would mean those products, uses, and values associated with forestland, including recreation and aesthetics, fish, forage, soil, timber, watershed, wilderness, and wildlife.

"Landowner" would mean a person who holds an ownership interest in nonindustrial private forestland. "Nonindustrial private forestland" would mean a privately owned tract of land, or the timber rights in the land if they have been severed, that is at least 50% occupied by forest tree species, consists of at least 10 acres, and has the productive capacity to grow at least on average 20 cubic feet per acre per year. The term would include land from which forest tree species have been removed and not restocked, but would not include land converted to uses other than the growing of forest tree species or land zoned currently for uses incompatible with forest practices.

"Forest practice" would mean that term as defined in the General Property Tax Act. (Under that Act, as amended by Senate Bill 51, the term would include any of the following:

- The preparation of forest management plans for forestland.
- The improvement of species of forest trees.
- Reforestation.
- The harvesting of species of forest trees.
- Road construction associated with the improvement or harvesting of forest tree species or reforestation.
- Use of chemicals or fertilizers for the purpose of growing or managing species of forest trees.
- Applicable silvicultural practices.
- Any other actions intended to improve forestland or forest resources.)

Cooperative Agreements. The Department could enter into cooperative agreements with the Federal agencies that had been authorized by Congress to assist landowners in management of their nonindustrial private forestland.

Private Forestland Enhancement Fund. The bill would create the Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for

deposit into the Fund, including General Fund General Purpose appropriations, gifts, grants, and bequests. The Treasurer would have to direct the investment of the Fund, and credit to it any interest and earnings.

The Department would be the Fund administrator for auditing purposes. The Department could spend Fund money, upon appropriation, only for one or more of the following purposes:

- Direct assistance.
- Indirect assistance.
- Administrative costs.

"Direct assistance" would include any of the following:

- Programs devoted to nonindustrial private forestland to encourage the judicious management of forestland to maximize economic and ecological value.
- Incentive and cost-sharing programs to assist landowners.
- Programs that enhanced investment of private and Federal funds in sustainable forest management.
- Other programs established pursuant to Part 513.

"Indirect assistance" would include the following:

- Public education and demonstration programs on sustainable management of private forestland for increasing value for wildlife habitat and/or timber management.
- Educational programs.
- Technical assistance programs.
- Programs that would provide for the promotion and implementation of on-site evaluation systems and management practices.

"Administrative costs" would include costs incurred during any of the following:

- Development and enforcement of the Act.
- Administration of the qualified forest program developed in the General Property Tax Act.

The Department would have to establish criteria and procedures for approving proposed expenditures from the Fund.

Before November 1 of each year, the Department of Treasury would have to notify MDARD of the balance in the Fund at the close of the preceding fiscal year. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

Qualified Foresters. The bill would require MDARD to prepare and maintain a list of qualified foresters in Michigan. An individual who wished to be included on the list would have to submit a registration to MDARD on a form prepared by the Department. The form would have to include all of the following:

- The category of qualified forester for which the individual met the necessary requirements.
- The continuing education required for the individual to maintain his or her status as a qualified forester, including the date on which the continuing education had to be completed.
- A place for an individual to certify with his or her signature that he or she met the requirements of a qualified forester and was current with any required continuing education.
- A place to designate whether the individual was submitting a new registration or a renewal.

An individual could update his or her registration at any time by submitting a renewal.

A person who no longer met the requirements to be considered a qualified forester would have to notify MDARD in writing, and the Department would have to remove him or her from the list.

The Department would have to publish the list on its website.

#### Part 501: Forest Improvement

Part 501 provides for the establishment of forest improvement districts. Generally, the process for creation of a district involves the filing of a petition, a public hearing, a determination by the Department of Natural Resources of the need for the district's creation and whether its operation is administratively and economically feasible, and certification by the Secretary of State. Part 501 also authorizes the DNR to fund a

forest restoration pilot project or any other forest improvement district created to implement the part, and calls for the establishment of a pilot project organized as a forest improvement district consisting of the western six counties of the Upper Peninsula. This pilot project is known as the "Western Upper Peninsula Forest Improvement District" (WUPFID).

The bill would repeal Section 50110, which contains definitions of terms used in the provisions regarding pilot projects. The bill would reenact some of these definitions in Part 513.

The bill also would repeal Section 50112, which requires the WUPFID to be managed by a board of directors and prescribes the board's membership and duties, as well as the powers, responsibilities, duties, and authority of a profit corporation having a contract as agent for the District.

In addition, the bill would repeal Section 50136, which requires each State agency with jurisdiction over or charged with the administration of State-owned land within the boundaries of a forest improvement district to cooperate to the fullest extent with the district board in implementing Part 501.

### **Senate Bill 57**

#### MAEAP Standards

Under Part 87 of NREPA, the Michigan Agriculture Environmental Assistance Program is a voluntary program available to farms throughout the State to promote natural resources conservation through education, technical assistance, and verification. Part 87 states, "The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards."

"MAEAP standards" means all of the following as adopted by the Commission of Agriculture and Rural Development for the purpose of implementing the program:

- Conservation practices.
- Site-specific nutrient management plan requirements.
- Emergency protocols.

- U.S. Department of Agriculture (USDA) Natural Resources Conservation Service practice standards.
- Generally accepted agricultural and management practices developed under the Right to Farm Act.
- Completed environmental risk assessments.

The bill would refer to completed environmental risk and benefit assessments.

#### On-Site Evaluations

Part 87 requires the MDARD Director, in conjunction with Michigan State University (MSU), the Department of Environmental Quality (DEQ), and other appropriate people, to develop protocols for voluntary on-site evaluations designed to do the following:

- Enable farmers to determine voluntarily the relative risk of current practices in relation to sources of contamination.
- Enable farmers to determine the degree to which farm operations are in accordance with MAEAP standards and applicable law.
- Prioritize operational changes on farms to protect groundwater and surface water from sources of contamination.
- Guide farmers to appropriate technical and educational materials.
- Give farmers the opportunity for verification.

Under the bill, the evaluations also would have to enable landowners to assess voluntarily the value of managing areas of the land that were not used for traditional or production agriculture practices for environmental, ecological, and economic benefits.

#### Advisory Council

Part 87 requires the MDARD Director to establish an Environmental Assurance Advisory Council to advise him or her on a number of issues. The Council includes the Director, as well as the Directors of the DEQ, MSU Extension, and the MSU Agricultural Experimentation Station. The Council also includes representatives of the following, as appointed by the MDARD Director:

- The USDA Farm Service Agency.

- The USDA Natural Resources Conservation Service.
- Conservation districts.
- Farmers and other agricultural organizations.
- Nongovernmental conservation and environmental organizations.
- Regulated agricultural industries.

In addition, the Council includes a member representing each regional environmental assurance team (described below) and other people determined by the MDARD Director.

Under the bill, the Council also would have to include representatives of a private consulting forester, a member of the forest products industry, and a member of the logging profession.

In addition to the issues on which the Council already must provide advice, the bill would require it to advise on on-site evaluations of potential environmental, ecological, and economic benefits that could be realized by managing areas of the land that were not used for traditional or production agriculture practices.

Within one year after the bill's effective date, the Council would have to recommend to the MDARD Director an assessment tool designed to assist landowners to assess voluntarily the value of managing areas of the land that were not used for traditional or production agriculture practices, for environmental, ecological, and economic benefits. At a minimum, the tool would have to assess all of the following:

- Forest management for timber and/or habitat development.
- Wetland development potential.
- Habitat restoration development.

#### Environmental Assurance Teams

Part 87 requires the MDARD Director to establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other necessary people for implementation of Part 87 programs. The teams are responsible for implementation of the programs, including providing access to technical assistance related to either of the following:

- On-site evaluation of practices that might have an impact on natural resources.
- The development and implementation of conservation plans and activity plans for people making conservation practice changes.

Under the bill, the teams' responsibilities also would include providing access to technical assistance related to on-site evaluation of potential environmental, ecological, and economic benefits that could be realized by managing areas of the land that were not used for traditional or production agriculture practices.

### **Senate Bill 58**

Part 503 of NREPA requires the DNR to do all of the following:

- Advise the Legislature and the Governor on forest management and development and other matters relevant to the development of the forest products industry in Michigan.
- Develop a forestry development plan to improve the State's business climate for forestry, assure a stable timber supply, and coordinate public and private forestry activities.
- Identify the needs of the forest products industry.
- Promote and encourage the development of the forest products industry in Michigan.
- Promote and encourage the expansion of existing forest products companies in Michigan and attract new forest products companies to locate in the State.
- Perform other functions the DNR considers necessary for the development of the forest products industry in Michigan.
- Promote and encourage the use of the State's forest products by other states and for export.
- Report annually to the Governor and the Legislature on the Department's activities to promote the development of the forest products industry in Michigan.

Under the bill, the DNR and MDARD would have to do all of these things jointly.

With regard to the specific tasks, the bill would refer to expansion, rather than development, of the forest products

industry; include the retention of existing forest products companies; and eliminate the promotion and encouragement of Michigan forest product use by other states and for export. Instead, the bill would include the promotion and encouragement of the use of the State's value-added products in Michigan, other states, and internationally.

### **Senate Bill 59**

#### 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 withdrawal application fee or penalty if the application meets certain requirements, including reimbursement by the landowner to 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 (the section Senate Bill 51 would amend), 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.

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. On the bill's effective date, if there were no access and the lack of access were not the consequence of an action taken by the owner, 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 following acquisition of commercial forestland that had the effect of denying or inhibiting access to the public 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.

MCL 211.7jj (S.B. 51)  
211.27a (S.B. 52)  
211.1034 (S.B. 53)  
211.1035 (S.B. 54)  
211.7dd (S.B. 55)  
324.9301 et al. (S.B. 56)  
324.8703 et al. (S.B. 57)  
324.50301 & 324.50302 (S.B. 58)  
324.51102 et al. (S.B. 59)

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

### **Senate Bills 51 and 52**

The bills would reduce revenue to local units of government, have an indeterminate impact on School Aid Fund expenditures, reduce General Fund revenue, and direct revenue to the Private Forestland Enhancement Fund.

Currently, approximately 70,000 to 80,000 acres are enrolled in programs that treat the property as qualified forest property. It is unknown how many owners of property would choose to seek qualified forest property status under the bills, but given the current acreage, the bills would reduce revenue to local units of government by between \$1.9 million and \$2.2 million per year, assuming an average property tax rate of 33 mills and average taxable value of \$1,000 per acre. 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.

To the extent that acreage ceased to be qualified forest property as a result of the bills, the bills would decrease School Aid Fund expenditures because the property would become subject to the 18-mill school operating levy and less expenditure would be needed in order to meet per-pupil funding guarantees. Conversely, to the extent that the number of acres of qualified forest property increased as a result of the bills, any local revenue loss would be increased and School Aid Fund expenditures would need to be increased if per-pupil funding guarantees were to be met.

The bills also would decrease General Fund revenue by an unknown amount, and increase revenue to the Private Forestland Enhancement Fund by an identical amount, by redirecting penalty revenue from the General Fund to the Private Forestland Enhancement Fund. It is not known how many properties would be subject to any penalties, or the specific characteristics that would affect their liability.

### **Senate Bills 53 and 55**

The bills would affect local school district revenue and School Aid Fund expenditures by an unknown amount, although the

amount would likely be less than \$15.0 million per year. The bills would potentially increase the number of properties that receive an exemption from locally levied mills for school operating purposes as a result of being qualified forest property. When the legislation was first adopted in 2006, the exemption was limited to 1.2 million acres of qualified forest property (beginning in FY 2010-11) and the exemption was estimated to total \$16.2 million per year. Approximately 70,000 acres of property are currently affected by the legislation.

The bills would expand the number of properties potentially eligible for the exemption, and the local school district of any property that became qualified forest property would experience a loss equal to 18 mills times the taxable value of the property. To the extent that per-pupil funding guarantees were not reduced as a result of the bills, the bills would require increased expenditures of an equal magnitude to affected school districts from the School Aid Fund.

The bills also would shift application fee revenue from the Department of Natural Resources to the Department of Agriculture and Rural Development. To the extent that the bills increased the number of acres categorized as qualified forest property, application fee revenue would increase by an unknown, and likely minimal, amount. The bills also would result in additional administration for the Department of Treasury. The magnitude of these additional costs is unknown but likely minimal.

In addition, the bills 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 properties were classified as qualified forest property, this decline in revenue per property could be offset by revenue from the additional properties.

### **Senate Bill 54**

The bill would reduce General Fund revenue by an unknown amount beginning January 1, 2014, by redirecting the revenue from the General Fund to the Private Forestland Enhancement Fund. The actual amount of

revenue redirected would depend on the specific number and characteristics of property subject to the recapture tax under the Act.

#### **Senate Bill 56**

The bill would require MDARD to assume a greater role in providing for the availability of evaluation, potential management, and use of nonindustrial forestland in the State. The Department would incur additional administrative costs, in an amount that cannot be determined at this time. The bill also would create the Private Forestland Evaluation Fund and would require MDARD to administer and spend money from the Fund for various purposes. The contents of the Fund cannot be determined at this time.

#### **Senate Bill 57**

The bill would have no fiscal impact on State or local government. The additional responsibilities required under the bill could be accomplished with existing resources.

#### **Senate Bill 58**

The bill would have no fiscal impact on State or local government.

#### **Senate Bill 59**

In total, the bill 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.

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#### **S1314\S51sa**

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.