

Legislative Analysis



PROPERTY TAX: INCLUDE EQUINE AND CERVIDAE IN AGRICULTURAL CLASSIFICATION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5673 (Substitute H-1)

Sponsor: Rep. Joe Hune

Committee: Agriculture and Resource Management

First Analysis (4-22-04)

BRIEF SUMMARY: The bill would amend the General Property Tax Act to specify that raising equine (horses) and cervidae (such as deer and elk) would be considered an “agricultural operation” for the purposes of classifying agricultural property.

FISCAL IMPACT: As written, the bill would reduce property taxes by an indeterminate amount.

THE APPARENT PROBLEM:

The General Property Tax Act provides certain tax benefits to agricultural property, including exempting such property from the local 18 school operating mills and allowing the valuation of such property to remain capped upon a transfer or ownership provided it continues to be used for an agricultural purpose. Generally speaking, the act classifies property as being agricultural property if such property is used for an agricultural operation. The act further defines “agricultural operation” to mean, among others, raising livestock, bees, fish, fur-bearing animals, or poultry and performing any practices on a farm incidental to, or in conjunction with, farming operations. Apparently, there been some inconsistency among local taxing units in the state regarding the classification of property used for equine and cervidae operations, as it is not entirely clear as to whether these activities are commercial or agricultural in nature. Property used to board and train horses, for example, is used for a commercial activity. However, such property clearly has an agricultural component as well. Legislation has been introduced to clearly specify that raising equines (horses) and cervidae (such as deer, elk, moose, and caribou) would be considered to be an agricultural operation.

THE CONTENT OF THE BILL:

Under the General Property Tax Act (MCL 211.34c), some property is classified as being “agricultural real property”, a classification that includes parcels used partially or entirely for certain agricultural operations. The act defines “agricultural operations” to include, among other things, raising livestock, bees, fish, fur-bearing animals, or poultry, and performing any practices on a farm incidental to, or in conjunction with, farming operations. The bill would specify that raising livestock would include raising equine and cervidae, but would not include pay-to-hunt farms or game preserves.

While not defined in the bill or the act as a whole, cervidae generally includes members of the cervidae family, including deer, elk, moose, and caribou.

BACKGROUND INFORMATION:

School Millage Exemption. Under the General Property Tax Act certain agricultural property may be eligible for an exemption from the local 18 school operating mills if such property is either classified as agricultural property under the act (MCL 211.34c) or is property that is not classified as agricultural, but is primarily devoted to an “agricultural use” as defined under Part 361 of the Natural Resources and Environmental Protection Act (MCL 324.36101). However, property used for commercial storage, commercial processing, commercial distribution, commercial marketing, or commercial shipping operations or other commercial or industrial purposes is not eligible for the exemption. A parcel of property is devoted primarily to agricultural use only if more than 50 percent of the parcel's acreage is devoted to agricultural use. Owners of property not classified as agricultural real property must file an affidavit with the local assessing unit by May 1.

Generally speaking, the General Property Tax Act classifies property as being agricultural real property if such property is used for an agricultural operation. The act further defines “agricultural operation” to mean the following: (1) farming in all its branches, including cultivating soil; (2) growing and harvesting any agricultural, horticultural, or floricultural commodity; (3) dairying; (4) raising livestock, bees, fish, fur-bearing animals, or poultry; (5) turf and tree farming; and (6) performing any practices on a farm incident to, or in conjunction with, farming operations.

Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act defines “agricultural use” to mean the production of plants and animals useful to humans, including, among other activities, livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals. Property used for an agricultural use does not necessarily have to be classified as agricultural real property under the General Property Tax Act.

Pay-To-Hunt Farms. The issue of whether pay-to-hunt farms qualify for the Qualified Agricultural Property Exemption has been addressed in the Michigan Tax Tribunal’s decision *Huron Bay Lodge v. Arvon Township*, Docket No. 282654 and State Tax Commission Bulletin No. 4 of 1997 (as supplemented by STC Bulletin No. 8 of 2001). The 1997 STC Bulletin notes that for the purposes of “agricultural use” in Part 361 of NREPA, “[t]he breeding and grazing of captive cervidae includes farms where cervidae are raised for the same or similar purposes as are customary in the breeding and grazing of other animals such as cattle. The breeding and grazing of captive cervidae does NOT include properties used primarily as hunting ranches where customers pay a fee to hunt animals.”

ARGUMENTS:

For:

The bill clarifies that raising equines and cervidae are considered to be agricultural operations, thus enabling property used for such purposes to qualify for the exemption

from local school operating taxes. This change is consistent a variety of other state laws with respect to how such activities are classified. The breeding and grazing of captive cervidae is considered to be an “agricultural use” under Part 361 of the Natural Resources and Environmental Protection Act. A similar definition is included in Part 362 (Agricultural Preservation Fund). Part 327 (Great Lakes Preservation) defines “agricultural purpose” to mean the agricultural production of those plants and animals useful to human beings produced by agriculture, including cervidae and the breeding and grazing of equine. Perhaps most importantly, the Animal Industry Act, which regulates equine and cervidae operations, defines “livestock” to mean those species of animals used for human food and fiber or those species of animals used for service to humans, including privately owned cervids and equine.

Against:

There is some concern that specifically excluding pay-to-hunt farms and game preserves from being considered an agricultural operation takes the state down a dangerous path toward taxing more agricultural activities. Today, more and more farmers are engaging in a variety of “valued-added” agricultural operations, which are alternative production and marketing strategies for a particular commodity, including corn mazes and the like, and that are more commercial in nature than traditional agricultural operations.

Moreover, it appears that pay-to-hunt farms are eligible for the exemption if at least 50 percent of the property is devoted primarily to an agricultural use. The Michigan Tax Tribunal, in *Huron Bay Lodge*, noted that the petitioner “presented no evidence whatsoever to demonstrate that more than 50 percent of the subject property was devoted primarily to agricultural use” and that the breeding and grazing of elk, deer and swine on the petitioner’s property was purely secondary and incidental to the fact that those animals were on the property for recreational hunting purposes. The tax tribunal did not summarily dismiss the petitioners claim for the school millage exemption simply because the property was used as a pay-to-hunt farm; the petitioner failed to provide evidence supporting its claim for the exemption. This bill, however, would appear to disqualify pay-to-hunt farms from the exemption notwithstanding the fact that it could meet other eligibility requirements (that is, at least 50 percent of property devoted primarily to an agricultural use.).

POSITIONS:

The Michigan Farm Bureau indicated that it supports the bill. (4-20-04)

The Michigan Deer and Elk Farmers Association indicated that it supports the bill. (4-20-04)

The Michigan Harness Horsemen’s Association indicated that it supports the bill. (4-20-04)

The Michigan Equine Practitioners Association indicated that it supports the bill. (4-20-04)

The Michigan Association of Counties indicated that is neutral on the bill. (4-20-04)

The Department of Treasury indicated that it is neutral on the bill (4-20-04)

The Michigan Townships Association does not support the bill. (4-22-04)

Legislative Analyst: Mark Wolf
Fiscal Analyst: Jim Stansell

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