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**SFA**



**BILL ANALYSIS**

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Senate Bills 1245 and 1246 (as introduced 5-4-00)  
Sponsor: Senator Joanne G. Emmons (S.B. 1245)  
Senator George A. McManus, Jr. (S.B. 1246)  
Committee: Farming, Agribusiness and Food Systems

Date Completed: 5-10-00

## CONTENT

**Senate Bill 1245** would amend the General Property Tax Act to provide for the assessment of agricultural property based upon agricultural use; prescribe the determination of "agricultural use value"; provide for county agricultural property boards of review; designate county equalization directors as the assessing officers for qualified agricultural property; eliminate developmental property as a classification of property for tax purposes; and exempt greenhouses from the property tax. **Senate Bill 1246** would create the "Agricultural Property Recapture Act" to provide for the levy of a recapture tax on qualified agricultural property that was converted from agricultural property by a change in use; and dedicate proceeds of the tax to the Agricultural Preservation Fund (proposed in Senate Bill 1247).

The bills are tie-barred to each other and to Senate Bill 1247, and could not take effect unless Senate Joint Resolution M was approved by a vote of the electors and became a part of the State Constitution. (Senate Joint Resolution M proposes an amendment to the State Constitution to provide for the assessment of agricultural property based on the lesser of its market value or agricultural use value, without regard to the property's highest and best use.)

### Senate Bill 1245

#### Agricultural Use Value

The bill provides that beginning December 31, 2000, property that was "qualified agricultural property" would have to be assessed at 50% of its "agricultural use value" under Article 9, Section 3 of the State Constitution (which would be amended by Senate Joint Resolution M). "Agricultural use value" would mean that value calculated using the method determined by the State Tax Commission, after consultation with the Department of Agriculture. The method could not include sales of comparable

qualified agricultural property. The method would have to include, but would not be limited to, all of the following considerations:

- Evidence of the productive capability of the qualified agricultural property for agricultural use, including soil characteristics.
- The average annual net return in the immediately preceding five-year period for typical agricultural property located in the county in which the qualified agricultural property was located, discounted by an appropriate interest rate.
- The average rental income for typical agricultural property located in the county in which the qualified agricultural property was located.

For purposes of determining agricultural use value, "qualified agricultural property" would mean property exempt from the tax levied by a local school district for school operating purposes.

Under the General Property Tax Act, "qualified agricultural property" means unoccupied property and related buildings classified as agricultural, or other unoccupied property and related buildings located on that property devoted primarily to "agricultural use" as defined in the Natural Resources and Environmental Protection Act. That Act defines "agricultural use" as substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. The management and harvesting of a woodlot is not an agricultural use under the Act. The bill would place this definition in the General Property Tax Act; further provide that agricultural use would include property enrolled in a Federal acreage set-aside or Federal conservation program; and specify that agricultural use would not include commercial storage, processing, distribution, marketing, or

shipping operations.

Currently, the classification of assessable real property as agricultural real property includes parcels used partially or wholly for "agricultural operations", which means farming in all its branches, including cultivating soil; growing and harvesting any agricultural, horticultural, or floricultural commodity; dairying; raising livestock, bees, fish, fur-bearing animals, or poultry; turf and tree farming; and performing any practices on a farm incident to, or in conjunction with, farming operations. The bill would eliminate this definition, and provide instead that the classification of assessable real property as agricultural real property would include parcels used partially or wholly for agricultural use.

Further, the Act states that the classification of assessable real property as developmental real property includes parcels containing more than five acres without buildings, or more than 15 acres with a market value in excess of its value in use. Developmental real property may include farmland or open space land adjacent to a population center, or farmland subject to several competing valuation influences. The bill would delete this provision (meaning that there would be no classification for developmental real property in the Act).

#### Taxable Value

For taxes levied in 2000 and each year thereafter, the taxable value of each parcel of qualified agricultural property would be the lowest of the following:

- The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions.
- The property's current agricultural use value.
- The taxable value the property would have had if its taxable value had been determined under Section 27a. (Under Section 27a, a parcel's taxable value is the lesser of its current State equalized valuation (SEV), or its taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the rate of inflation, plus additions.)

Upon a transfer of ownership of qualified agricultural property, if the property remained qualified agricultural property, its taxable value for the calendar year following the year of the transfer would be the property's taxable value for the calendar year immediately preceding the transfer, as calculated according to the above requirements.

Upon a transfer of ownership of qualified agricultural property, if the property did not remain qualified

agricultural property, the taxable value of the property would be its SEV.

#### Notice of Transactions

The register of deeds of the county where deeds or other title documents were recorded would have to notify the county equalization director at least once a month of any recorded transaction involving the ownership of qualified agricultural property, and make any recorded deeds or other title documents available to that county's tax or equalization department. The buyer, grantee, or other transferee of the qualified agricultural property would have to notify the county equalization director in the county in which the property was located of the transfer of ownership of the property within 45 days of the transfer, on a form prescribed by the State Tax Commission, that stated the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the qualified agricultural property's parcel identification number or legal description. Forms filed in the assessing office of a county would have to be made available to the county tax or equalization department for that county. This provision would not apply to personal property except buildings described in Section 14(6) and personal property described in Section 8(h), (l), and (j) of the Act. (These sections refer to improvements and structures installed by a lessee on real property, that are assessed to the lessee; and to tangible personal property located on real property where the owner of the personal property is not the owner of the land.)

Currently, qualified agricultural property is exempt from school operating taxes. The owner of property no longer qualified must rescind the exemption within 90 days after all or a portion of the exempted property no longer qualifies, by filing a rescission with the local tax collecting unit. The bill specifies that the owner of qualified agricultural property would have to rescind the exemption under these provisions, if the exempted property were no longer qualified agricultural property, and file the rescission with the county equalization director.

#### Agricultural Property Board of Review

The bill specifies that the electors of a county appointed by the county board of commissioners would constitute a qualified agricultural property board of review for the county. At least two-thirds of the members would have to be property taxpayers of the county. Members would have to serve for terms of two years beginning on January 1 of each odd-numbered year. A member of the county board of commissioners would not be eligible to serve on the board of review or to fill any vacancy. A spouse, mother, father, sister, brother, son, or daughter, including an adopted child, of the county equalization

director would not be eligible to serve on the board of review, or to fill any vacancy.

The county board of commissioners could appoint three, six, or nine electors of the county, who would constitute a qualified agricultural property board of review for the county. If six or nine members were appointed, the membership of the board would have to be divided into committees consisting of three members each for the purpose of hearing and deciding protested issues.

All meetings of the members of the board and committees would have to be held during the same hours of the same day and at the same location. A majority of the entire board membership would have to endorse the assessment roll for qualified agricultural property.

#### Board of Review Duties

The duties and responsibilities of a qualified agricultural property board of review would have to be carried out by the entire membership of the board, and a majority of the membership would constitute a quorum for those purposes.

On the Tuesday immediately following the first Monday in March, the board of each county would have to meet at the office of the county equalization director (CED), at which time the CED would have to submit to the board the assessment roll for all qualified agricultural property in the county for the current year, as prepared by the CED, and the board would have to proceed to examine and review the qualified agricultural property assessment roll.

During that day, and the day following, if necessary, the board, on its own motion (or if sufficient cause were shown by a person) would have to add to the qualified agricultural property assessment roll the names of persons and the description and value of qualified agricultural property subject to assessment in the county that had been omitted from the roll. The board would have to correct errors in the names of persons, in the descriptions of qualified agricultural property upon the roll, and in the assessment and valuation of qualified agricultural property. The board would have to do whatever else was necessary to make the qualified agricultural property roll comply with the bill.

The qualified agricultural property roll would have to be reviewed according to the facts existing on tax day. The board could not add to the roll qualified agricultural property not subject to taxation on tax day, and could not remove from the roll property subject to taxation on tax day regardless of a change in the taxable status of the property since tax day.

The qualified agricultural property assessment roll as prepared by the CED would stand as approved and adopted as the act of the board, except as changed by a vote of the board. If for any cause a quorum did not assemble during the period prescribed under the bill, the roll as prepared by the CED would stand as if approved by the board.

The business that the board could perform would have to be conducted at a public meeting held in compliance with the Open Meetings Act. Notice of the date, time, and place of the meeting would have to be given at least one week before the meeting by publication in a generally circulated newspaper serving the county. The notice would have to appear in three successive issues of the newspaper if available or, if no newspaper were available, the notice would have to be posted in five conspicuous places in the county.

When the board made a change in the assessment of qualified agricultural property or added to the qualified agricultural property assessment roll, the person chargeable with the assessment would have to be promptly notified in a manner that would assure the person opportunity to attend the second meeting of the board.

The board would have to meet on the second Monday in March at 9 a.m., and continue in session during the day for at least six hours. The board also would have to meet for at least six hours during the remainder of that week. Persons or their agents who had appeared to file a protest before the board at a scheduled meeting or at a scheduled appointment would have to be allowed an opportunity to be heard by the board. The board would have to schedule a final meeting after it made a change in the assessed value, agricultural use value, or tentative taxable value of qualified agricultural property, or added property to the qualified agricultural property assessment roll. In a county with a population of 10,000 or more, the board would have to hold at least three hours of its required sessions for review of the roll during the week of the second Monday in March after 6 p.m.

The board would have to meet a total of at least 12 hours during the week beginning the second Monday in March to hear protests. At the request of a person whose qualified agricultural property was assessed on the qualified agricultural property assessment roll or of his or her agent, and on the showing of sufficient cause, the board would have to correct the assessed value, agricultural use value, or tentative taxable value of the qualified agricultural property, in a manner that in the board's judgment would make the valuation of the property relatively just and proper under the Act. The board could examine on oath the person making the application, or any other person

concerning the matter. A nonresident taxpayer could file his or her appearance, protest, and papers in support of the protest by letter, and his or her personal appearance would not be required. The board, upon its own motion, could change assessed values, agricultural use values, or tentative taxable values or add to the qualified agricultural property assessment roll qualified agricultural property omitted from the roll that was liable to assessment in the county, if the person who was assessed upon the altered valuation or for the omitted property were promptly notified and granted an opportunity to file objections to the change at the meeting or at a subsequent meeting. An objection would have to be promptly heard and determined.

Each person who made a request, protest, or application to the board for the correction of the assessed value, agricultural use value, or tentative taxable value of the person's qualified agricultural property would have to be notified in writing, by the first Monday in June, of the board's action on the request, protest, or application, and of information regarding the right of further appeal to the State Tax Tribunal. This information would have to include a statement of the right to appeal to the Tax Tribunal, the address of the Tax Tribunal, and the final date for filing an appeal with the Tax Tribunal.

If for any reason the second meeting of the board were not held at the time fixed for that meeting, the board would have to meet on the immediately succeeding Monday and proceed in the same manner and with the same powers as if that meeting had been held as provided under the bill.

The board would have to complete its review of the qualified agricultural property assessment roll by the first Monday in April. A majority of the board then would have to endorse the roll and sign a statement to the effect that the roll in that county for that year had been prepared and approved by the board.

The county equalization director would be the secretary of the board and would have to keep a record of the proceedings of the board and of all the changes made in the assessment roll. The CED would have to file the roll with the county board of commissioners, with the statements made by persons assessed. In the absence of the CED, the board would have to appoint one of its members to serve as secretary. The State Tax Commission could prescribe the form of the record whenever necessary. The completed roll would have to be delivered to the CED by the 10th day after the board adjourned, or the Wednesday following the first Monday in April, whichever occurred first.

The board of county commissioners could authorize, by adoption of an ordinance or resolution, a resident

taxpayer to file his or her protest before the qualified agricultural property board of review by letter, without a personal appearance by the taxpayer or his or her agent. If that ordinance or resolution were adopted, the county would have to include a statement notifying taxpayers of this option in the assessment notice sent as required under the Act, and on each notice or publication of a meeting of the qualified agricultural property board of review.

#### Value Reductions

If a taxpayer had the assessed value, agricultural use value, or taxable value reduced on his or her qualified agricultural property as a result of a protest to the board under the bill, the CED would have to use that reduced amount as the basis for calculating the assessment of that property in the immediately succeeding year.

If a taxpayer appeared before the Tax Tribunal during the same tax year for which the SEV, assessed value, agricultural use value, or taxable value of qualified agricultural property was appealed and had the SEV, assessed value, agricultural use value, or taxable value of his or her qualified agricultural property reduced pursuant to a final order of the Tax Tribunal, the CED would have to use the reduced SEV, assessed value, agricultural use value, or taxable value as the basis for calculating the assessment of that property in the immediately succeeding year.

In either case, the taxable value of the property in a tax year immediately following a transfer of ownership of that property would have to be determined as provided under the bill for determining the taxable value of qualified agricultural property.

#### County Equalization Director

Currently, the Act prescribes various duties and responsibilities that local assessing officers must perform in levying property tax assessments within the jurisdiction of a local unit, on all parcels within the local unit. In addition, the Act contains specific provisions for assessors regarding qualified agricultural property. The bill provides that for taxes levied after December 31, 2000, a CED would have to prepare the tax roll for all qualified agricultural property located in a county. For such property, the local assessing district would be the county. Further, the CED would replace local assessing officers for requirements related to the assessment of qualified agricultural property.

The bill provides that if property previously assessed as qualified agricultural property were no longer qualified agricultural property, the CED would have to transmit all applicable assessing records for that property to the applicable assessing officer for the local tax collecting unit in which the property was located. The CED annually would have to report certain qualified agricultural property valuation data to the State Tax Commission on a form prescribed by the Commission.

The bill would require the CED to determine the true cash value and the agricultural use value for qualified agricultural property.

#### Assessment Notice/Tax Statement

The Act requires an assessing officer to send an assessment notice to a taxpayer if the taxpayer's SEV or taxable value has increased for the year, and prescribes the content of the notice. The bill would require that a notice also be sent when there was an increase in the tentative agricultural use value. For qualified agricultural property the notice would have to include the following:

- Beginning in 2002, the agricultural use value for the immediately preceding year.
- The tentative agricultural use value for the current year.
- Beginning in 2002, the net change between the tentative agricultural use value for the current year and the agricultural use value for the immediately preceding year.
- The recapture tax that would be imposed under the Agricultural Property Recapture Act (proposed by Senate Bill 1246) if the qualified agricultural

property were converted by a change in use.

- Whether that property was qualified agricultural property exempt from the tax levied by a local school district for school operating purposes.
- A statement provided by the State Tax Commission explaining the relationship between the agricultural use value and taxable value.

Currently, the Act requires that a tax statement be mailed to a taxpayer after the taxes on a parcel have been determined, and prescribes the content of the statement. The bill provides that for qualified agricultural property only, the tax statement mailed to the taxpayer or to the taxpayer's designated agent would have to include the recapture tax that would be imposed under the proposed Agricultural Property Recapture Act if the qualified agricultural property were converted by a change in use.

#### Prospective Buyer

The bill would require the owner of qualified agricultural property to inform a prospective buyer of the property that if the property were converted by a change in use from qualified agricultural property, the property would be subject to the recapture tax (as proposed in Senate Bill 1246).

#### Greenhouse Exemption

The bill specifies that a greenhouse, but not the land on which it was located, and all flowering, nursery, or vegetable plants located within the greenhouse would be exempt from the property tax. "Greenhouse" would mean a structure or enclosure consisting of a wood, fiberglass, or metal frame with a glass, plastic, acrylic, polycarbonate, polyethylene, or similar covering, that was designed to regulate climatic conditions in order to germinate, grow, or store flowering, nursery, or vegetable plants.

#### **Senate Bill 1246**

The bill provides that beginning January 1, 2002, a recapture tax would be imposed on the owner of property that was qualified agricultural property on January 1, 2002, or became qualified agricultural property after that date, and that was "converted by a change in use"; that is, due to a change in use, the property was no longer qualified agricultural property and the property's exemption from school operating taxes was subject to rescission under the General Property Tax Act.

The recapture tax would be calculated using the following formula:

$$\text{Tax} = \frac{1}{2}A \times (B-C) \times D$$

"A" would be the mills levied by the

local taxing unit in which the qualified agricultural property was located in the year in which it was converted by a change in use; "B" would be the true cash value of the property; "C" would be the taxable value of the property; and "D" would be the number of years after the effective date of the bill that the property was converted by a change in use, but not to exceed the number seven.

The owner of the property when the recapture tax was imposed would be liable for the tax. If the tax were not paid within 90 days of the date it was imposed, the county treasurer in the county in which the property was located, or the State Treasurer, could bring a civil action against the owner as of the date the recapture tax was imposed, to collect the tax. The recapture tax would be a lien on the real property subject to the tax, until it was paid. If the recapture tax were not paid within 90 days of the date it was imposed, the tax could be collected by the county treasurer in the same manner as delinquent taxes are collected under the General Property Tax Act.

The recapture tax would have to be collected by the county treasurer and deposited with the State Treasurer. By the 15th day of each month, on a form prescribed by the State Treasurer, the county treasurer would have to itemize the recapture taxes collected the preceding month and transmit the form and the taxes to the State Treasurer. The county treasurer could retain the interest earned on the money collected while held by the county treasurer as reimbursement for the costs incurred by the county in collecting and transmitting the tax. The money retained by the county treasurer would have to be deposited in the treasury of the county in which the tax was collected, to the credit of the general fund.

The State would have to refund recapture tax paid if all of the following conditions were satisfied:

- The property that was subject to the recapture tax was exempt and had been exempt from taxes collected under the General Property Tax Act, from the date the recapture tax was paid.
- The person who paid the recapture tax claimed a refund of the tax on a form and in the manner provided by the Department of Treasury.
- The person who paid the recapture tax claimed a refund between six and 18 months after the date the tax was paid.

The State would have to pay the refund to the person who paid the tax.

The bill would have to be administered by the Revenue Division of the Department of Treasury.

MCL 211.7dd et al. (S.B. 1245)

Legislative Analyst: G. Towne

### **FISCAL IMPACT**

#### **Senate Bill 1245**

The changes to the General Property Tax Act proposed in this bill that would have a fiscal impact include 1) exempting greenhouses from the property tax, 2) eliminating the "pop-up" in the property tax base when qualified agricultural property changed ownership, and 3) basing the value of agriculture real property on its current use. In total, it is estimated preliminarily that these changes would reduce various property taxes by \$90.4 million in 2001. The preliminary estimated fiscal impact of each of these changes is summarized below.

Greenhouses - This bill proposes to exempt greenhouses from property taxes. This exemption would be limited to greenhouses only and not the land on which they are located. It is estimated that this exemption would reduce total property tax revenue by \$4 million in 2001. This loss in revenue would affect the various types of property taxes as follows in 2001: Local government property taxes would decline \$1.1 million, local school taxes would decline \$1.8 million, intermediate school district (ISD) tax revenue would decline \$0.4 million, community college property tax revenue would decrease \$0.1 million, and the State education property tax revenue would decrease \$0.6 million.

Assessment Cap and Ownership Changes - Under this bill, when qualified agricultural property changed ownership, but continued to be qualified agricultural property under the new owner, the cap on the assessed value would not be removed, and as a result the new owner's property taxes would be lower than they otherwise would be if the assessment cap came off, as it would under current law. This proposed change would reduce total property taxes an estimated \$2.4 million in 2001, and by 2005 the loss in property tax revenue would increase to an estimated \$4.1 million. This loss in revenue would affect the various types of property taxes as follows in 2001: Local government property taxes would decline \$0.9 million, local school taxes would decline \$0.2 million, ISD tax revenue would decline \$0.4 million, community college property taxes would decrease \$0.1 million, and the State education property tax revenue would decrease \$0.5 million.

Valuation Based on Use - The preliminary estimate is that assessing qualified agricultural real property

based on its current use and not its highest and best use, would reduce property taxes at least \$84 million in 2001, assuming that all qualified farmers chose to have their real property assessed using this new method. The reduction in property taxes could be higher than this, however, because the bill would prohibit assessors from using any information on the sale prices of comparable farm property in determining the use value. Many states that have use valuation use it only to determine the value of the land and not the buildings. Many states use some type of market value measure to determine the value of the buildings. Therefore, using use valuation for determining the taxable values of both the land and the buildings could result in a larger reduction in farm values and property taxes compared with the above estimate. This issue will be studied further and the estimate will be refined as more information becomes available. Based on the preliminary estimate of the reduction in property taxes, this loss in revenue would affect the various types of property taxes as follows in 2001: Local government property taxes would decline \$40 million, ISD tax revenue would decrease \$18 million, community college property taxes would decline \$4 million, and the State education property tax revenue would decrease \$22 million.

#### **Senate Bill 1246**

This bill would generate new tax revenue totaling an estimated \$750,000 in 2001, and by 2008, when the "year factor" would be at its maximum amount of 7, the total revenue would be an estimated \$7.0 million. The amount of revenue this new tax would ultimately generate depends on how effective it would be at discouraging people and businesses from buying farmland and converting it to nonfarm uses. The above estimates are based on the estimated current rate at which farmland is being converted to nonfarm uses.

Fiscal Analyst: J. Wortley

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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.