

Legislative Analysis



NO POP-UP FOR LAND SUBJECT TO CONSERVATION EASEMENT

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

Senate Bill 1004 as passed by the Senate
Sponsor: Sen. Michelle A. McManus
House Committee: Tax Policy
Senate Committee: Finance

First Analysis (6-20-06)

BRIEF SUMMARY: The bill would prevent the taxable value of property subject to a conservation easement from "popping-up" to the state equalized value when it is transferred.

FISCAL IMPACT: Because the value of the property transfers that would be excluded is not known, a precise fiscal impact cannot be determined. However, since only the land is eligible for the exclusion, the impact is likely to be \$1.0 million or less in a typical year.

THE APPARENT PROBLEM:

State law permits property owners to place their land under a conservation easement, an agreement with a governmental or charitable entity that permanently restricts the uses of the land in order to protect its natural, scenic, forested, agricultural, or historic character from future development. Generally, the easement prohibits the land from being divided or being used for commercial or industrial activities. The property owner still retains ownership and control of the land. Most easements are permanent, and will "run with the land," restricting the uses of the current owner and all subsequent owners. When conservation easements are donated to charitable organizations, the property owner is eligible for a federal income tax deduction. Additionally, the restriction of the development rights on the land typically, though not always, reduces the land's value, which has the dual effect of reducing property and estate taxes on the land.

In addition to the conservation benefits of placing land under an easement, many property owners use easements as a way to pass the land on to their heirs. (Given the special nature of this property, property owners likely have a stronger desire to see that it remains in the family than they would for other types of property.) The lower tax burden makes it financially feasible for heirs to keep the land within the family. However, there is an issue with the "pop-up" tax. Under Proposal A of 1994, year-to-year increases in a property's taxable value are capped at five percent or the rate of inflation, whichever is less. But when the land is sold ("transferred"), the taxable value "pops-up" to the state equalized value, which has the effect of increasing property taxes.

Given the size of land held under a conservation easement, the increased taxes resulting from the pop-up can be quite significant. In one example cited in committee, a property owner who donated an easement of nearly 120 acres of land adjacent to the Waterloo

Recreation Area, near Chelsea, a decade ago is now faced with a dilemma on what to do with the land after he dies. When the land is passed on to his heirs, the property's taxable value will "pop-up" to the state equalized value, and the property taxes will increase by \$6,000 annually. The land cannot be subdivided, and the added tax burden will make it difficult for the family to retain possession of the land. Moreover, many also feel that this particular property owner's experience will discourage other property owners from placing their land in a conservation easement.

It has been suggested that, as a means of encouraging land owners to place their land under a conservation easement be

THE CONTENT OF THE BILL:

Senate Bill 1004 would amend the General Property Tax Act to specify that, beginning on the bill's effective date, a "transfer of ownership" does not include a transfer of land that is subject to a conservation easement under Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act, or where a transfer of ownership or interest in the land is eligible for a deduction as a qualified conservation contribution under the federal Internal Revenue Code. (This exemption would not apply to buildings or structures located on the land.)

Under the act, year-to-year increases in a property's taxable value are capped at five percent or the rate of inflation, whichever is less. The taxable value "pops-up" to the State Equalized Value upon a transfer of ownership. The act lists a number of transactions that are not considered to be a "transfer of ownership" including, most notably, the transfer of qualified agricultural property. The bill would add a new exception.

MCL 211.27a

ARGUMENTS:

For:

The bill creates an incentive to place land under a conservation easement, which precludes future development on the land and preserves its natural character. Conservation easements are an important tool for maintaining the green space in the state, particularly in developed areas, and often protect valuable plant and animal habitat. Property owners who donate conservation easements also realize a number of tax savings, whether through a federal income tax deduction, lower property taxes, or lower federal estate taxes. These financial inducements also enable property owners and their families to retain possession of the land, rather than subdividing it for development.

When this land is transferred upon (or before) the property owner's death, the taxable value of the land "pops-up" to the state equalized value, often more than doubling the amount of property taxes on the land. For some families, this creates a significant financial burden that makes it difficult for the family to keep possession of the property.

Moreover, the restrictions of the easement typically prevent the family from subdividing the land. The added tax burden dissuades many property owners from considering conservation easements. This reduces the amount of land subject to these easements, and potentially opens important natural areas in the state to development, which adversely impacts air and water quality, plant and animal habitat, and other important natural resources.

Against:

By exempting land subject to a conservation easement from the "pop-up," the bill has the effect of increasing property taxes for other property owners within the community. Under the Headlee rollback provisions of the state constitution, if the local tax base (taxable value) increases by more than the rate of inflation, the local millage rates must be rolled back. (In the alternative, voters may override the rollback at an election.) When the taxable value of property subject to an easement does not "pop-up," the local tax base does not grow as it otherwise would, thereby lowering the rollback, which results in higher property taxes for all property owners in the municipality.

POSITIONS:

The Washtenaw Land Trust supports the bill. (6-14-06)

The Leelanau Conservancy supports the bill. (6-14-06)

The Heart of the Lakes Center for Land Conservation Policy supports the bill. (6-14-06)

The Little Traverse Conservancy supports the bill. (6-14-06)

The Michigan Environmental Council supports the bill. (6-14-06)

The Department of Treasury supports the concept of the bill but would prefer that the bill apply prospectively, to new conservation easements. (6-14-06)

The Michigan Townships Association opposes the bill. (6-14-06)

The Michigan Municipal League opposes the bill. (6-14-06)

The Michigan Assessors Association opposes the bill. (6-14-06)

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.