

Legislative Analysis



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

FORESTRY PACKAGE

House Bill 4069 (Proposed H-1)
Sponsor: Rep. Frank Foster

House Bill 4243 (Proposed H-1)
Sponsor: Rep. Ed McBroom

House Bill 4244 (Proposed H-2)
Sponsor: Rep. Bruce Rendon

House Bill 4320 as introduced
Sponsor: Rep. Andrea LaFontaine

House Bill 4321 as introduced
Sponsor: Rep. Ed McBroom

House Bill 4322 as introduced
Sponsor: Rep. Roger Victory

House Bill 4323 as introduced
Sponsor: Rep. Peter Pettalia

House Bill 4324 as introduced
Sponsor: Rep. Frank Foster

House Bill 4325 as introduced
Sponsor: Rep. Ken Goike

Committee: Natural Resources

Complete to 3-5-13

A SUMMARY OF THE BILLS

BRIEF BACKGROUND:

Part 511 (Commercial Forestland) of the Natural Resources and Environmental Protection Act (NREPA) allows land to be registered as commercial forest and to be subject to a specific tax of \$1.25 per acre, rather than the standard ad valorem property tax. Land enrolled in this **Commercial Forest Program** must be open to the general public for hunting and fishing. According to the department, there are approximately 2.2 million acres enrolled in the CF Program, and all but roughly 45,000 are located in the Upper Peninsula. The Commercial Forest Program provides a property tax reduction to private landowners as an incentive to retain and manage forestland for long-term timber production.

In 2006, the General Property Tax Act was amended to add the **Qualified Forest Property** tax exemption (Public Acts 378-380 of 2006). The program was intended to encourage private land owners to manage their land for forestry by exempting qualified land from some school operating taxes. Land owners participating in this program do not have to allow access to the general public, and land must be managed according to a department-approved forest management plan. The amount of land eligible statewide for the qualified forest property tax exemption was capped at 1.2 million acres for the fiscal year ending September 30, 2011. According to the department, the Qualified Forest Property Program currently has approximately 70,000 enrolled acres.

The Commercial Forest Program and the Qualified Forest Program are two separate property tax incentive programs. Land cannot have both a Commercial Forest and a Qualified Forest Property tax designation.

BRIEF SUMMARY:

Generally speaking, the bills would allow land owners in the Commercial Forest Program to move to the Qualified Forest Property Program without penalty, under certain conditions.

The bills would, among other things, also:

- Transfer responsibilities from the Department of Natural Resources to the Department of Agriculture and Rural Development;
- Provide for a fee on each parcel of qualified forest property;
- Increase the number of eligible acres in the qualified forest program;
- Alter the requirements for a transferee to file an affidavit upon transferring property;
- Revise the recalculation and distribution of the Qualified Forest Property Recapture Tax;
- Create the Private Forestland Enhancement Fund; and
- Provide for the assessment of managing areas of land not used for traditional or production agriculture practices for environmental, ecological, and economic benefits.

All of the bills would take effect on June 1, 2013.

FISCAL IMPACT:

A fiscal analysis is in process.

DETAILED SUMMARY:

A detailed description of each bill follows.

House Bill 4069 (Proposed Substitute H-1) would amend Part 511 (Commercial Forests) of NREPA to alter the operation of the Commercial Forest program.

The bill removes the requirement that the Department of Natural Resources prepare a forest management plan for an applicant that is unable to secure a registered forester and

exempts all forest management plans submitted to the department or a local tax collecting unit from disclosure under the Freedom of Information Act (FOIA). It also removes a provision requiring the approval of the State Administrative Board for all expenses incurred and staff employed to implement the Commercial Forest Program.

Until one year after the bill takes effect, the owner of commercial forestland would be allowed to withdraw the land from the Commercial Forest program and not be subject to a withdrawal penalty if all of the following occur:

- The owner of the property withdraws the land from the Commercial Forest program as provided for Part 511 and in Section 51108.
- The withdrawn land is placed on the assessment roll in the local tax collecting unit in which the land is located.
- The owner of the land applies for and is granted admission to the Qualified Forest program. The owner would have to submit a copy of the recorded qualified forest school tax affidavit by December 31 of the year in which the land was withdrawn.

The department would be able to withdraw land from the Commercial Forest program if it has been acquired by a federally recognized Indian tribe and the associated property taxes are subsequently preempted under federal law. In this instance, a withdrawal is not subject to the withdrawal application fee or penalty.

The department would also be able to withdraw land from the Commercial Forest program if a determination is made that the land owner has taken an action that has the effect of denying access to the land for public hunting and fishing. The land could remain as commercial forest land even if there is no access and the lack of access is not because of an action taken by the land owner, if the conditions in the bill are satisfied.

The bill would include wind energy development among the generally prohibited uses of Commercial Forest land, but then allow exploration for wind energy development under certain circumstances. After applying and being approved, meteorological towers could be built and wind energy exploration or development leases, easements, or license agreements could be entered into without affecting the land's eligibility as Commercial Forest. Land owners could be compensated. The land owner would be required to withdraw the portion of the land from the Commercial Forest program before any wind turbines are built as follows:

- Actual physical footprint of each turbine, buildings, and adjacent areas that will be permanently removed from forest production must be removed.
- Land under a development lease, easement, or license agreement where forest production will continue could remain in the program.
- Land containing road and utility rights-of-way could remain in the program.

House Bill 4243 (Proposed Substitute H-1) would amend the Qualified Forest Property Recapture Tax Act (MCL 211.1034) to revise the calculation of the recapture tax that is

imposed on qualified forest property that has been converted by a change in use and is no longer eligible for the tax exemption.

Currently, if there have been one or more harvests of forest products, the recapture tax is calculated as follows:

- The property's state equalized value at the time it is converted by a 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 above calculation is multiplied by seven.

If no harvest has occurred on the property, the recapture tax is determined in the same manner, with the total of the above calculation being multiplied by two.

Under House Bill 4243, if there have been one or more harvests of forest products, the recapture tax would be calculated as follows:

- The property's taxable value at the time it is converted by a change in use is multiplied by the number of operating mills levied by the local school district in which the property is located and reduced by the number of mills collected as a fee for qualified forest property.
- The product of the above calculation would be multiplied by the number of years the property had been exempt as qualified forest property before the property was converted by a change in use, not to exceed the seven years immediately preceding the year in which the property was converted by a change in use.

As is currently in place, if no harvest occurred on the property, the recapture tax would be doubled.

If the property was eligible for exemption as qualified forest property as a result of the withdrawal of that property from the operation of Part 511 (Commercial Forest) of NREPA and is converted by a change in use within seven years after the withdrawal, the recapture tax would be equal to the application fee and penalty that would have been assessed under Part 511 to withdraw the property from Part 511 in the year in which the property is 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 from Part 511, the recapture tax would be calculated according to the bill's provisions based on the property's taxable value.

House Bill 4244 (Proposed Substitute H-2) would amend the General Property Tax Act to revise the requirements for an individual transferring qualified forest property to file an affidavit in order to avoid an adjustment in the property's taxable value.

The bill would require the Department of Agriculture and Rural Development to prescribe the form (currently, this is a responsibility of the Department of Treasury) and it would have to contain the following:

- Legal description of the property.
- Name of the new property owner and year in which the transfer occurred.
- Statement indicating the property owner is confirming the property for which the exemption is claimed is qualified forest property and will be managed according to the approved management plan.
- Any other information pertinent to the parcel and owner.

The property owner would have to provide a copy of the affidavit to the department, which would have to provide a copy to the local tax collecting unit, the conservation district, and the Department of Treasury. The bill specifies that the exception to the recognition of a transfer of ownership would extend to the land only of the qualified forest property; if qualified forest property is improved by buildings, structures, or land improvements, those improvements would be recognized as a transfer of ownership.

Beginning June 1, 2013, and ending on November 30, 2013, owners of property enrolled as qualified forest property prior to January 1, 2013, may execute a new qualified forest taxable value affidavit with MDARD without having to pay the \$50 fee. If a property owner chooses 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 be adjusted accordingly.

House Bill 4320 would amend the General Property Tax Act (MCL 211.7jj[1]) to make the following changes regarding qualified forest property:

- Increase the number of acres eligible for the exemption statewide from 1.2 million to 2.4 million acres. Beginning in the fiscal year ending September 30, 2013, property eligible for an exemption as qualified forest property as a result of the land being withdrawn from Part 511 (Commercial Forests) would not be credited against the 2.4 million acre cap.
- Transfer responsibilities from the Department of Natural Resources to the Department of Agriculture and Rural Development.
- Require the local conservation district or the department to advise an interested applicant on the exemption process and provide a list of qualified foresters, upon request. The department would be required to maintain a list of qualified foresters.
- Require conservation districts to review applications to determine if the land meets the minimum requirements for enrollment. A determination would have to be made within 45 days of receipt. A property would be considered eligible if a determination is not made in the required time frame.
- Upon determination that the application and supporting documents are in compliance, the department would have to approve the application and prepare a qualified forest school tax affidavit and send it to the land owner for execution.

- Establish time frames to file an appeal if an application is denied.
- Increase the maximum number of acres for which an owner can claim an exemption in each local tax collecting unit from 320 to 640 acres.
- Require a local tax collecting unit to collect a fee on each parcel of qualified forest property within its jurisdiction. The fee would be determined by multiplying 2 mills by the taxable value of the property and would be collected at the same time and in the same manner as taxes collected under the act. The fee would be deposited into the newly created Private Forestland Enhancement Fund. The fee would be subject to the property tax administration fee established by the local tax collecting unit.
- Redirect the penalty for an owner who fails to file a rescission from the General Fund to the Private Forestland Enhancement Fund.
- Require a land owner to notify the local tax collecting unit, the assessor, the department, and the Department of Treasury if all or a portion of property for which an exemption has been granted is converted by a change in use and is no longer qualified. Upon rescission of the exemption, the land would be placed back on the tax roll and collection would begin of any applicable tax and penalty.
- From June 1, 2013, to November 30, 2013, allow land owners to execute a new qualified forest school tax affidavit without having to pay the \$50 fee. If a land owner does not file a new affidavit, the existing affidavit would be rescinded without penalty and the property would be placed back on the tax roll. The property would not be subject to the recapture tax.
- Require an owner of qualified forest property to report to the department when a forest practice or timber harvest has occurred on the property during a calendar year, indicating the practice completed or the volume and value of the harvested timber. If a land owner fails to file a report, a fine of \$500 could be collected by the department. Currently, land owners are required to file annual reports detailing the amount of timber produced and whether any buildings or structures have been constructed.
- By December 31, 2013, and every year after, require the department to submit a report to the House and Senate standing committees with primary jurisdiction over forestry issues. In addition to the report requirements already in statute, it would have to include the number of forest management plans completed by conservation districts and the total number of plans submitted for approval each year.
- Require a land owner to retain the current management plan, most recent harvest records, recorded copies of a receipt of the tax exemption, and a map showing any structures on the property for as long as the property is exempt.

- Provide that property would no longer be eligible for an exemption as qualified forest property if the land owner has not accomplished forest practices and harvests within three years after the time specified in the forest management plan, and the plan has not been amended to extend the date. Upon being determined ineligible, the land would be placed back on the tax roll.
- Require forest management plans submitted to the department to be for a maximum length of 20 years and any succeeding plan would have to be submitted along with a \$50 fee. The first amendment to the plan would not be subject to a fee but additional amendments would be subject to the \$50 fee.
- Reduce the minimum size of qualified forest property from 20 to 10 contiguous acres, of which not less than 50% (rather than 80%) is productive forest.
- Excludes buildings, structures, or land improvements located on qualified forest property from the property's exemption from school operating taxes.

House Bill 4321 would amend the Qualified Forest Property Recapture Tax Act (MCL 211.1035) to redirect proceeds from the recapture tax from the General Fund to the newly created Private Forestland Enhancement Fund. Currently, the proceeds from the recapture tax are deposited into the General Fund, and would continue to be until January 1, 2014. Beginning on January 1, 2014, proceeds collected from the recapture tax would be deposited into the Private Forestland Enhancement Fund.

Land enrolled in the qualified forest program is exempt from the tax levied by a local school district for operating purposes. Property that is converted by a change in use and is no longer qualified forest property is subject to the recapture of taxes.

House Bill 4322 would amend the General Property Tax Act (MCL 211.7dd) to expand the definition of "qualified agricultural property" to provide that parcels would be considered devoted primarily to agricultural use if at least 50% of its acreage is devoted to a combination of agricultural use and is exempt as qualified forest property.

House Bill 4323 would amend Parts 93 (Soil Conservation Districts) and 513 (Private Forestry) of NREPA to allow for the review of conservation district budgets and financial information, establish grant eligibility criteria, prohibit certain conduct by professional foresters employed as under an MDARD grant, require MDARD to maintain a list of qualified foresters, and establish the Private Forestland Enhancement Fund, among other things. The bill is described in detail below.

Budget and financial information review

The bill would authorize MDARD to review the budgets and financial information of soil conservation districts.

Grant eligibility

In order to be eligible for grants of \$50,000 or more, a conservation district would have to do all of the following:

- Submit an annual budget to MDARD describing 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.
- Provide for a biennial independent certified audit by a certified public accountant of the financial records, accounts, and procedures of the conservation district. Audit reports would have to show profits and losses and the overall financial condition of the district. Currently, conservation districts are required to provide for a yearly audit of the receipts and disbursements.
- Agree to comply with the new requirements pertaining to hiring professional foresters with grant funds (described below) and to return the funds if found in violation.

MDARD would be able to promulgate rules to implement these provisions but the rules would only remain in effect for three years after the bill takes effect.

Employment of professional foresters with grant funds

Professional foresters who are hired by a conservation district using MDARD grant funds (described above) would be prohibited from using the position to (1) compete with a private sector business or (2) develop a client base for forestry consultation during hours when not employed by the conservation district.

The bill also states a conservation district board is responsible for the exercise of the powers and the performance of the duties of a conservation district under Part 93.

Powers of conservation districts

The bill would add the following to the already existing powers of a conservation district:

- To collaborate with MDARD in reviewing applications for the Qualified Forest Program.
- To evaluate nonindustrial private forestlands.
- To provide landowners (1) technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat and wetland development and restoration; (2) contact information for qualified foresters; and/or (3) contact information for other forest resource professionals that may have voluntarily provided information to MDARD.

Management plans for nonindustrial private forestlands

Conservation districts would have to provide landowners with a list of qualified foresters, upon request, to develop management plans. The district would have to post on its website notice that a landowner is seeking forest management plan preparation, timber

harvesting, marketing, or thinning if the landowners make such a request. With MDARD's approval, a conservation district could prepare a forest management plan for a landowner if a notice has been posted for at least 30 days and the landowner is unable to identify a private forester willing to perform the tasks. Except under this condition, conservation districts are prohibited from developing management plans for nonindustrial private forestlands.

Legislative intent

The bill states this part is intended to simulate improved management and utilization of private forestland and private forest resources within the 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 primary purpose of Part 93 is to assist private landowners in understanding the value of forest resources and the potential threats to forest resources and to provide management guidance.

The DNR would be allowed to enter into cooperative agreements with federal agencies that have been given authority by an act of Congress for the management of forestlands to assist landowners in the management of their nonindustrial private forestlands.

Private Forestland Enhancement Fund

The bill would create the Private Forestland Enhancement Fund within the state treasury. The Fund could receive money from any source, including the General Fund/General Purpose appropriations, gifts, grants, and bequests. Interest and earnings from fund investments would be credited back to the fund.

Money remaining in the fund at the end of the fiscal year would remain in the fund and would not lapse to the General Fund. MDARD would be the administrator of the fund for auditing purposes.

MDARD could spend money from the fund, through an appropriation of the Legislature, only for direct assistance, indirect assistance, and/or administrative costs. The department would be required to develop criteria and procedures for approved proposed expenditures from the fund. Before November 1 of each year, the Department of Treasury would be required to notify MDARD of the balance in the fund at the close of the preceding fiscal year.

"Administrative costs" would include costs incurred in administering the Qualified Forest Program.

"Direct assistance" would include programs that would provide for any of the following:

- Programs devoted to nonindustrial private forestlands to encourage the judicious management of forestlands to maximize economic and ecological value.
- Incentive and cost-share programs to assist landowners.
- Programs that enhance investment of private and federal funds in sustainable forest management.
- Other programs established under this part.

"Indirect assistance" would include programs that would provide any of 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.
- The promotion of on-site evaluation systems and management practices.

Qualified forester list

MDARD would be required to prepare and maintain a list of the state's qualified foresters. Individuals wishing to be included on the list would have to submit a registration form that includes all of the following:

- Category of forester for which the individual meets the requirements.
- Continuing education required for the individual to maintain status as a qualified forester, including the date on which the continuing education was completed.
- A place to certify the individual meets the requirements of a qualified forester and is up-to-date with any continuing education requirements.
- A place to designate whether the form is for a new or renewal registration.

Registered individuals who no longer meet the requirements to be included as a qualified forester would have to notify the department in writing, at which time the department would remove the individual from the list of qualified foresters.

The list of qualified foresters would have to be published on the MDARD website.

Enacting Section 1

The bill would repeal Sections 50110, 50112, and 50136 of NREPA. Generally speaking, these sections (1) define terms regarding forest restoration pilot projects, (2) provide requirements for the Western Upper Peninsula Forest Improvement District, and (3) require state agencies to cooperate with a forest improvement district board.

House Bill 4324 would amend Part 87 (Groundwater and Freshwater Protection) of the Natural Resources and Environmental Protection Act to do the following:

- Add the following individuals to the Environmental Assurance Advisory Council: a private consulting forester, a member of the forest products industry, and a member of the logging profession.

- In addition to the other requirements for MAEAP on-site evaluations, require they provide landowners with the ability to voluntarily assess the value of managing areas of the land that are not utilized for traditional or production agriculture practices for environmental ecological, and economic benefits.
- In addition to the other requirements of the Environmental Assurance Advisory Council, require it to advise the director on on-site evaluations of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.
- Require the Environmental Assurance Advisory Council to submit a recommendation to the director for an assessment tool designed to help landowners to voluntarily assess the value of managing areas of the land that are not utilized for traditional or production agriculture practices for environmental, ecological, and economic benefits. At the very least the recommendation would have to assess (1) forest management for timber, habitat development, or both; (2) wetland restoration development potential; and (3) habitat restoration development.
- Require an environmental assurance team to provide technical assistance to the on-site evaluation of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.

House Bill 4325 would amend Part 503 (State Forest Products Industry Development Council) of NREPA to require MDARD to jointly perform duties with the DNR. Currently the DNR is required to (1) advise the legislature and governor on forest management, (2) develop a forestry development plan, (3) identify the needs of the forest products industry, (4) promote and encourage development of the forest products industry, (5) promote and encourage the expansion of existing forest products companies and attract new companies, and (6) annually report to the legislature on its activities to promote the development of the state's forest products industry.

Under the bill, MDARD would be required to jointly perform all of above mentioned duties with the DNR. Additionally, the bill would add "to promote and encourage the use of the state's value-added forest products in Michigan, other states, and internationally" to the list of required duties. The bill would also require both departments to promote and encourage the retention of existing forest products companies, in addition to promoting expansion of the industry.

Legislative Analyst: Jeff Stoutenburg
 Fiscal Analyst: Jim Stansell
 Viola Bay Wild
 Susan Frey

■ 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.