

Legislative Analysis



TRANSFER OF CONSERVATION EASEMENT BY WILL, TRUST OR INTESTATE SUCCESSION

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Senate Bill 113 (Substitute H-1)

Sponsor: Sen. Mike Green

House Committee: Tax Policy

Senate Committee: Finance

Complete to 11-3-14

A SUMMARY OF SENATE BILL 113 (H-1) AS REPORTED FROM COMMITTEE 9-17-14

Senate Bill 113 would amend the General Property Tax Act to specify that if a parcel of land were made subject to a conservation easement before being conveyed by a will or trust or intestate succession, the transfer of the land to a new owner would not be considered "a transfer of ownership" for the purpose of "uncapping" the tax assessment. This means the property would not be subject to the increased tax assessment that otherwise would occur when the property is transferred to a new owner.

This is a change from existing law, which, according to an Attorney General opinion in 2009, requires that the easement be in place before the owner's death in order for the transaction to be excluded from the definition of "transfer of ownership." Senate Bill 113 makes this change by adding the new provision to the current list of transactions in Section 27a that do not constitute a transfer of ownership for re-assessment purposes. (MCL 211.27a)

The bill refers to (1) land made subject to a conservation easement described in subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act (MCL 324.2140 to 324.2144), and (2) land or interest in the land made eligible for a deduction as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code. The exemption applies only to land and not to buildings and structures on the land.

(There is no substantive difference between the bill as passed the Senate and the House committee substitute. Since SB 113 was passed by the Senate, Section 27a of the General Property Tax Act has been amended by Public Act 50 of 2013 and Public Act 310 of 2014. The substitute H-1 reported from committee simply makes this bill conform with the section as it is currently written in statute.)

BACKGROUND INFORMATION:

Transfer of Ownership

The definition of the term "transfer of ownership" is important because under Michigan's property tax system, the taxable value of property cannot rise from one year to the next by more than 5% or the inflation rate, whichever is less, until there is a transfer of ownership. When there is a transfer of ownership, the new owner is then responsible for taxes assessed on 50% of the true cash value of the property; this is referred to informally

as the "pop-up" tax or "uncapping" the assessment. Under current law, land subject to a conservation easement is not considered a transfer of ownership, and therefore a new owner is not subject to the uncapping of the assessment.

Conservation Easement

Land subject to a conservation easement (by agreement with either the state or a charitable organization) is restricted regarding development, subdivision, or any other activity that would compromise the natural state of the land. The owner may sell, transfer, or lease the land, but the easement remains. While these restrictions have value in conserving the natural state of the land, they tend to depress its cash and resale value.

Problem Addressed by the Bill

Under current law, landowners who intend to pass on their undeveloped property find themselves in a bind if they are unsure that their heirs can afford the increased property taxes after the "pop-up." By subjecting the land to a conservation easement they can avoid the pop-up entirely. However, they would then reduce the value of that land, and therefore reduce their ability to manage unforeseen financial obligations (e.g. medical expenses) while alive. The bill would address this problem by changing the law to specify that the easement only needs to be in place before the transfer is made (in a will, for example), regardless of whether it was in place at the time of the owner's death.

FISCAL IMPACT:

As written, the bill could reduce state and local revenues by a small, and likely insignificant, amount. Local units of government would see reductions in property tax revenue relative to current law. Decreased State Education Tax collections would reduce School Aid Fund (SAF) revenues, while SAF expenditures could increase if local school operating revenues fall below per-pupil guarantees. The magnitude of the reduction depends on the number of properties affected and the extent of the change in taxable value (the "pop-up") that would have occurred under current law. Neither of these factors can be known in advance, so an exact impact cannot be estimated at this time.

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