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BILL ANALYSIS

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Senate Bill 113 (as reported without amendment) *(enacted version)*
Sponsor: Senator Mike Green
Committee: Finance

Date Completed: 4-1-13

RATIONALE

Michigan law recognizes conservation easements, which are voluntary restrictions on the use of land negotiated by the landowner and the State or a charitable organization. It is common for such an easement to be donated to a land conservancy or trust, which enforces the easement. A conservation easement typically prohibits or limits any development, subdivision, or other activity that would interfere with the land's natural state or scenic characteristics, or its value for agricultural, forestry, or similar uses. The landowner retains ownership of the property itself and may sell, donate, or lease it, but future owners assume ownership subject to the terms of the easement. If Federal standards are met, the conservation easement qualifies for a Federal income tax deduction and Federal estate tax relief. Also, by preventing development, the easement may restrict the value of the land, resulting in some property tax savings.

Given the special nature of the land, many owners also would like to keep it in the family, but may have concerns about the ability of future generations to pay property taxes, especially if the land cannot be developed or divided. To address these concerns, Public Act 446 of 2006 amended the General Property Tax Act to prevent taxable value from being "uncapped" upon the transfer of land that is subject to a conservation easement; otherwise, the value would be adjusted and the new owner likely would pay a higher tax bill. It has been pointed out that some owners might want to put off donating a conservation easement until their death, to preserve a potential source of funds for medical or other expenses. According to a 2009 opinion of the Attorney General, however, if the land was not already subject to a conservation easement at the time of the owner's death, the taxable value will be uncapped (Opinion No. 7233). As a result, if a landowner creates a conservation easement in his or her will, the person who inherits the land will not benefit from the amendment enacted in 2006. Evidently, this scenario was not anticipated when the Act was amended, and it has been suggested these situations also should be accommodated.

CONTENT

The bill would amend the General Property Tax Act to exclude from the term "transfer of ownership" a conveyance of land by distribution under a will or trust or by intestate succession if, before the conveyance, the land were made subject to a conservation easement under State law or made eligible for a Federal tax deduction as a qualified conservation contribution.

Under the law, the taxable value of a parcel of property may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership. At that time, the assessment is "uncapped" and the property is taxed upon its State equalized valuation, which is 50% of its true cash value. (This is commonly referred to as the "pop-up" tax.) The Act defines "transfer of ownership" for this purpose and identifies types of conveyances that do or do not constitute a transfer of ownership.
Beginning on the bill's effective date, "transfer of ownership" would not include a

conveyance of land by distribution under a will or trust or by intestate succession (inheritance in the absence of a valid will), but not buildings or structures located on the land, that met one or both of the following:

-- The land was made subject to a conservation easement under Part 21 of the Natural Resources and Environmental Protection Act (NREPA) before the conveyance by distribution under a will or trust or by intestate succession.
-- The land or an interest in it was made eligible for a deduction as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code before the conveyance by distribution under a will or trust or by intestate succession.

As used above, "conservation easement" would mean that term as defined in Section 2140 of NREPA (i.e., "an interest in land that provides limitations on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water…, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition").

(Section 170 of the Internal Revenue Code allows a deduction for charitable contributions. As a rule, the section denies the deduction for contributions of partial interests in property, but makes an exception for qualified conservation contributions. Section 170(h) defines "qualified conservation contribution" as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes, and defines the terms used in that provision.)

MCL 211.27a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument
Conservation easements preserve important wildlife habitat, wetland, scenic views, shore land, open space, forest land, and agricultural property, while allowing the land to remain in private ownership. In exchange for donating the easement and giving up the value of future development, the landowner receives Federal tax relief if the land and the donation meet Federal criteria, and also may realize some property tax savings. Under the General Property Tax Act amendment made by Public Act 446 of 2006, a landowner who creates a conservation easement also receives the assurance that he or she can leave the property to the next generation and that the beneficiaries will not be forced to sell the land due to an adjustment in taxable value. An example of the need for that legislation was a property owner who had donated an easement of nearly 120 acres of land adjacent to the Waterloo Recreation Area, near Chelsea, and a decade later was faced with the dilemma of what to do with the land after he died. It was estimated that, when the land was passed on to his beneficiaries, the annual property tax bill would increase by $6,000. Since the land could not be subdivided, the added tax burden would have made it difficult for the family to keep the land.

While Public Act 446 addressed this type of situation, the amendment applies only if the conservation easement was created *before* the owner's death, according to the 2009 Attorney General opinion. Some landowners, wishing to protect property after their death, but fearing potential catastrophic medical or other expenses during their lifetime, choose to place a conservation easement in their will, rather than making the donation while they are alive. Unless the General Property Tax Act is amended, however, the taxable value will be uncapped upon the landowners' death, and the beneficiaries may be confronted with an unaffordable tax bill and be forced to sell the property. This consequence might discourage landowners from including a conservation easement in their wills.

The bill therefore would prevent taxable value from being uncapped when a conservation easement was created by either a will or a trust, which is a commonly used estate-planning tool. The bill also would apply to conveyances by intestate succession, to enable heirs to keep family

land that has conservation value. These changes would be consistent with Federal law, which makes estate tax relief available for a qualified conservation contribution made by a decedent, a trustee, the executor of a decedent's estate, or a family member of the decedent.

By following up on the amendment made in 2006, the bill would help Michigan residents to keep family property, and would promote beneficial land conservation.

Opposing Argument

Although many tax credits, exemptions, and deductions were eliminated as part of the tax reform legislation enacted in May 2011, the bill essentially would create a new exemption. This reflects an inconsistent approach to State tax policy. It also would force local units to accept reduced property tax revenue without having a say in the matter.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce School Aid Fund revenue under the State Education Tax, and local revenue, by an unknown, and likely negligible, amount that would depend on the number of parcels affected and their specific characteristics. Because there may be property where the bill could affect revenue from school operating levies, the bill also would potentially increase School Aid Fund expenditures, in order to meet per-pupil funding guarantees, by an unknown and negligible amount.

Fiscal Analyst: David Zin

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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.