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BILL ANALYSIS



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Senate Bill 113 (as introduced 1-30-13)
Sponsor: Senator Mike Green
Committee: Finance

Date Completed: 3-19-13

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.

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

BACKGROUND

Conservation easements 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.

Public Act 446 of 2006 was enacted to address concerns of landowners who wanted to protect the property and keep it in their family, but were afraid that future generations might be unable to pay the property taxes, especially if the land could not be developed or divided. The Act amended definition of "transfer of ownership" in the General Property Tax Act to exclude a transfer of land, but not buildings or structures located on the land, if the land is subject to a conservation easement under Part 21 of the Natural Resources and Environmental Protection Act; or if a transfer of ownership of the land or a transfer of an interest in it is eligible for a deduction as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code.

According to a 2009 opinion of the Attorney General (No. 7233), however, the 2006 amendments apply only if the conservation easement was created *before* the owner's death. If the land is not already subject to a conservation easement when the owner dies, the taxable value will be uncapped.

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 properties affected and their specific characteristics. Because there may be properties 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.