

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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House Bill 4688 (as reported with amendments)

Sponsor: Representative Thomas L. Hickner

House Committee: Forestry and Minerals

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 10-9-90

**RATIONALE**

Department of Natural Resources (DNR) foresters annually inventory one-tenth of the State's forest acreage and suggest ways to improve forest management. Recommendations are reviewed and decisions made concerning management practices to be implemented within the next 10 years for the inventoried forests, but many of the recommendations apparently have not been implemented because sufficient funds have not been available. A large share of the State's forest management practices are financed from timber sales receipts. Since current receipts reportedly are not adequate to cover the management practices needed to ensure continued improvement of Michigan's forests, however, forest management practices have not been funded at very high levels, which in turn leads to low receipts. In order to break this cycle, and to improve implementation of existing forest management policy, some people feel that a stable financing mechanism should be created.

**CONTENT**

The bill would create the "Michigan Forest Finance Authority Act" to establish the "Michigan Forest Finance Authority", which could acquire standing timber and cutting rights in timber on State tax reverted lands and finance forest management operations and practices. Upon the expiration of 180 days after the bill's effective date, the State's interest in all existing contracts granting timber cutting rights on State tax reverted lands would be conveyed to the proposed Authority. The bill would do all of the

following:

- Specify the duties and responsibilities of the Authority.
- Allow the Authority to authorize and issue bonds or notes to provide funds for various purposes.
- Allow the authority to provide various forms of security to assure the timely payment of a bond or note.
- Allow the Authority to authorize a board member or officer to perform certain activities.
- Make other provisions pertaining to a pledge made by the Authority; liability relative to the issuance of bonds or notes; investment of funds in the Authority's bonds and notes; tax exemption; construction of the bill; and rules promulgation.
- Repeal Section 1 of Public Act 268 of 1945, which regulates the use of money received from the sale of forest products from State tax reverted land (MCL 320.71).

**Forest Finance Authority**

The Authority would be created as a "body corporate" within the DNR, and would exercise its financial functions and duties and statutory powers independently of the Natural Resources Commission (NRC). The Authority's funds would have to be handled in the same manner, and subject to the same laws, as State funds or as specified in an Authority resolution

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authorizing the issuance of bonds or notes.

The Authority would be governed by a board of directors that consisted of the State Treasurer, the DNR Director, and three Michigan residents appointed by the Governor with the advice and consent of the Senate. The appointees would serve three-year staggered terms. A board vacancy would be filled by the Governor's appointment, with the advice and consent of the Senate, for the balance of the unexpired term. A member would hold office until a successor was appointed and qualified.

Board members and Authority officers and employees would be subject to Public Act 317 of 1968 (MCL 15.321-15.330), which restricts a public servant from being a party to any contract between himself or herself and the public entity of which the public servant is an officer or employee. Authority board members, employees, officers, and agents of the Authority's funds would have to perform their duties in a nonpartisan manner in good faith, and with "that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position". A board member, employee, officer, or agent could rely upon the opinion of the Authority's counsel, the report of an independent appraiser selected by the board, or financial statements of the Authority.

The board would have to organize and make its own procedures and policies, and comply with the Open Meetings Act. A board member who was a State officer or director could designate a representative from his or her department to serve in his or her place as a voting member of the board. The Authority would have to select a chairperson and vice-chairperson from its members and the State Forester would serve as the Authority's executive director. The Authority could employ technical and legal experts and other agents, employees, or officers paid from the Authority's funds. An Authority employee could not be paid more than the DNR Director.

The Authority's budgeting, procurement, and other related functions would have to be performed under the DNR Director's direction and supervision. The Authority could contract with the DNR for the purpose of maintaining and improving the Authority's rights and

interests. The Authority annually would have to file a written report to the Legislature within 270 days following the end of the fiscal year. The report would have to specify the source and amount of revenue received, the status of investments, and a description of the DNR's forest management practices undertaken with proceeds of bonds sold pursuant to the bill.

### Duties and Responsibilities

Except as otherwise provided in the bill, the Authority could "do all things necessary or convenient to carry out the purposes, objectives, and provisions of this [proposed] act, and the purposes, objectives, and powers delegated to the board by other laws or executive orders". The Authority's practices could include, but would not be limited to, all of the following:

- Borrowing money and issuing negotiable revenue bonds and notes under the bill.
- Entering into contracts and other necessary instruments, incidental or convenient to the Authority's performance of its duties and powers.
- With the DNR Director's prior consent, soliciting and accepting gifts, loans, grants, and other aid, or participating in any way in a Federal, State, or local government program.
- Acquiring standing timber, cutting rights, and the State's interest in contracts granting cutting rights, on State tax reverted land. (The State could not convey to the Authority the fee title to any State forest lands, however.)
- Investing the Authority's money, at the board's discretion, in instruments, securities, obligation, or property, and naming and using depositories for Authority money.
- Contracting for goods and services and engaging necessary personnel and the services of private consultants, legal counsel, managers, and auditors for rendering financial advice and assistance.
- Procuring insurance against loss in connection with the Authority's property, assets, or activities; and indemnifying and procuring insurance to indemnify board members from personal loss or accountability from liability asserted on the Authority's bonds or notes, or from

any personal liability or accountability by reason of any other action taken, or the failure to act, by the Authority.

- Doing all other things necessary or convenient to achieve the objectives and purposes of the Authority, the bill or rules promulgated under it, or other laws relating to the Authority's purposes and responsibilities.

The Authority could finance only forest management operations and practices that complied with the DNR's guidelines, rules, and objectives. Funds managed by the Authority would have to be applied consistently with the DNR's land management planning policies on land that was identified for forest management practices. In the absence of an approved State forest management plan covering a candidate area, an interim procedure, as adopted by the NRC, would have to be used to assure that all forest values were considered in selecting investment sites for Authority funds. The DNR annually would have to give the Authority's board a list of activities and practices allocated from funds generated under the bill for the board's review and determination of consistency.

The Authority could issue contracts for the cutting and sale of timber only upon approval by an authorized DNR representative. Such contracts would have to follow the DNR's rules, guidelines, and objectives. The DNR would have to act as the Authority's agent in contracting for cutting and sale of timber or other forest management operations and practices.

### Bonds and Notes

The Authority could issue bonds and notes payable solely from its funds and revenue. The Authority's bonds and notes could not be a debt or liability of the State and could not create any indebtedness, liability, or obligations of the State or constitute a pledge of the State's faith and credit. Each bond and note would have to contain on its face a statement to that effect. Similarly, the bill specifies that all expenses incurred in carrying out its provisions would be payable solely from revenue or funds provided under the bill and that the bill could not be construed to authorize liability or indebtedness on behalf of,

or payable by, the State.

The Authority would be empowered to issue bonds or notes, from time to time, in principal amounts that it considered necessary. Bonds or notes could provide funds for any purpose, including all of the following:

- The payment, funding, or refunding of the Authority's bond or note principal, interest, or redemption premium, regardless of whether the bonds or notes were due.
- The establishment or increase of reserves to pay bonds or notes or their interest.
- The payment of interest on bonds or notes for a period determined by the Authority.
- The payment of the Authority's other costs or expenses that were "incident to and necessary or convenient to carry out its corporate purposes and powers".

Bonds and notes would have to be authorized by resolution of the Authority, and could not be a general obligation of the Authority, but would be payable only from revenue or funds pledged to the payment of the principal and interest as provided in the authorizing resolution. The Authority's bonds and notes would have to be issued in one or more series; bear the date of issue; mature within 50 years of issuance; provide sinking fund payments; bear interest at a fixed or variable rate, at an annual rate, or at no interest; be in one or more denominations; be in the form, either coupon or registered; carry the conversion or registration privileges; have the rank or priority; be executed in the manner; be transferable; be payable from the sources in the medium of payment; and be subject to redemption at the option of the Authority or the holder and with the terms and redemption premiums provided in the authorizing resolution.

Bonds or notes could be sold at either a public or private sale and at the time, price, and discount determined by the Authority. Authority bonds would be subject to the Municipal Finance Act, but would not require the State Treasurer's approval under that Act and would not have to be registered. A bond or note would not have to be filed under the Uniform Securities Act.

The Authority could provide for the issuance of bonds and notes in amounts it considered necessary for the purpose of refunding its bonds and notes that were outstanding, including covering any redemption premium and interest accrued or to accrue. Proceeds of bonds and notes issued for refund purposes could be applied to the purchase or retirement or redemption of outstanding bonds or notes, and could be placed in escrow to be applied to purchase, retirement, or redemption on dates determined by the Authority. Pending such an application of proceeds and subject to agreements with noteholders or bondholders, escrowed proceeds could be invested and reinvested in a manner determined by the Authority. After the terms of escrow were fully satisfied, the balance of the proceeds plus interest, income, and any profit earned or realized on the proceeds' investment would have to be returned to the Authority. In a resolution that authorized bonds or notes to refund other bonds or notes, the Authority could provide that those to be refunded would be considered paid at the time money or other investment obligations that would cover principal and interest on bonds to be refunded were deposited in escrow. Upon such a deposit, the Authority's obligations to the holders would be terminated except as to the rights to the deposited money or investment obligations.

A resolution authorizing bonds or notes could provide for all of the following to be part of the contract with the holders of the bonds or notes:

- A pledge to any payment or purpose, subject to agreements with bondholders or noteholders. Although the Authority could not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber, it could pledge revenue derived from the sale of timber or from contracts for the cutting of timber.
- A pledge of a loan, grant, or contribution from the Federal or State government.
- The establishment, setting aside, and regulation of reserves or sinking funds subject to the bill.
- Authority for and limitations on the issuance of additional bonds or notes for the purpose provided in the resolution, and the terms upon which additional

notes or bonds could be issued and secured.

- The procedure by which terms of the contract with holders could be amended or abrogated, the number of holders required to consent to such measures, and the manner in which consent could be given.
- A contract with bondholders as to the collection, custody, investment, security, and payment of the Authority's money.
- The vesting in a trustee, or a secured party, of property, revenues, income, receipts, rights, remedies, powers, and duties, to secure and protect holders or to limit the right of holders to appoint a trustee, or to limit the rights, powers, and duties of such a trustee.
- The provision to a trustee or holder of remedies that could be exercised in the event of the Authority's failure or refusal to comply with the bill, or the Authority's default in an agreement with holders.
- Any other matters of like or different character, that would affect the bonds' or notes' security.

The Authority could purchase its own bonds or notes out funds available for that purpose, and could hold, cancel, or resell the notes or bonds in accordance with an agreement with bondholders and noteholders.

### Security

The Authority could approve an insurance contract, a line-of-credit agreement, a letter of credit, a commitment to purchase bonds or notes, an agreement to remarket notes or bonds, and any other transaction in order to provide security to assure a bond's or note's timely payment. The Authority also could authorize payment from note or bond proceeds or other available funds to cover the cost of insurance. Such costs could include, but would not be limited to, placement fees, insurance charges, letters of credit, lines of credit, remarketing or reimbursement agreements, purchase or sales commitments or agreements, or agreements to provide security to assure a bond's or note's timely payment.

## Board Members and Officers

Within limitations specified in an issuance or authorization resolution, the Authority could authorize a board member, the executive director, or other Authority officer to do any of the following:

- Sell and deliver, and receive payments for, Authority bonds or notes.
- Refund notes or bonds by delivering new notes or bonds, regardless of whether those to be refunded had matured or were subject to redemption.
- Deliver bonds or notes, partly for refunding and partly for other authorized purposes.
- Buy bonds or notes and resell them.
- Approve interest rates or methods for fixing interest rates, discounts, prices, principal amounts, maturities, dates of issuance, denominations, interest payment dates, redemption rights at the option of either the Authority or the holder, the place of delivery and payment, and other matters and procedures necessary for an authorized transaction's completion.
- Direct the investment of Authority funds.
- Approve the terms of a contract, including a contract for the sale or cutting of timber, and execute and deliver the contract.
- Exercise any power, function, duty, or responsibility of the Authority.

## Other Provisions

Authority Pledge. A pledge made by the Authority would be valid and binding. Money or property pledged and received by the Authority immediately would be subject to the pledge's lien. The lien of a pledge would be valid and binding against parties having claims against the Authority and also would be valid and binding against the transfer of money or property pledged, regardless of whether parties had notice. A resolution, trust agreement, or any other instrument by which a pledge was created would not have to be recorded in order to establish and perfect a lien or interest in the pledged property.

Prohibit State Restrictions. The State would pledge and agree with bondholders and

noteholders that it would not limit or restrict the Authority's rights to fulfill terms of agreements made with the holders, or impair the rights or remedies of holders until after all obligations were met, paid, and discharged.

Investment in the Authority. The bill provides that public entities or officials, banking businesses, insurance businesses, or other fiduciaries could legally invest in Authority bonds and notes any funds belonging to them or within their control. Authority bonds and notes would be authorized security for public deposits.

Tax Exemption. The Authority's property would be designated as "public property devoted to an essential public and governmental function and purpose". Authority income would be considered to be for a public purpose, and its property, income, and operation would be exempt from State and local taxes and special assessments. Authority bonds and notes and the interest and income from them would be exempt from State and local taxation.

Construction. The bill would require that it be "construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this [proposed] act and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers".

Rules. The Authority could promulgate rules necessary to implement the bill.

## SENATE COMMITTEE ACTION

The Senate Committee on Natural Resources and Environmental Affairs adopted amendments to the bill to do all of the following:

- Require an interim procedure, developed by the NRC, to be used in the absence of an approved State forest management plan to assure that all forest values were considered in selecting sites for investment with Authority funds.
- Allow the Authority to issue contracts for the cutting and sale of timber only with DNR approval. (The House-passed version of the bill would have required

the Authority to issue such contracts and would not have required DNR approval.)

- Prohibit the Authority from mortgaging, granting a security interest in, or otherwise pledging its ownership rights in standing timber when authorizing bonds or notes.
- Remove a deadline for the submittal of promulgated rules to the Joint Committee on Administrative Rules.
- Delete the date for the repeal of Section 1 of Public Act 268 of 1945. (The House-passed version would have repealed that section 180 days after the bill's effective date.)

### **FISCAL IMPACT**

The bill would have an indeterminate net fiscal impact on State and local government. There is no anticipated impact on the State General Fund.

Revenues: According to the Department of Natural Resources, the bill could generate approximately \$712,000 in additional timber sales revenue annually, which would be credited to the Forest Development Fund. Fiscal Year 1989-90 revenue from timber sales was estimated at \$6,623,100.

Costs: The Governor's FY 1990-91 Department of Natural Resources budget proposed an additional 9.0 FTEs and \$1,512,400 to administer programs under the Act, with the Forest Development Fund as the funding source. This was not approved due to lack of authorization for bond revenue. Debt service would depend on the amount and time the bonds were issued. According to a schedule proposed by the Department, annual debt service payments are estimated at approximately \$650,000, to be paid from revenues or funds provided under the Act.

### **ARGUMENTS**

#### **Supporting Argument**

Current funding for the implementation of forest management practices is inadequate to ensure the proper growth and development of Michigan's forest resources. The bill would allow the Michigan Forest Finance Authority to borrow and reinvest money through the issuance of bonds in order to implement

management practices designed to increase and improve forest growth. Consequently, the DNR could substantially improve resource management of the State's forests and ensure prompt reforestation of harvested areas. In addition, the bill would allow the State forest system's share of Michigan's total timber supply to be grown on fewer acres than would be needed with less effective management.

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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.