



**House
Legislative
Analysis
Section**

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REVISE COMMERCIAL FOREST ACT

AS ENROLLED

**Senate Bill 409 with House committee
amendments**

Sponsor: Sen. Don Koivisto

Senate Bill 413 as passed by the Senate

Sponsor: Sen. George A. McManus, Jr.

First Analysis (5-25-93)

**Senate Committee: Agriculture &
Forestry**

House Committee: Agriculture & Forestry

THE APPARENT PROBLEM:

The Commercial Forest Act of 1925 allows owners to have their woodlands exempted from the property tax if the Department of Natural Resources (DNR) certifies them as having enough growth to produce marketable lumber within a reasonable period. Once land is certified, its owners cannot use it for industrial, recreational, or other commercial purposes, and the public must be allowed hunting and fishing privileges at the discretion of the DNR. If they wish to harvest and sell timber, owners must obtain permits from the department and pay a yield or stumpage tax of ten percent of the stumpage value of the forest products gleaned. Instead of property taxes, township supervisors collect a specific tax of 38 cents per acre from owners of land classified as commercial forests, and the state pays counties 90 cents for each acre, which is distributed according to the regular distribution of property tax revenue to local governments. The specific tax and the state fees are adjusted every ten years based on a formula that measures growth in the state equalized value per acre of all timber cutover land. (The current amounts were set in 1990 when the first such adjustments were made to the statutorily established amounts of 30 cents and 70 cents, respectively.) There are about 2.3 million acres enrolled in the CFA program, the vast majority owned by those in the forest products industry. Owners who want their land removed from the program must pay, in addition to ten percent of the full stumpage value of merchantable forest products, a penalty equal to the current property tax times the number of years in the program, not to exceed seven. However, if land has been in the program for over 20 years or is

being condemned or donated to a public body for public use, only the stumpage fee is due.

Some people affected by the act say that while it is accomplishing its aim of preserving large contiguous tracts of forest, it is administratively burdensome and needs amending. The yield or stumpage tax is particularly a problem. The DNR is supposed to verify on site the amounts of timber harvested and does not have sufficient staff to do so in a timely manner; thus, frustrating delays result. The lack of staff also means the DNR cannot effectively prevent landowners from harvesting without the proper permits and from escaping the tax. The yield tax also results in uneven flows of revenue to local units because large landowners might cut timber in a township one year and not the next.

THE CONTENT OF THE BILLS:

The bills would amend the Commercial Forest Act and the State School Aid Act to, among other things, increase the specific annual tax from 38 cents per acre to \$1.10 per acre and increase the state payment to local governments from 70 cents per acre to \$1.10 per acre; eliminate entirely the 10 percent yield or stumpage tax; require the deduction of certain commercial forest tax revenue from state school aid payments to school districts and intermediate school districts (ISDs) that received revenue under the Commercial Forest Act; redefine and provide for the reclassification of "commercial forest" land; create a "commercial forest fund" to be used by the DNR for enforcing and monitoring compliance with forestry laws; and revise penalties that could be imposed for violations of forestry laws.

Senate Bills 409 and 413 (5-25-93)

Senate Bill 409 would take effect January 1, 1994, except for provisions relating to the withdrawal of commercial forestland from the act due to changes made to the act (where, under the bill, a person would have to pay a per-acre fee for certain withdrawals), which would take effect January 1, 1995.

Senate Bill 409 would make the following changes to the Commercial Forest Act (MCL 320.301):

Specific Taxes and State Payments. The bill would raise the specific tax by 72 cents per acre to \$1.10 per acre and raise the state payment by 50 cents per acre to \$1.20 per acre. It also would require that the specific tax and the state payment be adjusted in 2004 and every tenth year after (instead of every tenth year after 1990).

Classification as Commercial Forest. The bill would repeal the existing definition of "commercial forest" and instead define "forestland" and specify eligibility criteria for classification as a commercial forest. The forestland would have to be capable of producing 1) not less than 20 cubic feet per acre per year of forest growth upon maturity, 2) trees with economic or commercial value, and 3) a commercial stand of timber within a "reasonable" period of time.

Application for classification would require a nonrefundable application fee of one dollar per acre (or fraction of an acre), with a maximum fee of \$1,000. In addition, the applicant would have to give the Department of Natural Resources (DNR) a legal description of the land and the number of acres, a statement certifying that the owner of the forestland also owned the timber rights, and a statement certifying that a forest management plan had been prepared and was in effect. Owners of commercial forest that had been designated before the bill took effect would have until January 1, 1997 to prepare a forest management plan and file a statement with the DNR certifying that it had been prepared and was in effect. Owners who failed to file the required statement by January 1, 1997 would have their commercial forestland declassified (and would have to pay the declassification penalties).

The act currently requires that a public hearing, in the county where the land is located, be held on the eligibility of the land for listing as a commercial forest. Under the bill, if the department determined that the applicant and the forestland met the act's requirements and determined that all

valid taxes assessed against the forestland had been paid, the DNR, after the hearing, would have to approve the application. Upon approval the department would be required to record immediately a listing certificate in the register of deeds office in the county in which the land was located, with the department's approval endorsed on the listing certificate. A copy of the approved listing certificate would have to be forwarded to the applicant and to the supervisor of the township in which the land was located.

Cutting Forest Products on Commercial Forestland. The bill would delete the existing requirement that a DNR permit be obtained before cutting forest products on commercial forestland. Instead, it would require that before cutting or removing any "merchantable" forest products, a "person" (i.e. individual, corporation, or other legal entity) "report" to the DNR. Owners could cut or remove merchantable forest products without withdrawing from the act if they did so in accordance with their forest management plan and the act. Owners further could cut or remove merchantable forest products for their personal use without paying any penalty or fee and without affecting the land's status as a commercial forest.

Transfer of Commercial Forestland. The bill would require that any document transferring an interest in commercial forestlands state that "this property is subject to the commercial forest act," and would require that the owner notify the DNR in writing not later than 30 days after the transfer or ownership change.

Use of Commercial Forestland. Currently, the commercial forest act says that the owner may not use the land in a manner that would be prejudicial to its development as a commercial forest nor use the land for industrial, recreational, or other commercial purposes. Under the bill, land also could not be used for agricultural, mineral extraction (except as provided in the act), grazing, "developed recreational," residential, resort or developmental purposes.

Removal of Mineral Deposits. Currently, exploration for minerals is permitted on commercial forestland. The bill would delete the requirement that land on which commercial mineral deposits are discovered and extraction is to be undertaken be removed from the act's provisions and that penalties be paid. Under the bill, prior to the removal of any

commercial mineral deposits, the owner would be required to withdraw from the act the portion of the commercial forestland directly affected by the removal. The withdrawal of commercial forestland due to mineral removal could not cause the remaining portion of the forestland to be withdrawn due to insufficient acreage of the remaining commercial forestland.

Upon application to and approval by the department, sand and gravel could be removed from the commercial forest without affecting the land's status as a commercial forest. The DNR could only approve an application to remove sand and gravel deposits if the removal site were not greater than five acres, excluding access to the removal site, and the sand and gravel were to be used by the person that owned them, whether or not that person also owned the forestland, or by the state, a local government, or a county road commission, for governmental use.

Upon application to and approval by the department, deposits of oil and gas owned by the state could be removed from the commercial forest without affecting the land's status as a commercial forest.

Withdrawal and Declassification. Currently, if a portion or all of any commercial forestland is used for purposes contrary to the act, the department, upon notifying the owner and holding a hearing, may declassify the land and require the payment of fees, as in the case of voluntary withdrawal.

Under the bill, the department could, upon notification and hearing as currently required, declassify all or a portion of commercial forestland if its owner used the forest in violation of the act; failed, after certifying to the department that a forest management plan had been prepared and was in effect, to plant, harvest, or remove forest products in compliance with the owner's forest management plan; failed to pay any specific tax; or failed to report to the department the quantity of forest products cut, harvested or removed. The department could also declassify forestland if minerals were removed in violation of the act. The DNR would have to declassify the commercial forestland if at the hearing it determined that 1) the commercial forests were used in violation of the act; 2) the owner failed to plant, harvest, or remove forest products in compliance with the owner's forest management plan after certifying to the

department that a plan had been prepared and was in effect; 3) the owner failed to pay the specific tax; 4) the owner failed to report to the department on the forest products cut, harvested or removed; or 5) minerals were removed in violation of the act. Upon declassification, the land would be subject to the general property tax.

Currently, the owner, within 90 days of being notified of a declassification, must pay the department as if the lands had been voluntarily withdrawn. The bill would decrease the time period to 30 days and require the owner to pay a fee equal to the withdrawal application fee to the department and an amount equal to the withdrawal penalty described in the bill to the treasurer of the township in which the land was located. These amounts would be distributed, except as provided for payments to local and intermediate school districts, in the same proportions to the various funds as the general property tax was allocated in the township.

New Laws, Land Affected. The act specifies that changes in its terms, fees, taxes or other provisions apply to all commercial forests. If any change materially increases the burden on the owner, he or she may withdraw land from the act without being penalized or having to pay withdrawal or stumpage fees. An owner must apply to withdraw the land, without penalty, within one year after the changes took effect. If an owner or the DNR applies to withdraw the land before any changes take effect, the owner must pay the stumpage fees.

Under the bill, a landowner who decided to withdraw his or her commercial forestland from the act due to changes in the act could do so without paying a withdrawal application fee, pursuant to the bill. However, if an owner withdrew his or her commercial forestland because of this provision, the owner would have to pay a fee for each acre withdrawn equal to the product of the current property tax per acre on timber cutover real property within the township in which the forestland was located, as determined by the township assessor, multiplied by five.

If the township in which the forestland was located did not contain any real property classified as timber cutover real property under the General Property Tax Act, then one of the following would apply:

* If there were timber cutover real property located within the county in which the commercial

forestland was located, the per-acre average of the property tax for all timber cutover real property located in the county in which the commercial forestland was located would have to be used in calculating the penalty; or,

* If there were no timber cutover real property located within the county in which the commercial forestland was located, the per-acre average of the property tax for all timber cutover real property in townships contiguous to the county in which the commercial forestland was located would have to be used in calculating the penalty.

The fee, which the owner would have to pay before withdrawal, could not exceed \$100,000.

Currently, if a withdrawal application is initiated by an owner or the DNR before changes in the act take effect, the owner must pay withdrawal and stumpage fees in the same manner and rate as though no changes had been enacted. The bill would delete reference to payment of withdrawal fees but would require an owner to pay stumpage and other fees, taxes and penalties, if any, at the same rates that were in effect when the application had been filed.

The DNR would have to remit these fees to the township treasurer in the same proportions to the various funds as the general property tax is allocated in the township, except as provided in the act's provisions on state school aid allocations.

Commercial Forest Fund. The bill would create a "commercial forest fund" in the treasury department to be used by the DNR for enforcing and monitoring compliance with the act. Money for the fund would come from:

- * application fees;
- * forest management plan fees [Note: the bill does not provide for forest management plan fees];
- * withdrawal application fees;
- * declassification fees;
- * an amount equal to 10 cents for each acre of land enrolled under the act as certified by the department, which would have to be appropriated each fiscal year from the general fund; and
- * restitution ordered by a court payable to the state for a violation of the act.

The treasurer could receive money or other assets from any source for deposit into the fund, would have to direct the fund's investment, and would have to credit to the fund interest and earnings from its investments. Money in the fund appropriated from

the general fund would have to remain in the fund at the close of the fiscal year and could not lapse to the general fund. The department would have to spend the fund's money, upon appropriation, for enforcement and monitoring compliance with the act and rules promulgated under it.

Violations and Penalties. Currently, a person is guilty of a felony, punishable by a fine of up to \$2,000 or imprisonment for not more than three years, or both, for violating the act. The bill would revise the penalties as follows:

* A person would be guilty of a felony punishable by imprisonment for up to three years or a fine of up to \$10,000, or both, for harvesting, cutting or removing forest products having a value of more than \$2,500, in violation of the act or his or her management plan;

* A person would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both, for otherwise violating the act.

Upon conviction, the court could declassify all or a portion of the commercial forest.

Repealer. The bill would repeal four sections of the act: Section 1a, which specifies the legislative intent of the act; section 9, which requires a report on the actual quantity of each kind and class of forest product cut, and imposes a stumpage or yield tax of 10 percent; section 12, which gives the DNR the authority to extend the period of time for harvesting forest products under permit; and section 13b, which gives the procedures for appealing DNR orders and determinations under the act to the circuit court.

Senate Bill 413 would amend the school aid act (MCL 388.144a) to require the deduction of certain commercial forest tax revenue from state school aid payments to school districts and intermediate school districts (ISD) that received revenue under the Commercial Forest Act. Under the bill, there would have to be deducted from school aid an amount equal to the amount disbursed to a district or an ISD, during the fiscal year for which the allocation was made, from the following revenue sources:

- * Revenues from that portion of a levy of a specific tax over 15 cents per acre pursuant to provisions in the Commercial Forest Act that exempt commercial

forestland from general property taxes but subject them to an annual specific tax;

* Revenues from that portion of state payments in excess of 25 cents per acre made pursuant to the Commercial Forest Act for the payment of state funds to a county and their distribution by a county treasurer;

* Revenues remitted from withdrawal penalties and fees imposed pursuant to Commercial Forest Act provisions that govern the withdrawal of commercial forestland from the act; and

* Revenues remitted from stumpage or yield tax collections made pursuant to the Commercial Forest Act for the payment of a yield or stumpage tax on forest products cut from a commercial forest.

HOUSE COMMITTEE ACTION:

The House Committee on Agriculture and Forestry adopted several technical amendments to Senate Bill 409.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, Senate Bill 409 could generate approximately \$743,000 in additional revenue to local units of government and save the state approximately \$222,700. This

estimate assumes that 2.3 million acres continue to be enrolled in the Commercial Forest Act program, and that there would be administrative cost savings and new revenue from withdrawal and application fees. The bill provides that 10 cents per acre in general fund money (about \$230,000) be deposited into the Commercial Forest Fund, subject to the appropriations process. (3-17-93)

The Senate Fiscal Agency also reports that Senate Bill 413 would not affect state or local budget expenditures. The bill would change the way in which in-formula local and intermediate school districts reimburse the State School Aid Fund for portions of revenue that they receive under the Commercial Forest Act. Instead of each district remitting to the fund amounts due under the Commercial Forest Act, the amounts would be deducted from the district's school aid payment. For fiscal year 1992-93, the estimated amount of these deductions is \$1,485,000. (3-3-93)

The school aid fund (SAF) adjustment in the following table represents a cost savings to the state and a loss of revenue to local units of government with in-formula school districts. (Approximately 77 percent of districts with CFA-enrolled lands receive school aid fund revenue.) This adjustment was estimated by applying the CFA-enrolled acreage against the portion of local revenues applied to in-formula school districts.

	Current Law ^a	Proposed ^b
LOCAL REVENUE		
state payment	2,087,900	2,783,800
landowner specific tax	881,500	2,551,800
stumpage yield tax	600,000	--
withdrawal stumpage paym't.	200,000	--
total payments	3,769,400	5,335,600
less SAF adjustment	(1,485,000)	(2,308,200)
net revenue to locals	2,284,400	3,027,400
STATE COST		
state payment	2,087,900	2,783,800
less SAF adjustment	(1,485,000)	(2,308,200)
DNR administrative costs	335,400	300,000
less withdrawal fee	--	(10,000)
less application fee	--	(50,000)
net state cost	938,300	715,600

COMPARED TO CURRENT LAW

net local revenue gain (loss)	--	743,000
net state savings (cost)	--	222,700

^a based on 38-cent per acre specific tax and 70-cent per acre state payment.

^b based on \$1.10 per acre specific tax and \$1.20 per acre state payment.

ARGUMENTS:

For:

The aim of Senate Bill 409 is to streamline the Commercial Forest Act (CFA) and make it more workable and less intimidating, while increasing current revenue levels and continuing to protect Michigan's forests. By eliminating the yield tax and replacing it with an additional specific tax, the bill does away with the need for the DNR to monitor the amount of timber harvested (which they do not have the staff to do properly) and provides a steadier stream of revenue to local units of government. Because owners of large tracts of land may cut timber in a local unit one year but not the next, local governments cannot predict revenue. Because the DNR is understaffed, landowners must put up with considerable delay in marketing timber because yields cannot be verified in a timely manner. The DNR is also ill-equipped to prevent yield tax abuses. Thus, the bill benefits both business and local units of government. The bill also serves the original purpose of the act by maintaining the specific tax as an alternative to the ad valorem property tax: this provides an incentive to keep lands as commercial forests and a disincentive to convert land to other private uses or to sell it for development.

Response:

Revenues generated by the specific and yield taxes do not equal the revenues that local governments could receive if the commercial forestland were subject to the general property tax. It has been estimated that the difference between the revenues counties and townships received under the act and what they would have received if the land were taxed ad valorem would have been \$6.6 million in 1989. Some people believe that the funding should be revised to reflect provisions similar to those in the Farmland and Open Space Preservation Act, under which lands remain on the property tax rolls and the landowners pay property taxes but receive

a credit against either their income or single business tax. If a tax credit were established for commercial forestland, local governments could benefit from increased tax revenues while landowners still would receive a tax break for maintaining the land as commercial forests.

For:

The CFA currently places on commercial forest owners little obligation to manage their land to ensure proper timber growth and production. The act's tax incentives are meant to encourage owners to retain and manage this land for timber production, and not merely set it aside as a forest where no timber is harvested. Under Senate Bill 409, a landowner applying for a determination of land as commercial forestland would have to certify that a forest management plan had been prepared and was in effect. Such a plan would have to be prepared by a registered forester or a natural resources professional and would have to prescribe measures that would be taken to ensure the best production, use, and regeneration of forest resources. The adoption of sound management practices by landowners who participate in the act would help assure the long-term vitality of Michigan's forest industry.

For:

Administration of the CFA is the responsibility of the DNR's Forest Management Division, Private Forest Development Section. This agency administers the Cooperative Forest Management Program, of which the act is a part. Environmental advocates argue that this program currently is understaffed, and if additional employees are not hired the act's enforcement could be undermined. Senate Bill 409 would help alleviate the problem by requiring that a commercial forest fund be created and that various fees and a specific appropriation (as well as any court-ordered restitution costs for violations of the act) be deposited into the fund.

The DNR would have to spend proceeds of the fund for enforcement of the act.

For:

Currently, someone who violates the CFA is guilty of a felony. Because it provides only for a felony penalty, some people contend the act may discourage the prosecution of persons whose alleged violations of the act do not warrant a felony conviction but nonetheless should be punished. Senate Bill 409 would broaden the range of prosecution options by permitting misdemeanor penalties to be imposed as well as felony penalties.

Against:

Senate Bill 409 would provide for the specific tax (which the bill would raise from .38 cents per acre to \$1.10 per acre) and the state payment (proposed to go from .70 cents per acre to \$1.20 per acre) imposed under the CFA to be adjusted in 2004 and every tenth year thereafter. (The act currently requires these to be adjusted every tenth year after 1990.) The bill, instead, should reduce the number of years between these adjustments as commercial forestland property values have been increasing steadily and are expected to continue to do so as land grows more scarce and valuable. The bill should provide for changes to be made every five or seven years so that taxes and fees on these lands would reflect their current fair market values.

Response:

The bill represents a compromise on the way commercial forestland would be taxed by imposing on its owners higher taxes now balanced against extending the next adjustment date another four years (in 2004 rather than 2000) and continuing with a ten-year adjustment cycle. The timber industry already faces increased costs related to stricter federal environmental rules and, of course, will need time to adjust to the higher taxes proposed in the bill.

Against:

Although the CFA currently denies commercial forestland owners exclusive hunting and fishing privileges on their lands and specifically allows the public to hunt and fish on them (unless these activities are not allowed by order of the Natural Resources Commission or by state law), Senate Bill 409 should expand this concept to specifically permit other activities on these lands, such as hiking, mushroom gathering, berry picking, bird watching and the like. House Bill 4509 (Substitute H-2),

which is similar to the Senate bill, would open CFA-enrolled lands to the public for other activities, too.

Response:

Commercial forestland owners apparently fear that allowing more types of activities on their lands will only increase the potential for misuse of them. Reportedly, a number of CFA land owners have reported problems with trash being dumped illegally on their lands, and occasional destruction of nurseries caused by off-road vehicles (ORVs). Besides, allowing other activities to occur on CFA land as long as they were not "prejudicial to its development as a commercial forest" would require the DNR to make this determination, which effectively could eliminate the say of CFA landowners concerning use of their lands. According to a spokesman for a paper company owning several acres of CFA-enrolled land in the U.P., any person with a fishing or hunting license currently may traverse CFA land to pick berries, gather mushrooms or watch birds without having to get written permission from the owner. And in many instances, people are even allowed to drive snowmobiles and other ORVs on these lands if they have not been closed to these activities and those driving them act responsibly. Ultimately, the decision to permit access to CFA lands must be left with those who own them--and apparently, the only real problem now involves those who are free to use them for many purposes but who end up abusing the privilege.

Against:

A rewrite of the CFA, and particularly the way it taxes commercial forestland owners, is certainly needed and has been worked on for a number of years. As the legislature moves closer to adopting extensive changes, however, it may wish to delay any further action until after the upcoming June referendum where state voters will decide whether to lower property taxes and raise the state's sales tax in order to pay for more equal funding of schools. According to a spokeswoman with the Sierra Club, if Proposal A wins approval (resulting in lower ad valorem property tax rates) and if changes proposed in the bill were adopted (which would raise the taxes paid on CFA-enrolled land), some landowners with CFA-enrolled land could decide that the financial incentive to keep their land enrolled under the act no longer exists.

For:

Senate Bill 413 is an important part of the proposal as it would eliminate costly and inefficient

administrative procedures involving the transfer of tax levies from commercial forestland owners to the state and then on to in-formula local and intermediate school districts via their local governments, as provided under the school aid act. Currently, each district remits to the School Aid Fund amounts it receives from local governments under the Commercial Forest Act, which involves an additional step in the transfer process that costs districts and local governments (and ultimately the state) more money. By providing for amounts owed by districts to the state under the Commercial Forest Act simply to be deducted from a district's school aid payment, the bill would eliminate the unnecessary and costly step involving local governments in the revenue transfer process.

POSITIONS:

The Department of Natural Resources supports the bills. (5-21-93)

The Michigan Association of School Administrators supports the bills. (5-21-93)

The Michigan Townships Association supports both bills. (5-21-93)

The Michigan Association of Counties supports the bills. (5-21-93)

The Michigan Association of County Treasurers supports the bills. (5-21-93)

The Michigan United Conservation Clubs supports both bills. (5-21-93)

Champion International Corporation, a pulp and paper company of Quinnesec in the Upper Peninsula, supports the bills. (5-21-93)

The Sierra Club, Mackinaw Chapter, supports the bills. (5-21-93)