



**House
Legislative
Analysis
Section**

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REVISE COMMERCIAL FOREST ACT

**House Bill 4509 (Substitute H-2)
First Analysis (5-4-93)**

**Sponsor: Rep. David Anthony
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 BILL:

The bill would amend the Commercial Forest 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; 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 the act; and revise penalties that could be imposed for certain violations of the act.

The bill 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.

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).

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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: (a) not less than 20 cubic feet per acre per year of forest growth upon maturity; (b) trees with economic or commercial value; and (c) 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, for land of more than 500 acres, a statement certifying that a forest management plan had been prepared. Owners of more than 500 acres 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 to that effect with the DNR. 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 classification and hearing process would remain basically as they are now under the act.

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.

Public access to 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, or "enjoy exclusive privileges as to hunting and fishing." The general public must be "accorded the privilege of hunting and fishing" unless the land is closed to hunting or fishing, or both, by order of the DNR or state law.

The bill would say instead that owners of commercial forests could not use the land in a manner that was prejudicial to its development as a commercial forest, use the land for commercial purposes, or deny the general public the privilege of hunting, fishing, "and other public recreational activities that [were] not prejudicial to its development as a commercial forest." In addition, the bill would delete language that specifies that this privilege is denied if the land is closed by DNR order or state law.

Removal of mineral deposits. The bill would allow the removal of deposits of sand, gravel, oil and gas from commercial forestlands without affecting the land's status as a commercial forest under the following circumstances:

Sand and gravel could be removed, with DNR approval, if the removal site were not more than 5 acres (excluding access to the removal site) and if the sand and gravel were for the owner's personal use or for governmental use by the state, a local unit of government, or a county road commission.

Oil and gas owned by the state could be removed with DNR approval.

Withdrawal and declassification. The bill would establish withdrawal application fees of one dollar per acre, with minimum and maximum fees of \$200 and \$1,000, respectively. The bill also would establish two withdrawal penalty fees, depending on whether the forestland was designated commercial forestland before January 1, 1995 or after December 31, 1994. For lands classified before January 1, 1995, the withdrawal penalty would be based on current property taxes for timber cutover property times the number of years in the program, not to exceed seven years. For lands classified after

December 31, 1994, the penalty would be based on current property taxes times the number of years in the program, not to exceed 15 years. The bill would eliminate yield or stumpage fees on withdrawal.

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

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

Withdrawal and penalty fees would not be assessed on land (a) donated to a public body for public use; (b) condemned for public use; or (c) exchanged for government property that was designated as commercial forestland.

If the DNR declassified forestland (because the owner had used the land in violation of the act; failed to plant, harvest, or remove forest products in compliance with the forest management plan; failed to pay the specific tax; or removed minerals in violation of the act), the owner would have to pay fees as though he or she had voluntarily withdrawn from the act (i.e. fees equal to the withdrawal application fee and withdrawal penalty fee). Declassified land would be subject to property taxes 30 days, instead of 90 days, after the owner was notified of declassification.

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:

- * classification application fees;
- * forest management plan fees [Note: the bill does not provide for forest management plan fees];
- * withdrawal application fees; and
- * declassification fees.

The fund would not lapse at the end of the fiscal year into the general fund.

Violations and penalties. Currently, all violations of the act are felonies punishable by imprisonment for up to 3 years and a fine of up to \$3,000. The bill would establish both felony and misdemeanor penalties. Cutting, harvesting, or removing forest products of \$2,500 or less would be a misdemeanor punishable by imprisonment for up to 90 days and a fine of up to \$500. Otherwise, harvesting, cutting, or removing forest products in violation of the act or of the forest management plan would be a felony punishable by imprisonment for up to 3 years and a fine of up to \$10,000.

Other provisions. The bill would officially name the act the "commercial forest act," and would repeal the existing legislative intent section of the act and instead specify the "intent and purpose" of the act, namely, "to encourage reforestation and proper forest management on lands valuable for those purposes."

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.

MCL 320.301 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill 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 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	H.B. 4509 ^b
<u>LOCAL REVENUE</u>		
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
<u>STATE COST</u>		
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 the bill is to streamline the Commercial Forest Act 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 act 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 the bill, a landowner applying for a determination of land as commercial forestland (who owned more than 500 acres of 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.

Response:

These provisions should apply to all owners of any amount of CFA-enrolled land, not just to those who own more than 500 acres. Reportedly, many of the violations which the bill is intended to address are committed by those who own smaller parcels of commercial forestland.

For:

Administration of the act 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. The bill would help alleviate the problem by requiring that a commercial forest fund be created and that various fees be deposited into the fund. In addition, the bill would require the DNR to spend proceeds of the fund for enforcement of the act.

Response:

Senate Bill 409 as passed by the Senate, which is similar to this bill, would provide for a general fund appropriation of 10 cents per acre of CFA-enrolled land to be deposited into the commercial forest fund, subject to the appropriations process. By not including this provision in proposed amendments to the act, the department will not receive approximately \$230,000 in additional funds which it feels are necessary to properly administer the act.

For:

Currently, someone who violates the act 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. The bill would broaden the range of prosecution options by permitting misdemeanor penalties to be imposed as well as felony penalties.

For:

Commercial forestland owners currently do not have exclusive hunting and fishing privileges on their land. The public is permitted to use such lands for hunting and fishing unless it is closed to those activities by order of the Natural Resources Commission or by state law. The bill provides that such land also would be open for use by the public for other recreational activities that would not affect its development as a commercial forest. (Thus, the bill specifically would permit other nonmotorized day use activities on these lands, such as hiking.)

Against:

The bill as reported from the House Agriculture and Forestry Committee is similar to Senate Bill 409 (which has passed the Senate and is currently before the same House committee), but differs in the following ways:

* The House bill exempts people owning 500 acres or less of commercial forestland from the proposed requirement to prepare a forest management plan. Exempting landowners of smaller parcels from this provision would enable them to more easily violate sound forestry practices. Some people, in fact, believe it is owners of smaller parcels of commercial forestland who more frequently engage in the type of activities that the bill is intended to thwart. Senate Bill 409 contains language which generally would ensure that all commercial forestland owners prepare and follow a forest management plan, whereas similar provisions in the House bill are ambiguous and seem less enforceable. In fact, House Bill 4509 would allow a landowner to prepare his or her own plan and then later amend it without DNR approval.

* The bill would not require a landowner to have prepared and have in effect a forest management plan before harvesting or removing timber, and would permit the harvesting, cutting or removal of forest products without having to report this to the DNR. Essentially, this provision would enable landowners regulated by the act to avoid paying any fees or penalties on unreported commercial activities.

* Under the House bill, the new, tougher penalty provisions for withdrawing land from the act would take effect one year later (January 1, 1995) than as proposed in Senate Bill 409.

* The bill does not include language that would require an appropriation of 10 cents per acre of CFA-enrolled land to go into the proposed commercial forest fund and be used by the DNR for administering and enforcing the act.

* Although the bill would exempt from withdrawal penalties land that was donated to a public body for public use, it fails to specify that to qualify for the exemption the land would have to be donated prior to its withdrawal from the act.

Against:

A rewrite of the Commercial Forest Act, and particularly the way the act 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.

POSITIONS:

The Michigan Association of School Administrators supports the bill. (4-28-93)

The Michigan Townships Association supports the bill. (4-30-93)

The Sierra Club supports the concept of extensively revising the act to ensure that it promotes better forest management practices. (4-30-93)

The following groups support Senate Bills 409 and 413 as passed by the Senate, but have not yet taken a position on House Bill 4509 (Substitute H-2):

- * The Department of Natural Resources (5-3-93)
- * The Michigan Association of Counties (4-30-93)
- * The Michigan Association of County Treasurers (4-28-93)
- * The Michigan United Conservation Clubs (5-3-93)
- * Champion International Corporation, a pulp and paper company of Quinnesec in the Upper Peninsula (5-2-93)