

Act No. 351  
Public Acts of 1993  
Approved by the Governor  
January 11, 1994  
Filed with the Secretary of State  
January 12, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Bobier, Bodem, Shepich, Gagliardi, Gernaat, McManus and Lowe

# **ENROLLED HOUSE BILL No. 5025**

AN ACT to amend the title and sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13 of Act No. 280 of the Public Acts of 1990, entitled "An act to create the Michigan forest finance authority and prescribe its powers and duties; to provide for the issuance of certain revenue obligations by the authority to be paid for with revenues from the sale of timber; to provide for the acquisition of standing timber and timber cutting rights in standing timber on state tax reverted lands; to provide for certain forest management operations and practices; to provide for disposition of the proceeds received by the authority from the sale of timber; to prescribe the powers and duties of certain state agencies and officials; and to repeal certain acts and parts of acts," being sections 320.2002, 320.2003, 320.2004, 320.2005, 320.2006, 320.2007, 320.2008, 320.2009, 320.2010, 320.2011, and 320.2013 of the Michigan Compiled Laws; and to add section 1a.

*The People of the State of Michigan enact:*

Section 1. The title and sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13 of Act No. 280 of the Public Acts of 1990, being sections 320.2002, 320.2003, 320.2004, 320.2005, 320.2006, 320.2007, 320.2008, 320.2009, 320.2010, 320.2011, and 320.2013 of the Michigan Compiled Laws, are amended and section 1a is added to read as follows:

## **TITLE**

An act to create the Michigan forest finance authority and prescribe its powers and duties; to provide for the issuance of certain revenue obligations by the authority to be paid for with revenues from the sale of timber; to provide for the acquisition of standing timber and timber cutting rights in standing timber on state tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945; to provide for certain forest management operations and practices; to provide for disposition of the proceeds received by the authority from the sale of timber; to prescribe the powers and duties of certain state agencies and officials; and to repeal certain acts and parts of acts.

Sec. 1a. The purpose of this act and of the authority created by this act is to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention, promotion, and development of forestry and forest industries and to protect the health and vigor of the forest resources by doing all of the following:

- (a) Funding practices prescribed and approved by the department that intensify management of certain highly productive portions of the state's forest system.
- (b) Implementing a system of forest management that is investment-oriented, economically efficient, and environmentally sound.
- (c) Promoting a stable and continuing supply of timber for future economic expansion.

- (d) Providing dependable funding of scheduled forest management operations.
- (e) Promoting effective investment of revenues from timber sales for high future returns.
- (f) Facilitating timely performance of forest management operations.
- (g) Earning additional revenues for forest management from timber sales.
- (h) Improving existing timber stands and establishing new stands of trees.
- (i) Providing for reforestation, forest protection, and timber stand improvement.
- (j) Providing an additional funding source for the purposes described in this section from indebtedness secured with revenues generated from future sale of timber harvested from state tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945.

Sec. 2. As used in this act:

- (a) "Authority" means the Michigan forest finance authority created in section 3.
- (b) "Board" means the board of directors of the Michigan forest finance authority, except where the context clearly requires a different definition.
- (c) "Bonds" means bonds of the authority issued as provided in this act.
- (d) "Department" means the director of the department of natural resources or his or her designee.
- (e) "Director" means the director of the department of natural resources.
- (f) "Notes" means notes of the authority issued as provided in this act, including commercial paper.
- (g) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 3. The Michigan forest finance authority is created as a body corporate within the department of natural resources and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds and notes.

Sec. 4. (1) The authority shall be governed by a board of directors consisting of the director, the state treasurer, and 3 residents of the state appointed by the governor with the advice and consent of the senate. The 3 resident directors shall serve terms of 3 years. In appointing the initial 3 resident members of the board, the governor shall designate 1 to serve for 3 years, 1 to serve for 2 years, and 1 to serve for 1 year.

(2) Upon appointment to the board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board shall enter the office and exercise the duties of the office.

(3) Regardless of the cause of a vacancy on the board, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term of the office. A member of the board shall hold office until a successor has been appointed and has qualified.

(4) Members of the board and officers and employees of the authority are subject to Act No. 317 of the Public Acts of 1968, being sections 15.321 to 15.330 of the Michigan Compiled Laws. A member of the board or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with 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. In discharging his or her duties, a member of the board or an officer, employee, or agent of the authority, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the authority.

(5) The board shall organize and make its own policies and procedures. The board shall conduct all business at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of each meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. Three members of the board constitute a quorum for the transaction of business. An action of the board requires a concurring vote by 3 members of the board. A state officer or director who is a member of the board may designate a representative from his or her department to serve instead of that state officer or director as a voting member of the board for 1 or more meetings.

Sec. 5. (1) The authority shall elect a chairperson and a vice-chairperson from among its members. The state forester shall serve as the executive director of the authority. The authority may employ legal and technical experts, and other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director. The authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(2) The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the department.

(3) The authority shall contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(4) The authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and a description of the forest management practices undertaken by the department with proceeds of bonds sold under the provisions of this act.

(5) The accounts of the authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted auditing principles.

Sec. 6. Except as otherwise provided in this act, the board may do all things necessary or convenient to carry out the purposes, objectives, and provisions of this act, and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws at its pleasure.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this act.

(d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(e) With the prior consent of the department, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(f) Acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights, on state tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945, to be used for any of the purposes provided in this act subject to the restrictions of section 9. However, the state shall not convey to the authority fee title to any state forest lands.

(g) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(h) Invest money of the authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.

(i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the authority, subject to the restrictions of section 7.

(j) Indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(k) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this act, rules promulgated under this act, or other laws that relate to the purposes and responsibilities of the authority.

Sec. 7. (1) The authority shall finance only forest management operations and practices that follow the guidelines, rules, and objectives prescribed and approved by the department as these guidelines, rules, and objectives are amended by the department.

(2) Funds managed by the authority shall be applied in a manner consistent with the land management planning policies of the department on lands that have been 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 department, shall be used to assure that all forest values have been considered in selecting sites for investment with funds of the authority. The department shall annually submit a list of activities and practices allocated from the funds generated under this act for the board's review and determination of consistency with the purposes of this act.

(3) The executive director of the authority shall notify the department if the authority projects a probable default on any bonds or notes issued by the authority, and within 1 year of receipt of the notification, or within less than 1 year,

if the notification indicates a shorter time period is necessary to avoid a default, the department shall identify and convey to the authority sufficient timber on tax reverted lands to enable the authority to avoid the projected default and to provide for timely payment of principal of and interest on the authority's bonds or notes. The authority may only issue contracts for the cutting and sale of timber which has been conveyed to the authority under this section to avoid a default on any bonds or notes issued by the authority. The determination of the board as to the need to cut and sell timber is conclusive. Contracts for the cutting and sale of timber shall be consistent with the guidelines, rules, and objectives prescribed by the department.

(4) The authority shall establish a fund designated as the "forest development fund". Any money on hand or received in the future from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands shall be deposited in the forest development fund and utilized by the authority to provide for the payment of principal of and interest on any bonds or notes issued by the authority and for reforestation, forest protection, and timber stand improvement and any other purposes authorized by this act. All money in the special forest management fund established pursuant to former Act No. 268 of the Public Acts of 1945 shall be transferred to the forest development fund.

Sec. 8. (1) Except as provided in section 7(3), the department shall act as the agent for the authority in contracting for the cutting and sale of timber or other forest management operations and practices undertaken by the authority.

(2) The state's interest in all existing and future contracts granting timber cutting rights on state tax reverted lands are hereby conveyed to the authority to be used for any of the purposes of this act subject to the restrictions of this act. The money received by the state from existing or future contracts for the cutting and sale of timber on state tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945 shall be deposited in the forest development fund and utilized as provided in section 7(4).

(3) In order to provide for additional security for indebtedness of the authority, the department may convey to the authority title to timber on all or any portion of tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945. The form of conveyance shall be approved by the attorney general and by resolution of the state administrative board. If the authority receives title to any timber, it may release and reconvey timber on state tax reverted lands and on other lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former Act No. 268 of the Public Acts of 1945 if requested by the department and the reconveyance from the authority to the department will not cause the authority to default on any obligation or covenant contained in any resolution of the authority authorizing issuance of bonds or notes.

Sec. 9. (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the authority. Bonds and notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith and credit of the state. All authority bonds and notes shall be payable solely from revenues or funds pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the authority pledged for the payment of principal and interest and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this act shall be payable solely from revenues or funds provided or to be provided under this act. This act does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

(3) Any revenues or funds available to the authority that are not necessary to pay principal of or interest on any outstanding bonds or notes of the authority or which are not required to be deposited in a fund created to secure the bonds or notes of the authority or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes of the authority shall be expended to fund forest management programs in a manner prescribed by the department. Any money derived from the proceeds of bonds or notes shall be expended by the authority in the manner prescribed in the act and the resolution authorizing such indebtedness.

Sec. 10. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(b) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.

- (c) The payment of interest on the bonds or notes for a period as the authority determines.
- (d) The payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the authority:

- (a) Shall be authorized by resolution of the authority.
- (b) Shall bear the date or dates of issuance.
- (c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.
- (d) Shall be serial bonds, term bonds, or term and serial bonds.
- (e) Shall mature at such time or times not exceeding 30 years from the date of issuance.
- (f) May provide for sinking fund payments.
- (g) May provide for redemption at the option of the authority for any reason or reasons.
- (h) May provide for redemption at the option of the bondholder for any reason or reasons.
- (i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.
- (j) Shall be registered bonds, coupon bonds, or both.
- (k) May contain a conversion feature.
- (l) May be transferable.
- (m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is determined necessary or beneficial by the authority.

(4) If a member of the board or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. An authority bond or note is not subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws. The bond or note does not require the approval of the state treasurer under Act No. 202 of the Public Acts of 1943 and is not required to be registered. The bond or note of the authority is not required to be filed under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

Sec. 11. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded shall be considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded shall be terminated except as to the rights to the money or investment obligations deposited in trust.

(3) The authority shall not have outstanding at any time bonds or notes in an aggregate principal amount exceeding \$20,000,000.00 excluding bonds or notes issued to refund outstanding bonds or notes.

Sec. 13. Within limitations that shall be contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board, the executive director, or other officer of the authority to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for notes or bonds.
- (b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.
- (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.
- (d) Buy notes or bonds so issued and resell those notes or bonds.
- (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (f) Direct the investment of any and all funds of the authority.
- (g) Approve the terms of a contract, including, but not limited to, a contract for the sale or cutting of timber, and execute and deliver the contract subject to the restrictions of this act.
- (h) Approve terms of any insurance contract, agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, an agreement to manage payment, revenue, or interest rate exposure, or any other transaction to provide security to assure timely payment of a bond or note.
- (i) Perform any power, duty, function, or responsibility of the authority.

This act is ordered to take immediate effect.

-----  
Co-Clerk of the House of Representatives.

-----  
Secretary of the Senate.

Approved -----

-----  
Governor.