

Act No. 70  
Public Acts of 1993  
Approved by the Governor  
June 23, 1993  
Filed with the Secretary of State  
June 24, 1993

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

Introduced by Senators Koivisto, McManus and Faust

# **ENROLLED SENATE BILL No. 409**

AN ACT to amend the title and sections 1, 2, 3, 4, 5, 6, 6a, 7, 8, 9, 10, 11, 12a, 13, 13a, 13c, and 14 of Act No. 94 of the Public Acts of 1925, entitled as amended "An act to provide for the establishment of commercial forests and for the administration and taxation of them," sections 2, 5, 6, 7, 8, 9, and 10 as amended and section 6a as added by Act No. 393 of the Public Acts of 1980, being sections 320.301, 320.302, 320.303, 320.304, 320.305, 320.306, 320.306a, 320.307, 320.308, 320.309, 320.310, 320.311, 320.312a, 320.313, 320.313a, 320.313c, and 320.314 of the Michigan Compiled Laws; to add sections 7b and 9a; and to repeal certain parts of the act.

*The People of the State of Michigan enact:*

Section 1. The title and sections 1, 2, 3, 4, 5, 6, 6a, 7, 8, 9, 10, 11, 12a, 13, 13a, 13c, and 14 of Act No. 94 of the Public Acts of 1925, sections 2, 5, 6, 7, 8, 9, and 10 as amended and section 6a as added by Act No. 393 of the Public Acts of 1980, being sections 320.301, 320.302, 320.303, 320.304, 320.305, 320.306, 320.306a, 320.307, 320.308, 320.309, 320.310, 320.311, 320.312a, 320.313, 320.313a, 320.313c, and 320.314 of the Michigan Compiled Laws, are amended and sections 7b and 9a are added to read as follows:

## **TITLE**

An act to provide for the establishment of commercial forests; to prescribe the powers and duties of certain state agencies and officials; to provide for certain taxes and fees; to prescribe penalties and provide remedies; and to repeal certain acts and parts of acts.

Sec. 1. (1) This act shall be known and may be cited as the "commercial forest act".

(2) The department of natural resources shall establish and maintain commercial forests and may promulgate and enforce rules as necessary to accomplish the intent and purpose of this act. All expenses incurred and staff employed to implement this act shall be with the approval of the state administrative board.

Sec. 2. As used in this act:

(a) "Ad valorem general property tax" means taxes levied under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(b) "Commercial forest" or "commercial forestland" means forestland that is determined to be a commercial forest under section 3.

(c) "Declassify" or "declassification" means the removal of the commercial forest designation pursuant to section 13.

(d) "Department" means the department of natural resources.

- (e) "Director" means the director of the department.
- (f) "Forestland" means a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest and that meets all the following:
  - (i) Does not have material natural resources other than those resources suitable for forest growth or the potential for forest growth.
  - (ii) Is not used for agricultural, mineral extraction except as provided in section 10, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes.
  - (iii) The owner agrees to develop, maintain, and actively manage the land as a commercial forest through planting, natural reproduction, or other silvicultural practices.
- (g) "Forest management plan" means a written plan prepared and signed by a registered forester or a natural resources professional that prescribes measures to optimize production, utilization, and regeneration of forest resources. The forest management plan shall include schedules and timetables for the various silvicultural practices used on commercial forestlands, including, but not limited to, timber harvesting and regeneration.
- (h) "Fund" means the commercial forest fund created pursuant to section 9a.
- (i) "Natural resources professional" means a person who is acknowledged by the department as having the education, knowledge, experience, and skills to identify, schedule, and implement appropriate forest management practices needed to achieve the purposes of this act on land subject to or to be subject to this act.
- (j) "Owner" means a person who holds title to the surface estate of forestland subject to this act. However, if land is purchased on a land contract, the owner includes the person who holds the land contract vendee's interest and does not include the person who holds the land contract vendor's interest.
- (k) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.
- (l) "Personal use" means use for any noncommercial purpose.
- (m) "Registered forester" means a person registered under article 21 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2101 to 339.2108 of the Michigan Compiled Laws.
- (n) "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.
- (o) "Silvicultural practices" means the management and manipulation of forest vegetation for the protection, growth, and enhancement of forest products.

Sec. 3. (1) The owner of forestland located within this state may apply to the department to have that forestland determined to be a commercial forest under this act.

- (2) To be eligible for determination as a commercial forest, forestland shall be capable of all of the following:
  - (a) Producing not less than 20 cubic feet per acre per year of forest growth upon maturity.
  - (b) Producing tree species that have economic or commercial value.
  - (c) Producing a commercial stand of timber within a reasonable period of time.
- (3) Application shall be on a form prescribed by the department. In addition to any information that the department may reasonably require by rule, the applicant shall provide all of the following to the department:
  - (a) A nonrefundable application fee in the amount of \$1.00 per acre or fraction of an acre, not to exceed \$1,000.00. The department shall remit the application fee to the state treasurer for deposit into the fund.
  - (b) A legal description and the amount of acreage considered for determination as a commercial forest.
  - (c) A statement certifying that a forest management plan covering the forestland has been prepared and is in effect.
  - (d) A statement certifying that the owner of the forestland owns the timber rights to the timber standing on the forestland.
- (4) The department shall prepare and distribute to any person desiring to make application under this act a brochure that lists and explains, in simple, nontechnical terms, all of the following:
  - (a) The application, hearing, determination, declassification, and prosecution process.
  - (b) The requirements of the forest management plan.
- (5) If an applicant is unable to secure the services of a registered forester or a natural resources professional to prepare a forest management plan, the department upon request shall prepare the forest management plan on behalf of the owner of the forestland and charge the owner a forest management plan fee not to exceed the actual cost of preparing the forest management plan.
- (6) Before January 1, 1997, an owner of a commercial forest that was designated a commercial forest before the effective date of the amendatory act that added this subsection shall prepare a forest management plan and file a statement with the department certifying that a forest management plan has been prepared and is in effect. If an owner

of a commercial forest fails to comply with this subsection, the department shall declassify the owner's commercial forest pursuant to section 13.

(7) After an owner certifies to the department that a forest management plan has been prepared and is in effect, a violation of that forest management plan is a violation of this act.

Sec. 4. (1) Upon receipt of the application, the forest management plan certification, the timber rights certification, and the application fee described in section 3, the department shall evaluate the forestland offered and fix a date for a public hearing upon the eligibility of the forestland for determination as a commercial forest. The hearing shall be held in the county where the land is located not later than November 1 following receipt of the application. Applications offering lands in the same county may be heard on the same day and at the same place. The department shall publish a notice of hearing and a list of the legal descriptions of lands being considered for determination as commercial forests in a newspaper of general circulation in the county in which the land is located. The notice of hearing shall be published at least 20 days before the date of the hearing. At the time of publication, the department shall provide a copy of the notice of hearing and a list of descriptions of land in each township to be considered for determination as a commercial forest to each township supervisor in whose township the lands are located. Any person who wishes may testify as to eligibility for determination as a commercial forest of any of the described lands. The hearing shall be conducted by the director of the department or an employee designated by the director.

(2) After the hearing, if the department determines that the applicant and forestland meet the requirements of this act and determines that all valid taxes assessed against that forestland have been paid, the department shall approve the application. Upon approval of the application, the department shall immediately record a listing certificate in the register of deeds office in the county in which the land is located with the department approval endorsed on the listing certificate and forward a copy of the listing certificate to the applicant and to the township supervisor of the township in which the land is located.

Sec. 5. (1) Commercial forests are not subject to the ad valorem general property tax after the date the township supervisor is notified by the department that the land is a commercial forest, except taxes as previously levied. Commercial forests are subject to an annual specific tax as follows:

- (a) Through October 1, 1981, 15 cents per acre.
- (b) After October 1, 1981 and through December 31, 1989, 30 cents per acre.
- (c) After December 31, 1989 and through December 31, 1993, 38 cents per acre.
- (d) Beginning January 1, 1994, \$1.10 per acre as adjusted pursuant to section 6a.

(2) The supervisor of the township shall remove from the list of land descriptions assessed and taxed under the ad valorem general property tax the land descriptions certified to him or her by the department as being commercial forests and shall enter those land descriptions on a roll separate from lands assessed and taxed by the ad valorem general property tax and shall spread against these commercial forests the specific tax provided by this section.

(3) The township treasurer shall collect the specific tax at the same time and in the same manner as ad valorem general property taxes are collected and this tax is subject to the same collection charges levied for the collection of ad valorem property taxes. Commercial forests are subject to return and sale for nonpayment of taxes in the same manner, at the same time, and under the same penalties as lands returned and sold for nonpayment of taxes levied under the ad valorem general property tax laws. A valuation shall not be determined for descriptions listed as commercial forests and these lands shall not be considered by the county board of commissioners or by the state board of equalization in connection with county or state equalization for ad valorem property taxation purposes.

(4) Except as provided in section 7a(2), all sums collected pursuant to this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

Sec. 6. On December 1 of each year, the department shall certify to the state treasurer the number of acres that are commercial forestlands in each county and the state treasurer shall transmit to the treasurer of each county in which these commercial forests are located a warrant on the state treasurer for an amount equal to \$1.20 per acre, as adjusted by section 6a, upon each acre of commercial forest in the county. The county treasurer of each county shall distribute an amount equal to 25 cents per acre for each acre of commercial forest in the county in the same proportions between the various funds as the ad valorem general property tax is distributed by the township treasurers in each township. Except as provided by section 7a(2), the county treasurer of each county shall distribute the remainder of the funds transmitted pursuant to this section pursuant to the manner in which ad valorem property taxes are distributed.

Sec. 6a. The annual specific tax and the state payment described in section 6, per acre, shall be adjusted in 2004 and every tenth year after 2004 to the nearest cent by the use of a ratio computed by the revenue division of the department of treasury. The ratio shall be computed by using the state equalized value per acre of the timber cutover lands within the state in 1990 as the denominator and using the state equalized value per acre for timber cutover lands in 2004 and every tenth year after 2004 as the numerator.

Sec. 7. (1) An owner of a commercial forest may withdraw his or her land, in whole or in part, from the operation of this act upon application to the department and payment of the withdrawal application fee and penalty, as provided in this section.

(2) Except as otherwise provided by this section, upon application to the department to withdraw commercial forestland from the operation of this act, the applicant shall forward to the department a withdrawal application fee in the amount of \$1.00 per acre with a minimum withdrawal application fee of \$200.00 per application and a maximum withdrawal application fee of \$1,000.00 per application.

(3) Except as otherwise provided in this section, an application to withdraw commercial forestland from the operation of this act shall be granted upon the payment to the township treasurer in which the commercial forestland is located of a penalty per acre equal to the product of the current average ad valorem property tax per acre on timber cutover real property within the township in which the commercial forestland is located, as determined by the township assessor, multiplied by 1 of the following:

(a) For forestland determined to be a commercial forest before January 1, 1994, the number of years, to a maximum of 7 years, that the land was subject to this act.

(b) For forestland determined to be a commercial forest after December 31, 1993, the number of years, to a maximum of 15 years, that the land was subject to this act.

(4) For purposes of calculating the penalty in subsection (3), if the township in which the commercial forestland is located does not contain any real property classified as timber cutover real property under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, then 1 of the following applies:

(a) If there is timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property located in the county in which the commercial forestland is located shall be used in calculating the penalty under subsection (3).

(b) If there is no timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property in townships contiguous to the county in which the commercial forestland is located shall be used in calculating the penalty under subsection (3).

(5) An application to withdraw commercial forestland from the operation of this act that meets 1 or more of the following requirements shall be granted without payment of the withdrawal application fee or penalty under this section:

(a) Commercial forestland that has been donated to a public body for public use prior to withdrawal.

(b) Commercial forestland that has been exchanged for property belonging to a public body if the property received is designated as a commercial forest as determined by the department.

(c) Commercial forestland that has been condemned for public use.

(6) The department shall remit the withdrawal application fee paid pursuant to subsection (2) to the state treasurer for deposit into the fund. The penalty received by the township treasurer under subsection (3) shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township, except as provided by section 7a(2).

(7) If an application to withdraw commercial forestland is granted, the department shall immediately notify the applicant, the supervisor of the township, and the register of deeds of the county in which the lands are located of the action and shall file with those officials a list of the lands withdrawn.

Sec. 7b. If the constitutional amendment submitted to the electors on June 2, 1993, becomes part of the state constitution of 1963, as provided in section 1 of article XII of the state constitution of 1963, in determining the distributions under sections 5(4), 6, and 7(6) that provide for distributions in the same manner as the ad valorem general property taxes are distributed, the number of mills used to determine the amount of revenue distributed to local school districts shall be the same number of mills used to determine the distribution in 1992 or the number of mills levied in the year of distribution, whichever is greater.

Sec. 8. (1) Except as provided in subsection (2), a person shall not cut, harvest, or remove forest products from a commercial forest.

(2) The owner of a commercial forest is entitled to cut or remove merchantable forest products on his or her commercial forest without withdrawing it or affecting its status as a commercial forest and without payment of a fee or penalty if the owner complies with all of the following:

(a) After an owner certifies to the department that a forest management plan has been prepared and is in effect under section 3 and cuts, harvests, or removes forest products in compliance with his or her forest management plan.

(b) All other requirements of this act.

Sec. 9. The owner shall report to the department prior to the cutting, harvesting, or removal of forest products from the commercial forest.

Sec. 9a. (1) The commercial forest fund is created within the state treasury.

(2) The state treasurer shall deposit the money collected from the following sources into the fund:

(a) The application fee and forest management plan fee pursuant to section 3.

(b) The withdrawal application fee pursuant to section 7.

(c) The fee described in section 13(1)(a).

(d) An amount equal to 10 cents for each acre of land enrolled under this act as certified by the department to be appropriated each fiscal year from the general fund.

(e) Any restitution ordered by a court payable to this state for a violation of this act.

(3) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) Money in the fund appropriated from the general fund shall remain in the fund at the close of the fiscal year and shall not lapse to the general fund.

(5) The department shall expend the money from the fund, upon appropriation, for enforcement, administration, and monitoring of compliance with this act and rules promulgated under this act.

Sec. 10. (1) Except as provided in this section, the owner of a commercial forest shall not use that land in a manner that is prejudicial to its development as a commercial forest, use the land for agricultural, mineral extraction except as provided in this section, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes, or deny the general public the privilege of hunting and fishing on commercial forestland unless the land is closed to hunting or fishing, or both, by order of the commission of natural resources or by an act of the legislature.

(2) Exploration for minerals shall be permitted on land listed under this act. Except as provided in subsections (3) and (4), before the removal of any commercial mineral deposits, the owner shall withdraw the portion of the commercial forestland directly affected by the removal pursuant to section 7. The withdrawal of commercial forestland due to mineral removal as provided in this section and section 7 shall not cause the remaining portion of the commercial forestland to be withdrawn due to insufficient acreage of the remaining commercial forestland.

(3) Upon application to and approval by the department, sand and gravel may be removed from the commercial forest without affecting the land's status as a commercial forest. The department shall approve an application to remove sand and gravel deposits only if the removal site is not greater than 5 acres, excluding access to the removal site, and the sand and gravel are to be utilized by 1 or more of the following:

(a) The owner of a commercial forest for personal use if the owner of the commercial forest is also the owner of the sand and gravel deposits.

(b) The owner of the sand and gravel deposits for his or her personal use or for sale to the owner of the commercial forest for personal use, if the owner of the commercial forest is not also the owner of the sand and gravel deposits.

(c) This state, a local unit of government, or a county road commission, for governmental use.

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

Sec. 11. All applications, statements, reports, and information required by the department in the administration of this act shall be on forms prescribed by the department and shall be under oath.

Sec. 12a. (1) The transfer of title of forestland subject to this act shall not affect that forestland's status as a commercial forest if the forestland continues to meet all of the eligibility requirements under this act. If the purchaser desires to withdraw his or her forestland from this act, the purchaser shall withdraw that forestland pursuant to section 7. If the forestland's eligibility to be a commercial forest is affected by the transfer of title, the department shall determine which forestlands may remain under this act and which forestlands must be withdrawn or declassified.

(2) A document that transfers any interest in commercial forestlands shall state on the face of the document that "this property is subject to the commercial forest act". Failure to comply with this subsection does not affect the status of the land as commercial forestland.

(3) Not later than 30 days after the transfer of title or the transfer of any interest in land contract concerning the commercial forestland, the owner shall notify the department in writing of the transfer or ownership change.

Sec. 13. (1) If an owner of a commercial forestland uses his or her commercial forest in violation of this act, fails to pay any specific tax under section 5, fails to report to the department pursuant to section 9, removes minerals in

violation of section 10, or, after an owner certifies to the department that a forest management plan has been prepared and is in effect, fails to plant, harvest, or remove forest products in compliance with the owner's forest management plan, the department may upon notice to the owner and hearing declassify all or a portion of the commercial forest. If, at the hearing, the department determines that the commercial forests were used in violation of this act, that the owner failed to pay the specific tax pursuant to section 5, that the owner failed to report to the department pursuant to section 9, that minerals were removed in violation of section 10, or, after an owner certifies to the department that a forest management plan has been prepared and is in effect, that the owner failed to plant, harvest, or remove forest products in compliance with the owner's forest management plan, then the department shall declassify the commercial forest, serve a notice of declassification of the lands upon the owner, and record a copy of the declassification in the office of the register of deeds of the county in which the lands are located. Upon declassification, the land shall be subject to the ad valorem general property tax. Within 30 days after the service of the declassification notice on the owner, the owner shall pay both of the following:

- (a) A fee equal to the withdrawal application fee described in section 7 to the department for deposit into the fund.
- (b) An amount equal to the penalty described in section 7 to the township treasurer of the township in which the land is located to be distributed, except as provided in section 7a(2), in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

Sec. 13a. (1) Except as provided in this section, changes in the terms, fees, taxes, or other provisions of this act apply to all forestlands that are commercial forests when the changes take effect.

(2) An owner, without penalty or payment of the withdrawal application fee pursuant to section 7, may withdraw commercial forestland from the operation of this act if any change in the terms, fees, taxes, or other provisions of this act materially increases the burden on the owner. However, if an owner elects to withdraw his or her commercial forestlands under this subsection, the owner shall pay a fee for each acre withdrawn equal to the product of the current average ad valorem property tax per acre on timber cutover real property within the township in which the commercial forestland is located, as determined by the township assessor, multiplied by 5. If the township in which the commercial forestland is located does not contain any real property classified as timber cutover real property under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, then 1 of the following applies:

(a) If there is timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property located in the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(b) If there is no timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property in townships contiguous to the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(3) The fee described in subsection (2) shall not exceed \$100,000.00. The owner shall pay the fee described in subsection (2) before withdrawal.

(4) The owner may not withdraw commercial forestland under this section unless he or she makes application to do so within 1 year after the changes take effect. If an owner elects to withdraw commercial forestlands under this section, he or she shall withdraw all the commercial forestlands owned by him or her at the time of withdrawal.

(5) If an application to withdraw commercial forestlands under subsection (2) is initiated by an owner or by the department of natural resources before changes in terms, fees, taxes, or other provisions of this act become effective, the owner shall pay the stumpage fees, other fees, taxes, and penalties, if any, in the same manner and at the same rates as were in effect when the application was filed.

(6) The department shall remit the fees paid pursuant to this section to the township treasurer. Except as provided in section 7a(2), all fees remitted to the township treasurer under this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

Sec. 13c. A duly authorized representative of the department may at any time go upon commercial forestlands to ascertain the validity of any report made pursuant to this act or otherwise determine compliance with this act. The duly authorized representative of the department may examine or cause to be examined any books, papers, records, or memorandum bearing upon the amounts of timber products cut from the commercial forestland or the owner's forest management plan.

Sec. 14. (1) Except as provided in subsection (2), a person who violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(2) A person who harvests, cuts, or removes forest products having a value of more than \$2,500.00 in violation of this act is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$10,000.00, or both.

(3) Upon conviction for a violation of this act, the court may declassify all or a portion of the commercial forest pursuant to section 13.

Section 2. Sections 1a, 12, and 13b of Act No. 94 of the Public Acts of 1925, being sections 320.301a, 320.312, and 320.313b of the Michigan Compiled Laws, are repealed.

Section 3. (1) Except as provided in subsections (2) and (3), this amendatory act shall take effect January 1, 1994.

(2) Section 13a, as amended by this amendatory act, shall take effect on January 1, 1995.

(3) Section 7b, as added by this amendatory act, shall take immediate effect.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved -----

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Governor.