

Act No. 280  
Public Acts of 1990  
Approved by the Governor  
December 11, 1990  
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December 11, 1990

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1990**

Introduced by Reps. Hickner, Sofio, Stupak, Ouwinga, Gagliardi, Gnodtke, Johnson, Pitoniak, Jacobetti, Weeks, Brown, Stacey, Gubow, Webb and Harrison

# **ENROLLED HOUSE BILL No. 4688**

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.

*The People of the State of Michigan enact:*

Sec. 1. This act shall be known and may be cited as the "Michigan forest finance authority act".

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) "Notes" means notes of the authority issued as provided in this act, including commercial paper.
- (e) "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 commission of natural resources. 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 of the department of natural resources, 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), a member of the board shall enter office and exercise the duties of office. A member of the board shall qualify by taking and filing the constitutional oath of 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 such 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 shall be 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 funds 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 authority having charge of its books or account, or stated in a written report by 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. Four members of the board shall constitute a quorum for the transaction of business. An action of the board shall require a concurring vote by a majority of the members present at the meeting. 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 of the department of natural resources. 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 director of the department of natural resources.

(3) The authority shall contract with the department of natural resources 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 of natural resources 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 director of the department of natural resources, 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, 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 of natural resources as these guidelines, rules, and objectives are amended by the department of natural resources.

(2) Funds managed by the authority shall be applied in a manner consistent with the land management planning policies of the department of natural resources 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 commission of natural resources, shall be used to assure that all forest values have been considered in selecting sites for investment with funds of the authority. The department of natural resources 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 authority may issue contracts for the cutting and sale of timber only upon approval by an authorized representative of the department of natural resources. Contracts for the cutting and sale of timber shall be consistent with the guidelines, rules, and objectives prescribed by the department of natural resources.

Sec. 8. (1) The department of natural resources 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) Upon the expiration of 180 days after the effective date of this act, the state's interest in all existing contracts granting timber cutting rights on state tax reverted lands shall be conveyed to the authority to be used for any of the purposes of this act subject to the restrictions of section 9.

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 shall not be in any way a debt or liability of the state and shall not create or constitute any indebtedness, liability, or obligations of the state or be 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 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 shall not be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

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 shall be authorized by resolution of the authority and shall comply with all of the following:

- (a) Be issued in 1 or more series.
- (b) Bear the date or dates of issuance.
- (c) Mature at the time or times not exceeding 50 years from the date of their issuance.
- (d) Provide sinking fund payments.
- (e) Bear interest at a fixed or variable rate or rates of interest per annum or at no interest.
- (f) Be in a denomination or denominations.
- (g) Be in the form, either coupon or registered.
- (h) Carry the conversion or registration privileges.
- (i) Have the rank or priority.
- (j) Be executed in the manner.
- (k) Be transferable.
- (l) Be payable from the sources in the medium of payment at the place or places within or without the state.
- (m) Be subject to redemption at the option of the authority or the holder and with the terms and redemption premiums, as the resolution provides.

(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 shall not require the approval of the state treasurer under Act No. 202 of the Public Acts of 1943 and shall not be required to be registered. The bond or note of the authority shall not be 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.

Sec. 12. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit,

lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of notes or bonds.

— 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 section 7.
- (h) Any power, duty, function, or responsibility of the authority.

Sec. 14. A resolution authorizing bonds or notes may provide for all of the following that shall be part of the contract with the holders of the bonds or notes:

- (a) A pledge to any payment or purpose all or any part of authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders. The authority shall not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber. This subdivision does not prohibit the authority from pledging any revenues derived from the sale of timber or any contracts for the cutting of timber.
- (b) A pledge of a loan, grant, or contribution from the federal or state government.
- (c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this act.
- (d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured.
- (e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.
- (f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.
- (g) Vest in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this act or to limit the rights, powers, and duties of the trustee.
- (h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised in the event that the authority fails or refuses to comply with this act or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:
  - (i) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the rights of the bondholders or noteholders, and require the authority to carry out any other agreements with the holders of those notes or bonds and to perform the authority's duties under this act.
  - (ii) Bring suit upon the notes or bonds.
  - (iii) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.
  - (iv) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the notes or bonds.
  - (v) Declare the notes or bonds due and payable, and if all defaults shall be made good, then, as permitted by such resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character, which in any way affect the security of protection of the bonds or notes.

Sec. 15. A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and then received by the authority immediately shall be subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge shall be valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority, and shall be valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created need be recorded in order to establish and perfect a lien or security interest in the property so pledged.

Sec. 16. Neither the members of the authority nor any person executing bonds or notes issued under this act or any person executing any agreement on behalf of the authority shall be liable personally on the bonds or notes by reason of their issuance.

Sec. 17. The authority may purchase bonds or notes of the authority out of funds or money of the authority available for that purpose. The authority may hold, cancel, or resell authority bonds or notes subject to or in accordance with an agreement with holders of authority bonds or notes.

Sec. 18. The state pledges to and agrees with the holders of bonds or notes issued under this act that the state shall not limit or restrict the rights vested in the authority by this act to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

Sec. 19. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this act, and authority bonds or notes shall be authorized security for public deposits.

Sec. 20. Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is considered to be for a public purpose. The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state. Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

Sec. 21. This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

Sec. 22. The authority may promulgate rules as necessary to implement this act.

Sec. 23. Section 1 of Act No. 268 of the Public Acts of 1945, being section 320.71 of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.