

SENATE BILL No. 365

April 25, 1989, Introduced by Senators IRWIN, BINSFELD
and MACK and referred to the Committee on Natural
Resources and Environmental Affairs.

A bill 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:

- 1 Sec. 1. This act shall be known and may be cited as the
- 2 "Michigan forest finance authority act".
- 3 Sec. 2. As used in this act:

1 (a) "Authority" means the Michigan forest finance authority
2 created in section 3.

3 (b) "Board" means the board of directors of the Michigan
4 forest finance authority, except where the context clearly
5 requires a different definition.

6 (c) "Bonds" means bonds of the authority issued as provided
7 in this act.

8 (d) "Notes" means notes of the authority issued as provided
9 in this act, including commercial paper.

10 (e) "Rule" means a rule promulgated pursuant to the adminis-
11 trative procedures act of 1969, Act No. 306 of the Public Acts of
12 1969, being sections 24.201 to 24.328 of the Michigan Compiled
13 Laws.

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

22 Sec. 4. (1) The authority shall be governed by a board of
23 directors consisting of the director of the department of natural
24 resources, the state treasurer, and 3 residents of the state
25 appointed by the governor with the advice and consent of the
26 senate. The 3 resident directors shall serve terms of 3 years.
27 In appointing the initial 3 resident members of the board, the

1 governor shall designate 1 to serve for 3 years, 1 to serve for 2
2 years, and 1 to serve for 1 year.

3 (2) Upon appointment to the board under subsection (1), a
4 member of the board shall enter office and exercise the duties of
5 office. A member of the board shall qualify by taking and filing
6 the constitutional oath of office.

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

13 (4) Members of the board and officers and employees of the
14 authority shall be subject to Act No. 317 of the Public Acts of
15 1968, being sections 15.321 to 15.330 of the Michigan Compiled
16 Laws. A member of the board or an officer, employee, or agent of
17 the funds of the authority shall discharge the duties of his or
18 her position in a nonpartisan manner, with good faith, and with
19 that degree of diligence, care, and skill that an ordinarily pru-
20 dent person would exercise under similar circumstances in a like
21 position. In discharging his or her duties, a member of the
22 board or an officer, employee, or agent of the authority, when
23 acting in good faith, may rely upon the opinion of counsel for
24 the authority, upon the report of an independent appraiser
25 selected with reasonable care by the board, or upon financial
26 statements of the authority represented to the member of the
27 board, officer, employee, or agent to be correct by the officer

1 of authority having charge of its books or account, or stated in
2 a written report by a certified public accountant or the firm of
3 the accountants fairly to reflect the financial condition of the
4 authority.

5 (5) The board shall organize and make its own policies and
6 procedures. The board shall conduct all business at public meet-
7 ings held in compliance with the open meetings act, Act No. 267
8 of the Public Acts of 1976, being sections 15.261 to 15.275 of
9 the Michigan Compiled Laws. Public notice of the time, date, and
10 place of each meeting shall be given in the manner required by
11 Act No. 267 of the Public Acts of 1976. Four members of the
12 board shall constitute a quorum for the transaction of business.
13 An action of the board shall require a concurring vote by a
14 majority of the members present at the meeting. A state officer
15 or director who is a member of the board may designate a repre-
16 sentative from his or her department to serve instead of that
17 state officer or director as a voting member of the board for 1
18 or more meetings.

19 Sec. 5. (1) The authority shall elect a chairperson and a
20 vice-chairperson from among its members. The state forester
21 shall serve as the executive director of the authority. The
22 authority may employ legal and technical experts, and other offi-
23 cers, agents, or employees, permanent or temporary, paid from the
24 funds of the authority. The authority shall determine the quali-
25 fications, duties, and compensation of those it employs, but an
26 employee shall not be paid a higher salary than the director of
27 the department of natural resources. The authority may delegate

1 to 1 or more members, officers, agents, or employees any powers
2 or duties it considers proper.

3 (2) The budgeting, procurement, and related functions of the
4 authority shall be performed under the direction and supervision
5 of the director of the department of natural resources.

6 (3) The authority shall contract with the department of nat-
7 ural resources for the purpose of maintaining and improving the
8 rights and interests of the authority.

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

17 (5) The accounts of the authority shall be subject to annual
18 audits by the state auditor general or a certified public accoun-
19 tant appointed by the auditor general. Records shall be main-
20 tained according to generally accepted auditing principles.

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

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

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

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

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

10 (e) With the prior consent of the director of the department
11 of natural resources, solicit and accept gifts, grants, loans,
12 and other aid from any person, or the federal, state, or local
13 government or any agency of the federal, state, or local govern-
14 ment, or participate in any other way in a federal, state, or
15 local government program.

16 (f) Acquire standing timber, timber cutting rights, and the
17 state's interest in contracts granting cutting rights, on state
18 tax reverted lands, to be used for any of the purposes provided
19 in this act subject to the restrictions of section 9. However,
20 the state shall not convey to the authority fee title to any
21 state forest lands.

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

24 (h) Invest money of the authority, at the board's discre-
25 tion, in instruments, obligations, securities, or property deter-
26 mined proper by the board, and name and use depositories for its
27 money.

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

6 (j) Indemnify and procure insurance indemnifying members of
7 the board from personal loss or accountability from liability
8 asserted by a person on bonds or notes of the authority, or from
9 any personal liability or accountability by reason of the issu-
10 ance of the bonds or notes, or by reason of any other action
11 taken or the failure to act by the authority.

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

16 Sec. 7. (1) The authority shall finance only forest manage-
17 ment operations and practices that follow the guidelines, rules,
18 and objectives prescribed and approved by the department of natu-
19 ral resources as these guidelines, rules, and objectives are
20 amended by the department of natural resources.

21 (2) Funds managed by the authority shall be applied in a
22 manner consistent with the land management planning policies of
23 the department of natural resources on lands that have been iden-
24 tified for forest management practices. The department of natu-
25 ral resources shall annually submit a list of activities and
26 practices allocated from the funds generated under this act for

1 the board's review and determination of consistency with the
2 purposes of this act.

3 (3) The authority shall issue contracts for the cutting and
4 sale of timber that follow the guidelines, rules, and objectives
5 prescribed and approved by the department of natural resources as
6 these guidelines, rules, and objectives are amended.

7 Sec. 8. (1) The department of natural resources shall act
8 as the agent for the authority in contracting for the cutting and
9 sale of timber or other forest management operations and prac-
10 tices undertaken by the authority.

11 (2) Upon the expiration of 180 days after the effective date
12 of this act, the state's interest in all existing contracts
13 granting timber cutting rights on state tax reverted lands shall
14 be conveyed to the authority to be used for any of the purposes
15 of this act subject to the restrictions of section 9.

16 Sec. 9. (1) The authority may authorize and issue its bonds
17 or notes payable solely from the revenues or funds available to
18 the authority. Bonds and notes of the authority shall not be in
19 any way a debt or liability of the state and shall not create or
20 constitute any indebtedness, liability, or obligations of the
21 state or be or constitute a pledge of the faith and credit of the
22 state. All authority bonds and notes shall be payable solely
23 from revenues or funds pledged or available for their payment as
24 authorized in this act. Each bond and note shall contain on its
25 face a statement to the effect that the authority is obligated to
26 pay the principal of and the interest on the bond or note only
27 from revenues or funds of the authority and that the state is not

1 obligated to pay that principal or interest and that neither the
2 faith and credit nor the taxing power of the state is pledged to
3 the payment of the principal of or the interest on the bond or
4 note.

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

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

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

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

21 (c) The payment of interest on the bonds or notes for a
22 period as the authority determines.

23 (d) The payment of all other costs or expenses of the
24 authority incident to and necessary or convenient to carry out
25 its corporate purposes and powers.

26 (2) The bonds or notes of the authority shall not be a
27 general obligation of the authority but shall be payable solely

1 from the revenues or funds, or both, pledged to the payment of
2 the principal of and interest on the bonds or notes as provided
3 in the resolution authorizing the bond or note.

4 (3) The bonds or notes of the authority shall be authorized
5 by resolution of the authority and shall comply with all of the
6 following:

7 (a) Be issued in 1 or more series.

8 (b) Bear the date or dates of issuance.

9 (c) Mature at the time or times not exceeding 50 years from
10 the date of their issuance.

11 (d) Provide sinking fund payments.

12 (e) Bear interest at a fixed or variable rate or rates of
13 interest per annum or at no interest.

14 (f) Be in a denomination or denominations.

15 (g) Be in the form, either coupon or registered.

16 (h) Carry the conversion or registration privileges.

17 (i) Have the rank or priority.

18 (j) Be executed in the manner.

19 (k) Be transferable.

20 (l) Be payable from the sources in the medium of payment at
21 the place or places within or without the state.

22 (m) Be subject to redemption at the option of the authority
23 or the holder and with the terms and redemption premiums, as the
24 resolution provides.

25 (4) If a member of the board or any officer of the authority
26 whose signature or facsimile of his or her signature appears on
27 the note, bond, or coupon ceases to be a member or officer before

1 the delivery of that note or bond, the signature shall continue
2 to be valid and sufficient for all purposes, as if the member or
3 officer had remained in office until the delivery.

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

16 Sec. 11. (1) The authority may provide for the issuance of
17 bonds or notes in the amounts the authority considers necessary
18 for the purpose of refunding bonds or notes of the authority then
19 outstanding, including the payment of any redemption premium and
20 interest accrued or to accrue to the earliest or subsequent date
21 of redemption, purchase, or maturity of these bonds or notes.
22 The proceeds of bonds or notes issued for the purpose of refund-
23 ing outstanding bonds or notes may be applied by the authority to
24 the purchase or retirement at maturity or redemption of outstand-
25 ing bonds or notes either on the earliest or subsequent redemp-
26 tion date, and pending such applications, may be placed in escrow
27 to be applied to the purchase or retirement at maturity or

1 redemption on the date or dates determined by the authority.
2 Pending such application and subject to agreements with note-
3 holders or bondholders, the escrowed proceeds may be invested and
4 reinvested in the manner the authority determines, maturing at
5 the date or times as appropriate to assure the prompt payment of
6 the principal, interest, and redemption premium, if any, on the
7 outstanding bonds or notes to be refunded. After the terms of
8 the escrow have been fully satisfied and carried out, the balance
9 of the proceeds and interest, income, and profits, if any, earned
10 or realized on the investment of the proceeds shall be returned
11 to the authority for use by the authority in any lawful manner.

12 (2) In the resolution authorizing bonds or notes to refund
13 bonds or notes, the authority may provide that the bonds or notes
14 to be refunded shall be considered paid when there has been
15 deposited in escrow, money or investment obligations that would
16 provide payments of principal and interest adequate to pay the
17 principal and interest on the bonds to be refunded, as that prin-
18 cipal and interest becomes due whether by maturity or prior
19 redemption and that, upon the deposit of the money or investment
20 obligations, the obligations of the authority to the holders of
21 the bonds or notes to be refunded shall be terminated except as
22 to the rights to the money or investment obligations deposited in
23 trust.

24 Sec. 12. (1) The authority may authorize and approve an
25 insurance contract, an agreement for a line of credit, a letter
26 of credit, a commitment to purchase notes or bonds, an agreement

1 to remarket bonds or notes, and any other transaction to provide
2 security to assure timely payment of a bond or note.

3 (2) The authority may authorize payment from the proceeds of
4 the notes or bonds, or other funds available, of the cost of
5 issuance including, but not limited to, fees for placement,
6 charges for insurance, letters of credit, lines of credit, remar-
7 keting agreements, reimbursement agreements, or purchase or sales
8 agreements or commitments, or agreements to provide security to
9 assure timely payment of notes or bonds.

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

15 (a) Sell and deliver, and receive payment for notes or
16 bonds.

17 (b) Refund notes or bonds by the delivery of new notes or
18 bonds whether or not the notes or bonds to be refunded have
19 matured or are subject to redemption.

20 (c) Deliver notes or bonds, partly to refund notes or bonds
21 and partly for any other authorized purpose.

22 (d) Buy notes or bonds so issued and resell those notes or
23 bonds.

24 (e) Approve interest rates or methods for fixing interest
25 rates, prices, discounts, maturities, principal amounts, denomi-
26 nations, dates of issuance, interest payment dates, redemption
27 rights at the option of the authority or the holder, the place of

1 delivery and payment, and other matters and procedures necessary
2 to complete the transactions authorized.

3 (f) Direct the investment of any and all funds of the
4 authority.

5 (g) Approve the terms of a contract, including, but not
6 limited to, a contract for the sale or cutting of timber, and
7 execute and deliver the contract subject to the restrictions of
8 section 7.

9 (h) Any power, duty, function, or responsibility of the
10 authority.

11 Sec. 14. A resolution authorizing bonds or notes may pro-
12 vide for all of the following that shall be part of the contract
13 with the holders of the bonds or notes:

14 (a) A pledge to any payment or purpose all or any part of
15 authority revenues or assets to which its right then exists or
16 may thereafter come into existence, and of money derived from the
17 revenues or assets, and of the proceeds of bonds or notes or of
18 an issue of bonds or notes, subject to agreements with bondhold-
19 ers or noteholders as they may exist.

20 (b) A pledge of a loan, grant, or contribution from the fed-
21 eral or state government.

22 (c) The establishment and setting aside of reserves or sink-
23 ing funds and the regulation and disposition of reserves or sink-
24 ing funds subject to this act.

25 (d) Authority for and limitations on the issuance of addi-
26 tional bonds or notes for the purposes provided for in the

1 resolution and the terms upon which additional notes or bonds may
2 be issued and secured.

3 (e) The procedure, if any, by which the terms of a contract
4 with noteholders or bondholders may be amended or abrogated, the
5 number of noteholders or bondholders who are required to consent
6 to the amendment or abrogation, and the manner in which the con-
7 sent may be given.

8 (f) A contract with the bondholders as to the custody, col-
9 lection, securing, investment, and payment of any money of the
10 authority. Money of the authority and deposits of money may be
11 secured in the manner determined by the authority. Banks and
12 trust companies may give security for such deposits.

13 (g) Vest in a trustee, or a secured party, such property,
14 income, revenues, receipts, rights, remedies, powers, and duties
15 in trust or otherwise as the authority determines necessary or
16 appropriate to adequately secure and protect noteholders and
17 bondholders or to limit or abrogate the right of the holders of
18 bonds or notes of the authority to appoint a trustee under this
19 act or to limit the rights, powers, and duties of the trustee.

20 (h) Provide to a trustee or the noteholders or bondholders
21 remedies that may be exercised in the event that the authority
22 fails or refuses to comply with this act or defaults in an agree-
23 ment made with the holders of an issue of bonds or notes, which
24 may include any of the following:

25 (i) By mandamus or other suit, action, or proceeding at law
26 or in equity, to enforce the rights of the bondholders or
27 noteholders, and require the authority to carry out any other

1 agreements with the holders of those notes or bonds and to
2 perform the authority's duties under this act.

3 (ii) Bring suit upon the notes or bonds.

4 (iii) By action or suit, require the authority to account as
5 if it were the trustee of an express trust for the holders of the
6 notes or bonds.

7 (iv) By action or suit in equity, enjoin any acts or things
8 which may be unlawful or in violation of the rights of the hold-
9 ers of the notes or bonds.

10 (v) Declare the notes or bonds due and payable, and if all
11 defaults shall be made good, then, as permitted by such resolu-
12 tion, to annul that declaration and its consequences.

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

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

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

6 Sec. 17. The authority may purchase bonds or notes of the
7 authority out of funds or money of the authority available for
8 that purpose. The authority may hold, cancel, or resell author-
9 ity bonds or notes subject to or in accordance with an agreement
10 with holders of authority bonds or notes.

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

22 Sec. 19. Notwithstanding any restriction contained in any
23 other law, the state and a public officer, local unit of govern-
24 ment, or agency of the state or a local unit of government; a
25 bank, trust company, savings bank and institution, savings and
26 loan association, investment company, or other person carrying on
27 a banking business; an insurance company, insurance association;

1 or other person carrying on an insurance business; or an
2 executor, administrator, guardian, trustee, or other fiduciary
3 may legally invest funds belonging to them or within their con-
4 trol in bonds or notes issued under this act, and authority bonds
5 or notes shall be authorized security for public deposits.

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

15 Sec. 21. This act shall be construed liberally to effectuate
16 the legislative intent and the purposes as complete and inde-
17 pendent authority for the performance of each and every act and
18 thing authorized by this act and all powers granted shall be
19 broadly interpreted to effectuate the intent and purposes and not
20 as a limitation of powers.

21 Sec. 22. The authority shall promulgate rules as necessary
22 to implement this act. The authority shall submit all such rules
23 to the joint committee on administrative rules prior to
24 January 1, 1990.

25 Sec. 23. Effective upon the expiration of 180 days after
26 the effective date of this act, section 1 of Act No. 268 of the

1 Public Acts of 1945, being section 320.71 of the Michigan
2 Compiled Laws, is repealed.