

# Legislative Analysis



## NATURAL RESOURCES TRUST FUND: BONDS AND NOTES

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### House Joint Resolution ZZ

### House Bill 6002

Sponsor: Rep. Steven Lindberg

Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 5-6-08

## A SUMMARY OF HOUSE RESOLUTION ZZ & HOUSE BILL 6002 AS INTRODUCED 4-22-08

Article IX, Section 35 of the Michigan Constitution establishes the Michigan Natural Resources Trust Fund into which revenues from the extraction of nonrenewable resources (such as oil and gas, ore, and other minerals) from state-owned land, with some exceptions, are deposited. Money in the Fund must be spent in accordance with Article IX, Section 35 and with corresponding provisions contained in Part 19 (Natural Resources Trust Fund) of the Natural Resources and Environmental Protection Act (NREPA).

House Joint Resolution ZZ would amend the State Constitution:

(1) To allow the board of the Michigan Natural Resources Trust Fund to issue bonds and notes, payable from the allowable expenditures of the Fund, for the purposes of Section 35 (to acquire land or land rights for recreation or protection; to develop public recreation facilities; and to administer the Fund). Repayment of bonds and notes would be added as an allowable administrative purpose of the Fund.

(2) To allow two-thirds, rather than one-third, of annual revenues (exclusive of interest and earnings) to be spent in subsequent fiscal years for authorized purposes.

House Bill 6002 would amend Part 19 of NREPA to create the Michigan Natural Resources Trust Fund Authority, and to prescribe its powers and duties, including the issuance of bonds and notes. The bill is tie-barred to the joint resolution. A similar bill and joint resolution (Senate Bill 1257 and Senate Joint resolution M) are pending in the Senate.

### DETAILED SUMMARY:

More details about House Bill 6002 are provided below.

### House Bill 6002

Purposes of Fund expenditures. Fund moneys (whether interest and earnings or annual revenues) may only be spent for the following purposes: (1) to acquire land or land rights

for recreational uses or protection of the land; (2) to develop public recreation facilities; or (3) to administer the Fund, including making payments in lieu of taxes. The bill would also authorize the repayment of bonds or notes issued by the Fund as an allowable administrative expenditure under this section.

Allowable expenditures of annual revenues (other than interest and earnings) in future state fiscal years. Under Section 1903, there is no limit on the amount of interest and earnings that may be spent in future state fiscal years. Currently, however, only one third of the revenue received by the Fund (other than interest and earnings) in any state fiscal year may be spent in future state fiscal years for one of the allowable purposes until the fiscal year in which the amount of money in the Fund (not counting interest and earnings and authorized expenditures) exceeds \$500 million. The bill would authorize the expenditure of two thirds, rather than one third, of annual revenues (exclusive of interest and earnings) in future state fiscal years.

Creation of the Authority. Section 1911 of the bill would create the Michigan Natural Resources Trust Fund Authority as a body corporate with the Department of Natural Resources (DNR). The Authority would be administered under the supervision of the DNR but would exercise its prescribed statutory powers, duties, and functions independently of the DNR. The Authority's budgeting, procurement, and related functions would be performed under the direction and supervision of the DNR. Its funds would be handled in the same manner and subject to the same laws as other state funds or as specified in a resolution authorizing the issuance of bonds and notes.

Governance. The Authority would be governed by the Board of the Natural Resources Trust Fund.

Board members; Authority officers, employees, and agents. Board members and Authority officers would be subject to Public Act 317 of 1968 (which restricts contracts with public entities in which a public servant would have a conflict of interest). In addition, board members and Authority officers, employees, and agents would be required to carry out their duties in a nonpartisan manner, in good faith, and with the diligence, care, and skill of an ordinarily prudent person in similar circumstances. When acting in good faith, members, officers, employees, and agents could rely on (1) the opinions of counsel; (2) the reports of independent appraisers selected with reasonable care; or (3) the financial statements of the Authority represented to be accurate by an appropriate officer, or stated in a written report by the Auditor General or by a certified public accountant or accounting firm. The Authority could employ, pay, delegate duties to, and determine the qualifications, duties and compensation of legal and technical experts and others. No employee could be paid a higher salary than the director.

Contract with DNR to improve rights and interests. The Authority would have to contract with the DNR to maintain and improve the rights and interests of the Authority.

Annual legislative report. The Authority would have to file a written report with the Legislature not more than 270 days after the end of a fiscal year, describing revenues received, the status of investments, and projects funded with bond proceeds.

Accounting; audits. The Authority would have to maintain its accounts according to generally accepted auditing principles and have annual audits.

Powers. Except as otherwise provided, the board would have broad authority to do all things necessary or convenient to implement the purpose, objectives, and provisions of Part 19 or as delegated to the board by other laws or executive orders, including, but not limited to, the power to (1) adopt a seal and bylaws; (2) sue and be sued; (3) borrow money and to issue negotiable revenue bonds and notes; (4) enter into contracts and other instruments related its duties or powers; (5) solicit and accept gifts, grants, loans from any person or federal, state, or local government or agency or to otherwise participate in a government program (with the prior approval of the DNR); (6) to obtain insurance; (7) to invest the authority's money in its discretion in instruments, obligations, securities, or property, and to name and use depositories for the money; (8) to contract for goods and services, to hire personnel, and to engage the services of private consultants, managers, legal counsel, and auditors payable out of the Authority's money subject to restrictions in Part 19; (9) to indemnify and obtain insurance indemnifying board members from personal loss or liability related to bonds or notes issued by the Authority or other actions taken or not taken by the Authority; and (10) to do all other things necessary or convenient to achieve the objectives and purposes of the Authority, Part 19, related rules, or other related laws.

State's liability to repay Authority's bonds and notes. The Authority could only authorize and issue bonds or notes payable solely from its revenues or funds pledged or available for their payment as authorized by Part 19. The Authority's bonds and notes would not be a debt or liability of the state or constitute a pledge of the state's faith and credit. Each bond or note would have to contain a statement to that effect.

Authority's expenses. All expenses incurred to carry out Part 19 would be payable solely from revenues or funds provided under Part 19. Part 19 would not authorize the Authority to incur any indebtedness or liability on behalf of or payable by the state.

Expenditure of proceeds from issuance of bonds or notes. Any of the Authority's revenues or funds that are not needed to repay bonds or notes, not required to be deposited to secure the Authority's bonds or notes, or not required for another matter included in the resolution authorizing an issuance would have to be used for the purposes of the Fund (i.e., the acquisition of land or land rights, the development of public recreation facilities, or the administration of the Fund). Any money derived from the proceeds of bonds or notes would have to be expended by the Authority in the manner prescribed in Part 19 and the resolution authorizing the indebtedness.

Issuances of bonds or notes by the Authority. The Authority could issue bonds or notes from time to time in principal amounts it considers necessary to provide funds for any purpose, including but not limited to, all of the following:

- The payment, funding, or refunding of principal, interest, or redemption premiums on bonds or notes issued by the Authority whether or not the bonds, notes, or interest have become due.

- The establishment or increase of reserves to secure or to pay bonds, notes or interest.
- The payment of the interest on the bonds or notes for a period determined by the Authority.
- The payment of all other costs or expenses of the Authority incident to and convenient to carry out its corporate purposes and powers.

Bonds or notes not a general obligation of the Authority. Bonds or notes issued by the Authority would not be a general obligation of the Authority but would be payable solely from the revenues or funds, or both, pledged to the payment of the principal and interest on the bonds or notes as provided in the resolution authorizing the bonds or notes.

Features of the bonds or notes. The Authority's bonds or notes:

- Would be authorized by resolution of the Authority.
- Would bear the date or dates of issuance.
- Could be tax-exempt or taxable for federal income tax purposes.
- Would be serial bonds, term bonds, or term and serial bonds.
- Would mature not more than 30 years from issuance.
- Could provide for sinking fund payments.
- Could provide for redemption at the option of the bondholder for any reason.
- Would bear interest at a fixed or variable rate, rates of interest per annum, or no interest.
- Would be registered bonds, coupon bonds, or both.
- Could contain a conversion feature.
- Could be transferable.
- Would have the form, denomination, and terms as determined by the Authority.

Continued validity of signatures. If a board member or Authority officer whose signature appears on a note, bond, or coupon ceased to be a member or officer before the delivery of the note or bond, the signature would remain valid for all purposes.

Sales price, discount, and type of sale. The Authority could determine the time for a sale of bonds or notes, and whether a sale was public or private, as well as the price and discount of the bonds or notes.

Applicability of other laws. The Authority's bonds and notes:

- Would *not* be subject to the Revised Municipal Finance Act.
- Would *not* be required to be filed under the Uniform Securities Act.
- *Would* be subject to the Agency Financing Reporting Act.

Issuance to refund outstanding bonds or notes. The bill would authorize the Authority to issue bonds or notes in amounts considered necessary for the purpose of refunding then-outstanding bonds or notes of the Authority, including the payment of any redemption premium and accrued interest or interest to accrue to the earliest or subsequent date of

redemption, purchase, or maturity. The Authority could apply the proceeds of bonds or notes to refund outstanding bonds or notes, and pending their use in this way, proceeds could be placed in escrow. Escrowed proceeds could be invested as determined by the Authority so as to mature at times appropriate for 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 escrowed proceeds, interest, and earnings would be returned to the Authority for its use "in any lawful manner."

Bonds or notes to be refunded considered paid when escrow money deposited. In a resolution authorizing bonds or notes to refund bonds or notes, the Authority could provide that the bonds or notes to be refunded would be considered paid when money or investment obligations were deposited into escrow adequate to pay the principal and interest on the bonds to be refunded, and that, upon the deposit of the money or investment obligations into escrow, the Authority's obligations to the holders of the bonds or notes to be refunded would be terminated except as to the rights to the money or investment obligations deposited in trust.

Insurance or forms of security. The Authority could authorize and approve an insurance contract, 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.

Costs of issuance. The Authority could authorize payment of the costs of issuance from the proceeds of the notes or bonds or other funds available. Costs of issuance could include placement fees, insurance charges, remarketing agreements, reimbursement agreements, purchase or sales commitments, or agreements to provide security to assure timely payment.

Authorized acts. Within limitations in the issuance resolution, the Authority could authorize a board member, the executive director, or other Authority officer to do one or more of the following:

- Sell, deliver, and receive payment for notes or bonds.
- Refund notes or bonds by the delivery of new notes or bonds whether or not the bonds to be refunded have matured or are subject to redemption.
- Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.
- Buy notes or bonds so issued and resell those notes or bonds.
- Approve interest rates or methods for fixing interest rates, discounts, maturities, principal amounts, denominations, issuance dates, interest payment dates, redemption rights at the option of the Authority or the holder, place and delivery of payment, and other matters and procedures necessary to complete authorized transactions.
- Direct the investment of any and all of the Authority's funds.
- Approve contracts, including, but not limited to, contracts for the sale or cutting of timber, and to execute and deliver the contracts subject to Part 19's restrictions.

- Approve the terms of any contract for insurance, 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.
- Perform any power, duty, function, or responsibility of the Authority.

Provisions that could be included in a resolution authorizing bonds or notes. A resolution authorizing bonds or notes could provide for all of the following, which would be a part of the contract with the holders:

- A pledge to any payment or purpose of 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 holders.
- A pledge of a loan, grant, or contribution from the federal or state government.
- The establishment and setting aside of reserves or sinking funds and their regulation and disposition subject to Part 19.
- Authority for and limitations on the issuance of additional bonds or notes for the purposes provided in the resolution and the terms on which additional notes or bonds could be issued and secured.
- The procedure, if any, by which the terms of a contract with holders could be amended or abrogated, the number of holders that would be required to consent, and the manner in which consent could be given.
- A contract with bondholders as to the custody, collection, securing, investment, and payment of any money of the Authority. Money of the Authority and deposits could be secured in the manner determined by the Authority, including security given by banks and trust companies.
- Vesting in a trustee or secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the Authority determines is necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders to appoint a trustee under Part 19 or to limit the rights powers, and duties of the trustee.
- Providing to a trustee or holders of bonds or notes broad remedies in case the Authority does not comply with Part 19 or defaults in an agreement with holders of bonds or notes, which could include specified legal and equitable rights and remedies, such as the right to sue, the right to enjoin unlawful acts, and "any other matters of like or different character that in any way affect the security [or] protection of the bonds or notes."

Pledges. A pledge by the Authority would be valid and binding from the time it was made against parties having any types of claims.

Personal liability. Neither Board members nor any person executing bonds or notes issued under Part 19 or any person executing an agreement on behalf of the Authority would be personally liable on the bonds or notes by reason of their issuance.

The Authority's purchase of its own bonds or notes. The Authority could purchase its own bonds or notes out of Authority funds available for that purpose. The Authority could hold, cancel, or resell authority bonds or notes subject to or in accordance with an agreement with holders of Authority bonds or notes.

State pledge to not limit the Authority's rights or holders' remedies. The state would pledge to the holders of bonds or notes issued under Part 19 that the state would not limit or restrict the rights vested in the Authority by Part 19 to fulfill the terms of an agreement with the holders of bonds or notes, or in any way impair the rights or remedies of the holders until the bonds and notes, and interest, and all costs and expenses in connection with an action or proceedings on behalf of holders were fully paid and discharged.

Investment by others in Authority bonds and notes. Notwithstanding any restriction contained in any other law, a broad range of entities—including the state, state agencies and officers, local units of government, banks, trust companies, insurance companies, and fiduciaries—would be specifically authorized to legally invest in bonds or notes issued by the Authority, and the bonds or notes would constitute authorized security for public deposits.

Tax issues. Property of the Authority is public property with an essential governmental function and purpose. Income of the Authority is deemed to be for a public purpose. Property of the authority and its income and operation would be exempt from all state and local taxes or special assessments. Bonds or notes issued by the Authority (and the interest and income from them) would be exempt from all state or local taxes.

Liberal construction. Part 19 is to be interpreted broadly to provide independent authority for the performance of allowed acts and powers granted are to be interpreted broadly.

Rules. The Authority could promulgate rules to implement Part 19.

## **FISCAL IMPACT:**

This bill would double the amount of revenue to the Natural Resource Trust Fund available for land acquisition and recreational land development from 1/3 to 2/3rds of annual revenue. Revenue obligated for bond debt service payments would be taken from the amount normally available for grants. The department reports that \$74,266,600 was deposited into the Michigan Natural Resources Trust Fund in FY 2006-07. Depending on the amount set aside for these purposes, the annual \$10,000,000 deposit from non-renewable mineral royalties to the State Park Endowment Fund could be affected. Administrative costs could increase if bonds are issued, pursuant to provisions included this bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.