

Legislative Analysis



HEALTHY FOREST INITIATIVE

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House Bill 5552 as introduced
Sponsor: Rep. David Palsrok

House Bill 5553 as introduced
Sponsor: Rep. Rich Brown

House Bill 5554 as introduced
Sponsor: Rep. Tom Casperson

Committee: Agriculture and Resource Management
First Analysis (3-10-04)

BRIEF SUMMARY: The three bills form the Michigan Healthy Forest for the 21st Century initiative to establish sustainable forestry rules, including third-party certification (House Bill 5554); alter the membership on the Michigan Forest Finance Authority (House Bill 5552); expand the permitted uses of money in the Forest Development Fund, including to make payments in lieu of property taxes (PILT) on state forestland (House Bill 5552); and establish pilot project areas for sustainable forest management in the state (House Bill 5553). The three bills are tie-barred to each other.

FISCAL IMPACT: The bills would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Predominantly covering the northern two-thirds of the state, Michigan's forestland provides the state and its citizens with economic, environmental, and recreational benefits. The diversity and sheer abundance of the state's forestland provides plant and animal wildlife with a healthy and viable habitat, filtration for air and water quality, and protection against soil erosion. In addition, the state's forestland provides the serene backdrop for the 'crown jewel' of the state's tourism industry. Visitors and residents are provided with the opportunity to enjoy myriad recreational activities, including camping, hiking, cross country skiing, mountain biking, horseback riding, and canoeing, in addition to fishing and hunting. Such forest-based tourism and recreation provides for 50,000 jobs and injects over \$3 billion into the state's economy. In addition, forest-related manufacturing industries – lumber, paper, and furniture companies - provide 150,000 jobs and contribute more than \$9 billion to the state's economy.

A 1993 statewide inventory conducted by the United States Department of Agriculture-Forest Service (USDA-FS), the fifth such study since 1935, determined that approximately 19.3 million acres (53 percent) of the state's 36.4 million acres was forestland. Timberland (commercial forestland) accounted for 18.6 million acres of the forestland – the fifth largest state acreage in the U.S. These figures represent an increase

of 933,000 acres (five percent) and 1.1 million acres (seven percent), respectively, from a previous inventory conducted in 1980. The state currently owns about four million acres of forestland, making it the largest state forest system in the country.

Timed in conjunction with the 100th Anniversary of the state forest system, the Republican legislative leaders announced in August 2003 the commencement of a series of legislative hearings on the stewardship and management of the state forest system. The hearings, conducted throughout the state in the fall of 2003, focused on (1) ways to promote and encourage the use of state forests for forest products, tourism, and outdoor recreation; (2) the needs of the forest products industry; (3) the needs of local communities, outdoor recreation interests, and the tourism industry; (4) assuring proper landscape management planning for state forests, incorporating biodiversity conservation goals, indicators, and measures; (5) establishing statutory standards for sustainable forestry, including potential third-party certification requirements; and (6) identifying environmentally sensitive areas needing additional protection. Legislation has been introduced in response to the legislative hearings

THE CONTENT OF THE BILL:

House Bill 5552

The bill would amend Part 505 (Michigan Forest Finance Authority) of the Natural Resources and Environmental Protection Act. Part 505 establishes the Michigan Forest Finance Authority, which is authorized to acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights on state tax revered lands and on other state forestland. The authority is governed by the director of the Department of Natural Resources, the state treasurer, and three residents appointed by the governor with the advice and consent of the Senate. The bill would remove the director from the board and would add the attorney general, the state forester, and another state resident. The bill would specify that of the four residents appointed to the board, one would be a member of an association representing the forest products industry, one would be a commercial logging contractor active in a forest products industry, one would be an owner of nonindustrial, private forestland, and one would be from the wood products manufacturing industry. The bill would increase from three to four the number of members constituting a quorum of the board and the number concurring that is necessary in order to take an action.

Part 505 established the Forest Development Fund to provide debt service on any bonds or notes issued by the board and for reforestation, forest protection, and timber stand improvement. The bill would add that money in the fund would be used for payments in lieu of taxes (PILT) on state forestland, the maintenance of sustainable forestry certification, and to provide forest management assistance to private landowners. Revenue for the fund is derived from the cutting and sale of timber on tax reverted land. The bill would permit the fund to receive money from any other source.

House Bill 5553

The bill would amend Part 525 (Disposal of Timber from State Lands) of the Natural Resources and Environmental Protection Act to require the Department of Natural Resources to establish four forest pilot project areas no later than December 31, 2004 based on certain scientific silvicultural specifications. Each project area would have to be between 200 and 640 acres, two would have to be located in the lower peninsula and two would have to be located in the upper peninsula, at least one would have to be composed primarily of hardwoods, and at least one would have to be composed primarily of softwoods.

After the project areas are established, the DNR would solicit bids for the management of each area. The DNR would enter into a three-year contract for the management of the project area, with the contract including provisions related to the marking of timber, the harvesting of timber, and the reforestation of timber cutover areas.

House Bill 5554

Under Part 525 of the Natural Resources and Environmental Protection Act, the Department of Natural Resources is authorized to dispose of timber from state lands under the department's control under such rules and regulations as prescribed by the department. The bill would, instead, require the DNR to manage state forestland in a manner consistent with the principles of sustainable forestry. In doing so, the DNR would (1) consider the economic, social, and environmental values of the forest and management practices; (2) conserve and protect forestland; (3) communicate with the public; (4) promote continual improvement in forestry management practices; and (5) consider the local community surrounding state forestland.

The bill would require the DNR to adopt (and update as necessary) a forestry development, conservation, and recreation management plan for state forests that is designed to assure a stable, nondeclining, sustainable timber supply from state forestland. The plan would include identifying the interests of the forest products industry, local communities, the recreation community, and the tourism industry, and identifying the annual productivity of state forestlands and management goals. In addition, the plan would have to include (1) methods to promote and encourage the use of state forestland for forest projects, tourism, and outdoor recreation; (2) a landscape management plan that incorporates biodiversity goals, indicators, and measures; (3) sustainable forestry practices; (4) identifying natural areas designated under Part 351 of NREPA; and (5) identifying the need for forest treatments to maintain and sustain a healthy forest and quality habitat for wildlife and environmentally sensitive species. The DNR would have to harvest timber from state forestland in accordance with the management plan. Proceeds from the sale of timber from state forestland would be deposited into the forest development fund.

The bill would also require the DNR to seek and maintain third-party certification that the management of state forestland is consistent with the principles of sustainable forestry. Beginning January 1, 2006, the DNR would have to ensure that all state forestland is certified.

Each January 1, the DNR would submit a report to the appropriate legislative standing committees and appropriations subcommittees concerning the number of harvestable acres determined by the certification program, the number of acres that were harvested, the number of cores of wood harvested, the status of management plan and any possible changes to the plan, and a description of the activities of forest pilot projects established under House Bill 5553.

BACKGROUND INFORMATION:

On February 11, 2004, Governor Granholm announced her administration's plan for the stewardship of state forests while attending the 2004 Governors' Forest Summit in Minnesota hosted by the Great Lakes Forest Alliance. The governor proposed that the Department of Natural Resources move forward with an effort to seek certification under three standards - the International Organization for Standardization (ISO) standard 14001, the Sustainable Forestry Initiative (SFI), and the Forest Stewardship Council (FSC). Apparently, the governor also plans to reestablish the Forest Advisory Council, which was eliminated in 1991.

The Sustainable Forestry Initiative (SFI) is a program of the American Forest and Paper Association that integrates long-term, sustained growth and harvesting of trees with environmental protection. In 1996, the legislature passed SCR 14 expressing support for SFI. There are five major principles of SFI, as follows:

- To practice sustainable forestry to meet present needs without compromising the ability of future generations to meet their own needs through the reforestation, managing, growing, nurturing, and harvesting of trees for useful products, and integrating those practices with the conservation of soil, air, and water quality, wildlife and fish habitat, and aesthetics.

- To use in one's own forests, and promote among other forest landowners, sustainable forestry practices that are economically and environmentally responsible.

- To protect forests from wildfire, pests, diseases, and other damaging agents in order to maintain and improve long-term forest health and productivity.

- To manage one's forests and lands of special significance in a manner that takes into account their unique qualities.

- To continually improve the practice of forest management and to monitor, measure, and report the performance of members in achieving the commitment to sustainable forestry.

These five overarching principles are further developed into 12 primary objectives of the SFI as follows: broadening the practice of sustainable forestry, ensuring prompt reforestation, protecting water quality, enhancing wildlife habitat, minimizing the visual impact of harvesting, protecting special sites, contributing to biodiversity, continuing the prudent use of chemicals to ensure forest health, fostering the practice of sustainable forestry on all forestlands, publicly reporting progress, and providing opportunities for public research.

The Forest Stewardship Council (FSC) was established in Mexico in 1993, and was designed to apply to all types of forest systems throughout the world. The FSC has certified more than 4.6 million acres in the United States and another 25 million acres worldwide. Certification is based upon 10 principles pertaining to the following: compliance with laws and other FSC principles, tenure and use rights and responsibilities, indigenous people's rights, benefits from forest, environmental impacts, a management plan, monitoring and assessment, maintenance of high conservation value forests, and plantations.

The International Organization for Standardization (ISO) is a federation of national standards entities from over 130 countries worldwide that develops voluntary technical standards designed to facilitate international trade. The ISO 14001 standard requires that organizations develop an Environmental Management System (EMS), which is used by the organization as a framework to identify and address the environmental aspects and implications of its activities. Certification under ISO 14001 requires that an organization complete the following requirements:

- Establish an appropriate environmental policy.
- Determine significant environmental implications of its activities, products, and services.
- Identify the relevant environmental legislative and regulatory requirements.
- Identify priorities and set appropriate environmental objectives.
- Establish a structure and programs to enable it to implement the policy and achieve the established objectives.
- Facilitate planning, control, monitoring, corrective action, and auditing and review activities to ensure that the policy is complied with and that the environmental management system remains appropriate.
- Be capable of adapting to changing circumstances.

FISCAL INFORMATION:

House Bill 5552 - The bill would have no fiscal impact on the state or local units of government.

House Bill 5553 - Program funding would be redirected from planned forest management efforts. No additional financial support would be necessary to carry out the provisions of the bill. There would be no fiscal impact on local governmental units.

House Bill 5554 - No new funding would be necessary to meet program expectations or to prepare the plans and reports required by the bill. There would be no fiscal impact on local governmental units.

ARGUMENTS:

For:

The main purpose of the package is to promote and encourage the use of state forests for forest products, tourism, outdoor recreation, and habitat protection, and to establish sustainable forestry practices (including third-party certification). During committee hearings, much was said about the fragile (and declining) state of the forest products industry in the state. The forest products industry supports more than 150,000 jobs and \$9 billion in economic activity. However, the industry continues to struggle, in large part because of a lack of supply and the increasing desire by consumers (generally, large retailers) to use wood from “sustainably managed” forests. According to committee testimony, Michigan harvests less than 40 percent of its annual growth, thereby creating a substantial timber surplus. This under-utilization of state timber harms an industry that, like other manufacturers, must compete nationally and internationally. According to information provided by the Pulp and Paperworkers Resource Council, the state has lost more than 35 pulp and paper mills from Detroit to Watersmeet in the last decade. The fortunes of the industry can turn around with the development of sustainable forestry management practices that take into consideration all of the appropriate uses, including timber production, for state forestland. While the move toward certification will not, in and of itself, lead to increased timber production, it is likely that the state’s forest products industry (timber producers) will lose market share, estimated at \$80 million per decade, without such certification.

House Bill 5554 would require the DNR to manage state forestland in a manner consistent with the principles of sustainable forestry and move forward with its plan to obtain third-party certification. In doing so, the DNR would have to (1) consider the economic, social, and environmental values of the forest and management practices; (2) conserve and protect forest land; (3) communicate with the public; (4) promote continual improvement in forestry management practices; and (5) consider the local community surrounding state forestland. Sustainable forestry initiatives, through certification, are designed to enhance and ensure the long-term viability of forests as sources of timber and plant and wildlife habitat within the context of the varied uses of forestland. The bill defines “sustainable forestry” to mean forestry practices that are designed to meet present

and future needs by employing a land stewardship ethic that integrates the reforestation, managing, growing, nurturing, and harvesting of trees for useful products with the conservation of soil, air and water quality, wildlife and fish habitat, and visual changes. This definition is consistent with the definition as used by the United Nations Conference on Environment and Development, Rio de Janeiro, 1992. Third-party certification is essentially a way to show that the state forestland is sustainably managed following the principles of the forest certification system. In announcing her push for forest certification, Governor Granholm stated, “[t]hrough the certification efforts I am asking the DNR to undertake, Michigan would have the largest amount of certified forestland in the nation by the end of 2005. While certification will help us compete and ensure that consumers are getting a quality product, it also sends a message that Michigan’s forests will continue to be expertly managed for sustained use.”

House Bill 5552 amends provisions in NREPA related to the Michigan Forest Finance Authority. The MFFA was established with the enactment of Public Act 280 of 1990 to provide financial support to the forest management activities of the Department of Natural Resources. At the time, it was reportedly argued that a large share of the DNR’s forest-related activities, though funded by receipts from timber sales, were not adequately supported, thereby resulting in situations where forest management practices, though very much necessary to provide for the growth and development of the state forest system, went largely unfunded and not acted upon. The financing authority was established to provide for a stable funding mechanism for these forest management practices. The board of the finance authority consists of three residents appointed by the governor with the advice and consent of the Senate, as well as other state officers. However, there are no assurances that the residents appointed to the board will have any experience or expertise in forestry management practices. In addition to adding a fourth resident to the board, the bill requires that resident-members of the board be members of the forest industry - more specifically, persons with backgrounds in the forest products industry, commercial logging, and the wood products manufacturing industry, and an owner of nonindustrial, private forestland.

In addition, the bill expands the allowable uses of money from the Forest Development Fund, to include payments in lieu of taxes (PILT) on state forestland, the maintenance of sustainable forestry certification, and to provide forest management assistance to private landowners. Assisting private landowners in forest management practices is essential to ensuring proper forest stewardship of all forestland in the state. While sustainably managed state forestland is a great goal to have, it is equally beneficial to have properly managed private forestland as well, particularly considering the fact that much of the forestland in the state is held by private landowners. Perhaps more importantly, the bill would permit money in the Forest Development Fund to be used for PILT payments, a perennially thorny issue that must be addressed. In many instances, PILT payments are a major source of local revenue for many northern Michigan communities, often equally important as revenue sharing. When the state fails to make the required payments these communities invariably suffer.

House Bill 5553 establishes four pilot projects for contracts for marking timber, harvesting timber, and replanting timber cutover areas in state forestland. These projects can help determine appropriate forest management practices for state forestland.

Against:

While the move toward sustainable forestry and third-party certification are great goals to have for the state's forest industry, House Bill 5554 is nonetheless problematic. The bill would require the department to adopt a forestry development, conservation, and recreation management plan for state forests that is designed to assure a stable, nondeclining, sustainable timber supply from state forestland. The problem with this language is that by stating that the plan should assure a nondeclining, sustainable timber supply, the bill seems to essentially place timber production from state forestlands over and above all other uses of state forestland, including recreational and environmental uses. This directly contravenes the mission of the DNR to balance all uses when managing state forestland.

Moreover, assuring a nondeclining timber supply is not always possible. If the DNR had to choose between wildlife habitat and a declining, yet sustainable timber supply, which would prevail? In addition, the definition of "state forest" - all state land owned or controlled by the department - is quite broad. This definition would encompass state game areas and other types of land that are clearly not forestland, and should not be treated as such. These various types of land have different uses and management goals. Perhaps most importantly, such a broad definition might jeopardize state fish and wildlife money. Also, the bill defines "certification program" to mean a program that develops specific standards that measure whether forest management practices are consistent with the principles of sustainable forestry. The problem with this definition is that certification programs encompass much more than sustainable forestry initiatives.

There is some concern that the legislative mandate to have all state forestland certified by 2006 may be too burdensome on the department. While the department has been working on certification for quite some time and with the goal of being dually certified (FSC and SFI) by 2005, the process is quite costly (particularly with recent budget constraints) and provides the department with no flexibility in working with the certifying entities. Moreover, while many other states are moving toward certification, none has been mandated to do so.

In addition, references to "plantations" should be removed from the bills, as the state is not in the business of tree farming, but is managing the state forest system for varied uses. Also, the definition of "sustainable forestry" should also include managing forest land keeping in mind the lands recreational and tourism uses and values. This is more all encompassing and recognizes the unique and important role the state forest system serves in these two industries.

Against:

There are many problems with House Bill 5552. First, the bill provides that the state forester would be the person, with appropriate qualifications, who is designated as such by the director of the department *based upon the recommendation* of the board of the Michigan Forest Finance Authority. The duties of the state forester go well beyond the scope of the finance authority board, and include overseeing several federal programs. In addition, the state forester would be a member of the board and would now be hired based on the recommendation of the board itself. This presents a serious problem if the state forester were to refuse to go along with the actions of the board or otherwise creates a “problem”. Also, the bill does not explicitly provide the board with the authority to recommend candidates for the position of state forester, nor does it contain any provision about what would happen if the director hired someone against the wishes of the board? If the board’s wishes prevail, who really is the head of the department?

There is also some concern about the revised membership of the board. First, the bill removes the director of the DNR from the board and replaces him or her with the state forester. However, the director of the department is the best departmental representative for the board, as he or she has knowledge of and interest in all of the department’s activities, not just forest stewardship. Secondly, and perhaps more importantly, the resident members of the board are not representative of all forest interests. As written, the resident members of the board would include persons with backgrounds in the forest products industry, commercial logging, and the wood products manufacturing industry. While the apparent purpose to specifically designate members of the board so as to make sure forest interests are properly heard, the proposed membership is unbalanced. There is no consideration for persons with expertise in plant and wildlife habitat, soil and water quality, or recreational uses of state forestland. If the principle of sustainable forestry is to manage state forestland in a manner that considers the varied uses of the forest, the membership of the board should also include the varied uses of state forestland.

Perhaps most important of all, representatives from the Department of Natural Resources testified that the Forest Development Fund could not support making PILT payments. As is stands, the fund already operates at a structural deficit and can hardly support existing activities, let alone something as costly as PILT payments. Overall, say critics, this bill seems to put the forest products industry in charge of the state forest system, a system that was established and is maintain by the DNR for the benefit of all state residents (and future generations) by balancing all of the varied uses of the land.

POSITIONS:

The Michigan Forest Products Council indicated that it supports the bills. (2-24-04)

The Michigan Association of Counties indicated that it supports the bills. (2-24-04)

The Michigan Farm Bureau supports the concept of the bills. (2-24-04)

The Michigan Townships Association supports the bills. (2-24-04)

The Michigan Association of Timbermen indicated that it supports the bills. (2-24-04)

Louisiana-Pacific indicated that it supports the bill. (2-24-04)

Smurfit-Stone Container Corporation indicated that it supports the bills. (2-24-04)

The Michigan Association of Conservation Districts indicated that it is neutral on the bills. (2-24-04)

The Department of Natural Resources opposes the bills. (2-24-04)

The Sierra Club indicated that it opposes HB 5552 and 5553, and is neutral on HB 5554. (2-24-04)

The Michigan Environmental Council indicated that it opposes the bills. (2-24-04)

The Michigan United Conservation Clubs indicated that it opposes the bills. (2-24-04)

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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.