

# Legislative Analysis



## PREFERENCE FOR WOOD OR PAPER PRODUCTS FROM SUSTAINABLY MANAGED FORESTS

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**House Bill 5665 as enrolled**

**Public Act 249 of 2004**

**Sponsor: Rep. Ken Bradstreet**

**House Committee: Agriculture and Resource Management**

**Senate Committee: Agriculture, Forestry and Tourism**

### **Second Analysis (12-28-04)**

**BRIEF SUMMARY:** The bill would amend the Management and Budget Act to require the DMB to give preference to wood or paper products from sustainably managed forests when it purchases wood or paper products.

**FISCAL IMPACT:** The bill would not have a fiscal impact on the state or on local governmental units.

### **THE APPARENT PROBLEM:**

The Department of Management and Budget (DMB) acts as the main purchaser of goods and services for use by state entities unless the legislature has expressly provided otherwise. The Management and Budget Act (Public Act 431 of 1984) imposes certain restrictions on state purchasing. For example, all other things being equal, preference must be given to products manufactured or services offered by Michigan-based firms. The DMB is also required to solicit competitive bids from the private sector whenever practical as a means of efficiently and effectively meeting the state's needs.

In recent years, other procurement measures have been placed in statute in order to promote state policies. Most notably, Public Act 413 of 1988 amended the Management and Budget Act to require, with some exceptions, that a percentage of all supplies, materials, and equipment be made from recycled materials. Under current law, 50 percent of all paper products and 20 percent of all other supplies, materials, and equipment purchased or contracted for must be made of recycled materials. Proponents of the requirement believed these purchase requirements would promote sound environmental policies and the stewardship of state lands, as well as ease pressures on the state's overburdened landfills.

Along similar lines, in response to the growing emphasis on the importance of proper forest management techniques, and to foster proper stewardship of state forestlands, legislation has been introduced to add a preference in state purchasing for wood or paper products derived from sustainably managed forests.

## ***THE CONTENT OF THE BILL:***

House Bill 5665 would amend the Management and Budget Act to require the DMB, in addition to other purchasing requirements in current law, when purchasing wood or paper products, to give preference to paper products derived from “sustainably managed forests or procurement systems”. The added requirements would begin October 1, 2006.

That term would refer to forests or procurement systems certified by an independent third party under one of the following certification programs:

- The Sustainable Forestry Initiative/ American Forest and Paper Association;
- The American Tree Farm Systems/ American Forest Foundation;
- The Canadian Standards Association’s Sustainable Forest Management System Standards;
- The Forest Stewardship Council;
- The Pan-European Forest Certification;
- The Finnish Forest Certification System;
- The United Kingdom Woodlands Assurance Scheme; and
- The International Organization for Standardization (ISO) standard 14001.

The bill also specifies that paper or forest product companies that purchase raw materials from or through third parties can reasonably rely on the representations of landowners, vendors, or brokers regarding whether the materials derive from sustainably managed forest or procurement systems.

MCL 18.1261c

## ***BACKGROUND INFORMATION:***

### **Previous Legislation**

The bill is a re-introduction of House Bill 5952 of the 2001-2002 legislative session, which passed both houses of the legislature in the fall of 2002, but was vetoed by Governor Engler on December 31, 2002. In his veto message to the House of Representatives, Governor Engler said, in part, “I am returning Enrolled House Bill 5952 to you without my signature because it would impose an undue administrative burden on the Department of Management and Budget and future administrations. Under the provisions of Enrolled House Bill 5952, the Department of Management and Budget would be required to ensure its purchases of paper and wood products complied with one or more of eight different standards for sustainable forest areas and resulting products. The State of Michigan would have to verify whether numerous suppliers and vendors complied with at least one standard, and would be subject to litigation for improperly classifying vendors accordingly. Moreover, unlike present state law on the purchase of products with recycled materials, HB 5952 would require the state to give preference to wood and paper products meeting these standards even if their costs were prohibitive or they were not readily available.”

The principal difference between the bill from last session and the current bill is that the current bill allows paper and forest product companies to rely on the representation of others that the products are from sustainably managed forests.

### **Forest Certification Initiatives**

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 attempt 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). Reportedly, the governor also plans to reestablish the Forest Advisory Council, which was eliminated in 1991.

Earlier this session, the legislature and governor enacted Public Act 125 of 2004 (House Bill 5554), which is part of the Michigan Healthy Forest for the 21<sup>st</sup> Century Initiative. Among other things, the act requires the Department of Natural Resources to seek and maintain third-party certification that the management of state forestland is consistent with the principles of sustainable forestry. The DNR would have to ensure all state forestland is certified beginning January 1, 2006.

### **Michigan's Forest Industry**

Covering much of 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 a healthy plant and animal wildlife habitat, filtration for air and water quality, and protection against soil erosion. In addition, the state's forestland provides the serene backdrop for the state's tourism industry. Visitors and residents have 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 is said to support 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 perhaps 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

## **Sustainable Forest Initiative**

The Sustainable Forest 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 the Sustainable Forest Initiative. There are five major principles of the 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 improvements in wood utilization, 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.

## **American Tree Farm System**

The purpose of the tree farm system is to promote the growth of renewable forest resources on private lands while protecting environmental benefits and increasing public understanding of all benefits of productive forestry. The tree farm system provides non-industrial private forestland owners with conservation education and assists them in sustainably managing their forests. To certify forestland, the forest owner must develop a written management plan based on strict environmental standards and guidelines.

## **Canadian Standards Association**

The Canadian Standards Association first published Canada's National Standard for Sustainable Forest Management in 1996. Since that time over 13 million acres in Canada have been certified. The certification program follows six criteria that take into consideration the environmental, social, and economic benefits of forestland. These criteria include conservation of biodiversity, maintenance and enhancement of forest ecosystem conditions and productivity, conservation of soil and water resources, forest

ecosystem contributions to the global ecological cycles, benefits to society, and accepting society's responsibility for sustainable development.

### **Forest Stewardship Council**

The Forest Stewardship Council 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, community relations and workers' rights, benefits from the forest, environmental impacts, a management plan, monitoring and assessment, maintenance of high conservation value forests, and plantations.

### **Pan-European Forest Certification**

The Pan-European Forest Certification (PEFC) was established in Paris, France on June 30, 1999. The purpose of the PEFC program was to establish an internationally credible framework for forest certification programs in Europe that facilitate mutual recognition of such programs. The PEFC assures consumers of wood products that the products originate from independently certified forests that are managed in accordance with the Pan European Criteria. The PEFC actually is a competitor of sorts with the FSC.

### **Finnish Forest Certification System**

The Finnish Forest Certification System (FFCS) comprises 37 criteria developed in Finland from 1996-1999. The criteria for certification are divided into three groups: ecological sustainability, economic sustainability, and social sustainability. The ecological criteria are designed to ensure the maintenance of the health and vitality of forest ecosystems, the conservation of biodiversity, and the protection of soil and water. The economic criteria are designed to maintain forest resources and their growing stock while encouraging the productive functions of forests. Finally, the social criteria are designed to maintain the socio-economic and cultural values in the forest management. The FFCS was originally developed to meet the needs of forestry conditions specific to Finland, where small-scale family forest holdings dominate the forest industry. The FFCS, which has certified 95 percent of forests in Finland, was also accepted into the PEFC in 2000.

### **United Kingdom Woodlands Assurance Scheme**

The United Kingdom Woodlands Assurance Scheme (UKWAS) was established in June 1999 by a broad coalition of forestry, environmental, and social interests in the U.K. The UKWAS, the first national forestry standard in the U.K., is a voluntary system for independent certification of forest management in the U.K. The UKWAS was developed in order to operate in association with other international forest certification systems, and is recognized by the Forest Stewardship Council. There are eight standards that must be met for certification, including compliance with relevant laws and regulations and the

requirements of the UKWAS, documentation of a management plan, forest design, assessing the environmental impacts of the operations, protecting and maintaining the forest, conservation and enhancement of biodiversity, consultation with local communities, and maintaining the health and safety of the forestry workforce.

### **International Organization for Standardization (ISO)**

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, 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.

### ***ARGUMENTS:***

#### ***For:***

Given the economic, social, and environmental implications of the forest industry for the state, it is imperative that measures be taken to ensure that the management techniques employed ensure the sustainability of state forestland. Forest certification systems serve as one tool for assessing whether forest management practices are ecologically, environmentally, and socially sound. The state should take encourage landowners and timber producers to sustainably manage their forestland. By requiring the DMB to give preference to wood or paper products from sustainably managed forests, the bill serves as a preliminary step in ensuring the long term health and viability of state forestland. Given the vast amount of paper and other wood products purchased by the DMB, companies will invariably strive for certification. This, in turn, will help to ensure that forestry-related companies in Michigan and elsewhere are engaged in sound forest management practices.

#### ***Against:***

Under the bill's provisions, the department would be required to give preference to goods derived from one of nine systems of sustainable forest practices. On the surface, this creates the potential for an administrative nightmare for the DMB, which would

apparently have to find a way to verify that purchased products fall under one of these systems. While the DMB would not have to directly certify the products, it appears it would, at the very least, have to confirm the certifications.

In addition, it should be noted that this bill would have to be implemented in conjunction with other purchasing restrictions. Although the bill does not explicitly require the department to purchase a certain percentage of wood and wood products from sustainably managed forestry operations, the aggregate of all purchase restrictions could undermine the ability of the DMB to properly purchase goods. Under the Management and Budget Act, preference is given to products from Michigan-based firms. In addition, the DMB must also purchase recycled paper. It is not entirely clear how these existing provisions would be affected by the bill. If preference is given to Michigan-based firms and also to sustainably certified products, what would happen if the DMB had to choose between a Michigan-based company whose products do not derive from sustainably managed forestland and a company not from Michigan whose products do derive from sustainably managed forestland?

Finally, the bill does not contain “opt-out” provisions found elsewhere in the act that give the department discretion and flexibility when purchasing goods and services. Under the act, for example, preference is given to Michigan-based firms *all other things being equal*. Also, when purchasing products from recycled goods, the cost may not exceed 110 percent of the cost of similar goods not made of recycled goods. These caveats ensure that the purchasing restrictions are balanced against other considerations. House Bill 5665, however, grants preference to products from sustainably managed forestland, without regard to the costs of such products or other considerations.

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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.