

Draft 6/15/2009

MICHIGAN ECONOMIC DEVELOPMENT CODE (MEDC)

[Drafter's note: the draft of ARTICLE III is included in this document. To assist in orienting the reader, remaining articles of the draft Michigan economic development code, including source statutes, are outlined in a separate document.]

ARTICLE III - PROMOTING THE MICHIGAN AGRICULTURAL ECONOMY**DIVISION I – DEFINITIONS**

Sec. 13102 Definitions. (1) As used in this article:

- (a) Except as otherwise provided, "agricultural processing" means 1 or more of the operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption including goods for nonfood use. As used in Part C of this article, "agricultural processing facility" means 1 or more facilities or operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plants or plant products, excluding forest products, into goods that are used for intermediate or final consumption including goods for nonfood use, and surrounding property.
- (b) "Commercialization" means the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.
- (c) "Department of agriculture" means the Michigan department of agriculture.
- (d) "Eligible grantee" means a person able to receive a grant under this section and includes, but is not limited to, individuals, farmer owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government.
- (e) "Agricultural development fund" means the agricultural development fund created in section 13202a.
- (f) "Joint evaluation committee" means a committee selected by the commission of agriculture with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of grant proposals. The committee shall include at least 3 producers, including 1 plant agricultural producer, 1 animal agricultural producer, and another producer at large, an individual with a scientific agriculture education, and an agricultural financial lender.

(g) "Qualified agricultural loan" means a loan for projects designed to establish, retain, attract, or develop value-added agricultural processing and related agricultural production operations in this state.

(h) "Specialty crops" means any agricultural commodity except wheat, feed grains, oil seeds, cotton, rice, peanuts, and tobacco, as well as products derived from these agricultural commodities.

(i) "Value-added" means the enhancement or improvement of the overall value of an agricultural commodity or of an animal or plant product into a product of higher value. The enhancement or improvement includes, but is not limited to, marketing, agricultural processing, transforming, or packaging.

Sec. 13112. Definitions.

As used in part B of this article, being sections 13211 through 13232:

(a) "Forest finance authority" means the Michigan forest finance authority created in section 13213.

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

(c) "Forest finance bonds" means bonds of the forest finance authority issued as provided in this part.

(d) "Forest finance notes" means notes of the forest finance authority issued as provided in this part, including commercial paper.

(e) "Forester" means an employee of the department who has a 4-year degree in forest management from an accredited college or university and experience in forest management and who is designated as the state forester by the director of the department of natural resources.

(f) "Sustainable forestry" means that term as it is defined in section 52501 of Act 451 of 1994, MCL 324.52501.

Sec. 13112. Definitions.

(1) As used in part B of this article, being sections 13211 through 13232:

(b) "Board" means the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3.

(j) "Renaissance zone" means a geographic area designated under division IV of article X of this code, formerly the Michigan Renaissance Zone Act, 376 public act of 1996.

(2) As used in section 13288c, "development agreement" means a written agreement between the Michigan strategic fund and the agricultural processing facility that includes, but is not limited to, all of the following:

- (a) A requirement that the agricultural processing facility comply with all state and local laws.
- (b) A requirement that the agricultural processing facility report annually to the Michigan strategic fund on all of the following:
 - (i) The amount of capital investment made at the facility.
 - (ii) The number of individuals employed at the facility at the beginning and end of the reporting period as well as the number of individuals transferred to the facility from another facility owned by the agricultural processing facility.
 - (iii) The percentage of raw materials purchased in this state.
- (c) Any other conditions or requirements reasonably required by the Michigan strategic fund. [formerly MCL 125.2688c(6).]

DIVISION II – STATE PROMOTION OF AGRICULTURAL VALUE ADDED PRODUCTS

[Drafter’s note, the following text comes from the JULIAN-STILLE VALUE-ADDED ACT and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

Part A. Agricultural Processing.

Sec. 13202 Agricultural value-added grant program; establishment and administration; grant awards; procedure; condition of receiving grant; establishment of low-interest loan program; fiduciary obligations upon grant recipient; "substantial conflict of interest" defined; grant application; form or format; rules; effect on prior grants.

(2) The department of agriculture shall establish and administer an agricultural value-added grant program. The commission of agriculture shall award grants from the agricultural development fund created in section 13202a only for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in this state. In approving a grant under this subsection, the commission of agriculture shall state the specific objective reasons supporting the selection of the applicant over competing applicants. The joint evaluation committee shall assist and provide recommendations to the commission of agriculture in identifying high-quality projects for funding based upon the selection criteria and scoring system approved by the commission of agriculture. The

recommendations shall include all materials and decision documents used by the joint evaluation committee in making the recommendations.

(3) All scoring sheets, meetings, and other decisions made by the joint evaluation committee shall be open to the public and considered public documents. A record or portion of a record, material, or other data received, prepared, used, or retained by the department of agriculture in connection with an application to or with a project or product assisted by the department of agriculture or with an award, grant, loan, or investment relating to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the department of agriculture as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) Subject to subsection (2), the department of agriculture shall do all of the following:

(a) Establish a competitive process to award grants. The competitive process shall include, but is not limited to, the following:

(i) A provision that the applications must be reviewed by the joint evaluation committee. Scientific and technical merit, commercial merit, and the ability to leverage additional funding shall be given equal weight in the review and scoring process.

(ii) A preference for proposals that demonstrate a high level of innovation for value-added agricultural processing and related agricultural production ventures to benefit producers in this state.

(iii) A preference for proposals that are attempting to secure a license for agricultural-related intellectual property to be produced in Michigan.

(iv) A provision that the program will utilize contracts with measurable milestones, clear objectives, and provisions to revoke awards for breach of contract.

(v) Provide for a cash match of at least 10% of the grant by the applicant.

(vi) Limit overhead rates for recipients of grants to reflect actual overhead but not greater than 15% of the grant.

(vii) A preference for proposals whose business plan forecasts revenues within 2 years or that have outside investments from investors with experience and management teams with experience in the area targeted by the proposal, or both.

(b) Prepare a request for proposals on at least an annual basis for grants for eligible grantees from the agricultural development fund. Grants are contingent upon the availability of funds.

(5) Subject to subsection (4)(a)(i), an application for a grant submitted under this section shall be evaluated and ranked according to selection criteria and a scoring or point system approved by the director of the department of agriculture. The selection criteria and the scoring or point system shall be reviewed and approved by the commission of agriculture. In developing such a system, the department of agriculture shall seek the assistance of the Michigan economic development corporation, any institution of higher education, the United States department of agriculture-rural development agency, the rural development council of Michigan, agricultural producers, and other industry and professional organizations as determined by the director of the department of agriculture.

(6) The commission of agriculture shall ensure that a recipient of a grant under this section agrees that, as a condition of receiving the grant, that recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(7) The department of agriculture, in cooperation with the department of treasury and Michigan financial institutions, shall establish a low-interest loan program in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, or a loan guarantee program to provide qualified agricultural loans. The department of treasury shall give the department of agriculture any necessary assistance required to establish a low-interest loan or loan guarantee program. The department of agriculture shall work with Michigan financial institutions to establish a certification system to verify that loan applicants are requesting qualified agricultural loans. As part of the low-interest loan program, the department of agriculture shall do the following:

(a) Work with the department of treasury to establish agreements with participating financial institutions.

(b) Ensure that an investment or new investment utilizing the 21st century jobs fund in which a qualified agricultural loan is attributed is not made pursuant to this section after June 1, 2008.

(c) Ensure that the terms of a qualified agricultural loan under this section are for a term of not more than 5 years and that the first payment made by the recipient occurs not later than 24 months after the date of the loan.

(d) Ensure that the interest rate charged by participating financial institutions does not exceed 50% of the adjusted prime rate determined in section 23 of 1941 PA 122, MCL 205.23, plus 1 percentage point as determined by the department of treasury. [Drafter's Note: previous reference was just to "prime" rate, which reference has been replaced by the language used here in modern legislation.]

(e) Ensure that participating financial institutions do not refinance prior debt.

(f) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added low-interest loan from the financial institution.

(g) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(8) As part of a loan guarantee program, the department of agriculture shall do the following:

(a) Work with the department of treasury to establish agreements with participating financial institutions.

(b) Ensure that participating financial institutions require adequate collateral and fully liquidate all collateral before calling on the loan guarantees.

(c) Establish a loan guarantee of not more than 90% of the financial institution's loss after all alternatives to collect have been exhausted.

(d) Ensure that participating financial institutions do not refinance prior debt.

(e) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added loan guarantee from the financial institution.

(f) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan guarantee, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(g) Maintain a list of financial institutions that will participate in the loan guarantee program.

(9) The director of the department of agriculture may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

(10) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the commission of agriculture and the joint evaluation committee are subject to 1968 PA 317, MCL 15.321 to 15.330. As used in this subsection, "substantial conflict of interest" means that the pecuniary interest is of such importance as to either materially influence the judgment of the member in the actual performance of his or her duty under the act or to foreseeably and materially influence the judgment of a reasonable person with similar knowledge and experience acting under similar circumstances and in a like position as the member. For purposes of this section, members of the commission of agriculture and the joint evaluation committee shall do the following:

(a) Discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, the commission of agriculture when acting in good faith may rely upon the report of the joint evaluation committee or upon financial statements of the department of agriculture represented to the commission of agriculture by the officer having charge of its books or accounts or stated in a written report by the auditor general.

(b) Not make or participate in making, or in any way attempt to use his or her position to influence a matter before the department of agriculture regarding, a loan, loan guarantee, grant, or other expenditure under this part.

(c) Not have any financial interest in a recipient of proceeds under this part and shall not engage in any conduct that constitutes a substantial conflict of interest.

(d) Immediately advise the commission of agriculture in writing of the details of any incident or circumstances that may present the existence of a substantial conflict of interest with respect to the performance of his or her duty under this part.

(e) Disclose a substantial conflict of interest related to any matter before the department of agriculture or the commission of agriculture takes any action with respect to the matter, which disclosure shall become a part of the record of the official proceedings.

(f) Refrain from doing all of the following with respect to the matter that is a basis of a substantial conflict of interest:

(i) Voting in the proceedings related to the matter.

(ii) Participating in the discussion or deliberation of the matter.

(iii) Being present at the meeting when the discussion, deliberation, and voting on the matter takes place.

(iv) Discussing the matter with any other member of the commission of agriculture or the joint evaluation committee.

(11) An application for a grant from the Agricultural Development Fund shall be made on a form or format prescribed by the department of agriculture. The department of agriculture may require the applicant to provide information reasonably necessary to allow the department of agriculture to make a determination required under this section.

(12) The department of agriculture shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

Sec. 13202a Agricultural development fund; creation as revolving fund; administration; investment; lapse; money appropriated from 21st century jobs trust fund; manner of investment.

(1) The agricultural development fund is created as a revolving fund within the department of treasury to be administered by the department of agriculture. The state treasurer shall direct the investment of the agricultural development fund. Money in the agricultural development fund at the close of the fiscal year shall remain in the agricultural development fund and shall not lapse to the general fund. The department of agriculture may utilize up to 4% of the agricultural development fund for administrative purposes. The state treasurer shall credit to the agricultural development fund money from the following sources:

(a) Appropriations.

(b) Money or other assets from any source for deposit into the agricultural development fund, including federal money, other state revenues, gifts, bequests, or donations, as well as money from any other source provided by law.

(c) Any money representing loan repayments and interest on the loans.

(2) Of the money appropriated under [2006 PA 153](#) from the 21st century jobs trust fund, not more than 10% shall be used for grants and the remaining shall be used for loans and loan guarantees. The maximum grant from the agricultural development fund shall not exceed \$250,000.00. The maximum low-interest loan supported by the agricultural development fund shall not exceed \$500,000.00.

(3) Upon request from the commission of agriculture, the state treasurer shall invest the money in the agricultural development fund in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, as provided in section 13202.

[DRAFTER'S NOTE: THE FOLLOWING TWO SECTIONS ARE PART OF JULLIAN STILLE ACT, BUT SHOULD BE LEFT BEHIND IN A TRUNCATED ACT OR ADDED TO THE ENVIRONMENTAL CODE.]

[(1) As used in this section:

(a) "DEQ" means the department of environmental quality.

(b) "Clean Air Fund" means the Michigan clean air fund created in this section.

(2) The Michigan clean air fund is created within the department of treasury to be administered by DEQ. Money in the clean air fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The state treasurer shall credit to the fund the money from the uncollectibles allowance recovery funds established in section 4 as well as money from any other source provided by law.

(3) Money in the clean air fund shall be used by DEQ to provide grants and loans to individuals, private or public corporations, and local units of government for programs or projects established to reduce oxides of nitrogen and volatile organic compounds and for the administration of the grant and loan program.

(4) The director of DEQ shall have final approval of grants and loans made under this section. Grants and loans made under this section are contingent upon the availability of money in the clean air fund.

(5) The director of DEQ may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

(6) An application for a grant or loan from the clean air fund shall be made on a form or in a format prescribed by DEQ. DEQ may require the applicant to provide any information reasonably necessary to allow DEQ to make a determination required under this section.

(7) DEQ shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

Definitions; uncollectibles allowance recovery fund; establishment and administration; deposit; recorded amounts; disbursement of money into Michigan clean air fund; allocation to customers of cooperative electric utility; rules.

(1) As used in this section:

(a) "PSC" means the Michigan public service commission.

(b) "Cooperative electric utility" means an electric utility organized as a cooperative corporation under 1931 PA 327, MCL 450.1 to 450.192.

(c) "Recovery fund" means the uncollectibles allowance recovery fund created in subsection (2).

(d) "Utility" means a person, firm, corporation, cooperative, association, or other agency that is subject to the jurisdiction of the PSC and that distributes and sells electricity or natural gas to the public for residential use.

(2) The PSC shall require a utility to establish and to administer an uncollectibles allowance recovery fund.

(3) A utility required by the PSC to establish and administer an uncollectibles allowance recovery fund shall annually deposit into its recovery fund the difference between the uncollectible provision as recorded in the utility's financial records for 1999 less the provision as recorded on the utility's financial records in each subsequent fiscal year.

(4) Not less than 30 days after the close of the utility's fiscal year, the utility shall inform the PSC of the amount of money that the utility recorded into its recovery fund for that year. A dispute regarding the reasonableness of an amount recorded on a utility's financial record as a provision for its uncollectible expenses or the accuracy of the amount deposited into a utility's recovery fund shall be resolved by the PSC after notice to the utility and an opportunity for the utility to submit comments.

(5) An investor owned utility shall annually disburse money from its recovery fund to the state treasurer for deposit into the Michigan clean air fund created in section 3 in accordance with the orders and rules of the PSC.

(6) A cooperative electric utility shall annually allocate all money from its recovery fund to its customers in proportionate amounts based on each customer's patronage with the cooperative. The money shall be paid to each customer in accordance with the cooperative's capital credit rotation policy.

(7) The PSC shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.]

Source Statute: PA 322 OF 2000 – JULIAN-STILLE VALUE-ADDED ACT

Part B. Forest Finance Authority.

[Drafter's note, the following text comes from the MICHIGAN FOREST FINANCE AUTHORITY ACT and section numbering (last digit) corresponds to same section in that Act, for ease of comparison.]

Sec. 13211. Purpose of part. [Drafter's Note: It made sense to violate our general rule on omitting purposes section for this part, especially in light of its specificity and the bonding requirements.]

The purpose of this part and of the forest finance authority created by this part is to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention,

promotion, and development of forestry and forest industries and to protect the health and vigor of forest resources by doing all of the following:

- (a) Funding practices prescribed and approved by the department that intensify management of certain highly productive portions of this state's forest system.
- (b) Implementing a system of forest management that is investment-oriented, economically efficient, and environmentally sound.
- (c) Implementing a system of forest management that is consistent with principles of sustainable forestry and with part 525 of Act 451 of 1994, MCL 324.52501 – 324.52511.
- (d) Promoting a stable and continuing supply of timber for future economic expansion.
- (e) Providing dependable funding of scheduled forest management operations.
- (f) Promoting effective investment of revenues from timber sales for high future returns.
- (g) Facilitating timely performance of forest management operations.
- (h) Earning additional revenues for forest management from timber sales.
- (i) Improving existing timber stands and establishing new stands of trees.
- (j) Providing for reforestation, forest protection, and timber stand improvement.
- (k) Providing an additional funding source for the purposes described in this section from indebtedness secured with revenues generated from future sale of timber harvested from state tax reverted lands, from lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and from other lands as provided by law.

Sec. 13213. Michigan forest finance authority; creation; exercise of powers, duties, and functions; handling of funds.

The Michigan forest finance authority is created as a body corporate within the department of natural resources and shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department. The budgeting, procurement, and related functions of the forest finance authority shall be performed under the direction and supervision of the department. Funds of the forest finance authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the forest finance authority authorizing the issuance of bonds and notes.

Sec. 13214 Board of directors; appointment; terms; oath; vacancy; persons subject to §§15.321 to 15.330; discharge of duties; policies and procedures; conducting business at public meetings; notice; quorum; actions of board; representative as voting member; chairperson.

(1) The forest finance authority shall be governed by a board of directors consisting of the director of the department of natural resources, the state treasurer, the director of the department of labor and economic growth, and 6 residents of the state, appointed by the governor with the advice and consent of the senate as follows:

- (a) One individual shall represent the forest products industry within the state.
- (b) One individual shall be a commercial logging contractor.
- (c) One individual shall be an owner of nonindustrial, private forestland.
- (d) One individual shall be from the wood products manufacturing industry.
- (e) One individual shall represent hunters, anglers, and other outdoor recreation interests.
- (f) One individual from a college or university in the state with knowledge and expertise in forest management.

(2) The 6 resident directors appointed under subsection (1)(a) to (f) shall serve terms of 3 years. In appointing the initial 6 resident members of the board, the governor shall designate 2 to serve for 3 years, 2 to serve for 2 years, and 2 to serve for 1 year.

(3) Upon appointment to the board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the forest finance board shall enter the office and exercise the duties of the office.

(4) Regardless of the cause of a vacancy on the forest finance board, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term of the office. A member of the board shall hold office until a successor has been appointed and has qualified.

[Drafter's note: Subsection (5) and (6) were eliminated from this part, as ethics provisions are consolidated at the beginning of the Code.]

(5) Members of the forest finance board and officers and employees of the forest finance authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the board or an officer, employee, or agent of the forest finance authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board or an officer, employee, or

agent of the forest finance authority, when acting in good faith, may rely upon the opinion of counsel for the forest finance authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the forest finance authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the forest finance authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the forest finance authority.

(6) The board shall organize and make its own policies and procedures. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Five members of the board constitute a quorum for the transaction of business. An action of the board requires a concurring vote by 5 members of the board. A state officer who is a member of the board may designate a representative from his or her department to serve instead of that state officer as a voting member of the board for 1 or more meetings. The state treasurer shall serve as chairperson of the board.

Sec. 13215. Election of chairperson and vice-chairperson; state forester as executive director; qualifications, duties, and compensation of employees; delegation of powers or duties; rights and interests of authority; annual report; audits; records.

(1) The forest finance authority shall elect a chairperson and a vice-chairperson from among its members. The state forester shall serve as the executive director of the forest finance authority. The forest finance authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the forest finance authority. The forest finance authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department of natural resources. The forest finance authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(2) The forest finance authority shall contract with the department of natural resources for the purpose of maintaining and improving the rights and interests of the forest finance authority.

(3) The forest finance authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and a description of the forest management practices undertaken by the department of natural resources with proceeds of bonds sold under this part.

(4) The accounts of the forest finance authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted auditing principles.

Sec. 13216 Powers of board.

Except as otherwise provided in this part, the board may do all things necessary or convenient to implement the purposes, objectives, and provisions of this part, and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including, but not limited to, all of the following:

- (a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws at its pleasure.
- (b) Sue and be sued in its own name and plead and be impleaded.
- (c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.
- (d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.
- (e) With the prior consent of the department of natural resources, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.
- (f) Acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights, on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law, to be used for any of the purposes provided in this part subject to the restrictions of section 13219. However, the state shall not convey to the forest finance authority fee title to any state forest lands.
- (g) Procure insurance against loss in connection with the property, assets, or activities of the forest finance authority.
- (h) Invest money of the forest finance authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.
- (i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the forest finance authority, subject to the restrictions of section 13217.
- (j) Indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the forest finance authority, or from any personal liability or accountability by reason of the

issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the forest finance authority.

(k) Do all other things necessary or convenient to achieve the objectives and purposes of the forest finance authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the forest finance authority.

Sec. 13217. Financing forest management operations and practices; guidelines, rules, and objectives; application of funds; interim procedure; annual list of activities and practices; projection of probable default; contracts for cutting and sale of timber; forest development fund; audit.

(1) The forest finance authority shall finance only forest management operations and practices consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.511, that follow the guidelines, rules, and objectives prescribed and approved by the department of natural resources as these guidelines, rules, and objectives are amended by the department.

(2) Funds managed by the forest finance authority shall be applied in a manner consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.511, and the land management planning policies of the department of natural resources on lands that have been identified for forest management practices. In the absence of an approved state forest management plan covering a candidate area, an interim procedure, as adopted by the department, shall be used to assure that all forest values have been considered in selecting sites for investment with funds of the forest finance authority. The department shall annually submit a list of activities and practices allocated from the funds generated under this part for the board's review and determination of consistency with the purposes of this part.

(3) The executive director of the forest finance authority shall notify the department of natural resources if the forest finance authority projects a probable default on any bonds or notes issued by the forest finance authority, and within 1 year of receipt of the notification, or within less than 1 year, if the notification indicates a shorter time period is necessary to avoid a default, the department shall identify and convey to the forest finance authority sufficient timber on tax reverted lands to enable the forest finance authority to avoid the projected default and to provide for timely payment of principal of and interest on the forest finance authority's bonds or notes. The forest finance authority may only issue contracts for the cutting and sale of timber that has been conveyed to the forest finance authority under this section to avoid a default on any bonds or notes issued by the forest finance authority. The determination of the board as to the need to cut and sell timber is conclusive. Contracts for the cutting and sale of timber shall be consistent with part 525 of Act 451 of 1994, MCL 324.52501-324.52511, and with the guidelines, rules, and objectives prescribed by the department of natural resources.

(4) The forest finance authority shall establish a fund designated as the "forest development fund." Any money on hand or received in the future from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands shall be deposited in the forest development

fund. In addition, this fund may receive revenues from any other source. The forest finance authority shall use money in the forest development fund for 1 or more of the following:

(a) To provide for the payment of principal of and interest on any bonds or notes issued by the forest finance authority.

(b) For reforestation, forest protection, and timber stand improvement.

(c) To obtain and maintain certification of sustainable forestry standards in the state forest under section 52505 of Act 451 of 1994, MCL 324.52505.

(d) For any other purposes authorized by this part.

(5) The auditor general shall audit the expenditures of the forest development fund at least once every 3 years.

Sec. 13218. Department as agent for authority; conveyance of state's interest in contracts granting timber cutting rights; deposit of money received; conveyance of title to timber.

(1) Except as provided in section 13217(3), the department of natural resources shall act as the agent for the forest finance authority in contracting for the cutting and sale of timber or other forest management operations and practices undertaken by the forest finance authority.

(2) The state's interest in all existing and future contracts granting timber cutting rights on state tax reverted lands are conveyed to the forest finance authority to be used for any of the purposes of this part subject to the restrictions of this part. The money received by the state from existing or future contracts for the cutting and sale of timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law shall be deposited in the forest development fund and utilized as provided in section 13217(4).

(3) In order to provide for additional security for indebtedness of the forest finance authority, the department of natural resources may convey to the forest finance authority title to timber on all or any portion of tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law. The form of conveyance shall be approved by the attorney general and by resolution of the state administrative board. If the forest finance authority receives title to any timber, it may release and reconvey timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law if requested by the department of natural resources, and the reconveyance from the forest finance authority to the department will not cause the forest finance authority to default on any obligation or covenant contained in any resolution of the forest finance authority authorizing issuance of bonds or notes.

Sec. 13219. Bonds and notes generally; expenses; expenditures.

(1) The forest finance authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the forest finance authority. Bonds and notes of the forest finance authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith and credit of the state. All authority bonds and notes shall be payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the forest finance authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the forest finance authority pledged for the payment of principal and interest and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this part shall be payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the forest finance authority to incur any indebtedness or liability on behalf of or payable by the state.

(3) Any revenues or funds available to the forest finance authority that are not necessary to pay principal of or interest on any outstanding bonds or notes of the forest finance authority or which are not required to be deposited in a fund created to secure the bonds or notes of the forest finance authority or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes of the forest finance authority shall be expended to fund forest management programs in a manner prescribed by the department of natural resources. Any money derived from the proceeds of bonds or notes shall be expended by the forest finance authority in the manner prescribed in the part and the resolution authorizing such indebtedness.

Sec. 13220. Forest financing bonds and notes; purposes; payment; requirements; signature of board member or office of authority; sale of bonds or notes; applicability of other laws; interest rate agreement.

(1) The forest finance authority may issue from time to time bonds or notes in principal amounts the forest finance authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

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

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

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

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

(2) The bonds or notes of the forest finance authority shall not be a general obligation of the forest finance authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the forest finance authority:

[Drafter's Note: Recommend revisiting this section and subsequent bonding sections after other bonding provisions in Article XIV are drafted to see if a reference will do here.]

(a) Shall be authorized by resolution of the forest finance authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 30 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the forest finance authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(l) May be transferable.

(m) Shall be in the form, denomination or denominations, and with the other provisions and terms as is determined necessary or beneficial by the forest finance authority.

(4) If a member of the board or any officer of the forest finance authority whose signature or facsimile of his or her signature appears on the forest financing note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the forest finance authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the forest finance authority determines. Bonds and notes of the forest finance authority are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the forest finance authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(6) The issuance of forest financing bonds and notes under this section is subject to the agency financing reporting act.

(7) For the purpose of more effectively managing its debt service, the forest finance authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the forest finance authority.

Sec. 13221 Refunding bonds or notes.

[Drafter's note: Subsections (1) and (2) of this section should be revisited after bonding sections of Article XIV are drafted, to see if a reference to Article XIV may be substituted here.]

(1) The forest finance authority may provide for the issuance of forest financing bonds or notes in the amounts the forest finance authority considers necessary for the purpose of refunding bonds or notes of the forest finance authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the forest finance authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the forest finance authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the forest finance authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the forest finance authority for use by the forest finance authority in any lawful manner.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the forest finance authority may provide that the bonds or notes to be refunded shall be considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the forest finance authority to the holders of the bonds or notes to be refunded shall be terminated except as to the rights to the money or investment obligations deposited in trust.

(3) The forest finance authority shall not have outstanding at any time bonds or notes in an aggregate principal amount exceeding \$20,000,000.00 excluding bonds or notes issued to refund outstanding bonds or notes.

Sec. 13222. Security to assure timely payment of bond or note.

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

(2) The forest finance authority may authorize payment from the proceeds of the forest financing notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of forest financing notes or bonds.

Sec. 13223. Forest Financing bonds or notes; authority of board member, executive director, or other officer of authority.

Within limitations that shall be contained in the issuance or authorization resolution of the forest finance authority, the forest finance authority may authorize a member of the board, the executive director, or other officer of the forest finance authority to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for notes or bonds.
- (b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.
- (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.
- (d) Buy notes or bonds so issued and resell those notes or bonds.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the forest finance authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the forest finance authority.

(g) Approve the terms of a contract, including, but not limited to, a contract for the sale or cutting of timber, and execute and deliver the contract subject to the restrictions of this part.

(h) Approve terms of any insurance contract, agreement for 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.

(i) Perform any power, duty, function, or responsibility of the forest finance authority.

Sec. 13224. Resolution authorizing bonds or notes; provisions.

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

(a) A pledge to any payment or purpose all or any part of authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders. The forest finance authority shall not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber. This subdivision does not prohibit the forest finance authority from pledging any revenues derived from the sale of timber or any contracts for the cutting of timber.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders

who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the forest finance authority. Money of the forest finance authority and deposits of money may be secured in the manner determined by the forest finance authority. Banks and trust companies may give security for such deposits.

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

(h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised if the forest finance authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(i) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the rights of the bondholders or noteholders, and require the forest finance authority to carry out any other agreements with the holders of those notes or bonds and to perform the forest finance authority's duties under this part.

(ii) Bring suit upon the notes or bonds.

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

(iv) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the notes or bonds.

(v) Declare the notes or bonds due and payable and, if all defaults shall be made good, then, as permitted by such resolution, annul that declaration and its consequences.

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

Sec. 13225. Pledge.

A pledge made by the forest finance authority shall be valid and binding from the time the pledge is made. The money or property pledged and then received by the forest finance authority immediately is subject to the lien of the pledge without a physical delivery or further act. The

lien of a pledge is valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the forest finance authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. The resolution, the trust agreement, or any other instrument by which a pledge is created need not be recorded in order to establish and perfect a lien or security interest in the property so pledged.

Sec. 13226. Personal liability on forest financing bonds or notes.

No member of the forest finance authority, or any person executing forest financing bonds or notes issued under this part, or any person executing any agreement on behalf of the forest finance authority is liable personally on the bonds or notes by reason of their issuance.

Sec. 13227. Purchasing, holding, canceling, or reselling forest financing bonds or notes.

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

Sec. 13228. Rights and remedies.

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

Sec. 13229. Forest Financing bonds or notes as legal investments; security.

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

Sec. 13230. Property and income of authority; exemption from taxes and special assessments; bonds or notes exempt from taxation.

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

Sec. 13231. Liberal construction; broad interpretation.

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

Sec. 13232. Rules.

The forest finance authority may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement this part.

Part C. Renaissance Zones For Agricultural Processing Facilities

[Drafter's note, the following text comes from the MICHIGAN RENAISSANCE ZONE ACT, Act 376 of 1996 and section numbering (last two digits) corresponds to same section in that Act, for ease of comparison.]

Sec. 13288c.

(1) The board, upon recommendation of the board of the Michigan strategic fund defined in section _____ of this code, formerly section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004, and upon recommendation of the commission of agriculture, may designate not more than 30 additional renaissance zones for agricultural processing facilities within this state in 1 or more cities, villages, or townships if that city, village, or township or combination of cities, villages, or townships consents to the creation of a renaissance zone for an agricultural processing facility within their boundaries.

(2) Each renaissance zone designated for an agricultural processing facility under this section shall be 1 continuous distinct geographic area.

(3) The board may revoke the designation of all or a portion of a renaissance zone for an agricultural processing facility if the board determines that the agricultural processing facility does 1 or more of the following in a renaissance zone designated under this section:

- (a) Fails to commence operation.
- (b) Ceases operation.
- (c) Fails to commence construction or renovation within 1 year from the date the renaissance zone for the agricultural processing facility is designated.

(4) Beginning on the date of the amendatory act that added this subsection, the board shall consider all of the following when designating a renaissance zone for an agricultural processing facility:

- (a) The economic impact on local suppliers who supply raw materials, goods, and services to the agricultural processing facility.
- (b) The creation of jobs relative to the employment base of the community rather than the static number of jobs created.
- (c) The viability of the project.
- (d) The economic impact on the community in which the agricultural processing facility is located.
- (e) All other things being equal, giving preference to a business entity already located in this state.

(5) Beginning on the date of the amendatory act that added this subsection, the board shall do all of the following:

- (a) Require a development agreement between the Michigan strategic fund and the agricultural processing facility.
- (b) Designate not less than 3 of the renaissance zones for agricultural processing facilities that have an initial capital investment of less than \$7,000,000.00.
- (c) Designate not less than 5 of the renaissance zones for agricultural processing facilities in rural areas.

**Source Statute: PA 451 OF 1994 - FOREST FINANCE AUTHORITY ACT -
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
(EXCERPT – MCL §§324.50501-50521)**

**DIVISION III - OTHER STATE ACTIVITIES PROMOTING THE
AGRICULTURAL ECONOMY**

**[Reserved for future legislation or cross-reference to existing law not
part of the Code.]**