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BILL ANALYSIS

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Senate Bill 953 (Substitute S-1)
Sponsor: Senator Cameron S. Brown
Committee: Agriculture, Forestry and Tourism

Date Completed: 5-26-04

CONTENT

The bill would amend Public Act 105 of 1855, which regulates the disposition of surplus State funds, to permit the State Treasurer to invest up to $25 million in certificates of deposit (or other instruments of qualified financial institutions) for the purpose of facilitating loans of up to $5 million to eligible farmers for the construction and operation of agricultural ethanol plants, methane digesters, and other equipment used to generate electricity from agricultural biomass.

Investment & Loan Authorization

The Act permits the State Treasurer to invest surplus funds to facilitate loans to farmers adversely affected by agricultural disasters; to local units of government to promote solid waste management; and to brownfield redevelopment authorities to facilitate clearing titles on tax-reverted lands, among other purposes. The bill would permit the Treasurer also to invest in financial institutions for the purpose of providing "qualified agricultural energy production loans", which the bill would define as loans to eligible farmers for the construction and operation of qualified agricultural ethanol plants or qualified agricultural energy production systems.

The State Treasurer would have to endeavor to make investments so that qualified agricultural energy production loans would be conveniently available in all geographic regions in the State. The Treasurer could take any action necessary to ensure the successful operation of the bill's provisions, including making investments with financial institutions to cover the administrative and risk-related costs associated with the loans.

The bill states that an investment made for qualified agricultural energy production loans "is found and declared to be for a valid public purpose".

The bill would define "eligible farmer" as a natural or corporate person who was engaged as an owner-operator of a farm in the production of agricultural goods, as defined in the Single Business Tax Act. An eligible farmer would not include a person who had been found guilty of a criminal violation under, or a person who had been determined responsible for a civil violation under, Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act within a one-year period immediately preceding the date of application for the qualified agricultural energy production loan.

A "qualified agricultural ethanol plant" would be a facility that produced ethanol that met all of the specifications of the American Society for Testing and Materials, specification D 4806-88, and was denatured to make it unfit for human consumption and was produced from the fermentation of agricultural biomass. "Agricultural biomass" would mean agricultural crops, residue and waste generated from the production and processing of agricultural products, animal wastes, or food processing wastes. "Qualified agricultural energy production system" would mean the structures, equipment, and apparatus necessary to produce a gaseous fuel from the noncombustive decomposition of agricultural biomass and the apparatus and equipment used to generate electricity or heat from the gaseous fuel, or store the gaseous fuel for future generation of electricity or heat.

Investment Agreement

The State Treasurer could enter into an investment agreement with a financial institution to provide for qualified agricultural energy production loans to eligible farmers. The investment agreement would have to contain the term of the investment, which could not exceed 15 years, and require that a qualified agricultural energy production loan made by the financial institution attributable to the investment be issued at an interest rate established in the investment agreement, and for a repayment period of not more than 15 years; be made not later than five years after the bill's effective date; not exceed $5 million per applicant; and not be released by the institution unless the applicant had certified that it was an eligible farmer.

The agreement also would have to require that the interest accruing on the investment not be more than the interest earned by the financial institution on qualified agricultural energy production loans made after the date of the investment. The agreement would have to require the financial institution to provide good and ample security as the State Treasurer required, and identify the qualified agricultural energy production loans and the terms and conditions of those loans made after the date of the investment that were attributable to that investment, together with other information required by the Act.

To the extent the financial institution had not made qualified agricultural energy production loans in an amount at least equal to the amount of the investment within 90 days after the investment, the agreement would have to require that the interest rate payable on that portion of the outstanding investment be increased to a rate provided in the agreement, with the increase applied retroactively to the date on which the Treasurer made the investment.

In addition, the agreement would have to contain incentives for the early repayment of the investment and for the acceleration of payments, in the event of a State cash shortfall as prescribed by the investment agreement, if required by the Treasurer. The agreement also could contain other terms as prescribed by the Treasurer.

Annually, each financial institution in which the Treasurer had made an investment for qualified agricultural energy production loans would have to file an affidavit, signed by a senior executive officer of the financial institution, stating that the financial institution was in compliance with the terms of the investment agreement.

General Fund

Earnings from an investment made under the bill that were in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested for emergency municipal loans (under Section 1 of the Act), would have to be credited to the General Fund. If interest from an investment made for qualified agricultural energy production loans were below the average interest rate earned during the same period on other surplus funds (except surplus funds invested for emergency municipal loans), the General Fund would have to be reduced by the amount of the deficiency on an amortized basis over the remaining term of the investment. A loss of principal from an investment made under the bill would have to reduce the earnings of the General Fund by the amount of that loss on an amortized basis over the remaining term of the investment.

Report to Legislature

Annually, the State Treasurer would have to prepare and submit to the Legislature a report regarding the disposition of money invested for purposes of facilitating qualified agricultural energy production loans. The report would have to include all of the following information: 1) the total number of eligible farmers who had received a qualified agricultural energy production loan; 2) by county, the total number and amounts of the qualified agricultural energy production loans that were issued; and 3) the name of each financial institution participating in the energy production loan program and the amount invested in each financial institution for purposes of the loan program.

Proposed MCL 21.142g Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill would have a negative impact on the State's ability to earn higher returns on its cash investments, by authorizing the deposit of up to $25 million into financial institutions for up to 15 years. It is assumed that the State would have to accept below-market interest rates on its investments to encourage financial institutions to participate in the agricultural energy production loan program. The financial institutions then would be required (within 90 days of accepting the State investment) to make the funding available to eligible farmers as loans. The actual fiscal impact would be contingent on the term (number of years) of the investments made by the State with participating financial institutions, the interest rate received by the State on its investments with those financial institutions, the total value of the loans made to farmers, and the interest rate that the State would receive on its cash reserves in the absence of the loan program. Assuming that the entire $25 million would be deposited in financial institutions with equal repayments each year for 15 years, it is estimated that the State would realize lost interest earnings of $1.6 million over the 15-year investment period.

In addition to the lost interest earnings, the Michigan Department of Treasury would experience increased administrative costs associated with the proposed loan program. These costs would have to be covered by existing appropriations available to the Department of Treasury.

As a point of reference, the General Fund has realized negative interest earnings for eight of the last nine quarters, suggesting a need for the General Fund to borrow from other State funds to meet its cash flow requirements over this period. It is unknown at this time whether the State would have the $25 million in "surplus funds" available to invest in financial institutions, as the bill would allow.

Fiscal Analyst: Craig Thiel

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