

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

**Introduced by Senators Brown, Cropsey, Barcia, Van Woerkom, McManus, Allen, Goschka, Kuipers, Garcia
and Jelinek**

ENROLLED SENATE BILL No. 953

AN ACT to amend 1855 PA 105, entitled "An act to regulate the disposition of the surplus funds in the state treasury; to provide for the deposit of surplus funds in certain financial institutions; to lend surplus funds pursuant to loan agreements secured by certain commercial, agricultural, or industrial real and personal property; to authorize the loan of surplus funds to certain municipalities; to authorize the participation in certain loan programs; to authorize an appropriation; and to prescribe the duties of certain state agencies," (MCL 21.141 to 21.147) by adding section 2g.

The People of the State of Michigan enact:

Sec. 2g. (1) The state treasurer may invest surplus funds under the state treasurer's control in certificates of deposit or other instruments of a financial institution qualified under this act to receive deposits or investments of surplus funds for the purpose of facilitating qualified agricultural energy production loans. The state treasurer shall endeavor to make investments under this subsection in financial institutions such that qualified agricultural energy production loans will be conveniently available in all geographic regions in this state. The state treasurer may enter into an investment agreement with a financial institution to provide for the investment under this subsection. The investment agreement shall contain all of the following:

- (a) The term of the investment which shall be not more than 15 years.
- (b) A requirement that the interest accruing on the investment shall not be more than the interest earned by the financial institution on qualified agricultural energy production loans made after the date of the investment.
- (c) A requirement that the financial institution shall provide good and ample security as the state treasurer requires and shall identify the qualified agricultural energy production loans and the terms and conditions of those loans that are made after the date of the investment that are attributable to that investment together with other information required by this act.
- (d) A requirement that a qualified agricultural energy production loan made by the financial institution that is attributable to the investment shall be issued at a rate or rates of interest that are established in the investment agreement.
- (e) A requirement that a qualified agricultural energy production loan made by the financial institution that is attributable to the investment shall be made not later than 5 years after the effective date of this section.
- (f) A requirement that a qualified agricultural energy production loan made by the financial institution that is attributable to the investment shall be issued for a loan repayment period of not more than 15 years.
- (g) A requirement that a qualified agricultural energy production loan made by the financial institution that is attributable to the investment shall not exceed \$5,000,000.00 per applicant.

(h) A requirement that a qualified agricultural energy production loan made by the financial institution that is attributable to the investment shall not be released by the financial institution unless the loan applicant has certified that it is an eligible farmer.

(i) A requirement that, to the extent the financial institution has 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 rate of interest payable on that portion of the outstanding investment shall be increased to a rate of interest provided in the investment agreement, with the increase in the rate of interest applied retroactively to the date on which the state treasurer made the investment.

(j) 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 state treasurer.

(k) Other terms as prescribed by the state treasurer.

(2) An investment made under this section is found and declared to be for a valid public purpose.

(3) The attorney general shall approve documentation for an investment under this section as to legal form.

(4) The aggregate amount of investments made under this section shall not exceed \$25,000,000.00.

(5) Earnings from an investment made under this section that are in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested under section 1, shall be credited to the general fund of the state. If interest from an investment made under this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested under section 1, the general fund shall 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 this section shall reduce the earnings of the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

(6) The state treasurer may take any necessary action to ensure the successful operation of this section, including making investments with financial institutions to cover the administrative and risk-related costs associated with a qualified agricultural energy production loan.

(7) Annually, each financial institution in which the state treasurer has made an investment under this section shall file an affidavit, signed by a senior executive officer of the financial institution, stating that the financial institution is in compliance with the terms of the investment agreement.

(8) The state treasurer shall annually prepare and submit a report to the legislature regarding the disposition of money invested for purposes of facilitating qualified agricultural energy production loans under this section. The report shall include all of the following information:

(a) The total number of eligible farmers who have received a qualified agricultural energy production loan.

(b) By county, the total number and amounts of the qualified agricultural energy production loans that were issued.

(c) The name of each financial institution participating in the qualified agricultural energy production loan program and the amount invested in each financial institution for purposes of the loan program.

(9) As used in this section:

(a) "Agricultural biomass" means agricultural crops, residue and waste generated from the production and processing of agricultural products, animal wastes, or food processing wastes.

(b) "Eligible farmer" means a person or entity that processes agricultural products or a natural or corporate person who is engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 35(1)(h) of the single business tax act, 1975 PA 228, MCL 208.35. Eligible farmer does not include a person who has been found guilty of a criminal violation under, or a person who has been determined responsible for a civil violation under, part 31 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3101 to 324.3133, within a 1-year period immediately preceding the date of application for the qualified agricultural energy production loan.

(c) "Qualified agricultural energy production loan" means a loan to an eligible farmer for the construction and operation of a qualified agricultural ethanol plant or a qualified agricultural energy production system.

(d) "Qualified agricultural energy production system" means 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. A qualified agricultural energy production system includes, but is not limited to, a methane digester, biomass gasification technology, or thermal depolymerization technology.

(e) "Qualified agricultural ethanol plant" means a facility that produces ethanol that meets all the specifications of the American society for testing and materials specification D 4806 and is denatured to make it unfit for human consumption and is produced from the fermentation of agricultural biomass.

(f) "Surplus funds" means, at any given date, the excess of cash and other recognized assets that are expected to be resolved into cash or its equivalent in the natural course of events and with a reasonable certainty, over the liabilities and necessary reserves at the same date and any other available funds.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved _____

Governor