

SENATE BILL No. 1400

September 5, 2006, Introduced by Senators JELINEK, BISHOP, KUIPERS, HARDIMAN, GARCIA, ALLEN, GILBERT, CROUSEY, VAN WOERKOM, GOSCHKA and McMANUS and referred to the Committee on Appropriations.

A bill 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,"

by amending section 2a (MCL 21.142a), as amended by 2002 PA 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) The state treasurer may invest surplus funds
2 under the state treasurer's control in certificates of deposit or
3 in a financial institution which qualifies with proof of financial
4 viability acceptable to the state treasurer under this act to
5 receive deposits or investments of surplus funds. In addition to

1 terms that may be prescribed in the investment agreement by the
2 state treasurer, an investment under this section shall be subject
3 to all of the following conditions and restrictions:

4 (a) The interest accruing on the investment shall not be more
5 than the interest earned by the financial institution on qualified
6 agricultural loans made after the date of the investment.

7 (b) The financial institution shall provide good and ample
8 security as the state treasurer requires and shall identify the
9 qualified agricultural loans and the terms and conditions of those
10 loans that are made after the date of the investment which are
11 attributable to that investment together with other information
12 required by this act.

13 (c) As established in the investment agreement by the state
14 treasurer, a qualified agricultural loan shall be made at a rate or
15 rates of interest, if any.

16 (d) To the extent the financial institution has not made
17 qualified agricultural loans as defined by subsection (9)(a) in an
18 amount at least equal to the amount of the investment within 90
19 days after the investment, the rate of interest payable on that
20 portion of the outstanding investment shall be increased to a rate
21 of interest provided in the investment agreement, with the increase
22 in the rate of interest applied retroactively to the date on which
23 the state treasurer invested the surplus funds.

24 (e) For a qualified agricultural loan as defined by subsection
25 (9)(a), the investment agreement shall provide that the financial
26 institution does not have to repay any principal within the first
27 24 months after which the investment is made unless the investment

1 is no longer being used to make a qualified agricultural loan as
2 defined by subsection (9) (a), or to the extent the qualified
3 agricultural loan has been repaid.

4 (f) For a qualified agricultural loan as defined by subsection
5 (9) (a), the investment agreement may include incentives for the
6 early repayment of the investment and for the acceleration of
7 payments in the event of a state cash shortfall as prescribed by
8 the investment agreement.

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

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

13 (4) The state treasurer shall deposit before May 1, 2002 up to
14 \$30,000,000.00 of surplus funds with the financial institutions
15 participating in making qualified agricultural loans under this
16 section for the purpose of making those qualified agricultural
17 loans. Not more than \$10,000,000.00 of this deposit shall be
18 allocated to qualified agricultural loans made to businesses under
19 subsection (9) (a) (iii).

20 (5) Earnings from an investment made pursuant to this section
21 which are in excess of the average rate of interest earned during
22 the same period on other surplus funds, other than surplus funds
23 invested pursuant to section 1 or 2, shall be credited to the
24 general fund of the state. If interest from an investment made
25 pursuant to this section is below the average rate of interest
26 earned during the same period on other surplus funds, other than
27 surplus funds invested pursuant to section 1 or 2, the general fund

1 shall be reduced by the amount of the deficiency on an amortized
2 basis over the remaining term of the investment. A loss of
3 principal from an investment made pursuant to this section shall
4 reduce the earnings of the general fund by the amount of that loss
5 on an amortized basis over the remaining term of the investment.

6 (6) A new investment to which a qualified agricultural loan as
7 defined by subsection (9) (a) (ii) is attributed shall not be made
8 pursuant to this section after October 1, 2002, and shall not be
9 made with a term which extends beyond October 1, 2007. An
10 investment to which a qualified agricultural loan as defined by
11 subsection (9) (a) (iii) is attributed shall not be made pursuant to
12 this section after October 1, 2002, and shall not be made with a
13 term extending beyond October 1, 2007. The terms of the qualified
14 agricultural loan as defined by subsection (9) (a) shall provide
15 that zero-interest loans under this section be for a term not more
16 than 5 years and that the first payment made by the recipient occur
17 not later than 24 months after the date of the loan. An investment
18 to which a qualified agricultural loan as defined by subsection
19 (9) (a) (i) is attributed shall not be made with a term extending
20 beyond October 1, 2007.

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

26 (8) Before October 1, 2003, the state treasurer shall prepare
27 separate reports to the legislature and the house and senate

1 agriculture appropriations subcommittees regarding the disposition
2 of money invested for purposes of qualified agricultural loans as
3 defined by subsection (9) (a) (i) and for qualified agricultural loans
4 as defined by subsection (9) (a) (ii) and (iii). The reports for each
5 type of loan shall include all of the following information:

6 (a) The total number of farmers and the total number of
7 agricultural businesses who have received such a loan.

8 (b) By county, the total number and amounts of the loans.

9 (c) The name of each financial institution participating in
10 the loan program and the amount invested in each financial
11 institution for purposes of such loan program.

12 (d) Any action undertaken by the state treasurer under
13 subsection (15).

14 (9) As used in this section:

15 (a) "Qualified agricultural loan" means 1 or more of the
16 following types of loans, as applicable:

17 (i) Until October 1, 2002, a loan to a natural or corporate
18 person who is engaged as an owner-operator of a farm in the
19 production of agricultural goods as defined by section 35(1)(h) of
20 the single business tax act, 1975 PA 228, MCL 208.35, who is
21 experiencing financial stress and difficulty in meeting existing or
22 projected debt obligations owed to financial institutions due to an
23 agricultural disaster as requested by the governor at rates
24 commensurate with rates charged by financial institutions for loans
25 of comparable type and terms at the time the loan is to be made,
26 and who certifies to the financial institution that the owner-
27 operator will not have more than \$150,000.00 in outstanding loans

1 otherwise considered qualified agricultural loans under this
2 subparagraph, including the loan for which the owner-operator is
3 applying. If crop insurance was available for a particular crop and
4 the producer did not purchase the crop insurance for that crop, the
5 amount of the loan shall be reduced by 30% or \$50,000.00, whichever
6 is less. A qualified agricultural loan under this subparagraph may
7 be made for either or both of the following purposes:

8 (A) Operating capital including, but not limited to, capital
9 necessary for the rental, lease, and repair of equipment or
10 machinery, crop insurance premiums, and the purchase of seed, feed,
11 livestock, breeding stock, fertilizer, fuel, and chemicals.

12 (B) Refinancing all or a portion of a loan entered into before
13 October 1, 2002 for a purpose identified in sub-subparagraph (A).

14 (ii) A loan to an individual, sole proprietorship, partnership,
15 corporation, or other legal entity that is engaged and intends to
16 remain engaged as an owner-operator of a farm in the production of
17 agricultural goods as defined by section 35(1)(h) of the single
18 business tax act, 1975 PA 228, MCL 208.35, who has suffered a 25%
19 or more loss in major enterprises or a 50% or more production loss
20 in any 1 crop due to an agricultural disaster on a farm located in
21 this state, as requested by the governor and as certified by the
22 producer by means of an affidavit demonstrating an accurate and
23 valid production loss.

24 (iii) A loan to an individual, sole proprietorship, partnership,
25 corporation, or other legal entity that is engaged in an
26 agricultural business of buying, exchanging, or selling farm
27 produce, or is engaged in the business of making retail sales

1 directly to farmers and has 75% or more of its gross retail sales
2 volume exempted from sales tax under the Michigan agricultural
3 sales tax exemption, as provided in section 4a(1)(e) of the general
4 sales tax act, 1933 PA 167, MCL 205.54a. Businesses engaged in the
5 buying, exchanging, or selling of farm produce must have suffered a
6 50% or greater loss in volume of 1 commodity as compared with the
7 average volume of that commodity which the business handled over
8 the last 3 years to qualify for loans under this subparagraph.
9 Businesses engaged in making retail sales directly to farmers must
10 have suffered a 50% or greater reduction in gross retail sales
11 volume subject to the Michigan agricultural sales tax exemption as
12 compared with that business's average retail sales volume subject
13 to that exemption over the last 3 years to qualify for loans under
14 this subparagraph. All losses claimed by businesses attempting to
15 qualify for loans under this subparagraph must be directly
16 attributable to a natural disaster occurring after January 1, 2001,
17 as requested by the governor and as certified by the agricultural
18 business by means of an affidavit demonstrating an accurate and
19 valid loss.

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

25 (c) "Financial institution" includes, but is not limited to,
26 entities of the farm credit system or a state or federally
27 chartered savings bank. For purposes of this section, entities of

1 the farm credit system or a state or federally chartered savings
2 bank may be qualified as a financial institution eligible to
3 receive an investment under this section notwithstanding that its
4 principal office is not located in this state if the proceeds of
5 the investment will be committed to qualified agricultural loans in
6 this state.

7 (d) "Corporate person" or "corporation" means, except in
8 relation to a qualified agricultural loan under subdivision (A) (iii),
9 a corporation in which a majority of the corporate stock is owned
10 by persons operating the farm applying for a loan.

11 (e) "Facility" means a plant designed for receiving or storing
12 farm produce or a retail sales establishment of a business engaged
13 in making retail sales directly to farmers, which establishment has
14 75% or more of its gross retail sales volume exempted from sales
15 tax under the Michigan agricultural sales tax exemption, as
16 provided in section 4a(1)(e) of the general sales tax act, 1933 PA
17 167, MCL 205.54a.

18 (10) A qualified agricultural loan as defined by subsection
19 (9)(a)(ii) shall be equal to not more than the value of the crop
20 loss as certified by the producer by means of an affidavit
21 demonstrating an accurate and valid production loss. The qualified
22 agricultural loan shall not exceed the lesser of \$200,000.00 or the
23 value of the crop loss minus the amount of any grant under federal
24 disaster assistance or insurance proceeds received by the owner-
25 operator as a result of the same crop loss. If crop insurance was
26 available for a particular crop and the producer did not purchase
27 the crop insurance for that crop, the amount of the loan shall be

1 reduced by 30% or \$50,000.00, whichever is less.

2 (11) A qualified agricultural loan as defined by subsection
3 (9)(a)(iii) shall not exceed the lesser of the following:

4 (a) \$300,000.00 per facility.

5 (b) An amount not to exceed the value of the direct loss of
6 the individual, sole proprietorship, partnership, corporation, or
7 other legal entity making application for the loan, as determined
8 by the department of treasury under subsection (9)(a)(iii).

9 (c) \$400,000.00 per individual, sole proprietorship,
10 partnership, corporation, or other legal entity making application
11 for the loan.

12 (12) The financial institutions participating in the loan
13 program pursuant to subsection (9)(a) shall have the option of
14 making state subsidized loans to farmers or to businesses described
15 in subsection (9)(a)(iii) before October 1, 2002, with terms approved
16 by the state treasurer by using their existing deposits for the
17 loans and receiving from the state treasurer an interest rate
18 subsidy equal to 120% of the state treasurer's common cash earnings
19 rate. The state's reimbursement to financial institutions
20 participating in the loan program pursuant to subsection (9)(a)
21 shall not be made before October 1, 2002.

22 (13) There is hereby appropriated an amount sufficient to make
23 the distributions required under subsections (4) and (12) in the
24 2001-02 fiscal year for not to exceed \$210,000,000.00 in qualified
25 agricultural loans. For each qualified agricultural loan for which
26 a distribution is made pursuant to subsection (12), the maximum
27 amount of investments authorized by subsection (4) shall be reduced

1 by an amount equal to 100% or more of the qualified agricultural
2 loan, as determined by the department of treasury, for which a
3 distribution is made pursuant to subsection (12).

4 (14) Any money for purposes of qualified agricultural loans as
5 defined by subsection (9) (a) (ii) that has not been invested by the
6 state treasurer by October 1, 2002, shall increase the maximum
7 amount available under this section for qualified agricultural
8 loans as defined by subsection (9) (a) (i).

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

14 (16) Upon request by the department of treasury, a financial
15 institution shall forward a copy of any affidavits executed and
16 filed under this section to the department of treasury. The
17 financial institution and the department of treasury shall destroy
18 the affidavit or its copy after the qualified agricultural loan is
19 paid off.

20 (17) If the recipient of a qualified agricultural loan as
21 defined by subsection (9) (a) receives a federal grant after the
22 receipt of a qualified agricultural loan under this section, then
23 any federal grant money remaining after all federal obligations are
24 met shall be allocated by the recipient to payment of the balance
25 of any outstanding loan made under this section.

26 (18) **THE STATE OF MICHIGAN AND A LENDER WHO MADE A ZERO-**
27 **INTEREST LOAN UNDER SUBSECTION (6) SHALL EXECUTE AN ADDENDUM TO THE**

1 INVESTMENT AGREEMENT. NOTWITHSTANDING SUBSECTION (6), AN OWNER-
2 OPERATOR FARMER OR PRODUCER MAY REQUEST A SUSPENSION OF PAYMENTS OF
3 AN EXISTING ZERO-INTEREST LOAN, HAVING AT LEAST A \$2,500.00 BALANCE
4 AS OF THE DATE THE APPLICATION FOR THE EXTENSION WAS SUBMITTED TO
5 THE LENDER, FOR UP TO 2 YEARS FROM THE DATE OF THE ORIGINAL
6 SCHEDULED PAYMENT, BUT NOT LATER THAN OCTOBER 1, 2009, UNDER THE
7 FOLLOWING QUALIFYING CIRCUMSTANCES:

8 (A) THE BORROWER SUFFERS A WEATHER-RELATED LOSS ON HIS OR HER
9 FARM OPERATION IN A COUNTY, OR A CONTIGUOUS COUNTY, THAT HAS BEEN
10 DECLARED TO BE AN AGRICULTURAL DISASTER AS DETERMINED BY THE UNITED
11 STATES DEPARTMENT OF AGRICULTURE, UPON THE REQUEST OF THE GOVERNOR.

12 (B) THE BORROWER SUBMITS AN AFFIDAVIT DEMONSTRATING A 30% CROP
13 LOSS DUE TO A WEATHER-RELATED AGRICULTURAL DISASTER.

14 (19) UPON APPLICATION UNDER THE CONDITIONS DESCRIBED IN
15 SUBSECTION (18), EXECUTION OF THE APPROPRIATE AGREEMENT BETWEEN THE
16 BORROWER AND LENDER, AND APPROVAL OF THE LENDER, THE LENDER MAY
17 SUSPEND THE LOAN PAYMENTS FOR UP TO 2 YEARS FROM THE DATE OF THE
18 ORIGINAL SCHEDULED PAYMENT, BUT NOT LATER THAN OCTOBER 1, 2009.