

## SURPLUS FUNDS IN TREASURY Act 105 of 1855

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.

**History:** 1855, Act 105, Eff. May 15, 1855;—Am. 1979, Act 88, Imd. Eff. Aug. 1, 1979;—Am. 1980, Act 30, Imd. Eff. Mar. 8, 1980;—Am. 1980, Act 323, Imd. Eff. Dec. 15, 1980;—Am. 1986, Act 242, Imd. Eff. Dec. 3, 1986;—Am. 1990, Act 360, Imd. Eff. Dec. 27, 1990;—Am. 1993, Act 44, Imd. Eff. May 27, 1993.

*The People of the State of Michigan enact:*

### **21.141 Loan to eligible municipality; approval; compliance; warrant; limitation on total amount of loans; sale, assignment, transfer, or repurchase of loans; "board" defined.**

Sec. 1. (1) The state treasurer shall make a loan from surplus funds to an eligible municipality, as municipality is defined in section 1 of the emergency municipal loan act, 1980 PA 243, MCL 141.931, if the loan is approved under the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(2) A loan made under subsection (1) shall comply with the requirements of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, relating to the terms, conditions, rate of interest, and amount of the loan.

(3) Upon approval of a loan by the board and execution of a note of indebtedness to this state by an authorized representative of the municipality, including, but not limited to, an emergency manager for the municipality if the municipality is in receivership under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, a successor statute, or, if the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is repealed or otherwise not effective and former 1990 PA 72 is reenacted or otherwise again in effect or applicable, an emergency financial manager for the municipality if the municipality has a financial emergency under former 1990 PA 72, the state treasurer shall issue a warrant to the municipality in an amount equal to the amount of the loan.

(4) For state fiscal years beginning before October 1, 2011, the total amount of loans made from surplus funds pursuant to this section in any 1 state fiscal year shall not exceed \$5,000,000.00 plus the amount of any loans authorized by section 3(2) of the emergency municipal loan act, 1980 PA 243, MCL 141.933. For state fiscal years beginning after September 30, 2018, the total amount of loans made from surplus funds pursuant to this section in any 1 state fiscal year shall not exceed \$10,000,000.00 plus the amount of any loans authorized by section 3(2) of the emergency municipal loan act, 1980 PA 243, MCL 141.933, with no loan to a single municipality exceeding \$4,000,000.00 in a state fiscal year. For the period beginning on October 1, 2011 and ending on September 30, 2018, loans made from surplus funds pursuant to this section may include both of the following:

(a) Loans to municipalities other than school districts totaling up to \$35,000,000.00 during the period. Loans to a single municipality under this subdivision shall not total more than \$20,000,000.00.

(b) Loans to school districts within this state that total up to \$50,000,000.00 during the period. Loans to a single school district under this subdivision shall not total more than \$20,000,000.00.

(5) The state treasurer may sell, assign, transfer, or repurchase loans made from surplus funds under this section or from the proceeds of the sale, assignment, or transfer of a loan under section 6a of the emergency municipal loan act, 1980 PA 243, MCL 141.936a. The state treasurer shall use surplus funds to repurchase a loan under this subsection.

(6) As used in this section, "board" means the local emergency financial assistance loan board created pursuant to the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

**History:** Add. 1980, Act 323, Imd. Eff. Dec. 15, 1980;—Am. 1987, Act 284, Eff. Apr. 11, 1988;—Am. 2012, Act 287, Imd. Eff. Aug. 1, 2012.

### **21.142 Repealed. 2006, Act 228, Imd. Eff. June 26, 2006.**

**Compiler's note:** The repealed section pertained to use of surplus funds to make loans to qualified corporations.

### **21.142a Investment of surplus funds; conditions and restrictions; valid public purpose; approval of documentation; agricultural loans; disposition of earnings; reducing general fund by amount of interest deficiency or loss of principal; duration of certain investments;**

**compliance; separate reports; definitions; value of qualified agricultural loans; deduction of grant; use of existing deposits for loans to farmers; appropriation; reduction of maximum amount of investments; effect of money not invested for qualified agricultural loans; action to ensure successful operation of section; disposition of affidavit; use of federal grant.**

Sec. 2a. (1) The state treasurer may invest surplus funds under the state treasurer's control in certificates of deposit or in a financial institution that qualifies with proof of financial viability acceptable to the state treasurer under this act to receive deposits or investments of surplus funds. In addition to terms that may be prescribed in the investment agreement by the state treasurer, an investment under this section shall be subject to all of the following conditions and restrictions:

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

(b) The financial institution shall provide good and ample security as the state treasurer requires and shall identify the qualified agricultural 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.

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

(d) To the extent the financial institution has not made qualified agricultural loans as defined by subsection (9)(a) 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 invested the surplus funds.

(e) For a qualified agricultural loan as defined by subsection (9)(a), the investment agreement shall provide that the financial institution does not have to repay any principal within the first 24 months after which the investment is made unless the investment is no longer being used to make a qualified agricultural loan as defined by subsection (9)(a), or to the extent the qualified agricultural loan has been repaid.

(f) For a qualified agricultural loan as defined by subsection (9)(a), the investment agreement may include 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.

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

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

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

(5) Earnings from an investment made pursuant to this section which are in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1 or former section 2, shall be credited to the general fund of the state. If interest from an investment made pursuant to this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1 or former section 2, 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 pursuant to 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) A new investment to which a qualified agricultural loan as defined by subsection (9)(a)(ii) is attributed shall not be made pursuant to this section after October 1, 2002, and shall not be made with a term which extends beyond October 1, 2007. An investment to which a qualified agricultural loan as defined by subsection (9)(a)(iii) is attributed shall not be made pursuant to this section after October 1, 2002, and shall not be made with a term extending beyond October 1, 2007. The terms of the qualified agricultural loan as defined by subsection (9)(a) shall provide that zero-interest loans under this section be for a term not more than 5 years and that the first payment made by the recipient occur not later than 24 months after the date of the loan. An investment to which a qualified agricultural loan as defined by subsection (9)(a)(i) is attributed shall not be made with a term extending beyond October 1, 2007.

(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 and this act.

(8) Before October 1, 2003, the state treasurer shall prepare separate reports to the legislature and the house and senate agriculture appropriations subcommittees regarding the disposition of money invested for purposes of qualified agricultural loans as defined by subsection (9)(a)(i) and for qualified agricultural loans as defined by subsection (9)(a)(ii) and (iii). The reports for each type of loan shall include all of the following information:

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

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

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

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

(9) As used in this section:

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

(i) Until October 1, 2002, a loan to 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 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207, who is experiencing financial stress and difficulty in meeting existing or projected debt obligations owed to financial institutions due to an agricultural disaster as requested by the governor at rates commensurate with rates charged by financial institutions for loans of comparable type and terms at the time the loan is to be made, and who certifies to the financial institution that the owner-operator will not have more than \$150,000.00 in outstanding loans otherwise considered qualified agricultural loans under this subparagraph, including the loan for which the owner-operator is applying. If crop insurance was available for a particular crop and the producer did not purchase the crop insurance for that crop, the amount of the loan shall be reduced by 30% or \$50,000.00, whichever is less. A qualified agricultural loan under this subparagraph may be made for either or both of the following purposes:

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

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

(ii) A loan to an individual, sole proprietorship, partnership, corporation, or other legal entity that is engaged and intends to remain engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207, who has suffered a 25% or more loss in major enterprises or a 50% or more production loss in any 1 crop due to an agricultural disaster on a farm located in this state, as requested by the governor and as certified by the producer by means of an affidavit demonstrating an accurate and valid production loss.

(iii) A loan to an individual, sole proprietorship, partnership, corporation, or other legal entity that is engaged in an agricultural business of buying, exchanging, or selling farm produce, or is engaged in the business of making retail sales directly to farmers and has 75% or more of its gross retail sales volume exempted from sales tax under the Michigan agricultural sales tax exemption, as provided in section 4a(1)(e) of the general sales tax act, 1933 PA 167, MCL 205.54a. Businesses engaged in the buying, exchanging, or selling of farm produce must have suffered a 50% or greater loss in volume of 1 commodity as compared with the average volume of that commodity which the business handled over the last 3 years to qualify for loans under this subparagraph. Businesses engaged in making retail sales directly to farmers must have suffered a 50% or greater reduction in gross retail sales volume subject to the Michigan agricultural sales tax exemption as compared with that business's average retail sales volume subject to that exemption over the last 3 years to qualify for loans under this subparagraph. All losses claimed by businesses attempting to qualify for loans under this subparagraph must be directly attributable to a natural disaster occurring after January 1, 2001, as requested by the governor and as certified by the agricultural business by means of an affidavit demonstrating an accurate and valid loss.

(b) "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.

(c) "Financial institution" includes, but is not limited to, entities of the farm credit system or a state or federally chartered savings bank. For purposes of this section, entities of the farm credit system or a state or federally chartered savings bank may be qualified as a financial institution eligible to receive an investment under this section notwithstanding that its principal office is not located in this state if the proceeds of the investment will be committed to qualified agricultural loans in this state.

(d) "Corporate person" or "corporation" means, except in relation to a qualified agricultural loan under

subdivision (a)(iii), a corporation in which a majority of the corporate stock is owned by persons operating the farm applying for a loan.

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

(10) A qualified agricultural loan as defined by subsection (9)(a)(ii) shall be equal to not more than the value of the crop loss as certified by the producer by means of an affidavit demonstrating an accurate and valid production loss. The qualified agricultural loan shall not exceed the lesser of \$200,000.00 or the value of the crop loss minus the amount of any grant under federal disaster assistance or insurance proceeds received by the owner-operator as a result of the same crop loss. If crop insurance was available for a particular crop and the producer did not purchase the crop insurance for that crop, the amount of the loan shall be reduced by 30% or \$50,000.00, whichever is less.

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

(a) \$300,000.00 per facility.

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

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

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

(13) There is hereby appropriated an amount sufficient to make the distributions required under subsections (4) and (12) in the 2001-02 fiscal year for not to exceed \$210,000,000.00 in qualified agricultural loans. For each qualified agricultural loan for which a distribution is made pursuant to subsection (12), the maximum amount of investments authorized by subsection (4) shall be reduced by an amount equal to 100% or more of the qualified agricultural loan, as determined by the department of treasury, for which a distribution is made pursuant to subsection (12).

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

(15) 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 loan.

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

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

**History:** Add. 1985, Act 12, Imd. Eff. May 1, 1985;—Am. 1985, Act 90, Imd. Eff. July 10, 1985;—Am. 1986, Act 242, Imd. Eff. Dec. 3, 1986;—Am. 1987, Act 27, Imd. Eff. May 12, 1987;—Am. 2002, Act 16, Imd. Eff. Feb. 28, 2002;—Am. 2007, Act 176, Imd. Eff. Dec. 21, 2007.

**21.142b Investment of surplus funds; terms and conditions; valid public purpose; investment agreement; amount of investment; earnings; list of eligible projects; conditions to approval of eligible project; duty of director and state treasurer; definitions; effect of general obligation bonds; use of bond proceeds to promote solid waste management.**

Sec. 2b. (1) The state treasurer may invest surplus funds under the state treasurer's control with a financial institution, investment company, insurance company, or other legal entity entitled to receive an investment, which investment may be in the form of a deposit, repurchase agreement, guaranteed investment contract,

banker's acceptances, or other security evidencing the obligation of the entity receiving the investments to repay the investment under the terms and conditions contained in an investment agreement, including the rate of return, if any, to be received on the investment.

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

(3) In addition to the terms and conditions that may be prescribed by the investment agreement, the investment agreement shall also provide for the following:

(a) The character, extent, and nature of security necessary for the investment.

(b) That the investment shall be loaned to the Michigan municipal bond authority for the purpose of the Michigan municipal bond authority investing the proceeds of that loan in a manner consistent with and pursuant to the shared credit rating act, Act No. 227 of the Public Acts of 1985, being sections 141.1051 to 141.1078 of the Michigan Compiled Laws, to produce a return available to the Michigan municipal bond authority solely for the purpose of structuring, assisting, or benefiting an eligible project or to pay principal and interest on any proceeds of an obligation of the Michigan municipal bond authority which are used to benefit an eligible project.

(c) The term of the investment.

(4) The amount of any investment made pursuant to this subsection shall not exceed 10% of the average balance of the state common cash fund during the 30 days preceding the date on which the list of eligible projects is submitted to the joint capital outlay subcommittee, calculated after other investments made pursuant to this section have been deducted.

(5) Earnings from an investment made pursuant to this section in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1, 2, or 2a, shall be credited to the general fund of the state. If interest from an investment made pursuant to this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1, 2, or 2a, 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 pursuant to this section shall reduce the earnings on the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

(6) Not less than 30 days before an investment is made pursuant to this section the director and the state treasurer shall prepare and submit to the members of the joint capital outlay subcommittee of the appropriations subcommittees of the legislature a list of projects that the director and the state treasurer determine are eligible projects and the local units in which the eligible projects are located. Upon the approval of the joint capital outlay subcommittee, the state treasurer may execute the investment authorized by this section.

(7) A project shall not be approved by the director and the state treasurer as an eligible project unless all of the following conditions are met:

(a) The director determines that the project is located in a county that has an approved solid waste management plan.

(b) The director determines that the project is consistent with the approved solid waste management plan.

(c) The director determines that the project has all the permits that are required by state law that are specifically applicable to the nature of the proposed project.

(d) If the project is a waste to energy facility, the director determines that the facility utilizes the best available control technology and that the resultant ash is tested for toxicity and appropriate disposal is assured.

(e) If the project is a waste to energy facility, the project either includes the recycling of the recyclable portion of the project's projected waste stream, or the project application includes a recycling feasibility analysis or other available information that indicates that recycling is not necessary or feasible, or is only necessary or feasible to a limited extent and that adding such a component to the project would not be economically feasible. If any local unit within a county which has an approved solid waste management plan operates a recycling project or receives funding pursuant to part 191 (clean Michigan fund) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.19101 to 324.19121 of the Michigan Compiled Laws, for a recycling project that included an analysis of the feasibility of recycling in the county in which the project is located, the requirements of this subdivision shall be met for all local units within the planning area.

(f) The state treasurer determines that the project meets the requirements of this section, that the project is economically feasible, and that no similar project that is economically feasible without the expenditure of state funds is proceeding in a timely manner and has made application with the director for any permit or license necessary for construction or operation in the county in which the project is located.

(8) The director and the state treasurer shall work together to assure that eligible projects are economically

viable and will assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound and maximize the use and reuse of valuable resources.

(9) As used in this section:

(a) "Authority" means the Michigan municipal bond authority created in Act No. 227 of the Public Acts of 1985.

(b) "Best available control technology" means best available control technology as defined in section 169 of subpart I of part C of title I of the clean air act, chapter 360, 91 stat. 740, 42 U.S.C. 7479.

(c) "Director" means the director of the department of environmental quality or his or her authorized representative.

(d) "Eligible project" means 1 or more of the following projects of a local unit that have been approved by the director and the state treasurer, including costs associated with a project necessary for issuance of evidences of indebtedness to finance the project:

(i) The construction, improvement, acquisition, or enlargement of a waste to energy facility.

(ii) The construction, improvement, acquisition, or enlargement of a solid waste transfer facility.

(iii) The construction, improvement, or enlargement of a recycling project or the acquisition of recycling equipment.

(iv) The construction, improvement, or enlargement of a composting project or the acquisition of composting equipment.

(e) "Local units" means a city, village, township, county, or an authority created by or pursuant to state law, or any combination thereof if authorized by state law to act jointly.

(f) "Composting project", "recycling project", "solid waste", "solid waste transfer facility", and "waste to energy" have the meaning ascribed to them in part 191 of Act No. 451 of the Public Acts of 1994.

(10) Notwithstanding any other provision of this act, the state treasurer shall not invest additional surplus funds in the manner and for the purposes provided in this section after the electors approve the issuance of general obligation bonds in accordance with section 15 of article IX of the state constitution of 1963 and not less than \$250,000,000.00 of the proceeds of those bonds is to be used to promote solid waste management in the state by funding eligible projects or similar solid waste management projects, promoting solid waste reduction, upgrading or closing existing landfills, or providing educational and technical assistance regarding solid waste management.

**History:** Add. 1987, Act 118, Eff. Oct. 1, 1987;—Am. 1996, Act 31, Imd. Eff. Feb. 26, 1996.

#### **21.142c Investment of surplus funds; public purpose; earnings; losses; limitation.**

Sec. 2c. (1) The state treasurer may invest surplus funds under the control of the state treasurer in undivided participating interests in loans the principal of which is in whole or in part guaranteed or otherwise considered an evidence of indebtedness of the United States government or its agencies, to the extent the investment in an undivided participating interest in loans does not exceed that portion of the loan amount guaranteed or otherwise considered an evidence of indebtedness of the United States government or its agencies.

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

(3) Earnings from an investment made pursuant to this section in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1, 2, 2a, or 2b, shall be credited to the general fund of the state. If interest from an investment made pursuant to this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1, 2, 2a, or 2b, 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 pursuant to this section shall reduce the earnings on the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

(4) Investments made pursuant to this section shall not be outstanding at any 1 time in an amount in excess of \$100,000,000.00.

**History:** Add. 1990, Act 360, Imd. Eff. Dec. 27, 1990.

#### **21.142d Investment of surplus funds to facilitate marina dredging loans.**

Sec. 2d. (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 marina dredging loans. The state treasurer shall endeavor to make investments under this subsection in financial institutions such that marina dredging 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 10 years.
- (b) A requirement that the interest accruing on the investment shall not be more than the interest earned by the financial institution on marina dredging 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 marina dredging 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 marina dredging 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 marina dredging loan made by the financial institution that is attributable to the investment shall be made not later than 3 years after the effective date of this section.
- (f) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall be issued for a loan repayment period of not more than 7 years.
- (g) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall not exceed \$75,000.00.
- (h) A requirement that a marina dredging 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 marina.
- (i) A requirement that to the extent the financial institution has not made marina dredging 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 \$20,000,000.00.
- (5) Upon the determination by the directors of the departments of natural resources and environmental quality that the need to facilitate marina dredging loans has significantly diminished based on changes in Great Lakes water levels, the state treasurer may take actions necessary to ensure that no new marina dredging loans that are attributable to an investment under this section are made. Such a determination shall not affect existing marina dredging loans that are attributable to an investment under this section.
- (6) 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.
- (7) 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 marina dredging loan.
- (8) 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.
- (9) The state treasurer shall annually prepare and submit a report to the legislature regarding the disposition of money invested for purposes of facilitating marina dredging loans under this section. The report shall include all of the following information:
  - (a) The total number of eligible marina owners who have received a marina dredging loan.
  - (b) By county, the total number and amounts of the marina dredging loans that were issued.
  - (c) The name of each financial institution participating in the marina dredging loan program and the amount invested in each financial institution for purposes of the loan program.
- (10) As used in this section:

(a) "Bottomland" means the land area of a water body that lies below the ordinary high-water mark and

that may or may not be covered by water.

(b) "Dredging" means the removal of sediments from bottomland.

(c) "Dredging costs" means the costs associated with dredging that were incurred after January 1, 2000, including costs of removal, disposal, and testing of sediments, and the costs associated with obtaining necessary permits required to conduct dredging.

(d) "Eligible marina" means a privately owned, commercial facility in this state that meets all of the following requirements:

(i) Extends into or over the Great Lakes and their connecting waters navigable by motorized watercraft from a Great Lake.

(ii) Provides docking, mooring or launching services available to the general public for recreational boating. Marinas that limit their services based on membership or residency requirements are not eligible.

(iii) Provides mooring facilities for no more than 200 recreational watercraft through the use of docks, slips, or broadside mooring.

(iv) Has received the permits required by law from the department of environmental quality and the army corps of engineers for the dredging to be conducted with loan funds.

(e) "Marina dredging loan" means a loan or the refinancing of all or a portion of a loan made to the owner of an eligible marina for dredging costs necessitated by low water levels to accommodate the use of the marina by recreational watercraft.

(f) "Ordinary high-water mark" means either of the following:

(i) For an inland lake or stream, that term as it is defined in section 30101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30101.

(ii) For the Great Lakes, the ordinary high-water mark as described in section 32502 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.32502.

(g) "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.

**History:** Add. 2000, Act 280, Imd. Eff. July 10, 2000.

#### **21.142e Loan of surplus funds to sugar beet growers' cooperative.**

Sec. 2e. (1) The state treasurer may loan not more than \$5,000,000.00 in surplus funds, without interest, to sugar beet growers' cooperatives for the purpose of purchasing the assets of 1 or more agricultural processors if all of the following conditions are met:

(a) The agricultural processor employs at least 300 full-time employees and 1,000 seasonal employees and is in bankruptcy proceedings or was in bankruptcy proceedings at any time during the 1-year period preceding the date of the loan.

(b) The loan amount does not exceed 10% of the total purchase price of the agricultural processor's assets.

(c) The loan is for a period not to exceed 10 years.

(2) In addition to the conditions provided in subsection (1), the state treasurer may prescribe additional terms of a loan issued under this section.

(3) In the case of a loan executed under subsection (1), the state treasurer, as part of the modification of the loan, shall subordinate the loan to the primary loan of the sugar beet growers' cooperative and shall relinquish any enforcement powers or authority that may exist under the current contract or agreement. The modification shall be for not more than a \$5,000,000.00 loan to a sugar beet growers' cooperative for the purpose of purchasing the assets of 1 or more agricultural processors that employ at least 300 full-time employees and 1,000 seasonal employees. However, the modification agreement for the loan extension provided for by the amendatory act that added this sentence shall provide that if a quarterly payment is missed by the borrower after February 15, 2007, the entire loan is in default and is due and payable immediately, in full.

(4) As used in this section, "sugar beet growers' cooperative" means a farmer owned cooperative comprised of sugar beet growers who own the assets of the cooperative and use the cooperative's services or processing equipment.

**History:** Add. 2001, Act 123, Imd. Eff. Oct. 8, 2001;—Am. 2004, Act 342, Imd. Eff. Sept. 28, 2004;—Am. 2007, Act 4, Imd. Eff. Mar. 22, 2007.

#### **21.142f Investment in loans to land bank fast track authority or brownfield redevelopment authority; terms; definitions.**

Sec. 2f. (1) The state treasurer may invest surplus funds in loans to a land bank fast track authority or a brownfield redevelopment authority at the market rate of interest, as determined by the state treasurer, for the purpose of clearing or quieting title to tax reverted property held by or under the control of an authority or for

any other purpose that the land bank fast track authority or brownfield redevelopment authority is authorized to undertake with respect to property transferred to a land bank fast track authority or over which a land bank fast track authority may exercise its authority.

(2) A loan made to a land bank fast track authority or a brownfield redevelopment authority under this section shall not be for a period of more than 10 years as determined by the state treasurer. All other terms of the loan, including security required for the loan, if any, shall be prescribed by the state treasurer.

(3) As used in this section:

(a) "Brownfield redevelopment authority" means an authority created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(b) "Land bank fast track authority" means an authority created under the land bank fast track act.

(c) "Tax reverted property" means that term as defined in the land bank fast track act.

**History:** Add. 2003, Act 262, Imd. Eff. Jan. 5, 2004.

### **21.143 Financial institution as depository of surplus funds; compliance; location of principal office; security; rate of return; investment and use of surplus funds; disposition of earnings from loans; loss of principal or interest; reduction of earnings; investment in securities of no-load open-end or closed-end management type investment company or investment trust.**

Sec. 3. (1) A financial institution shall not be a depository of surplus funds of the state unless the financial institution complies with this act. The state treasurer shall require of a financial institution, before it is made a depository of surplus funds of the state, good and ample security as approved by the state treasurer and the attorney general for the safekeeping and reimbursement of the surplus funds and the payment of the rate of return as the state treasurer, in the treasurer's discretion, considers best for the interest of the state.

(2) The state treasurer may invest surplus funds of the state in the bonds, notes, and other evidences of indebtedness of the United States government and its agencies, in prime commercial paper, and may also use surplus funds in the manner provided in sections 2, 2a, 2b, and 2d and may use each fiscal year not more than that amount of the surplus funds necessary to make loans to municipalities under section 1.

(3) All earnings from loans made under section 1 in excess of the average rate of interest earned on other surplus funds during the same period shall be credited to the general fund of the state. Any loss of principal or interest sustained from loans made under section 1 shall reduce the earnings of the general fund on an amortized basis over the remaining term of the loan.

(4) The investment of surplus state funds in bonds, notes, and other evidences of indebtedness of the United States government and its agencies as provided in subsection (1) may include securities of, or other interests in, a no-load open-end or closed-end management type investment company or investment trust registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, if both of the following are true:

(a) The portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations.

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

**History:** 1855, Act 105, Eff. May 15, 1855;—CL 1857, 274;—Am. 1863, Act 200, Eff. June 22, 1863;—CL 1871, 353;—How. 398;—CL 1897, 1189;—CL 1915, 289;—CL 1929, 348;—Am. 1933, Act 15, Imd. Eff. Feb. 27, 1933;—CL 1948, 21.143;—Am. 1967, Act 102, Imd. Eff. June 21, 1967;—Am. 1979, Act 88, Imd. Eff. Aug. 1, 1979;—Am. 1980, Act 30, Imd. Eff. Mar. 8, 1980;—Am. 1980, Act 323, Imd. Eff. Dec. 15, 1980;—Am. 1985, Act 12, Imd. Eff. May 1, 1985;—Am. 1987, Act 118, Eff. Oct. 1, 1987;—Am. 1987, Act 284, Eff. Apr. 11, 1988;—Am. 1990, Act 8, Imd. Eff. Feb. 16, 1990;—Am. 1997, Act 32, Imd. Eff. June 19, 1997;—Am. 2000, Act 280, Imd. Eff. July 10, 2000.

### **21.144 Liability of state treasurer and his or her bail; loans not subject to certain acts.**

Sec. 4. (1) Nothing contained in this act shall be held or considered to change or affect the liability of the state treasurer or his or her bail, on his or her bond to this state.

(2) Loans made under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) Loans made under this act are subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

**History:** 1855, Act 105, Eff. May 15, 1855;—CL 1857, 275;—CL 1871, 354;—How. 399;—CL 1897, 1190;—CL 1915, 290;—CL 1929, 349;—CL 1948, 21.144;—Am. 2003, Act 262, Imd. Eff. Jan. 5, 2004.

### **21.145 Compliance with divestment from terror act.**

Sec. 5. The state treasurer shall comply with the divestment from terror act, 2008 PA 234, MCL 129.291 to 129.301, in making investments under this act.

**History:** Add. 2008, Act 271, Imd. Eff. Sept. 29, 2008.

**Compiler's note:** Former MCL 21.145, which pertained to financial institutions failing to comply with certain requirements, was repealed by Act 32 of 1997, Imd. Eff. June 19, 1997.

**21.146 Illegal discriminatory lending practice; determination regarding deposit of additional surplus funds; considerations; commencement date and duration of prohibition; determination subject to MCL 24.201 et seq.**

Sec. 6. (1) If a financial institution is found by a state or federal agency having jurisdiction over that financial institution, or a court having jurisdiction over that financial institution, to have engaged in an illegal discriminatory lending practice relating to a mortgage loan or home improvement loan application, the commissioner, if the commissioner considers it appropriate, shall within 30 days after receipt of written notice that the finding has become final, initiate a proceeding under this act. The purpose of the proceeding shall be to determine whether additional surplus funds belonging to the state shall be deposited in that financial institution. In making the determination, the commissioner shall consider the nature of the violation, the action taken by the financial institution to insure that the violation shall not be repeated, and the record of the financial institution in complying with laws prohibiting discriminatory lending practices relating to a mortgage loan or a home improvement loan application. The commissioner shall not make a determination adverse to the financial institution based on an unintentional, isolated, or technical illegal discriminatory lending practice. If the commissioner determines that additional surplus funds belonging to the state shall not be deposited in that financial institution, then the commissioner also shall determine during the same proceeding, the commencement date and duration of the prohibition, which shall not exceed 2 years.

(2) The determination of the commissioner under this act shall be subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**History:** Add. 1979, Act 88, Imd. Eff. Aug. 1, 1979.

**21.147 Definitions.**

Sec. 7. As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance services of the department of consumer and industry services.

(b) "Deposit" includes the purchase of, or investment in, shares of credit unions.

(c) Except as otherwise provided by this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States. For the purpose of repurchase agreements, "financial institution" means a state or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of this state or the United States.

**History:** Add. 1979, Act 88, Imd. Eff. Aug. 1, 1979;—Am. 1993, Act 44, Imd. Eff. May 27, 1993;—Am. 1997, Act 32, Imd. Eff. June 19, 1997;—Am. 2000, Act 280, Imd. Eff. July 10, 2000.

**Administrative rules:** R 445.1001 et seq. of the Michigan Administrative Code.