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“THE JULIAN-STILLE VALUE-ADDED ACT”

Senate Bill 1340 (Substitute H-2) First Analysis (10-2-00)

Sponsor: Sen. Leon Stille
**House Committee: Agriculture and
Resource Management**
**Senate Committee: Farming, Agribusiness
and Food Systems**

THE APPARENT PROBLEM:

Reportedly, some sectors of production agriculture in Michigan are suffering in part from the fact that processing plants for their products have moved out of state. In addition, some people believe that one way to help an agricultural industry that is, in general, struggling economically would be to encourage new “value added” agricultural enterprises.

Public Act 291 of 2000 (enrolled Senate Bill 968) appropriated supplemental funds to the Department of Agriculture, among other entities. Among the supplemental appropriations to the MDA are a \$5 million appropriation for “agricultural development initiatives,” and the bill requires the MDA to expend these funds for local grant promotions for agricultural value initiatives. However, the act also specifies that the \$5 million for agriculture development initiatives cannot be expended until legislation is enacted to create the uncollectable allowance recovery fund and prescribe the uses of the fund.

Legislation has been proposed to address these issues.

THE CONTENT OF THE BILL:

The bill would create a new act, the “Julian-Stille valued-added act,” to create two state funds -- the Agricultural Development Fund to be administered by the Department of Agriculture, and the Michigan Clean Air Fund to be administered by the Department of Environmental Quality -- and to require the Public Service Commission (in the Department of Consumer and Industry Services) to require residential gas and electric utilities to establish and administer “uncollectibles allowance recovery funds” for annual deposit into the proposed Michigan Clean Air Fund.

The uncollectibles allowance recovery funds. The bill would require the Public Service Commission (PSC) to require a utility (defined in the bill as “a person, firm, corporation, cooperative, association, or other agency that [was] subject to the jurisdiction of the commission and that distribute[d] and [sold] electricity or natural gas to the public for residential use”) to establish and administer an “uncollectibles allowance recovery fund.” A utility that was required by the PSC to establish and administer such a fund would be required to annually deposit into its fund the difference between the “uncollectable provision” (a term not defined in the bill) as recorded in the utility’s financial records for 1999 less the provision as recorded on the utility’s financial records in each subsequent year. Within 30 days after the close of the utility’s fiscal year, it would have to inform the PSC of the amount of money that it had recorded into its fund for that year, and annually disburse money from its fund to the state treasurer for deposit into the proposed Michigan Clean Air Fund (see below) in accordance with the Public Service Commission’s orders and rules.

The PSC would resolve any dispute regarding the reasonableness of an amount recorded on a utility’s financial record as a provision for its uncollectable expenses or the accuracy of the amount deposited into a utility’s fund.

The bill also would require the PSC to promulgate rules to implement this section of the proposed act.

The Agricultural Development Fund. The bill would create an Agricultural Development Fund in the Department of Treasury to be administered by the Department of Agriculture, which could use up to five percent of the fund for administrative purposes and which would be required to use the fund to make grants

Senate Bill 1340 (10-2-00)

for development of value-added agricultural processing and production ventures. (The bill would define “value-added” to mean “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 would include, but not be limited to, marketing, agricultural processing, transforming, or packaging.” The bill also would define “agricultural processing” to mean one 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.”)

The Department of Treasury would be required to deposit not less than \$5 million of the revenue available within the proposed Michigan Clean Air Fund into the Agricultural Development Fund.

The state treasurer also would be required credit to the fund (a) money from appropriations and (b) money or other assets from any source, including federal money, other state revenue, gifts, bequests, donations, and money from any other source provided by law. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse into the general fund.

Agricultural Development Fund Grants. The Department of Agriculture (MDA) would be required to promulgate rules to implement the Agricultural Development Fund provisions of the bill and to prepare a request for proposal on at least an annual basis for grants from the fund, and grants would depend on the availability of funds. Grant money could be used “only for land, buildings, equipment, and property acquisition and assembly, demolition, site development, utility modifications and improvements, transportation improvements, infrastructure improvements, telecommunication infrastructure, technical assistance, marketing research, business plan development, and utilization of technology designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations” in the state.

The director of the MDA would have final approval of grants under the bill, and could impose fiduciary obligations (including performance bonding) upon grant recipients, as well as conditions upon the receipt and expenditure of the grant money. Before a grant could be awarded, applicants would be required to have a cash match of at least ten percent of the grant or there would have to be some other repayment guarantee with a dedicated funding source.

Applicants for grants from the fund could be individuals, farmer-owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government. Applications for grants from the fund would be made on a form or format prescribed by the MDA, and the bill would allow the department to require applicants to provide information reasonably necessary to allow the department to determine whether or not to issue a grant to the applicant.

Applications for grants would be evaluated and ranked according to selection criteria and a scoring or point system developed and approved by the Department of Agriculture and reviewed and approved by the Commission of Agriculture. In developing the scoring or point system, the MDA would have to seek the assistance of the Michigan Economic Development Corporation, Michigan State University, the United States Department of Agriculture Rural Development Agency, the Rural Development Council of Michigan, three “producers” (including one plant agricultural producer, one animal agricultural producer, and another “producer at large”), and, as determined appropriate by the MDA director, “other industry and professional organizations.”

The bill would require the selection criteria to give primary consideration to the ability of the proposed project to provide sound agricultural economic development in a given geographical area of the state “with demonstrated economic and social benefits and the analysis of the proposed project in terms of and relative to risk, business and market planning, financial soundness, and credit-worthiness.” Special consideration would have to be given to those projects that demonstrated a high level of innovation and initiative for value-added agricultural processing and related agricultural production ventures to benefit producers in the state.

The Michigan Clean Air Fund. The bill would create the Michigan Clean Air Fund in the Department of Treasury, to be administered by the Department of Environmental Quality (DEQ). The department would use money in the fund to administer the program and 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.

The state treasurer would credit to the fund the money from the uncollectibles allowance recovery funds that would be established under the bill, as well as money from any other source provided by law. Money in the

fund at the end of the fiscal year would remain in the fund and not lapse into the state general fund.

The director of the DEQ would have final approval of grants and loans from the Clean Air Fund. He or she also could impose fiduciary obligations (including performance bonding) on grant recipients, as well as conditions on the receipt and expenditure of the grant money. Grants and loans would depend on the availability of money in the fund.

Applications for grants and loans from the fund would have to be made on a form or in a format prescribed by the DEQ, which could require applicants to provide any information “reasonably necessary” to allow it to decide whether or not to issue a grant or loan.

The bill would require the department to promulgate rules to implement this section of the proposed act.

HOUSE COMMITTEE ACTION:

The House Committee substituted the bill as passed by the Senate. As passed by the Senate, Substitute S-1 would have created only an “Agricultural Development Fund Act” to create and maintain value-added agricultural processing and production ventures in the state. The Senate-passed bill had a statement of legislative findings; would have created an Agriculture Development Advisory Board to review and recommend to the Department of Agriculture proposals for grants under the bill; would have allowed the MDA to designate a “primary point of contact” for activities conducted under the act and required it to establish a mission statement and objectives to be made available to the general public and to the processing and agricultural industries; would have required the director of the MDA to report quarterly to the legislature on the expenditures and grants made under the bill; and would have indicated that it was intended that the legislature appropriate an amount each year from the Agricultural Development Fund to the MDA that was sufficient to make the grants described in the bill.

The House substitute substantially expands the content of the bill to include the establishment of a Michigan Clean Air Fund to be administered by the Department of Environmental Quality and the addition of a requirement that the Public Service Commission require residential gas and electric utility companies to establish “uncollectibles allowance recovery funds.” In addition, Substitute H-2 would change the title and name of the bill, delete the statement of legislative intent, eliminate the advisory board and the reference

to appropriations by future legislatures, as well as the reporting requirement.

BACKGROUND INFORMATION

Reportedly, the Public Service Commission (PSC) held discussions with the utility companies in the state regarding a number of utility practices. As a result, the PSC promulgated a set of rules titled “Consumer Standards and Billing Practices for Electrical and Gas Residential Service” (R 460.2101 to 460.2199). The draft rules were approved by the Office of Regulatory Reform on August 15, 2000, and revisions to the draft rules have been proposed.

Rule 460.2135, “Uncollectibles allowance recovery fund” (effective March 17, 2000), reads in its entirety as follows:

(1) A utility shall establish and administer an uncollectibles allowance recovery fund.

(2) A utility shall annually deposit into its uncollectibles allowance recovery fund the difference between the uncollectibles provision as recorded on the utility’s financial records for 1999 less the provision as recorded on the utility’s financial records in each subsequent fiscal year.

(3) A utility shall annually disburse the funds placed into its uncollectibles allowance recovery fund according to the following formula:

(a) Twenty-five percent (25%) shall be retained by the utility.

(b) Seventy-five percent (75%) shall be contributed to the Michigan Clean Air Fund of the Department of Environmental Quality for use in programs or projects established to reduce oxides of nitrogen and volatile organic compounds.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Agriculture is an industry vital to the state and yet those involved in the industry are struggling economically. “Value-added” enterprises – such as processing corn to make ethanol fuel – are one way to increase agricultural income and profits. According to one

source, the average return on investment for production agriculture is two percent or less, while processing companies earn an average return of 14 percent. If farmers could be financially helped by the state to engage in value-added ventures, their return on their investment could be measurably improved. This not only would help farmers, but would benefit the state economy as a whole. Last spring the legislature passed supplemental agricultural appropriations that required the creation of a specific fund before the appropriations could be spent. The bill proposes to fulfill this requirement, thereby paving the way for helping farmers develop value-added agricultural enterprises.

For:

Reportedly, the language in the bill that would create the Clean Air Fund is at the request of the governor, who intended to use the money from residential gas and electric utility companies' uncollectibles allowance recovery funds to fund programs to reduce oxides of nitrogen and volatile organic compounds, both of which are significant air pollutants. As a compromise, the governor reportedly agreed to allow the first \$5 million collected from these utility funds to go to an agricultural development fund to promote value-added agricultural enterprises, with revenues in excess of this initial \$5 million going to the clean air programs.

For:

The money for both of the proposed state funds in the bill would come from money collected by residential gas and electric utility companies and held in "uncollectibles allowance recovery funds." The Public Service Commission had issued a rule that required these residential utility companies to collect these deposits and forward a percentage of the deposits to the state. However, apparently one utility company challenged the validity of the rule, arguing that the PSC could not demand non-statutory collection of deposits. The bill would provide that statutory authority. The bill would allow the utility companies to collect deposits from customers who had a record of bad credit, and in return would deposit the difference between their uncollectible provision (as recorded in 1999) minus the uncollectible provision as recorded in each subsequent year. Thus, a new revenue stream would be created, though it currently does not yet exist.

Against:

The bill is problematic and possibly unconstitutional. One problem is that it would take money from a proposed fund, the Michigan clean air fund, that would be intended to address air pollution and put it into another proposed fund, the agricultural development

fund, that has a completely unrelated purpose. Reportedly, discussions between the Public Service Commission and the utility companies resulted in a rule (Rule 460.2135) that requires utilities to establish and administer "uncollectable allowance recovery funds," consisting of money held by utility companies that comes from unclaimed deposits by utility customers who die or leave their residences without notifying the utility companies. There apparently is a surplus remaining once the utility companies recover their costs of closing these accounts, and the rule gives a formula under which utility companies are required annually to disburse the funds placed into their "uncollectibles allowance recovery funds." Under this formula, utility companies keep 25 percent of the funds and contribute 75 percent of these funds to the Michigan Clean Air Fund for use in programs or projects established to reduce oxides of nitrogen and volatile organic compounds (that is, substances which utility companies, among others, themselves produce and release into the atmosphere). Why should clean air funds be used to fund agricultural processing and production enterprises? Indeed, using the money in this way could potentially contribute to air pollution, since the bill does not place any environmental restrictions on such proposed ventures, though it would require that such "value-added" ventures have "demonstrated economic and social benefits." At the very least, shouldn't these proposed ventures also have environmental benefits? Or shouldn't they at least be required not to have adverse environmental impacts?

Secondly, although testimony before the House Committee on Agriculture and Resource Development indicated that the intent was to appropriate funds from the proposed Clean Air Fund to the proposed Agricultural Development Fund for only the first year of the proposed "uncollectibles allowance recovery funds," there is nothing in the bill that would restrict the shifting of money from the one fund to the other to only the first year. If this truly is the intent behind the bill, why not sunset the proposed Agricultural Development Fund and thereby protect the proposed Clean Air Fund from future raids?

Thirdly, the bill is very sketchy about the proposed programs, seemingly leaving most of the details of how the programs are to be implemented, including the application procedures and how the proposed grants would be decided, up to departmental rule-making and as-yet undetermined selection criteria and "scoring" or "point" systems. In addition, some of the language of the bill is unclear and needs clarification. (For example, the bill speaks of making grants to "qualified grantees who apply for such grants," when it would appear that

strictly speaking the bill should refer to “qualified applicants who apply for such grants.” Elsewhere in the bill it is unclear which entities are the references for qualifying phrases. For example, when the bill lists who might be included among grantees, does the phrase “for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations” apply only to local governments, or to all potential grantees?)

Fourthly, while the bill would put into statute most of the Public Service Commission rule regarding “uncollectibles allowance recovery funds” (see BACKGROUND INFORMATION), it would not require utility companies to send money from their funds to the state nor would it include the rule’s formula for how much of the funds would be kept by the utility companies and how much would have to be sent by the utility companies to the state (25 and 75 percent, respectively, in the rule). Yet as the Senate Fiscal Agency floor analysis of the bill as passed by the Senate points out, the proposed rule changes to the recently adopted rules would rescind this rule, which could mean that the utility companies would not be required to deposit money in their funds nor to send money from their funds to the proposed state Clean Air Fund. If the rule is rescinded and the bill is enacted, will there in fact be \$5 million to appropriate from the proposed clean air fund to the Agricultural Development Fund? If not, where will the \$5 million mentioned in the bill for the Agricultural Development Fund come from?

The Senate Fiscal Agency floor analysis also points out that Public Act 291 of 2000 appropriates \$5 million from “the uncollectibles allowance recovery fund” for agricultural development initiatives, while boilerplate language in the act states that these funds cannot be spent until legislation is enacted to create the fund and prescribe its uses. But the bill as substituted in the House would create two other state funds. And while, unlike the Senate-passed version of the bill, the House substitute would require the Public Service Commission to require residential gas and electric utilities to create individual “uncollectibles allowance recovery funds,” technically this requirement still would not meet Public Act 291’s requirement that a (single) “uncollectibles allowance recovery fund” be established. Moreover, the act requires appropriation from this fund, not the proposed Clean Air Fund, so the bill does not meet the act’s requirements regarding the \$5 million appropriation to the proposed agricultural initiatives fund.

Finally, the bill is an odd amalgam of different objectives and possibly violates the object-title provision of the state constitution. Article IV, Section 24 of the state constitution says, in part, that “no law shall embrace more than one object, which shall be expressed in its title.” The bill, however, appears to embrace disparate objects: establishing an agricultural development fund to be administered by the Department of Agriculture in one section, establishing a quite different air quality fund to be administered by the Department of Environmental Quality in another section, and then requiring the Public Service Commission, which is housed in the Department of Consumer and Industry Services, to require private sector businesses (i.e. residential gas and electric utilities) to establish certain private sector funds. Moreover, although the long title of the act appears to describe these varied components of the bill, the proposed short title for the proposed act – the “Julian-Stille value-added act” – describes only the agricultural development fund aspect of the proposed act. Why not introduce and tie-bar separate bills to accomplish these disparate ends instead of attempting to do everything in one possibly unconstitutional bill?

Response:

With regard to the issue of “raiding” the proposed clean air fund to give money to the proposed agricultural development fund, it should be pointed out that the proposed clean air fund is not a restricted fund, and so could potentially be “raided” – that is, appropriated by the legislature, once it was established and had money in it – for any program that the legislature decided it wanted to fund. While air pollution, whether by stationary sources or mobile sources (such as vehicles, which reportedly may account for up to half of the volatile organic chemical and nitrogen oxide pollutants in the air), certainly is an important issue, there are many – and arguably equally important – issues that are programmatically underfunded or even unfunded. The appropriations process is at the heart of the legislative process, and it is the legislature, ultimately, that has the responsibility for deciding where state revenues should go.

POSITIONS:

The Department of Management and Budget supports the bill. (10-2-00)

The Michigan Farm Bureau supports the bill. (9-27-00)

A representative from the Michigan Corn Processors indicated support of the bill. (9-27-00)

Analyst: S. Ekstrom

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.