

**REPRINT**

**SUBSTITUTE FOR**

**HOUSE BILL NO. 5854**

(As passed the House, June 8, 2000)

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 sections 3 and 7 (MCL 21.143 and 21.147), as amended by 1997 PA 32, and by adding section 2d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 2D. (1) THE STATE TREASURER MAY INVEST SURPLUS FUNDS  
2 UNDER THE STATE TREASURER'S CONTROL IN CERTIFICATES OF DEPOSIT OR  
3 OTHER INSTRUMENTS OF A FINANCIAL INSTITUTION QUALIFIED UNDER THIS  
4 ACT TO RECEIVE DEPOSITS OR INVESTMENTS OF SURPLUS FUNDS FOR THE  
5 PURPOSE OF FACILITATING MARINA DREDGING LOANS. THE STATE  
6 TREASURER SHALL ENDEAVOR TO MAKE INVESTMENTS UNDER THIS

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1 SUBSECTION IN FINANCIAL INSTITUTIONS SUCH THAT MARINA DREDGING  
2 LOANS WILL BE CONVENIENTLY AVAILABLE IN ALL GEOGRAPHIC REGIONS IN  
3 THIS STATE. THE STATE TREASURER MAY ENTER INTO AN INVESTMENT  
4 AGREEMENT WITH A FINANCIAL INSTITUTION TO PROVIDE FOR THE INVEST-  
5 MENT UNDER THIS SUBSECTION. THE INVESTMENT AGREEMENT SHALL CON-  
6 TAIN ALL OF THE FOLLOWING:

7 (A) THE TERM OF THE INVESTMENT WHICH SHALL BE NOT MORE THAN  
8 10 YEARS.

9 (B) A REQUIREMENT THAT THE INTEREST ACCRUING ON THE INVEST-  
10 MENT SHALL NOT BE MORE THAN THE INTEREST EARNED BY THE FINANCIAL  
11 INSTITUTION ON MARINA DREDGING LOANS MADE AFTER THE DATE OF THE  
12 INVESTMENT.

13 (C) A REQUIREMENT THAT THE FINANCIAL INSTITUTION SHALL PRO-  
14 VIDE GOOD AND AMPLE SECURITY AS THE STATE TREASURER REQUIRES AND  
15 SHALL IDENTIFY THE MARINA DREDGING LOANS AND THE TERMS AND CONDI-  
16 TIONS OF THOSE LOANS THAT ARE MADE AFTER THE DATE OF THE INVEST-  
17 MENT THAT ARE ATTRIBUTABLE TO THAT INVESTMENT TOGETHER WITH OTHER  
18 INFORMATION REQUIRED BY THIS ACT.

19 (D) A REQUIREMENT THAT A MARINA DREDGING LOAN MADE BY THE  
20 FINANCIAL INSTITUTION THAT IS ATTRIBUTABLE TO THE INVESTMENT  
21 SHALL BE ISSUED AT A RATE OR RATES OF INTEREST THAT ARE ESTAB-  
22 LISHED IN THE INVESTMENT AGREEMENT.

23 (E) A REQUIREMENT THAT A MARINA DREDGING LOAN MADE BY THE  
24 FINANCIAL INSTITUTION THAT IS ATTRIBUTABLE TO THE INVESTMENT  
25 SHALL BE MADE NOT LATER THAN 3 YEARS AFTER THE EFFECTIVE DATE OF  
26 THIS SECTION.

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1 (F) A REQUIREMENT THAT A MARINA DREDGING LOAN MADE BY THE  
2 FINANCIAL INSTITUTION THAT IS ATTRIBUTABLE TO THE INVESTMENT  
3 SHALL BE ISSUED FOR A LOAN REPAYMENT PERIOD OF NOT MORE THAN 7  
4 YEARS.

5 (G) A REQUIREMENT THAT A MARINA DREDGING LOAN MADE BY THE  
6 FINANCIAL INSTITUTION THAT IS ATTRIBUTABLE TO THE INVESTMENT  
7 SHALL NOT EXCEED \$75,000.00.

8 (H) A REQUIREMENT THAT A MARINA DREDGING LOAN MADE BY THE  
9 FINANCIAL INSTITUTION THAT IS ATTRIBUTABLE TO THE INVESTMENT  
10 SHALL NOT BE RELEASED BY THE FINANCIAL INSTITUTION UNLESS THE  
11 LOAN APPLICANT HAS CERTIFIED THAT IT IS AN ELIGIBLE MARINA.

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14 (I) A REQUIREMENT THAT TO THE EXTENT THE FINANCIAL INSTITU-  
15 TION HAS NOT MADE MARINA DREDGING LOANS IN AN AMOUNT AT LEAST  
16 EQUAL TO THE AMOUNT OF THE INVESTMENT WITHIN 90 DAYS AFTER THE  
17 INVESTMENT, THE RATE OF INTEREST PAYABLE ON THAT PORTION OF THE  
18 OUTSTANDING INVESTMENT SHALL BE INCREASED TO A RATE OF INTEREST  
19 PROVIDED IN THE INVESTMENT AGREEMENT, WITH THE INCREASE IN THE  
20 RATE OF INTEREST APPLIED RETROACTIVELY TO THE DATE ON WHICH THE  
21 STATE TREASURER MADE THE INVESTMENT.

22 (J) INCENTIVES FOR THE EARLY REPAYMENT OF THE INVESTMENT AND  
23 FOR THE ACCELERATION OF PAYMENTS IN THE EVENT OF A STATE CASH  
24 SHORTFALL AS PRESCRIBED BY THE INVESTMENT AGREEMENT, IF REQUIRED  
25 BY THE STATE TREASURER.

26 (K) OTHER TERMS AS PRESCRIBED BY THE STATE TREASURER.

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1 (2) AN INVESTMENT MADE UNDER THIS SECTION IS FOUND AND  
2 DECLARED TO BE FOR A VALID PUBLIC PURPOSE.

3 (3) THE ATTORNEY GENERAL SHALL APPROVE DOCUMENTATION FOR AN  
4 INVESTMENT UNDER THIS SECTION AS TO LEGAL FORM.

5 (4) THE AGGREGATE AMOUNT OF INVESTMENTS MADE UNDER THIS SEC-  
6 TION SHALL NOT EXCEED \$20,000,000.00.

(5) UPON THE DETERMINATION BY THE DIRECTORS OF THE DEPARTMENT  
OF 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.

7 (6) EARNINGS FROM AN INVESTMENT MADE UNDER THIS SECTION THAT  
8 ARE IN EXCESS OF THE AVERAGE RATE OF INTEREST EARNED DURING THE  
9 SAME PERIOD ON OTHER SURPLUS FUNDS, OTHER THAN SURPLUS FUNDS  
10 INVESTED UNDER SECTION 1, SHALL BE CREDITED TO THE GENERAL FUND  
11 OF THE STATE. IF INTEREST FROM AN INVESTMENT MADE UNDER THIS  
12 SECTION IS BELOW THE AVERAGE RATE OF INTEREST EARNED DURING THE  
13 SAME PERIOD ON OTHER SURPLUS FUNDS, OTHER THAN SURPLUS FUNDS  
14 INVESTED UNDER SECTION 1, THE GENERAL FUND SHALL BE REDUCED BY  
15 THE AMOUNT OF THE DEFICIENCY ON AN AMORTIZED BASIS OVER THE  
16 REMAINING TERM OF THE INVESTMENT. A LOSS OF PRINCIPAL FROM AN  
17 INVESTMENT MADE UNDER THIS SECTION SHALL REDUCE THE EARNINGS OF  
18 THE GENERAL FUND BY THE AMOUNT OF THAT LOSS ON AN AMORTIZED BASIS  
19 OVER THE REMAINING TERM OF THE INVESTMENT.

20 (7) THE STATE TREASURER MAY TAKE ANY NECESSARY ACTION TO  
21 ENSURE THE SUCCESSFUL OPERATION OF THIS SECTION, INCLUDING MAKING  
22 INVESTMENTS WITH FINANCIAL INSTITUTIONS TO COVER THE ADMINISTRA-  
23 TIVE AND RISK-RELATED COSTS ASSOCIATED WITH A MARINA DREDGING  
24 LOAN.

25 (8) ANNUALLY, EACH FINANCIAL INSTITUTION IN WHICH THE STATE  
26 TREASURER HAS MADE AN INVESTMENT UNDER THIS SECTION SHALL FILE  
27 AN AFFIDAVIT, SIGNED BY A SENIOR EXECUTIVE OFFICER OF THE

1 FINANCIAL INSTITUTION, STATING THAT THE FINANCIAL INSTITUTION IS  
2 IN COMPLIANCE WITH THE TERMS OF THE INVESTMENT AGREEMENT.

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5 (9) THE STATE TREASURER SHALL ANNUALLY PREPARE AND SUBMIT A  
6 REPORT TO THE LEGISLATURE REGARDING THE DISPOSITION OF MONEY  
7 INVESTED FOR PURPOSES OF FACILITATING MARINA DREDGING LOANS UNDER  
8 THIS SECTION. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING  
9 INFORMATION:

10 (A) THE TOTAL NUMBER OF ELIGIBLE MARINA OWNERS WHO HAVE  
11 RECEIVED A MARINA DREDGING LOAN.

12 (B) BY COUNTY, THE TOTAL NUMBER AND AMOUNTS OF THE MARINA  
13 DREDGING LOANS THAT WERE ISSUED.

14 (C) THE NAME OF EACH FINANCIAL INSTITUTION PARTICIPATING IN  
15 THE MARINA DREDGING LOAN PROGRAM AND THE AMOUNT INVESTED IN EACH  
16 FINANCIAL INSTITUTION FOR PURPOSES OF THE LOAN PROGRAM.

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19 (10) AS USED IN THIS SECTION:

20 (A) "BOTTOMLAND" MEANS THE LAND AREA OF A WATER BODY THAT  
21 LIES BELOW THE ORDINARY HIGH-WATER MARK AND THAT MAY OR MAY NOT  
22 BE COVERED BY WATER.

23 (B) "DREDGING" MEANS THE REMOVAL OF SEDIMENTS FROM  
24 BOTTOMLAND.

25 (C) "DREDGING COSTS" MEANS THE COSTS ASSOCIATED WITH DREDG-  
26 ING THAT WERE INCURRED AFTER JANUARY 1, 2000, INCLUDING COSTS OF  
27 REMOVAL, DISPOSAL, AND TESTING OF SEDIMENTS, AND THE COSTS

1 ASSOCIATED WITH OBTAINING NECESSARY PERMITS REQUIRED TO CONDUCT  
2 DREDGING.

3 (D) "ELIGIBLE MARINA" MEANS A PRIVATELY OWNED, COMMERCIAL  
4 FACILITY IN THIS STATE THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

5 (i) EXTENDS INTO OR OVER THE GREAT LAKES THEIR CONNECTING

6 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  
DEPARTMENTS OF NATURAL RESOURCES AND ENVIRONMENTAL QUALITY AND THE  
ARMY CORPS OF ENGINEERS FOR THE DREDGING TO BE CONDUCTED WITH LOAN  
FUNDS.

7 (E) "MARINA DREDGING LOAN" MEANS A LOAN OR THE REFINANCING

8 OF ALL OR A PORTION OF A LOAN MADE TO THE OWNER OF AN ELIGIBLE  
MARINA FOR

9 DREDGING COSTS NECESSITATED BY LOW WATER LEVELS TO ACCOMMODATE

10 THE USE OF THE MARINA BY RECREATIONAL WATERCRAFT.

11 (F) "ORDINARY HIGH-WATER MARK" MEANS EITHER OF THE

12 FOLLOWING:

13 (i) FOR AN INLAND LAKE OR STREAM, THAT TERM AS IT IS DEFINED  
14 IN SECTION 30101 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PRO-  
15 TECTION ACT, 1994 PA 451, MCL 324.30101.

16 (ii) FOR THE GREAT LAKES, THE ORDINARY HIGH-WATER MARK AS  
17 DESCRIBED IN SECTION 32502 OF THE NATURAL RESOURCES AND ENVIRON-  
18 MENTAL PROTECTION ACT, 1994 PA 451, MCL 324.32502.

19 (G) "SURPLUS FUNDS" MEANS, AT ANY GIVEN DATE, THE EXCESS OF  
20 CASH AND OTHER RECOGNIZED ASSETS THAT ARE EXPECTED TO BE RESOLVED  
21 INTO CASH OR ITS EQUIVALENT IN THE NATURAL COURSE OF EVENTS AND  
22 WITH A REASONABLE CERTAINTY, OVER THE LIABILITIES AND NECESSARY  
23 RESERVES AT THE SAME DATE.

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1       Sec. 3. (1) A financial institution shall not be a  
2 depository of surplus funds of the state unless the financial  
3 institution complies with this act. The state treasurer shall  
4 require of a financial institution, before it is made a deposi-  
5 tory of surplus funds of the state, good and ample security as  
6 approved by the state treasurer and the attorney general for the  
7 safekeeping and reimbursement of the surplus funds and the pay-  
8 ment of the rate of return as the state treasurer, in the  
9 treasurer's discretion, considers best for the interest of the  
10 state.

11       (2) The state treasurer may invest surplus funds of the  
12 state in the bonds, notes, and other evidences of indebtedness of  
13 the United States government and its agencies, in prime commer-  
14 cial paper, and may also use surplus funds in the manner provided  
15 in sections 2, 2a, ~~and~~ 2b, AND 2D and may use each fiscal year  
16 not more than that amount of the surplus funds necessary to make  
17 loans to municipalities under section 1.

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

25       (4) The investment of surplus state funds in bonds, notes,  
26 and other evidences of indebtedness of the United States  
27 government and its agencies as provided in subsection (1) may

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1 include securities of, or other interests in, a no-load open-end  
2 or closed-end management type investment company or investment  
3 trust registered under the investment company act of 1940, TITLE  
4 I OF CHAPTER 686, 54 STAT. 789, 15 U.S.C. 80a-1 to 80a-3 AND  
5 80a-4 TO 80a-64, if both of the following are true:

6 (a) The portfolio of the investment company or investment  
7 trust is limited to United States government obligations and  
8 repurchase agreements fully collateralized by United States gov-  
9 ernment obligations.

10 (b) The investment company or investment trust takes deliv-  
11 ery of the collateral for any repurchase agreement either  
12 directly or through an authorized custodian.

13 Sec. 7. As used in this act:

14 (a) "Commissioner" means the commissioner of the ~~financial~~  
15 ~~institutions bureau~~ OFFICE OF FINANCIAL AND INSURANCE SERVICES  
16 of the department of ~~commerce~~ CONSUMER AND INDUSTRY SERVICES.

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

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

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1 and loan association, savings bank, or credit union whose  
2 deposits are insured by an agency of the United States government  
3 under the laws of this state or the United States.