

REPRINT

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4009

(As passed the Senate February 20, 2002)

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 1987 PA 27.

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 ~~other instruments of a financial institution qualified~~ IN A
4 FINANCIAL INSTITUTION WHICH QUALIFIES WITH PROOF OF FINANCIAL
5 VIABILITY ACCEPTABLE TO THE STATE TREASURER under this act to
6 receive deposits or investments of surplus funds. In addition to
7 terms that may be prescribed in the investment agreement by the

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1 state treasurer, an investment under this section shall be
2 subject to all of the following conditions and restrictions:

3 (a) The interest accruing on the investment shall not be
4 more than the interest earned by the financial institution on
5 qualified agricultural loans made after the date of the
6 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
10 those loans that are made after the date of the investment which
11 are attributable to that investment together with other informa-
12 tion 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
15 or 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)(i)~~
18 (9)(A) in an amount at least equal to the amount of the invest-
19 ment within 90 days after the investment, the rate of interest
20 payable on that portion of the outstanding investment shall be
21 increased to a rate of interest provided in the investment agree-
22 ment, with the increase in the rate of interest applied retroac-
23 tively to the date on which the state treasurer invested the sur-
24 plus funds.

25 (e) For a qualified agricultural loan as defined by subsec-
26 tion ~~(9)(a)(ii)~~ (9)(A), the investment agreement shall provide
27 that the financial institution does not have to repay any

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1 principal within the first ~~3 years~~ [24] MONTHS after which the
2 investment is made unless the investment is no longer being used
3 to make a qualified agricultural loan as defined by subsection
4 ~~(9)(a)(ii)~~ (9)(A), or to the extent the qualified agricultural
5 loan has been repaid.

6 (f) For a qualified agricultural loan as defined by subsec-
7 tion ~~(9)(a)(ii) or (iii)~~ (9)(A), the investment agreement may
8 include incentives for the early repayment of the investment and
9 for the acceleration of payments in the event of a state cash
10 shortfall as prescribed by the investment agreement.

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

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

15 (4) ~~Until June 30, 1988, the aggregate amount of invest-~~
16 ~~ments made pursuant to this section shall not exceed~~
17 ~~\$349,000,000.00. Beginning July 1, 1988, the aggregate amount of~~
18 ~~investments made and outstanding pursuant to this section shall~~
19 ~~not exceed \$210,000,000.00, except that not more than~~
20 ~~\$10,000,000.00 of that aggregate amount shall be allocated under~~
21 ~~subsection (9)(a)(iii).~~ THE STATE TREASURER SHALL DEPOSIT BEFORE
22 MAY 1, 2002 UP TO \$30,000,000.00 OF SURPLUS FUNDS WITH THE FINAN-
23 CIAL INSTITUTIONS PARTICIPATING IN MAKING QUALIFIED AGRICULTURAL
24 LOANS UNDER THIS SECTION FOR THE PURPOSE OF MAKING THOSE QUALI-
25 FIED AGRICULTURAL LOANS. NOT MORE THAN \$10,000,000.00 OF THIS
26 DEPOSIT SHALL BE ALLOCATED TO QUALIFIED AGRICULTURAL LOANS MADE
27 TO BUSINESSES UNDER SUBSECTION (9)(A)(iii).

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1 (5) Earnings from an investment made pursuant to this
2 section which are in excess of the average rate of interest
3 earned during the same period on other surplus funds, other than
4 surplus funds invested pursuant to section 1 or 2, shall be cred-
5 ited to the general fund of the state. If interest from an
6 investment made pursuant to this section is below the average
7 rate of interest earned during the same period on other surplus
8 funds, other than surplus funds invested pursuant to section 1 or
9 2, the general fund shall be reduced by the amount of the defi-
10 ciency on an amortized basis over the remaining term of the
11 investment. A loss of principal from an investment made pursuant
12 to this section shall reduce the earnings of the general fund by
13 the amount of that loss on an amortized basis over the remaining
14 term of the investment.

15 (6) A new investment to which a qualified agricultural loan
16 as defined by subsection (9)(a)(ii) is attributed shall not be
17 made pursuant to this section after ~~June 30, 1987~~ OCTOBER 1,
18 2002, and shall not be made with a term which extends beyond
19 [~~January~~ OCTOBER] 1, ~~1997~~ 2007. An investment to which a qualified
20 agri-
21 cultural loan as defined by subsection (9)(a)(iii) is attributed
22 shall not be made pursuant to this section after ~~June 30, 1987~~
23 OCTOBER 1, 2002, and shall not be made with a term extending
24 beyond ~~June 28, 1992~~ [OCTOBER] 1, 2007. THE TERMS OF THE QUALI-
25 FIED AGRICULTURAL LOAN AS DEFINED BY SUBSECTION (9)(A) SHALL PRO-
26 VIDE THAT ZERO-INTEREST LOANS UNDER THIS SECTION BE FOR A TERM
27 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

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1 LOAN. An investment to which a qualified agricultural loan as
2 defined by subsection (9)(a)(i) is attributed shall not be made
3 with a term extending beyond ~~June 28, 1988~~ OCTOBER 1, 2007.

4 (7) [~~The commissioner shall monitor the compliance of a~~
5 ~~financial institution in which the state treasurer has made an~~
6 ~~investment pursuant to this section with the terms of the invest-~~
7 ~~ment agreement and this act. For each investment, the commis-~~
8 ~~sioner shall certify the extent of compliance with subsection~~
9 ~~(1)(b) for the purpose of subsection (1)(d) and~~
10 ~~subsection (9)(a)(ii) and (iii) and shall periodically report~~
11 ~~those and other findings to the state treasurer. [ANNUALLY, EACH~~
12 ~~FINANCIAL INSTITUTION IN WHICH THE STATE TREASURER HAS MADE AN~~
13 ~~INVESTMENT UNDER THIS SECTION SHALL FILE AN AFFIDAVIT, SIGNED BY A~~
14 ~~SENIOR EXECUTIVE OFFICER OF THE FINANCIAL INSTITUTION, STATING THAT THE~~
15 ~~FINANCIAL INSTITUTION IS IN COMPLIANCE WITH THE TERMS OF THE INVESTMENT~~
16 ~~AGREEMENT AND THIS ACT.]~~

12 (8) Before October 1, ~~1987~~ 2003, the state treasurer shall
13 prepare separate reports to the legislature AND THE HOUSE AND
14 SENATE AGRICULTURE APPROPRIATIONS SUBCOMMITTEES regarding the
15 disposition of money invested for purposes of qualified agricul-
16 tural loans as defined by subsection (9)(a)(i) and for qualified
17 agricultural loans as defined by subsection (9)(a)(ii) and
18 (iii). The reports for each type of loan shall include all of
19 the following information:

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

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

23 (c) The name of each financial institution participating in
24 the loan program and the amount invested in each financial insti-
25 tution for purposes of such loan program.

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1 (d) [~~The information reported to the state treasurer by the~~
2 ~~commissioner under subsection (7)~~ ANY] ACTION UNDERTAKEN BY
3 THE STATE TREASURER UNDER SUBSECTION (15).

4 (9) As used in this section:

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

7 (i) Until ~~June 30, 1988~~ OCTOBER 1, 2002, a loan to a natu-
8 ral or corporate person who is engaged as an owner-operator of a
9 farm in the production of agricultural goods as defined by sec-
10 tion 35(1)(h) of the single business tax act, ~~Act No. 228 of the~~
11 ~~Public Acts of 1975, being section 208.35 of the Michigan~~
12 ~~Compiled Laws~~ 1975 PA 228, MCL 208.35, who is experiencing
13 financial stress and difficulty in meeting existing or projected
14 debt obligations owed to financial institutions DUE TO AN AGRI-
15 CULTURAL DISASTER AS REQUESTED BY THE GOVERNOR at rates commensu-
16 rate with rates charged by financial institutions for loans of
17 comparable type and terms at the time the loan is to be made, and
18 who certifies to the financial institution that the
19 owner-operator will not have more than ~~\$100,000.00~~ \$150,000.00
20 in outstanding loans otherwise considered qualified agricultural
21 loans under this subparagraph, including the loan for which the
22 owner-operator is applying. IF CROP INSURANCE WAS AVAILABLE FOR
23 A PARTICULAR CROP AND THE PRODUCER DID NOT PURCHASE THE CROP
24 INSURANCE FOR THAT CROP, THE AMOUNT OF THE LOAN SHALL BE REDUCED
25 BY 30% OR \$50,000.00, WHICHEVER IS LESS. A qualified agricultural
26 loan under this subparagraph may be made for ~~1~~ EITHER or ~~more~~
27 BOTH of the following purposes:

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1 ~~(A) If necessary for the continuance of the operation of~~
2 ~~the farm through the crop year during which the loan is made,~~
3 ~~repair of agricultural equipment or machinery.~~

4 ~~(B) If necessary for the continuance of the operation of the~~
5 ~~farm through the crop year during which the loan is made, the~~
6 ~~purchase of used replacement equipment or machinery to the extent~~
7 ~~the person is not eligible for a loan for this purpose from the~~
8 ~~Michigan family farm development authority created under the~~
9 ~~Michigan family farm development act, Act No. 220 of the Public~~
10 ~~Acts of 1982, being sections 285.251 to 285.279 of the Michigan~~
11 ~~Compiled Laws.~~

12 (A) ~~(C)~~ Operating capital including, but not limited to,
13 capital necessary for the rental, LEASE, AND REPAIR of equipment
14 or machinery, CROP INSURANCE PREMIUMS, and the purchase of seed,
15 feed, livestock, breeding stock, fertilizer, fuel, and
16 chemicals.

17 (B) ~~(D)~~ Refinancing all or a portion of a loan entered
18 into before ~~July 10, 1985~~ OCTOBER 1, 2002 for a purpose identi-
19 fied in SUB-SUBPARAGRAPH (A). ~~to (C) of this subparagraph.~~

20 (ii) A loan to an individual, sole proprietorship, partner-
21 ship, corporation, or other legal entity that is engaged and
22 intends to remain engaged as an owner-operator of a farm in the
23 production of agricultural goods as defined by section 35(1)(h)
24 of the single business tax act, ~~Act No. 228 of the Public Acts~~
25 ~~of 1975, being section 208.35 of the Michigan Compiled Laws~~ 1975
26 PA 228, MCL 208.35, who has suffered a 25% or more loss in major
27 enterprises or a 50% or more production loss in any 1 crop DUE TO

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1 AN AGRICULTURAL DISASTER on a farm located in this state, as
2 REQUESTED BY THE GOVERNOR AND AS certified by the ~~agricultural~~
3 ~~stabilization and conservation service or the department of~~
4 ~~treasury~~ PRODUCER BY MEANS OF AN AFFIDAVIT DEMONSTRATING AN
5 ACCURATE AND VALID PRODUCTION LOSS. ~~If eligible for a grant~~
6 ~~under the federal payment-in-kind assistance law, the~~
7 ~~owner-operator shall first apply for a grant in the maximum~~
8 ~~amount for which the owner-operator may be eligible under the~~
9 ~~federal payment-in-kind assistance law and have received a deter-~~
10 ~~mination as to the grant.~~

11 (iii) A loan to an individual, sole proprietorship, partner-
12 ship, corporation, or other legal entity that is engaged in an
13 agricultural business of buying, exchanging, or selling farm
14 produce, or is engaged in the business of making retail sales
15 directly to farmers and has 75% or more of its gross retail sales
16 volume exempted from sales tax under the Michigan agricultural
17 sales tax exemption, as provided in section ~~4a(f)~~ 4A(1)(E) of
18 the general sales tax act, ~~Act No. 167 of the Public Acts of~~
19 ~~1933, being section 205.54a of the Michigan Compiled Laws~~ 1933
20 PA 167, MCL 205.54A. Businesses engaged in the buying, exchang-
21 ing, or selling of farm produce must have suffered a 50% or
22 greater loss in volume of 1 commodity as compared with the aver-
23 age volume of that commodity which the business handled over the
24 last 3 years to qualify for loans under this subparagraph.
25 Businesses engaged in making retail sales directly to farmers
26 must have suffered a 50% or greater reduction in gross retail
27 sales volume subject to the Michigan agricultural sales tax

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1 exemption as compared with that business's average retail sales
2 volume subject to that exemption over the last 3 years to qualify
3 for loans under this subparagraph. All losses claimed by busi-
4 nesses attempting to qualify for loans under this subparagraph
5 must be directly attributable to a natural disaster occurring
6 after ~~July 1, 1986, and before December 31, 1986~~ JANUARY 1,
7 2001, as ~~determined~~ REQUESTED by the ~~department of treasury~~
8 GOVERNOR AND AS CERTIFIED BY THE AGRICULTURAL BUSINESS BY MEANS
9 OF AN AFFIDAVIT DEMONSTRATING AN ACCURATE AND VALID LOSS.

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

15 (c) "Financial institution" includes, but is not limited to,
16 ~~a production credit association, a federal land bank~~
17 ~~association,~~ ENTITIES OF THE FARM CREDIT SYSTEM or a ~~bank for~~
18 ~~cooperatives~~ STATE OR FEDERALLY CHARTERED SAVINGS BANK. For
19 purposes of this section, ~~a production credit association~~
20 ENTITIES OF THE FARM CREDIT SYSTEM or a ~~bank for cooperatives~~
21 STATE OR FEDERALLY CHARTERED SAVINGS BANK may be qualified as a
22 financial institution eligible to receive an investment under
23 this section notwithstanding that its principal office is not
24 located in this state if the proceeds of the investment will be
25 committed to qualified agricultural loans in this state.

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

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

4 (e) "Facility" means a plant designed for receiving or stor-
5 ing farm produce or a retail sales establishment of a business
6 engaged in making retail sales directly to farmers, which estab-
7 lishment has 75% or more of its gross retail sales volume
8 exempted from sales tax under the Michigan agricultural sales tax
9 exemption, as provided in ~~section 4a(f)~~ 4A(1)(E) of the general
10 sales tax act, ~~Act No. 167 of the Public Acts of 1933, being~~
11 ~~section 205.54a of the Michigan Compiled Laws~~ 1933 PA 167,
12 MCL 205.54A.

13 (10) A qualified agricultural loan as defined by subsection
14 (9)(a)(ii) shall be equal to NOT MORE THAN the value of the crop
15 loss as certified by the ~~agricultural stabilization and conser-~~
16 ~~vation service but~~ PRODUCER BY MEANS OF AN AFFIDAVIT DEMONSTRAT-
17 ING AN ACCURATE AND VALID PRODUCTION LOSS. THE QUALIFIED AGRI-
18 CULTURAL LOAN shall not exceed the lesser of \$200,000.00 or the
19 value of the crop loss minus the amount of any grant under ~~the~~
20 ~~federal payment-in-kind assistance law~~ FEDERAL DISASTER
21 ASSISTANCE or insurance proceeds received by the owner-operator
22 as a result of the same crop loss. IF CROP INSURANCE WAS AVAIL-
23 ABLE FOR A PARTICULAR CROP AND THE PRODUCER DID NOT PURCHASE THE
24 CROP INSURANCE FOR THAT CROP, THE AMOUNT OF THE LOAN SHALL BE
25 REDUCED BY 30% OR \$50,000.00, WHICHEVER IS LESS.

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

4 (a) ~~-\$200,000.00~~ \$300,000.00 per facility.

5 (b) An amount ~~equal to 60%~~ NOT TO EXCEED THE VALUE of the
6 direct loss of the individual, sole proprietorship, partnership,
7 corporation, or other legal entity making application for the
8 loan, as determined by the department of treasury under subsec-
9 tion (9)(a)(iii).

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

13 (12) The financial institutions participating in the loan
14 program pursuant to subsection ~~(9)(a)(i), (ii), or (iii)~~ (9)(A)
15 shall have the option of making state subsidized loans to farmers
16 ~~before June 30, 1988,~~ or to businesses described in
17 subsection (9)(a)(iii) before ~~June 30, 1987~~ [OCTOBER 1,] 2002,
18 with terms approved by the state treasurer by using their exist-
19 ing deposits for the loans and receiving from the state treasurer
20 an ~~amount not to exceed the lesser of the following:~~ INTEREST
21 RATE SUBSIDY [EQUAL TO] 120% OF THE [STATE TREASURER'S COMMON
22 CASH EARNINGS RATE.] THE STATE'S REIMBURSEMENT TO FINANCIAL
23 INSTITUTIONS PARTICIPATING IN THE LOAN PROGRAM PURSUANT TO
24 SUBSECTION (9)(A) SHALL NOT BE MADE BEFORE OCTOBER 1, 2002.

25 ~~(a) The interest that would be charged by a financial~~
26 ~~institution on an amount equal to 100% or more of the qualified~~
27 ~~agricultural loan as determined by the department of treasury if~~

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1 ~~the distribution provided by this subsection is not~~
2 ~~appropriated.~~

3 ~~(b) The interest that would have been earned on an amount~~
4 ~~equal to 100% or more of the qualified agricultural loan as~~
5 ~~determined by the department of treasury if the rate charged for~~
6 ~~each quarter the loan is outstanding were equal to the average~~
7 ~~rate earned by the state during that quarter on surplus funds~~
8 ~~other than those invested pursuant to sections 1 and 2 and this~~
9 ~~section.~~

10 (13) There is hereby appropriated an amount sufficient to
11 make the distributions required under ~~subsection~~
12 SUBSECTIONS (4) AND (12) in the ~~1986-87~~ 2001-02 fiscal year for
13 not to exceed \$210,000,000.00 in qualified agricultural loans.
14 For each qualified agricultural loan for which a distribution is
15 made pursuant to subsection (12), the maximum amount of invest-
16 ments authorized by subsection (4) shall be reduced by an amount
17 equal to 100% or more of the qualified agricultural loan, as
18 determined by the department of treasury, for which a distribu-
19 tion is made pursuant to subsection (12).

20 (14) Any money for purposes of qualified agricultural loans
21 as defined by subsection (9)(a)(ii) that has not been invested by
22 the state treasurer by ~~June 30, 1987~~ OCTOBER 1, 2002, shall
23 increase the maximum amount available under this section for
24 qualified agricultural loans as defined by subsection (9)(a)(i).

25 (15) The state treasurer may take any necessary action to
26 ensure the successful operation of this section, including making
27 investments with financial institutions to cover the

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1 administrative and risk-related costs associated with a qualified
2 agricultural loan.

3 ~~(16) There is hereby appropriated from the general fund for~~
4 ~~the fiscal year ending September 30, 1987 to Michigan state uni-~~
5 ~~versity, cooperative extension service, \$875,000.00 for the fol-~~
6 ~~lowing purposes:~~

7 ~~(a) Expansion of extension management assistance teams~~
8 ~~(EMATS) -- \$500,000.00.~~

9 ~~(b) Grain and feed analysis for nutrition levels and disease~~
10 ~~--\$125,000.00.~~

11 ~~(c) Technical information delivery -- \$100,000.00.~~

12 ~~(d) Rural community and small town problems -- \$25,000.00.~~

13 ~~(e) Agricultural experiment station for research --~~
14 ~~\$125,000.00.~~

15 (16) UPON REQUEST BY THE DEPARTMENT OF TREASURY, A FINANCIAL
16 INSTITUTION SHALL FORWARD A COPY OF ANY AFFIDAVITS EXECUTED AND
17 FILED UNDER THIS SECTION TO THE DEPARTMENT OF TREASURY. THE
18 FINANCIAL INSTITUTION AND THE DEPARTMENT OF TREASURY SHALL
19 DESTROY THE AFFIDAVIT OR ITS COPY AFTER THE QUALIFIED AGRICUL-
20 TURAL LOAN IS PAID OFF.

21 (17) IF THE RECIPIENT OF A QUALIFIED AGRICULTURAL LOAN AS
22 DEFINED BY SUBSECTION (9)(A) RECEIVES A FEDERAL GRANT AFTER THE
23 RECEIPT OF A QUALIFIED AGRICULTURAL LOAN UNDER THIS SECTION, THEN
24 ANY FEDERAL GRANT MONEY REMAINING AFTER ALL FEDERAL OBLIGATIONS
25 ARE MET SHALL BE ALLOCATED BY THE RECIPIENT TO PAYMENT OF THE
26 BALANCE OF ANY OUTSTANDING LOAN MADE UNDER THIS SECTION.