

AGRICULTURAL DEVELOPMENT FUND

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Senate Bill 1167 as passed by the Senate
Sponsor: Sen. Ron Jelinek

Senate Bill 1168 (Substitute H-2)
Sponsor: Sen. Michelle A. McManus

Senate Bill 1169 as passed by the Senate
Sponsor: Sen. Cameron S. Brown
House Committee: Agriculture
Senate Committee: Agriculture, Forestry and Tourism

Complete to 6-13-06

A SUMMARY OF SENATE BILLS 1167 – 1169 AS REPORTED FROM COMMITTEE

The bills would amend the Julian-Stille Value-Added Act to do the following:

- Establish an Agricultural Value-Added Commercialization Roundtable.
- Permit the Agricultural Development Fund to provide loans and loan guarantees, in addition to the grants currently provided for under the act.
- Establish a competitive process to award grants and loans from the fund.
- Establish a joint evaluation committee to review grant and loan applications.
- Prohibit Agriculture Commission members or members of the Joint Evaluation Committee from maintaining a conflict of interest in a matter pending before the department.
- Re-establish the Agricultural Development Fund as a revolving fund within the Department of Treasury.
- Lower the maximum amount of the fund that can be used for administrative purposes from five percent to four percent.
- Specify that of the funds appropriated in FY 2006 from the 21st Century Jobs Fund, not more than one-half may be used for grants.
- Limit the maximum grant award to \$250,000.
- Limit the maximum loan amount to \$500,000.

The bills are tie-barred to each other, meaning none can take effect unless all are enacted.

Senate Bill 1167

The bill would amend the Julian-Stille Value-Added Act to require the director of the Department of Agriculture to convene *an Agricultural Value-Added Commercialization Roundtable* to discuss the commercialization of agricultural products, processes, and services, including the availability of capital, innovation infrastructure, and university

licensing of intellectual property. The roundtable would be convened for the purpose of promoting innovation in Michigan agriculture and for providing more early-stage capital to the agriculture industry. The roundtable would include 13 individuals representing farmers, food processors, agribusiness, lending institutions, higher education, the USDA-Rural Development Agency, the Michigan Strategic Fund, and the Rural Development Council of Michigan.

The first meeting would have to be convened within 90 days after the bill's effective date, and the roundtable would generally meet at least two times in each calendar year, unless the MDA director determines that more frequent meetings are necessary. Meetings would be open to the public, and at least one meeting held each year would have to be in a "rural community." Summaries of roundtable meetings would have to be posted on the department website, with copies provided to the roundtable participants, the standing committees of the House and Senate dealing primarily with agricultural issues, and to members of the public requesting a copy. The bill would be repealed two years after its effective date.

Senate Bill 1168

Fund Uses. Under the Julian-Stille Value-Added Act, the Agricultural Development Fund provides grants to individuals, farmer-owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in this state. Grant money can be used only for land, buildings, equipment, and property acquisition and assembly, demolition, site development, utility modifications and improvements, transportation improvements, infrastructure improvements, telecommunications 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 bill would expand this program to allow the Agriculture Commission to award loans and loan guarantees for similar purposes. The bill deletes much of the language concerning what entities may receive grants and for what purposes grants may be used. The bill's definition of "eligible grantee," however, includes the list of grantees included in the act. The bill doesn't state specifically what a grant or loan may be used for (land, buildings, etc) and simply states that grants and loans are made for projects designed to establish, retain, expand, or develop value-added agricultural processing and related agricultural production operations in the state. Grant or loan recipients could not use the money for the development of a casino regulated under the Michigan Gaming Control and Revenue Act or the federal Indian Gaming Regulatory Act.

The program would have to ensure that financial institutions do not refinance prior debt and would prohibit officers and their immediate family from receiving loans.

Loan and Loan Guarantee Program. The bill requires the Department of Agriculture to establish a low-interest loan or loan guarantee program in cooperation with the Department of Treasury and financial institutions in the state similar to the qualified agricultural loan program established in Public Act 105 of 1855 (State Surplus Funds Act). Loans may be made for projects designed to establish, retain, expand, or develop value-added agricultural processing and related agricultural production operations in the state (i.e., the same purposes for which grants are provided).

In establishing the loan program, the Department of Agriculture would have to do the following:

- Work with the Department of Treasury to establish agreements with participating financial institutions.
- Ensure that investments utilizing the 21st Century Jobs Fund are not made after June 1, 2008.
- Provide for a loan term of not more than five years, with repayment beginning within two years after the date of the loan.
- Provide for an interest rate charged by participating financial institutions not exceeding one-half of the prime rate, plus one percent.
- Prohibit participating financial institutions from re-financing prior debt.
- Prohibit officers, directors, and principal shareholders of a participating financial institution (and their immediate family) from receiving a loan from the institution.
- Prohibit loan recipients from use the money to develop a casino regulated under the Michigan Gaming Control and Revenue Act or the federal Indian Gaming Regulatory Act or any other gambling enterprise.

Competitive Process. The bill would require the Department of Agriculture to establish a competitive process to award grants. The process would include the following:

- A requirement that applications must be reviewed by the joint evaluation committee.
- A preference for proposals that demonstrate a high level of innovation for value-added agricultural processing and related production ventures that benefit producers.
- A preference for proposals that attempt to secure a license for agricultural-related intellectual property to be produced in Michigan.
- A requirement that the program will utilize contracts with measurable milestones, clear objectives, and will revoke awards for breach of contract.
- A requirement of a cash-match of at least 10 percent of the grant, with a dedicated funding source identified before the grant is awarded. (This provision is currently part of the act.)
- A limit on overhead rates for grant recipients to reflect actual overhead, but not exceeding 15 percent of the grant.
- A preference for proposals where business plans forecasts revenue within two years or have outside investments from investors with experience and management teams with experience in the area targeted by the proposal, or both.

The bill specifies that scientific and technical merit, commercial merit, and the ability to leverage additional funding would be given equal weight in the review and scoring process. The bill also adds that, in approving a grant, the Agriculture Commission would be required to state the specific objective reasons supporting the selection of the applicant over competing applicants.

Selection Criteria. The act requires the Department of Agriculture to develop a selection criteria and scoring system in conjunction with the Michigan Economic Development Corporation; Michigan State University; the USDA-Rural Development Agency; the Rural Development Council of Michigan; three producers, including one plant agricultural producer, one animal agricultural producer, and one at-large producer; and other industry and professional organizations as the MDA deems appropriate.

The bill largely retains this provision, although it replaces the references to MSU with *any* institution of higher education, and eliminates the specific number of producers to be consulted. The bill retains a requirement that the director of the MDA and the Agriculture Commission approve the selection criteria.

The bill adds that the joint evaluation committee would provide recommendations to, and assist, the Agriculture Commission in identifying high-quality projects for funding based on the selection criteria. The joint evaluation committee would consist for at least three agricultural producers – including one plant producer, one animal producer, and another at-large producer – as well as an individual with a scientific agriculture education, and an agricultural financial lender.

Disclosure. The bill provides that all scoring sheets, meetings, and other decisions made by the joint evaluation committee would be open to the public and considered public documents. However, the act provides that records and material containing financial or propriety information submitted by an applicant that the applicant considers (and joint evaluation committee acknowledges) as confidential would not be subject to disclosure under the Freedom of Information Act.

Conflict of Interest. The bill provides that members of the Agriculture Commission and the Joint Evaluation Committee would be subject to Public Act 317 of 1968, concerning the conduct of public employees, and further provides the following:

- Members could not make or participate in making or attempt to influence a matter before the MDA concerning a loan, loan guarantee, grant, or expenditure under the act.
- Members would be prohibited from having a financial interest in a grant or loan recipient or engaging in any conduct that constitutes a substantial conflict of interest.
- If a conflict of interest arises, the member would have to immediately advise the commission in writing before the commission or department takes an action regarding the matter.

- Members with a conflict of interest could not vote in any proceedings related to the matter, participate in the discussion on the matter, be present at the meeting when the matter is being discussed or voted on, or discuss the matter with any other member of the Agriculture Commission or Joint Evaluation Committee.

The bill defines "substantial conflict of interest" to mean a pecuniary interest that is of such substances so as to influence the judgment of the member in the performance of his or her duties under the bill.

Definitions. The bill defines "specialty crop" to mean any agricultural commodity except wheat, feed grains, oilseeds, cotton, rice, peanuts, and tobacco, as well as products derived from these agricultural commodities. [This is the same definition as used in the FY 2005-2006 supplemental appropriations bill.] Additionally, the bill defines "commercialization" to mean the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.

Senate Bill 1169

The bill would re-establish the Agricultural Development Fund within a separate section of the act. (Language concerning the creation of the fund would be deleted in Senate Bill 1168.) The bill re-creates the fund as a revolving fund within the Department of Treasury. Under the act, the MDA may use up to five percent of the fund for administrative purposes. The bill limits this amount to four percent. The act currently requires the state treasurer to credit appropriations and money and other assets from any source into the fund. The bill adds to that, any money representing principal and interest payments on loans.

The bill adds that of the money appropriated during FY 2005-2006 from the 21st Century Jobs Fund, not more than half would have to be used for grants and the remaining balance would be used for loans and loan guarantees. The maximum grant award would be \$250,000 and the maximum loan and loan guarantee would be \$500,000.

The bill also adds that, upon request of the Agriculture Commission, the state treasurer will invest money in the fund in a manner similar to the qualified agricultural loan program established in Public Act 105 of 1855.

FISCAL IMPACT:

The Agricultural Development Fund was first established under Section 2 of the Julian-Stille Value-Added Act, Public Act 322 of 2000 (Senate Bill 1340). The Julian-Stille Value-Added Act created the fund within the Department of Treasury to be administered by the Department of Agriculture. Section 4 of the act authorized the department to make *grants* from the fund. Senate Bill 1168 (H-2) would authorize the department to make loans and loan guarantees, as well as grants.

Senate Bill 1169 would amend Section 2 of the act to indicate that the Agricultural Development Fund is created as a *revolving fund* within the Department of Treasury. The bills do not define "revolving fund." However, Section 404 of the Management and Budget Act, Public Act 431 of 1984, defines "revolving fund" as "a self-supporting fund which provides services or sells goods to state agencies, other government jurisdiction, or the public."

The designation of the Agriculture Development Fund as a revolving fund, and related language in Senate Bill 1169, provides for the fund to receive interest and loan repayments for subsequent use as grants, loans, and loan guarantees.

The Julian-Stille Act currently provides for the Department of Agriculture to receive up to 5 percent of the fund for administrative purposes. Senate Bill 1169 would reduce the allowable administrative allocation to up to 4 percent of the fund. If the fund were \$5.0 million, the department could receive up to \$200,000 for administrative costs. If the fund were \$10.0 million, the department could receive up to \$400,000 for administration. See [Background Information](#) below for a discussion of the amount which may be appropriated to the fund.

HOUSE COMMITTEE ACTION:

The House Committee on Agriculture reported an H-2 Substitute for Senate Bill 1168, which added the disclosures provisions, added the definition of "substantial conflict of interest," and further described the responsibilities of the Department of Agriculture concerning the loan and loan guarantee program.

The committee made no changes to the Senate-passed versions of SB 1167 and SB 1168. The committee rejected a proposed amendment to Senate Bill 1169 to reduce the amount of the Agricultural Development Fund that may be used for administrative purposes from four percent (as provided in the bill) to two percent.

BACKGROUND INFORMATION:

Appropriations History

In 2000, the Legislature enacted Senate Bill 1340 (Public Act 322 of 2000), the "Julian-Stille Value-Added Act," which created the Agricultural Development Fund within the Michigan Department of Treasury, to be administered by the Michigan Department of Agriculture.

Senate Bill 1340 directed the Department of Treasury to deposit \$5.0 million from the Clean Air Fund to the Agriculture Development Fund. The ultimate revenue source for the Clean Air Fund money was a utility company "Uncollectables Allowance Recovery

Fund."¹ However, uncollectables allowance recovery fund revenue never materialized, and the \$5.0 million deposit provided for in Julian-Stille Act was never made.² However, the Agricultural Development Fund was subsequently used to collect and distribute revenue from other fund sources as appropriated in a supplemental appropriations bill.

Senate Bill 291 (PA 120 of 2001), a FY 2000-01 supplemental appropriation bill, made the first appropriation to the Agricultural Development Fund, \$5.0 million from the state General Fund. At the same time, the bill made the first appropriation from the fund, \$5.0 million for *Value-adding processing: ethanol*. Section 1303 of Public Act 120 indicated that the \$5.0 million in General Fund revenue was appropriated to the Agricultural Development Fund created by the Julian-Stille Value-Added Act. The section then directed the department to award \$5.0 million from the Agricultural Development Fund for a "value-adding processing: ethanol plant." This appropriation, subsequently reduced to \$4.8 million, was used to provide a grant to Broin Companies to construct an ethanol processing plant in Caro, Michigan. The ethanol plant is known as Michigan Ethanol LLC.

Public Act 120 also included a \$4.1 million appropriation of federal Department of Agriculture specialty crop program grant revenue. Boilerplate Section 1301 of the bill directed how the funds were to be expended. The distribution included \$1.15 million to the Agricultural Development Fund "*for the support of grants for value added processing and agricultural production ventures for specialty crops in accordance with the Julian-Stille value-added act.*"

The recently passed amendment to the Michigan Strategic Fund Act, House Bill 5047 enacted as Public Act 225 of 2005, appropriated \$10.0 million from the 21st Century Jobs Fund (the tobacco settlement securitization) for the Agricultural Development Fund. The Governor vetoed a \$5.0 million earmark for specialty crops leaving only \$5.0 million in spending authority – none of which can be used for specialty crops.

FY 2005-06 supplemental appropriations bill, Senate Bill 242, enacted as Public Act 153 of 2006, restored the \$5.0 million in vetoed funds. The bill included boilerplate Section 503 which indicated that the \$5.0 million appropriation "*shall be awarded as specialty crop grants and loans pursuant to the Julian-Stille Value-Added Act.*" The bill defines "*specialty crop*" as "*any agricultural commodity except wheat, feed grains, oilseeds, cotton, rice, peanuts, and tobacco, as well as products derived from these agricultural commodities.*" The Section also tie-barred the appropriation to the passage of the three bills which are the subject of this analysis, Senate Bills 1167, 1168, and 1169.

¹ Prior to the enactment of the Julian-Stille Value-Added Act, the Legislature appropriated \$5.0 million for a new Agriculture line item, *Agriculture development initiatives* in Senate Bill 968 (PA 291 of 2000), a FY 1999-2000 supplemental appropriations bill. The fund source for the appropriation was identified as "Uncollected allowance recovery fund." In his message to the Senate in signing the bill, Governor Engler indicated that "*the funds cannot be spent until legislation is enacted to establish and define the program.*"

² At the end of the FY 2004-05 fiscal year, there was no balance in the Agricultural Development Fund.

In signing Senate Bill 242, the Governor indicated that she was directing the State Treasurer and the Michigan Strategic Fund to withhold any disbursements or expenditures "*until it is determined that the appropriations and related conditions are legally valid and consistent with the requirements of the [...] Michigan Strategic Fund Act.*"

Administrative Rules

The Department of Agriculture is currently in the process of revising its regulations concerning the Agricultural Development Fund. [See R 285.351 et seq.] A copy of the proposed rules was submitted to the Joint Committee on Administrative Rules on May 26, 2006. Under the Administrative Procedures Act, the committee has 15 session days in which to consider the rule and to object to the rule, by filing a notice of objection, waive the remaining session days to review the rule. [The 15th session day after the rule was filed with JCAR is Thursday June 29, 2006.]

Under the proposed rule, applications may be submitted for one of five granting categories:

- Development of a detailed business plan that incorporates a specific marketing strategy and specifically outlines the working capital and financial needs, management structure, construction, production, marketing, and distribution needs.
- Market research and/or market development.
- Innovative technology or technical assistance, including feasibility studies, that will enhance and support the commercialization of value-added products.
- Upgrading and enhancements (including acquisition) of buildings, equipment, utility modifications and improvements, transportation installations, telecommunications infrastructure, or other infrastructure improvements.
- Facility purchase and/or construction, including property and/or land acquisition and assembly, demolition, and site development.

Grant applications are to be reviewed by a joint evaluation committee, which would be appointed by the director of the Department of Agriculture. The committee would evaluate and rank applications based on the selection criteria and scoring system for each granting category, according to (1) the expected benefit to the Michigan agricultural and food industry and the local economy; (2) analysis of the project's business and marketing plans or feasibility studies; (3) clear project proposal with specific, measurable outcomes; (4) level of matching funds, though not including in-kind contributions. The review process is to be completed within 90 days after the application deadline, and the director of the department has final approval of grants.

The proposed rule also states that a record and material containing financial or propriety information submitted by an applicant that the applicant considers (and joint evaluation committee acknowledges) as confidential would not be subject to disclosure under the Freedom of Information Act. [Senate Bill 1168 contains a similar provision.]

A copy of the current and proposed rules may be obtained from the website of the State Office of Administrative Hearings and Rules at:

www.michigan.gov/cis/0,1607,7-154-10576_35738_5695---,00.html

POSITIONS:

The Michigan Farm Bureau supports the bills. (6-6-06)

The Department of Agriculture supports the concept of the bills. (6-6-06)

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■ 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.