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BILL ANALYSIS

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Senate Bills 1167, 1168, and 1169 (as enrolled)
Sponsor: Senator Ron Jelinek (S.B. 1167)
Senator Michelle A. McManus (S.B. 1168)
Senator Cameron S. Brown (S.B. 1169)
Senate Committee: Agriculture, Forestry and Tourism
House Committee: Agriculture

PUBLIC ACTS 422-424 of 2006

Date Completed: 3-7-07

RATIONALE

The Agricultural Development Fund was created under the Julian-Stille Value-Added Act in 2000, to encourage the development of value-added agricultural processing and production in the State. Grants from the Fund may be awarded to individuals, farmer-owned cooperatives, businesses, and local units of government, to be used for land, buildings, or equipment; improvements to physical infrastructure; marketing research; business plan development; and other purposes. According to the Michigan Department of Agriculture (MDA), the program has funded a broad range of projects, including an anaerobic digester to process and generate electricity from animal waste, a shrimp farm, community food systems, a process developed by cherry growers to convert agricultural waste into electricity, and other projects designed to create new markets for Michigan's agricultural products.

The Fund has limited resources, however, and the Department receives many more applications than it can support through the Fund. Public Act 225 of 2005 allocated \$5.0 million to the Agricultural Development Fund from a newly created 21st Century Jobs Trust Fund for grants and loans, and additional funds have been appropriated since then. To extend the usefulness of that revenue and permit the program to support as many projects as possible, it was suggested that a system for providing loans as well as grants under the program should be developed. In addition, some recommended that the process for evaluating and approving projects under the Value-Added Act should

be revised, and that other changes could make the Act more effective in promoting the commercialization of agricultural products.

CONTENT

Senate Bill 1167 amended the Value-Added Act to require the Director of the MDA to convene an agricultural value-added commercialization roundtable to discuss the commercialization of agricultural products, processes, and services. The section added by the bill will be repealed two years after its effective date.

Senate Bill 1168 amended the Value-Added Act to do the following:

- **Require the MDA to establish an agricultural value-added grant program under which the Agriculture Commission may award grants from the Agricultural Development Fund; and delete previous provisions for awarding grants under the Act.**
- **Require the MDA to create a competitive process for awarding grants.**
- **Require the MDA to establish a low-interest loan program or a loan guarantee program to provide qualified agricultural loans.**
- **Establish a Joint Evaluation Committee consisting of agricultural producers and others, which, together with the Agriculture Commission, must evaluate grant**

applications and select suitable projects for funding according to specified criteria.

- **Establish conflict-of-interest standards for members of the Agriculture Commission and the Joint Evaluation Committee.**

Senate Bill 1169 amended the Value-Added Act to do the following:

- **Provide that not more than 10% of the money appropriated under Public Act 153 of 2006 in fiscal year 2005-06 from the 21st Century Jobs Trust Fund may be used for grants, with the remainder to be used for loans and loan guarantees.**
- **Limit the maximum grant from the Fund to \$250,000 and the maximum low-interest loan supported by the Fund to \$500,000.**
- **Reduce the maximum percentage of the Fund that may be used for administrative purposes from 5% to 4%.**

The three bills took effect on September 29, 2006.

Senate Bill 1167

The bill requires the MDA Director, in order to promote innovation in Michigan agriculture and to make more early-stage capital available to the agriculture industry, to convene an agricultural value-added commercialization roundtable to discuss all facets of the commercialization of agricultural products, processes, and services, including the availability of capital, innovation infrastructure, and university licensing of intellectual property.

(Under Senate Bill 1168, "commercialization" means 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 entity with that transition.)

The MDA Director must invite at least the following individuals to participate in the roundtable:

- Three from an association representing farmers.
- Two from an association representing food processors.
- Two from an association representing agribusiness.
- Two representing agricultural lending institutions.
- One representing an institution of higher education.
- One representing the United States Department of Agriculture (USDA) Rural Development Agency.
- One representing the Michigan Strategic Fund.
- One representing the Rural Development Council of Michigan.

The bill required the MDA Director to convene the first meeting of the roundtable within 90 days after the bill took effect. The Director must convene the roundtable at least twice each calendar year. The roundtable may advise the Director on the need for a more frequent meeting schedule. The meetings must be open to and held in a place available to the general public, and the MDA must provide notice of each roundtable meeting on its website and by any other means deemed appropriate.

At least one meeting each year must be held in a rural community. At this meeting, the public must be given an opportunity to address the roundtable on issues within its purview.

The MDA is required to prepare a summary of each roundtable meeting, including a Department response to issues raised during the meeting, and to post the summary on its website and provide a copy to all of the following: the members of the roundtable, the standing committees of the Senate and House of Representatives dealing primarily with agricultural issues, and any member of the public who requests a copy.

Senate Bill 1168

Ag Dev't Fund; Grant Program

Previously under the Value-Added Act, the MDA was required to award grants from the Agricultural Development Fund to qualified grantees who applied and submitted proposals demonstrating feasibility for development of value-added agricultural processing and agricultural processing and

agricultural production ventures consistent with the purposes described in the Act. Grantees could include 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.

The bill deleted these provisions, instead requiring the MDA to establish and administer an agricultural value-added grant program. Under the bill, the Agriculture Commission may award grants from the Agricultural Development Fund only for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in the State.

In approving a grant, the Agriculture Commission must state the specific objective reasons supporting the selection of the applicant over competing applicants. The Joint Evaluation Committee (described below) must assist and provide recommendations to the Agriculture Commission in identifying high-quality projects for funding based on the selection criteria and scoring system approved by the Commission. The recommendations must include all materials and decision documents used by the Joint Evaluation Committee in making the recommendations.

(The bill defines "Joint Evaluation Committee" as a committee selected by the Agriculture Commission with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of grant proposals. The committee must include at least three producers, including one plant agricultural producer, one animal agricultural producer, and another producer at large; an individual with a scientific agriculture education; and an agricultural financial lender.)

All scoring sheets, meetings, and other decisions made by the Joint Evaluation Committee must be open to the public and considered public documents, although the disclosure requirements of the Freedom of Information Act do not apply to a record or portion of a record, material, or other data

received, prepared, used, or retained by the MDA in connection with an application to or with a project or product assisted by the MDA or with an award, grant, loan, or investment relating to financial or proprietary information submitted by the applicant that the applicant considers and the MDA acknowledges to be confidential.

The bill does not affect any grants awarded under the Act before the bill took effect on September 29, 2006.

Competitive Process

The bill requires the MDA to establish a competitive process to award grants. The competitive process must include all of the following:

- A provision that the 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 agricultural production ventures to benefit producers in the State.
- A preference for proposals that are attempting to secure a license for agricultural intellectual property to be produced in Michigan.
- A provision that the program will use contracts with measurable milestones, clear objectives, and provisions to revoke awards for breach of contract.
- A provision requiring a cash match of at least 10% of the grant by the applicant (as the Act previously required).
- A provision to limit overhead rates for recipients of grants to reflect actual overhead but not more than 15% of the grant.
- A preference for proposals whose business plan forecasts revenue within two years or that have outside investments from investors with experience and management teams with experience in the area targeted by the proposal, or both.

Scientific and technical merit, commercial merit, and the ability to leverage additional funding must be given equal weight in the review and scoring process.

Selection Criteria

Under the bill, subject to the requirement that the Joint Evaluation Committee review applications, an application for a grant must be evaluated and ranked according to selection criteria and a scoring or point system approved by the MDA Director and the Agriculture Commission. In developing this system, the MDA must seek the assistance of the Michigan Economic Development Corporation; any institution of higher education; the USDA Rural Development Agency; the Rural Development Council of Michigan; agricultural producers; and other industry and professional organizations as determined appropriate by the MDA Director.

(The Act previously contained similar requirements but the selection criteria and scoring or point system had to be approved only by the MDA Director; the MDA was required to seek the assistance of Michigan State University, rather than any higher education institution; and the Department had to seek the assistance of one plant agricultural producer, one animal agricultural producer, and another producer at large, rather than agricultural producers.)

In addition, the bill requires the Agriculture Commission to ensure that a grant recipient agrees, as a condition of receiving the grant, that the recipient may not use the money for the development of a casino or any other gaming enterprise.

Previously, the Act required that the selection criteria give primary consideration to the ability of the proposed project to provide sound agricultural economic development in the 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 had to be given to projects that met these considerations and 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 bill removed these requirements.

Low-Interest Loans, Loan Guarantees

The bill requires the MDA, in cooperation with the Department of Treasury and Michigan financial institutions, to establish a low-interest loan program similar to the qualified agricultural loan program in Section 2a of Public Act 105 of 1855, or a loan guarantee program to provide qualified agricultural loans. The MDA must work with financial institutions in Michigan to establish a certification system to verify that loan applicants are requesting qualified agricultural loans.

(Section 2a of Public Act 105 of 1855 provides for loans to agricultural producers or businesses engaged in buying, selling, or trading agricultural products that have suffered significant losses in one agricultural commodity because of an agricultural or natural disaster.)

As part of a low-interest loan program or a loan guarantee program, the MDA must work with the Department of Treasury to establish agreements with participating financial institutions, and ensure that participating financial institutions do not refinance prior debt. In addition, the Department must require a financial institution participating in either program to certify compliance with the Federal Sarbanes-Oxley Act of 2002 (which requires businesses to adhere to certain corporate governance and accounting practices) or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added low-interest loan or loan guarantee from the financial institution. The MDA also must require the recipient of a low-interest loan or a loan guarantee to agree, as a condition of receiving the loan or loan guarantee, that the recipient will not use the money for the development of a casino or any other gaming enterprise.

As part of a low-interest loan program, the MDA also must ensure that an investment or new investment using the 21st Century Jobs Fund in which a qualified agricultural loan is attributed is not made under the bill after June 1, 2008. In addition, the MDA must ensure that a loan does not exceed a term of five years, that the first payment made by the recipient occurs within 24 months after the date of the loan, and that the interest

rate charged by participating financial institutions does not exceed 50% of the prime lending rate in Michigan plus 1%.

As part of a loan guarantee program, the MDA must maintain a list of financial institutions that will participate in the program, and ensure that participating financial institutions require adequate collateral and fully liquidate all collateral before calling on the loan guarantees. The MDA also must establish a loan guarantee of not more than 90% of the financial institution's loss after all alternatives to collect have been exhausted.

The bill defines "qualified agricultural loan" as a loan for projects designed to establish, retain, attract, or develop value-added agricultural processing and related agricultural production operations in this State.

Conflicts of Interest

The bill requires members of the Agriculture Commission and the Joint Evaluation Committee to discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of the State, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, the Commission may rely upon the report of the Joint Evaluation Committee or upon financial statements of the MDA, either represented to the Commission by the officer having charge of its books or accounts, or in a written report by the Auditor General.

A member of the Commission or the Joint Evaluation Committee may not make or participate in making, or in any way attempt to use his or her position to influence a matter before the MDA regarding, a loan, loan guarantee, grant, or other expenditure under the Act; may not have any financial interest in a recipient of proceeds under the Act; and may not engage in any conduct that constitutes a substantial conflict of interest.

(Under the bill, "substantial conflict of interest" means that the pecuniary interest is of such importance as either to influence materially the judgment of the member in the actual performance of his or her duty, or foreseeably and materially to influence a

reasonable person with similar knowledge and experience acting under similar circumstances and in a like position.)

A member of the Commission or the Joint Evaluation Committee must advise the Commission immediately in writing of the details of any incident or circumstances that may present a substantial conflict of interest with respect to the performance of his or her duty under the Act. If a member of the Commission or the Joint Evaluation Committee has a conflict of interest related to any matter, the member must disclose that fact before the MDA or the Commission takes any action on the matter. The disclosure will become part of the record of the official proceedings.

A member must refrain from doing all of the following with respect to the matter that is a basis of a substantial conflict of interest:

- Voting in the proceedings related to the matter.
- Participating in the discussion of or deliberation on the matter.
- Being present at the meeting when the discussion, deliberation, and voting on the matter take place.
- Discussing the matter with any other member of the Agriculture Commission or the Joint Evaluation Committee.

The bill specifies that members of the Agriculture Commission and the Joint evaluation Committee are subject to Public Act 317 of 1968. (That Act, which deals with contracts of public servants with public entities, prohibits a public servant from being a party, either directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer or employee.

Senate Bill 1169

The Value-Added Act provides for an Agricultural Development Fund within the Treasury Department. (Senate Bill 1168 deleted provisions concerning the Fund, and Senate Bill 1169 re-enacted similar language, with the changes described below.)

Under the bill, the Fund is to be managed by the Department of Treasury, rather than administered by the MDA, and is referred to as a revolving fund. As previously required,

money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

Previously, the MDA could use up to 5% of the Fund for administrative purposes. The bill reduced that percentage to 4%.

As previously required, the State Treasurer must credit to the Fund both of the following:

- Money from appropriations.
- Money or other assets from any source for deposit into the Fund, including Federal money, other State revenue, gifts, bequests, donations, and money from any other source provided by law.

The bill also requires the State Treasurer to credit to the Fund any money representing loan repayments and interest on the loans.

Previously, the Treasury Department had to deposit at least \$5.0 million of the revenue available in the Michigan Clean Air Fund into the Agricultural Development Fund. The bill omits that requirement.

Under the bill, the State Treasurer must direct the investment of the Fund. Upon request from the Agriculture Commission, the State Treasurer must invest the money in the Fund in a manner similar to the qualified agricultural loan program established in Section 2a of Public Act 105 of 1855.

Under the bill, of the money appropriated under Public Act 153 of 2006 from the 21st Century Jobs Trust Fund, a maximum of 10% may be used for grants, and the remainder must be used for loans and loan guarantees. A grant from the Fund may not exceed \$250,000, and a low-interest loan supported by the Fund may not exceed \$500,000.

(Public Act 153 of 2006 appropriated \$5.0 million for the Agricultural Development Fund, to be awarded as specialty crop grants and loans under the Value-Added Act. Public Act 153 states a legislative intent that the appropriated funds be combined with a \$5.0 million appropriation under the Michigan Strategic Fund Act, for a total of \$10.0 million to be transferred from the 21st Century Jobs Fund to the Agricultural Development Fund. "Specialty crop" means

any agricultural commodity except wheat, feed grains, oilseeds, cotton, rice, peanuts, and tobacco, as well as products derived from those commodities.)

MCL 285.302b (S.B. 1167)
285.302 (S.B. 1168)
285.302a (S.B. 1169)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As originally created, the Agricultural Development Fund could only distribute grants, which restricted its effectiveness in spurring agricultural innovation in the State. Because of the limited amount of money available in the Fund, only a small number of applicants could qualify for support under the program. The bills will make better use of the Fund by requiring the MDA to establish a low-interest loan program or a loan guarantee program, in addition to the grant program. Those programs will stretch finite resources while giving agricultural entrepreneurs the financing that they need to develop new processes to improve the agricultural industry in Michigan. This structure will benefit more individuals, businesses, organizations, and universities, which may do more to stimulate the agricultural sector of Michigan's economy.

The bills also provide for additional oversight of the Fund, helping to ensure that grants and loans are issued where they will have the most impact on the agricultural community and on the State's economy. The decision-making process will be impartial, involving experts in the field who are able to determine where the money can be put to the best use. The roundtable created under Senate Bill 1167 will consist of agricultural producers and others from the industry, as well as representatives of State and Federal government, helping to bring innovative ideas to the attention of the entities responsible for evaluating proposals for funding. The roundtable will give members of the agricultural community a voice in the decision-making process, and will bring together knowledgeable individuals who can provide valuable insights and recommendations. The open meetings of

the roundtable also will give members of the public a forum for input.

Opposing Argument

There is no need for the Fund to issue loans as well as grants. Loans are available widely to agricultural producers, while grants are relatively scarce. Even a low-interest loan appears as a liability on a company's books, and can affect a fledgling company's viability in its crucial early stages. The State supports other industries through grants and tax abatements, and agriculture should receive similar support, being the integral and vibrant part of Michigan's economy that it is. The Agricultural Development Fund represents an opportunity to invest in Michigan's second-largest industry, and open new opportunities for Michigan's agricultural producers. That can be done most effectively, however, through grants to individuals, companies, or units of government with innovative ideas but limited resources. In the past, small projects such as farmer's markets not only have helped the local farmers who participated, but also have been instrumental in revitalizing downtown areas in Saugatuck, Holland, and elsewhere. Grants from the Agricultural Development Fund may help to ensure the success of projects like these, while a low-interest loan program largely duplicates what is otherwise available through private lending institutions. By diverting some of the Fund's resources into a low-interest loan program, the bills further limit the amount of money available as grants, causing greater competition for those dollars.

Opposing Argument

Senate Bill 1169 lowers the amount of the Fund that may be used for administrative purposes from 5% to 4%, a 20% decrease. That reduction in funding will limit the Department's ability to oversee the Fund. To protect the Fund and ensure that it is used for the greatest possible benefit, the MDA must have sufficient resources to oversee the Fund.

Opposing Argument

The process for awarding grants or loans from the Agricultural Development fund could be improved significantly. The application requirements are very complex, and the bills do nothing to simplify or streamline the process. Reportedly, in the past some applicants have been intimidated

or discouraged by the difficulty of applying for grants under the program. In addition, it is unclear whether individuals on the review boards will have the expertise to evaluate the financial information included in the applications. This is of particular concern with such large sums of money at stake, and the potential for undesirable consequences if projects are funded without proper scrutiny.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bills 1167 and 1168

The bills will have no fiscal impact on State or local government.

Senate Bill 1169

The bill will have no direct fiscal impact on State government. The bill changes how money in the Agricultural Development Fund may be spent. The Act previously allowed up to 5% of the Fund to be used for administrative purposes. Under the bill, up to 4% of the Fund may be used for these purposes.

Previous law required the Fund to be used to provide grants. Under the bill, not more than 10% of the money appropriated to the Fund in fiscal year 2005-06 from the 21st Century Jobs Trust Fund may be used for grants. The remainder will be used for loans and loan guarantees. The maximum grant is \$250,000. The bill allows the Fund to be used to provide loans of up to \$500,000. Of the total amount of funding, not less than 50% will have to be awarded as grants and loans for specialty crops.

Fiscal Analyst: Debra Hollon

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.