Act No. 176
Public Acts of 2007
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STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007

Introduced by Senator Pappageorge

ENROLLED SENATE BILL No. 935

AN ACT 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 2002 PA 16.

The People of the State of Michigan enact:

Sec. 2a. (1) The state treasurer may invest surplus funds under the state treasurer's control in certificates of deposit or in a financial institution that qualifies with proof of financial viability acceptable to the state treasurer under this act to receive deposits or investments of surplus funds. In addition to terms that may be prescribed in the investment agreement by the state treasurer, an investment under this section shall be subject to all of the following conditions and restrictions:

(a) The interest accruing on the investment shall not be more than the interest earned by the financial institution on qualified agricultural loans made after the date of the investment.

(b) The financial institution shall provide good and ample security as the state treasurer requires and shall identify the qualified agricultural loans and the terms and conditions of those loans that are made after the date of the investment that are attributable to that investment together with other information required by this act.

(c) As established in the investment agreement by the state treasurer, a qualified agricultural loan shall be made at a rate or rates of interest, if any.

(d) To the extent the financial institution has not made qualified agricultural loans as defined by subsection (9)(a) in an amount at least equal to the amount of the investment within 90 days after the investment, the rate of interest payable on that portion of the outstanding investment shall be increased to a rate of interest provided in the investment agreement, with the increase in the rate of interest applied retroactively to the date on which the state treasurer invested the surplus funds.

(e) For a qualified agricultural loan as defined by subsection (9)(a), the investment agreement shall provide that the financial institution does not have to repay any principal within the first 24 months after which the investment is made unless the investment is no longer being used to make a qualified agricultural loan as defined by subsection (9)(a), or to the extent the qualified agricultural loan has been repaid.

(f) For a qualified agricultural loan as defined by subsection (9)(a), the investment agreement may include incentives for the early repayment of the investment and for the acceleration of payments in the event of a state cash shortfall as prescribed by the investment agreement.

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

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

(4) The state treasurer shall deposit before May 1, 2002 up to $30,000,000.00 of surplus funds with the financial institutions participating in making qualified agricultural loans under this section for the purpose of making those qualified agricultural loans. Not more than $10,000,000.00 of this deposit shall be allocated to qualified agricultural loans made to businesses under subsection (9)(a)(*iii*).

(5) Earnings from an investment made pursuant to this section which are in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1 or former section 2, shall be credited to the general fund of the state. If interest from an investment made pursuant to this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested pursuant to section 1 or former section 2, the general fund shall be reduced by the amount of the deficiency on an amortized basis over the remaining term of the investment. A loss of principal from an investment made pursuant to this section shall reduce the earnings of the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

(6) A new investment to which a qualified agricultural loan as defined by subsection (9)(a)(*ii*) is attributed shall not be made pursuant to this section after October 1, 2002, and shall not be made with a term which extends beyond October 1, 2007. An investment to which a qualified agricultural loan as defined by subsection (9)(a)(*iii*) is attributed shall not be made pursuant to this section after October 1, 2002, and shall not be made with a term extending beyond October 1, 2007. The terms of the qualified agricultural loan as defined by subsection (9)(a) shall provide that zero-interest loans under this section be for a term 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 loan. An investment to which a qualified agricultural loan as defined by subsection (9)(a)(*i*) is attributed shall not be made with a term extending beyond October 1, 2007.

(7) Annually, each financial institution in which the state treasurer has made an investment under this section shall file an affidavit, signed by a senior executive officer of the financial institution, stating that the financial institution is in compliance with the terms of the investment agreement and this act.

(8) Before October 1, 2003, the state treasurer shall prepare separate reports to the legislature and the house and senate agriculture appropriations subcommittees regarding the disposition of money invested for purposes of qualified agricultural loans as defined by subsection (9)(a)(*i*) and for qualified agricultural loans as defined by subsection (9)(a)(*ii*) and (*iii*). The reports for each type of loan shall include all of the following information:

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

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

(c) The name of each financial institution participating in the loan program and the amount invested in each financial institution for purposes of such loan program.

(d) Any action undertaken by the state treasurer under subsection (15).

(9) As used in this section:

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

(*i*) Until October 1, 2002, a loan to a natural or corporate person who is engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207, who is experiencing financial stress and difficulty in meeting existing or projected debt obligations owed to financial institutions due to an agricultural disaster as requested by the governor at rates commensurate with rates charged by financial institutions for loans of comparable type and terms at the time the loan is to be made, and who certifies to the financial institution that the owner-operator will not have more than $150,000.00 in outstanding loans otherwise considered qualified agricultural loans under this subparagraph, including the loan for which the owner-operator is applying. If crop insurance was available for a particular crop and the producer did not purchase the crop insurance for that crop, the amount of the loan shall be reduced by 30% or $50,000.00, whichever is less. A qualified agricultural loan under this subparagraph may be made for either or both of the following purposes:

(A) Operating capital including, but not limited to, capital necessary for the rental, lease, and repair of equipment or machinery, crop insurance premiums, and the purchase of seed, feed, livestock, breeding stock, fertilizer, fuel, and chemicals.

(B) Refinancing all or a portion of a loan entered into before October 1, 2002 for a purpose identified in sub-subparagraph (A).

(*ii*) A loan to an individual, sole proprietorship, partnership, corporation, or other legal entity that is engaged and intends to remain engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207, who has suffered a 25% or more loss in

major enterprises or a 50% or more production loss in any 1 crop due to an agricultural disaster on a farm located in this state, as requested by the governor and as certified by the producer by means of an affidavit demonstrating an accurate and valid production loss.

(*iii*) A loan to an individual, sole proprietorship, partnership, corporation, or other legal entity that is engaged in an agricultural business of buying, exchanging, or selling farm produce, or is engaged in the business of making retail sales directly to farmers and has 75% or more of its gross retail sales volume exempted from sales tax under the Michigan agricultural sales tax exemption, as provided in section 4a(1)(e) of the general sales tax act, 1933 PA 167, MCL 205.54a. Businesses engaged in the buying, exchanging, or selling of farm produce must have suffered a 50% or greater loss in volume of 1 commodity as compared with the average volume of that commodity which the business handled over the last 3 years to qualify for loans under this subparagraph. Businesses engaged in making retail sales directly to farmers must have suffered a 50% or greater reduction in gross retail sales volume subject to the Michigan agricultural sales tax exemption as compared with that business's average retail sales volume subject to that exemption over the last 3 years to qualify for loans under this subparagraph. All losses claimed by businesses attempting to qualify for loans under this subparagraph must be directly attributable to a natural disaster occurring after January 1, 2001, as requested by the governor and as certified by the agricultural business by means of an affidavit demonstrating an accurate and valid loss.

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

(c) "Financial institution" includes, but is not limited to, entities of the farm credit system or a state or federally chartered savings bank. For purposes of this section, entities of the farm credit system or a state or federally chartered savings bank may be qualified as a financial institution eligible to receive an investment under this section notwithstanding that its principal office is not located in this state if the proceeds of the investment will be committed to qualified agricultural loans in this state.

(d) "Corporate person" or "corporation" means, except in relation to a qualified agricultural loan under subdivision (a)(*iii*), a corporation in which a majority of the corporate stock is owned by persons operating the farm applying for a loan.

(e) "Facility" means a plant designed for receiving or storing farm produce or a retail sales establishment of a business engaged in making retail sales directly to farmers, which establishment has 75% or more of its gross retail sales volume exempted from sales tax under the Michigan agricultural sales tax exemption, as provided in section 4a(1)(e) of the general sales tax act, 1933 PA 167, MCL 205.54a.

(10) A qualified agricultural loan as defined by subsection (9)(a)(*ii*) shall be equal to not more than the value of the crop loss as certified by the producer by means of an affidavit demonstrating an accurate and valid production loss. The qualified agricultural loan shall not exceed the lesser of $200,000.00 or the value of the crop loss minus the amount of any grant under federal disaster assistance or insurance proceeds received by the owner-operator as a result of the same crop loss. If crop insurance was available for a particular crop and the producer did not purchase the crop insurance for that crop, the amount of the loan shall be reduced by 30% or $50,000.00, whichever is less.

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

(a) $300,000.00 per facility.

(b) An amount not to exceed the value of the direct loss of the individual, sole proprietorship, partnership, corporation, or other legal entity making application for the loan, as determined by the department of treasury under subsection (9)(a)(*iii*).

(c) $400,000.00 per individual, sole proprietorship, partnership, corporation, or other legal entity making application for the loan.

(12) The financial institutions participating in the loan program pursuant to subsection (9)(a) shall have the option of making state subsidized loans to farmers or to businesses described in subsection (9)(a)(*iii*) before October 1, 2002, with terms approved by the state treasurer by using their existing deposits for the loans and receiving from the state treasurer an interest rate subsidy equal to 120% of the state treasurer's common cash earnings rate. The state's reimbursement to financial institutions participating in the loan program pursuant to subsection (9)(a) shall not be made before October 1, 2002.

(13) There is hereby appropriated an amount sufficient to make the distributions required under subsections (4) and (12) in the 2001-02 fiscal year for not to exceed $210,000,000.00 in qualified agricultural loans. For each qualified agricultural loan for which a distribution is made pursuant to subsection (12), the maximum amount of investments authorized by subsection (4) shall be reduced by an amount equal to 100% or more of the qualified agricultural loan, as determined by the department of treasury, for which a distribution is made pursuant to subsection (12).

(14) Any money for purposes of qualified agricultural loans as defined by subsection (9)(a)(*ii*) that has not been invested by the state treasurer by October 1, 2002, shall increase the maximum amount available under this section for qualified agricultural loans as defined by subsection (9)(a)(*i*).

(15) The state treasurer may take any necessary action to ensure the successful operation of this section, including making investments with financial institutions to cover the administrative and risk-related costs associated with a qualified agricultural loan.

(16) Upon request by the department of treasury, a financial institution shall forward a copy of any affidavits executed and filed under this section to the department of treasury. The financial institution and the department of treasury shall destroy the affidavit or its copy after the qualified agricultural loan is paid off.

(17) If the recipient of a qualified agricultural loan as defined by subsection (9)(a) receives a federal grant after the receipt of a qualified agricultural loan under this section, then any federal grant money remaining after all federal obligations are met shall be allocated by the recipient to payment of the balance of any outstanding loan made under this section.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved _____

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Governor