

SENATE BILL No. 823

September 15, 2009, Introduced by Senators KAHN and McMANUS and referred to the Committee on Appropriations.

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 2b and 2d (MCL 21.142b and 21.142d), section 2b as amended by 1996 PA 31 and section 2d as added by 2000 PA 280.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2b. (1) The state treasurer may invest surplus funds
2 under the state treasurer's control with a financial institution,

1 investment company, insurance company, or other legal entity
2 entitled to receive an investment, which investment may be in the
3 form of a deposit, repurchase agreement, guaranteed investment
4 contract, banker's acceptances, or other security evidencing the
5 obligation of the entity receiving the investments to repay the
6 investment under the terms and conditions contained in an
7 investment agreement, including the rate of return, if any, to be
8 received on the investment.

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

11 (3) In addition to the terms and conditions that may be
12 prescribed by the investment agreement, the investment agreement
13 shall also provide for the following:

14 (a) The character, extent, and nature of security necessary
15 for the investment.

16 (b) That the investment shall be loaned to the Michigan
17 municipal bond authority for the purpose of the Michigan municipal
18 bond authority investing the proceeds of that loan in a manner
19 consistent with and pursuant to the shared credit rating act, ~~Act~~
20 ~~No. 227 of the Public Acts of 1985, being sections 141.1051 to~~
21 ~~141.1078 of the Michigan Compiled Laws 1985 PA 227, MCL 141.1051 TO~~
22 **141.1076**, to produce a return available to the Michigan municipal
23 bond authority solely for the purpose of structuring, assisting, or
24 benefiting an eligible project or to pay principal and interest on
25 any proceeds of an obligation of the Michigan municipal bond
26 authority which are used to benefit an eligible project.

27 (c) The term of the investment.

1 (4) The amount of any investment made pursuant to this
2 subsection shall not exceed 10% of the average balance of the state
3 common cash fund during the 30 days preceding the date on which the
4 list of eligible projects is submitted to the joint capital outlay
5 subcommittee, calculated after other investments made pursuant to
6 this section have been deducted.

7 (5) Earnings from an investment made pursuant to this section
8 in excess of the average rate of interest earned during the same
9 period on other surplus funds, other than surplus funds invested
10 pursuant to section 1 ~~, 2,~~ or 2a, shall be credited to the general
11 fund of the state. If interest from an investment made pursuant to
12 this section is below the average rate of interest earned during
13 the same period on other surplus funds, other than surplus funds
14 invested pursuant to section 1 ~~, 2,~~ or 2a, the general fund shall
15 be reduced by the amount of the deficiency on an amortized basis
16 over the remaining term of the investment. A loss of principal from
17 an investment made pursuant to this section shall reduce the
18 earnings on the general fund by the amount of that loss on an
19 amortized basis over the remaining term of the investment.

20 (6) Not less than 30 days before an investment is made
21 pursuant to this section the director and the state treasurer shall
22 prepare and submit to the members of the joint capital outlay
23 subcommittee of the appropriations subcommittees of the legislature
24 a list of projects that the director and the state treasurer
25 determine are eligible projects and the local units in which the
26 eligible projects are located. Upon the approval of the joint
27 capital outlay subcommittee, the state treasurer may execute the

1 investment authorized by this section.

2 (7) A project shall not be approved by the director and the
3 state treasurer as an eligible project unless all of the following
4 conditions are met:

5 (a) The director determines that the project is located in a
6 county that has an approved solid waste management plan.

7 (b) The director determines that the project is consistent
8 with the approved solid waste management plan.

9 (c) The director determines that the project has all the
10 permits that are required by state law that are specifically
11 applicable to the nature of the proposed project.

12 (d) If the project is a waste to energy facility, the director
13 determines that the facility utilizes the best available control
14 technology and that the resultant ash is tested for toxicity and
15 appropriate disposal is assured.

16 (e) If the project is a waste to energy facility, the project
17 either includes the recycling of the recyclable portion of the
18 project's projected waste stream, or the project application
19 includes a recycling feasibility analysis or other available
20 information that indicates that recycling is not necessary or
21 feasible, or is only necessary or feasible to a limited extent and
22 that adding such a component to the project would not be
23 economically feasible. If any local unit within a county which has
24 an approved solid waste management plan operates a recycling
25 project or receives funding pursuant to part 191 ~~(clean Michigan~~
26 ~~fund)~~ of the natural resources and environmental protection act,
27 ~~Act No. 451 of the Public Acts of 1994, being sections 324.19101 to~~

~~324.19121 of the Michigan Compiled Laws 1994 PA 451, MCL 324.19101~~
TO 324.19121, for a recycling project that included an analysis of
 the feasibility of recycling in the county in which the project is
 located, the requirements of this subdivision shall be met for all
 local units within the planning area.

(f) The state treasurer determines that the project meets the
 requirements of this section, that the project is economically
 feasible, and that no similar project that is economically feasible
 without the expenditure of state funds is proceeding in a timely
 manner and has made application with the director for any permit or
 license necessary for construction or operation in the county in
 which the project is located.

(8) The director and the state treasurer shall work together
 to assure that eligible projects are economically viable and will
 assist in developing and encouraging methods for the disposal of
 solid waste that are environmentally sound and maximize the use and
 reuse of valuable resources.

(9) As used in this section:

(a) "Authority" means the Michigan municipal bond authority
 created in ~~Act No. 227 of the Public Acts of 1985~~ **THE SHARED CREDIT**
RATING ACT, 1985 PA 227, MCL 141.1051 TO 141.1076.

(b) "Best available control technology" means best available
 control technology as defined in ~~section 169 of subpart I of part C~~
~~of title I of the clean air act, chapter 360, 91 stat. 740, 42~~
~~U.S.C.—USC~~ 7479.

(c) "Director" means the director of the department of
~~environmental quality~~ **NATURAL RESOURCES** or his or her authorized

1 representative.

2 (d) "Eligible project" means 1 or more of the following
3 projects of a local unit that have been approved by the director
4 and the state treasurer, including costs associated with a project
5 necessary for issuance of evidences of indebtedness to finance the
6 project:

7 (i) The construction, improvement, acquisition, or enlargement
8 of a waste to energy facility.

9 (ii) The construction, improvement, acquisition, or enlargement
10 of a solid waste transfer facility.

11 (iii) The construction, improvement, or enlargement of a
12 recycling project or the acquisition of recycling equipment.

13 (iv) The construction, improvement, or enlargement of a
14 composting project or the acquisition of composting equipment.

15 (e) "Local units" means a city, village, township, county, or
16 an authority created by or pursuant to state law, or any
17 combination thereof if authorized by state law to act jointly.

18 (f) "Composting project", "recycling project", "solid waste",
19 "solid waste transfer facility", and "waste to energy" have the
20 meaning ascribed to them in part 191 of ~~Act No. 451 of the Public~~

21 ~~Acts of 1994~~ **THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**
22 **ACT, 1994 PA 451, MCL 324.19101 TO 324.19121.**

23 (10) Notwithstanding any other provision of this act, the
24 state treasurer shall not invest additional surplus funds in the
25 manner and for the purposes provided in this section after the
26 electors approve the issuance of general obligation bonds in
27 accordance with section 15 of article IX of the state constitution

1 of 1963 and not less than \$250,000,000.00 of the proceeds of those
2 bonds is to be used to promote solid waste management in the state
3 by funding eligible projects or similar solid waste management
4 projects, promoting solid waste reduction, upgrading or closing
5 existing landfills, or providing educational and technical
6 assistance regarding solid waste management.

7 Sec. 2d. (1) The state treasurer may invest surplus funds
8 under the state treasurer's control in certificates of deposit or
9 other instruments of a financial institution qualified under this
10 act to receive deposits or investments of surplus funds for the
11 purpose of facilitating marina dredging loans. The state treasurer
12 shall endeavor to make investments under this subsection in
13 financial institutions such that marina dredging loans will be
14 conveniently available in all geographic regions in this state. The
15 state treasurer may enter into an investment agreement with a
16 financial institution to provide for the investment under this
17 subsection. The investment agreement shall contain all of the
18 following:

19 (a) The term of the investment which shall be not more than 10
20 years.

21 (b) A requirement that the interest accruing on the investment
22 shall not be more than the interest earned by the financial
23 institution on marina dredging loans made after the date of the
24 investment.

25 (c) A requirement that the financial institution shall provide
26 good and ample security as the state treasurer requires and shall
27 identify the marina dredging loans and the terms and conditions of

1 those loans that are made after the date of the investment that are
2 attributable to that investment together with other information
3 required by this act.

4 (d) A requirement that a marina dredging loan made by the
5 financial institution that is attributable to the investment shall
6 be issued at a rate or rates of interest that are established in
7 the investment agreement.

8 (e) A requirement that a marina dredging loan made by the
9 financial institution that is attributable to the investment shall
10 be made not later ~~than 3 years after the effective date of this~~
11 ~~section~~ **JULY 10, 2003**.

12 (f) A requirement that a marina dredging loan made by the
13 financial institution that is attributable to the investment shall
14 be issued for a loan repayment period of not more than 7 years.

15 (g) A requirement that a marina dredging loan made by the
16 financial institution that is attributable to the investment shall
17 not exceed \$75,000.00.

18 (h) A requirement that a marina dredging loan made by the
19 financial institution that is attributable to the investment shall
20 not be released by the financial institution unless the loan
21 applicant has certified that it is an eligible marina.

22 (i) A requirement that to the extent the financial institution
23 has not made marina dredging loans in an amount at least equal to
24 the amount of the investment within 90 days after the investment,
25 the rate of interest payable on that portion of the outstanding
26 investment shall be increased to a rate of interest provided in the
27 investment agreement, with the increase in the rate of interest

1 applied retroactively to the date on which the state treasurer made
2 the investment.

3 (j) Incentives for the early repayment of the investment and
4 for the acceleration of payments in the event of a state cash
5 shortfall as prescribed by the investment agreement, if required by
6 the state treasurer.

7 (k) Other terms as prescribed by the state treasurer.

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

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

12 (4) The aggregate amount of investments made under this
13 section shall not exceed \$20,000,000.00.

14 (5) Upon the determination by the ~~directors of the departments~~
15 **DIRECTOR OF THE DEPARTMENT** of natural resources ~~and environmental~~
16 ~~quality~~ that the need to facilitate marina dredging loans has
17 significantly diminished based on changes in Great Lakes water
18 levels, the state treasurer may take actions necessary to ensure
19 that no new marina dredging loans that are attributable to an
20 investment under this section are made. Such a determination shall
21 not affect existing marina dredging loans that are attributable to
22 an investment under this section.

23 (6) Earnings from an investment made under this section that
24 are in excess of the average rate of interest earned during the
25 same period on other surplus funds, other than surplus funds
26 invested under section 1, shall be credited to the general fund of
27 the state. If interest from an investment made under this section

1 is below the average rate of interest earned during the same period
2 on other surplus funds, other than surplus funds invested under
3 section 1, the general fund shall be reduced by the amount of the
4 deficiency on an amortized basis over the remaining term of the
5 investment. A loss of principal from an investment made under this
6 section shall reduce the earnings of the general fund by the amount
7 of that loss on an amortized basis over the remaining term of the
8 investment.

9 (7) The state treasurer may take any necessary action to
10 ensure the successful operation of this section, including making
11 investments with financial institutions to cover the administrative
12 and risk-related costs associated with a marina dredging loan.

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

18 (9) The state treasurer shall annually prepare and submit a
19 report to the legislature regarding the disposition of money
20 invested for purposes of facilitating marina dredging loans under
21 this section. The report shall include all of the following
22 information:

23 (a) The total number of eligible marina owners who have
24 received a marina dredging loan.

25 (b) By county, the total number and amounts of the marina
26 dredging loans that were issued.

27 (c) The name of each financial institution participating in

1 the marina dredging loan program and the amount invested in each
2 financial institution for purposes of the loan program.

3 (10) As used in this section:

4 (a) "Bottomland" means the land area of a water body that lies
5 below the ordinary high-water mark and that may or may not be
6 covered by water.

7 (b) "Dredging" means the removal of sediments from bottomland.

8 (c) "Dredging costs" means the costs associated with dredging
9 that were incurred after January 1, 2000, including costs of
10 removal, disposal, and testing of sediments, and the costs
11 associated with obtaining necessary permits required to conduct
12 dredging.

13 (d) "Eligible marina" means a privately owned, commercial
14 facility in this state that meets all of the following
15 requirements:

16 (i) Extends into or over the Great Lakes and their connecting
17 waters navigable by motorized watercraft from a Great Lake.

18 (ii) Provides docking, mooring or launching services available
19 to the general public for recreational boating. Marinas that limit
20 their services based on membership or residency requirements are
21 not eligible.

22 (iii) Provides mooring facilities for no more than 200
23 recreational watercraft through the use of docks, slips, or
24 broadside mooring.

25 (iv) Has received the permits required by law from the
26 department of ~~environmental quality~~ **NATURAL RESOURCES** and the army
27 corps of engineers for the dredging to be conducted with loan

1 funds.

2 (e) "Marina dredging loan" means a loan or the refinancing of
3 all or a portion of a loan made to the owner of an eligible marina
4 for dredging costs necessitated by low water levels to accommodate
5 the use of the marina by recreational watercraft.

6 (f) "Ordinary high-water mark" means either of the following:

7 (i) For an inland lake or stream, that term as it is defined in
8 section 30101 of the natural resources and environmental protection
9 act, 1994 PA 451, MCL 324.30101.

10 (ii) For the Great Lakes, the ordinary high-water mark as
11 described in section 32502 of the natural resources and
12 environmental protection act, 1994 PA 451, MCL 324.32502.

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

18 Enacting section 1. This amendatory act does not take effect
19 unless Senate Bill No. 807

20 of the 95th Legislature is enacted into law.