

HOUSE BILL No. 4116

January 22, 2009, Introduced by Rep. Terry Brown and referred to the Committee on Agriculture.

A bill to amend 2000 PA 322, entitled "Julian-Stille value-added act," by amending the title and sections 2, 2a, and 3 (MCL 285.302, 285.302a, and 285.303), the title and section 2 as amended by 2006 PA 423 and section 2a as added by 2006 PA 424.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

3

4

5

6

7

8

9

An act to create certain committees; to create certain funds from certain sources and to provide for the disposition of money from the funds; to provide for the creation of certain funds by certain private entities; to create incentives and to locate and maintain value-added agricultural processing, commercialization of agriculture, and production ventures within this state; to provide for grants ~~, loans, and loan guarantees~~ to certain private and governmental entities for certain purposes; to provide for certain

1 powers and duties for certain private entities, state agencies,
2 commissions, and departments; to authorize ~~loans, loan guarantees,~~
3 expenditures ~~—~~and grants from the funds; and to finance the
4 development of certain programs.

5 Sec. 2. (1) As used in this section and ~~sections~~ **SECTION 2a:**
6 ~~and 2b:~~

7 (a) "Agricultural processing" means 1 or more of the
8 operations that transform, package, sort, or grade livestock or
9 livestock products, agricultural commodities, or plant or plant
10 products into goods that are used for the intermediate or final
11 consumption including goods for nonfood use.

12 (b) "Commercialization" means the transition from research to
13 the actions necessary to achieve market entry and general market
14 competitiveness of new innovative technologies, processes, and
15 products and the services that support, assist, equip, finance, or
16 promote a person or an entity with that transition.

17 (c) "Department" means the Michigan department of agriculture.

18 (d) "Eligible grantee" means a person able to receive a grant
19 under this section and includes, but is not limited to,
20 individuals, farmer owned cooperatives, partnerships, limited
21 liability companies, private or public corporations, and local
22 units of government.

23 (e) "Fund" means the agricultural development **GRANT** fund
24 created in section 2a.

25 (f) "Joint evaluation committee" means a committee selected by
26 the commission of agriculture with appropriate expertise to conduct
27 an independent, unbiased, objective, and competitive evaluation of

1 grant proposals. The committee shall include at least 3 producers,
2 including 1 plant agricultural producer, 1 animal agricultural
3 producer, and another producer at large, an individual with a
4 scientific agriculture education, and an agricultural financial
5 lender.

6 ~~—— (g) "Qualified agricultural loan" means a loan for projects~~
7 ~~designed to establish, retain, attract, or develop value added~~
8 ~~agricultural processing and related agricultural production~~
9 ~~operations in this state.~~

10 ~~—— (h) "Specialty crops" means any agricultural commodity except~~
11 ~~wheat, feed grains, oil seeds, cotton, rice, peanuts, and tobacco,~~
12 ~~as well as products derived from these agricultural commodities.~~

13 (G) ~~(i)~~ "Value-added" means the enhancement or improvement of
14 the overall value of an agricultural commodity or of an animal or
15 plant product into a product of higher value. The enhancement or
16 improvement includes, but is not limited to, marketing,
17 agricultural processing, transforming, or packaging.

18 (2) The department shall establish and administer an
19 agricultural value-added grant program. The **DIRECTOR OF THE**
20 **DEPARTMENT, WITH THE CONSENT OF THE** commission of agriculture,
21 shall award grants from the fund created in section 2a only for
22 projects designed to establish, retain, expand, attract, or develop
23 value-added agricultural processing and related agricultural
24 production operations in this state. In approving a grant under
25 this subsection, the **DIRECTOR OF THE DEPARTMENT SHALL PROVIDE**
26 **SUPPORTING DOCUMENTATION ON THE SELECTION OF APPROVED APPLICANTS TO**
27 **THE** commission of agriculture. ~~shall state the specific objective~~

1 ~~reasons supporting the selection of the applicant over competing~~
2 ~~applicants.~~ The joint evaluation committee shall assist and provide
3 recommendations to the ~~commission of agriculture~~ **DIRECTOR OF THE**
4 **DEPARTMENT** in identifying high-quality projects for funding based
5 upon the selection criteria and scoring system approved by the
6 commission of agriculture. The recommendations shall include all
7 materials and decision documents used by the joint evaluation
8 committee in making the recommendations.

9 (3) All scoring sheets, meetings, and other decisions made by
10 the joint evaluation committee shall be open to the public and
11 considered public documents. A record or portion of a record,
12 material, or other data received, prepared, used, or retained by
13 the department in connection with an application to or with a
14 project or product assisted by the department or with an award,
15 grant, ~~loan,~~ or investment relating to financial or proprietary
16 information submitted by the applicant that is considered by the
17 applicant and acknowledged by the department as confidential shall
18 not be subject to the disclosure requirements of the freedom of
19 information act, 1976 PA 442, MCL 15.231 to 15.246.

20 (4) Subject to subsection (2), the department shall do all of
21 the following:

22 (a) Establish a competitive process to award grants. The
23 competitive process shall include, but is not limited to, the
24 following:

25 (i) A provision that the applications must be reviewed by the
26 joint evaluation committee. Scientific and technical merit,
27 commercial merit, and the ability to leverage additional funding

1 shall be given equal weight in the review and scoring process.

2 (ii) A preference for proposals that demonstrate a high level
3 of innovation for value-added agricultural processing and related
4 agricultural production ventures to benefit producers in this
5 state.

6 (iii) A preference **MAY BE MADE** for proposals that ~~are attempting~~
7 ~~to secure~~ **HAVE SECURED** a license for agricultural-related
8 intellectual property to be produced in Michigan.

9 (iv) A provision that the program will utilize contracts with
10 measurable milestones, clear objectives, and provisions to revoke
11 awards for breach of contract.

12 (v) Provide for a cash match of at least 10% of the grant by
13 the applicant.

14 (vi) Limit overhead rates for recipients of grants to reflect
15 actual overhead but not greater than 15% of the grant.

16 (vii) A preference for proposals whose business plan forecasts
17 revenues within 2 years or that have outside investments from
18 investors with experience and management teams with experience in
19 the area targeted by the proposal, or both.

20 (b) Prepare a request for proposals on at least an annual
21 basis for grants for eligible grantees from the fund. Grants are
22 contingent upon the availability of funds.

23 (5) Subject to subsection (4)(a)(i), an application for a grant
24 submitted under this section shall be evaluated and ranked
25 according to selection criteria and a scoring or point system
26 approved by the director of the department. The selection criteria
27 and the scoring or point system shall be reviewed and approved by

1 the commission of agriculture. In developing such a system, the
 2 department shall seek the assistance of the Michigan economic
 3 development corporation, any institution of higher education, the
 4 United States department of agriculture-rural development agency,
 5 the rural development council of Michigan, agricultural producers,
 6 and other industry and professional organizations as determined by
 7 the director of the department.

8 (6) The ~~commission of agriculture~~ **DIRECTOR OF THE DEPARTMENT**
 9 shall ensure that a recipient of a grant under this section agrees
 10 that, as a condition of receiving the grant, that recipient shall
 11 not use the money for the development of a casino regulated under
 12 the Michigan gaming control and revenue act, ~~the Initiated Law of~~
 13 1996 IL 1, MCL 432.201 to 432.226, a casino regulated under the
 14 Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467,
 15 or any other gaming enterprise.

16 ~~—— (7) The department, in cooperation with the department of~~
 17 ~~treasury and Michigan financial institutions, shall establish a~~
 18 ~~low interest loan program in a manner similar to the qualified~~
 19 ~~agricultural loan program established in section 2a of 1855 PA 105,~~
 20 ~~MCL 21.142a, or a loan guarantee program to provide qualified~~
 21 ~~agricultural loans. The department of treasury shall give the~~
 22 ~~department any necessary assistance required to establish a low-~~
 23 ~~interest loan or loan guarantee program. The department shall work~~
 24 ~~with Michigan financial institutions to establish a certification~~
 25 ~~system to verify that loan applicants are requesting qualified~~
 26 ~~agricultural loans. As part of the low interest loan program, the~~
 27 ~~department shall do the following:~~

1 ~~—— (a) Work with the department of treasury to establish~~
2 ~~agreements with participating financial institutions.~~

3 ~~—— (b) Ensure that an investment or new investment utilizing the~~
4 ~~21st century jobs fund in which a qualified agricultural loan is~~
5 ~~attributed is not made pursuant to this section after June 1, 2008.~~

6 ~~—— (c) Ensure that the terms of a qualified agricultural loan~~
7 ~~under this section are for a term of not more than 5 years and that~~
8 ~~the first payment made by the recipient occurs not later than 24~~
9 ~~months after the date of the loan.~~

10 ~~—— (d) Ensure that the interest rate charged by participating~~
11 ~~financial institutions does not exceed 50% of prime in Michigan~~
12 ~~plus 1%.~~

13 ~~—— (e) Ensure that participating financial institutions do not~~
14 ~~refinance prior debt.~~

15 ~~—— (f) Require a participating financial institution to certify~~
16 ~~compliance with the Sarbanes Oxley act of 2002, Public Law 107-204,~~
17 ~~or prohibit an officer, director, or principal shareholder of a~~
18 ~~participating financial institution, or his or her immediate family~~
19 ~~members, from receiving an agricultural value added low interest~~
20 ~~loan from the financial institution.~~

21 ~~—— (g) Require the recipient of a qualified agricultural loan~~
22 ~~under this section to agree that, as a condition of receiving the~~
23 ~~loan, that the recipient shall not use the money for the~~
24 ~~development of a casino regulated under the Michigan gaming control~~
25 ~~and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226,~~
26 ~~a casino regulated under the Indian gaming regulatory act, Public~~
27 ~~Law 100-497, 102 Stat. 2467, or any other gaming enterprise.~~

~~—— (8) As part of a loan guarantee program, the department shall do the following:~~

~~—— (a) Work with the department of treasury to establish agreements with participating financial institutions.~~

~~—— (b) Ensure that participating financial institutions require adequate collateral and fully liquidate all collateral before calling on the loan guarantees.~~

~~—— (c) Establish a loan guarantee of not more than 90% of the financial institution's loss after all alternatives to collect have been exhausted.~~

~~—— (d) Ensure that participating financial institutions do not refinance prior debt.~~

~~—— (e) Require a participating financial institution to certify compliance with the Sarbanes Oxley act of 2002, Public Law 107-204, 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 loan guarantee from the financial institution.~~

~~—— (f) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan guarantee, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.~~

~~—— (g) Maintain a list of financial institutions that will participate in the loan guarantee program.~~

1 (7) ~~(9)~~—The director of the department may impose fiduciary
2 obligations upon a recipient of a grant, including performance
3 bonding, and may impose conditions upon the receipt and expenditure
4 of the grant money.

5 (8) ~~(10)~~—Notwithstanding section 3(1) of 1968 PA 317, MCL
6 15.323, members of the commission of agriculture and the joint
7 evaluation committee are subject to 1968 PA 317, MCL 15.321 to
8 15.330. As used in this subsection, "substantial conflict of
9 interest" means that the pecuniary interest is of such importance
10 as to either materially influence the judgment of the member in the
11 actual performance of his or her duty under the act or to
12 foreseeably and materially influence the judgment of a reasonable
13 person with similar knowledge and experience acting under similar
14 circumstances and in a like position as the member. For purposes of
15 this section, members of the commission of agriculture and the
16 joint evaluation committee shall do the following:

17 (a) Discharge the duties of the position in a nonpartisan
18 manner, in good faith, in the best interests of this state, and
19 with the degree of diligence, care, and skill that a fiduciary
20 would exercise under similar circumstances in a like position. In
21 discharging duties of the office, the commission of agriculture
22 when acting in good faith may rely upon the report of the joint
23 evaluation committee or upon financial statements of the department
24 represented to the commission of agriculture by the officer having
25 charge of its books or accounts or stated in a written report by
26 the auditor general.

27 (b) Not make or participate in making, or in any way attempt

1 to use his or her position to influence a matter before the
2 department regarding ~~, a loan, loan guarantee, A~~ grant ~~, or~~ other
3 expenditure under this act.

4 (c) Not have any financial interest in a recipient of proceeds
5 under this act and shall not engage in any conduct that constitutes
6 a substantial conflict of interest.

7 (d) Immediately advise the commission of agriculture in
8 writing of the details of any incident or circumstances that may
9 present the existence of a substantial conflict of interest with
10 respect to the performance of his or her duty under this act.

11 (e) Disclose a substantial conflict of interest related to any
12 matter before the department or the commission of agriculture takes
13 any action with respect to the matter, which disclosure shall
14 become a part of the record of the official proceedings.

15 (f) Refrain from doing all of the following with respect to
16 the matter that is a basis of a substantial conflict of interest:

17 (i) Voting in the proceedings related to the matter.

18 (ii) Participating in the discussion or deliberation of the
19 matter.

20 (iii) Being present at the meeting when the discussion,
21 deliberation, and voting on the matter takes place.

22 (iv) Discussing the matter with any other member of the
23 commission of agriculture or the joint evaluation committee.

24 (9) ~~(11)~~ An application for a grant from the fund shall be
25 made on a form or format prescribed by the department. The
26 department may require the applicant to provide information
27 reasonably necessary to allow the department to make a

1 determination required under this section.

2 (10) ~~(12)~~ The department shall promulgate rules under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328, to implement this section.

5 ~~—— (13) The amendatory act that added subsection (5) shall not~~
6 ~~affect any grants awarded under this act prior to the effective~~
7 ~~date of the amendatory act that added subsection (5).~~

8 Sec. 2a. (1) The agricultural development fund is created as a
9 revolving fund within the department of treasury to be administered
10 by the department. The state treasurer shall direct the investment
11 of the fund. Money in the fund at the close of the fiscal year
12 shall remain in the fund and shall not lapse to the general fund.

13 **THE DEPARTMENT IS THE ADMINISTRATOR OF THE FUND FOR AUDIT PURPOSES.**

14 The department may utilize up to 4% of the fund for administrative
15 purposes. The state treasurer shall credit to the fund money from
16 the following sources:

17 (a) Appropriations.

18 (b) Money or other assets from any source for deposit into the
19 fund, including federal money, other state revenues, gifts,
20 bequests, or donations, as well as money from any other source
21 provided by law.

22 ~~—— (c) Any money representing loan repayments and interest on the~~
23 ~~loans.~~

24 (2) Of the money appropriated under 2006 PA 153 from the 21st
25 century jobs trust fund, ~~not more than 10% shall be used for grants~~
26 ~~and the remaining shall be used for loans and loan guarantees. The~~
27 **THE** maximum grant from the fund shall not exceed \$250,000.00. ~~The~~

~~maximum low interest loan supported by the fund shall not exceed
\$500,000.00.~~

(3) Upon request from the commission of agriculture, the state treasurer shall invest the money in the ~~agricultural development~~ fund in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, as provided in section 2.

Sec. 3. (1) As used in this section:

(a) "Department" means the department of environmental quality.

(b) "Fund" means the Michigan clean air fund created in this section.

(2) The Michigan clean air fund is created within the department of treasury to be administered by the department. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The state treasurer shall credit to the fund the money from the uncollectibles allowance recovery funds established in section 4 as well as money from any other source provided by law. **THE DEPARTMENT IS THE ADMINISTRATOR OF THE FUND FOR AUDIT PURPOSES.**

(3) Money in the fund shall be used by the department to provide grants ~~and loans~~ to individuals, private or public corporations, and local units of government for programs or projects established to reduce oxides of nitrogen and volatile organic compounds and for the administration of the grant ~~and loan~~ program.

(4) The director of the department shall have final approval

1 of grants ~~and loans~~ made under this section. Grants ~~and loans~~ made
2 under this section are contingent upon the availability of money in
3 the fund.

4 (5) The director of the department may impose fiduciary
5 obligations upon a recipient of a grant, including performance
6 bonding, and may impose conditions upon the receipt and expenditure
7 of the grant money.

8 (6) An application for a grant ~~or loan~~ from the fund shall be
9 made on a form or in a format prescribed by the department. The
10 department may require the applicant to provide any information
11 reasonably necessary to allow the department to make a
12 determination required under this section.

13 (7) The department shall promulgate rules under the
14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
15 24.328, to implement this section.