

# HOUSE BILL No. 4157

February 4, 2009, Introduced by Rep. Mayes 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:

### TITLE

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  
powers and duties for certain private entities, state agencies,

1 commissions, and departments; to authorize ~~loans, loan guarantees,~~  
2 expenditures ~~and~~ grants from the funds; and to finance the  
3 development of certain programs.

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

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

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

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

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

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

24 (f) "Joint evaluation committee" means a committee selected by  
25 the commission of agriculture with appropriate expertise to conduct  
26 an independent, unbiased, objective, and competitive evaluation of  
27 grant proposals. The committee shall include at least 3 producers,

including 1 plant agricultural producer, 1 animal agricultural producer, and another producer at large, an individual with a scientific agriculture education, and an agricultural financial lender.

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

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

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

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

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

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

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

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

24 (i) A provision that the applications must be reviewed by the  
25 joint evaluation committee. Scientific and technical merit,  
26 commercial merit, and the ability to leverage additional funding  
27 shall be given equal weight in the review and scoring process.

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

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

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

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

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

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

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

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

department shall seek the assistance of the Michigan economic development corporation, any institution of higher education, the United States department of agriculture-rural development agency, the rural development council of Michigan, agricultural producers, and other industry and professional organizations as determined by the director of the department.

(6) The ~~commission of agriculture~~ **DIRECTOR OF THE DEPARTMENT** shall ensure that a recipient of a grant under this section agrees that, as a condition of receiving the grant, that 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 IL 1, 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.

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

~~—— (a) Work with the department of treasury to establish~~

~~agreements with participating financial institutions.~~

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

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

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

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

~~—— (f) 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 low interest loan from the financial institution.~~

~~—— (g) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan, 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.~~

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

1 ~~do the following.~~

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

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

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

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

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

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

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

27 (7) ~~(9)~~ The director of the department may impose fiduciary



1 obligations upon a recipient of a grant, including performance  
2 bonding, and may impose conditions upon the receipt and expenditure  
3 of the grant money.

4       (8) ~~(10)~~ Notwithstanding section 3(1) of 1968 PA 317, MCL  
5 15.323, members of the commission of agriculture and the joint  
6 evaluation committee are subject to 1968 PA 317, MCL 15.321 to  
7 15.330. As used in this subsection, "substantial conflict of  
8 interest" means that the pecuniary interest is of such importance  
9 as to either materially influence the judgment of the member in the  
10 actual performance of his or her duty under the act or to  
11 foreseeably and materially influence the judgment of a reasonable  
12 person with similar knowledge and experience acting under similar  
13 circumstances and in a like position as the member. For purposes of  
14 this section, members of the commission of agriculture and the  
15 joint evaluation committee shall do the following:

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

26       (b) Not make or participate in making, or in any way attempt  
27 to use his or her position to influence a matter before the

1 department regarding ~~—a loan, loan guarantee, A~~ grant ~~—or other~~  
2 expenditure under this act.

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

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

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

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

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

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

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

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

23 (9) ~~(11)~~—An application for a grant from the fund shall be  
24 made on a form or format prescribed by the department. The  
25 department may require the applicant to provide information  
26 reasonably necessary to allow the department to make a  
27 determination required under this section.

1       (10) ~~(12)~~ The department shall promulgate rules under the  
 2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
 3 24.328, to implement this section.

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

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

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

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

16       (a) Appropriations.

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

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

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

1 ~~\$500,000.00.~~

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

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

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

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

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

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

26 (4) The director of the department shall have final approval  
27 of grants ~~and loans~~ made under this section. Grants ~~and loans~~ made

1 under this section are contingent upon the availability of money in  
2 the fund.

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

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

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