

# 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.