Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5717 (as enacted)
Sponsor: Representative Ray A. Franz
House Committee: Agriculture
Senate Committee: Agriculture

PUBLIC ACT 193 of 2012

Date Completed: 8-15-12

CONTENT

The bill created the "Agricultural Disaster Loan Origination Program Act" to do the following:

-- Allow the State Treasurer to establish a "qualified agricultural loan origination program" under which a qualified financial institution will make low-interest loans to certain farmers, agricultural processors, and farm-related retailers.
-- Require the State to pay loan origination fees for administrative costs incurred by a qualified financial institution.
-- Specify financial institutions' responsibilities under the Act, including reporting to the State Treasurer and forwarding to the Treasurer, upon request, affidavits executed by people who receive loans.
-- Require the Department of Treasury to spend up to $15.0 million to pay for loan origination fees, if that amount is appropriated to the Department.
-- Cap at $3.0 million the amount of that appropriation that may be used for loans to agricultural processors and farm-related retailers.
-- Specify that the appropriation is a work project appropriation and that unencumbered or unallotted funds must be carried forward into the following fiscal year.

The Act took effect on June 26, 2012, and will be repealed on February 15, 2018.

"Qualified financial institution" means a financial institution that has a physical location and/or principal office in Michigan.

"Financial institution" means a State or national bank, a State- or federally chartered savings and loan association, a State- or federally chartered credit union, or other regulated lending institution that maintains a principal office or branch in Michigan under the laws of this State or the United States, including an entity of the federally chartered farm credit system.

"Qualified agricultural loan" means a loan made under the Act to farmers, agricultural processors, or farm-related retail sales operations (as described below) who suffered certain losses due to an agricultural disaster recognized by the Governor and occurring after January 1, 2012.

<u>Qualified Loan Origination Program</u>

The State Treasurer may establish a qualified agricultural loan origination program. Under the program, a qualified financial institution must make qualified agricultural loans before March 31, 2013. A person receiving a loan must pay an interest rate authorized under the Act and established by the financial institution. The State must pay loan origination fees for administrative costs incurred by the qualified financial institution equal to 5% of the original principal amount of the loan. Loan origination fees must be paid by the State in five equal installments by September 30, 2017.

A qualified agricultural loan must comply with all of the following:

-- Interest must be set by the qualified financial institution at a rate of 1% or at the rate of five-year U.S. Treasury notes plus 0.25%.

-- The term of the loan may not be more than five years.
-- The first principal payment required under the loan may not occur before 24 months after the loan is issued.

A loan made to a person engaged in and intending to remain engaged in Michigan as an owner or operator of farm that suffered a loss of 25% or more in major enterprises or production loss of 50% or more in any one crop must be equal to not more than the value of the crop loss as certified by the producer in an affidavit demonstrating an accurate and valid production loss. The loan may not exceed the lesser of $400,000 or the value of the crop loss minus insurance proceeds received by the owner or operation 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, the amount of the loan must be reduced by 30% or $100,000, whichever is less.

A loan may not exceed the lesser of $800,000 per facility or $1.0 million per person for a person engaged and intending to remain engaged in Michigan in an agricultural business of buying, exchanging, processing, storing, or selling farm produce, that suffered a 50% or greater loss in volume of one commodity when compared with the average volume of that commodity that the business handled in the prior three years. A loan also may not exceed those amounts for a person engaged and intending to remain engaged in Michigan in the business of making retail sales directly to farmers, with 75% or more of the person's gross retail sales volume exempted from the sales tax under Section 4a(1)(e) of the General Sales Tax Act, that suffered a 50% or greater reduction in gross retail sales volume subject to that exemption when compared with the person's average retail sales volume subject to the exemption in the prior three years.

(Section 4a(1)(e) of the General Sales Tax Act exempts from the sales tax a sale of tangible personal property to people engaged in a business enterprise and using or consuming the property in certain farming, livestock, horticultural, and fishing operations.)

The State Treasurer may take any action necessary to ensure the successful operation of the program, including entering into agreements with qualified financial institutions related to the operation of the program and the issuance of qualified agricultural loans.

The Attorney General must approve the legal form of all documents relating to the State's payment of a loan origination fee.

Financial Institutions' Responsibilities

Each qualified financial institution participating in the program must report to the State Treasurer the principal amount of loans made under the program by March 31, 2013. Participating financial institutions also must file with the State Treasurer an affidavit signed by a senior executive officer stating that the qualified financial institution is in compliance with the program and the Act.

Upon request by the State Treasurer, a qualified financial institution must forward to the Treasurer a copy of any affidavits executed by a person receiving a loan under the Act. The financial institution and the Treasurer must destroy an affidavit, or its copy, after a qualified agricultural loan is repaid.

Loan Origination Fees & Work Project Appropriation

An amount sufficient to pay loan origination fees, or loan guarantee or collateral support mechanisms, not to exceed $15.0 million must be spent if it is appropriated to the Department of Treasury. Not more than $3.0 million of that amount may be used for loans that may not exceed $800,000 per facility or $1.0 million per person for an agricultural processing or retail sales operation.

The appropriation authorized in the Act is a work project appropriation, and any unencumbered or unallotted funds must be carried forward into the following fiscal year.

The following is in compliance with Section 451a(1) of the Management and Budget Act (which governs work project appropriations):

-- The purpose of the project is to provide financial assistance to the agricultural sector of Michigan's economy and to alleviate financial distress caused by crop damage and related economic impacts through the program.

-- The work project will be accomplished through the use of payments to qualified financial institutions for qualified agricultural loan origination fees for administrative costs incurred by the financial institutions.
-- The total estimated completion cost of the work project is $15.0 million.
-- The estimated completion date of the work project is September 30, 2017.

MCL 286.421-286.425

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill authorizes the State Treasurer to pay loan origination fees of 5% of eligible agricultural loans. The bill sets a cap of $15.0 million on the total amount of State funds that may be used for the program; however, the bill does not make an appropriation. Funds for the program will not be available to the Department of Treasury unless appropriated in a supplemental bill. If appropriated, the loan origination fees will be paid by the Department of Treasury in five equal installments by September 30, 2017. Senate Bill 871 as passed by the Senate on June 7, 2012 (an FY 2011-12 supplemental) included an appropriation of $15.0 million in General Fund/General Purpose (GF/GP) revenue for this program; however, the appropriation was not included in the bill as it passed the Legislature. Public Act 236 of 2012 (enacted Senate Bill 871) includes a statement of legislative intent that $15.0 million be appropriated for the program in FY 2012-13.

On August 14, 2012, the State Budget Office submitted to the Legislature a supplemental appropriation request that recommended an appropriation of $15.0 million GF/GP in FY 2011-12 to the Department of Treasury for the Qualified Agricultural Loan Origination Program.

Fiscal Analyst: Elizabeth Pratt

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