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BILL ANALYSIS

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House Bill 5717 (Substitute H-2 as passed by the House)
Sponsor: Representative Ray A. Franz
House Committee: Agriculture
Senate Committee: Agriculture

Date Completed: 6-13-12

CONTENT

The bill would create 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 would 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 received loans.**
- **Require the Department of Treasury to spend up to $15.0 million to pay for loan origination fees or loan guarantee or collateral support mechanisms, if that amount were appropriated in fiscal year (FY) 2011-12.**
- **Cap at $3.0 million the amount of that appropriation that could be used for loans to agricultural processors and farm-related retailers.**
- **Specify that the appropriation would be a work project appropriation and that unencumbered or unallotted funds would have to be carried forward into the following fiscal year.**
- **Allow the Michigan Strategic Fund (MSF) to support the loan origination program by providing a loan guarantee or collateral support mechanism to qualified financial institutions that provided loans under the bill.**

The proposed Act would be repealed on February 15, 2018.

"Qualified financial institution" would mean a financial institution that has a physical location and/or principal office in Michigan. "Financial institution" would mean 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" would mean a loan made under the proposed 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.

Qualified Loan Origination Program

The State Treasurer could establish a qualified agricultural loan origination program. Under the program, a qualified financial institution would have to make qualified agricultural loans before March 31, 2013. A person receiving a loan would have pay an interest rate authorized under the Act and established by the financial institution. The State would 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 would have to be paid by the State in five equal installments by September 30, 2017.

A qualified agricultural loan would have to comply with all of the following:

-- Interest would have to 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 could not be more than five years.
-- The first principal payment required under the loan could not occur before 24 months after the loan was 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 would have to 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 could 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 were available for a particular crop and the producer did not purchase the crop insurance, the amount of the loan would have to be reduced by 30% or $100,000, whichever was less.

A loan could 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 could 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 could 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 would have to 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 would have to report to the State Treasurer the principal amount of loans made under the program by March 31, 2013. Participating financial institutions also would have to file with the State Treasurer an affidavit signed by a senior executive officer stating that the qualified financial institution was in compliance with the program and the Act.

Upon request by the State Treasurer, a qualified financial institution would have to 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 would have to destroy an affidavit, or its copy, after a qualified agricultural loan was repaid.

<u>Loan Origination Fees & Work Project Appropriation</u>

An amount sufficient to pay loan origination fees, or loan guarantee or collateral support mechanisms, not to exceed $15.0 million would have to be spent if it were appropriated to the Department of Treasury for FY 2011-12. Not more than $3.0 million of that amount could be used for loans that could 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 proposed Act would be a work project appropriation, and any unencumbered or unallotted funds would have to be carried forward into the following fiscal year.

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

-- The purpose of the project would be 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 would 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 would be $15.0 million.
-- The estimated completion date of the work project would be September 30, 2017.

<u>Loan Guarantee or Collateral Support</u>

To the extent authorized under the Michigan Strategic Fund Act and the proposed Act, the MSF could support the program by providing a loan guarantee or collateral support mechanism to a qualified financial institution that provided a loan to a person eligible to participate in the program. The loan guarantee or collateral support mechanism would have to ensure that the qualified financial institution did not refinance prior debt and would have to include repayment provisions for a loan or a guarantee given for a person that left the State within three years after the provision of the loan or guarantee or who otherwise breached the terms of an agreement with the MSF.

Legislative Analyst: Patrick Affholter

<u>FISCAL IMPACT</u>

The bill would authorize the State Treasurer to pay loan origination fees of 5% of eligible agricultural loans and allow the Michigan Strategic Fund Agency to provide a loan guarantee or collateral support mechanism. The bill would set a cap of $15.0 million in FY 2011-12 on the total amount of State funds that could be used for these programs; however, the bill does not make an appropriation or specify an allocation of funds between the two programs or entities. Funds for the program would not be available to the Department of Treasury unless appropriated in a supplemental bill. Senate Bill 871 as passed by the Senate (an FY 2011-12 supplemental) included an appropriation of $15.0 million in General Fund/General Purpose (GF/GP) revenue for this program.

Fiscal Analyst: Elizabeth Pratt