

2000 PUBLIC AND LOCAL ACTS

[No. 280]

(HB 5854)

AN ACT 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 3 and 7 (MCL 21.143 and 21.147), as amended by 1997 PA 32, and by adding section 2d.

The People of the State of Michigan enact:

21.142d Investment of surplus funds to facilitate marina dredging loans. [M.S.A. 3.690(4)]

Sec. 2d. (1) The state treasurer may invest surplus funds under the state treasurer's control in certificates of deposit or other instruments of a financial institution qualified under this act to receive deposits or investments of surplus funds for the purpose of facilitating marina dredging loans. The state treasurer shall endeavor to make investments under this subsection in financial institutions such that marina dredging loans will be conveniently available in all geographic regions in this state. The state treasurer may enter into an investment agreement with a financial institution to provide for the investment under this subsection. The investment agreement shall contain all of the following:

(a) The term of the investment which shall be not more than 10 years.

(b) A requirement that the interest accruing on the investment shall not be more than the interest earned by the financial institution on marina dredging loans made after the date of the investment.

(c) A requirement that the financial institution shall provide good and ample security as the state treasurer requires and shall identify the marina dredging loans and the terms and conditions of those loans that are made after the date of the investment that are attributable to that investment together with other information required by this act.

(d) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall be issued at a rate or rates of interest that are established in the investment agreement.

(e) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall be made not later than 3 years after the effective date of this section.

(f) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall be issued for a loan repayment period of not more than 7 years.

(g) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall not exceed \$75,000.00.

(h) A requirement that a marina dredging loan made by the financial institution that is attributable to the investment shall not be released by the financial institution unless the loan applicant has certified that it is an eligible marina.

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(i) A requirement that to the extent the financial institution has not made marina dredging loans in an amount at least equal to the amount of the investment within 90 days after the investment, the rate of interest payable on that portion of the outstanding investment shall be increased to a rate of interest provided in the investment agreement, with the increase in the rate of interest applied retroactively to the date on which the state treasurer made the investment.

(j) Incentives for the early repayment of the investment and for the acceleration of payments in the event of a state cash shortfall as prescribed by the investment agreement, if required by the state treasurer.

(k) Other terms as prescribed by the state treasurer.

(2) An investment made under this section is found and declared to be for a valid public purpose.

(3) The attorney general shall approve documentation for an investment under this section as to legal form.

(4) The aggregate amount of investments made under this section shall not exceed \$20,000,000.00.

(5) Upon the determination by the directors of the departments of natural resources and environmental quality that the need to facilitate marina dredging loans has significantly diminished based on changes in Great Lakes water levels, the state treasurer may take actions necessary to ensure that no new marina dredging loans that are attributable to an investment under this section are made. Such a determination shall not affect existing marina dredging loans that are attributable to an investment under this section.

(6) Earnings from an investment made under this section that are in excess of the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested under section 1, shall be credited to the general fund of the state. If interest from an investment made under this section is below the average rate of interest earned during the same period on other surplus funds, other than surplus funds invested under section 1, the general fund shall be reduced by the amount of the deficiency on an amortized basis over the remaining term of the investment. A loss of principal from an investment made under this section shall reduce the earnings of the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

(7) The state treasurer may take any necessary action to ensure the successful operation of this section, including making investments with financial institutions to cover the administrative and risk-related costs associated with a marina dredging loan.

(8) Annually, each financial institution in which the state treasurer has made an investment under this section shall file an affidavit, signed by a senior executive officer of the financial institution, stating that the financial institution is in compliance with the terms of the investment agreement.

(9) The state treasurer shall annually prepare and submit a report to the legislature regarding the disposition of money invested for purposes of facilitating marina dredging loans under this section. The report shall include all of the following information:

(a) The total number of eligible marina owners who have received a marina dredging loan.

(b) By county, the total number and amounts of the marina dredging loans that were issued.

(c) The name of each financial institution participating in the marina dredging loan program and the amount invested in each financial institution for purposes of the loan program.

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(10) As used in this section:

(a) "Bottomland" means the land area of a water body that lies below the ordinary high-water mark and that may or may not be covered by water.

(b) "Dredging" means the removal of sediments from bottomland.

(c) "Dredging costs" means the costs associated with dredging that were incurred after January 1, 2000, including costs of removal, disposal, and testing of sediments, and the costs associated with obtaining necessary permits required to conduct dredging.

(d) "Eligible marina" means a privately owned, commercial facility in this state that meets all of the following requirements:

(i) Extends into or over the Great Lakes and their connecting waters navigable by motorized watercraft from a Great Lake.

(ii) Provides docking, mooring or launching services available to the general public for recreational boating. Marinas that limit their services based on membership or residency requirements are not eligible.

(iii) Provides mooring facilities for no more than 200 recreational watercraft through the use of docks, slips, or broadside mooring.

(iv) Has received the permits required by law from the department of environmental quality and the army corps of engineers for the dredging to be conducted with loan funds.

(e) "Marina dredging loan" means a loan or the refinancing of all or a portion of a loan made to the owner of an eligible marina for dredging costs necessitated by low water levels to accommodate the use of the marina by recreational watercraft.

(f) "Ordinary high-water mark" means either of the following:

(i) For an inland lake or stream, that term as it is defined in section 30101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30101.

(ii) For the Great Lakes, the ordinary high-water mark as described in section 32502 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.32502.

(g) "Surplus funds" means, at any given date, the excess of cash and other recognized assets that are expected to be resolved into cash or its equivalent in the natural course of events and with a reasonable certainty, over the liabilities and necessary reserves at the same date.

21.143 Financial institution as depository of surplus funds; compliance; location of principal office; security; rate of return; investment and use of surplus funds; disposition of earnings from loans; loss of principal or interest; reduction of earnings; investment in securities of no-load open-end or closed-end management type investment company or investment trust. [M.S.A. 3.691]

Sec. 3. (1) A financial institution shall not be a depository of surplus funds of the state unless the financial institution complies with this act. The state treasurer shall require of a financial institution, before it is made a depository of surplus funds of the state, good and ample security as approved by the state treasurer and the attorney general for the safekeeping and reimbursement of the surplus funds and the payment of the rate of return as the state treasurer, in the treasurer's discretion, considers best for the interest of the state.

(2) The state treasurer may invest surplus funds of the state in the bonds, notes, and other evidences of indebtedness of the United States government and its agencies, in prime commercial paper, and may also use surplus funds in the manner provided in

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sections 2, 2a, 2b, and 2d and may use each fiscal year not more than that amount of the surplus funds necessary to make loans to municipalities under section 1.

(3) All earnings from loans made under section 1 in excess of the average rate of interest earned on other surplus funds during the same period shall be credited to the general fund of the state. Any loss of principal or interest sustained from loans made under section 1 shall reduce the earnings of the general fund on an amortized basis over the remaining term of the loan.

(4) The investment of surplus state funds in bonds, notes, and other evidences of indebtedness of the United States government and its agencies as provided in subsection (1) may include securities of, or other interests in, a no-load open-end or closed-end management type investment company or investment trust registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, if both of the following are true:

(a) The portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations.

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

21.147 Definitions. [M.S.A. 3.695]

Sec. 7. As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance services of the department of consumer and industry services.

(b) "Deposit" includes the purchase of, or investment in, shares of credit unions.

(c) Except as otherwise provided by this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States. For the purpose of repurchase agreements, "financial institution" means a state or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of this state or the United States.

This act is ordered to take immediate effect.

Approved July 7, 2000.

Filed with Secretary of State July 10, 2000.
