A bill to establish the community bank of Michigan; to provide for its operation, regulation, and supervision; to prescribe the powers and duties of the community bank of Michigan; and to prescribe the powers and duties of certain state agencies and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "bank of Michigan act".

Sec. 3. As used in this act:

(a) "Advisory board" means the advisory board of directors described in section 7.

(b) "Bank" means the community bank of Michigan established in section 5.

(c) "Department" means department of insurance and financial
services.

(d) "Director" means the director of the department or his or her designee.

(e) "Surplus funds" means that term as defined in section 2a of 1855 PA 105, MCL 21.142a.

Sec. 5. (1) The community bank of Michigan is established. The director shall operate, manage, and control the bank, shall establish the bank's principal place of business in this state, shall establish and operate any other places of business for the bank that the director determines are appropriate, and shall make and enforce orders, rules, regulations, and bylaws for the transaction of the bank's business.

(2) Subject to the limitations and restrictions contained in this act, and in addition to any specific powers established in this act, the bank shall engage in the business of banking and may engage in any business or financial transactions in which any banking institution or bank holding company may engage.

(3) The director shall promulgate any rules he or she considers necessary to implement this act, to establish the powers of the director under this act, and to establish the powers and functions of the bank.

(4) The director shall promulgate any rules required or permitted under this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 7. (1) The governor shall appoint an advisory board of directors to the bank, consisting of 7 members. The governor shall appoint at least 2 individuals to the advisory board who are
officers of other banks, the majority of the stock of which is owned by residents of this state, and at least 1 member who is an officer of a state-chartered or federally chartered financial institution.

(2) The governor shall appoint a chair, vice chair, and secretary for the advisory board described in subsection (1) from among the members of the advisory board. The term of office of a member of the advisory board is 4 years.

(3) The advisory board shall do all of the following:

(a) Meet regularly with the management of the bank to review the bank's operations to determine whether recommendations should be made by the board to the director relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the bank.

(b) Make recommendations to the department relating to the establishment of additional objectives for the operation of the bank.

(c) Make recommendations to the department concerning the appointment of officers of the bank.

(d) Meet regularly with the director to present any recommendations concerning the bank.

(e) If authorized by the director, act on behalf of the bank with respect to the powers and functions of the bank.

(f) Perform any other duties assigned by the director.

Sec. 9. (1) The director shall appoint a president of the bank and may appoint and employ any subordinate bank officers,
employees, or agents he or she considers appropriate to improve the
operation of the bank and advance the interests of the state. The
director shall define the duties, designate the titles, and fix the
compensation of any individual appointed by the director under this
subsection.

(2) The director may designate the president or another
officer or employee of the bank as his or her agent with respect to
the functions of the bank, subject to his or her supervision,
limitation, and control.

(3) In any state fiscal year, the sum of the total amount of
compensation paid to the officers, employees, or agents of the bank
appointed under subsection (1), and any other expenditures for the
operation and maintenance of the bank, shall not exceed the
appropriations, revenues, or capital lawfully available for those
purposes.

(4) The director, or the president if authorized by the
director, may remove and discharge any officer, employee, or agent
of the bank if the director considers that removal appropriate to
improve the operation of the bank and advance the interests of the
state.

Sec. 11. (1) Unless otherwise provided by law, the state
treasurer shall deposit all surplus funds in the bank. The bank
must credit all income earned on surplus funds that are deposited
in or invested with the bank to the revenue and income of the bank.

(2) The state treasurer is exempt from any liability for the
loss of any surplus funds deposited in the bank under this section.

(3) All deposits in the bank are guaranteed by the state. All
deposits in the bank are exempt from state taxes, except as provided by law, and from taxation by any county, village, township, or city.

(4) If any financial institutions make the bank their reserve depository, the bank may perform the functions and render the services of a clearinghouse for those institutions, including, but not limited to, providing domestic and foreign exchange.

Sec. 13. The bank may do any of the following:

(a) Make, purchase, guarantee, or hold loans that are any of the following:

(i) Made to a state-chartered or federally chartered lending agency or institution or any other financial institution.

(ii) Made to a holder of bank certificates of deposit and savings accounts, if the amount of the loan does not exceed 90% of the value of the certificates and savings accounts offered as security.

(iii) Made to a farmer who is a resident of this state, if the loan is secured by a recorded mortgage that gives the bank a first lien on real property located in this state and the amount of the loan does not exceed 80% of the value of that property.

(iv) Insured or guaranteed in whole or in part by the United States or its agencies or instrumentalities.

(v) Eligible for guarantee by the state. A loan made under this subparagraph may provide that any interest that remains unpaid at the end of any period specified in the loan is added to the principal amount of the debt and accumulates interest after it is added to the principal of the debt.
(vi) Made to an individual or bank holding company for the purpose of purchasing or refinancing the purchase of the stock of a bank located in the state.

(vii) Made to a nonprofit organization that is exempt from federal taxation under section 501(c)(3) of the internal revenue code of 1986, 26 USC 501(c)(3), if the proceeds of the loan are to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on park or recreational property under the control of the department of natural resources.

(viii) Made under 7 USC 1932 to a nonprofit corporation for the purpose of relending loan funds to rural businesses.

(ix) Made to finance businesses and development projects in rural areas under 7 CFR part 1948, subpart B; 7 CFR part 1951, subpart F or R; or 7 CFR part 1955, subpart A, B, or C.

(x) Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the bank.

(xi) Made to an instrumentality of this state.

(xii) Otherwise authorized in this act or another state law.

(xiii) Made to an investment company created to complete a trust preferred securities transaction for the benefit of a financial institution located in this state.

(b) If the bank is participating in the loan and the bank determines that it is in the best interests of the bank to do so, purchase the remaining portion of a loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets.
(c) Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program described in 12 USC 2279aa to 2279aa-14.

(d) Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

(e) Invest its funds in any investments authorized under state law or authorized by the director by rule.

(f) Lend or finance hospitals or medical facilities that are established and operated by a government, government sponsored entity or authority, or a similar entity, established under the laws of this state; or a subdivision of any government or entity established under the laws of this state.

(g) Buy and sell federal funds.

(h) Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage any real and personal property to which it has acquired title.

(i) Acquire real or personal property or property rights by purchase or lease and construct, remodel, and repair buildings on real property acquired under this subdivision.

(j) Receive deposits from any source and deposit its funds in any bank or other financial institution.

(k) Take any other action that is necessary, convenient, advisable, or desirable to carry out the powers expressly granted
or necessarily implied in this act, through or by an act of its president, officers, agents, or employees or by contract with any person.

(l) Purchase mortgage loans on residential real property originated by financial institutions.

Sec. 15. (1) If at any time in a state fiscal year the balance in the state general fund is insufficient to meet legislative appropriations, the state treasurer and the director of the department of technology, management, and budget may execute and issue notes or other evidences of indebtedness on the state general fund. The principal amount of all outstanding evidences of indebtedness issued under this subsection may not exceed $10,000,000.00 at any time. The term of any evidence of indebtedness issued under this subsection shall not exceed 12 months.

(2) The state may not issue evidences of indebtedness under subsection (1) unless the state treasurer first requests and obtains a statement from the director of the department of technology, management, and budget and the state budget director certifying that anticipated general fund revenues for the balance of the state fiscal year in which the evidences of indebtedness are to be issued will exceed the principal amount and interest on the evidences of indebtedness to be issued. The director may in turn direct the bank to make loans to the state general fund by purchasing the evidences of indebtedness at interest rates prescribed by the director.

(3) If evidences of indebtedness are issued and sold under
this section, the state treasurer shall establish a fund for the repayment of the evidences of indebtedness and pay the principal and interest on those evidences of indebtedness when due. The state treasurer shall place all available general fund revenues into this fund until the fund contains a sufficient balance for the repayment of the principal and interest on the evidences of indebtedness when due.

Sec. 17. The bank shall conduct all of its business under the name "the Bank of Michigan". The bank shall obtain and convey title to property pertaining to the operation of the bank in the name of "the State of Michigan, doing business as the Bank of Michigan" and shall execute any instrument or agreement in the name of the state of Michigan. Within the scope of authority granted by the director, the president may execute instruments and agreements on behalf of the bank, including, but not limited to, any instrument granting, conveying, or otherwise affecting any interest in or lien on real or personal property. Other officers or employees of, and legal counsel to, the bank may execute instruments or agreements on behalf of the bank when authorized by the department.

Sec. 19. (1) A person may not file a civil action against the state of Michigan on any claim for damages arising from any transaction connected with the operation of the bank unless the defendant in the action is designated as "the State of Michigan, doing business as the Bank of Michigan", and the action is brought in the court of claims. Except as provided in this subsection, a person may file a civil action described in this section in the same manner as any other civil action, and that action is subject
to the same provisions of law as other civil actions.

(2) For the purpose of applying any law or court rule requiring a surety bond or other security as a condition to asserting a claim, bringing a civil action, or appealing a decision of a court or administrative proceeding, the bank is considered to be the state of Michigan and security is not required of the bank in that action or proceeding if the state generally would not be required to provide security in that action or proceeding.

Sec. 21. (1) The auditor general shall contract with an independent certified public accounting firm for an annual audit of the bank in accordance with generally accepted government auditing standards. The auditor general shall audit annually or contract for an annual audit of the separate programs and funds administered by the bank. On request of the auditor general, the director shall assist the auditor general in selecting an auditing firm, but the selection of an auditing firm is the auditor general's responsibility.

(2) An auditor selected under subsection (1) shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American Institute of Certified Public Accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report, as defined in section 402 of the management and budget act, 1984 PA 431, MCL 18.1402.

(3) The auditor general may conduct performance audits of the bank, including the separate programs and funds administered by the
(4) The auditor general shall report the results of any audit under this section to the director and to the legislature. The bank or its separate programs and funds shall pay the costs of the audits.

(5) The department shall examine the bank at least once every 24 months and conduct any investigation of the bank that it determines is necessary. The department shall report the examination results, and the results of any necessary investigation, to the director as soon as practicable and to the legislature. The department shall charge a fee for any examination or investigation under this subsection, at an hourly rate set by the department as sufficient to cover all reasonable expenses of the department associated with the examination or investigation.

Sec. 23. Pursuant to rules promulgated by the director, and subject to 1978 PA 322, MCL 488.1 to 488.31, and any other applicable state and federal law, the bank may establish a system to provide fund transfer services to its customers and to the customers of state-chartered and national or federally chartered banks located in this state, and to other financial institutions otherwise authorized to utilize the services of electronic fund transfer systems, to acquire any equipment it considers necessary to establish electronic fund transfer systems, and to make reasonable charges for services rendered to other banks and financial institutions under this section, as established by the director.

Sec. 25. All of the following records of the bank are
confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246:

(a) Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this subdivision, "customer" means any person that has transacted or is transacting business with, or has used or is using the services of, the bank, or for which the bank has acted as a fiduciary with respect to trust property.

(b) Internal or interagency memorandums or letters that would not be available by law to a person other than in litigation with the bank.

(c) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a state or federal agency responsible for the regulation or supervision of any activity of the bank.

(d) Information obtained by the bank from the department of that is considered confidential information of the department or the director under state or federal law.

(e) A report by a bank officer or member of the bank's advisory concerning personal financial statements.

Sec. 27. The director shall promulgate rules concerning the sale or lease of agricultural real estate acquired by the bank through foreclosure or deed in lieu of foreclosure.

Enacting section 1. This act takes effect 90 days after the date it is enacted into law.