

# SENATE BILL No. 227

February 17, 2005, Introduced by Senators BROWN, VAN WOERKOM, BIRKHOLZ, GILBERT, JELINEK, GOSCHKA, CROPSEY, SANBORN, STAMAS, KUIPERS and ALLEN and referred to the Committee on Agriculture, Forestry and Tourism.

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,"

(MCL 21.141 to 21.147) by adding section 2g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 2G. (1) THE STATE TREASURER MAY INVEST SURPLUS FUNDS  
2 UNDER THE STATE TREASURER'S CONTROL IN CERTIFICATES OF DEPOSIT OR  
3 OTHER INSTRUMENTS OF A FINANCIAL INSTITUTION QUALIFIED UNDER THIS  
4 ACT TO RECEIVE DEPOSITS OR INVESTMENTS OF SURPLUS FUNDS FOR THE  
5 PURPOSE OF FACILITATING QUALIFIED AGRICULTURAL ENERGY PRODUCTION

1 LOANS. THE STATE TREASURER SHALL ENDEAVOR TO MAKE INVESTMENTS UNDER  
2 THIS SUBSECTION IN FINANCIAL INSTITUTIONS SUCH THAT QUALIFIED  
3 AGRICULTURAL ENERGY PRODUCTION LOANS WILL BE CONVENIENTLY AVAILABLE  
4 IN ALL GEOGRAPHIC REGIONS IN THIS STATE. THE STATE TREASURER MAY  
5 ENTER INTO AN INVESTMENT AGREEMENT WITH A FINANCIAL INSTITUTION TO  
6 PROVIDE FOR THE INVESTMENT UNDER THIS SUBSECTION. THE INVESTMENT  
7 AGREEMENT SHALL CONTAIN ALL OF THE FOLLOWING:

8 (A) THE TERM OF THE INVESTMENT WHICH SHALL BE NOT MORE THAN 15  
9 YEARS.

10 (B) A REQUIREMENT THAT THE INTEREST ACCRUING ON THE INVESTMENT  
11 SHALL NOT BE MORE THAN THE INTEREST EARNED BY THE FINANCIAL  
12 INSTITUTION ON QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOANS MADE  
13 AFTER THE DATE OF THE INVESTMENT.

14 (C) A REQUIREMENT THAT THE FINANCIAL INSTITUTION SHALL PROVIDE  
15 GOOD AND AMPLE SECURITY AS THE STATE TREASURER REQUIRES AND SHALL  
16 IDENTIFY THE QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOANS AND THE  
17 TERMS AND CONDITIONS OF THOSE LOANS THAT ARE MADE AFTER THE DATE OF  
18 THE INVESTMENT THAT ARE ATTRIBUTABLE TO THAT INVESTMENT TOGETHER  
19 WITH OTHER INFORMATION REQUIRED BY THIS ACT.

20 (D) A REQUIREMENT THAT A QUALIFIED AGRICULTURAL ENERGY  
21 PRODUCTION LOAN MADE BY THE FINANCIAL INSTITUTION THAT IS  
22 ATTRIBUTABLE TO THE INVESTMENT SHALL BE ISSUED AT A RATE OR RATES  
23 OF INTEREST THAT ARE ESTABLISHED IN THE INVESTMENT AGREEMENT.

24 (E) A REQUIREMENT THAT A QUALIFIED AGRICULTURAL ENERGY  
25 PRODUCTION LOAN MADE BY THE FINANCIAL INSTITUTION THAT IS  
26 ATTRIBUTABLE TO THE INVESTMENT SHALL BE MADE NOT LATER THAN 5 YEARS  
27 AFTER THE EFFECTIVE DATE OF THIS SECTION.

1 (F) A REQUIREMENT THAT A QUALIFIED AGRICULTURAL ENERGY  
2 PRODUCTION LOAN MADE BY THE FINANCIAL INSTITUTION THAT IS  
3 ATTRIBUTABLE TO THE INVESTMENT SHALL BE ISSUED FOR A LOAN REPAYMENT  
4 PERIOD OF NOT MORE THAN 15 YEARS.

5 (G) A REQUIREMENT THAT A QUALIFIED AGRICULTURAL ENERGY  
6 PRODUCTION LOAN MADE BY THE FINANCIAL INSTITUTION THAT IS  
7 ATTRIBUTABLE TO THE INVESTMENT SHALL NOT EXCEED \$5,000,000.00 PER  
8 APPLICANT.

9 (H) A REQUIREMENT THAT A QUALIFIED AGRICULTURAL ENERGY  
10 PRODUCTION LOAN MADE BY THE FINANCIAL INSTITUTION THAT IS  
11 ATTRIBUTABLE TO THE INVESTMENT SHALL NOT BE RELEASED BY THE  
12 FINANCIAL INSTITUTION UNLESS THE LOAN APPLICANT HAS CERTIFIED THAT  
13 IT IS AN ELIGIBLE FARMER.

14 (I) A REQUIREMENT THAT, TO THE EXTENT THE FINANCIAL  
15 INSTITUTION HAS NOT MADE QUALIFIED AGRICULTURAL ENERGY PRODUCTION  
16 LOANS IN AN AMOUNT AT LEAST EQUAL TO THE AMOUNT OF THE INVESTMENT  
17 WITHIN 90 DAYS AFTER THE INVESTMENT, THE RATE OF INTEREST PAYABLE  
18 ON THAT PORTION OF THE OUTSTANDING INVESTMENT SHALL BE INCREASED TO  
19 A RATE OF INTEREST PROVIDED IN THE INVESTMENT AGREEMENT, WITH THE  
20 INCREASE IN THE RATE OF INTEREST APPLIED RETROACTIVELY TO THE DATE  
21 ON WHICH THE STATE TREASURER MADE THE INVESTMENT.

22 (J) INCENTIVES FOR THE EARLY REPAYMENT OF THE INVESTMENT AND  
23 FOR THE ACCELERATION OF PAYMENTS IN THE EVENT OF A STATE CASH  
24 SHORTFALL AS PRESCRIBED BY THE INVESTMENT AGREEMENT, IF REQUIRED BY  
25 THE STATE TREASURER.

26 (K) OTHER TERMS AS PRESCRIBED BY THE STATE TREASURER.

27 (2) AN INVESTMENT MADE UNDER THIS SECTION IS FOUND AND

1 DECLARED TO BE FOR A VALID PUBLIC PURPOSE.

2 (3) THE ATTORNEY GENERAL SHALL APPROVE DOCUMENTATION FOR AN  
3 INVESTMENT UNDER THIS SECTION AS TO LEGAL FORM.

4 (4) THE AGGREGATE AMOUNT OF INVESTMENTS MADE UNDER THIS  
5 SECTION SHALL NOT EXCEED \$25,000,000.00.

6 (5) EARNINGS FROM AN INVESTMENT MADE UNDER THIS SECTION THAT  
7 ARE IN EXCESS OF THE AVERAGE RATE OF INTEREST EARNED DURING THE  
8 SAME PERIOD ON OTHER SURPLUS FUNDS, OTHER THAN SURPLUS FUNDS  
9 INVESTED UNDER SECTION 1, SHALL BE CREDITED TO THE GENERAL FUND OF  
10 THE STATE. IF INTEREST FROM AN INVESTMENT MADE UNDER THIS SECTION  
11 IS BELOW THE AVERAGE RATE OF INTEREST EARNED DURING THE SAME PERIOD  
12 ON OTHER SURPLUS FUNDS, OTHER THAN SURPLUS FUNDS INVESTED UNDER  
13 SECTION 1, THE GENERAL FUND SHALL BE REDUCED BY THE AMOUNT OF THE  
14 DEFICIENCY ON AN AMORTIZED BASIS OVER THE REMAINING TERM OF THE  
15 INVESTMENT. A LOSS OF PRINCIPAL FROM AN INVESTMENT MADE UNDER THIS  
16 SECTION SHALL REDUCE THE EARNINGS OF THE GENERAL FUND BY THE AMOUNT  
17 OF THAT LOSS ON AN AMORTIZED BASIS OVER THE REMAINING TERM OF THE  
18 INVESTMENT.

19 (6) THE STATE TREASURER MAY TAKE ANY NECESSARY ACTION TO  
20 ENSURE THE SUCCESSFUL OPERATION OF THIS SECTION, INCLUDING MAKING  
21 INVESTMENTS WITH FINANCIAL INSTITUTIONS TO COVER THE ADMINISTRATIVE  
22 AND RISK-RELATED COSTS ASSOCIATED WITH A QUALIFIED AGRICULTURAL  
23 ENERGY PRODUCTION LOAN.

24 (7) ANNUALLY, EACH FINANCIAL INSTITUTION IN WHICH THE STATE  
25 TREASURER HAS MADE AN INVESTMENT UNDER THIS SECTION SHALL FILE AN  
26 AFFIDAVIT, SIGNED BY A SENIOR EXECUTIVE OFFICER OF THE FINANCIAL  
27 INSTITUTION, STATING THAT THE FINANCIAL INSTITUTION IS IN

1 COMPLIANCE WITH THE TERMS OF THE INVESTMENT AGREEMENT.

2 (8) THE STATE TREASURER SHALL ANNUALLY PREPARE AND SUBMIT A  
3 REPORT TO THE LEGISLATURE REGARDING THE DISPOSITION OF MONEY  
4 INVESTED FOR PURPOSES OF FACILITATING QUALIFIED AGRICULTURAL ENERGY  
5 PRODUCTION LOANS UNDER THIS SECTION. THE REPORT SHALL INCLUDE ALL  
6 OF THE FOLLOWING INFORMATION:

7 (A) THE TOTAL NUMBER OF ELIGIBLE FARMERS WHO HAVE RECEIVED A  
8 QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOAN.

9 (B) BY COUNTY, THE TOTAL NUMBER AND AMOUNTS OF THE QUALIFIED  
10 AGRICULTURAL ENERGY PRODUCTION LOANS THAT WERE ISSUED.

11 (C) THE NAME OF EACH FINANCIAL INSTITUTION PARTICIPATING IN  
12 THE QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOAN PROGRAM AND THE  
13 AMOUNT INVESTED IN EACH FINANCIAL INSTITUTION FOR PURPOSES OF THE  
14 LOAN PROGRAM.

15 (9) AS USED IN THIS SECTION:

16 (A) "AGRICULTURAL BIOMASS" MEANS AGRICULTURAL CROPS, RESIDUE  
17 AND WASTE GENERATED FROM THE PRODUCTION AND PROCESSING OF  
18 AGRICULTURAL PRODUCTS, ANIMAL WASTES, OR FOOD PROCESSING WASTES.

19 (B) "ELIGIBLE FARMER" MEANS A PERSON OR ENTITY THAT PROCESSES  
20 AGRICULTURAL PRODUCTS OR A NATURAL OR CORPORATE PERSON WHO IS  
21 ENGAGED AS AN OWNER-OPERATOR OF A FARM IN THE PRODUCTION OF  
22 AGRICULTURAL GOODS AS DEFINED BY SECTION 35(1)(H) OF THE SINGLE  
23 BUSINESS TAX ACT, 1975 PA 228, MCL 208.35. ELIGIBLE FARMER DOES NOT  
24 INCLUDE A PERSON WHO HAS BEEN FOUND GUILTY OF A CRIMINAL VIOLATION  
25 UNDER, OR A PERSON WHO HAS BEEN DETERMINED RESPONSIBLE FOR A CIVIL  
26 VIOLATION UNDER, PART 31 OF THE NATURAL RESOURCES AND ENVIRONMENTAL  
27 PROTECTION ACT, 1994 PA 451, MCL 324.3101 TO 324.3133, WITHIN A 1-

1 YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR THE  
2 QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOAN.

3 (C) "QUALIFIED AGRICULTURAL ENERGY PRODUCTION LOAN" MEANS A  
4 LOAN TO AN ELIGIBLE FARMER FOR THE CONSTRUCTION AND OPERATION OF A  
5 QUALIFIED AGRICULTURAL ETHANOL PLANT OR A QUALIFIED AGRICULTURAL  
6 ENERGY PRODUCTION SYSTEM.

7 (D) "QUALIFIED AGRICULTURAL ENERGY PRODUCTION SYSTEM" MEANS  
8 THE STRUCTURES, EQUIPMENT, AND APPARATUS NECESSARY TO PRODUCE A  
9 GASEOUS FUEL FROM THE NONCOMBUSTIVE DECOMPOSITION OF AGRICULTURAL  
10 BIOMASS AND THE APPARATUS AND EQUIPMENT USED TO GENERATE  
11 ELECTRICITY OR HEAT FROM THE GASEOUS FUEL OR STORE THE GASEOUS FUEL  
12 FOR FUTURE GENERATION OF ELECTRICITY OR HEAT. A QUALIFIED  
13 AGRICULTURAL ENERGY PRODUCTION SYSTEM INCLUDES, BUT IS NOT LIMITED  
14 TO, A METHANE DIGESTER, BIOMASS GASIFICATION TECHNOLOGY, OR THERMAL  
15 DEPOLYMERIZATION TECHNOLOGY.

16 (E) "QUALIFIED AGRICULTURAL ETHANOL PLANT" MEANS A FACILITY  
17 THAT PRODUCES ETHANOL THAT MEETS ALL THE SPECIFICATIONS OF THE  
18 AMERICAN SOCIETY FOR TESTING AND MATERIALS SPECIFICATION D 4806 AND  
19 IS DENATURED TO MAKE IT UNFIT FOR HUMAN CONSUMPTION AND IS PRODUCED  
20 FROM THE FERMENTATION OF AGRICULTURAL BIOMASS.

21 (F) "SURPLUS FUNDS" MEANS, AT ANY GIVEN DATE, THE EXCESS OF  
22 CASH AND OTHER RECOGNIZED ASSETS THAT ARE EXPECTED TO BE RESOLVED  
23 INTO CASH OR ITS EQUIVALENT IN THE NATURAL COURSE OF EVENTS AND  
24 WITH A REASONABLE CERTAINTY, OVER THE LIABILITIES AND NECESSARY  
25 RESERVES AT THE SAME DATE AND ANY OTHER AVAILABLE FUNDS.