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SFA



BILL ANALYSIS

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Senate Bill 1340 (as enrolled)
Sponsor: Senator Leon Stille
Senate Committee: Farming, Agriculture, and Food Systems
House Committee: Agriculture and Resource Management

PUBLIC ACT 322 of 2000

Date Completed: 3-6-01

CONTENT

The bill enacted the “Julian-Stille Value-Added Act” to do the following:

- **Create the Agricultural Development Fund to make grants for the development of value-added agricultural processing and agricultural ventures.**
- **Create the Michigan Clean Air Fund to make grants and loans for programs or projects established to reduce nitrogen oxides and volatile organic compounds.**
- **Require the Public Service Commission to require gas and electric utilities to establish an uncollectibles allowance recovery fund, and require an investor-owned utility annually to disburse money from its fund for deposit into the Michigan Clean Air Fund.**

(The bill defines “value-added” as the enhancement or improvement of the overall value of an agricultural commodity or of an animal or plant product into a product of higher value. The enhancement or improvement includes marketing, agricultural processing, transforming, or packaging. “Agricultural processing” means one or more of the operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption including goods for nonfood use.)

Agricultural Development Fund

The bill created the Agricultural Development Fund in the Department of Treasury to be administered by the Michigan Department of Agriculture (MDA). The Treasury Department is required to deposit at least \$5 million of the revenue available within the Michigan Clean Air Fund, created under the bill, into the Agricultural Development Fund. The State Treasurer also is required to credit to the Fund money from the following sources: appropriations and money or other assets from any source for deposit into the Fund, including Federal money, other

State revenues, gifts, bequests, donations, and money from any other source provided by law. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund. The MDA may use up to 5% of the Fund for administrative purposes.

The MDA must use the Agricultural Development Fund to make grants to qualified grantees who apply for them and submit proposals demonstrating feasibility for development of value-added agricultural processing and agricultural production ventures consistent with the purposes described in the bill. Grantees may include individuals, farmer-owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in the State. Grant money may be used only for land, buildings, equipment, and property acquisition and assembly, demolition, site development, utility modifications and improvements, transportation improvements, infrastructure improvements, telecommunications infrastructure, technical assistance, marketing research, business plan development, and use of technology designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in the State.

The MDA Director has final approval of grants made under the bill. The Department is required to prepare a request for proposals on at least an annual basis for grants from the Fund. Grants are contingent upon the availability of funds. The Director may impose fiduciary obligations on a grant recipient, including performance bonding, and may impose conditions on the receipt and expenditure of the grant money. A cash match of at least 10% of the grant by the applicant or other repayment guarantee with a dedicated funding source is required before a grant may be awarded.

A grant application must be evaluated and ranked according to selection criteria and a scoring or point

system approved by the Director. The selection criteria and scoring or point system also must be reviewed and approved by the Agriculture Commission. In developing a system, the Department must seek the assistance of the Michigan Economic Development Corporation; Michigan State University; the U.S. Department of Agriculture - rural development agency; the Rural Development Council of Michigan; three producers including one plant agricultural producer, one animal agricultural producer, and another producer at large; and, other industry and professional organizations as the Director determines to be appropriate.

The selection criteria must give primary consideration to the ability of the proposed project to provide sound agricultural economic development in a given geographical area in the State with demonstrated economic and social benefits and the analysis of the proposed project in terms of and relative to risk, business and market planning, financial soundness, and credit-worthiness. Special consideration must be given to projects that meet these considerations and demonstrate a high level of innovation and initiative for value-added agricultural processing and related agricultural production ventures to benefit producers in the State.

A grant application must be made on a form or format prescribed by the MDA. The Department may require an applicant to provide information reasonably necessary to allow it to make a determination required under the bill.

The MDA must promulgate rules under the Administrative Procedures Act (APA) to implement these provisions.

Clean Air Fund

The bill created the Michigan Clean Air Fund in the Department of Treasury to be administered by the Department of Environmental Quality (DEQ). The State Treasurer is required to credit to the Fund the money from the uncollectible allowance recovery funds established in the bill as well as money from any other source provided by law. Money in the Clean Air Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

The DEQ must use money in the Clean Air Fund to provide grants and loans to individuals, private or public corporations, and local units of government for programs or projects established to reduce nitrogen oxides and volatile organic compounds and for the administration of the grant and loan program.

The DEQ Director has the final approval of the grants and loans, which are contingent upon the availability of money in the Fund. The Director may impose fiduciary obligations upon a grant recipient, including performance bonding, and may impose conditions on the receipt and expenditure of the grant money.

An application for a grant or loan from the Fund must be made on a form or in a format prescribed by the DEQ. The Department may require the applicant to provide any information reasonably necessary to allow it to make a determination required under the bill.

The DEQ must promulgate rules under the APA to implement these provisions.

Uncollectibles Allowance Recovery Fund

The Michigan Public Service Commission (PSC) must require a utility to establish and administer an uncollectibles allowance recovery fund. The utility annually must deposit into it the difference between the uncollectible provision as recorded in the utility's financial records for 1999 less the provision as recorded on the utility's financial records in each subsequent fiscal year. (The bill defines "utility" as a person, firm, corporation, cooperative, association, or other agency that is subject to the jurisdiction of the PSC and that distributes and sells electricity or natural gas to the public for residential use.)

At least 30 days after the close of its fiscal year, the utility must inform the PSC of the amount of money that the utility recorded into its fund for that year. A dispute regarding the reasonableness of an amount

recorded on a utility's financial record as a provision for its uncollectible expenses or the accuracy of the amount deposited into a utility's fund must be resolved by the Commission after notifying the utility and providing an opportunity for it to submit comments.

An investor-owned utility annually must disburse money from its fund to the State Treasurer for deposit into the Michigan Clean Air Fund in accordance with rules and orders of the PSC.

A cooperative electric utility is required to allocate annually all money from its fund to its customers in proportionate amounts based on each customer's patronage with the cooperative. The money must be paid to each customer in accordance with the cooperative's capital credit rotation policy. ("Cooperative electric utility" means an electric utility organized as a cooperative corporation under Public Act 327 of 1931.)

The PSC is required to promulgate rules under the APA to implement these provisions.

MCL 285.301-285.304

BACKGROUND

The Senate Agricultural Task Force was created in the spring of 1999 to examine the condition of agriculture in Michigan, identify the challenges and threats it faces, and develop recommendations to meet those challenges and threats. In September 1999, the Task Force produced a report stating that the farm sector was in the worst condition it had been in since the mid-1980s; prices for many commodities were as low as they had been in many decades; few young people were entering agriculture; and, economic pressures on farmers and processing industries were causing agricultural resources, including land, to be removed from farm production. The report concluded that the fundamental cause of these problems was low profits, and that policies designed to address the issues facing agriculture should focus on profitability. The report listed specific recommendations for State action, including helping farmers to engage in value-added ventures in which their return on their investment could be improved.

The promotion of value-added enterprises, such as operations that process corn into ethanol fuel, is considered one way to increase agricultural income and profits. Public Act 291 of 2000 appropriated \$5 million from an uncollectibles allowance recovery fund for agricultural development initiatives. The Act, however, prohibited these funds from being spent until legislation was enacted to create an uncollectibles allowance recovery fund and prescribe

its use.

In a February 9, 2000, order, the Public Service Commission promulgated Rule 460.2135, which required a utility to establish and administer an uncollectibles allowance recovery fund. The rule also required utility annually to deposit into this fund the difference between the uncollectibles provisions as recorded on the utility's financial records for 1999 less the provision as recorded on the utility's financial records in each subsequent fiscal year. (In other words, if the amounts due but uncollected from customers, the "uncollectibles", recorded in a year after 1999 were less than the amount recorded for 1999, the difference was to be deposited in the utility's fund.) The rule required the utility annually to disburse the funds according to the following formula: 25% to be retained by the utility and 75% to be contributed to the Michigan Clean Air Fund of the Department of Environmental Quality for use in programs or projects established to reduce oxides of nitrogen and volatile organic compounds.

The Wisconsin Public Service Corporation, the Upper Peninsula Power Company, the Northern States Power Company - Wisconsin, the Wisconsin Electric Power Company, and the Indiana Michigan Power Company filed a lawsuit with the Court of Appeals (Docket No. 225771) seeking judicial review of the order. The appellants questioned whether the rule constituted an unlawful tax because it required utilities to contribute funds to the DEQ for use in public programs or projects; whether the PSC lacked authority to promulgate this rule; and, whether the rule resulted in an unlawful retroactive reduction of revenues and constituted an unlawful taking of property. In an unpublished opinion issued on June 2, 2000, the Court concluded that the rule was an unlawful tax because it was promulgated by the PSC, which has no taxing authority, and that the rule was invalid because it went beyond the rule-making authority of the PSC. The Court noted that the rule had the effect of retroactively reducing a utility's revenue and that the PSC lacked authority to impose this reduction. Finally, the Court concluded that the rule constituted an unlawful taking of property because it directed utilities to contribute to the DEQ funds that otherwise belonged to the utilities and their shareholders.

The PSC is in the process of rescinding R 460.2135 and proposing a new set of rules to implement the requirement in Public Act 322 that all regulated electric and gas utilities establish and administer an uncollectibles allowance recovery fund.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill will increase State revenues as a result of the requirement that utilities provide the State with 75% of their annual contributions to their Uncollectible Allowance Recovery Fund. As noted above, the State's portion will be initially deposited in the Michigan Clean Air Fund. Of this funding, \$5 million will be redirected to the Agricultural Development Fund to make grants for the development of value-added agricultural processing/production enterprises. It is unknown at this time how much revenue the State will receive under the bill.

Fiscal Analyst: C. Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.