

# HOUSE BILL No. 5833

September 8, 2016, Introduced by Reps. Howrylak, Lucido and Somerville and referred to the Committee on Financial Services.

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:

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

3           Sec. 3. As used in this act:

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

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

8           (c) "Department" means department of insurance and financial

1 services.

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

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

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

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

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

22 (4) The director shall promulgate any rules required or  
23 permitted under this act under the administrative procedures act of  
24 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 Sec. 7. (1) The governor shall appoint an advisory board of  
26 directors to the bank, consisting of 7 members. The governor shall  
27 appoint at least 2 individuals to the advisory board who are

1 officers of other banks, the majority of the stock of which is  
2 owned by residents of this state, and at least 1 member who is an  
3 officer of a state-chartered or federally chartered financial  
4 institution.

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

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

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

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

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

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

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

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

26 Sec. 9. (1) The director shall appoint a president of the bank  
27 and may appoint and employ any subordinate bank officers,

1 employees, or agents he or she considers appropriate to improve the  
2 operation of the bank and advance the interests of the state. The  
3 director shall define the duties, designate the titles, and fix the  
4 compensation of any individual appointed by the director under this  
5 subsection.

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

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

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

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

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

27 (3) All deposits in the bank are guaranteed by the state. All

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

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

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

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

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

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

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

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

23 (v) Eligible for guarantee by the state. A loan made under  
24 this subparagraph may provide that any interest that remains unpaid  
25 at the end of any period specified in the loan is added to the  
26 principal amount of the debt and accumulates interest after it is  
27 added to the principal of the debt.

1           (vi) Made to an individual or bank holding company for the  
2 purpose of purchasing or refinancing the purchase of the stock of a  
3 bank located in the state.

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

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

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

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

18           (xi) Made to an instrumentality of this state.

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

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

23           (b) If the bank is participating in the loan and the bank  
24 determines that it is in the best interests of the bank to do so,  
25 purchase the remaining portion of a loan from a participating  
26 lender that is closed by regulatory action or from the receiver of  
27 the participating lender's assets.

1 (c) Make agricultural real estate loans in order to  
2 participate in the agricultural mortgage secondary market program  
3 described in 12 USC 2279aa to 2279aa-14.

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

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

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

17 (g) Buy and sell federal funds.

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

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

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

26 (k) Take any other action that is necessary, convenient,  
27 advisable, or desirable to carry out the powers expressly granted

1 or necessarily implied in this act, through or by an act of its  
2 president, officers, agents, or employees or by contract with any  
3 person.

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

6 Sec. 15. (1) If at any time in a state fiscal year the balance  
7 in the state general fund is insufficient to meet legislative  
8 appropriations, the state treasurer and the director of the  
9 department of technology, management, and budget may execute and  
10 issue notes or other evidences of indebtedness on the state general  
11 fund. The principal amount of all outstanding evidences of  
12 indebtedness issued under this subsection may not exceed  
13 \$10,000,000.00 at any time. The term of any evidence of  
14 indebtedness issued under this subsection shall not exceed 12  
15 months.

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

27 (3) If evidences of indebtedness are issued and sold under



1 this section, the state treasurer shall establish a fund for the  
2 repayment of the evidences of indebtedness and pay the principal  
3 and interest on those evidences of indebtedness when due. The state  
4 treasurer shall place all available general fund revenues into this  
5 fund until the fund contains a sufficient balance for the repayment  
6 of the principal and interest on the evidences of indebtedness when  
7 due.

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

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

1 to the same provisions of law as other civil actions.

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

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

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

26 (3) The auditor general may conduct performance audits of the  
27 bank, including the separate programs and funds administered by the

1 bank.

2 (4) The auditor general shall report the results of any audit  
3 under this section to the director and to the legislature. The bank  
4 or its separate programs and funds shall pay the costs of the  
5 audits.

6 (5) The department shall examine the bank at least once every  
7 24 months and conduct any investigation of the bank that it  
8 determines is necessary. The department shall report the  
9 examination results, and the results of any necessary  
10 investigation, to the director as soon as practicable and to the  
11 legislature. The department shall charge a fee for any examination  
12 or investigation under this subsection, at an hourly rate set by  
13 the department as sufficient to cover all reasonable expenses of  
14 the department associated with the examination or investigation.

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

27 Sec. 25. All of the following records of the bank are

1 confidential and exempt from disclosure under the freedom of  
2 information act, 1976 PA 442, MCL 15.231 to 15.246:

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

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

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

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

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

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

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