

Act No. 316
Public Act of 1988
Approved by the Governor
August 17, 1988
Filed by the Secretary of State
August 17, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Senators Irwin, Shinkle, Binsfeld, Cherry, Ehlers and Pollack

ENROLLED SENATE BILL No. 898

AN ACT to amend the title and sections 3, 7, 9, 13, 15, 15a, 17, 20, 23, 25, and 27 of Act No. 227 of the Public Acts of 1985, entitled "An act to create the Michigan municipal bond authority and to prescribe its powers and duties; to provide for the issuance of, and terms and conditions for, notes and bonds of the authority; to impose conditions on, grant certain powers to political subdivisions of the state regarding, and allow certain agreements regarding obligations of political subdivisions of the state purchased by the authority; to exempt the property, income, and operation of the authority, its bonds and notes, and the interest on its bonds and notes from certain taxes; and to grant powers and impose duties on officers and agencies of the state and political subdivisions of the state," section 3 as amended by Act No. 270 of the Public Acts of 1988, sections 15a and 23 as amended by Act No. 280 of the Public Acts of 1987, and section 27 as amended by Act No. 228 of the Public Acts of 1986, being sections 141.1053, 141.1057, 141.1059, 141.1063, 141.1065, 141.1065a, 141.1067, 141.1070, 141.1073, 141.1075, and 141.1077 of the Michigan Compiled Laws; and to add section 16a.

The People of the State of Michigan enact:

Section 1. The title and sections 3, 7, 9, 13, 15, 15a, 17, 20, 23, 25, and 27 of Act No. 227 of the Public Acts of 1985, section 3 as amended by Act No. 270 of the Public Acts of 1988, sections 15a and 23 as amended by Act No. 280 of the Public Acts of 1987, and section 27 as amended by Act No. 228 of the Public Acts of 1986, being sections 141.1053, 141.1057, 141.1059, 141.1063, 141.1065, 141.1065a, 141.1067, 141.1070, 141.1073, 141.1075, and 141.1077 of the Michigan Compiled Laws, are amended and section 16a is added to read as follows:

TITLE

An act to create the Michigan municipal bond authority and to prescribe its powers and duties; to provide for the issuance of, and terms and conditions for, notes and bonds of the authority; to authorize certain forms of assistance to governmental units; to impose conditions on, grant certain powers to political subdivisions of the state regarding, and allow certain agreements regarding obligations of political subdivisions of the state purchased by the authority; to exempt the property, income, and operation of the authority, its bonds and notes, and the interest on its bonds and notes from certain taxes; and to grant powers and impose duties on officers and agencies of the state and political subdivisions of the state.

Sec. 3. As used in this act:

- (a) "Authority" means the Michigan municipal bond authority created in section 4.
- (b) "Board" means the board of trustees of the authority established in section 5.
- (c) "Bonds" means bonds of the authority issued as provided in this act with a maturity greater than 3 years.

(d) "Capitalization grant" means the federal grant made to this state by the United States environmental protection agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, chapter 758, 101 Stat. 22, 33 U.S.C. 1381 to 1387.

(e) "Federal water pollution control act" means chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1257, 1258 to 1263, 1265 to 1268, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(f) "Fully marketable form" means a municipal obligation duly executed and accompanied by all of the following:

(i) An approving legal opinion of a bond counsel approved by the authority and of nationally recognized standing in the field of municipal law.

(ii) Closing documents in a form and substance satisfactory to the authority. The municipal obligation so executed need not be printed or lithographed nor be in more than 1 denomination.

(iii) Evidence that the pledge for payment of the municipal obligation will be sufficient to pay the principal of and interest on the municipal obligation when due.

(iv) An order of approval or an order of exception issued by the department of treasury under the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, which orders shall also include a certification that the condition of subparagraph (iii) has been met.

(v) For purposes of a project funded under section 16a, an order of approval issued by the director of the department of natural resources under the state clean water assistance act. The order shall state that the project proposed by the governmental unit has been approved for assistance by the director of the department of natural resources.

(g) "Governmental unit" means a county, city, township, village, school district, intermediate school district, community college, public university, authority, district, any other body corporate and politic or other political subdivision, any agency or instrumentality of the foregoing, or any group self-insurance pool formed pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws. For purposes of a project funded under section 16a, governmental unit includes an Indian tribe that has jurisdiction over construction and operation of a project qualifying under 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329. A governmental unit shall not include the Michigan strategic fund created pursuant to Act No. 270 of the Public Acts of 1984, being sections 125.2001 to 125.2093 of the Michigan Compiled Laws, or an economic development corporation created under the economic development corporation act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws. After July 1, 1988, a governmental unit does not include a self-insurance pool unless the self-insurance pool has filed a certification by an independent actuary that the reserves set aside pursuant to section 7a of Act No. 35 of the Public Acts of 1951, being section 124.7a of the Michigan Compiled Laws, are adequate for the payment of claims.

(h) "Municipal obligation" means a bond or note or evidence of debt issued by a governmental unit for a purpose authorized by law.

(i) "Notes" means an obligation of the authority issued as provided in this act, including commercial paper, with a maturity of 3 years or less.

(j) "Project" means a sewage treatment works project or a nonpoint source project, or both, as defined in the state clean water assistance act.

(k) "Reserve fund" means a bond reserve fund or note reserve fund created and established under section 16.

(l) "Revenues" means all fees, charges, money, profits, payments of principal of or interest on municipal obligations and other investments, gifts, grants, contributions, and all other income derived or to be derived by the authority under this act.

Sec. 7. The board shall have all of the following powers:

(a) To adopt bylaws for the regulation of its affairs.

(b) To adopt an official seal.

(c) To maintain a principal office at a place within this state.

(d) To sue and be sued in its own name and to plead and be impleaded.

(e) To loan money to a governmental unit at such rate or rates as the authority shall determine and to purchase and sell, and to commit to purchase and sell, municipal obligations pursuant to this act.

(f) To borrow money and issue negotiable revenue bonds and notes pursuant to this act.

(g) To make and enter into contracts and other instruments necessary or incidental to the performance of its duties and the exercise of its powers. By rotating the services of legal counsel, the authority shall seek to increase the pool of nationally recognized bond counsel.

(h) To receive and accept from any source grants or contributions of money, property, or other things of value, excluding appropriations from the general fund of the state except for appropriations to the state water pollution control revolving fund established under section 16a, to be used, held, and applied only for the purposes for which the grants and contributions were made.

(i) To do all acts necessary or convenient to carry out the powers expressly granted.

(j) To require that final actions of the board are entered in the journal for the board and that all writings prepared, owned, used, in the possession of, retained by the board in the performance of an official function be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(k) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(l) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

(m) To investigate and assess the infrastructure needs of the state, current methods of financing infrastructure rehabilitation and improvements, and resources and financing options currently available and potentially useful to improve the state's infrastructure and lower the costs of those improvements.

(n) To indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the authority or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(o) To investigate and assess short-term and long-term borrowing requirements for operating, capital improvements, and delinquent taxes.

(p) Provide assistance, as that term is defined by the state clean water assistance act, to any municipality for a revolving fund project and to perform all functions necessary or incident to providing that assistance and to the operation of the state water pollution control revolving fund established under section 16a.

(q) Enter into agreements with the federal government to implement the establishment and operation of the state water pollution control revolving fund established under section 16a pursuant to the provisions of the federal water pollution control act and the rules and regulations promulgated under that act.

Sec. 9. (1) The authority may issue from time to time authority bonds or notes in the principal amounts the authority considers necessary to provide funds for any purposes including, but not limited to, the making of loans; the payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due; the establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes; the payment of interest on the bonds or notes for a period as the authority determines; the funding of a state match requirement for a capitalization grant or to reimburse an advance for that state match requirement; and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the bond or note authorizing resolution. Authority bonds or notes may be additionally secured by a pledge of any grant or contributions from the United States, the state, a governmental unit, or any person, firm, or corporation, or by a pledge of income or revenues, funds, or money of the authority from any source whatsoever.

(3) Bonds or notes of the authority shall be authorized by resolution of the authority and may be issued in 1 or more series and shall bear the date or dates of issuance; mature at the time or times not exceeding 50 years from the date of their issue; provide sinking fund payments; bear interest at a fixed or variable rate or rates of interest per annum or at no interest; be in the denomination or denominations; be in the form, either coupon or registered; carry the conversion or registration privileges; have the rank or priority; be executed in the manner; be payable from the sources in the medium of payment at the place or places within or without the state; and be subject to redemption at the option of the authority or the holder and with the terms and redemption premiums as the resolution provides.

(4) If a member of the board, the executive director of the authority, or an officer of the authority whose signature or facsimile thereof appears on a note, bond, or coupon ceases to be a member, executive director, or officer before the delivery of that note or bond, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the member, executive director, or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. An authority bond or note is not subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws. The bond or note shall not require state treasurer approval under Act No. 202 of the Public Acts of 1943.

Sec. 13. Within limitations which shall be contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board or the executive director of the authority to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for notes or bonds.
- (b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.
- (c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.
- (d) Buy notes or bonds so issued and resell those notes or bonds.
- (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (f) Direct the investment of any and all funds of the authority that the authority has the power to invest.
- (g) Create and manage investments on behalf of governmental units and the state water pollution control revolving fund established under section 16a.

Sec. 15. (1) A pledge of revenues or other money made by the authority is valid and binding from the time when the pledge is made. The revenues or other money so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without physical delivery of the revenues or money or further act. The lien of such a pledge is valid and binding against a party having a claim of any kind in tort, contract, or otherwise against the authority, irrespective of whether that party has notice of the pledge. Neither the resolution, trust indenture, nor any other instrument by which a pledge is created is required to be filed or recorded in order to establish and perfect a lien or security interest in the property so pledged.

(2) The state treasurer or a trustee shall hold the payment under this act that is assigned or pledged to the authority in trust for the payment of principal and interest on the obligation incurred with the authority in a separate account for each municipality. The payment under this act that is assigned or pledged to the authority and held by the state treasurer or a trustee shall be subject to a lien in favor of the authority. That lien shall be a statutory lien, paramount and superior to all other liens for the sole purpose of paying the principal of, and interest on, the obligation incurred with the authority. The payment under this act that is assigned or pledged to the authority under this act shall be exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the governmental unit other than for payment of the obligation incurred with the authority. The lien granted under this act to the authority shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, against the governmental unit irrespective of whether the parties have notice. Neither the assignment, the pledge, nor any other instrument by which an assignment, lien, or pledge is created is required to be filed or recorded.

Sec. 15a. Except for bonds or notes issued pursuant to the state water pollution control revolving fund established under section 16a, the authority shall not have outstanding at any time bonds in an aggregate principal amount exceeding \$800,000,000.00 excluding bonds issued to refund outstanding bonds and notes.

Sec. 16a. The authority shall establish a state water pollution control revolving fund that complies with the requirements and objectives of the federal water pollution control act. The authority may fund the state water pollution control revolving fund through federal grants, revenues of the authority, or through any other means permitted under the federal water pollution control act and the rules promulgated under that act. The authority may provide assistance as that term is defined in the state clean water assistance act to a governmental unit for a project with proceeds of the state water pollution control revolving fund. If the assistance is in the form of a loan, the loan shall be made through a loan agreement in which a governmental unit agrees to make loan repayments to the authority or through the purchase or refinancing of municipal obligations in fully marketable form. Loan agreements with governmental units shall contain appropriate provisions relating to maturity or length of loan, repayment terms, state or local funding requirements, and other provisions as are necessary to comply with the provisions of the federal water pollution control act and any agreements entered into with the federal government for implementation of the federal water pollution control act. Projects eligible for assistance from the state water pollution control revolving fund shall be determined pursuant to the state clean water assistance act. The maximum amount of any municipal obligation purchased with proceeds of the state water pollution control revolving fund and the maximum interest rate on a loan or municipal obligation shall be determined pursuant to the state clean water assistance act.

Sec. 17. (1) If the authority defaults in the payment of principal of or interest on an issue of bonds or notes issued under this act after the bonds or notes become due, whether at maturity or upon call for redemption, or in the event that the authority fails or refuses to comply with the provisions of this act or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of 51% or more in aggregate principal amount of the notes or bonds of that issue then outstanding, by instrument or instruments filed in the Ingham county clerk's office, may appoint, subject to agreement as contained in the resolution of the authority authorizing such bonds or notes, a trustee to represent the holders of those notes or bonds for the purposes provided in this section.

(2) The trustee may, and upon written request of the holders of 51% or more in aggregate principal amount of the notes or bonds of that issue then outstanding shall, in the trustee's own name do all of the following:

(a) By mandamus or other suit, action, or proceeding at law or in equity, enforce the rights of the bondholders or noteholders, and require the authority to carry out any other agreements with the holders of those notes or bonds and to perform the authority's duties under this act.

(b) Bring suit upon the notes or bonds.

(c) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the notes or bonds.

(e) If so provided in the resolution authorizing the bonds or notes, declare the notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of 51% or more of the aggregate principal amount of those notes or bonds then outstanding, to annul that declaration and its consequences.

(3) In addition to the provisions of subsection (2), the trustee has all of the powers necessary or appropriate for the exercise of any function specifically set forth in this section or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(4) Before declaring the principal of notes or bonds due and payable, the trustee shall give 30 days' notice in writing to the governor, to the authority, to the state treasurer, and to the attorney general.

Sec. 20. The state pledges to and agrees with the holders of bonds or notes issued under this act that, except as otherwise provided under section 27, the state shall not limit or restrict the rights vested in the authority by this act to do any 1 or more of the following:

(a) Purchase, acquire, hold, sell, or dispose of municipal obligations or other investments.

(b) Make loans to a governmental unit.

(c) Establish and collect fees or other charges as are convenient or necessary to produce sufficient revenues to meet the expenses of operation of the authority.

(d) Fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of authority bonds or notes until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

Sec. 23. (1) A governmental unit may borrow money and issue municipal obligations in accordance with the laws of this state. The security for municipal obligations shall be that provided by the laws authorizing their issuance. In addition, a governmental unit may pledge for the payment of a municipal obligation purchased by the authority the municipality's full faith and credit as determined by its governing body. In addition, the authority may require a governmental unit to pledge, and the governmental unit may pledge, for the payment of the municipal obligation purchased by the authority money received or to be received by the governmental unit whether derived from imposition of taxes by the state or from other sources and returned or to be returned to the governmental unit as provided by law except for money the use of which is prohibited for such purposes by the state constitution of 1963. The authority and a governmental unit may enter into an agreement providing for the payment of taxes, which taxes are collected by the state and returned to the governmental unit as provided by law, to the authority or to a trustee, and those taxes may be pledged by the governmental unit for the payment of the municipal obligations of the governmental unit purchased by the authority. If the authority and the governmental unit enter into such an agreement, the state treasurer shall pay the pledged money in accordance with the provisions of the agreement.

(2) Notwithstanding the provisions of a charter or statute applicable to or constituting a limitation on the maximum rate of interest per annum payable on bonds or notes, or as to annual interest cost of money borrowed or received upon issuance of bonds or notes, a governmental unit may contract to pay no interest or interest which may be a variable rate on money borrowed from the authority and evidenced by the municipal

obligations of that governmental unit purchased by the authority. A governmental unit may contract with the authority with respect to the loan or purchase. The contract shall contain the terms and conditions of the loan or purchase. The contract may also provide for agreements by the governmental unit with respect to the governmental unit's fiscal, budget, debt and cash management, and accounting matters as the authority requests.

(3) A governmental unit may pay fees and charges required to be paid to the authority for the authority's services.

(4) Notwithstanding the provisions of a law or statute applicable to or constituting a limitation on the sale of municipal obligations, a governmental unit may sell municipal obligations to the authority without limitation as to denomination, and the municipal obligations may be fully registered, registrable as to principal, or in bearer form; may bear interest at the rate or rates all in accordance with the provisions of this section; may be evidenced in the manner; may contain other provisions not inconsistent with this act; and may be sold to the authority without advertisement at private negotiated sale at par or at a discount and accrued interest as shall be provided in the proceedings of the governing body of the governmental unit pursuant to which the municipal obligations are authorized to be issued.

(5) Any provision of this act allowing a governmental unit to pledge its full faith and credit for payment of the principal of and interest on municipal obligations purchased by the authority does not grant any additional authority, beyond that granted by other statute or by charter, for that governmental unit to pledge its full faith and credit without a vote of the people.

Sec. 25. (1) This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

(2) This act shall be construed liberally to assure compliance with the federal water pollution control act and with any applicable rules promulgated under that act.

Sec. 27. Except for bonds or notes issued pursuant to the state water pollution control revolving fund established under section 16a, the authority shall not issue new bonds or notes after October 1, 1990, to make loans to governmental units.

Section 2. This amendatory act shall take effect September 1, 1988.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 800 of the 84th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.