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SFA



BILL ANALYSIS

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Senate Bill 1008 (as reported without amendment)
Senate Bill 1009 (Substitute S-1 as reported)
Sponsor: Senator Joel D. Gougeon (Senate Bill 1008)
Senator Shirley Johnson (Senate Bill 1009)
Committee: Families, Mental Health and Human Services

Date Completed: 2-24-00

RATIONALE

Major revisions to the Mental Health Code adopted in 1995 included authorization for a community mental health (CMH) agency or a CMH organization to become a CMH authority, which has relatively more autonomy and responsibility. The creation of a CMH authority requires enabling resolutions adopted by the board of commissioners of each county creating the authority. The 1995 legislation granted certain specified powers to CMH authorities. Among these were such things as making purchases and contracts and acquiring, owning, operating, maintaining, leasing, or selling real or personal property. There has been some confusion, however, as to whether a CMH authority is empowered to borrow money secured by the authority's assets; enter into installment loan contracts or agreements for the purchase of land, property, or equipment; lease facilities, equipment, or other property; obtain a line of credit to secure funds for authority operations or to pay for previous loans; or to use a credit card. Most CMH authorities and their officials apparently believed that the 1995 legislation was sufficient to authorize these types of transactions, but some CMH authority legal advisors and State Attorney General officials evidently disagree. Some people believe that CMH authorities should be explicitly empowered in statute to secure credit in order to ensure their continued operations.

CONTENT

Senate Bills 1008 and 1009 (S-1) would amend Public Act 266 of 1995 and the Mental Health Code, respectively, to authorize a community mental health authority to secure loans, make credit card transactions, establish a line of credit, and purchase or lease land, property, and equipment.

Senate Bill 1008

The bill would amend Public Act 266 of 1995, which authorizes and regulates credit card transactions involving local units of government, to include a CMH authority created under the Mental Health Code in the Act's definitions of "governing body" and "local unit".

Senate Bill 1009 (S-1)

The bill would amend the Mental Health Code to allow a CMH authority to borrow money for facilities, equipment, or refinancing existing debts secured by the authority's assets as collateral. These obligations could not be for longer than the useful life of the collateral and would have to be authorized by a resolution approved by a majority of the CMH board. The obligations would not be subject to the Municipal Finance Act.

The bill also would allow a CMH authority to enter into any contract or agreement for the purchase of land, property, or equipment for public purposes or for refinancing an outstanding contract or agreement to be paid for in installments. A contract or agreement for the purchase of property or equipment could not be for a longer term than the useful life of the property or equipment. The contracts and agreements would not be subject to the Municipal Finance Act.

In addition, the bill would allow a CMH authority to lease facilities, equipment, or other property. The leases could not be for longer than the useful life of the facility, equipment, or other property and would have to be authorized by a resolution approved by a majority of the CMH board. The leases would not be subject to the Municipal Finance Act.

Under the bill, a CMH authority could obtain a line of credit to secure funds for authority operations or to pay previous loans obtained for authority operations under the Code or any other statute. The line of

credit would have to be authorized by a resolution approved by a majority of the CMH board, and the authority could not borrow against the line of credit an amount greater than the average of two months' revenue from contracted sources, as determined by the CMH authority.

MCL 129.241 (S.B. 1008)
330.1205 (S.B. 1009)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would empower CMH authorities to conduct the kinds of transactions that most believed were authorized by 1995 legislation that amended the Mental Health Code. Those revisions granted CMH authorities the power to own and acquire real property and equipment, but the 1995 legislation apparently did not clearly grant the authorities the power to secure loans for those purposes. The bills would explicitly allow CMH authorities to secure loans with authority assets as collateral, obtain a line of credit, obtain or refinance installment loans, and lease facilities, equipment or other property. By doing so, the bills would enable CMH authorities to continue their smooth and efficient operation, without their ability to operate in that manner being questioned.

Opposing Argument

Senate Bill 1008, regarding credit card usage, is ripe for abuse. Reportedly, the office in the Department of Treasury that oversees local units' use of credit card transactions claims that various local units and their officials have used the credit cards for personal purchases. One local unit, Grand Traverse County, reportedly has had so many problems that it is canceling all credit card usage. Personal use of these credit cards brings up numerous issues: Public purchases are not subject to sales tax, so personal purchases using publicly issued credit cards may skirt payments due to the State; if a card includes perks such as frequent flyer miles or cash back awards, it is unclear whether those bonuses accrue to the individual using the card or the governmental entity issuing it; and, it is not specified what sort of penalty would be applied when an individual misused a credit card. The bill should include at least minimal prohibitions against the misuse of these cards and penalties for offending individuals, as well as specify who would receive the

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benefits of credit card use.

Response: The bill merely would add CMH authorities to the entities empowered under Public Act 266 of 1995 to use credit cards. It is up to each governmental entity that chooses to issue credit cards to establish policies and procedures regarding their use. To outline policies and penalties in statute would constitute micromanagement of local functions by the State.

Opposing Argument

Senate Bill 1009 (S-1) should have some safeguards to protect against irresponsible indebtedness. The bill includes no limits on debt load, no bidding requirements to find the best rate and terms for a loan, and no information on a CMH authority's revenue stream relative to indebtedness. Without any of these types of safeguards, CMH authorities could overload their debt and obligate the State to bail them out, perhaps damaging the State's credit rating. In addition, the bill specifically would exempt these CMH authority credit transactions from review by the Municipal Finance Authority. The authority to secure debt that the bill would grant simply is too loose.

Response: The Municipal Finance Authority deals with bonding by local units of government. Community mental health authorities are specifically prohibited from issuing bonds or levying taxes; the bill would do nothing to change that prohibition. In addition, the Mental Health Code specifies that CMH authorities themselves are responsible for authority finances and protects even the counties that create the authorities from legal and financial liability for the affairs of a CMH authority.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would expand the ability of local CMH authorities to borrow money to purchase facilities and equipment, to purchase land, property, and equipment, and to lease facilities and equipment. As the State has moved to a capitated payment system for CMH, the bills would not offset State or local finances.

Fiscal Analyst: S. Angelotti