

Act No. 93
Public Acts of 2005
Approved by the Governor
July 20, 2005
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July 20, 2005
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Senators Switalski, Jacobs, Prusi, Thomas, Cherry, Scott, Clark-Coleman, Olshove, Schauer and Leland

ENROLLED SENATE BILL No. 407

AN ACT to amend 1985 PA 227, 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 authorize certain forms of assistance to governmental units including the creation and management of investments; to impose conditions on, grant certain powers to political subdivisions of the state and water suppliers regarding, and allow certain agreements regarding obligations of political subdivisions of this state and water suppliers 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; to grant powers and impose duties on officers and agencies of the state, political subdivisions of this state, and water suppliers; to accept and expend certain appropriations; and to repeal acts and parts of acts," by amending the title and sections 3, 7, and 8 (MCL 141.1053, 141.1057, and 141.1058), the title and sections 3 and 7 as amended by 2000 PA 416 and section 8 as amended by 2003 PA 109, and by adding section 16c.

The People of the State of Michigan enact:

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 including the creation and management of investments; to impose conditions on, grant certain powers to political subdivisions of this state and water suppliers regarding, and allow certain agreements regarding obligations of this state, political subdivisions of this state, and water suppliers purchased by the authority or assigned to 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; to grant powers and impose duties on officers and agencies of this state, political subdivisions of this state, and water suppliers; to accept and expend certain appropriations; and to repeal acts and parts of acts.

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 under 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 either of the following purposes:

(i) For the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1387.

(ii) For the purpose of establishing a state drinking water revolving fund, as provided in section 1452 of the public health service act, 42 USC 300j-12.

(e) “Community water supply” means a community water supply as defined in part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

(f) “Federal safe drinking water act” means title XIV of the public health service act, chapter 373, 88 Stat. 1660.

(g) “Federal water pollution control act” means 33 USC 1251 to 1387.

(h) “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 executed municipal obligation 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) For purposes of a project funded under section 16a, an order of approval issued by the department of environmental quality under part 53 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5301 to 324.5316. The order shall state that the project proposed by the governmental unit has been approved for assistance by the department of environmental quality.

(v) For purposes of a community water supply or a noncommunity water supply funded under section 16b, an order of approval issued by the department of environmental quality under part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418. The order shall state that the community water supply or the noncommunity water supply proposed by the governmental unit has been approved for assistance by the department of environmental quality.

(i) “Governmental unit” means this state, 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 1951 PA 35, MCL 124.1 to 124.13. 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 33 USC 1329. For purposes of a community water supply or a noncommunity water supply funded under section 16b, governmental unit includes a community water supplier. 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 under section 7a of 1951 PA 35, MCL 124.7a, are adequate for the payment of claims. A school district shall include a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852. Funds loaned to a public school academy or a school district may not be used to finance the purchase, construction, lease, or renovation of property owned, directly or indirectly, by any officer, board member, or employee of that public school.

(j) “Municipal obligation” means a bond or note or evidence of debt issued by a governmental unit for a purpose authorized by law. A municipal obligation includes loan repayment obligations from a school district to this state with respect to a qualified loan made under a school loan act that is assigned or otherwise transferred by this state to the authority.

(k) “Noncommunity water supply” means a noncommunity water supply as defined in part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

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

(m) “Project” means a sewage treatment works project or a nonpoint source project, or both, as defined in part 53 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5301 to 324.5316.

(n) “Reserve fund” means a bond reserve fund or note reserve fund created and established under section 16.

(o) “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.

(p) “School loan act” means an act to implement section 16 of article IX of the state constitution of 1963, including, but not limited to, 1961 PA 108, MCL 388.951 to 388.963, 1961 PA 112, MCL 388.981 to 388.985, and the school bond qualification, approval, and loan act. For a qualified bond, as defined in 1961 PA 108, MCL 388.951 to 388.963, with a certificate of qualification from the state treasurer issued prior to the effective date of the amendatory act that added

this subdivision, "school loan act" means 1961 PA 108, MCL 388.951 to 388.963. For a qualified bond as defined in the school bond qualification, approval, and loan act with a certificate of qualification or approval issued by the state treasurer after the effective date of the school bond qualification, approval, and loan act, school loan act means the school bond qualification, approval, and loan act.

(q) "Water supplier" means a water supplier as defined in part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

Sec. 7. The board has 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, or to a nonprofit corporation, trust, or similar entity for the benefit of a public school academy, at a rate or rates as the authority determines 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 this state except for appropriations to be used for the benefit of public schools, except for appropriations to a reserve fund established under section 16, except for appropriations to the state water pollution control revolving fund established under section 16a and except for appropriations to the state drinking water revolving fund established under section 16b, and except for appropriations to the school loan revolving fund established under section 16c, 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, or 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, 1976 PA 442, MCL 15.231 to 15.246.

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

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

(m) 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.

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

(o) To provide assistance, as that term is defined in section 5301 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5301, 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.

(p) To 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.

(q) To provide assistance, as that term is defined in part 54 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418, to any governmental unit for a revolving fund community water supply or noncommunity water supply and to perform all functions necessary or incident to providing that assistance and to the operation of the state drinking water revolving fund established under section 16b, including, but not limited to, using funding allocated in the federal safe drinking water act for any of the purposes authorized in section 5417(c) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5417.

(r) To enter into agreements with the federal government to establish and operate the state drinking water revolving fund under section 16b pursuant to the provisions of the federal safe drinking water act and the rules and regulations promulgated under that act.

(s) To enter into agreements with the state treasurer to act as this state's agent to implement the establishment and operation of the school loan revolving fund established under section 16c, including provisions relating to the return to this state of contributions made by this state for deposit in the school loan revolving fund that are no longer needed for school loan revolving fund purposes.

Sec. 8. (1) The authority may lend money to a governmental unit through the purchase by the authority of municipal obligations of the governmental unit in fully marketable form. The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the authority, and to otherwise assist governmental units.

(2) Bonds and notes of the authority shall not be in any way a debt or liability of this state and shall not create or constitute any indebtedness, liability, or obligations of this state or be or constitute a pledge of the faith and credit of this state but all authority bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the authority and that this state is not obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on the bond or note.

(3) All expenses incurred in carrying out this act shall be payable solely from revenues or funds provided or to be provided under the provisions of this act, and nothing in this act shall be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by this state.

(4) Unless approved by a concurrent resolution of the legislature and except as permitted by section 16a, 16b, or 16c, the authority shall not provide preferential treatment in the rate of interest for a particular municipal obligation purchased by the authority that is based upon other than financial and credit considerations and shall not forgive or relinquish all or part of the interest or principal of a particular municipal obligation or of municipal obligations of a particular purpose.

(5) The authority may purchase bonds issued by school districts that are qualified bonds under a school loan act. Except as provided in subsection (6), the principal amount of the qualified bonds purchased by the authority in any calendar year shall not exceed 7.5% of the principal amount of qualified bonds issued by school districts in the immediately preceding calendar year. The authority may also purchase or accept by assignment from this state municipal obligations that are loan repayment obligations from a school district on a qualified loan made by this state under a school loan act. Municipal obligations acquired by the authority under this subsection are not required to be in fully marketable form.

(6) In addition to qualified bonds purchased under subsection (5), the authority may purchase qualified bonds issued by school districts not later than September 30, 2004 to obtain funds to repay all or a portion of the outstanding balance of a loan under 1961 PA 108, MCL 388.951 to 388.963, on the terms and conditions and subject to the requirements provided by or pursuant to a resolution of the authority. Bonds issued by the authority to purchase school district qualified bonds under this subsection shall be issued in an amount sufficient to provide and pay the reasonable costs of issuance incurred by the school districts as determined by or pursuant to a resolution of the authority.

Sec. 16c. The authority shall establish a school loan revolving fund and shall establish accounts and subaccounts with the school loan revolving fund as it determines is necessary or appropriate to operate the school loan revolving fund. The authority may fund the school loan revolving fund with proceeds of bonds or notes issued by the authority, revenues of the authority, contributions from this state including contributions resulting from the assignment of the right to receive loan repayments on qualified loans made or authorized by this state under a school loan act, or repayments of loans made from the school loan revolving fund. Funds deposited in the school loan revolving fund may be used only by the authority to make qualified loans to school districts at the times and in the amounts approved by this state under the provisions of a school loan act, for the purpose of funding a reserve fund established by the authority, for the purpose of securing bonds or notes issued by the authority to provide funds for the school loan revolving fund, for the purpose of acting as a surety for the payment of bonds or notes that provide direct or indirect state sponsorship or support to a school district, and for the purpose of paying the costs of the authority to administer the fund. Loans to school districts from the school loan revolving fund with respect to qualified bonds as defined in a school loan act shall be treated as state loans as described in section 16 of article IX of the state constitution of 1963.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 406.
- (b) Senate Bill No. 408.
- (c) Senate Bill No. 410.
- (d) Senate Bill No. 411.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor