

# HOUSE BILL No. 5919

September 21, 2016, Introduced by Reps. McBroom, Rutledge, Barrett, Hughes, Santana and Kivela and referred to the Committee on Appropriations.

A bill to create the Michigan veterans' facility authority; to develop and operate certain veterans' facilities; to create funds and accounts; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority and certain state departments and other state officials and employees; and to make appropriations and prescribe certain conditions for the appropriations.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 1. This act shall be known and may be cited as the  
2 "Michigan veterans' facility authority act".

3           Sec. 2. As used in this act:

4           (a) "Authority" means the Michigan veterans' facility  
5 authority created under section 3.

6           (b) "Board" means the board of directors of the authority.

1 (c) "Bond" means a bond, note, or other obligation issued by  
2 the authority under this act.

3 (d) "Department" means the department of military and veterans  
4 affairs.

5 (e) "Develop" means to plan, acquire, construct, improve,  
6 enlarge, maintain, renew, renovate, repair, replace, lease, equip,  
7 furnish, market, promote, manage, or operate.

8 (f) "Veteran" means an individual who meets both of the  
9 following:

10 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL  
11 35.61.

12 (ii) Was honorably discharged.

13 (g) "Veterans' facility" means a long-term care facility and  
14 ancillary facilities for veterans and their dependents as  
15 determined by the authority.

16 Sec. 3. (1) The Michigan veterans' facility authority is  
17 created as a public body corporate and politic within the  
18 department. The exercise by the authority of the powers conferred  
19 by this act is an essential governmental function of this state.

20 (2) Notwithstanding the existence of common management, the  
21 authority shall be treated and accounted for as a separate legal  
22 entity with its separate corporate purposes as set forth in this  
23 act. The assets, liabilities, and funds of the authority shall not  
24 be consolidated or commingled with those of this state.

25 Sec. 4. The authority shall exercise its duties independently  
26 of the department. The staffing, budgeting, procurement, and  
27 related administrative functions of the authority may be performed

1 under the direction and supervision of the director of the  
2 department.

3 Sec. 5. (1) The authority shall exercise its duties through  
4 its board of directors.

5 (2) The board shall be made up of 9 members as follows:

6 (a) The director of the department.

7 (b) Three members with professional knowledge, skill, or  
8 experience in long-term care, health care licensure or finance, or  
9 medicine who represent the interests of 1 or more congressionally  
10 chartered veterans' organizations appointed by the governor with  
11 the advice and consent of the senate.

12 (c) Three members with professional knowledge, skill, or  
13 experience in long-term care, health care licensure or finance, or  
14 medicine appointed by the governor with the advice and consent of  
15 the senate. One of the members appointed under this subdivision  
16 shall be a resident of the Upper Peninsula of this state.

17 (d) One member appointed by the governor from a list of 2 or  
18 more individuals selected by the majority leader of the senate,  
19 with professional knowledge, skill, or experience in long-term  
20 care, health care licensure or finance, or medicine.

21 (e) One member appointed by the governor from a list of 2 or  
22 more individuals selected by the speaker of the house of  
23 representatives, with professional knowledge, skill, or experience  
24 in long-term care, health care licensure or finance, or medicine.

25 (3) The appointed members shall serve for terms of 4 years. Of  
26 the 5 members first appointed, 1 shall be appointed for an initial  
27 term of 1 year, 2 shall be appointed for an initial term of 2

1 years, and 2 shall be appointed for an initial term of 3 years. The  
2 appointed members shall serve until a successor is appointed. A  
3 vacancy shall be filled for the balance of the unexpired term in  
4 the same manner as the original appointment.

5 (4) The director of a state department who is a designated  
6 member of the board may appoint a representative to serve in his or  
7 her absence.

8 (5) Members of the board shall serve without compensation but  
9 may receive reasonable reimbursement for necessary travel and  
10 expenses incurred in the discharge of their duties.

11 (6) The director of the department shall serve as chairperson  
12 of the board.

13 (7) A majority of the appointed and serving members of the  
14 board shall constitute a quorum of the board for the transaction of  
15 business. A member may participate in a meeting by the use of  
16 amplified telephonic or video conferencing equipment. A member  
17 participating by the use of video conferencing equipment shall be  
18 considered to be present for purposes of a quorum and for purposes  
19 of voting. Actions of the board shall be approved by a majority  
20 vote of the members present at a meeting.

21 (8) The authority may employ or contract for legal, financial,  
22 and technical experts, and other officers, agents, and employees,  
23 permanent and temporary, as the authority requires, and shall  
24 determine their qualifications, duties, and compensation. The board  
25 may delegate to 1 or more agents or employees those powers or  
26 duties with the limitations as the board considers proper.

27 (9) The members of the board and officers and employees of the

1 authority are subject to 1968 PA 317, MCL 15.321 to 15.330, or 1968  
2 PA 318, MCL 15.301 to 15.310.

3 (10) A member of the board or officer, employee, or agent of  
4 the authority shall discharge the duties of his or her position in  
5 a nonpartisan manner, with good faith, and with that degree of  
6 diligence, care, and skill that an ordinarily prudent person would  
7 exercise under similar circumstances in a like position. In  
8 discharging the duties, a member of the board or an officer,  
9 employee, or agent, when acting in good faith, may rely upon the  
10 opinion of counsel for the authority, upon the report of an  
11 independent appraiser selected with reasonable care by the board,  
12 or upon financial statements of the authority represented to the  
13 member of the board or officer, employee, or agent of the authority  
14 to be correct by the president or the officer of the authority  
15 having charge of its books or account, or stated in a written  
16 report by a certified public accountant or firm of certified public  
17 accountants fairly to reflect the financial condition of the  
18 authority.

19 (11) The board shall organize and make its own policies and  
20 procedures. The board shall conduct all business at public meetings  
21 held in compliance with the open meetings act, 1976 PA 267, MCL  
22 15.261 to 15.275. Public notice of the time, date, and place of  
23 each meeting shall be given in the manner required by the open  
24 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

25 (12) Upon request by a member of the legislature, the board  
26 shall make nonprivileged information regarding the operations and  
27 accounts of the authority and nonprivileged information regarding

1 the care provided to veterans at a veterans' facility available to  
2 members of the legislature.

3 Sec. 6. The authority shall have all of the following powers:

4 (a) To solicit and accept gifts, grants, and loans from any  
5 person.

6 (b) To invest any money of the authority at the authority's  
7 discretion, in any obligations determined proper by the authority,  
8 and name and use depositories for its money.

9 (c) To procure insurance against any loss in connection with  
10 the property, assets, or activities of the authority.

11 (d) To sue and be sued, to have a seal, and to make, execute,  
12 and deliver contracts, conveyances, and other instruments necessary  
13 to the exercise of the authority's powers.

14 (e) To make and amend bylaws.

15 (f) To employ and contract with individuals necessary for the  
16 operation of the authority and 1 or more veterans' facilities.

17 (g) To make and execute contracts including without limitation  
18 sale agreements, trust agreements, trust indentures, bond purchase  
19 agreements, tax regulatory agreements, continuing disclosure  
20 agreements, ancillary facilities, and all other instruments  
21 necessary or convenient for the exercise of its powers and  
22 functions, and commence any action to protect or enforce any right  
23 conferred upon it by any law, contract or other agreement.

24 (h) To engage the services of financial advisors and experts,  
25 legal counsel, placement agents, underwriters, appraisers and other  
26 advisors, consultants and fiduciaries as may be necessary to  
27 effectuate the purposes of this act.

1 (i) To pay its operating expenses and financing costs.

2 (j) To pledge revenues or other assets as security for the  
3 payment of the principal of and interest on any bonds.

4 (k) To procure insurance, letters of credit, or other credit  
5 enhancement with respect to any bonds for the payment of tenders of  
6 bonds, or for the payment upon maturity of short-term bonds.

7 (l) To develop or operate 1 or more veterans' facilities.

8 (m) To solicit federal funds and other funding sources to  
9 develop veterans' facilities.

10 (n) To do any and all things necessary or convenient to carry  
11 out its purposes and exercise the powers expressly given and  
12 granted in this act.

13 Sec. 7. (1) It is determined that the creation of the  
14 authority and the carrying out of its authorized duties is in all  
15 respects a public and governmental purpose for the benefit of the  
16 people of this state and for the improvement of their health,  
17 safety, welfare, comfort, and security, and that these purposes are  
18 public purposes and that the authority will be performing an  
19 essential governmental function in the exercise of the powers  
20 conferred upon it by this act.

21 (2) The property of the authority and its income and  
22 operations shall be exempt from taxation by this state and any  
23 political subdivision of this state.

24 (3) In the case of any bonds, the interest on which is  
25 intended to be exempt from federal income tax, the authority shall  
26 prescribe restrictions on the use of the proceeds of those bonds  
27 and related matters as are necessary to assure the exemption, and

1 the recipients of proceeds of those bonds shall be bound thereby to  
2 the extent the restrictions shall be made applicable to them. Any  
3 recipient of the proceeds of bonds bearing interest that is  
4 intended to be exempt from federal income tax, including without  
5 limitation this state or any political subdivision of this state,  
6 is authorized to execute a tax regulatory agreement with the  
7 authority and, as to any political subdivision that is a recipient  
8 of the proceeds of bonds bearing interest that is intended to be  
9 exempt from federal income, this state. The execution of a tax  
10 regulatory agreement may be treated as a condition to receiving any  
11 proceeds of a bond issued under this act.

12       Sec. 8. (1) The authority shall have power and is hereby  
13 authorized from time to time to issue bonds in the principal amount  
14 or amounts and with the maturities as the authority shall determine  
15 to be necessary to provide sufficient funds for achieving its  
16 authorized purposes. The department of treasury shall provide  
17 technical expertise as necessary for the authority to issue bonds  
18 under this act.

19       (2) The board of the authority shall authorize the issuance of  
20 bonds by resolution. The authority may issue bonds, including  
21 refunding bonds, without obtaining the consent of any department,  
22 division, commission, board, bureau, or agency of this state and  
23 without any other proceedings or the occurrence of any other  
24 conditions other than those proceedings, conditions, or things that  
25 are specifically required by this act. Every issue of bonds shall  
26 be special revenue obligations payable from and secured by a pledge  
27 of revenues and other assets, including without limitation the

1 proceeds of the bonds deposited in a reserve fund for the benefit  
2 of the owners of the bonds, earnings on funds of the authority and  
3 other funds as may become available, upon the terms and conditions  
4 as specified by the authority in the authority resolution under  
5 which the bonds are issued or in a related trust agreement or trust  
6 indenture.

7 (3) The authority may issue bonds to refund any bonds by the  
8 issuance of new bonds, whenever it considers the refunding  
9 expedient, whether the bonds to be refunded have or have not  
10 matured, and to issue bonds partly to refund bonds then outstanding  
11 and partly for restructuring or any of its other authorized  
12 purposes.

13 (4) For each issue of bonds, the authority shall determine all  
14 of the following:

15 (a) The date of issuance.

16 (b) Whether the bonds shall bear no interest, appreciate as to  
17 principal amount, bear interest at fixed or variable rates, or any  
18 combination of these.

19 (c) Whether the bonds shall be payable at or prior to  
20 maturity.

21 (d) When the bonds shall mature.

22 (e) Whether the authority may redeem the bonds prior to  
23 maturity, at what price, and under what conditions.

24 (f) The method of payment of principal of and interest on the  
25 bonds.

26 (g) The form, denominations, and places of payment of  
27 principal of and interest on the bonds.

1 (h) If any officer whose signature or the facsimile of whose  
2 signature appears on any bond shall cease to be that officer before  
3 the delivery of the bond, that signature or facsimile shall  
4 nevertheless be valid and sufficient for all purposes as if he or  
5 she had remained in office until delivery of the bond.

6 (i) Any other terms and conditions necessary to issue the  
7 bonds in fully marketable form.

8 (5) The authority may sell the bonds in the manner determined  
9 by the authority board, at public or private sale, and on either a  
10 competitive or negotiated basis.

11 (6) This act shall govern the creation, perfection, priority,  
12 and enforcement of any pledge of revenues or other security made by  
13 the authority. Each pledge made by the authority shall be valid and  
14 binding at the time the pledge is made. The encumbered revenues,  
15 reserves, or earnings pledged or earnings on the investment of the  
16 encumbered revenues, reserves, or earnings pledged shall  
17 immediately be subject to the lien of the pledge without any  
18 physical delivery or further act and the lien on that pledge shall  
19 be valid and binding as against all parties having claims of any  
20 kind in tort, contract or otherwise against the authority,  
21 irrespective of whether the parties have notice of the lien or  
22 pledge, and without filing or recording the pledge. The resolution  
23 or other instrument by which a pledge is created does not have to  
24 be recorded.

25 (7) This act shall also govern the negotiability of bonds  
26 issued under this act. Any bonds issued under this act shall be  
27 fully negotiable within the meaning and for all purposes of the

1 uniform commercial code. By accepting the bond or obligation, each  
2 owner of a bond or other obligation of the authority shall be  
3 conclusively considered to have agreed that the bond is and shall  
4 be fully negotiable within the meaning and for all purposes of the  
5 uniform commercial code.

6 (8) In the discretion of the authority, any bonds may be  
7 secured by a trust agreement or trust indenture by and between the  
8 authority and a trustee, which may be any trust company or bank  
9 having the powers of a trust company, whether located within or  
10 without this state. A trust agreement or trust indenture authorized  
11 under this subsection, or an authority resolution providing for the  
12 issuance of bonds may provide for the creation and maintenance of  
13 reserves as the authority shall determine to be proper and may  
14 include covenants setting forth the duties of the authority in  
15 relation to the bonds, the income to the authority, and the sale  
16 agreement. A trust agreement or trust indenture authorized under  
17 this subsection or an authority resolution may contain provisions  
18 respecting the custody, safeguarding, and application of all money  
19 and bonds and may contain provisions for protecting and enforcing  
20 the rights and remedies under the sale agreement of the owners of  
21 the bonds and benefited parties as may be reasonable and proper and  
22 not in violation of law. It shall be lawful for any bank or trust  
23 company incorporated under the laws of this state that may act as  
24 depository of the proceeds of bonds or of any other funds or  
25 obligations received on behalf of the authority to furnish  
26 indemnifying bonds or to pledge obligations as may be required by  
27 the authority. Any trust agreement or trust indenture authorized

1 under this subsection or an authority resolution may contain other  
2 provisions as the authority may consider reasonable and proper for  
3 priorities and subordination among the owners of bonds and  
4 benefited parties.

5 (9) A member of the board or an officer, appointee, or  
6 employee of the authority shall not be subject to personal  
7 liability when acting in good faith within the scope of his or her  
8 authority or on account of liability of the authority. The board  
9 may defend and indemnify a member of the board or an officer,  
10 appointee, or employee of the authority against liability arising  
11 out of the discharge of his or her official duties. The authority  
12 may indemnify and procure insurance indemnifying members of the  
13 board and other officers and employees of the authority from  
14 personal loss or accountability for liability asserted by a person  
15 with regard to bonds or other obligations of the authority, or from  
16 any personal liability or accountability by reason of the issuance  
17 of the bonds or other obligations or by reason of any other action  
18 taken or the failure to act by the authority. The authority may  
19 also purchase and maintain insurance on behalf of any person  
20 against the liability asserted against the person and incurred by  
21 the person in any capacity or arising out of the status of the  
22 person as a member of the board or an officer or employee of the  
23 authority, whether or not the authority would have the power to  
24 indemnify the person against that liability under this subsection.

25 (10) A member, officer, employee or agent of the authority  
26 shall not have an interest, either directly or indirectly, in any  
27 business organization engaged in any business, contract or

1 transaction with the authority or in any contract of any other  
2 person engaged in any business with the authority, or in the  
3 purchase, sale, lease or transfer of any property to or from the  
4 authority.

5 (11) Bonds issued under this act are not subject to the  
6 revised municipal finance act, 2001 PA 34, MCL 141.2101 to  
7 141.2821.

8 (12) The issuance of bonds under this act is subject to the  
9 agency financing reporting act, 2002 PA 470, MCL 129.171 to  
10 129.177.

11 (13) A resolution of the authority authorizing bonds, or the  
12 provisions of a trust agreement or trust indenture authorized by  
13 resolution of the authority, may delegate to an officer or other  
14 employee of the authority, or an agent designated by the authority,  
15 for the period of time as the authority determines, the power to  
16 cause the issue, sale, and delivery of the bonds within limits on  
17 those bonds established by the authority as to any of the  
18 following:

19 (a) The form.

20 (b) The maximum interest rate or rates.

21 (c) The maturity date or dates.

22 (d) The purchase price.

23 (e) The denominations.

24 (f) The redemption premiums.

25 (g) The nature of the security.

26 (h) The selection of an applicable interest rate index.

27 (i) Other terms and conditions with respect to the issuance of

1 the bonds as the authority shall prescribe.

2       Sec. 9. Notwithstanding any restriction contained in any other  
3 law, rule, regulation, or order to the contrary, this state and all  
4 political subdivisions of this state, their officers, boards,  
5 commissioners, departments or other agencies, governmental pension  
6 funds, all banks, trust companies, savings banks and institutions,  
7 building and loan associations, savings and loan associations,  
8 investment companies and other persons carrying on a banking or  
9 investment business, and all executors, administrators, guardians,  
10 trustees and other fiduciaries, and all other persons whatsoever  
11 who now are or may hereafter be authorized to invest in bonds or  
12 other obligations of the state, may properly and legally invest any  
13 sinking funds, money or other funds, including capital, belonging  
14 to them or within their control, in any bond. Bonds issued by the  
15 authority under this act are hereby made bonds that may properly  
16 and legally be deposited with, and received by, any state municipal  
17 officers or agency of this state, for any purpose for which the  
18 deposit of bonds or other obligations of this state is now, or may  
19 be, authorized by law.

20       Sec. 10. The authority may be dissolved by act of the  
21 legislature on condition that the authority has no debts or  
22 obligations outstanding or that provision has been made for the  
23 payment or retirement of all debts or obligations. Upon any such  
24 dissolution of the authority, all property, funds, and assets of  
25 the authority shall be vested in this state.

26       Sec. 11. This act and all powers granted hereby shall be  
27 liberally construed to effectuate its intent and their purposes,

1 without implied limitations on the powers of the authority, the  
2 state budget director, and the state treasurer. This act shall  
3 constitute full, complete, and additional authority for all things  
4 that are contemplated in this act to be done. All rights and powers  
5 granted in this act shall be cumulative with those derived from  
6 other sources and shall not, except as expressly stated in this  
7 act, be construed in limitation of those rights and powers. Insofar  
8 as the provisions of this act are inconsistent with the provisions  
9 of any other act, general or special, the provisions of this act  
10 shall be controlling. If any clause, paragraph, section, or part of  
11 this act is adjudged by any court of competent jurisdiction to be  
12 invalid, that judgment shall not affect, impair, or invalidate the  
13 remainder of the clause, paragraph, section, or part but shall be  
14 applied in its operation to the clause, sentence, paragraph,  
15 section, or part directly involved in the controversy in which the  
16 judgment shall have been rendered.

17       Sec. 12. (1) The authority shall annually file a written  
18 report on its activities of the immediately preceding year with the  
19 governor, each house of the legislature, and the chairperson of the  
20 appropriations subcommittee of each house of the legislature that  
21 has jurisdiction over military and veterans' affairs. This report  
22 shall be submitted not later than 90 days following the end of the  
23 fiscal year. This report shall specify all of the following:

24       (a) The status of development of each veterans' facility.

25       (b) A statement whether a veterans' facility will likely be  
26 opening in the next fiscal year.

27       (c) The census of each veterans' facility.

1 (d) Accounting of all revenues received and expended.

2 (e) Statistics on veterans who resided in each veterans'  
3 facility.

4 (f) Recommendations for improvements at each veterans'  
5 facility.

6 (g) Salaries and benefits costs of all staff positions within  
7 the authority and at all veterans' facilities.

8 (h) Any other matters the board considers pertinent.

9 (2) If the authority indicates that a veterans' facility will  
10 likely be opening in the next fiscal year under subsection (1)(a),  
11 then the authority shall file a supplemental report on its  
12 activities every 90 days until the veterans' facility is open and  
13 operational. The supplemental report shall be filed with the  
14 governor, each house of the legislature, and the chairperson of the  
15 appropriations subcommittee of each house of the legislature that  
16 has jurisdiction over military and veterans' affairs not later than  
17 60 days following the 90-day period covered in the supplemental  
18 report. The supplemental report shall specify all the items  
19 described in subsection (1)(a) to (g).

20 (3) The accounts of the authority shall be subject to annual  
21 audits by the state auditor general or a certified public  
22 accountant appointed by the auditor general. However, for the first  
23 4 years of the authority's existence, the auditor general shall  
24 conduct a financial audit for the first year and biennially  
25 thereafter and shall conduct a performance audit for the second  
26 year and biennially thereafter. After the initial 4-year period of  
27 the authority's existence, the auditor general shall perform a

1 performance audit if a veterans' facility receives a Centers for  
2 Medicare and Medicaid Services survey finding that indicates a  
3 substandard quality of care as defined in 42 CFR 488.301, upon  
4 request by either house of the legislature, or as otherwise  
5 determined by the auditor general. Records shall be maintained  
6 according to generally accepted auditing principles.