

# MICHIGAN FAMILY FARM DEVELOPMENT ACT

## Act 220 of 1982

AN ACT to create a Michigan family farm development authority; to define the powers and duties of the authority; to authorize the making and purchase of loans, deferred payment loans, and grants to certain qualified beginning farmers; to provide tax exemptions; to provide for the issuance and purchase of notes and bonds; to provide for the establishment of funds; and to prescribe criminal penalties.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

*The People of the State of Michigan enact:*

### 285.251 Short title.

#### Sec. 1.

This act shall be known and may be cited as the "Michigan family farm development act".

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### 285.252 Definitions; rules.

#### Sec. 2.

(1) As used in this act:

(a) "Agricultural land" means land suitable for use in farming.

(b) "Agricultural improvements" means any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

(c) "Authority" means the Michigan family farm development authority established in section 3.

(d) "Beginning farmer" means an individual with a low or moderate net worth who engages in farming or wishes to engage in farming.

(e) "Bonds" means bonds issued by the authority pursuant to this act.

(f) "Depreciable agricultural property" means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the internal revenue code.

(g) "Farming" means the cultivation of land for the production of agricultural crops and includes the production of poultry and poultry products, the production of livestock including breeding and grazing, the production of grains and feeds, the production of forages and sod, the production of dairy products, the production of fruits and vegetables, the production of timber and timber products, the production of seeds and grasses, and the production of equine.

(h) "Low or moderate net worth" means an aggregate net worth of an individual and the individual's spouse and children, if any, of less than \$250,000.00.

(i) "Mortgage" means a mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

(j) "Mortgage lender" means a state or national bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans in this state.

(k) "Mortgage loan" means a financial obligation secured by a mortgage.

(l) "Net worth" means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's net worth.

(m) "Note" means a note issued by the authority pursuant to this act.

(n) "Secured loan" means a financial obligation secured by a lien on an interest in depreciable agricultural property.

(2) The authority may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to establish further definitions applicable to this act and clarification of the definitions in this section, as necessary to assure eligibility for funds, insurance, or guarantees available under federal law, and to carry out the purposes of this act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.253 Michigan family farm development authority; creation; purpose; appointment, qualifications, and terms of members; expenses; certificate of appointment or reappointment; powers; actions by authority; quorum; findings of fact; conducting business at public meeting; notice of meeting; chairperson and vice-chairperson; officers, agents, and employees; delegation of powers and duties.**

**Sec. 3.**

(1) The Michigan family farm development authority is created within the department of agriculture. The authority is created to establish and administer programs which assist beginning farmers in purchasing agricultural land, agricultural improvements, and depreciable agricultural property for the purpose of farming. The authority shall consist of the director of the department of agriculture, the director of the department of commerce, the state treasurer, and 4 public persons, 3 of which are practicing farmers and 1 who is a director or a member of the board of directors of a state or federally regulated financial institution and who has experience in agricultural financing, appointed by the governor with the advice and consent of the senate. Not more than 2 of the public persons appointed shall be members of the same political party. Of the members first appointed by the governor, 2 shall be designated to serve for a term of 3 years and 2 for a term of 4 years from the dates of their appointments. Upon completion of each term, a person shall be appointed for a term of 4 years, except that a vacancy shall be filled for the unexpired term. A member of the authority shall not receive compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the member's duties. A member shall hold office until a successor has been appointed and has qualified. A certificate of appointment or reappointment of a member shall be filed with the authority and this certificate shall be conclusive evidence of the proper appointment of that member.

(2) The powers of the authority shall be vested in the members in office. Four members of the authority shall constitute a quorum for the purpose of conducting the authority's business, for exercising the authority's powers, and for other purposes. Action may be taken by the authority upon a vote of a majority of the quorum of the authority, unless the bylaws of the authority require a larger number. In the absence of fraud, a determination of the authority with respect to findings of fact made by the authority acting within the scope of its powers shall be conclusive, except with respect to the approval of the municipal finance commission as required by law. Meetings of the members of the authority may be held anywhere in this state. The business which the authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(3) The authority shall elect a chairperson and vice-chairperson. The authority shall employ an executive director, legal and technical experts, and other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The authority may delegate to 1 or more agents or employees those powers or duties the authority considers proper.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.254 Performance of duties, implementation of powers, and selection of programs and projects; principles.**

Sec. 4.

In the performance of its duties, the implementation of its powers, and the selection of specific programs and projects to receive its assistance, the authority shall comply with all of the following principles:

(a) The authority shall not become an owner of agricultural land, agricultural improvements, or depreciable agricultural property, except that the authority may own agricultural land, agricultural improvements, or depreciable agricultural property on a temporary basis if necessary to implement its programs, to protect its investments by means of foreclosure or other means, or to facilitate transfer of agricultural land, agricultural improvements, and depreciable agricultural property for the use of beginning farmers.

(b) The authority shall exercise diligence and care in the selection of projects to receive its assistance and shall apply customary and acceptable business and lending standards in the selection and subsequent implementation of those projects. The authority may delegate primary responsibility for determination and implementation of the projects to an agency of the federal government if that agency assumes an obligation to repay the loan, either directly or by insurance or guarantee.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.255 Powers of authority generally.**

Sec. 5.

The authority shall possess all powers necessary or convenient to carry out this act, including all the following powers and other powers granted by other provisions of this act:

(a) To sue and to be sued; to have a seal and to alter the seal at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to hold and possess real and personal property; and to make, amend, and repeal bylaws and rules.

(b) To undertake and carry out, in cooperation with other state agencies and local units of government, studies and analyses of family farms and beginning farmers within this state and ways of meeting the needs of family farms and beginning farmers, including data with respect to population and family groups and the distribution of population and family groups according to income, the amount and quality of available agricultural land and its distribution, and other factors affecting family farms and beginning farmers and the meeting of the needs of family farms and beginning farmers; to make the results of those studies and analyses available to the public and the agricultural industry; to engage in research; and disseminate information on farming.

(c) To agree and comply with conditions attached to federal financial assistance.

(d) To establish and collect fees and charges in connection with the sale of the authority's publications and the authority's loans, commitments, and servicing, including the reimbursement of costs of financing by the authority and service charges; and to use any accumulated fees, charges, and interest income for achieving any of the corporate purposes of the authority, to the extent that the fees, charges, and interest income are not pledged to the repayment of bonds and notes of the authority or the interest on those bonds and notes.

(e) To make loans, which are unsecured or the repayments of which are secured by mortgages, security interests, or other forms of security; to participate in making of unsecured or secured loans and undertake commitments to make unsecured or secured loans; to sell mortgages and security interests at public or private sale; to modify or alter mortgages and security interests; to foreclose on a mortgage, security interest, or other form of security; to commence an action to protect or enforce a right conferred upon the authority by law, mortgage, security agreement, contract, or other agreement; to bid for and purchase property which was the subject of the mortgage, security interest, or other form of security, at a foreclosure or at any other sale, and to acquire or take possession of the property. Upon acquiring or taking possession of the property, the authority may complete, administer, and pay the principal and interest of obligations incurred in connection with the property, and may dispose of and otherwise deal with the property in any manner necessary or desirable to protect the interests of the authority in the property. Property acquired by the authority through foreclosure shall be offered by the authority for sale within 6 months after the authority has a right to possession of the property and shall be sold by the authority only for farming or other agricultural purposes.

(f) To set standards for family farms or beginning farmers which receive loans under this act and to provide for inspections to determine compliance with those standards.

(g) To accept gifts, grants, loans, appropriations, or other aid from the federal, state, or local government, from

a subdivision, agency, or instrumentality of a federal, state, or local government, or from a person, corporation, firm, or other organization.

(h) As provided in section 4(a), to acquire or contract to acquire from a person, firm, corporation, municipality, or federal or state agency, by grant, purchase, or otherwise, leaseholds or real or personal property, or any interest in a leasehold or real or personal property; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber any interest in a leasehold or real or personal property. This act shall not impede the operation and effect of local zoning, building, and housing ordinances; ordinances relating to subdivision control, land development, or fire prevention; or other ordinances having to do with agricultural land, farming, or the development of farming.

(i) To procure insurance against any loss in connection with the property and other assets of the authority.

(j) To invest, at the discretion of the authority, funds held in reserve or sinking funds, or money not required for immediate use or disbursement in obligations of this state or of the United States, in obligations the principal and interest of which are guaranteed by this state or the United States, or in other obligations as may be approved by the state treasurer.

(k) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, except that in addition to the notice requirements of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, the authority shall furnish to each member of the legislature a copy of notice of a public hearing on proposed rules or proposed rule changes at least 10 days before the public hearing.

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

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**Admin Rule:** R 285.2101 et seq. of the Michigan Administrative Code.

## **285.256 Annual report.**

### **Sec. 6.**

(1) The authority shall submit to the governor, the speaker of the house of representatives, and the majority leader of the senate not later than January 15 of each year, a complete report on the activities of the authority. The report shall include all of the following:

(a) A description of its operations and accomplishments.

(b) An accounting of its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

(c) An accounting of its assets and liabilities at the end of its fiscal year and the status of reserve, special, and other funds.

(d) A schedule of the bonds and notes outstanding at the end of its fiscal year and a statement of the amounts redeemed and issued during its fiscal year.

(e) A statement of its proposed and projected activities.

(f) Recommendations to the legislature.

(g) An analysis of beginning farmer needs in the state.

(2) The annual report shall identify the performance goals of the authority and clearly indicate the progress made to attain those goals during the reporting period. If possible, results shall be expressed in terms of number of loans and acres of agricultural land.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

## **285.257 Use of surplus money.**

### **Sec. 7.**

Money declared by the authority to be surplus money which is not required to service bonds and notes, to pay

administrative expenses of the authority, or to accumulate necessary operating or loss reserves shall be used by the authority to provide loans, grants, subsidies, and services to beginning farmers through any of the programs initiated by the authority pursuant to this act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.258 Combining program with other state or federal programs.**

Sec. 8.

A program authorized by this act may be combined with any other state or federal program in order to facilitate the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property by beginning farmers.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.259 Beginning farmer loan program; development; exercise of powers by authority; participation in federal and state programs; requirements for providing loan to beginning farmer; acceleration of loan; assumption of mortgage; transfer of interest; participation interest in mortgage loan.**

Sec. 9.

(1) The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this act to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property. The authority may participate in and cooperate with programs of the farmers home administration, federal land bank, or other agency or instrumentality of the federal government, or with any program of another state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this act.

(2) The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if all of the following are satisfied:

(a) The beginning farmer is a resident of this state.

(b) The agricultural land, agricultural improvements, or depreciable agricultural property the beginning farmer proposes to purchase will be located in this state.

(c) The beginning farmer has sufficient education, training, ability, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. The authority shall give preference to beginning farmers that have on-farm experience.

(d) The authority is financing the acquisition by that beginning farmer of agricultural land and agricultural improvements totaling not more than \$400,000.00 in value or of depreciable agricultural property totaling not more than \$125,000.00 in value.

(e) If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock to commence or continue farming. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land to commence or continue farming.

(f) The beginning farmer has a low or moderate net worth.

(g) If the loan is for the acquisition of agricultural land, the beginning farmer executes, at the time of closing on the loan, an application for enrollment of the land in part 361 (farmland and open space preservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.36101 to 324.36117 of the Michigan Compiled Laws.

(h) The agricultural land and agricultural improvements will only be used for farming by the beginning farmer or his or her family.

(i) The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought, except that this restriction shall not apply if the

amount previously received plus the amount of the loan sought does not exceed \$400,000.00 in the case of agricultural land and improvements or \$125,000.00 in the case of depreciable agricultural property.

(j) Other criteria as the authority prescribes by rule.

(3) The authority may include in a mortgage or secured loan made or purchased pursuant to this act a provision that allows the authority, at its option, to accelerate and declare immediately due and payable all sums secured by the authority's lien or security interest if all or a part of the agricultural land, agricultural improvements, or depreciable agricultural property securing the loan is leased, sold, or otherwise transferred. The authority may provide by rule the standards for permitted assumptions of a mortgage or for the lease, sale, or other transfer of an interest in the agricultural land, agricultural improvement, or depreciable agricultural property. However, the authority shall include in a mortgage or secured loan a provision that allows the authority to raise the interest rate of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan.

(4) The authority may participate in any interest in a mortgage loan made or purchased pursuant to this act with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage loan retained by the authority, equally and ratably secured by the mortgage securing the mortgage loan.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1996, Act 61, Imd. Eff. Feb. 26, 1996

#### **285.260 Making, purchasing, or participating in loans, grants, or deferred payment loans to beginning farmers; secured or unsecured loans and grants; insurance; interest rate; terms and conditions; rules.**

##### **Sec. 10.**

(1) The authority may make, purchase, or participate in loans, grants, or deferred payment loans to beginning farmers to finance the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property.

(2) A loan under this section may be secured or unsecured as determined by the authority. If the loan is unsecured, it shall be accepted for insurance under the national housing act, 12 U.S.C. 1701 to 1750g, or another federal or private insurance program providing coverage at least equal to that provided by that act. A loan under this section shall bear interest at a rate and be repaid in the period, not exceeding 20 years, as may be determined by the authority and under additional terms and conditions as may be determined by the authority.

(3) A deferred payment loan or grant may be secured or unsecured as determined by the authority, and shall be made under additional terms and conditions determined by the authority.

(4) In recognition of the need for loans, grants, and deferred payment loans in all geographic areas of the state, the authority shall promulgate rules which provide for the availability of loans, grants, and deferred payment loans on an equitable basis to qualified applicants in all geographic areas of this state.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.261 Loans to mortgage lenders; requirements and conditions.**

##### **Sec. 11.**

(1) The authority may make and contract to make loans to mortgage lenders on terms and conditions it determines are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this act. Mortgage lenders are authorized to borrow from the authority pursuant to this section and the rules promulgated by the authority.

(2) The authority shall require as a condition of a loan to a mortgage lender that the mortgage lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, enter into written commitments to make and, within a reasonable period thereafter as the authority prescribes by rule, disburse the loan proceeds in new mortgage or secured loans to beginning farmers in an aggregate principal amount of not less than the amount of the loan. New mortgage or secured loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this act. The authority shall require a mortgage lender to which the authority has made a loan to submit evidence satisfactory to the authority

that the mortgage lender has made new mortgage or secured loans to beginning farmers as required by this section. To assure compliance with this section, the authority may, through its members, employees, or agents, inspect the books and records of a mortgage lender. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority.

(3) The authority shall require that a mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date, mature at a time, be subject to prepayment, and contain other provisions consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

(4) The interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due. In addition, the authority may require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in amounts and forms as the authority by resolution determines to be necessary to assure the payment of the loans and the interest as they become due. Collateral security shall consist of any of the following:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Investment quality obligations approved by the authority.

(5) The authority may require that collateral for loans be deposited with a bank, trust company, or other financial institution acceptable to the authority located in this state and designated by the authority as custodian. In the absence of that requirement, each mortgage lender shall enter into an agreement with the authority containing provisions the authority considers necessary to adequately identify and maintain the collateral, service the collateral, and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from the collateral. The authority may also establish additional requirements it considers necessary with respect to the pledging, assigning, setting aside, or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from the collateral.

(6) The authority may require as a condition of a loan to a mortgage lender any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

(7) The authority may require the beginning farmer to satisfy conditions and requirements normally imposed by mortgage lenders in making similar loans, including the purchase of capital stock in the federal land bank.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.262 Purchasing mortgage or secured loans from mortgage lenders; commitment to purchase; requirements and conditions.**

##### **Sec. 12.**

(1) The authority may purchase and make advance commitments to purchase mortgage or secured loans from mortgage lenders at prices and upon terms and conditions the authority determines. However, the total purchase price for all mortgage or secured loans which the authority commits to purchase from a mortgage lender at any 1 time shall not exceed the total of the unpaid principal balances of the mortgage or secured loans purchased. Mortgage lenders are authorized to sell mortgage or secured loans to the authority in accordance with the provisions of this section and the rules promulgated by the authority.

(2) The authority shall require as a condition of purchase of mortgage or secured loans from mortgage lenders that the mortgage lenders certify that the mortgage or secured loans purchased are loans made to beginning farmers. Mortgage or secured loans to be made by mortgage lenders shall have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage or secured loans from mortgage lenders in advance of the time the loans are made by mortgage lenders. The authority shall require as a

condition of a commitment that mortgage lenders certify in writing that all mortgage or secured loans represented by the commitment will be made to beginning farmers and that the mortgage lender will comply with other authority specifications.

(3) The authority shall require a mortgage lender from which the authority has purchased loans to submit evidence satisfactory to the authority that the mortgage lender has made mortgage or secured loans to beginning farmers as required by this section. To assure compliance with this section, the authority may, through its members, employees, or agents, inspect the books and records of a mortgage lender. The authority may also require, as a condition of the purchase of mortgage or secured loans from a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority.

(4) The authority may require as a condition of purchase of a mortgage or secured loan from a mortgage lender that the mortgage lender make representations and warranties as required by the authority. A mortgage lender is liable to the authority for damages suffered by the authority by reason of a false representation or the breach of a warranty by the mortgage lender and, in the event that a representation proves to be false or a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage or secured loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

(5) The authority shall require the recording with the appropriate register of deeds of any assignment of a mortgage loan purchased by it from a mortgage lender and is not required to notify the mortgagor of its purchase of the mortgage loan. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased enters into a contract to service the mortgage loan and account to the authority for the mortgage loan.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.263 Bonds and notes; general obligations; negotiability; issuance subject to agency financing reporting act.**

##### **Sec. 13.**

(1) The authority may issue its negotiable bonds and notes in a principal amount, which in the opinion of the authority is necessary to provide sufficient funds for achieving its corporate purposes, the payment of interest on bonds and notes of the authority, the establishment of reserves to secure bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The authority may issue renewal notes, issue bonds to pay notes, and if it determines refunding expedient, refund bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

(4) Whether or not the notes or bonds are of a form or character as to be negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the notes or bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes or bonds for registration.

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

(6) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1983, Act 68, Imd. Eff. May 31, 1983 ;-- Am. 2002, Act 381, Imd. Eff. May 24, 2002

#### **285.264 Bonds and notes; authorization; requirements; sale.**

##### **Sec. 14.**

The notes and bonds shall be authorized by resolution of the members of the authority; shall bear a date or dates; and shall mature at a time or times, in the case of any note, or any renewal of a note, not exceeding 10 years, from the date of issue of the original note, and in the case of any bond not exceeding 50 years from the date of issue, as the resolution may provide. The notes and bonds shall bear interest at a rate or rates; be in such denominations; be in a form, either coupon or registered; carry such registration privileges; be executed in a manner; be payable in a medium of payment; at a place or places; and be subject to terms of redemption as the resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at a price or prices as the authority shall determine.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.265 Resolution authorizing notes or bonds; provisions.**

##### **Sec. 15.**

A resolution authorizing notes or bonds or an issue of notes or bonds may contain provisions, which shall be a part of the contract with the holders of the notes or bonds, as to:

- (a) Pledging all or any part of the fees and charges made or received by the authority, and all or any part of the money received in payment of mortgage or secured loans and interest on the loans, and other money received or to be received, to secure the payment of the notes or bonds or of any issue of the notes or bonds, and subject to the agreements with bondholders or noteholders as may then exist.
- (b) Pledging all or any part of the assets of the authority, including mortgages and obligations securing mortgages, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to the agreements with noteholders or bondholders as may then exist.
- (c) Pledging of any loan, grant, or contribution from the federal, state, or local government, or source in aid of such development as provided for in this act.
- (d) The use and disposition of the gross income from mortgages or secured loans owned by the authority and payment of principal of mortgages or secured loans owned by the authority.
- (e) The setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds.
- (f) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging those proceeds to secure the payment of the notes or bonds or of any issue of notes or bonds.
- (g) Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds.
- (h) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds of the holders of which must consent to the amendment or abrogation, and the manner in which that consent may be given.
- (i) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to this act and limiting or abrogating the right of the bondholders to appoint a trustee under this section or limiting the rights, powers, and duties of the trustee.
- (j) Any other matters, of like or different character, which affect the security or protection of the notes or bonds.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.266 Pledge by authority; validity; lien; recording of resolution or instrument not required.**

##### **Sec. 16.**

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of that pledge without any physical delivery of the lien or further act; and the lien of the pledge shall be valid and binding as against all parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.267 Personal liability on note or bond of authority.**

Sec. 17.

The members of the authority or a person who executes a note or bond shall not be liable personally on the note or bond or be subject to any personal liability or accountability by reason of the issuance of the note or bond.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.268 Purchase and cancellation of notes or bonds by authority; price.**

Sec. 18.

The authority, subject to the agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be canceled, at a price not exceeding (a) the redemption price then applicable plus accrued interest to the next interest payment date thereon, if the notes or bonds are then redeemable, or (b) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, if the notes or bonds are not redeemable.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.269 Nonliability of state on notes or bonds of authority; statement.**

Sec. 19.

The state shall not be liable on notes or bonds of the authority and the notes and bonds shall not be a debt of the state. The notes and bonds shall contain on the face of the notes or bonds a statement to that effect.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.270 Capital reserve funds.**

Sec. 20.

(1) The authority shall create and establish 1 or more special funds to secure notes and bonds of the authority, referred to in this act as capital reserve funds. The authority shall pay into a capital reserve fund money appropriated and made available by this state for the purposes of the fund; the proceeds of the sale of notes or bonds, to the extent provided in the resolution of the authority authorizing the issuance of the notes or bonds; and other money which is made available to the authority for the purpose of a fund from any other source. All money held in any capital reserve fund, except as specifically provided, shall be used as required solely for the payment of the principal of bonds of the authority secured in whole or in part by the capital reserve fund, for the purchase or redemption of bonds, for the payment of interest on the bonds, or for the payment of a redemption premium required to be paid when the bonds are redeemed prior to maturity. However, the authority shall not use the money

for an optional purchase or optional redemption of bonds if that use would reduce the amount of money on deposit in a capital reserve fund to less than the capital reserve fund requirements established for the fund. Any income or interest earned by, or increment to, a capital reserve fund due to the investment of the money in the capital reserve fund may be transferred by the authority to other funds or accounts of the authority to the extent that the transfer does not reduce the amount of a capital reserve fund below the capital reserve fund requirement for a fund.

(2) The authority shall not issue bonds secured in whole or in part by a capital reserve fund if, upon the issuance of the bonds, the amount in the capital reserve fund would be less than the capital reserve fund requirement for the fund, unless the authority, at the time of issuance of the bonds, deposits in the fund from the proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in the fund, is not less than the capital reserve fund requirement for the fund. As used in this section, "capital reserve fund requirement" means the requirement provided in the resolution of the authority authorizing the bonds with respect to which the fund is established, which amount shall not exceed the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on the bonds of the authority secured in whole or in part by the fund.

(3) The authority shall not have outstanding at any time bonds and notes for its corporate purposes in an aggregate principal amount exceeding \$100,000,000.00, excluding bonds and notes issued to refund outstanding bonds and notes.

(4) In computing the amount of a capital reserve fund for the purposes of this section, securities in which all or a portion of the fund is invested shall be valued at par. If the securities are purchased at other than par, the securities may be valued at their cost to the authority, as adjusted by amortization of the discount or premium paid upon purchase of the securities on a pro rata basis to the maturity date of the securities.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.271 General reserve fund.**

##### **Sec. 21.**

The authority shall create and establish a special fund, referred to as a general reserve fund, and, subject to agreements with bondholders and noteholders, shall pay into the fund all fees and charges collected by the authority on loans made from and mortgages acquired with the proceeds of the sale of bonds and any money which the authority transfers from the capital reserve fund. That money and any other money paid into the general reserve fund, in the discretion of the authority but subject to agreements with bondholders and noteholders, may be used by the authority for any of the following:

(a) For the repayment of advances from the state in accordance with the provisions of repayment agreements between the authority and the director of the department of management and budget.

(b) To pay all costs, expenses, and charges of financing, including fees and expenses of trustees and paying agents.

(c) For transfers to the capital reserve fund.

(d) For the payment of the principal of and interest on bonds or notes issued by the authority when they shall become due whether at maturity or on call for redemption and for the payment of a redemption premium required to be paid if the bonds or notes are redeemed prior to their stated maturities, and to purchase bonds or notes.

(e) For other corporate purposes of the authority as the authority in its discretion shall determine and provide.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.272 Pledge and agreement of state with holders of notes or bonds.**

##### **Sec. 22.**

The state pledges and agrees with the holders of any notes or bonds issued under this act, that the state will not limit or alter the rights vested in the authority to fulfill the terms of an agreement made with the holders of the notes or bonds, or impair the rights and remedies of the holders until the notes or bonds, together with the interest on the notes or bonds, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to

include this pledge and agreement of the state in an agreement with the holders of notes or bonds.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.273 Default by authority; appointment and powers of trustee; notice by trustee.**

**Sec. 23.**

(1) If the authority defaults in the payment of principal of or interest on an issue of notes or bonds after the notes or bonds become due, whether at maturity or upon call for redemption, and that default continues for a period of 30 days, or if the authority fails or refuses to comply with the provisions of this act, or defaults on an agreement made with the holders of an issue of notes or bonds, the holders of 25% in aggregate principal amount of the notes or bonds of the issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Ingham and approved or acknowledged in the same manner as a deed to be recorded, may appoint 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 25% in principal amount of the notes or bonds then outstanding shall, in the trustee's own name:

(a) By civil action or administrative proceeding, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect fees and charges and interest and amortization payments on mortgages or secured loans made by it adequate to carry out any agreement as to, or pledge of, such fees and charges and interest and amortization payments on mortgages or secured loans and other properties and to require the authority to carry out any other agreements with the holders of the notes or bonds and to perform its duties under this act.

(b) Bring a civil action upon the notes or bonds.

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

(e) Declare all the notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of 25% of the principal amount of the notes or bonds then outstanding, to annul that declaration and its consequences.

(3) The trustee, in addition to the powers granted in subsection (2), shall have and possess all of the powers necessary or appropriate for the exercise of a function specifically provided 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 pursuant to this section, the trustee shall first give 30 days' notice in writing to the governor, to the authority, and to the attorney general of this state.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.274 Depositing money of authority in bank or savings and loan association; security; contracting with holders of notes or bonds for certain purposes; system of accounts; operating expenditures; audit.**

**Sec. 24.**

(1) All money of the authority shall be held by the authority and deposited in a state bank, national bank, or a state or federally chartered savings and loan association approved by the state treasurer. All deposits of money that are not fully insured by an agency of the United States shall, if required by the state treasurer or the authority, be secured by obligations of the United States, an agency of the United States, or obligations of this state or a local unit of government in this state, of a market value equal to the uninsured amount of the deposit. A state bank, national bank, or a state or federally chartered savings and loan association may give security for the deposits.

(2) The authority may, subject to the approval of the state treasurer, contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of money of the authority, of any money held in trust or otherwise for the payment of notes or bonds, and to carry out the contract. Money held in trust or otherwise for the payment of notes or bonds or to secure notes or bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies may give security for the deposits.

(3) Subject to agreements with noteholders and bondholders, the authority shall prescribe a system of accounts.

(4) The authority may spend for operating purposes those funds appropriated to it annually by the legislature for operating purposes or as otherwise authorized. The authority is subject to audit by the auditor general or an independent public accounting firm appointed by the auditor general.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1992, Act 56, Imd. Eff. May 20, 1992

#### **285.275 Notes and bonds of authority as securities; investment.**

Sec. 25.

The notes and bonds of the authority are securities in which all public officers and bodies of the state and all local units of government, all insurance companies and associations, and other persons carrying on an insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.276 Recommending issuance of faith and credit bonds to legislature.**

Sec. 26.

The authority from time to time at its discretion may recommend an issuance of faith and credit bonds to the legislature for a vote of the people.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.277 Tax exemptions.**

Sec. 27.

The property of the authority and its income and operation shall be exempt from all taxation by the state or any of its political subdivisions and all bonds and notes of the authority shall be exempt from all taxation by the state or any of its political subdivisions.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.278 Covenant by state with purchasers, holders, and transferees of notes and bonds concerning tax exemptions.**

Sec. 28.

The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the authority, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds

of the authority issued pursuant to this act and the income from notes and bonds and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received, pledged to pay or secure the payment of the notes or bonds shall be free and exempt from all state, city, county, or other taxation provided by the laws of the state, except for estate and gift taxes and taxes on transfers.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.279 Prohibited conduct; violation; penalties; determination of total value; prior convictions; "proceeds" defined; prohibition.**

Sec. 29.

(1) A person shall not, with the intent to defraud or cheat and designedly by false pretenses, including false statement or representation, obtain money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service provided under this act, including participation in a program established under this act.

(2) A person who violates this section is guilty of a crime as follows:

(a) If the value of the proceeds is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

(3) The values of proceeds obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of proceeds obtained.

(4) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(5) As used in this section, "proceeds" means money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service obtained in violation of subsection (1).

(6) If the sentence for a conviction under this section is enhanced by 1 or more convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of

chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 2001, Act 132, Eff. Jan. 1, 2002