

Act No. 416
Public Acts of 2000
Approved by the Governor
January 8, 2001
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator Emmons

ENROLLED SENATE BILL No. 959

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 the 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; and to grant powers and impose duties on officers and agencies of the state, political subdivisions of the state, and water suppliers," by amending the title and sections 1, 3, 5, 6, 7, 8, 16, and 20 (MCL 141.1051, 141.1053, 141.1055, 141.1056, 141.1057, 141.1058, 141.1066, and 141.1070), the title and sections 3 and 8 as amended by 1997 PA 27, section 7 as amended by 2000 PA 118, and section 20 as amended by 1988 PA 316; and to repeal acts and parts of acts.

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 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.

Sec. 1. The legislature finds and declares the following:

(a) It is in the public interest and it is the policy of the state to foster and promote borrowing of money by governmental units within the state for financing public improvements, for financing community water supplies and noncommunity water supplies, and for financing other municipal purposes from proceeds of bonds or notes issued by those governmental units; to assist those governmental units in fulfilling their needs for those purposes by creation of indebtedness; to provide for the orderly marketing of municipal obligations; and to the extent possible, to encourage continued investor interest in the bonds or notes of those governmental units as sound and preferred securities for investment.

(b) It is in the public interest and it is the policy of this state to encourage governmental units within this state to continue their independent undertakings of public improvements, community water supplies and noncommunity water supplies, and new municipal purposes and the financing for them, and to assist the governmental units by making money available for orderly financing of public improvements, community water supplies and noncommunity water supplies, and other municipal and governmental purposes.

(c) Credit and municipal bond market conditions require the exercise of the powers of this state in the interest of its governmental units to further and implement such policies by authorizing the Michigan municipal bond authority to have full powers to borrow money and to issue its bonds and notes to make money available through the Michigan municipal bond authority at reduced rates or on more favorable terms for borrowing by the state's governmental units through the purchase of the obligations of the governmental units in fully marketable form and by granting broad powers to the Michigan municipal bond authority to accomplish and to carry out these policies of this state that are in the public interest of this state and of its taxpayers and residents.

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, chapter 758, 101 Stat. 22, 33 U.S.C. 1381 to 1387.

(ii) For the purpose of establishing a state drinking water revolving fund, as provided in section 1452 of part E of title XIV of the public health service act, 42 U.S.C. 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 chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 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 municipal obligation so executed need not be printed or lithographed nor be in more than 1 denomination.

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

(iv) 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 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 section 319 of title III of the federal water pollution control act, 33 U.S.C. 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.

(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 the state clean water assistance act.

(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 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) "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. 5. (1) The authority shall be governed by a board of trustees consisting of the state treasurer, 2 appointees of the governor to serve at the pleasure of the governor who shall be public officials or employees with expertise in the state's infrastructure needs, and through December 31, 2000, 5 residents of this state to be appointed by the governor with the advice and consent of the senate. Beginning January 1, 2001, the board shall have 4 residents of this state appointed by the governor with the advice and consent of the senate. Of the residents appointed by the governor, 1 shall be appointed from 1 or more nominees of the speaker of the house of representatives and 1 shall be appointed from 1 or more nominees of the majority leader of the senate. A trustee shall serve a term of 3 years. In appointing the initial resident members of the board, the governor shall designate 1 to serve for 3 years, 1 to serve for 2 years, and 2 to serve for 1 year.

(2) Upon appointment, a member of the board shall enter office and exercise the duties of office. A member of the board shall qualify by taking and filing the constitutional oath of office.

(3) Regardless of the cause of a vacancy, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A member of the board shall hold office until a successor has been appointed and has qualified.

(4) The board shall organize and make its own rules of procedure. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A majority of the members of the board appointed and serving shall constitute a quorum for the transaction of business. An action of the board shall require a concurring vote by a majority of the members present at the meeting. A state officer who is a member of the board may designate a representative from his or her department to serve instead of that state officer as a member of the board for 1 or more meetings.

Sec. 6. (1) The state treasurer is the chairperson of the board. The authority may employ an executive director, legal and technical experts, and other officers, agents, or employees, permanent or temporary. The authority shall determine the qualifications, duties, and compensation of those it employs. The authority may delegate to 1 or more agents or employees any powers or duties as the authority considers proper.

(2) The authority shall be within the department of treasury and shall exercise the authority's prescribed statutory powers, duties, and functions independently of the state treasurer. However, the budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the state treasurer. The costs of providing these and any other departmental services shall be paid for from authority revenues to the extent these services are not otherwise authorized by law.

(3) The authority shall annually make a written report available to the public on its activities. This report shall specify obligations of municipalities it has purchased, the amount of authority obligations outstanding, the amount of authority obligations issued, and a description of each issuance specifying the rate, term, and an analysis of market performance.

(4) The accounts of the authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general.

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, 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.

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 the provisions of 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 or 16b, 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 1961 PA 108, MCL 388.951 to 388.963. 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.

Sec. 16. (1) The authority may create and establish 1 or more special funds as reserve funds. The authority shall pay into each reserve fund money appropriated and made available by this state for the purpose of that reserve fund, proceeds of the sale of bonds or notes to the extent provided in the resolution or resolutions of the authority authorizing the issuance of the bonds or notes, and any other money that may be available to the authority for the purpose of the reserve fund from any other source. Except as provided in the resolution authorizing the issuance of the bonds or notes, money held in a reserve fund is pledged to, and charged with, the payment of the principal of and the interest on those bonds or notes with respect to which that reserve fund is established, as the principal and interest becomes due, and the redemption price or the purchase price of bonds retired by call or purchase as provided in the resolution. Except as may otherwise be provided in the resolution authorizing the bonds or notes, the reserve fund shall be a fund for all the bonds and notes issued pursuant to a particular resolution without distinction or priority of any bond or note over another.

(2) Except as provided in the resolution authorizing the issuance of the bonds or notes, money in a reserve fund shall not be withdrawn from the reserve fund in an amount that would reduce the amount of that reserve fund to less than the requirement established for that reserve fund, except for the purpose of making, with respect to the bonds or notes secured in whole or in part by that reserve fund, payment when due of principal, interest, redemption premiums, and the sinking fund or mandatory redemption payments, if any, with respect to those bonds or notes for the payment of which other money of the authority is not available. Except as provided in the resolution authorizing the issuance of the bonds or notes, income or interest earned by a reserve fund resulting from the investment of that reserve fund or any other money in the reserve fund may be transferred by the authority to other funds or accounts of the authority to the extent the transfer does not reduce the amount of that reserve fund below the requirements for that reserve fund.

(3) Money in a reserve fund may be invested in the same manner as permitted for investment of funds belonging to this state or held in the state treasury or as provided in the resolution authorizing the bonds or notes for which the reserve fund is established.

(4) An amount appropriated to the authority may be accepted, obligated, and used by the authority to fund 1 or more reserve funds to secure bonds or notes issued by the authority to provide funds to make loans authorized by this act or to purchase municipal obligations issued by school districts, pursuant to 1 or more resolutions of the authority that shall identify the reserve fund or funds as being funded, in whole or in part, with appropriated amounts accepted and obligated under this subsection. By resolution, the authority shall establish a reserve fund requirement with respect to each reserve fund established under this subsection. If at any time a reserve fund requirement established under this subsection exceeds the amount in the reserve fund, an officer of the authority designated in the resolution of the authority establishing the reserve fund shall certify to the state treasurer the amount, if any, necessary to restore the reserve fund to the reserve fund requirement. The state treasurer shall inform the state budget director of the amount, if any, necessary to restore the reserve fund to the certified reserve fund requirement. The authority shall include in the resolutions authorizing the issuance of bonds or notes secured by a reserve fund established by the authority under this subsection, or in a separate agreement, provisions determined by the authority to be necessary or appropriate to implement this subsection.

Sec. 20. This state pledges to and agrees with the holders of bonds or notes issued under this act that this state shall not limit or restrict the rights vested in the authority by this act to do any 1 or more of the following:

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

(b) Make loans to a governmental unit.

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

(d) Fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of authority bonds or notes until the bonds and notes, together with interest on the

bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

Enacting section 1. Section 27 of the shared credit rating act, 1985 PA 227, MCL 141.1077, is repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Sam E. Randall

Clerk of the House of Representatives.

Approved

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Governor.