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SFA BILL ANALYSIS

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Senate Bill 1302 (as enrolled)
Sponsor: Senator Joanne G. Emmons
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 541 of 2002

Date Completed: 1-17-03

CONTENT

The bill amended the Revised Municipal Finance Act to allow the State to investigate if a municipality or a school district fails to make a payment on an outstanding municipal security; allow the State to implement a payment plan, including withholding State payments to the municipality or school district; and prescribe requirements for airport authorities that issue short-term municipal securities. The bill also made other amendments to the Act.

(Public Act 34 of 2001 created the Revised Municipal Finance Act to regulate borrowing by municipalities, and their issuance of securities; repeal the Municipal Finance Act; and prescribe the powers and duties of the Department of Treasury to protect the credit of the State and its municipalities. The Act took effect on March 1, 2002.)

Default on Outstanding Security

The bill provides that if a municipality fails to pay any installment of principal or interest on an outstanding municipal security by its due date, the State Treasurer (for a municipality other than a school district) or the Superintendent of Public Instruction (for a school district) may take action it considers advisable to investigate the municipality's fiscal affairs, may consult with the governing body of the municipality, and may negotiate with the municipality's creditors in order to assist the municipality in developing a plan for financing, adjusting, or compromising the outstanding municipal security.

As a component of a plan for financing the outstanding municipal security, the Department of Treasury may agree and has the power to withhold all or part of State payments under an appropriation made to the municipality, the State Revenue Sharing Act, or the State School Aid Act, that the municipality is entitled to receive. The Department may use the withheld funds to pay unpaid amounts or subsequently due amounts, or both, of principal and interest on the outstanding municipal security.

Upon the development of a plan that the Department finds to be fair and equitable and reasonably within the ability of the municipality to meet, the Department must enter an order finding that it is fair, equitable, and within the ability of the municipality to meet. The Department then must advise the governing body to take the necessary steps to implement the plan. If the governing body declines or refuses to do so within 90 days after receiving the Department's advice, the Department is vested with all powers of the municipality, its governing body, and its officers that are necessary to implement the plan. The members of the governing body and all officers and employees of the municipality then will be under an affirmative duty to do all things the Department determines necessary to implement the plan. The Department may institute appropriate proceedings in State courts, including those for writs of mandamus and injunctions, to enforce the Department's implementation of the plan and compliance with the plan by the governing body and other officers and employees of the municipality.

(Under the Act, a "municipality" is a county, township, city, village, school district, intermediate school district, community college district, metropolitan district, port district, drainage district, district library, or another governmental authority or agency that has the power to issue a security.

"Security" means an evidence of debt such as a bond, note, contract, obligation, refunding obligation, certificate of indebtedness, or other similar instrument issued by a municipality, that pledges payment of the debt by the municipality from an identified source of revenue. A "municipal security" is a security that when issued was not exempt from the Act or the former Municipal Finance Act, by the provisions of the Act or former Act, or by the provisions of the law authorizing its issuance, and that is payable from or secured by any of the following: ad valorem real and personal property taxes; special assessments; the limited or unlimited full faith and credit pledge of the municipality; or other sources of revenue described in the Act for debt or securities.)

Airport Authorities

Under the Act, a municipality may, by resolution of its governing body, and without a vote of the electors, issue short-term municipal securities in anticipation of and payable from taxes to be collected by the municipality for its current or succeeding fiscal year. The bill also allows an airport authority, by resolution of its governing body and without a vote of the electors, to borrow money and issue short-term municipal securities maturing within one year from the date of issue, in anticipation of the collection of revenues that it will be entitled to receive within one year from the date of issuance. The amount of the short-term municipal securities issued must not exceed 50% of the revenues collected in the preceding fiscal year not pledged for the payment of a security, other than a short-term municipal security, as certified by the authority's governing body.

The airport authority's resolution must provide for the pledging of all or a portion of the authority's revenues not previously pledged for the payment of a security, and may provide for the pledging of the authority's other assets as additional security. The resolution also must provide that from the receipts of the revenues in anticipation of which the authority issued the short-term municipal security, there must be set aside in a special fund to be used for the payment of the security's principal and interest a portion of each dollar received that is at least 125% of the percentage that the principal amount of the security bears to the amount certified as the revenues estimated to be collected, until the amount set aside is sufficient for the payment of the principal and interest. The amount set aside must be used only for the payment of the principal and interest on the short-term municipal security until both the principal and interest are paid.

An airport authority's short-term municipal securities authorized under these provisions are subject to the Revised Municipal Finance Act, except when in conflict with Section 9 of Public Act 206 of 1957. (Public Act 206 authorizes two or more counties, cities, villages, or townships jointly to form an airport authority for the purpose of planning, acquiring, constructing, and operating a community airport. Section 9 allows an airport authority to issue short-term notes to meet current expenses for airport operation and maintenance.)

These provisions of the bill apply to airport authorities organized under Public Act 206, or created or incorporated under the Public Airport Authority Act. (That Act prescribes the creation and membership of the Detroit Metropolitan Wayne County Airport, and provides for the incorporation of other airports authorities in local governments that own and operate an airport other than Detroit Metro.)

Municipal Contracts

The Act provides that a municipal security does not include certain instruments listed in the Act. The bill also excludes a contract between one or more municipalities under whose terms one or more municipalities pledge their revenues, or full faith and credit, to secure payment of a proposed municipal security issued by one of the municipalities.

The bill provides that if a municipality issues a municipal security subject to the Act, and the principal and interest for that municipal security will be paid by one or more municipalities not issuing the municipal security under a contract, then one of the following applies:

-- If one or more of the municipalities contracting to pay the municipal security have not been granted qualified status, then the security's issuance is subject to Section 303(7) of the Act. (Under Section 303(7), municipalities that have not been determined by the Department to be qualified to issue municipal securities without further approval, must obtain the prior written approval of the Department to issue a municipal security.)

-- If all of the municipalities contracting to pay the municipal security have been granted qualified status, then the issuance of the security is subject to Section 303(2) of the Act. (Under Section 303(2), a municipality must file a qualifying statement with the Department, with the municipality's annual audit report. If the Department determines that the municipality complies with specified provisions, the municipality may issue municipal securities without further approval from the Department, until the next qualifying statement is due or the Department makes a new determination.)

-- If one or more of the municipalities contracting to pay the municipal security have not been granted qualified status and the other municipalities representing over 50% of the contractual obligation have been granted qualified status, and the municipality that issues the municipal security has been granted qualified status and pledges its full faith and credit on the municipal security, then the issuance of the municipal security is subject to Section 303(2).

<u>Other Provisions</u>

The bill repealed Section 815 of the Act, which exempted from the Act any security that by the terms of the statute that authorized its issuance, was exempt from the former Municipal Finance Act.

Under the Revised Municipal Finance Act, all orders issued by the Department approving the issuance of securities continued in force and effect until October 31, 2002. The terms of the former Municipal Finance Act applied with respect to any security issued pursuant to a Department order that was issued before May 1, 2002. The bill provides that the terms of the administrative rules of the Municipal Finance Division apply to any security issued pursuant to a Department order that was issued before May 1, 2002.

Under the bill, if a municipality issues a municipal security that contains its limited tax full faith and credit pledge after October 1, 2002, a notice of at least one meeting at which a decision will be made or discussed with respect to the issuance of the municipal security must state that the proposed security will contain the municipality's limited tax full faith and credit pledge. This provision does not apply to a refunding security, short-term municipal security issued under Part 4 of the Act (which governs the issuance of short-term municipal securities), or a municipal security for which the municipality must provide a notice of the right of referendum by law or charter.

The Act specified that the State or any authority, agency, fund, commission, board, or department of the State was not required to obtain Department of Treasury approval before issuing securities or to file any qualifying or audit reports. A State authority, agency, fund, commission, board, or department that was required to obtain approval or exception from prior approval from the Department under the former Municipal Finance Act instead had to file with the Department a statement of intent to issue a security. Within 10 days of receiving that statement, the Department had to issue the State entity an order granting exception from prior approval. If the Department failed to comply, the State entity was considered to have obtained any required approval or exception from prior approval. Further, the Act prescribed filing requirements that a municipality had to fulfill after issuing municipal securities (for both municipalities that obtain qualified status and those that need prior approval); and for a State department, authority, agency, or board after issuing securities. The bill deleted all these provisions.

MCL 141.2105 et al.

Legislative Analyst: George Towne

<u>FISCAL IMPACT</u>

The bill restored powers that the State possessed under the former Municipal Finance Act, regarding the ability of the Department to take action against a municipality or school district that failed to make a payment on an outstanding municipal security. If the State did not have these powers, and the circumstances requiring these powers occurred, the fiscal impact on local units could have been significant. The bill allows the Department of Treasury, under certain conditions, to assume all of a local unit's powers necessary to implement and enforce a plan for financing, adjusting, or compromising the local unit's debt. If such conditions are met, the State may incur expenses that it would not absent the bill. Similarly, the bill empowers the State to direct and control a variety of the financial matters affecting the local unit, including revenue sharing and State school aid payments, which may result in changes in the local unit's revenues and expenses. The provisions regarding airport authorities are not estimated to have any significant fiscal effect.

Fiscal Analyst: David Zin