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SFA BILL ANALYSIS

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Senate Bill 1302 (as introduced 5-7-02)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 5-7-02

CONTENT

The bill would amend the Revised Municipal Finance Act to allow the State to investigate if a municipality or a school district failed to make a payment on an outstanding municipal security, and allow the State to implement a payment plan, including withholding State payments to the municipality or school. The bill also would make 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 failed to pay any installment of principal or interest on an outstanding municipal security on or before its due date, the State Treasurer (for a municipality other than a school district) or the Superintendent of Public Instruction (for a school district) could take action it considered advisable to investigate the municipality's fiscal affairs, could consult with the governing body of the municipality, and could 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 could agree and would have 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 was entitled to receive. The Department could use the withheld amounts 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 found to be fair and equitable and reasonably within the ability of the municipality to meet, the Department would have to enter an order finding that it was fair, equitable, and within the ability of the municipality to meet. The Department then would have to advise the governing body to take the necessary steps to implement the plan. If the governing body declined or refused to do so, within 90 days after receiving the Department's advice, the Department would be vested with all powers of the municipality, its governing body, and its officers that were necessary to implement the plan. The members of the governing body and all officers and employees of the municipality then would be under an affirmative duty to do all things the Department determined to be necessary to implement the plan. The Department could 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, which 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.)

Other Changes

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

The bill would repeal Section 815 of the Act, which exempts from the Act any security that by the terms of the statute that authorizes its issuance is exempt from the former Municipal Finance Act.

Under the Revised Municipal Finance Act, all orders issued by the Department approving the issuance of securities will continue in force and effect until October 31, 2002. The terms of the former Municipal Finance Act apply 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 also would apply to any security issued pursuant to a Department order that was issued before May 1, 2002.

The Act provides that if a municipality has municipal securities outstanding, or with the approval of its electors has authorized the issuance of municipal securities to be paid from collections of its next tax levy, it must include in the taxes levied each year certain amounts as prescribed. The bill specifies that a tax levy under these provisions would include special assessments.

The bill provides that if a municipality issued a municipal security subject to the Act, and the principal and interest for that municipal security would be paid by one or more municipalities not issuing the municipal security under a contract, and one or more of the municipalities had not been granted qualified status, then the municipal security would be 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.)

The Act specifies that the State or any authority, agency, fund, commission, board, or department of the State is not required to obtain Department of Treasury approval before issuing securities or to file any qualifying or audit reports under these provisions. Further, a State authority, agency, fund, commission, board, or department that is required to obtain approval or exception from prior approval from the Department under the former Municipal Finance Act must instead file with the Department a statement of intent to issue a security, on a form prescribed by the Department. Within 10 days of receiving that statement, the Department must issue the State entity an order granting exception from prior approval. If the Department fails to comply, the State entity will be considered to have obtained any required approval or exception from prior approval. Further, the Act prescribes filing requirements that a municipality must 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. Within 15 business days of completing the issuance of a security, a municipality or a State department, authority, agency, or board must file with the Department copies of various specified documents. The bill would delete all these provisions.

MCL 141.2105 et al. Legislative Analyst: George Towne

FISCAL IMPACT

The bill would restore powers that the State possessed under the Municipal Finance Act. Because the Municipal Finance Act already has been repealed, technically the State does not have these powers and passage of the bill thus would have a fiscal impact. The bill would have an unknown fiscal impact on State and local units. In some cases, the fiscal impact on local units could be significant. The bill would allow 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 were met, the State would incur expenses that it would not absent the bill. Similarly, the bill would empower 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 could result in changes in the local unit's revenues and expenses.

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