

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1100**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

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

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

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

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

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

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

11 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
12 35.61.

13 (ii) Was honorably discharged.

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

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

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

26 Sec. 4. The authority shall exercise its duties independently
27 of the department. The staffing, budgeting, procurement, and

1 related administrative functions of the authority may be performed
2 under the direction and supervision of the director of the
3 department.

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

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

7 (a) Subject to subsection (7), the director of the department.

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

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

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

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

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

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

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

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

12 (6) The director of the department shall serve as chairperson
13 of the board until 1 year after the second facility operated by the
14 authority is open and housing veterans. At that time, the board
15 members shall elect a new chairperson who is not the director of
16 the department or his or her designee.

17 (7) One year after the second facility operated by the
18 authority is open and housing veterans, the director of the
19 department shall then serve as a nonvoting member of the board. A
20 new member who is a veteran who has professional knowledge, skill,
21 or experience in long-term care, health care licensure or finance,
22 or medicine shall be appointed by the governor with the advice and
23 consent of the senate.

24 (8) A majority of the appointed and serving members of the
25 board shall constitute a quorum of the board for the transaction of
26 business. Actions of the board shall be approved by a majority vote
27 of the members present at a meeting.

1 (9) The authority may employ or contract for legal, financial,
2 and technical experts, and other officers, agents, and employees,
3 permanent and temporary, as the authority requires, and shall
4 determine their qualifications, duties, and compensation. The board
5 may delegate to 1 or more agents or employees those powers or
6 duties with the limitations as the board considers proper.

7 (10) The members of the board and officers and employees of
8 the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, and
9 1968 PA 318, MCL 15.301 to 15.310.

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

26 (12) The board shall organize and make its own policies and
27 procedures. The board shall conduct all business at public meetings

1 held in compliance with the open meetings act, 1976 PA 267, MCL
2 15.261 to 15.275. Public notice of the time, date, and place of
3 each meeting shall be given in the manner required by the open
4 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

5 (13) Upon request by a member of the legislature, the board
6 shall make nonprivileged information regarding the operations and
7 accounts of the authority and nonprivileged information regarding
8 the care provided to veterans at a veterans' facility available to
9 members of the legislature.

10 Sec. 6. (1) The authority shall have all of the following
11 powers:

12 (a) To solicit and accept gifts, grants, and loans from any
13 person.

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

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

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

22 (e) To make and amend bylaws.

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

25 (g) To make and execute contracts including without limitation
26 sale agreements, trust agreements, trust indentures, bond purchase
27 agreements, tax regulatory agreements, continuing disclosure

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1 agreements, ancillary facilities, and all other instruments
2 necessary or convenient for the exercise of its powers and
3 functions, and commence any action to protect or enforce any right
4 conferred upon it by any law, contract or other agreement.

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

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

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

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

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

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

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

21 (2) When hiring employees for a veterans' facility, the
22 authority shall give preference to employees currently employed by
23 the Michigan veterans' facility under 1885 PA 152, MCL 36.1 to
24 36.12.

25 [(3) In determining the operation and staffing of a veterans'
26 facility, the authority shall do both of the following:

27 (a) Consider nationally recognized models and guidelines for the

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delivery of health care in veterans' facilities.

(b) Follow rules and regulations of the civil service commission.]

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

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

(3) In the case of any bonds, the interest on which is intended to be exempt from federal income tax, the authority shall prescribe restrictions on the use of the proceeds of those bonds and related matters as are necessary to assure the exemption, and the recipients of proceeds of those bonds shall be bound thereby to the extent the restrictions shall be made applicable to them. Any recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income tax, including without limitation this state or any political subdivision of this state, is authorized to execute a tax regulatory agreement with the authority and, as to any political subdivision that is a recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income, this state. The execution of a tax regulatory agreement may be treated as a condition to receiving any

1 proceeds of a bond issued under this act.

2 Sec. 8. (1) The authority shall have power and is hereby
3 authorized from time to time to issue bonds in the principal amount
4 or amounts and with the maturities as the authority shall determine
5 to be necessary to provide sufficient funds for achieving its
6 authorized purposes. The department of treasury shall provide
7 technical expertise as necessary for the authority to issue bonds
8 under this act.

9 (2) The board of the authority shall authorize the issuance of
10 bonds by resolution. Except as otherwise provided in this
11 subsection, the authority may issue bonds, including refunding
12 bonds, without obtaining the consent of any department, division,
13 commission, board, bureau, or agency of this state and without any
14 other proceedings or the occurrence of any other conditions other
15 than those proceedings, conditions, or things that are specifically
16 required by this act. Every issue of bonds shall be special revenue
17 obligations payable from and secured by a pledge of revenues and
18 other assets, including without limitation the proceeds of the
19 bonds deposited in a reserve fund for the benefit of the owners of
20 the bonds, earnings on funds of the authority and other funds as
21 may become available, upon the terms and conditions as specified by
22 the authority in the authority resolution under which the bonds are
23 issued or in a related trust agreement or trust indenture. The
24 authority shall provide notice to the speaker of the house and
25 majority leader of the senate of their intent to issue bonds under
26 this section. The notice shall include estimated principal amount
27 or amounts and authorized purpose of issuing the bond or bonds.

1 (3) The authority may issue bonds to refund any bonds by the
2 issuance of new bonds, whenever it considers the refunding
3 expedient, whether the bonds to be refunded have or have not
4 matured, and to issue bonds partly to refund bonds then outstanding
5 and partly for restructuring or any of its other authorized
6 purposes.

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

9 (a) The date of issuance.

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

13 (c) Whether the bonds shall be payable at or prior to
14 maturity.

15 (d) When the bonds shall mature.

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

18 (f) The method of payment of principal of and interest on the
19 bonds.

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

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

27 (i) Any other terms and conditions necessary to issue the

1 bonds in fully marketable form.

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

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

19 (7) This act shall also govern the negotiability of bonds
20 issued under this act. Any bonds issued under this act shall be
21 fully negotiable within the meaning and for all purposes of the
22 uniform commercial code. By accepting the bond or obligation, each
23 owner of a bond or other obligation of the authority shall be
24 conclusively considered to have agreed that the bond is and shall
25 be fully negotiable within the meaning and for all purposes of the
26 uniform commercial code.

27 (8) In the discretion of the authority, any bonds may be

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

26 (9) A member of the board or an officer, appointee, or
27 employee of the authority shall not be subject to personal

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

19 (10) A member, officer, employee or agent of the authority
20 shall not have an interest, either directly or indirectly, in any
21 business organization engaged in any business, contract or
22 transaction with the authority or in any contract of any other
23 person engaged in any business with the authority, or in the
24 purchase, sale, lease or transfer of any property to or from the
25 authority.

26 (11) Bonds issued under this act are not subject to the
27 revised municipal finance act, 2001 PA 34, MCL 141.2101 to

1 141.2821.

2 (12) The issuance of bonds under this act is subject to the
3 agency financing reporting act, 2002 PA 470, MCL 129.171 to
4 129.177.

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

13 (a) The form.

14 (b) The maximum interest rate or rates.

15 (c) The maturity date or dates.

16 (d) The purchase price.

17 (e) The denominations.

18 (f) The redemption premiums.

19 (g) The nature of the security.

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

21 (i) Other terms and conditions with respect to the issuance of
22 the bonds as the authority shall prescribe.

23 (14) the authority shall not issue bonds under this act for
24 any of the following:

25 (a) Qualified residential rental projects as defined in
26 section 142 of the internal revenue code of 1986, 26 USC 142.

27 (b) Qualified mortgage bonds as defined in section 143 of the

1 internal revenue code of 1986, 26 USC 143.

2 (c) Mortgage credit certificates as defined in section 25 of
3 the internal revenue code of 1986, 26 USC 25.

4 (15) The authority shall not issue bonds under this act for
5 the purpose of paying operating costs or other recurring costs.

6 (16) The authority shall not issue bonds under this act that
7 in total exceed \$150,000,000.00.

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

26 Sec. 10. The authority may be dissolved by act of the
27 legislature on condition that the authority has no debts or

1 obligations outstanding or that provision has been made for the
2 payment or retirement of all debts or obligations. Upon any such
3 dissolution of the authority, all property, funds, and assets of
4 the authority shall be vested in this state.

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

23 Sec. 12. (1) The authority shall annually file a written
24 report on its activities of the immediately preceding year with the
25 governor, each house of the legislature, and the chairperson of the
26 appropriations subcommittee of each house of the legislature that
27 has jurisdiction over military and veterans' affairs. This report

1 shall be submitted not later than 90 days following the end of the
2 fiscal year. This report shall specify all of the following:

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

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

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

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

8 (e) Statistics on veterans who resided in each veterans'
9 facility.

10 (f) Recommendations for improvements at each veterans'
11 facility.

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

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

15 (2) If the authority indicates that a veterans' facility will
16 likely be opening in the next fiscal year under subsection (1)(a),
17 then the authority shall file a supplemental report on its
18 activities every 90 days until the veterans' facility is open and
19 operational. The supplemental report shall be filed with the
20 governor, each house of the legislature, and the chairperson of the
21 appropriations subcommittee of each house of the legislature that
22 has jurisdiction over military and veterans' affairs not later than
23 60 days following the 90-day period covered in the supplemental
24 report. The supplemental report shall specify all the items
25 described in subsection (1)(a) to (g).

26 (3) The accounts of the authority shall be subject to annual
27 audits by the state auditor general or a certified public

1 accountant appointed by the auditor general. However, for the first
2 4 years of the authority's existence, the auditor general shall
3 conduct a financial audit for the first year and biennially
4 thereafter and shall conduct a performance audit for the second
5 year and biennially thereafter. After the initial 4-year period of
6 the authority's existence, the auditor general shall perform a
7 performance audit if a veterans' facility receives a Centers for
8 Medicare and Medicaid Services survey finding that indicates a
9 substandard quality of care as defined in 42 CFR 488.301, upon
10 request by either house of the legislature, or as otherwise
11 determined by the auditor general. Records shall be maintained
12 according to generally accepted auditing principles.