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Senate Bill 801

Sponsor: Senator Mitch Irwin

Committee: Natural Resources and Environmental Affairs

Date Completed: 5-10-88

SUMMARY OF SENATE BILL 801 as introduced 4-13-88:

Senate Bill 801 would create the "Natural Resources Authority Act" to "encourage governmental units within the state to finance projects intended to prevent, reduce, and eliminate pollution and plan for the development and use, including restoration, preservation, and enhancement, of water and land resources". The bill would do all of the following:

- Declare a legislative finding and purpose.
- Establish the "Michigan Natural Resources Authority", provide for its board of directors, and specify its powers and responsibilities.
- Require the proposed Authority to establish a "State Water Pollution Control Revolving Fund".
- Authorize the Authority to issue bonds and notes to provide funds for the purposes of the proposed Act.
- Allow the Authority to establish reserve funds for the payment of principal and interest on bonds or notes.
- Allow the appointment of a trustee by bondholders or noteholders to represent their interests in the event that the Authority defaulted on its bonds or notes.
- Provide for the sale of municipal obligations to the Authority.
- Make other provisions pertaining to audits; security to assure the timely payment of bonds or notes; pledges of revenue or other money made by the Authority; liability; purchase of Authority bonds or notes; investment of funds in Authority bonds or notes; and tax exemption for the property and income of the Authority.

Legislative Finding and Purpose

The bill specifies that its purpose is to encourage governmental units to prevent, reduce, and eliminate pollution and to plan for the development and use of water and land resources. It further states that this purpose is in the public interest and is the policy of this State. In addition, the bill's declaration of legislative finding specifies that municipal "budget and credit conditions require the use of the powers of the state" to acquire funds and make money available at reduced rates or more favorable terms in order to "carry out the policies of the state that are in the public interest" and to "assist in the implementation of the policies and purposes" of the bill.

The bill specifies that it would have to be "construed liberally to effectuate the legislative intent" of the proposed Act and that all powers granted would have to be "broadly interpreted to effectuate the intent and purposes and not as a limitation of powers".

Natural Resources Authority

The "Michigan Natural Resources Authority" would be created within the Department of Treasury. It would be entitled to exercise its powers independently of the State Treasurer, but the budgeting, procurement, and related functions of the Authority would have to be performed under the direction and supervision of the Treasurer. If not otherwise authorized by law, the costs of providing such services would have to be paid for from Authority revenues. ("Revenues" would mean all income derived by the Authority, including appropriations.)

Board of Directors. An Authority board of directors would be vested with the purposes, powers, and duties of the Authority. The board would consist of the Director of the Department of Natural Resources (DNR), the Director of the Department of Management and Budget (DMB), and the State Treasurer. Two members would be appointed by the Governor with the advice and consent of the Senate. The two appointed members would have to possess knowledge, skill, and experience in the field of finance or natural resources, or be public officials or employees with expertise in the State's infrastructure needs. Any of the members who were Department chief executives could appoint a representative to serve as a voting member in his or her absence.

The State Treasurer would serve as chairperson of the board, and the board would have to elect a vice-chair. The board could hire employees, who would have to meet civil service qualifications determined by the board and could not be paid a higher salary than the State Treasurer. Members of the board would serve without compensation, except for "reasonable reimbursement for necessary travel and expenses". The board would be subject to the Open Meetings Act.

Powers and Responsibilities. The bill specifies that the Authority would "have the powers necessary or convenient to carry out and effectuate the purposes, objectives, and provisions" of the proposed Act, the objectives and purposes of the Authority, and any powers delegated by other laws or executive orders. The Authority would have the power to do all of the following:

- Solicit and accept gifts, loans, appropriations, and other aid; enter into agreements; or participate in any Federal, State, or local government program consistent with the bill.
- Make grants and loans to a governmental unit; guarantee and insure loans, leases, bonds, notes, or other indebtedness of a governmental unit; issue letters of credit; purchase and sell municipal obligations; and refinance municipal obligations.

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- Borrow money and issue bonds and notes for any purposes permitted by the bill and secure those bonds and notes by assignment or pledge of any of its money or revenues.
- Enter into agreements with the Federal government to implement the establishment and operation of the proposed "Water Pollution Control Revolving Fund".
- Procure insurance against losses in connection with the Authority's property, assets, or activities.
- Invest money in obligations determined proper by the Authority and name and use depositories for its money.
- Engage personnel and services for professional management and technical assistance and advice.
- Indemnify and procure insurance for any member, employee, officer, or agent of the Authority from personal loss or accountability from liability due to an act or failure to act by the Authority.
- Make loans; buy and sell loans; rewrite loans; or commence an action to protect or enforce a right conferred upon the Authority by a law, contract, or other agreement to protect the interest of the Authority.
- Provide assistance under the State Clean Water Assistance Act, proposed by Senate Bill 800, to any municipality for a "revolving fund project" and perform functions necessary or incident to providing that assistance. (Under the bill, a "revolving fund project" would be "any nonpoint source project or sewage treatment works project" eligible to receive assistance from the proposed Fund.)
- Promulgate rules to carry out the bill's purposes.
- Do all other things necessary or convenient to achieve the objective of the Authority, the bill, or other related laws.

With respect to the proposed Authority's power to issue bonds and notes, and within any limitations contained in a resolution to do so, the Authority could authorize a member, the executive director, or any officer to do any of the following:

- Sell and deliver notes or bonds.
- Refund notes or bonds by the delivery of new notes or bonds, whether or not they had matured or were subject to redemption.
- Deliver notes or bonds, partly to refund and partly for any other authorized purpose.
- Buy and resell notes or bonds.
- Approve interest rates or methods for fixing them and other matters and procedures necessary to complete authorized transactions.
- Direct the investment of the Authority's funds.
- Approve the terms of any contract.
- Exercise any power, duty, function, or responsibility of the Authority.

In addition to its other powers, and if approved by an Authority resolution relating to the issuance of bonds or notes, in order to secure the payment of bonds or notes, the Authority would have certain specified powers that would "constitute covenants by the authority and contracts with the holders of the bond or note".

State Water Pollution Control Revolving Fund

The bill would require the Authority to establish a "State Water Pollution Control Revolving Fund" that would comply with the objectives and requirements of the Federal Water Pollution Control Act. The Authority could fund the Fund through Federal grants, the Authority's revenues, or by any other means permitted under the Federal Act. The Authority could provide financial assistance to a governmental unit with the proceeds of the Fund. If such assistance were in the form of a loan, the governmental unit would have to

agree to make repayments to the Authority or through the purchase of refinancing of municipal obligations in "fully marketable form" as defined in the bill. Loan agreements would have to contain appropriate provisions relating to maturity or length of the loan, repayment terms, State or local funding requirements, and any other provisions necessary to comply with the Federal Act. Projects eligible for assistance from the Fund would have to be determined pursuant to the State Clean Water Assistance Act proposed in Senate Bill 800.

The Authority could lend money to a governmental unit through the purchase of municipal obligations. Such an obligation would have to be in fully marketable form. The Authority could issue its bonds or notes payable solely from the revenues or funds available to the Authority. Bonds and notes of the Authority could not be considered a debt or liability of the State, nor create or constitute any indebtedness, liability, or obligation of the State. All Authority bonds and notes, unless funded or refunded by bonds or notes of the Authority, would be payable solely from revenues or funds pledged or available for their payment. Each bond and note would have to contain a statement that the Authority was obligated to pay the principal and interest only from the Authority's revenues or funds and that the State was not obligated to pay. All expenses incurred in carrying out the bill also would be payable solely from revenues or funds provided under the bill.

Authority Bonds and Notes

The Authority could issue bonds or notes in principal amounts it considered necessary to provide funds for any purpose including, but not limited to, making loans; funding the State match requirement for a Federal capitalization grant; fulfilling a purpose or responsibility imposed on the Authority by law; paying, funding, or refunding of the principal, interest, or redemption premiums on Authority bonds or notes; establishing or increasing reserves to secure or pay Authority bonds or notes, or interest on them; paying interest on such bonds or notes; and paying all other costs or expenses of the Authority.

Bonds or notes of the Authority would have to be authorized by resolution of the Authority and could be payable only from the revenues and funds pledged to the payment of the bonds' or notes' principal and interest. Authority bonds or notes could be secured additionally by a pledge of a grant or contribution from the Federal government; a governmental unit; or any person, firm, or corporation; or by a pledge of income or revenues, funds, or money of the Authority.

Authority bonds or notes could be sold at public or private sale at the times, prices, and discounts as determined by the Authority. Authority bonds and notes would not be subject to the Municipal Finance Act, and would not require State Treasurer approval under Public Act 202 of 1943.

The Authority could pay and retire, fund, or refund its notes from proceeds of bonds or of other notes, or from any other funds or Authority money available for that purpose in accordance with the contract between the Authority and the holder of the notes. Unless otherwise provided in a contract, and unless the notes had been otherwise paid, the proceeds of the Authority's bonds issued to fund outstanding notes would have to be held, used, and applied by the Authority for the payment and retirement of those notes.

The Authority could issue bonds or notes in amounts it considered necessary for the purpose of refunding bonds

or notes it had outstanding. In the Authority's discretion, the proceeds of such bonds or notes could be applied to the purchase or retirement of outstanding bonds or notes, on either their earliest or subsequent redemption date. Pending such application, the proceeds could be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the Authority. The escrowed proceeds could be invested, subject to agreements with noteholders and bondholders, in a manner determined by the Authority. After the terms of the escrow were fully satisfied, the balance and any amount earned on the investment would have to be returned to the Authority.

In the authorizing resolution, the Authority could provide that bonds or notes to be refunded would have to be considered paid when money or direct obligations of the Federal government or other obligations were deposited in trust to pay the principal and interest on the bonds. The resolution also could specify that, upon the deposit of such money or obligation, the Authority's obligations to the holders of the bonds or notes would be terminated except as to the rights to the deposits in the trust.

Reserve Funds

The bill would authorize the Authority to create special funds as reserve funds. The Authority would have to pay into each reserve fund any money that the Legislature appropriated for the purpose of that fund, proceeds of the sale of bonds or notes to the extent provided in the issuing resolution, and any other money that could be available to the Authority for the purposes of the reserve fund. Except as provided in an issuing resolution, money held in a reserve fund would be pledged to and charged with the payment of the principal and interest on the bonds or notes with respect to which the fund was established. A reserve fund would have to be for all the bonds and notes issued pursuant to a particular resolution without distinction or priority of any bond or note over any other.

Except as provided in an issuing resolution, money in a reserve fund could not be withdrawn in an amount that would reduce the balance of the fund to less than the requirement established for that fund, unless the withdrawal was for the purpose of making payment when due of principal, interest, redemption premiums, and any sinking fund or mandatory redemption payments. Also, except as provided in the resolution, income or interest earned by a reserve fund could be transferred to other funds or accounts of the Authority, if such a transfer would not reduce the fund balance below its requirements.

Money in a reserve fund could be invested in the same manner as is permitted for investment of funds belonging to the State or held in the State Treasury or as provided in the issuing resolution.

Default on Bonds or Notes

If the Authority defaulted in the payment of principal or interest on an issue of bonds or notes, or failed or refused to comply with the bill, the holders of 51% or more in aggregate principal amount of the notes or bonds could appoint, by instrument filed in the Ingham County clerk's office, a trustee to represent them. The trustee, in his or her own name, could do any of the following:

- By mandamus or other action, enforce the rights of the holders of the notes and bonds, and require the Authority to carry out any other agreements with them and perform its duties.

- Bring suit upon the notes or bonds.
- By action or suit, require the Authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.
- By action or suit in equity, enjoin any acts or things that might be unlawful or in violation of the rights of the holders.
- If so provided in the issuing resolution, declare the notes or bonds due and payable, and if all defaults were made good, annul that declaration and its consequences.

The trustee also would have all the powers incident to the general representation of the holders of the notes or bonds in the enforcement and protection of their rights.

Municipal Obligation Sales to the Authority

Under the bill, a governmental unit could sell municipal obligations to the Authority without limitation as to denomination. A governmental unit could pay fees and charges required to be paid to the Authority for its services. In addition, the bill would allow the Authority and a governmental unit to enter into an agreement in which the governmental unit would pay to the Authority tax revenues collected by the State and returned to the governmental unit. Such tax payments would be pledged by the governmental unit for the payment of municipal obligations of the governmental unit that were purchased by the Authority. If such an agreement were entered into, the Treasurer would have to pay the pledged money in accordance with the agreement.

Upon the sale and issuance of municipal obligations to the Authority by a governmental unit, the governmental unit would be held and considered to have agreed to all of the following, if it failed to pay the interest or principal of the municipal obligations:

- That the governmental unit waived all defenses to the nonpayment and the Authority would constitute a holder or owner of the municipal obligations in default.
- That the Authority immediately could avail itself of all other remedies, rights, and provisions of law applicable in such a circumstance.
- That the failure to exercise or exert any rights or remedies within a time period provided by law would not be raised as a defense by the governmental unit.
- That all of the unpaid municipal obligations of that governmental unit's issue would be considered to have become due and payable.

The Authority could carry out the above provisions and exercise all rights and remedies provided or referred to in this section of the bill.

Other Provisions

Audits. The accounts of the Authority would be subject to annual audits by the State Auditor General or a certified public accountant appointed by the Auditor General. Records would have to be maintained according to generally accepted accounting principles.

Security. The Authority could authorize and approve an insurance contract, a letter of credit, an agreement for a line of credit, an agreement to remarket bonds or notes, a commitment to purchase notes or bonds, and any other transaction in order "to provide security to assure timely payment of a bond or note". For such security, the Authority could approve payment from the proceeds of the notes or bonds or other funds available.

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Pledge of Revenues. The bill specifies that a pledge of revenues or other money made by the Authority would be binding and valid from the time of the pledge. Revenues or other money pledged and received by the Authority after such a pledge would be subject to the lien of the pledge without physical delivery of the revenues or money. A lien of such a pledge would be valid and binding against a party having claim in tort, contract, or otherwise against the Authority, regardless of whether the party had notice of the pledge. Neither a resolution, trust indenture, nor any other instrument by which a pledge was created would have to be filed or recorded in order to establish and perfect a lien or security interest in property so pledged.

Liability. The bill specifies that neither the Authority nor a person executing an agreement on its behalf would be personally liable on the bonds, notes, or agreement.

Purchase of Authority Bonds or Notes. The Authority could purchase its bonds or notes out of funds or money of the Authority available for that purpose. The Authority could hold, cancel, or resell Authority bonds or notes subject to or in accordance with an agreement with holders of Authority bonds or notes.

Investment in Authority Bonds or Notes. The State and a public officer, governmental unit, or agency of the State or governmental unit; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other banking business; an insurance company, insurance association, or other insurance business; or an executor, administrator, guardian, trustee, or other fiduciary could legally invest a sinking fund, money, or other fund in bonds or notes issued by the Authority. Authority bonds and notes would be authorized security for public deposits.

Tax Exemption. The bill specifies that the Authority's property would be considered "public property devoted to an essential public and governmental function and purpose". Income of the Authority also would be considered to be for a "public purpose". The property and income of the Authority and its operation would be exempt from all taxes and special assessments of a governmental unit. Bonds or notes issued by the Authority, and their interest and income, would be exempt from all taxation of a governmental unit.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would result in indeterminate costs to the State for administration. Although the bonds to be issued pursuant to the bill appear to be revenue bonds, it is not clear what the revenue would be other than local taxes, which may not be a sufficient nexus to permit the issuance to be constitutional under Article IX of the State Constitution of 1963. The extent to which local units would use this Act is not known.

Fiscal Analyst: A. Rich

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.