

Act No. 428
Public Acts of 1994
Approved by the Governor
January 5, 1995
Filed with the Secretary of State
January 6, 1995

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Geake

ENROLLED SENATE BILL No. 1166

AN ACT to amend the title and sections 2 3 12 14 and 43a of Act No 38 of the Public Acts of 1969 entitled as amended An act to create a state hospital finance authority to lend money to nonprofit hospitals for capital improvements or to refinance hospital indebtedness to provide for the incorporation of local hospital authorities with power to lend money to nonprofit hospitals for hospital indebtedness or to refinance hospital indebtedness to construct acquire reconstruct remodel improve add to enlarge repair own lease and sell hospital facilities to finance outstanding hospital indebtedness to authorize the authorities to borrow money and issue obligations to accomplish the purposes of this act including the refunding or advance refunding of obligations issued by certain entities to permit the authorities to enter into loans contracts leases mortgages and security agreements which may include provisions for the appointment of receivers to exempt obligations and property of the authorities from taxation and to provide other rights powers and duties of the authorities sections 3 14 and 43a as amended by Act No 302 of the Public Acts of 1992 and section 12 as amended by Act No 303 of the Public Acts of 1992 being sections 331 32 331 33 331 42 331 44 and 331 73a of the Michigan Compiled Laws and to add section 47b

The People of the State of Michigan enact

Section 1 The title and sections 2 3 12 14 and 43a of Act No 38 of the Public Acts of 1969 sections 3 14 and 43a as amended by Act No 302 of the Public Acts of 1992 and section 12 as amended by Act No 303 of the Public Acts of 1992 being sections 331 32 331 33 331 42 331 44 and 331 73a of the Michigan Compiled Laws are amended and section 47b is added to read as follows

TITLE

An act to create a state hospital finance authority to lend money to nonprofit hospitals and nonprofit health care providers for capital improvements or to refinance hospital health care and certain retirement housing indebtedness to provide for the incorporation of local hospital authorities with power to lend money to nonprofit hospitals and nonprofit health care providers for hospital and health care indebtedness or to refinance hospital health care and certain retirement housing indebtedness to construct acquire reconstruct remodel improve add to enlarge repair own lease and sell hospital and health care facilities to finance outstanding hospital health care and certain retirement housing indebtedness to authorize the authorities to borrow money and issue obligations to accomplish the purposes of this act including the refunding or advance refunding of obligations issued by certain entities to permit the authorities to enter into loans contracts leases mortgages and security agreements which may include provisions for the appointment of receivers to exempt obligations and property of the authorities from taxation and to provide other rights powers and duties of the authorities

Sec 2 It is declared that for the benefit of the people of this state and the improvement of their health welfare and living conditions it is essential that hospitals within this state be provided with appropriate means at reasonable cost to maintain expand enlarge and establish health care hospitals nursing care certain retirement housing and other related facilities that hospitals be provided with the ability to refinance indebtedness and that authorities created or incorporated under this act be provided with the ability to refund or to refund in advance obligations issued for the benefit of hospitals This act shall provide a method to enable hospitals in this state to provide or maintain at reasonable cost pursuant to reasonable terms the facilities structures and services needed to accomplish the purposes of this act all to the public benefit and good to the extent and manner provided in this act

Sec 3 As used in this act

(a) State authority means the hospital finance authority created by this act

(b) Local authority' means a public municipal corporation incorporated under this act

(c) Incorporating unit means a county city village or township or a combination thereof incorporating a local authority pursuant to this act

(d) Governing body means the board charged with the governing of the incorporating unit

(e) Except as provided in subdivision (f)(iii) hospital means a nonpublic corporation association institution or establishment located within this state for the care of the sick or wounded or of those who require medical treatment or nursing care or home for the aged or which provides retirement housing facilities described in subdivision (f)(iii) operated without profit to an individual corporation or association It includes nonprofit corporations or other nonprofit organizations engaged in some phase of hospital nursing care home for the aged or to the extent described in subdivision (f)(iii) retirement housing activity or in owning controlling or providing a supporting service to hospitals or public corporations that operate or own hospital facilities

(f) Hospital facilities means any of the following

(i) A building or structure suitable and intended for or incidental or ancillary to use by a hospital and includes nursing homes for the aged outpatient clinics laboratories laundries nurses doctors or interns residences administration buildings facilities for research directly involved with hospital care maintenance storage or utility facilities parking lots and garages and all necessary useful or related equipment furnishings and appurtenances and all lands necessary or convenient as a site for these facilities

(ii) An office facility not less than 80% of which is intended for lease to direct providers of health care and that has been determined by the department of public health to meet a demonstrated need and to be geographically or functionally related to 1 or more other hospital facilities if the authority that is issuing the bonds determines the financing of the office facility is necessary to accomplish the purposes and objectives of this act

(iii) For the purpose of refinancing or refunding debt described in this subdivision only retirement housing facilities owned by a nonpublic nonprofit organization on September 1 1994 placed in service on or before September 1 1994 and for which there was outstanding on September 1 1994 debt incurred for the construction or acquisition of the retirement housing facilities which debt is not eligible for refinancing by the Michigan state housing development authority solely by reason of the provisions of section 44c(2) of the state housing development authority act Act No 346 of the Public Acts of 1966 being section 125 1444c of the Michigan Compiled Laws provided that the refinancing debt incurred with an authority created by or incorporated under this act to refinance the retirement housing facilities is debt that a nonprofit hospital or nonprofit nursing home or a nonprofit entity which owns or controls or is owned or controlled by a nonprofit hospital or nonprofit nursing home is obligated to repay and that no allocation of the state volume limitation on tax exempt obligations is required with respect to the refinancing debt or obligations issued by an authority created by or incorporated under this act to fund that refinancing debt As used in this subparagraph

(A) Hospital means that term as defined in section 20106 of the public health code Act No 368 of the Public Acts of 1978 being section 333 20106 of the Michigan Compiled Laws

(B) Nursing home means that term as defined in section 20109 of Act No 368 of the Public Acts of 1978 being section 333 20109 of the Michigan Compiled Laws

(g) Hospital loan means a loan made by the state authority or a local authority to a hospital

(h) Project costs means the total of the reasonable or necessary costs incurred for carrying out the works and undertakings for the acquisition or construction of hospital facilities under this act These include the costs of studies and surveys plans and specifications architectural and engineering services legal organization marketing or other special services financing acquisition demolition construction equipment and site development of new and rehabilitated buildings rehabilitation reconstruction repair or remodeling of existing buildings interest and carrying charges during construction and before full earnings are achieved and operating expenses before full earnings are achieved or a period of 1 year following the completion of construction whichever occurs first and a reasonable reserve for payment of principal and interest on bonds or notes of the authority Project costs include reimbursement of a hospital for the costs described in this subdivision expended by a hospital either from its own funds or from money borrowed by the hospital for such purposes before issuance and delivery of bonds by the authority for the purpose of providing funds to pay the project costs Project costs also includes the refinancing of any existing debt of a hospital

necessary in order to permit the hospital to borrow or lease from the authority and give adequate security for the loan or lease. The determination of the authority with respect to the necessity of refinancing and adequate security for a loan or lease is conclusive except with respect to the approval of the municipal finance commission or its successor agency when prior approval is required.

(i) Direct provider of health care means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, dentist, nurse, podiatrist, physician's assistant, or an organization comprised of these health professionals or employing these health professionals.

Sec. 12. The state authority has the powers necessary to carry out and effectuate the purposes of this act, including but not limited to, all of the following:

(a) To sue and be sued, to have a seal and authority to alter that seal at pleasure, to have perpetual succession, to make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers, and to make and amend bylaws.

(b) To solicit and accept gifts, grants, loans, and other aids from any person, corporation, or governmental agency.

(c) To make loans, to participate in the making of loans, to undertake commitments, to make loans and mortgages, to sell loans and mortgages at public or private sale, to modify or alter loans and mortgages, to discharge loans and mortgages, to foreclose on a mortgage or commence an action to protect or enforce a right conferred upon the state authority by a law, mortgage, loan, contract, or other agreement, to bid for and purchase property that was the subject of a mortgage at a foreclosure or at any other sale and to acquire or take possession of that property, to complete, administer, pay the principal and interest on any obligations incurred in connection with acquired property, and to dispose of and otherwise deal with the property in a manner necessary or desirable to protect the interests of the state authority in the property. The loans made by the authority may be secured or unsecured, as the authority determines.

(d) To loan money to hospitals for the purpose of refinancing any outstanding indebtedness of a hospital if the state authority determines the refinancing is necessary to realize the objectives and purposes of this act. A hospital loan made pursuant to this subdivision shall not exceed the amount of the principal, interest, and redemption premium, if any, of the indebtedness to be refinanced, that has not been repaid, plus the marketing, financing, legal, and other costs incurred in connection with the refinancing and the issuance of bonds of the state authority issued in whole or in part to provide funds to make the hospital loan described in this subdivision, including the costs of funding a bond reserve and paying capitalized interest on the bonds for a period not to exceed 1 year after the issuance of the bonds. The determination of the state authority under this subdivision is conclusive except with respect to the approval of the municipal finance commission or its successor agency when prior approval is required.

(e) To charge, impose, and collect fees and charges in connection with its loans, commitments, and servicing, including reimbursement of costs of financing by the authority, service charges, insurance premiums, and an allocable share of the operating expenses of the authority, and to make provision for increasing those fees and charges, if necessary, as the state authority determines is reasonable and approved by the state authority.

(f) To acquire, hold, and dispose of real or personal property convenient for the accomplishment of the purpose of this act.

(g) To procure insurance against a loss in connection with its property, assets, or activities.

(h) To borrow money and issue its bonds or notes for the money and provide for the rights of the holders of the bonds or notes and to secure the bonds by mortgage, assignment, or pledge of any or all of its properties, including any part of the security for its hospital loans. The state shall not be liable on any bonds of the state authority; the bonds and notes are not a debt of the state, and each bond and note shall contain on its face a statement to that effect.

(i) To invest any funds not required for immediate use or disbursement, at its discretion, in any of the following:

(i) Obligations of this state, the United States, or an agency of the United States.

(ii) Obligations the principal and interest of which are guaranteed by this state or the United States.

(iii) Certificates of deposit of a bank that is a member of the federal reserve system.

(iv) Certificates of deposit of a savings and loan association that is a member of the federal home loan bank system.

(v) Commercial paper that is rated at the time of purchase within the 2 highest classifications established by not less than 2 national rating services and that matures not more than 270 days after the date of purchase.

(vi) In United States government or federal agency obligation repurchase agreements.

(vii) In bankers' acceptances of United States banks.

(viii) In mutual funds composed of investment vehicles that are legal for direct investment by the state authority.

(ix) Subject to the approval of the state treasurer, obligations specified by the state authority in a contract with the holders of its bonds or notes.

(j) To engage necessary personnel and to engage the services of private consultants for rendering professional and technical assistance and advice.

(k) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act pursuant to the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 as amended being sections 24 201 to 24 328 of the Michigan Compiled Laws

(l) To enter into interest rate exchanges or swaps hedges or similar agreements with respect to its bonds or notes in the same manner and subject to the same limitations and conditions as provided for a municipality in section 15 of chapter III of the municipal finance act Act No 202 of the Public Acts of 1943 being section 133 15 of the Michigan Compiled Laws

Sec 14 (1) The state authority periodically may issue its negotiable bonds and notes including but not limited to commercial paper in a principal amount that in the opinion of the state authority is necessary to provide sufficient funds for the making of hospital loans including temporary loans during the construction of hospital facilities and for the payment of interest on bonds and notes of the state authority during construction of hospital facilities for which the hospital loan was made and for a reasonable time after the loan was made and for the establishment of reserves to secure those bonds and notes

(2) The state authority periodically may issue renewal notes may issue bonds to pay notes and if the state authority considers refunding expedient to refund or to refund in advance bonds or notes issued by an entity for the benefit of a hospital pursuant to the requirements of sections 43a to 43g

(3) Except as may otherwise be expressly provided by the state authority every issue of its notes or bonds shall be general obligations of the authority payable out of any properties revenues or money of the state authority subject only to any agreements with the holders of particular notes or bonds pledging any particular properties revenues or money

(4) A resolution authorizing notes or bonds or an issue of notes or bonds under this chapter may contain provisions which are a part of the contract with the holders of the bonds or notes regarding 1 or more of the following

(a) Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the state authority all or any part of the money received in payment of hospital loans and interest on hospital loans and other money received or to be received to secure the payment of the notes or bonds or of any issue of notes or bonds subject to those agreements with bondholders or noteholders that then exist

(b) Pledging and creating a lien on all or any part of the assets of the state authority including notes mortgages and obligations securing the assets to secure the payment of the notes or bonds or of any issue of notes or bonds subject to those agreements with noteholders or bondholders that then exist

(c) Pledging and creating a lien on any loan grant or contribution to be received from the federal state or local government or other source

(d) The use and disposition of the income from hospital loans and mortgages owned by the state authority and payment of principal and interest of mortgages and loans owned by the state authority

(e) The setting aside of reserves or sinking funds and the regulation and disposition of those reserves or sinking funds

(f) Limitations on the purpose to which the proceeds of the sale of notes or bonds may be applied and pledging the proceeds to secure the payment of the notes or bonds or of any issue of the notes or bonds

(g) Limitations on the issuance of additional notes or bonds and the terms upon which additional notes or bonds may be issued and secured

(h) The procedure by which the terms of a contract with noteholders or bondholders may be amended or abrogated the amount of notes or bonds the holders of which must consent to the amendment or abrogation and the manner in which the consent may be given

(i) Vesting in a trustee or trustees the property rights powers remedies and duties that the state authority considers necessary or convenient

(5) Within limitations stated in the issuance or authorization resolution of the state authority the state authority may authorize a member of the state authority or an officer or other employee of the state authority to do 1 or more of the following

(a) Sell deliver and receive payment for notes or bonds

(b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption

(c) Deliver notes or bonds to refund notes or bonds or for any other authorized purpose

(d) Purchase notes or bonds issued by the state authority and resell those notes or bonds

(e) Approve interest rates or methods for fixing interest rates prices discounts maturities principal amounts denominations dates of issuance mandatory or optional redemption provisions the place of delivery and payment and other matters and procedures necessary to complete the transactions authorized by the state authority

Sec 43a (1) Refunding bonds of an authority created or incorporated under this act issued pursuant to section 14(2) or 32 may be issued in 1 or more series to refund any series of bonds or notes in whole or in part issued by that authority issued by any other authority created or incorporated under this act or issued for the benefit of a hospital by an economic development corporation incorporated pursuant to the economic development corporations act Act No 338 of the Public Acts of 1974 being sections 125 1601 to 125 1636 or in the case of the state authority by an entity for the benefit of a hospital whether the bonds to be refunded have or have not matured are or are not redeemable on the date of the issuance of the refunding bonds or are or are not subject to redemption prior to maturity The bonds may be issued partly to refund bonds and partly for any other purpose authorized by this act Refunding bonds shall not be issued to refund bonds that do not mature or will not be redeemed pursuant to the plan of refunding within 40 years after the date of issuance of the refunding bonds The refunding bonds may be issued in a principal amount greater than the principal amount of the bonds to be refunded as may be necessary to effect the refunding pursuant to the plan of refunding Refunding bonds shall not be issued unless the authority issuing the bonds is reasonably satisfied that the hospital facility and other revenues pledged will produce sufficient revenues to meet the principal and interest on the refunding bonds other costs expenses and charges in connection with the issuance of the refunding bonds and the charges or obligations of the hospital which may be prior to or equal to the refunding bonds promptly as they become due and that the hospital is otherwise soundly financed

(2) Refunding bonds may be issued for any 1 or more of the following purposes

(a) To reduce debt service costs on the basis of the total amount of debt service to be paid on the refunding bonds as compared with the total amount of debt service that would be required to be paid on the bonds to be refunded should the refunding not occur

(b) To reduce debt service costs on the basis of the present value of debt service to be paid on the refunding bonds as compared with the present value of debt service that would be required to be paid on the bonds to be refunded should the refunding not occur

(c) To produce a repayment schedule on the refunding bonds more favorable to the hospital than the repayment schedule on the bonds to be refunded

(d) To eliminate restrictions or requirements determined by the authority to be excessively burdensome to the hospital

Sec 47b In addition to the other requirements of this act before a state or local authority adopts a resolution authorizing the issuance of bonds or notes and as a condition precedent for the authority to issue the bonds or notes to finance project costs for nursing homes the state or local authority shall attempt to determine and consider all of the following

(a) Whether the nursing home has a ban on admissions to that nursing home

(b) Whether the nursing home is medicare certified

This act is ordered to take immediate effect

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Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor