REPLACEMENT OF OBLIGATIONS

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House Bill 4503 (Substitute H-1)
First Analysis (5-11-95)

Sponsor: Rep. Robert Brackenridge
Committee: Local Government

THE APPARENT PROBLEM:

Public Act 354 of 1972 allows people to replace municipal bonds and similar obligations, or unmatured interest coupons, that have been lost, destroyed, or stolen. This requires the approval of the replacement by resolution of the governing body of the public corporation that issued the obligation. To obtain a replacement obligation a person must furnish proof of ownership; proof of loss, destruction, or wrongful taking; an indemnity bond to indemnify the public corporation and paying agent (e.g., a bank); and payment of costs associated with issuing the replacement obligation. Representatives of bankers have complained that this process can be cumbersome and result in delay. Some units and agencies of government do not consider requests for replacement of lost bonds and coupons agenda items of high priority. Some public entities that issued obligations many years ago may not even have regular meetings of the governing body. This process has been characterized as a burden for bondholders seeking replacement, a nuisance for governmental units, and an irritation to those banks and trust companies (the "paying agents") that the public expects to issue the replacements. It has been recommended that a streamlined process be put in place.

THE CONTENT OF THE BILL:

Under the bill, a "paying agent" (e.g., a bank) could exercise the powers granted to a public corporation under Public Act 354 of 1972 to replace an obligation or a coupon that had been lost, destroyed, or wrongfully taken if:

-- the governing body had adopted a resolution generally authorizing the paying agent to exercise such powers; and

-- in each particular case, the paying agent notifies the governing body in writing and the governing body does not object within 60 days after being notified.

A paying agent would have to notify the governing body of the public corporation of its action not more than 30 days after exercising such powers. The bill also would specify that the person now holding the office held by the person who originally executed the obligation would be authorized to execute and seal a replacement obligation without further action of the governing body upon notice from the paying agent that the required conditions for issuing a replacement obligation had been satisfied.

If a public corporation was organized under the Economic Development Corporations Act, either the legislative body of the municipality that incorporated the public corporation or the governing body of the public corporation could adopt the resolution. If the legislative body of the municipality adopts the resolution, it would receive the notification from the paying agent and could exercise the power to object. (Either the municipality or the corporation also could by resolution issue replacement obligations directly.)

The term "paying agent" would refer to: 1) for an obligation not registered as to payment of principal by or on behalf of the public corporation that issued the obligation, any bank or trust company designated by the public corporation to make payment of principal of or interest on the obligation; or 2) for an obligation that is registered as to payment of principal by or on behalf of the public corporation that issued the obligation, any bank or trust company authorized by the public corporation to authenticate the obligation on behalf of the public corporation.

The term "public corporation" in the act refers to a body corporate organized "to carry out a public governmental or proprietary function", including the state, an agency of the state, a school district, city, village, township, county, district, commission, authority, university, college, or any combination of those that is a corporate entity. The bill would add "intermediate school district" to the list.

A person seeking a replacement obligation must currently provide a bond of indemnity indemnifying the public corporation or paying agent. The bill would require the bond to be issued by a company rated in one of the three highest rating categories and one of the top ten financial size categories by a nationally recognized insurance rating agency. The bond would also indemnify "an obligor." That term would be defined to apply to (1) a person or entity that has borrowed the proceeds of an obligation from a public corporation and is contractually obligated to make loan repayments or (2) a person or entity that has leased or rented or purchased on an installment basis a facility from a public corporation financed with proceeds of an obligation and is making payments for the use or purchase of the facility sufficient to pay principal and interest on that obligation.

MCL 129.131 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal impact, "as the cost of processing the replacement documents remains with their owners." (Fiscal Note dated 5-8-95)

ARGUMENTS:

For:

The bill would allow people to replace municipal bonds and similar obligations (including interest coupons) that had been lost or destroyed by going directly to a bank or other paying agent and presenting certain required information, such as proof of ownership and loss, along with an indemnity bond. The expedited process in the bill would allow a paying agent to replace the obligations unless the public corporation that issued the obligation objected within 60 days. The new process would be permissive. That is, a governmental unit would have to expressly authorize it by resolution. A governmental body that wanted to continue to approve replacements on a case-by-case itself could do so (simply by doing nothing).

Response:

In the past, some people have advocated an "opt-out" approach. That is, the expedited process would be in place unless a governmental body passed a resolution retaining case-by-case jurisdiction over requests for obligation replacements. That might better address the problems associated with replacing obligations. For example, there are governmental bodies that rarely, if ever, meet. In the past, bankers have complained that it might be as difficult to get the governing bodies of some governing units or agencies to take up the resolution delegating powers to the paying agents as it is to get them to take up the replacement resolutions.

POSITIONS:

The Michigan Bankers Association has indicated support for the bill. (5-10-95)