

Act No. 27
Public Acts of 1997
Approved by the Governor
June 17, 1997
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Reps. Jellema, Middaugh, Middleton, DeVuyst, LaForge, Anthony, Hammerstrom, Martinez, Brater, Byl, McBryde, Voorhees, Ciaramitaro, Baade, Bodem, Raczkowski, Birkholz, Sikkema, Walberg, Jansen, Dalman, Wetters, McNutt, London, Fitzgerald, Kelly, McManus and Perricone

ENROLLED HOUSE BILL No. 4466

AN ACT to amend 1985 PA 227, entitled "An act to create the Michigan municipal bond authority and to prescribe its powers and duties; to provide for the issuance of, and terms and conditions for, notes and bonds of the authority; to authorize certain forms of assistance to governmental units including the creation and management of investments; to impose conditions on, grant certain powers to political subdivisions of the state regarding, and allow certain agreements regarding obligations of political subdivisions of the state purchased by the authority; to exempt the property, income, and operation of the authority, its bonds and notes, and the interest on its bonds and notes from certain taxes; and to grant powers and impose duties on officers and agencies of the state and political subdivisions of the state," by amending the title and sections 1, 3, 7, 8, 13, 25, and 27 (MCL 141.1051, 141.1053, 141.1057, 141.1058, 141.1063, 141.1075, and 141.1077), the title and sections 3, 8, 13, and 27 as amended by 1996 PA 241, section 7 as amended by 1996 PA 391, and section 25 as amended by 1988 PA 316, and by adding section 16b.

The People of the State of Michigan enact:

TITLE

An act to create the Michigan municipal bond authority and to prescribe its powers and duties; to provide for the issuance of, and terms and conditions for, notes and bonds of the authority; to authorize certain forms of assistance to governmental units including the creation and management of investments; to impose conditions on, grant certain powers to political subdivisions of the state and water suppliers regarding, and allow certain agreements regarding obligations of political subdivisions of the state and water suppliers purchased by the authority; to exempt the property, income, and operation of the authority, its bonds and notes, and the interest on its bonds and notes from certain taxes; and to grant powers and impose duties on officers and agencies of the state, political subdivisions of the state, and water suppliers.

Sec. 1. The legislature finds and declares the following:

(a) It is in the public interest and it is the policy of the state to foster and promote borrowing of money by governmental units within the state for financing public improvements, for financing community water supplies and noncommunity water supplies, and for financing other municipal purposes from proceeds of bonds or notes issued by those governmental units; to assist those governmental units in fulfilling their needs for those purposes by creation of indebtedness; to provide for the orderly marketing of municipal obligations; and to the extent possible, to encourage continued investor interest in the bonds or notes of those governmental units as sound and preferred securities for investment.

(b) It is in the public interest and it is the policy of the state to encourage governmental units within the state to continue their independent undertakings of public improvements, community water supplies and noncommunity water supplies, and new municipal purposes and the financing for them, and to assist the governmental units by making money available for orderly financing of public improvements, community water supplies and noncommunity water supplies, and other municipal purposes.

(c) Credit and municipal bond market conditions require the exercise of the powers of the state in the interest of its governmental units to further and implement such policies by authorizing the Michigan municipal bond authority to have full powers to borrow money and to issue its bonds and notes to make money available through the Michigan municipal bond authority at reduced rates or on more favorable terms for borrowing by the state's governmental units through the purchase of the obligations of the governmental units in fully marketable form and by granting broad powers to the Michigan municipal bond authority to accomplish and to carry out these policies of the state which are in the public interest of the state and of its taxpayers and residents.

Sec. 3. As used in this act:

(a) "Authority" means the Michigan municipal bond authority created in section 4.

(b) "Board" means the board of trustees of the authority established in section 5.

(c) "Bonds" means bonds of the authority issued under this act with a maturity greater than 3 years. Bonds do not include qualified bonds as defined in section 16 of article IX of the state constitution of 1963.

(d) "Capitalization grant" means the federal grant made to this state by the United States environmental protection agency for either of the following purposes:

(i) For the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, chapter 758, 101 Stat. 22, 33 U.S.C. 1381 to 1387.

(ii) For the purpose of establishing a state drinking water revolving fund, as provided in section 1452 of part E of the federal safe drinking water act, 42 U.S.C. 300j-12.

(e) "Community water supply" means a community water supply as defined in part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

(f) "Federal safe drinking water act" means title XIV of the public health service act, chapter 373, 88 Stat. 1660.

(g) "Federal water pollution control act" means chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(h) "Fully marketable form" means a municipal obligation duly executed and accompanied by all of the following:

(i) An approving legal opinion of a bond counsel approved by the authority and of nationally recognized standing in the field of municipal law.

(ii) Closing documents in a form and substance satisfactory to the authority. The municipal obligation so executed need not be printed or lithographed nor be in more than 1 denomination.

(iii) Evidence that the pledge for payment of the municipal obligation will be sufficient to pay the principal of and interest on the municipal obligation when due.

(iv) An order of approval or an order of exception issued by the department of treasury under the municipal finance act, 1943 PA 202, MCL 131.1 to 139.3, which orders shall also include a certification that the condition of subparagraph (iii) has been met, or for a water supplier not subject to oversight by the department of treasury under the municipal finance act, 1943 PA 202, MCL 131.1 to 139.3, certification of a financial advisor selected and engaged by the authority that the condition of subparagraph (iii) has been met.

(v) For purposes of a project funded under section 16a, an order of approval issued by the department of environmental quality under part 53 (clean water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5301 to 324.5316. The order shall state that the project proposed by the governmental unit has been approved for assistance by the department of environmental quality.

(vi) For purposes of a community water supply or a noncommunity water supply funded under section 16b, an order of approval issued by the department of environmental quality under part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418. The order shall state that the community water supply or the noncommunity water supply proposed by the governmental unit has been approved for assistance by the department of environmental quality.

(i) "Governmental unit" means a county, city, township, village, school district, intermediate school district, community college, public university, authority, district, any other body corporate and politic or other political subdivision, any agency or instrumentality of the foregoing, or any group self-insurance pool formed pursuant to 1951 PA 35, MCL 124.1 to 124.13. For purposes of a project funded under section 16a, governmental unit includes an Indian tribe that has jurisdiction over construction and operation of a project qualifying under 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329. For purposes of a community water supply or a

noncommunity water supply funded under section 16b, governmental unit includes a community water supplier. A governmental unit does not include the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2093, or an economic development corporation created under the economic development corporation act, 1974 PA 338, MCL 125.1601 to 125.1636. A governmental unit does not include a self-insurance pool unless the self-insurance pool has filed a certification by an independent actuary that the reserves set aside under section 7a of 1951 PA 35, MCL 124.7a, are adequate for the payment of claims. A school district shall include a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852. Funds loaned to a public school academy or a school district may not be used to finance the purchase, construction, lease, or renovation of property owned, directly or indirectly, by any officer, board member, or employee of that public school.

(j) "Municipal obligation" means a bond or note or evidence of debt issued by a governmental unit for a purpose authorized by law. A municipal obligation does not include qualified bonds as defined in section 16 of article IX of the state constitution of 1963 except for any such bonds issued by a governmental unit for a community water supply or a noncommunity water supply and financed through the state drinking water revolving fund established under section 16b.

(k) "Noncommunity water supply" means a noncommunity water supply as defined in part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

(l) "Notes" means an obligation of the authority issued as provided in this act, including commercial paper, with a maturity of 3 years or less.

(m) "Project" means a sewage treatment works project or a nonpoint source project, or both, as defined in the state clean water assistance act.

(n) "Reserve fund" means a bond reserve fund or note reserve fund created and established under section 16.

(o) "Revenues" means all fees, charges, money, profits, payments of principal of or interest on municipal obligations and other investments, gifts, grants, contributions, and all other income derived or to be derived by the authority under this act.

(p) "Water supplier" means a water supplier as defined in part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

Sec. 7. The board has all of the following powers:

(a) To adopt bylaws for the regulation of its affairs.

(b) To adopt an official seal.

(c) To maintain a principal office at a place within this state.

(d) To sue and be sued in its own name and to plead and be impleaded.

(e) To loan money to a governmental unit at a rate or rates as the authority determines and to purchase and sell, and to commit to purchase and sell, municipal obligations pursuant to this act.

(f) To borrow money and issue negotiable revenue bonds and notes pursuant to this act.

(g) To make and enter into contracts and other instruments necessary or incidental to the performance of its duties and the exercise of its powers. By rotating the services of legal counsel, the authority shall seek to increase the pool of nationally recognized bond counsel.

(h) To receive and accept from any source grants or contributions of money, property, or other things of value, excluding appropriations from the general fund of the state except for appropriations to the state water pollution control revolving fund established under section 16a and except for appropriations to the state drinking water revolving fund established under section 16b, to be used, held, and applied only for the purposes for which the grants and contributions were made.

(i) To do all acts necessary or convenient to carry out the powers expressly granted.

(j) To require that final actions of the board are entered in the journal for the board and that all writings prepared, owned, used, in the possession of, or retained by the board in the performance of an official function be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(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, 1969 PA 306, MCL 24.201 to 24.328.

(l) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

(m) To investigate and assess the infrastructure needs of the state, current methods of financing infrastructure rehabilitation and improvements, and resources and financing options currently available and potentially useful to improve the state's infrastructure and lower the costs of those improvements.

(n) To indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the authority or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(o) To investigate and assess short-term and long-term borrowing requirements for operating, capital improvements, and delinquent taxes.

(p) To provide assistance, as that term is defined in section 5301 of part 53 (clean water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5301, to any municipality for a revolving fund project and to perform all functions necessary or incident to providing that assistance and to the operation of the state water pollution control revolving fund established under section 16a.

(q) To enter into agreements with the federal government to implement the establishment and operation of the state water pollution control revolving fund established under section 16a pursuant to the provisions of the federal water pollution control act and the rules and regulations promulgated under that act.

(r) To provide assistance, as that term is defined in part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418, to any governmental unit for a revolving fund community water supply or noncommunity water supply and to perform all functions necessary or incident to providing that assistance and to the operation of the state drinking water revolving fund established under section 16b, including, but not limited to, using funding allocated in the federal safe drinking water act for any of the purposes authorized in section 5417(c) of part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5417.

(s) To enter into agreements with the federal government to establish and operate the state drinking water revolving fund under section 16b pursuant to the provisions of the federal safe drinking water act and the rules and regulations promulgated under that act.

Sec. 8. (1) The authority may lend money to a governmental unit through the purchase by the authority of municipal obligations of the governmental unit in fully marketable form. The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the authority, and to otherwise assist governmental units.

(2) Bonds and notes of the authority shall not be in any way a debt or liability of the state and shall not create or constitute any indebtedness, liability, or obligations of the state or be or constitute a pledge of the faith and credit of the state but all authority bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the authority and that the state is not obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(3) All expenses incurred in carrying out the provisions of this act shall be payable solely from revenues or funds provided or to be provided under the provisions of this act, and nothing in this act shall be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

(4) Unless approved by a concurrent resolution of the legislature and except as permitted by section 16a or 16b, the authority shall not provide preferential treatment in the rate of interest for a particular municipal obligation purchased by the authority that is based upon other than financial and credit considerations and shall not forgive or relinquish all or part of the interest or principal of a particular municipal obligation or of municipal obligations of a particular purpose.

Sec. 13. Within limitations that are stated in the issuance or authorization resolution of the authority, the authority may authorize a member of the board or the executive director of the authority to do 1 or more of the following:

(a) Sell and 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, partly to refund notes or bonds and partly for any other authorized purpose.

(d) Buy notes or bonds so issued 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, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of money of the authority that the authority has the power to invest.

(g) Create and manage investments on behalf of governmental units and the state water pollution control revolving fund established under section 16a and the state drinking water revolving fund established under section 16b.

Sec. 16b. The authority shall establish a state drinking water revolving fund that complies with the requirements and objectives of the federal safe drinking water act. The authority shall establish accounts and subaccounts within the state drinking water revolving fund as it determines is necessary or appropriate to operate the state drinking water revolving fund. The accounts and subaccounts may include, but are not limited to, accounts or subaccounts established for any of the purposes authorized in section 5417(c) of part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5417. At the close of a fiscal year, money in an account or

subaccount established under this section shall remain in the account or subaccount, shall not lapse to the general fund, and shall be carried forward to the following year as permitted in the federal safe drinking water act. The authority may fund the state drinking water revolving fund through federal grants, revenues of the authority, or through any other means permitted under the federal safe drinking water act and the rules promulgated under that act. The authority may provide assistance as that term is defined in part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418, to a governmental unit for a community water supply or a noncommunity water supply with proceeds of the state drinking water revolving fund. If the assistance is in the form of a loan, the loan shall be made through a loan agreement in which a governmental unit agrees to make loan repayments to the authority or through the purchase or refinancing of municipal obligations in fully marketable form. Loan agreements with governmental units shall contain appropriate provisions relating to maturity or length of loan, repayment terms, state or local funding requirements, and other provisions as are necessary to comply with the provisions of the federal safe drinking water act and any agreements entered into with the federal government for implementation of the federal safe drinking water act. Community water supplies and noncommunity water supplies eligible for assistance from the state drinking water revolving fund shall be determined pursuant to part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418. The maximum amount of any municipal obligation purchased with proceeds of the state drinking water revolving fund and the maximum interest rate on a loan or municipal obligation shall be determined pursuant to part 54 (safe drinking water assistance) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5401 to 324.5418.

Sec. 25. (1) This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

(2) This act shall be construed liberally to assure compliance with the federal water pollution control act and with any applicable rules promulgated under that act, and with the federal safe drinking water act and with any applicable rules promulgated under that act.

Sec. 27. Except for bonds or notes issued pursuant to the state water pollution control revolving fund established under section 16a and except for bonds or notes issued pursuant to the state drinking water revolving fund established under section 16b, the authority shall not issue new bonds or notes after December 31, 2000, to make loans to governmental units.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4465 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.