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CMH AUTHORITIES: CREDIT

Senate Bill 1008 as passed by the Senate
Sponsor: Sen. Joel D. Gougeon

Senate Bill 1009 (Substitute H-1)
Sponsor: Sen. Shirley Johnson

House Committee: Health Policy
Senate Committee: Families, Mental Health and Human Services

First Analysis (5-17-00)

THE APPARENT PROBLEM:

Major revisions to the Mental Health Code adopted in 1995 included authorization for a community mental health (CMH) agency or a CMH organization to become a CMH authority, which has relatively more autonomy and responsibility. The creation of a CMH authority requires enabling resolutions adopted by the board of commissioners of each county creating the authority. The 1995 legislation granted certain specified powers to CMH authorities. Among these were such things as making purchases and contracts and acquiring, owning, operating, maintaining, leasing, or selling real or personal property.

According to information supplied by the Senate Fiscal Agency, there has been some confusion as to whether a CMH authority is empowered to borrow money secured by the authority's assets; enter into installment loan contracts or agreements for the purchase of land, property, or equipment; lease facilities, equipment, or other property; obtain a line of credit to secure funds for authority operations or to pay for previous loans; or to use a credit card. Most CMH authorities and their officials apparently have believed that the 1995 legislation has been sufficient to authorize these types of transactions, but some CMH authority legal advisors, along with state attorney general officials, appear to disagree. Some people believe that CMH authorities should be explicitly empowered in statute to secure credit in order to ensure their continued operations.

THE CONTENT OF THE BILLS:

Senate Bills 1008 and 1009 would, respectively, allow a community mental health authority to make credit card transactions and secure loans; purchase or lease land, property, and equipment; and issue short-term notes. Specifically, the bills would do the following:

Senate Bill 1008 would amend Public Act 266 of 1995 (MCL 129.241), which authorizes and regulates credit card transactions involving local units of government, to include a CMH authority created under the Mental Health Code in the act's definitions of "governing body" and "local unit".

Senate Bill 1009 would amend the Mental Health Code (MCL 330.1205) to allow a CMH authority to borrow money to finance or refinance the purchase of real property or tangible personal property of the authority. The loan would have to be secured by a mortgage on the real property or a security interest or other lien on the tangible personal property. The loan could not be for longer than the useful life of the collateral and would have to be authorized by resolution approved by a majority of CMH board members. Though a mortgage given by a CMH authority to finance the purchase of real property under the bill is not otherwise subject to the Municipal Finance Act, it would have to be approved by the Department of Treasury unless an exception to prior approval were available under the act. A CMH authority could also enter an installment purchase agreement for the purchase or refinancing of tangible personal property for public purposes. The installment loan could not be for a longer term than the useful life of the tangible personal property and would not be subject to the provisions of the Municipal Finance Act. Further, the total of all outstanding installment purchase agreements could not exceed one percent of the taxable value of all property located within the service area of the CMH authority. A purchase of property financed in a manner substantially similar to the provisions of the bill prior to the bill's effective date would be ratified as if it had been made under the bill's provisions.

In addition, a community mental health authority could borrow money and issue notes by resolution of a majority of its governing board. The notes could not exceed 20 percent of the previous year's annual income and could not mature more than 18 months from the date of issuance. The purpose of the notes would be to meet the expenses of the CMH authority, including expenses for the operation and maintenance of facilities, and payments owed to contracted service providers.

The authorizing resolution would have to provide a pledge of income and revenues of the CMH authority for repayment of the notes, and could provide for a special sinking fund into which there could be paid, as collected, a sufficient fund from the revenues of the CMH authority to retire both the principal of and interest on the notes at or before maturity. The bill would also provide other means for board members to offer additional security for the payment of the notes. Unless an exception from prior approval were available under the Municipal Finance Act, the Department of Treasury would have to approve all notes issued under the bill. Before granting approval, the department would have to determine that the amount of the proposed note was sufficient, but not excessive, that the revenue and income pledged for the payment of the notes were sufficient, and that the note and the proceedings authorizing the note comply with the Mental Health Code and other applicable law.

HOUSE COMMITTEE ACTION:

The committee on Health Policy adopted a substitute for Senate Bill 1009. The substitute deleted a provision that would have allowed a CMH authority to obtain a line of credit to secure funds for authority operations or to pay previous loans and replaced it with a provision allowing the CMH authorities to issue short-term notes approved by the Department of Treasury. A provision allowing CMH authorities to lease facilities, equipment, or other property was also deleted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no fiscal impact on state or local government. (5-15-00)

ARGUMENTS:

For:

Senate Bill 1009 would empower CMH authorities to conduct the types of business transactions that many believed had been authorized by the 1995 recodification of the Mental Health Code. Those revisions granted CMH authorities the power to own and acquire real property and equipment, but apparently did not clearly grant the authorities the power to secure loans for those purposes. The bills would clarify that CMH authorities could secure loans with authority assets as collateral, obtain or refinance installment loans, issue short-term notes, and make credit card transactions. However, any loan or installment purchase agreement conducted under the bill would have to be approved by the Department of Treasury and would be under the department's oversight. In this way, a CMH authority should not get in debt to the point that services would be compromised. Passage of the bill would enable CMH authorities to continue their smooth and efficient operation, without their ability to operate in that manner being questioned.

For:

Senate Bill 1009 would enable CMH authorities to issue short-term notes to raise money to pay operating and maintenance expenses of its facilities, payments owed to contracted service providers, and other necessary expenses. According to testimony offered in committee, the federal government shutdown a few years ago severely threatened the operation of several CMH authorities by shutting off a major source of revenue. Though it was known that federal funds earmarked for CMH authority operations would eventually begin flowing again, affected community mental health services programs did not have sufficient cash flow to pay contracted service providers, utilities, building rents and mortgages, and so on until federal leaders approved the federal budget. It is hoped that, in case of another emergency (e.g., a delay in receiving promised funding), this provision would allow CMH authorities to issue notes to act as a bridge, so to speak, until expected funds are received.

However, several safeguards would be built in to the bill. For instance, the notes must mature no later than

18 months from issuance, the notes would require a resolution by the CMH board, and the amount borrowed by the notes could not exceed 20 percent of the previous year's annual income. Further, before any notes could be issued, a CMH board would have to apply for approval by the Department of Treasury. In deciding whether or not to approve a request to issue notes, the department would have to consider several factors, including whether or not the amount of the notes is sufficient without being excessive and the CMH authority's ability to repay the debt. It is hoped that this provision would be rarely utilized, but should CMH authorities face a crisis similar to the one created a few years ago when the federal government shut down operations, it is necessary to have a mechanism in place whereby the CMH authorities can obtain the necessary revenue to continue to offer mental health services to clients without interruption.

Response:

Some people are concerned that the ability to issue notes (which are very similar to issuing bonds, something that CMH authorities have previously been prohibited from doing) could result in a CMH authority having to use a significant amount of a current year's operating budget to pay off past debts, thus compromising services to clients.

Rebuttal:

The bill would cap the amount that a CMH authority could borrow at 20 percent of its previous year's annual income. Additionally, though notes are similar to bonds, they have a much shorter maturity period. That, coupled with the requisite Department of Treasury approval and oversight, should ensure that no CMH authority could get in over its head, so to speak. The bill as passed by the Senate, by comparison, would have allowed CMH authorities to establish lines of credit; that approach would have provided no outside accountability.

Against:

Senate Bill 1008, regarding credit card usage, could be ripe for abuse. Reportedly, the office in the Department of Treasury that oversees local units' use of credit card transactions claims that various local units and their officials have used the credit cards for personal purchases. According to information supplied by the Senate Fiscal Agency, Grand Traverse County has had so many problems that it is cancelling all credit card usage. Personal use of these credit cards brings up numerous issues. For example, public purchases are exempt from state sales tax; personal purchases using publicly issued credit cards could skirt payments due to the state. If a card included perks such as frequent flyer miles or cash back awards, it is unclear who be able to make use of those perks - the individual making the purchase, or the local unit who issued the card. Further, the bill contains no penalties for misuse of the credit cards.

Response:

The bill merely adds CMH authorities to the list of governmental entities already allowed to issue credit cards. Further, Public Act 266 of 1995 requires a local unit to adopt by resolution a written policy that includes disciplinary measures that are consistent with law for the unauthorized use of a credit card by an officer or employee of the local unit. This policy is required to be developed before a local unit enters into a credit card arrangement.

POSITIONS:

The Michigan Association of Counties (MAC) supports the bills. (5-12-00)

The Department of Community Health supports the bills. (5-15-00)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.