

HOUSE BILL No. 5849

(As passed the Senate, May 7, 2002)

April 9, 2002, Introduced by Rep. Caul and referred to the Committee on Tax Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 205 (MCL 330.1205), as amended by 2000 PA
228.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) A county community mental health agency or a
2 community mental health organization that is certified by the
3 department under section 232a may become a community mental
4 health authority as provided in this section through an enabling
5 resolution adopted by the board of commissioners of each creating
6 county after at least 3 public hearings held in accordance with
7 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The
8 resolution is considered adopted if it is approved by a majority
9 of the commissioners elected and serving in each county creating
10 the authority. The enabling resolution is not effective until it

1 has been filed with the secretary of state and with the county
2 clerk of each county creating the authority. If any provision of
3 the enabling resolution conflicts with this act, this act super-
4 sedes the conflicting provision.

5 (2) All of the following shall be stated in the enabling
6 resolution:

7 (a) The purpose and the power to be exercised by the commu-
8 nity mental health authority shall be to comply with and carry
9 out the provisions of this act.

10 (b) The duration of the existence of the community mental
11 health authority and the method by which the community mental
12 health authority may be dissolved or terminated by itself or by
13 the county board or boards of commissioners. These provisions
14 shall comply with section 220.

15 (c) The manner in which any net financial assets originally
16 made available to the authority by the participating county or
17 counties will be returned or distributed if the authority is dis-
18 solved or terminated. All other remaining assets, net of liabil-
19 ities, shall be transferred to the community mental health serv-
20 ices program or programs that replace the authority.

21 (d) The liability of the community mental health authority
22 for costs associated with real or personal property purchased or
23 leased by the county for use by the community mental health serv-
24 ices program to the extent necessary to discharge the financial
25 liability if desired by the county or counties.

26 (e) The manner of employing, compensating, transferring, or
27 discharging necessary personnel subject to the provisions of

1 applicable civil service and merit systems, and the following
2 restrictions:

3 (i) Employees of a community mental health authority are
4 public employees. A community mental health authority and its
5 employees are subject to 1947 PA 336, MCL 423.201 to 423.217.

6 (ii) Upon the creation of a community mental health authori-
7 ty, the employees of the former community mental health services
8 program shall be transferred to the new authority and appointed
9 as employees subject to all rights and benefits for 1 year. Such
10 employees of the new community mental health authority shall not
11 be placed in a worse position by reason of the transfer for a
12 period of 1 year with respect to workers' compensation, pension,
13 seniority, wages, sick leave, vacation, health and welfare insur-
14 ance, or any other benefit that the employee enjoyed as an
15 employee of the former community mental health services program.
16 Employees who are transferred shall not by reason of the transfer
17 have their accrued pension benefits or credits diminished.

18 (iii) If the former county community mental health agency or
19 community mental health organization was the designated employer
20 or participated in the development of a collective bargaining
21 agreement, the newly established community mental health author-
22 ity shall assume and be bound by the existing collective bargain-
23 ing agreement. The formation of a community mental health
24 authority shall not adversely affect any existing rights and
25 obligations contained in the existing collective bargaining
26 agreement. For purposes of this provision, participation in the
27 development of a collective bargaining agreement means that a

1 representative of the community mental health agency or
2 organization actively participated in bargaining sessions with
3 the employer representative and union or was consulted with
4 during the bargaining process.

5 (f) Any other matter consistent with this act that is neces-
6 sary to assure operation of the community mental health authority
7 as agreed upon by the creating county or counties.

8 (3) If a county community mental health agency or a commu-
9 nity mental health organization becomes a community mental health
10 authority pursuant to this section, both of the following apply:

11 (a) All assets, debts, and obligations of the county commu-
12 nity mental health agency or community mental health organiza-
13 tion, including but not limited to equipment, furnishings, sup-
14 plies, cash, and other personal property, shall be transferred to
15 the community mental health authority.

16 (b) All the privileges and immunities from liability and
17 exemptions from laws, ordinances, and rules that are applicable
18 to county community mental health agencies or community mental
19 health organizations and their board members, officers, and
20 administrators, and county elected officials and employees of
21 county government are retained by the authority and the board
22 members, officers, agents, and employees of an authority created
23 under this section.

24 (4) In addition to other powers of a community mental health
25 services program as set forth in this act, a community mental
26 health authority has all of the following powers, whether or not
27 they are specified in the enabling resolution:

1 (a) To fix and collect charges, rates, rents, fees, or other
2 charges and to collect interest.

3 (b) To make purchases and contracts.

4 (c) To transfer, divide, or distribute assets, liabilities,
5 or contingent liabilities, unless the community mental health
6 authority is a single-county community mental health services
7 program and the county has notified the department of its inten-
8 tion to terminate participation in the community mental health
9 services program. During the interim period between notification
10 by a county under section 220 of its intent to terminate partici-
11 pation in a multi-county community mental health services program
12 and the official termination of that participation, a community
13 mental health authority's power under this subdivision is subject
14 to any agreement between the community mental health authority
15 and the county that is terminating participation, if that agree-
16 ment is consistent with the enabling resolution that created the
17 authority.

18 (d) To accept gifts, grants, or bequests and determine the
19 manner in which those gifts, grants, or bequests may be used con-
20 sistent with the donor's request.

21 (e) To acquire, own, operate, maintain, lease, or sell real
22 or personal property. Before taking official action to sell res-
23 idential property, however, the authority shall do all of the
24 following:

25 (i) Implement a plan for alternative housing arrangements
26 for recipients residing on the property.

1 (ii) Provide the recipients residing on the property or
2 their legal guardians, if any, an opportunity to offer their
3 comments and concerns regarding the sale and planned
4 alternatives.

5 (iii) Respond to those comments and concerns in writing.

6 (f) To do the following in its own name:

7 (i) Enter into contracts and agreements.

8 (ii) Employ staff.

9 (iii) Acquire, construct, manage, maintain, or operate
10 buildings or improvements.

11 (iv) Subject to subdivision (e), acquire, own, operate,
12 maintain, lease, or dispose of real or personal property, unless
13 the community mental health authority is a single-county mental
14 health services program and the county has notified the depart-
15 ment of its intention to terminate participation in the community
16 mental health services program. During the interim period
17 between notification by a county under section 220 of its intent
18 to terminate participation in a multi-county community mental
19 health services program and the official termination of that par-
20 ticipation, a community mental health authority's power under
21 this subdivision is subject to any agreement between the commu-
22 nity mental health authority and the county that is terminating
23 participation, if that agreement is consistent with the enabling
24 resolution that created the authority.

25 (v) Incur debts, liabilities, or obligations that do not
26 constitute the debts, liabilities, or obligations of the creating
27 county or counties.

1 (vi) Commence litigation and defend itself in litigation.

2 (g) To invest funds in accordance with statutes regarding
3 investments.

4 (h) To set up reserve accounts, utilizing state funds in the
5 same proportion that state funds relate to all revenue sources,
6 to cover vested employee benefits including but not limited to
7 accrued vacation, health benefits, the employee payout portion of
8 accrued sick leave, if any, and worker's compensation. In addi-
9 tion, an authority may set up reserve accounts for depreciation
10 of capital assets and for expected future expenditures for an
11 organizational retirement plan.

12 (i) To develop a charge schedule for services provided to
13 the public and utilize the charge schedule for first and
14 third-party payers. The charge schedule may include charges that
15 are higher than costs for some service units by spreading nonrev-
16 enue service unit costs to revenue-producing service unit costs
17 with total charges not exceeding total costs. All revenue over
18 cost generated in this manner shall be utilized to provide serv-
19 ices to priority populations.

20 (5) In addition to other duties and responsibilities of a
21 community mental health services program as set forth in this
22 act, a community mental health authority shall do all of the
23 following:

24 (a) Provide to each county creating the authority and to the
25 department a copy of an annual independent audit performed by a
26 certified public accountant in accordance with governmental

1 auditing standards issued by the comptroller of the United
2 States.

3 (b) Be responsible for all executive administration, person-
4 nel administration, finance, accounting, and management informa-
5 tion system functions. The authority may discharge this respon-
6 sibility through direct staff or by contracting for services.

7 (6) A county that has created a community mental health
8 authority is not liable for any intentional, negligent, or
9 grossly negligent act or omission, for any financial affairs, or
10 for any obligation of a community mental health authority, its
11 board, employees, representatives, or agents. This subsection
12 applies only to county government.

13 (7) A community mental health authority shall not levy any
14 type of tax or, except as provided in subsection (13), issue any
15 type of bond in its own name or financially obligate any unit of
16 government other than itself.

17 (8) An employee of a community mental health authority is
18 not a county employee. The community mental health authority is
19 the employer with regard to all laws pertaining to employee and
20 employer rights, benefits, and responsibilities.

21 (9) As a public governmental body, a community mental health
22 authority is subject to the open meetings act, 1976 PA 267,
23 MCL 15.261 to 15.275, and the freedom of information act, 1976
24 PA 442, MCL 15.231 to 15.246, except for those documents produced
25 as a part of the peer review process required in section 143a and
26 made confidential by section 748(9).

1 (10) A community mental health authority may borrow money to
2 finance or refinance the purchase of real property or tangible
3 personal property of the authority. These contractual obliga-
4 tions shall be secured by a mortgage on the real property or a
5 security interest or other lien on the tangible personal
6 property. These contractual obligations shall be for not longer
7 than the useful life of the collateral and shall be authorized by
8 resolution approved by a majority of the community mental health
9 board. ~~Unless an exception to prior approval is available under~~
10 ~~section 10 or 11 of chapter III of the municipal finance act,~~
11 ~~1943 PA 202, MCL 133.10 and 133.11, a~~ A mortgage given by a com-
12 munity mental health authority to finance the purchase of real
13 property under this subsection ~~shall be approved by the depart-~~
14 ~~ment of treasury, but~~ is not ~~otherwise~~ subject to the
15 ~~municipal finance act, 1943 PA 202, MCL 131.1 to 139.3~~ REVISED
16 MUNICIPAL FINANCE ACT, 2001 PA 34, MCL 141.2101 TO 141.2821.

17 (11) A community mental health authority may enter into an
18 installment purchase agreement for the purchase or refinancing of
19 tangible personal property for public purposes. The installment
20 purchase agreement for the purchase of tangible personal property
21 shall not be for a longer term than the useful life of the tangi-
22 ble personal property. The installment purchase agreements
23 described in this subsection are not subject to the provisions of
24 the ~~municipal finance act, 1943 PA 202, MCL 131.1 to 139.3~~
25 REVISED MUNICIPAL FINANCE ACT, 2001 PA 34, MCL 141.2101 TO
26 141.2821. The total of all outstanding installment purchase
27 agreements under this subsection shall not exceed 1% of the

1 taxable value of all property located within the area served by
2 that community mental health authority.

3 (12) If a community mental health authority has financed the
4 purchase of property in a substantially similar manner to that as
5 described in subsection (10) or (11), prior to the effective date
6 of the amendatory act that added this subsection, that purchase
7 is ratified as if it was made under subsection (10) or (11).

8 (13) A community mental health authority may borrow money
9 and issue notes by resolution of a majority vote of its governing
10 board, which notes shall not exceed 20% of the previous year's
11 annual income and shall mature not more than 18 months from the
12 date of their issuance. Notes shall be issued for the purpose of
13 meeting the expenses of the community mental health authority,
14 including the expenses of operation and maintenance of its facil-
15 ities, and payments due to its contracted service providers. The
16 resolution authorizing the issuance of the notes shall provide
17 for the pledge of income and revenues of the community mental
18 health authority for the payment of the notes, and may also pro-
19 vide for a special sinking fund into which there may be paid, as
20 collected, a sufficient fund from the revenues of the community
21 mental health authority to retire both the principal of and
22 interest on the notes at or before maturity. The resolution may
23 also authorize 1 or more officers or board members of the author-
24 ity to provide for the mortgage, pledge, or grant of security
25 interests or other liens in other assets of the community mental
26 health authority as additional security for the payment of
27 notes. ~~Unless an exception from prior approval is available~~

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1 ~~under section 10 or 11 of chapter III of the municipal finance~~
2 ~~act, 1943 PA 202, MCL 133.10 and 133.11, notes~~ NOTES issued by a
3 community mental health authority under this subsection ~~shall be~~
4 ~~approved by the department of treasury, but~~ are not ~~otherwise~~
5 subject to the ~~municipal finance act, 1943 PA 202, MCL 133.1 to~~
6 ~~139.3~~ REVISED MUNICIPAL FINANCE ACT, 2001 PA 34, MCL 141.2101 TO
7 141.2821. ~~Before approving the issuance of a note under this~~
8 ~~subsection, the department of treasury shall determine that the~~
9 ~~amount of the proposed note is sufficient but not excessive, that~~
10 ~~the revenue and income pledged for the payment of the notes are~~
11 ~~sufficient, and that the note and the proceedings authorizing the~~
12 ~~note comply with this act and other applicable law.~~