

Act No. 4
Public Acts of 2010
Approved by the Governor
February 5, 2010
Filed with the Secretary of State
February 5, 2010
EFFECTIVE DATE: February 5, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Cushingberry, Durhal, Constan, Robert Jones, Hammel, Johnson, Leland, Young, Womack and Dean

ENROLLED HOUSE BILL No. 5626

AN ACT to amend 1981 PA 80, entitled "An act to authorize certain cities and counties to issue general obligation bonds or obligations to fund an operating deficit or projected operating deficit; to prescribe the powers and duties of the state administrative board; to provide for the levy of ad valorem property taxes to pay the principal and interest on the bonds or obligations; to prescribe certain conditions related to the bonds or obligations; and to provide remedies for enforcement of this act," by amending the title and sections 3, 4, 8, and 9 (MCL 141.1003, 141.1004, 141.1008, and 141.1009), the title and sections 3, 8, and 9 as amended by 1987 PA 279 and section 4 as amended by 2002 PA 444.

The People of the State of Michigan enact:

TITLE

An act to authorize certain cities and counties to issue bonds or obligations to fund an operating deficit or projected operating deficit; to prescribe the powers and duties of the state administrative board; to provide for the levy of ad valorem property taxes to pay the principal and interest on the bonds or obligations; to prescribe certain conditions related to the bonds or obligations; and to provide remedies for enforcement of this act.

Sec. 3. A city or county that meets the applicable conditions described in section 4 may borrow money and issue its bonds or obligations either for funding an operating deficit for a past fiscal year or years or for funding a projected operating deficit in the current fiscal year, or for funding both. The bonds or obligations may be issued as general obligation bonds or obligations, as bonds or obligations payable solely from a specified source or sources of revenues lawfully available to the city or county, or as a combination of general obligation bonds or obligations and bonds or obligations payable from a specified source or sources of revenues. The authority granted by this act is in addition to any power granted to a city or county by its charter or any other provision of law.

Sec. 4. (1) Before a city may make application to the board for approval to issue bonds or obligations under this act, the legislative body of the city shall determine by resolution that all of the following conditions exist:

(a) The city had an accumulated operating deficit as of the end of the last completed fiscal year or is projected to have an accumulated operating deficit at the end of the current fiscal year. The determination of the existence of an accumulated operating deficit or a projected accumulated operating deficit shall be made in accordance with generally accepted accounting principles.

(b) The amount of the deficit exceeds the amount that the city may borrow from the emergency municipal loan fund pursuant to the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(c) The amount of the deficit is more than the city can fund by issuing tax anticipation notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) Before a county may make application to the board for approval to issue bonds or obligations under this act, the legislative body of the county shall determine by resolution that the county had an accumulated operating deficit as of the end of the last completed fiscal year or is projected to have an accumulated operating deficit at the end of the current fiscal year. The determination of the existence of an accumulated operating deficit or a projected accumulated operating deficit shall be made in accordance with generally accepted accounting principles.

(3) If the legislative body of a city or county determines that all of the conditions described in subsection (1) or (2) exist, respectively, it shall also in the same resolution make the following determinations:

(a) The amount of the accumulated operating deficit that was incurred or is projected to exist at the end of the current fiscal year.

(b) The maximum amount of bonds or obligations necessary to fund the deficit and provide funds for the purposes described in section 5.

(4) Before adopting a resolution authorizing the issuance of the bonds or obligations, the city or county shall apply to the secretary of the board for an order approving issuance of the bonds or obligations by the city or county and shall attach to the application a copy of the resolution described in this section.

(5) The board shall require that the city or county provide the board with a statement signed by the chief executive officer of the city or county, if a charter county, or the chairperson of the board of county commissioners, which statement indicates how the city or county intends to avoid future deficits. The statement is a condition that shall be met as part of the application by the city or county to the board for issuance of bonds or obligations under this act.

(6) Within 7 days after receipt of a full and complete application as determined by the board, the board shall issue an order approving issuance of bonds or obligations by the city or county in an amount not exceeding the amount determined to be necessary by the legislative body of the city or county under subsection (3) or denying the application.

(7) After approval of the board, the determinations and findings made by the legislative body of the city or county pursuant to this section are conclusive.

(8) The maximum amount of bonds or obligations that are unlimited or limited tax bonds or obligations that may be issued by a city or county under this act shall not exceed 3% of the state equalized valuation of real and personal property located within the territorial boundaries of the city or county, respectively, or the maximum principal amount of all bonds or obligations that may be issued by a city or county under this act shall not exceed \$125,000,000.00, or for bonds or obligations issued by a city under this act after January 1, 2010 and before September 1, 2010, the maximum principal amount of all bonds or obligations issued by a city shall not exceed \$250,000,000.00. The limitations provided by this subsection do not include bonds or obligations or portions of bonds or obligations used to pay for any of the following:

(a) Amounts set aside for a reserve for payment of principal, interest, and redemption premiums.

(b) Expected costs of issuance of the bonds or obligations.

(c) The amount of any discount.

(d) Bonds or obligations issued to refund outstanding bonds or obligations.

(9) Except as provided in section 7, the issuance of bonds or obligations under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The issuance of bonds or obligations described in this subsection is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

Sec. 8. The bonds or obligations may be issued as limited tax bonds or obligations by resolution of the legislative body of the city or county without vote of the electors and without publication of a notice of intent to issue bonds or obligations as required by section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5. The legislative body of a city or county may submit to the electors of the city or county the question of issuing the bonds or obligations authorized by this act. If the question is approved, the bonds or obligations may be issued as unlimited tax bonds or obligations. If the question is not submitted to or approved by the electors, the bonds or obligations may be issued as limited tax bonds or obligations, as bonds or obligations payable solely from a specified source or sources of revenues lawfully available to the city or county, or as a combination of limited tax bonds or obligations and bonds or obligations payable solely from those specified revenue sources. Any actions taken before July 15, 1981 to submit to the electors of a city the question of issuing bonds or obligations similar to the bonds or obligations authorized by this act or the question of pledging the city's unlimited taxing power to bonds or obligations described in this act are ratified and confirmed and are effective with respect to bonds or obligations issued pursuant to this act.

Sec. 9. (1) All bonds or obligations issued pursuant to this act before April 11, 1988 are subject to the requirements of former 1981 PA 97.

(2) Unless otherwise provided by the city or county in the resolution required by section 4, bonds or obligations issued pursuant to this act on or after April 11, 1988 and before January 1, 2010 are not subject to the requirements of former 1981 PA 97, notwithstanding that distributable aid is pledged or assigned to secure bonds or obligations under this act.

(3) In the resolution authorizing the bonds or obligations, the legislative body of the city or county may provide for appointment of a trustee, escrow agent, or other person to hold funds or reserves for payment of the bonds or obligations and to perform other duties as the city or county determines, may provide for the vesting in the trustee, escrow agent, or other designated person the property, rights, powers, and remedies as the city or county determines, may pledge and create a lien upon any unencumbered revenues or taxes of the city or county, and may provide for payment of pledged revenues or taxes directly to a paying agent, trustee, escrow agent, the state treasurer, or other person to be held and used solely for payment of principal and interest on the bonds or obligations. A pledge pursuant to this act for benefit of bondholders or others is perfected without delivery, recording, or notice. The resolution authorizing the bonds or obligations also may provide for covenants and promises with respect to fiscal, budget, and accounting matters that are considered necessary or appropriate in the judgment of the city or county to sell the bonds or obligations to the best advantage of the city or county.

(4) In the resolution authorizing the bonds or obligations for the payment of the bonds or obligations, the city or county may provide for the payment of the bonds or obligations with distributable aid received or to be received by the city or county derived from the imposition of taxes by the state and returned or to be returned to the city or county as provided by law except for money that the state constitution of 1963 prohibits for use for such a pledge. The city or county and the state treasurer may enter into an agreement providing for the direct payment of distributable aid to a paying agent, trustee, escrow agent, or other person to be used for the sole purpose of paying principal or interest on bonds or obligations issued pursuant to this act, and that money may be pledged by the city or county for the payment of bonds or obligations issued under this act. If the city or county and the state treasurer enter into such an agreement, notwithstanding any other provision of this act to the contrary, for bonds or obligations issued after the effective date of the 2010 amendatory act that amended this subsection and made payable from distributable aid in the resolution authorizing those bonds or obligations a statutory lien and trust is created applicable to distributable aid received or to be received from the state treasurer by a paying agent, escrow agent, or a trustee, after the distributable aid has been appropriated but subject to any subsequent reduction of that appropriation by operation of law or executive order. The distributable aid paid or to be paid to a paying agent, trustee, escrow agent, or other person for the purpose of paying the principal of and interest on the bonds or obligations issued pursuant to this act shall be subject to a lien and trust, which for bonds or obligations issued pursuant to this act after the effective date of the 2010 amendatory act that amended this subsection and after bonds are issued subject to the statutory lien created by this subsection, is hereby made a statutory lien and trust paramount and superior to all other liens and interests of any kind, for the sole purpose of paying the principal of and interest on bonds and obligations issued pursuant to this act. The lien created under this subsection for the benefit of bondholders or others is perfected without delivery, recording, or notice. The distributable aid held or to be held by a paying agent, trustee, escrow agent, or other person shall be held in trust for the sole benefit of the holders of the bonds or obligations issued pursuant to this act and shall be exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the city or county other than for payment of debt service on the bonds or obligations to which the lien applies and the holders of bonds or obligations issued pursuant to this act after January 1, 2010, but before September 1, 2010, shall have a first priority lien that is paramount and superior to all other liens and interests of any kind that arise or are created after the effective date of the 2010 amendatory act that amended this subsection and after bonds are issued subject to the statutory lien created by this subsection. However, nothing in the 2010 amendatory act that amended this subsection shall abridge or reduce the ability of the state treasurer to withhold distributable aid from a city or county as provided by the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921. For bonds or obligations issued pursuant to this act after January 1, 2010 and before September 1, 2010, the maximum principal and interest becoming due on the bonds or obligations in any fiscal year shall not exceed the amount of shared revenues received by the city for the state fiscal year ending September 30, 2009 as provided for in the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921, and as provided in the state constitution of 1963. This subsection shall not be construed to do any of the following:

(a) Create or constitute state indebtedness.

(b) Require the state to continue to impose and collect taxes from which distributable aid is paid or to make payments of distributable aid.

(c) Limit or prohibit the state from repealing or amending a law enacted for the imposition of taxes from which distributable aid is paid, for the payment or apportionment of distributable aid, or for the manner, time, or amount of distributable aid.

(5) With respect to bonds or obligations issued on or before September 30, 1988, in the resolution authorizing the bonds or obligations, the legislative body of the city or county may provide that, from each collection of ad valorem property taxes after the issuance of the bonds or obligations, there shall be set aside in a special fund, to be used for the payment of principal and interest on the bonds or obligations, an amount equal to the total amount of the collection multiplied by a fraction determined as follows:

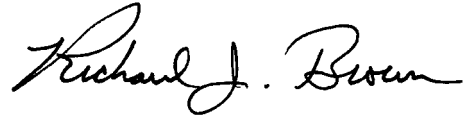
(a) The numerator of the fraction is 125% of the amount of principal and interest coming due on the bonds or obligations in the current fiscal year.

(b) The denominator of the fraction is the total amount of the tax levied for the current fiscal year multiplied by a fraction, the numerator of which is the total of the taxes collected during the 5 prior fiscal years and the denominator of which is the total of taxes levied during the 5 prior fiscal years.

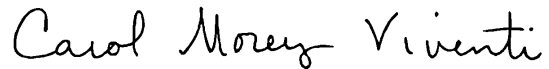
(6) An authorizing resolution under subsection (4) or (5) may provide that all or any portion of the taxes collected and set aside as provided in subsection (5) shall not be used for any other purpose.

(7) As used in this section, "distributable aid" means state shared revenues provided for in the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921, any other law providing for distribution of state shared revenues which are derived from the same taxes distributed under the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921, and any law providing reimbursement to a municipality under the state constitution of 1963 as reimbursement for revenue which would otherwise be collected from taxes imposed by the municipality.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved -----

Governor