Act No. 267
Public Acts of 2011
Approved by the Governor
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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011

Introduced by Senator Jansen

ENROLLED SENATE BILL No. 483

AN ACT to authorize the issuance of bonds, notes, or other financial instruments; to create funds and accounts; to prescribe the powers and duties of the authority, the state treasurer, and certain other state officials and state employees; and to make appropriations and prescribe certain conditions for the appropriations.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "employment security financing act".

Sec. 2. As used in this act:

(a) "Ancillary facility" means any revolving credit agreement, agreement establishing a line of credit, or letter of credit; reimbursement agreement; interest rate exchange or similar agreement; currency exchange agreement; commodity exchange agreement; interest rate floor or cap; option, put, call, or similar agreement to hedge payment, currency, commodity, rate, spread, or similar exposure; investment agreement; float agreement; forward agreement or other investment arrangement; insurance contract; surety bond; commitment to purchase or sell securities; purchase or sale agreement or commitment; or other contract or agreement or other security agreement approved by the authority under this act, including without limitation any arrangement referred to in this act.

(b) "Authority" means the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(c) "Board" means the board of directors of the authority.

(d) "Bond" means a bond, note, financial instrument, or other evidence of indebtedness or obligation issued by the authority under this act.

(e) "Director" means director of the department of licensing and regulatory affairs, or his or her designee.

(f) "Financing costs" means all capitalized interest; operating and debt service reserves; costs of issuance; fees for credit and liquidity enhancements; any item of expense directly or indirectly payable or reimbursable by the authority and related to the authorization, sale, or issuance of bonds, including without limitation underwriting fees, counsel fees, fees of the attorney general, and fees and expenses of consultants, advisors, fiduciaries, and rating agencies; and other costs as the authority determines to be desirable in issuing, securing, and marketing and remarketing the bonds.

(g) "Interest rate exchange or similar agreement" means a written contract with a counterparty to provide for an exchange of payments based upon fixed or variable interest rates or on both fixed and variable interest rates relating to bonds issued under this act.

(h) "Operating expenses" means the reasonable operating expenses of the authority under this act, including without limitation the cost of preparation of accounting and other reports; costs of maintaining the ratings on the bonds; bond insurance premiums; costs of authority meetings or other required activities of the authority under this act; counsel fees, including the fees of the attorney general; fees and expenses incurred for consultants, advisors, and fiduciaries relating to bonds or activities of the authority authorized by this act; and any other costs arising from activities authorized in section 8(2).

(i) "Outstanding" means with respect to bonds, all bonds except those that have been paid in full at maturity or that are not outstanding under the terms of the applicable authority resolution, trust indenture, or trust agreement authorizing the issuance of the bonds. With respect to ancillary facilities, outstanding means all ancillary facilities except those that have been paid in full or that are not outstanding under the terms of those ancillary facilities.

(j) "Person" means an individual, corporation, limited or general partnership, association, joint venture, limited liability company, or a governmental entity, including this state.

(k) "State treasurer" means the state treasurer of this state or his or her designee, if the designee is authorized to exercise delegated signatory power for purposes of this act in a written instrument signed by the state treasurer and maintained in a permanent file.

Sec. 3. (1) The authority's exercise of the powers under this act is in addition to any other powers conferred on the authority by law, including, but not limited to, Executive Reorganization Order No. 2010-2, MCL 12.194, and the statutory authority referred to in that reorganization order. The authority's exercise of the powers under this act is an essential governmental function of this state.

(2) The authority may issue bonds in the principal amount or amounts and with maturities as the authority determines necessary to provide sufficient funds to achieve its authorized purposes under this act, including, without limitation, all of the following:

(a) Reducing or avoiding the need for the state to borrow or obtain a federal advance to this state's unemployment trust account within the federal unemployment trust fund.

(b) Repaying principal and interest on unpaid advances to this state's unemployment trust account within the federal unemployment trust fund.

(c) Funding the minimum amount necessary to pay unemployment benefits without advances or loans from the federal government before January 1, 2014.

(d) Paying unemployment benefits before January 1, 2014.

(e) Paying or providing for financing costs.

(f) Providing sufficient reserves as necessary under an indenture or under federal unemployment insurance laws, rules, regulations, or guidance as are necessary to minimize the impact on unemployment insurance tax rates.

Sec. 4. (1) The board of the authority shall authorize a bond issue by resolution. The authority may issue bonds, including refunding bonds, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any proceedings or conditions other than those specifically required by this act. Every bond issue is a special revenue obligation payable from and secured by a pledge of revenues or funds available for that purpose under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, and other assets, including without limitation the proceeds of the bonds deposited in a reserve fund for the benefit of the owners of the bonds, earnings on funds from bonds issued under this act, and other available funds. The bonds are payable upon the terms and conditions specified by the authority in the resolution under which the authority issues the bonds or in a related trust agreement or trust indenture.

(2) The authority may issue bonds to refund any bonds by issuing new bonds if it considers the refunding expedient, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for restructuring or any of the authority's other authorized purposes.

Sec. 5. For each bond issue, the authority shall determine or prescribe the method of determining all of the following:

(a) The date of issue.

(b) Whether the bonds shall bear no interest, appreciate as to principal amount, bear interest at fixed or variable rates, or any combination of these.

(c) Whether the bonds are payable at or before maturity.

(d) When the bonds shall mature.

(e) Whether the authority may redeem the bonds prior to maturity, at what price, and under what conditions.

(f) The method of payment of principal of and interest on the bonds.

(g) The form, denomination, and place of payment of principal of and interest on the bonds.

(h) If any officer whose signature, or the facsimile of whose signature, appears on any bond shall cease to be that officer before the delivery of the bond, that signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until delivery of the bond.

(i) Any other term or condition necessary to issue the bonds.

Sec. 6. The authority may sell the bonds in the manner determined by the authority board at public or private sale and on either a competitive or negotiated basis. Proceeds of the bonds shall be applied as determined by, or pursuant to, a resolution of the authority and permitted under this act.

Sec. 7. In the discretion of the authority, any bond and any ancillary facility may be secured by a trust agreement or trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without this state. A trust agreement or trust indenture authorized under this subsection, or an authority resolution providing for the bond issue, may provide for creating and maintaining reserves as the authority determines proper and may include covenants setting forth the duties of the authority in relation to the bonds, the ancillary facilities, the income to the authority, and encumbered revenues. A trust agreement or trust indenture authorized under this subsection or an authority resolution under this act may contain provisions respecting the custody, safeguarding, and application of all money and bonds and may contain provisions for protecting and enforcing the rights and remedies of the owners of the bonds and parties to ancillary facilities as are reasonable and proper and not in violation of law. Any bank or trust company that acts as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the authority may furnish indemnifying bonds or pledge obligations as the authority requires. Any trust agreement or trust indenture authorized under this subsection or an authority resolution may contain other provisions that the authority considers reasonable and proper for priorities and subordination among the owners of bonds and parties to ancillary facilities.

Sec. 8. (1) The authority may enter into, amend, or terminate, as it determines necessary or appropriate, any ancillary facility for any of the following purposes:

(a) To facilitate the issue, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including without limitation bond insurance, letters of credit, and liquidity facilities.

(b) To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

(2) The authority may enter into, amend, or terminate any ancillary facility as it determines necessary or appropriate to place the obligations or investments of the authority, as represented by the bonds or the investment of bond proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority. The ancillary facility may include without limitation contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. The authority may enter into these contracts or arrangements in connection with, or incidental to, entering into, or maintaining any agreement that secures bonds of the authority or any investment of reserves, or contract providing for investments of reserves, or similar ancillary facility guaranteeing an investment rate for a period of years.

(3) The authority's determination that an ancillary facility, or the amendment or termination of an ancillary facility, is necessary or appropriate is conclusive. The authority may determine the terms and conditions of an ancillary facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

Sec. 9. A recital in a bond or ancillary facility stating that it is issued pursuant to this act is conclusive evidence of the validity of the bond or ancillary facility and the regularity of the proceedings relating to the bond or ancillary facility.

Sec. 10. (1) A member of the board or an officer, appointee, or employee of the authority is not subject to personal liability when acting in good faith within the scope of his or her authority under this act or on account of liability of the authority under this act. The board may defend and indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties under this act. The authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability for the bond issue or other obligations or by reason of any other action taken or the failure to act by the authority under this act. The authority may purchase and maintain insurance on behalf of any person against the liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the board or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under this subsection.

(2) A member, officer, employee, or agent of the authority shall not have an interest, either directly or indirectly, in any business organization engaged in any business, contract, or transaction with the authority or in any contract of any

other person engaged in any business with the authority, or in the purchase, sale, lease, or transfer of any property to or from the authority.

Sec. 11. (1) A bond issued under this act is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) A bond issued under this act is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

Sec. 12. In the authority's resolution authorizing bonds or in the provisions of a trust agreement or trust indenture that the authority authorizes, the authority may delegate for a time period at the authority's discretion to an officer, employee, or designated agent of the authority the power to issue, sell, and deliver bonds within limits on those bonds established by the authority, as to any of the following:

(a) Form.

(b) Maximum interest rate or rates.

(c) Maturity date or dates.

(d) Purchase price.

(e) Denominations.

(f) Redemption dates and premiums, if any.

(g) Nature of the security.

(h) Selection of an applicable interest rate index.

(i) Other terms and conditions with respect to the bond issue that the authority prescribes.

Sec. 13. (1) The authority shall exercise its duties under this act independently of the state treasurer. However, the authority shall perform its staffing, budgeting, procurement, and related administrative functions under the direction and supervision of the state treasurer as provided in Executive Reorganization Order No. 2010-2, MCL 12.194.

(2) The authority shall exercise its duties under this act through its board of directors as provided in Executive Reorganization Order No. 2010-2, MCL 12.194.

Sec. 14. In addition to any other powers conferred upon the authority by law, when exercising its powers under this act the authority shall have all of the following powers:

(a) To solicit and accept gifts, grants, and loans from any person.

(b) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(c) To procure insurance against any loss in connection with the property, assets, or activities of the authority.

(d) To sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.

(e) To make and amend bylaws.

(f) To employ and contract with individuals necessary for the operation of the authority.

(g) To make and execute contracts including without limitation, trust agreements, trust indentures, bond purchase agreements, tax regulatory agreements, continuing disclosure agreements, ancillary facilities, and all other instruments necessary or convenient for the exercise of its powers and functions, and to commence any action to protect or enforce any right conferred upon it by any law, contract, or other agreement.

(h) To engage the services of financial advisors and experts, legal counsel, placement agents, underwriters, appraisers, and other advisors, consultants, and fiduciaries, as is necessary to effectuate the purposes of this act.

(i) To pay its operating expenses and financing costs.

(j) To pledge revenues or other assets as security for the payment of the principal of and interest on any bonds and for its obligations under any ancillary facility.

(k) To procure insurance, letters of credit, or other credit enhancement with respect to any bonds for the payment of tenders of bonds, or for the payment upon maturity of short-term bonds.

(l) To enter into any ancillary facility with any person under the terms and conditions at the authority's discretion and to provide insurance, letters of credit, or other credit enhancement with respect to any ancillary facility.

(m) To modify, amend, replace an existing, or enter into a new, ancillary facility.

(n) To tender for, redeem, or defease bonds.

(o) To do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

Sec. 15. A bond or ancillary facility issued under this act is not a debt or liability of this state or any agency or instrumentality of this state, other than the authority as set forth in this act, either legal, moral, or otherwise. It does not create or constitute any indebtedness, liability, or obligation of this state or constitute a pledge of the faith and credit of this state. Nothing in this act shall be construed to authorize the authority to incur any indebtedness or liability on behalf of this state. Each bond or ancillary facility shall contain on its face or other prominent place on the bond or ancillary facility in bold typeface a statement to that effect.

Sec. 16. (1) The property of the authority and its income and operations under this act are exempt from taxation by this state and any political subdivision of this state.

(2) If the authority intends the interest on bonds it issues to be exempt from federal income tax, the authority shall prescribe restrictions on the use of the proceeds of those bonds and related matters as necessary to assure the exemption. The recipients of proceeds of those bonds are bound to the extent the restrictions are made to apply to them. The authority and the director may severally execute agreements as to bonds the authority issues, including without limitation intergovernmental agreements or other agreements providing for collecting and remitting funds.

Sec. 17. (1) This state hereby pledges and agrees with the authority, and the owners of the bonds and parties to ancillary facilities, that until all bonds and ancillary facilities, together with the interest on the bonds and ancillary facilities and all costs and expenses in connection with any action or proceedings by or on behalf of owners of bonds or parties to ancillary facilities, are fully paid and discharged, that this state will not do any of the following:

(a) Limit or alter the rights of the authority to fulfill the terms of its agreements with owners of the bonds or parties to ancillary facilities.

(b) Impair in any way the rights and remedies of owners of the bonds or benefited parties or the security for the bonds or ancillary facilities.

(c) Take any action that would result in an amount below that required by any contract with the owners of the bonds or parties to ancillary facilities when applying the then applicable contribution rates to the then applicable wage base.

(d) Reduce the obligation assessments imposed under section 26a of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.26a, to a level below that required by any outstanding bond or ancillary facility.

(2) The authority is authorized and directed to include the pledge and agreement made under this section in any contract with the owners of the bonds and parties to ancillary facilities.

Sec. 18. Notwithstanding any restriction contained in any other law, rule, regulation, or order to the contrary, this state and all political subdivisions of this state; their officers, boards, commissioners, departments or other agencies; governmental pension funds; all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; and all executors, administrators, guardians, trustees, and other fiduciaries; and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any sinking funds, money, or other funds, including capital, belonging to them or within their control, in any bond. Bonds that the authority issues under this act are hereby made bonds that may properly and legally be deposited with, and received by, any state municipal officer or agency of this state, for any purpose for which the deposit of bonds or other obligations of this state is now, or may be, authorized by law.

Sec. 19. This act and all powers granted in it shall be liberally construed to effectuate its intent and purposes, without implied limitations on the powers of the authority or the state treasurer. This act is full, complete, and additional authority for all things that are contemplated in this act to be done. All rights and powers granted in this act are cumulative with those derived from other sources and shall not be construed to limit those rights and powers except as expressly stated in this act. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act control.

Sec. 20. Subject to any agreements with bondholders, the authority may use any funds available to purchase bonds of the authority at a price determined by the authority.

Sec. 21. (1) Notwithstanding any existing provision of law and in addition to any other appropriations provided by law, $1,000,000.00 is appropriated from the general fund to the authority for the fiscal year ending September 30, 2012 for all of the following purposes:

(a) Payment of operating expenses of the authority.

(b) Funding any reserve requirements.

(2) Money appropriated under this section that is not expended before the end of the state fiscal year ending September 30, 2012 shall not revert to the general fund, and the authority may retain and use it for the purposes authorized by subsection (1).

Sec. 22. Except as otherwise provided in this section, any legal action against the authority shall be brought in the Michigan court of appeals, which has exclusive jurisdiction. However, any legal actions against the authority seeking money damages shall be brought in the court of claims for this state, which has exclusive original jurisdiction with respect to actions against the authority seeking money damages.

Sec. 23. (1) This act governs the creation, perfection, priority, and enforcement of any pledge of revenues or other security made by the authority under this act. Each pledge of the authority is valid and binding as of the time the pledge is made. The encumbered revenues, reserves or earnings pledged, or earnings on the investment of the encumbered revenues, reserves, or earnings pledged are immediately subject to the lien created under the pledge without any physical delivery or further act. The lien is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, whether or not the parties have notice of the lien or pledge or whether the pledge or lien has been recorded. The resolution or other instrument by which a pledge is created is not required to be recorded.

(2) This act also governs the negotiability of bonds issued under this act. Any bonds issued under this act are fully negotiable within the meaning and for all purposes of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. By accepting the bond or obligation, each owner of a bond or other obligation of the authority shall be conclusively considered to have agreed that the bond is and shall be fully negotiable within the meaning and for all purposes of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

Sec. 24. Bonds issued under this act are limited to the principal amount necessary to satisfy this state's obligations to the federal government for advances or loans from the federal account of the unemployment trust fund, to pay unemployment benefits before January 1, 2014, and to pay financing costs, reserves, coverage required for financing, and reimbursement for advances made by this state to pay a portion of its obligations on or before December 31, 2013. This limitation does not apply to or preclude issuing bonds to refinance or refund bonds issued under this act on or before December 31, 2013.

Enacting section 1. The legislature finds and declares all of the following:

(a) It is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due.

(b) At the time of the enactment of this act, unemployment benefits payments are made from Michigan's account in the unemployment trust fund of the United States treasury and are funded by employer contributions.

(c) At the time of the enactment of this act, borrowing from the federal government through loans from the federal unemployment trust fund is the only option available to obtain sufficient funds to pay benefits when the balance in Michigan's account in the unemployment trust fund of the United States treasury is insufficient to make necessary payments.

(d) Alternative methods of replenishing this state's account in the unemployment trust fund of the United States treasury may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state.

(e) It is in this state's best interests to authorize the issuance of bonds when appropriate for the purpose of continuing the unemployment insurance program at the lowest possible cost to this state and employers in this state and to avoid reductions in the employer unemployment tax credit.

(f) Execution by the authority of its powers granted under this act fulfill in all respects an essential governmental function and public purpose for the benefit of and in furtherance of the public health and welfare of the people of this state.

Enacting section 2. The legislature determines that the creation of the authority by Executive Reorganization Order No. 2010-2, MCL 12.194, and the carrying out of its authorized purposes under this act are in all respects public and governmental purposes for the benefit of the people of this state and for the improvement of their health, safety, welfare, comfort, and security, and that these purposes are public purposes and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

Enacting section 3. This act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) Senate Bill No. 484.

(b) Senate Bill No. 806.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gary L Randall

Clerk of the House of Representatives

Approved ....

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Governor

Compiler's note: Senate Bill No. 484, referred to in enacting section 3, was filed with the Secretary of State December 19, 2011, and became 2011 PA 268, Imd. Eff. Dec. 19, 2011.

Senate Bill No. 806, also referred to in enacting section 3, was filed with the Secretary of State December 19, 2011, and became 2011 PA 269, Imd. Eff. Dec. 19, 2011.