

SENATE BILL No. 483

June 16, 2011, Introduced by Senator JANSEN and referred to the Committee on Economic Development.

A bill to authorize the issuance of bonds, notes, or other financial instruments; to create funds and accounts; to create an authority; 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:

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

3 Sec. 2. As used in this act:

4 (a) "Ancillary facility" means any revolving credit agreement,
5 agreement establishing a line of credit, or letter of credit;

1 reimbursement agreement; interest rate exchange or similar
2 agreement; currency exchange agreement; commodity exchange
3 agreement; interest rate floor or cap; option, put, call, or
4 similar agreement to hedge payment, currency, commodity, rate,
5 spread, or similar exposure; investment agreement; float agreement;
6 forward agreement or other investment arrangement; insurance
7 contract; surety bond; commitment to purchase or sell securities;
8 purchase or sale agreement or commitment; or other contract or
9 agreement or other security agreement approved by the authority,
10 including without limitation any arrangement referred to in this
11 act.

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

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

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

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

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

1 remarketing the bonds.

2 (g) "Interest rate exchange or similar agreement" means a
3 written contract with a counterparty to provide for an exchange of
4 payments based upon fixed or variable interest rates or on both
5 fixed and variable interest rates.

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

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

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

27 (k) "State treasurer" means the state treasurer of this state

1 or his or her designee, if the designee is authorized to exercise
2 delegated signatory power for purposes of this act in a written
3 instrument signed by the state treasurer and maintained in a
4 permanent file.

5 Sec. 3. (1) The authority is created as a public body
6 corporate and politic within the department of treasury. The
7 authority is a state institution within the meaning of section 9 of
8 article II of the state constitution of 1963 and an instrumentality
9 of this state exercising public and essential governmental
10 functions. The authority's exercise of the powers under this act is
11 in addition to any other powers conferred on the authority by law,
12 including, but not limited to, Executive Reorganization Order No.
13 2010-2, MCL 12.194, and the statutory authority referred to in that
14 reorganization order. The authority's exercise of the powers under
15 this act is an essential governmental function of this state.

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

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

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

26 (c) Funding a surplus in this state's unemployment trust
27 account within the federal unemployment trust fund.

1 (d) Paying unemployment benefits.

2 (e) Paying or providing for financing costs.

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

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

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

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

3 (a) The date of issue.

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

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

8 (d) When the bonds shall mature.

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

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

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

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

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

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

26 Sec. 7. In the discretion of the authority, any bond and any
27 ancillary facility may be secured by a trust agreement or trust

1 indenture by and between the authority and a trustee, which may be
2 any trust company or bank having the powers of a trust company,
3 whether located within or without this state. A trust agreement or
4 trust indenture authorized under this subsection, or an authority
5 resolution providing for the bond issue, may provide for creating
6 and maintaining reserves as the authority determines proper and may
7 include covenants setting forth the duties of the authority in
8 relation to the bonds, the ancillary facilities, the income to the
9 authority, and encumbered revenues. A trust agreement or trust
10 indenture authorized under this subsection or an authority
11 resolution may contain provisions respecting the custody,
12 safeguarding, and application of all money and bonds and may
13 contain provisions for protecting and enforcing the rights and
14 remedies under the sale agreement of the owners of the bonds and
15 parties to ancillary facilities as are reasonable and proper and
16 not in violation of law. Any bank or trust company incorporated
17 under the laws of this state that acts as depository of the
18 proceeds of bonds or of any other funds or obligations received on
19 behalf of the authority may furnish indemnifying bonds or pledge
20 obligations as the authority requires. Any trust agreement or trust
21 indenture authorized under this subsection or an authority
22 resolution may contain other provisions that the authority
23 considers reasonable and proper for priorities and subordination
24 among the owners of bonds and parties to ancillary facilities.

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

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

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

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

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

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

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

26 (2) A member, officer, employee, or agent of the authority
27 shall not have an interest, either directly or indirectly, in any

1 business organization engaged in any business, contract, or
2 transaction with the authority or in any contract of any other
3 person engaged in any business with the authority, or in the
4 purchase, sale, lease, or transfer of any property to or from the
5 authority.

6 Sec. 11. (1) A bond issued under this act is not subject to
7 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to
8 141.2821.

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

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

18 (a) Form.

19 (b) Maximum interest rate or rates.

20 (c) Maturity date or dates.

21 (d) Purchase price.

22 (e) Denominations.

23 (f) Redemption dates and premiums, if any.

24 (g) Nature of the security.

25 (h) Selection of an applicable interest rate index.

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

1 Sec. 13. (1) The authority shall exercise its duties under
2 this act independently of the state treasurer. However, the
3 authority shall perform its staffing, budgeting, procurement, and
4 related administrative functions under the direction and
5 supervision of the state treasurer.

6 (2) The authority shall exercise its duties through its board
7 of directors as provided in Executive Reorganization Order No.
8 2010-2, MCL 12. 194.

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

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

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

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

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

22 (e) To make and amend bylaws.

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

25 (g) To make and execute contracts including without
26 limitation, trust agreements, trust indentures, bond purchase
27 agreements, tax regulatory agreements, continuing disclosure

1 agreements, ancillary facilities, and all other instruments
2 necessary or convenient for the exercise of its powers and
3 functions, and to commence any action to protect or enforce any
4 right conferred upon it by any law, contract, or other agreement.

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

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

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

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

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

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

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

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

26 Sec. 15. A bond or ancillary facility issued under this act is
27 not a debt or liability of this state or any agency or

1 instrumentality of this state, other than the authority as set
2 forth in this act, either legal, moral, or otherwise. It does not
3 create or constitute any indebtedness, liability, or obligation of
4 this state or constitute a pledge of the faith and credit of this
5 state. Nothing in this act shall be construed to authorize the
6 authority to incur any indebtedness or liability on behalf of this
7 state. Each bond or ancillary facility shall contain on its face or
8 other prominent place on the bond or ancillary facility in bold
9 typeface a statement to that effect.

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

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

22 Sec. 17. (1) This state hereby pledges and agrees with the
23 authority, and the owners of the bonds and parties to ancillary
24 facilities, that until all bonds and ancillary facilities, together
25 with the interest on the bonds and ancillary facilities and all
26 costs and expenses in connection with any action or proceedings by
27 or on behalf of owners of bonds or parties to ancillary facilities,

1 are fully paid and discharged, that this state will not do any of
2 the following:

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

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

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

13 (d) Reduce the obligation assessments imposed under section
14 26a of the Michigan employment security act, 1936 (Ex Sess) PA 1,
15 MCL 421.26a, to a level below that required by any outstanding bond
16 or ancillary facility.

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

20 Sec. 18. Notwithstanding any restriction contained in any
21 other law, rule, regulation, or order to the contrary, this state
22 and all political subdivisions of this state; their officers,
23 boards, commissioners, departments or other agencies; governmental
24 pension funds; all banks, trust companies, savings banks and
25 institutions, building and loan associations, savings and loan
26 associations, investment companies and other persons carrying on a
27 banking or investment business; and all executors, administrators,

1 guardians, trustees, and other fiduciaries; and all other persons
2 whatsoever who now are or may hereafter be authorized to invest in
3 bonds or other obligations of the state, may properly and legally
4 invest any sinking funds, money, or other funds, including capital,
5 belonging to them or within their control, in any bond. Bonds that
6 the authority issues under this act are hereby made bonds that may
7 properly and legally be deposited with, and received by, any state
8 municipal officer or agency of this state, for any purpose for
9 which the deposit of bonds or other obligations of this state is
10 now, or may be, authorized by law.

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

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

25 Sec. 21. (1) Notwithstanding any existing provision of law and
26 in addition to any other appropriations provided by law,
27 \$1,000,000.00 is appropriated from the general fund to the

1 authority for the fiscal year ending September 30, 2011 for all of
2 the following purposes:

3 (a) Payment of operating expenses of the authority.

4 (b) Funding any reserve requirements.

5 (2) Money appropriated under this section that is not expended
6 before the end of the state fiscal year ending September 30, 2011
7 shall not revert to the general fund, and the authority may retain
8 and use it for the purposes authorized by subsection (1).

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

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

1 which a pledge is created is not required to be recorded.

2 (2) This act also governs the negotiability of bonds issued
3 under this act. Any bonds issued under this act are fully
4 negotiable within the meaning and for all purposes of the uniform
5 commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. By
6 accepting the bond or obligation, each owner of a bond or other
7 obligation of the authority shall be conclusively considered to
8 have agreed that the bond is and shall be fully negotiable within
9 the meaning and for all purposes of the uniform commercial code,
10 1962 PA 174, MCL 440.1101 to 440.11102.

11 Sec. 24. This act is declared to be severable. If any portion
12 of this act or the application of this act to any person or
13 circumstances is found to be invalid by a court, the invalidity of
14 that portion or application shall not affect the remaining portions
15 or applications that can be given effect without the invalid
16 portion or application, provided the remaining portions are not
17 determined by the court to be inoperable.

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

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

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

26 (c) At the time of the enactment of this act, borrowing from
27 the federal government through loans from the federal unemployment

1 trust fund is the only option available to obtain sufficient funds
2 to pay benefits when the balance in Michigan's account in the
3 unemployment trust fund of the United States treasury is
4 insufficient to make necessary payments.

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

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

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

18 Enacting section 2. The legislature determines that the
19 creation of the authority by Executive Reorganization Order No.
20 2010-2, MCL 12.194, and the carrying out of its authorized purposes
21 under this act are in all respects public and governmental purposes
22 for the benefit of the people of this state and for the improvement
23 of their health, safety, welfare, comfort, and security, and that
24 these purposes are public purposes and that the authority will be
25 performing an essential governmental function in the exercise of
26 the powers conferred upon it by this act.

27 Enacting section 3. This act does not take effect unless

1 Senate Bill No. 484 of
2 the 96th Legislature is enacted into law.