

HIGHER EDUCATION FACILITIES AUTHORITY ACT Act 295 of 1969

AN ACT to establish the Michigan higher education facilities authority; to prescribe its powers and duties; to authorize the authority to borrow money and issue bonds for educational facilities; to exempt the bonds from taxation; and to authorize the authority to lend money to nonprofit educational institutions in this state to finance or refinance capital improvements.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1973, Act 50, Imd. Eff. July 11, 1973;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

The People of the State of Michigan enact:

390.921 Higher education facilities authority act; short title.

Sec. 1. This act shall be known and may be cited as the “higher education facilities authority act”.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969.

Compiler's note: For transfer of Higher Education Facilities Authority from the Department of Education to the Department of Treasury, see E.R.O. No. 1992-2, compiled at MCL 390.940 of the Michigan Compiled Laws.

390.921a Legislative determination.

Sec. 1a. It is hereby determined that there exists in this state a need for the financing of educational facilities at private or nonpublic, nonprofit institutions of higher learning so as to maintain and further the educational capabilities of these institutions. It is further determined that it is a valid public purpose to lend money to or participate in the lending of money to these educational institutions for the acquisition or alteration of, or energy efficiency improvements to, educational facilities within this state. It is further determined that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

History: Add. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

390.922 Definitions.

Sec. 2. As used in this act:

(a) “Authority” means the Michigan higher education facilities authority created by this act.

(b) “Institution for higher learning” or “institution” means a private or nonpublic, nonprofit educational institution within the state authorized by law to provide a program of education beyond the high school level.

(c) “Educational facility” means a structure available for use as a dormitory or other housing facility, including housing facilities for students, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, and maintenance, storage, or utility facility, and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of the institution for higher education, and shall include lands and interests in lands and landscaping, site preparation, furniture, equipment, machinery, and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, and any improvements necessary to a particular facility to make the facility more energy efficient. Educational facility does not include items as books, fuel, supplies, or other items the costs of which are customarily deemed to result in a current operating charge and does not include any facility used or to be used for sectarian instruction or as a place of religious worship, nor a facility which is used or to be used primarily in connection with a part of the program of a school or department of divinity for a religious denomination.

(d) “Bond” includes a note or other obligation issued by the authority for borrowed money, including refunding bonds.

(e) “Educational loan” means a loan made by the authority to an institution.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1971, Act 56, Eff. Mar. 30, 1972;—Am. 1972, Act 306, Eff. Mar. 30, 1973;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

390.923 Michigan higher education facilities authority; creation; nature; members; exercise of powers, duties, and functions.

Sec. 3. A public body corporate and politic is created as an agency and instrumentality of the state within the department of education to be known as the “Michigan higher education facilities authority”. The authority shall consist of the members of the state higher education facilities commission created by Act No.

233 of the Public Acts of 1964, as amended, being sections 390.941 to 390.948 of the Michigan Compiled Laws. The authority shall exercise its prescribed statutory powers, duties, and functions independently of the head of that department.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1971, Act 56, Eff. Mar. 30, 1972;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

Compiler's note: For transfer of Higher Education Facilities Authority from the Department of Education to the Department of Treasury, see E.R.O. No. 1992-2, compiled at MCL 390.940 of the Michigan Compiled Laws.

For consolidation of administrative staff of Michigan higher education assistance authority, Michigan higher education facilities authority, Michigan higher education student loan authority, Michigan municipal bond authority, and state hospital finance authority, and for transfer of certain functions to state treasurer, see E.R.O. No. 2002-8, compiled at MCL 12.193.

For abolishment of governing body of Michigan higher education facilities authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

390.924 Powers of authority.

Sec. 4. The authority shall have the powers necessary to carry out and effectuate the purposes and provisions of this act, including but not limited to the following powers:

(a) To sue and be sued; to have a seal and alter it at pleasure; to have perpetual succession; to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of its powers; and to make and amend bylaws.

(b) To accept gifts, grants, loans, and other aids from a person, corporation, or governmental agency.

(c) To loan money to educational institutions for the purpose of assisting in the acquisition, construction, alteration, or equipping of educational facilities, including any improvements necessary to make them more energy efficient, and to accept security for money so loaned.

(d) To loan money to educational institutions for the purpose of refunding outstanding obligations issued by the educational institutions for the acquisition, construction, or alteration of educational facilities prior to or after July 11, 1973, whether or not the obligations to be refunded have matured.

(e) To enforce its rights under mortgage, contracts, or agreements, including foreclosure and court actions.

(f) To acquire, hold, and dispose of real or personal property as necessary for the accomplishment of the purpose of this act.

(g) To procure insurance against any loss in connection with its property, assets, or activities.

(h) To borrow money and to issue its bonds, to provide for the rights of the holders of the bonds, and to secure the bonds by mortgage, assignment, or pledge of any or all of its properties, including any part of the security for its educational loans. The state shall not be liable on any bonds of the authority, the bonds shall not be a debt of the state, and each bond shall contain on its face a statement to that effect.

(i) To invest any funds not required for immediate use or disbursement, at its discretion, in obligations of the state or the United States, in obligations the principal and interest of which are guaranteed by the state or the United States, or in certificates of deposit of any bank whose deposits are insured by the federal deposit insurance corporation.

(j) Subject to the provisions of any contract with the holders of its bonds, whenever it considers it necessary or desirable, to consent to the modification, with respect to security, rate of interest, time of payment of interest or principal, or any other term of a bond, mortgage, contract, or agreement of any kind between the authority and any educational institution.

(k) To engage the services of private consultants or contract with any private organization for professional and technical assistance and advice or other services.

(l) To appoint officers, agents, and employees, and to describe their duties and fix their compensation subject to the civil service laws of this state.

(m) To make rules necessary to carry out the purposes of this act.

(n) To solicit grants and contributions from a governmental authority and from the general public.

(o) To agree and comply with conditions attached to federal financial assistance.

(p) To collect fees and charges in connection with its loans, commitments, and servicing, including but not limited to, reimbursements of costs of financing by the authority, service charges, insurance premiums, and a share of the operating expenses of the authority, and to provide for increasing those fees and charges, if necessary, as the authority determines to be reasonable and as approved by the authority.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1971, Act 56, Eff. Mar. 30, 1972;—Am. 1973, Act 50, Imd. Eff. July 11, 1973;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

Compiler's note: For consolidation of administrative staff of Michigan higher education assistance authority, Michigan higher education facilities authority, Michigan higher education student loan authority, Michigan municipal bond authority, and state hospital finance authority, and for transfer of certain functions to state treasurer, see E.R.O. No. 2002-8, compiled at MCL 12.193.

390.925 Loans to educational institutions for acquisition, construction, or alteration of educational facilities; conditions.

Sec. 5. (1) The authority may lend money or participate in the lending of money to educational institutions for the acquisition, construction, or alteration of educational facilities. An educational loan for acquisition or alteration shall not be made unless the authority is reasonably satisfied that all of the following conditions exist:

(a) There will be made available to the institution from the loan and other sources all the funds that may be required to complete and pay for the acquisition, construction, or alteration of educational facilities.

(b) The revenues and income generally available and to become available to the institution for allocation to repayment of the loan and interest on the loan when due will be sufficient for repayment.

(c) The facility or alteration is needed, will not result in an unnecessary duplication of existing facilities, and has been well planned.

(d) The facility or alteration is consistent with an orderly development and provision of educational services in the area.

(e) The loan shall not exceed the cost of the acquisition, construction, or alteration of the educational facility and incidental costs related thereto and to the issuance of bonds by the authority to provide funds to make the loan.

(2) The authority may lend money or participate in the lending of money to educational institutions as described in subsection (1) whether the loan is secured or unsecured, if the authority considers the action proper.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 306, Eff. Mar. 30, 1973;—Am. 1973, Act 50, Imd. Eff. July 11, 1973;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

390.925a Loans to educational institutions for refunding of certain outstanding obligations; conditions.

Sec. 5a. (1) The authority may lend money or participate in the lending of money to educational institutions for the refunding of outstanding obligations issued by educational institutions for the acquisition, construction, or alteration of educational facilities. An educational loan for refunding shall not be made unless the authority is reasonably satisfied that all of the following conditions exist:

(a) There will be made available to the institution from the loan and other sources all the funds that may be required to complete and pay for the acquisition, construction, or alteration of educational facilities.

(b) The revenues and income generally available and to become available to the institution for allocation to repayment of the loan and interest on the loan when due will be sufficient for repayment.

(c) The facility or alteration was needed, has not resulted in unnecessary duplication of existing facilities, and has been well planned.

(d) The facility or alteration is consistent with an orderly development and provision of educational services in the area.

(e) The acquisition, construction, or alteration of the educational facility has been paid and completed.

(f) The outstanding obligations of the educational institution to be refunded constitute a financial hardship to the educational institution, and the refunding of the obligations will enhance the ability of the educational institution to provide educational services.

(g) The loan shall not exceed the amount of principal and accrued interest outstanding with respect to the obligations to be refunded and incidental costs related to the issuance of bonds by the authority to provide funds to make the loan.

(2) The authority may lend money or participate in the lending of money to educational institutions as described in subsection (1) whether the loan is secured or unsecured, if the authority considers the action proper.

History: Add. 1973, Act 50, Imd. Eff. July 11, 1973;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

390.926 Bonds.

Sec. 6. (1) The authority may issue its bonds in the principal amount it considers necessary to provide funds for achieving its purposes under this act, including the making of educational loans, the payment of interest on bonds of the authority during construction, the establishment of reserves to secure the bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The authority may issue refunding bonds whenever it considers refunding expedient, whether the bonds to be refunded have or have not matured. The proceeds of the refunding bonds shall be applied to the purchase, redemption, or payment of the bonds refunded. Except as may otherwise be expressly provided in

the resolution authorizing the bonds, every issue of bonds shall be general obligations of the authority to be satisfied out of any revenues or money or other property of the authority, subject to an agreement with the holders of particular bonds in support of which particular receipts, revenues, security for educational loans, or other property of the authority has been pledged or mortgaged.

(2) Bonds issued by the authority shall be subject to this act and are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The bonds of the authority shall be authorized by resolution of its members, shall be serial or term bonds, or a combination of serial and term bonds, shall bear the date, and shall mature at the time or times, not exceeding 30 years from date of issue, as the resolution may provide. The bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon, registered, or both, carry the registration privileges, be executed in the manner, be payable in the medium of payment at the place or places, and be subject to the terms of redemption as the resolution or resolutions may provide. The bonds of the authority may be sold by the authority, at public or private sale, at the price or prices as the authority determines.

(4) A pledge made by the authority in connection with the issuance of bonds shall be valid and binding from the time the pledge is made. The money or property pledged and subsequently received by the authority shall immediately be subject to the lien of the pledge without a physical delivery or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether those parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

(6) For the purpose of more effectively managing its debt service, the authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1975, Act 305, Imd. Eff. Dec. 22, 1975;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982;—Am. 2002, Act 546, Imd. Eff. July 26, 2002.

390.927 Pledge to bondholders.

Sec. 7. The state pledges and agrees with the holders of any bonds issued under this act, that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969.

390.928 Bonds as investment.

Sec. 8. The bonds of the authority are securities, in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations, and other persons carrying on an insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969.

390.929 Payment and deposit of money; contract; security; examination of books and accounts.

Sec. 9. (1) All money of the authority, except as otherwise authorized or provided in this section, shall be paid to the state treasurer as agent of the authority, who shall not commingle the money with any other money. The money shall be deposited in a separate bank account or accounts. The money in the accounts shall be paid out on warrants signed by the state treasurer on requisition of the chairperson of the authority or of such other officer or employee as the authority shall authorize to make the requisition. All deposits of the money shall, if required by the state treasurer or the authority, be secured by obligations of the United States or of the state of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give the security for the deposits.

(2) Notwithstanding the provisions of this section, the authority, subject to the approval of the state treasurer, may contract with the holders of any of its bonds, as to the custody, collection, securing, investment, and payment of any money of the authority, of any money held in trust or otherwise for the payment of bonds and carry out the contract. Money held in trust or otherwise for the payment of bonds or in

any way to secure bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give such security for the deposits.

(3) The auditor general, or his or her legally authorized representative, from time to time shall examine the books and accounts of the authority, including its receipts, disbursements, contracts, mortgages, loans, and any other matters relating to its financial standing. Such an examination shall be conducted by the auditor general at least once every year. The auditor general is authorized to accept from the authority, in lieu of such an examination, an external examination of its books and accounts made at the request of the authority.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1982, Act 409, Imd. Eff. Dec. 28, 1982.

390.930 Tax exemption.

Sec. 10. The property of the authority and its income and operation shall be exempt from taxation.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969.

390.931 Bonds; negotiability; tax exemption.

Sec. 11. Bonds issued under this act shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, and the bonds and the interest thereon are exempt from all taxation by this state or any of its political subdivisions.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 2000, Act 356, Eff. Mar. 28, 2001.

390.932 Trustee; appointment; powers and duties.

Sec. 12. (1) If the authority defaults in the payment of principal of or interest on any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default continues for a period of 30 days, or if the authority fails or refuses to comply with the provisions of this act, or defaults in any agreement made with the holders of any issue of bonds, the holders of 25% in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Ingham and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(2) The trustee may, and upon written request of the holders of 25% in principal amount of such bonds then outstanding shall, in his own name, by action or proceeding, enforce all rights of the bondholders, including the right to require the authority to collect fees and charges and interest and amortization payments of mortgage loans made by it adequate to carry out any agreement as to or pledge of, such fees and charges and interest and amortization payments on such mortgages, and other properties and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this act; bring suit upon such bonds; by action, require the authority to account as if it were the trustee of an express trust for the holders of such bonds; by action, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; declare all such bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of 25% of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

(3) In addition, the holders of bonds and the trustee authorized above, shall have all of the rights to which they may be entitled by virtue of provisions included in the bonds, or otherwise available to them under law.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969.

390.933 Nondiscrimination covenant.

Sec. 13. The authority shall require that use of educational facilities assisted under this act shall be consistent with the requirements in section 2(c) and shall be open to all regardless of race, religion, color, sex, or national origin, except that there may be restrictions on the basis of sex in the assignment of student living facilities assisted under this act, and that contractors and subcontractors engaged in the construction or alteration of educational facilities assisted under this act shall provide an equal opportunity for employment, without discrimination as to race, religion, color, sex, or national origin. The educational institution to which an educational loan is made shall covenant with the authority that the nondiscrimination provision shall be enforced.

History: 1969, Act 295, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 306, Eff. Mar. 30, 1973;—Am. 1983, Act 238, Imd. Eff. Dec. 1, 1983.

390.934 Personal liability as to notes or bonds.

Sec. 14. A member of the authority or a person executing the notes or bonds is not personally liable on the notes or bonds or subject to any personal liability or accountability by reason of the issuance or nonissuance thereof.

History: Add. 1972, Act 306, Eff. Mar. 30, 1973.

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