

MUNICIPAL LIGHTING AUTHORITY ACT (EXCERPT)
Act 392 of 2012

123.1285 Contracts; trust agreement; definitions.

Sec. 25. (1) An authority and the local government comprising the authority may enter into a contract providing for the construction, acquisition, improvement, enlargement, or extension of a lighting system, including the payment of engineering, legal, and financing expenses in connection with the lighting system, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority. Contracts shall provide for the rates and charges for the local government. The local government may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. If the local government makes this pledge, it may include in its annual tax levy an amount sufficient so the estimated collections from the tax levy will be sufficient to promptly pay when due the portion of the obligation falling due before the time of the following year's tax collection, subject to constitutional, statutory, and charter limitations. If the contract or an unlimited tax pledge in support of the contract has been approved by the electors of the local government, the tax may be in addition to any tax that the local government may otherwise be authorized to levy and may be imposed without limitation as to rate or amount, but shall not be in excess of the rate or amount necessary to pay the contractual obligation. If, at the time of making the annual tax levy, there are other funds on hand earmarked for the payment of the contractual obligation, credit for those funds may be taken upon the annual levy for the payment of the obligation. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The contract may provide for other funds to be raised and pledged by the local government by the use of 1 or more of the following additional methods:

(a) The levy of special assessments to the extent legally permitted by the local government. The procedures relative to the levying and collection of the special assessments shall conform as nearly as is applicable to charter or statutory provisions for the levying and collection, except that a petition is not required from property owners.

(b) The levy and collection of charges to users and beneficiaries of the service or services furnished by the lighting system.

(c) A pledge of revenue that would otherwise be received by the local government under the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, as provided in subsection (3).

(d) The receipt of money derived from the imposition of taxes by this state, except to the extent that the use of the money for this purpose is expressly prohibited by the state constitution of 1963.

(e) The receipt of other funds that may be validly used for this purpose.

(3) If an authority issues bonds pursuant to this section to be paid from revenues from a contract entered into pursuant to this section, the local government, in furtherance of its obligations under the contract, may by resolution or order pledge revenues to be received by the local government pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, to bonds of the authority issued pursuant to the contract. If the local government pledges these revenues, all of the following apply:

(a) Before the pledge and the contract become effective, the local government shall do all of the following:

(i) Enter into a trust agreement with the authority, the Michigan finance authority, and a trustee to provide for both of the following:

(A) Collection of pledged revenues by public utilities and resale customers.

(B) Direct payment of those pledged revenues to the trustee for the purposes provided in this act.

(ii) Levy the tax.

(iii) Send a notice to each public utility and resale customer collecting the tax to remit those collections to the trustee designated in the trust agreement, pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177.

(iv) Take all other steps necessary and convenient to arrange for and ensure the orderly collection of the taxes.

(b) After the pledge and contract become effective, the local government shall continue to do all of the following:

(i) Levy the tax at not lower than the rate at which the tax is levied when the contract becomes effective.

(ii) Take all other steps necessary and convenient to ensure orderly collection of the taxes.

(iii) Perform all of its other lawful obligations under the contract.

(c) The pledged revenues collected or to be collected by public utilities and resale customers shall be held in trust to be applied for the sole and exclusive benefit of authority bondholders to the extent and in the manner provided for by this act, the contract, and the trust agreement, and may not be commingled with any

other funds.

(d) The pledged revenues are exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the local government other than for payment of debt service on the authority bonds and related administrative costs to which the contract and trust agreement apply. The pledged revenues shall be exempt from any further taxes or special assessments of this state or a political subdivision of this state.

(e) Although the pledged revenues are held in trust, to the extent that the local government or authority retains any interest in the pledged revenues, and solely to that extent, the pledged revenues shall be subject to a lien in favor of the authority bondholders. This lien is paramount and superior to all other liens and interests of any kind, including any interest of the local government or the authority, and shall be for the sole purpose of ensuring payment of the principal, interest, and related administrative costs of authority bonds secured by the contract and the trust agreement. The lien created is effected and perfected without delivery, recording, or notice.

(4) A trust agreement may provide that, should the trustee determine that it holds funds in excess of those it reasonably considers necessary to make bond payments obligated under the contract and trust agreement, the trustee may release some or all of the excess funds from the trust and distribute them to the local government.

(5) The local government may not enter into a contract pledging revenues pursuant to subsection (3) that would result in outstanding bonds secured by those pledged revenues having an aggregate annual debt service that exceeds \$12,500,000.00 in any 1 year taking into account any anticipated federal credits as determined by the authority.

(6) As used in this section:

(a) "Bonds" includes any ancillary facility or other financing instruments entered into by the authority if the facilities are permitted by the contract entered into between the local government and the authority.

(b) "Pledged revenues" means all money to be received by the local government pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, to the extent pledged for repayment of authority bonds under the contract.

(c) "Public utilities" and "resale customers" mean those terms as defined in the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012.