

REVISED MUNICIPAL FINANCE ACT (EXCERPT)
Act 34 of 2001

PART III
GENERAL

141.2301 Issuance of municipal security.

Sec. 301. A municipality shall not issue a municipal security except in accordance with this act.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2303 Annual audit report and qualifying statement; filing by municipality; compliance requirements; determination; correction of noncompliant requirements; reconsideration; order granting exception from prior approval.

Sec. 303. (1) Each municipality shall file an audit report annually with the department within 6 months from the end of its fiscal year or as otherwise provided in the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(2) Accompanying the audit report described in subsection (1), a municipality shall file a qualifying statement, on a form and in the manner provided by the department, which shall be certified by the chief administrative officer. Within 30 business days of the receipt of the qualifying statement, the department shall determine if the municipality complies with the requirements of subsection (3). If the department determines that the municipality complies with the provisions of subsection (3) or if the department fails to notify the municipality of its determination under this subsection within 30 business days of receipt of the qualifying statement, the municipality may proceed to issue municipal securities under this act without further approval from the department until 30 business days after the next qualifying statement is due or a new determination is made by the department, whichever occurs first.

(3) To qualify to issue municipal securities without further approval from the department, the municipality shall be in material compliance with all of the following requirements, as determined by the department:

(a) The municipality is not operating under the provisions of the local government and school district fiscal accountability act.

(b) The municipality did not issue securities in the immediately preceding 5 fiscal years or current fiscal year that were authorized by either the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, other than a security issued for a loan authorized under section 3(2)(a) of the emergency municipal loan act, 1980 PA 243, MCL 141.933, or the fiscal stabilization act, 1981 PA 80, MCL 141.1001 to 141.1011.

(c) The municipality was not required by the terms of a court order or judgment to levy a tax in the preceding fiscal year. For purposes of this subdivision, the department may determine that a court order or judgment to levy a tax is not material if it did not have an adverse financial impact on the municipality.

(d) The most recent audit report, as required by the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, was filed with the department within 6 months from the end of the fiscal year of the municipality.

(e) The debt retirement fund balance for any municipal security that is funded from an unlimited tax levy does not exceed 150% of the amount required for principal and interest payments due for that municipal security in the next fiscal year.

(f) The municipality is not currently exceeding its statutory or constitutional debt limits.

(g) The municipality has no outstanding securities that were not authorized by statute.

(h) The municipality is not currently and during the preceding fiscal year was not in violation of any provisions in the covenants for an outstanding security.

(i) The municipality was not delinquent more than 1 time in the preceding fiscal year in transferring employee taxes withheld to the appropriate agency, transferring taxes collected as agent for another taxing entity to that taxing unit, or making all required pension, retirement, or benefit plan contributions.

(j) The most recent delinquent property taxes of the municipality, without regard to payments received from the county under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, did not exceed 18% of the amount levied.

(k) The municipality did not submit a qualifying statement or an application for any other municipal security in the preceding 12 months that was materially false or incorrect.

(l) The municipality is not in default on the payment of any debt, excluding industrial development revenue bonds issued under the industrial development revenue bond act of 1963, 1963 PA 62, MCL 125.1251 to 125.1267, economic development corporation bonds issued under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, bonds issued by a local hospital finance authority

for a private hospital under the hospital finance authority act, 1969 PA 38, MCL 331.31 to 331.84, or any other debt for which the municipality is not financially liable.

(m) The municipality did not end the immediately preceding fiscal year with a deficit in any fund, unless the municipality has filed a financial plan to correct that deficit condition that is acceptable to the department.

(n) The municipality has not been found by a court of competent jurisdiction to be in violation of any finance or tax-related state or federal statutes during the preceding fiscal year.

(o) The municipality has not been determined by the department to be in violation of this act during the preceding fiscal year.

(p) The municipality did not issue a refunding security in the preceding fiscal year to avoid a potential default on an outstanding security.

(4) If a municipality is notified within 30 business days of the filing of the qualifying statement that it does not comply with 1 or more of the requirements of subsection (3), the municipality may correct the noncompliant requirements and request a reconsideration of the determination from the department as provided in subsection (5).

(5) A municipality may request a reconsideration of the determination from the department. That request shall indicate the requirements that the department determined the municipality to be not in compliance with and the action taken by the municipality to correct the noncompliance. Within 30 business days of the receipt of the request for reconsideration, the department shall determine if the municipality complies with the requirements of subsection (3) or, if the department fails to notify the municipality of its determination under this subsection within 30 business days of receipt of the request for reconsideration, the municipality will be granted qualified status.

(6) If a municipality is notified within 30 business days after filing a request for reconsideration that it does not comply with the requirements of subsection (3), the municipality shall not issue municipal securities under this act without the prior written approval of the department to issue a municipal security as provided in subsections (7) and (8).

(7) If a municipality has not been granted qualified status, the municipality must obtain, for each municipal security, the prior written approval of the department to issue a municipal security. To request prior written approval to issue a municipal security, the municipality shall submit an application and supporting documentation to the department on a form and in a manner prescribed by the department, which shall be certified by the chief administrative officer. A filing fee equal to 0.03% of the principal amount of the municipal security to be issued, but not less than \$800.00 and not greater than \$2,000.00 as determined by the department, shall accompany each application. If the qualifying statement required by subsection (2) was received by the department more than 6 months after the end of the municipality's fiscal year, a late fee of \$100.00 shall accompany the first application filed after that date. Within 30 business days of receiving an application, the fee, and supporting documentation from a municipality, the department shall make a determination whether the municipality has met all of the following requirements:

(a) Has indicated the authority to issue the municipal security requested.

(b) Is projected to be able to repay the municipal security when due.

(c) Has filed information with the department indicating compliance with the requirements of subsection (3) or adequately addressed any noncompliance with subsection (3) as determined by the department.

(d) If required by the department, has obtained an investment grade rating for the municipal security or has purchased insurance for payment of the principal and interest on the municipal security to the holders of the municipal security, or has otherwise enhanced the creditworthiness of the municipal security.

(8) If the department determines that the requirements in subsection (7) have been met, the department shall approve the issuance of the proposed municipal security. If the department determines that the requirements in subsection (7) have not been met, the department shall issue a notice of deficiency to the municipality that prevents the issuance of the proposed municipal security. The notice of deficiency shall state the specific deficiencies and problems with the proposed issuance. After the deficiencies and problems have been addressed as determined by the department, the department shall approve the issuance of the proposed municipal security.

(9) A determination by the department that a municipality has been granted qualified status constitutes an order granting exception from prior approval under former 1943 PA 202, of that municipality's securities.

History: 2001, Act 34, Eff. Mar. 1, 2002;—Am. 2002, Act 541, Imd. Eff. July 26, 2002;—Am. 2011, Act 5, Imd. Eff. Mar. 16, 2011.

141.2304 Issuance of municipal security; provisions applicable to contracting municipalities.

Sec. 304. If a municipality issues a municipal security subject to this act and the principal and interest for that municipal security will be paid by 1 or more municipalities not issuing the municipal security under a contract, then 1 of the following applies:

(a) If all of the municipalities contracting to pay the municipal security have been granted qualified status, then the issuance of the municipal security is subject to section 303(2).

(b) Except as provided in subdivision (c), if 1 or more of the municipalities contracting to pay the municipal security have not been granted qualified status, then the issuance of the municipal security is subject to section 303(7).

(c) If 1 or more of the municipalities contracting to pay the municipal security have not been granted qualified status and the other municipalities representing over 50% of the contractual obligation have been granted qualified status and the municipality that issues the municipal security has been granted qualified status and pledges its full faith and credit on the municipal security, then the issuance of the municipal security is subject to section 303(2).

History: Add. 2002, Act 541, Imd. Eff. July 26, 2002.

141.2305 Issuance of municipal security; interest rate; sale at discount; rating; maturity; principal as interest.

Sec. 305. (1) A municipal security authorized by law to be issued by a municipality may, notwithstanding the provisions of a charter, bear no interest as provided in this section or a rate of interest not to exceed a maximum rate established by the governing body of the issuing municipality as set forth in its resolution or ordinance authorizing the issuance of the municipal security, which rate shall not exceed 18% per annum or a per annum rate determined by the department at the request of the municipality, whichever is higher. In making its determination, the department shall establish a rate that shall bear a reasonable relationship to 80% of the adjusted prime rate determined by the department under section 23 of 1941 PA 122, MCL 205.23. Except as otherwise provided in this section, the rate determined by the department shall be conclusive as to the maximum rate of interest permitted for a municipal security issued under this act.

(2) Except as provided in subsection (3), a municipal security issued under this act shall not be sold at a discount exceeding 10% of the principal amount of the municipal security. The amortization of the discount shall be considered interest and shall be within the interest rate limitation set forth in subsection (1).

(3) A municipal security may be sold at a discount exceeding 10% of the principal amount of the municipal security only if 1 or more of the following conditions apply, as determined by the department:

(a) The sale will result in the more even distribution for the municipality of total debt service on proposed and outstanding municipal securities.

(b) The sale will result in an interest cost savings when compared to the best available alternative that does not include a municipal security being sold at a discount exceeding 10% of the principal amount.

(c) The issuance is based on the availability of specific revenues previously pledged for another purpose and lawfully available for this purpose.

(d) The municipal security is issued to this state or the federal government to secure a loan or agreement.

(e) The municipal security is issued pursuant to section 518.

(4) A municipal security issued in accordance with subsection (3)(a), (b), or (c) shall be rated investment grade by a nationally recognized rating agency or have insurance for payment of the principal and interest on the municipal security to the holders of the municipal security.

(5) Notwithstanding any other provision of this section, a municipal security meeting the requirements of subsection (3) that is a refunding security shall not have a maturity that exceeds the maturity of the existing municipal security.

(6) Not more than 25% of the total principal amount of any authorized issue of a municipal security shall meet the qualifications under subsection (3)(a), (b), and (c).

(7) A municipal security may bear no interest if sold in accordance with a federal program by which the holder of the municipal security, as a result of holding the municipal security, may declare a credit against a federal tax.

(8) A municipal security may bear no interest and appreciate as to principal amount if it meets the requirements of subsections (3), (4), and (6). The accreted principal amount of a municipal security shall be considered interest and shall be within the interest rate limitations provided in subsection (1).

History: 2001, Act 34, Eff. Mar. 1, 2002;—Am. 2012, Act 329, Imd. Eff. Oct. 9, 2012.

141.2307 Proposed bulletin; public comment period.

Sec. 307. Before any bulletin issued by the department can take effect that addresses the filings, approvals, or determinations under section 303, or any modification of an existing bulletin that addresses the filings, approvals, or determinations under section 303, the department shall issue the bulletin or modification as a proposed bulletin with not less than a 30-day public comment period.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2308 Limited tax full faith and credit pledge; notice.

Sec. 308. If a municipality issues a municipal security that contains the limited tax full faith and credit pledge of the municipality after October 1, 2002, a notice of at least 1 meeting at which a decision will be made or discussed with respect to the issuance of the municipal security shall contain a statement that the proposed municipal security will contain a limited tax full faith and credit pledge of the municipality. This section does not apply to a refunding security, short-term municipal security issued under part 4, or a municipal security for which the municipality is required to provide a notice of the right of referendum by law or charter.

History: Add. 2002, Act 541, Imd. Eff. July 26, 2002.

141.2309 Sale of municipal security at competitive or negotiated sale; requirements.

Sec. 309. (1) A municipality may sell an authorized municipal security at a competitive sale or a negotiated sale as determined in the authorizing resolution. If a municipality determines to sell a municipal security at a negotiated sale, the governing body shall expressly state the method and reasons for choosing a negotiated sale instead of a competitive sale in the resolution or ordinance authorizing the issuance or sale of the municipal security.

(2) If a municipality determines to sell a municipal security at a competitive sale, the municipality shall publish a notice of sale at least 7 days before the date set for the sale, in a publication printed in the English language and circulated in this state that carries as a part of its regular service the notices of the sale of municipal securities.

(3) A municipality shall award a municipal security sold at a competitive sale to the bidder whose bid meets all specifications and requirements and results in the lowest interest cost to the municipality, unless all bids are rejected.

(4) A municipality may accept bids for the purchase of a municipal security made in person, by mail, by facsimile, by electronic means, or by any other means authorized by the municipality.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2311 Municipal security; registration; facsimile signatures; transfer of ownership; delivery; validity of signature of former officer.

Sec. 311. (1) A municipal security may be registrable as to principal alone or as to both principal and interest under terms and conditions determined by the governing body of the issuing municipality.

(2) A municipality may authorize a trustee or other authenticating agent to authenticate any municipal security executed by the facsimile signatures of the officials of the municipality in lieu of manual signatures of the officials of the issuing municipality.

(3) Officials of a municipality may sign and seal a municipal security in facsimile form if so authorized by the governing body of the issuing municipality.

(4) If authorized by the governing body of the issuing municipality, ownership of a municipal security may be transferred by means of a recorded entry in a record maintained by the issuing municipality, trustee, or other agent in lieu of printing and transferring a new municipal security. However, this subsection does not preclude a municipality from the delivery of, and a municipality shall have the authority to deliver, new municipal securities as evidence of the originally issued municipal security.

(5) If an individual acting in an official capacity signs or affixes his or her signature to a municipal security under this act and that individual ceases to be an officer before delivery of the municipal security, the municipal security is valid the same as if the individual had remained in office until delivery of that municipal security.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2313 Mutilated security; substitution.

Sec. 313. If a municipal security has become mutilated, then the governing body of the municipality may by resolution provide for the issuance of a new municipal security with like terms, in exchange for and substitution of the mutilated municipal security. In all such cases the holder shall pay the reasonable expenses and charges of such an exchange.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2315 Issuance of municipal security; determination; payment on demand; contrary ordinance or charter provision.

Sec. 315. (1) In determining to issue a municipal security, a municipality may do 1 or more of the following:

(a) Authorize and enter into insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase municipal securities, remarketing agreements, reimbursement agreements, and any other transactions to enhance timely payment of any municipal security.

(b) Authorize payment from the proceeds of the municipal security, or from other funds available, of the cost of issuance, including, but not limited to, fees for placement, fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to enhance timely payment of municipal securities.

(c) Authorize principal and interest to be payable from 1 or more of the following:

(i) Taxes or other revenues of the municipality.

(ii) Proceeds of the municipal security.

(iii) Earnings on proceeds of the municipal security or other funds held for payment of the municipal security.

(iv) Proceeds of any other transaction described in subdivision (a).

(d) Authorize or provide for an officer of the municipality, but only within limitations that shall be contained in the authorizing resolution of the governing body, to do 1 or more of the following:

(i) Sell, deliver, and receive payment for the municipal securities.

(ii) Refund the municipal securities in accordance with part VI of this act.

(iii) Deliver a municipal security partly to refund another security and partly for any other authorized purposes.

(iv) Buy the municipal security so issued at not more than the face value of the municipal security.

(v) Approve fixed interest rates, variable interest rates, or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment date, redemption rights at the option of the municipality or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(2) A municipality may provide that a municipal security additionally secured as provided in subsection (1) may be payable on demand or before maturity at the option of the holder only at the time and in the manner determined by the governing body as provided in the resolution authorizing the municipal security.

(3) The authority granted by this section may be exercised notwithstanding any ordinance or charter provision to the contrary.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2317 Interest rate exchange or swap, hedge, or similar agreement; definitions.

Sec. 317. (1) For the purpose of more effectively managing its debt service, a municipality may enter into an interest rate exchange or swap, hedge, or similar agreement or agreements in connection with the issuance or proposed issuance of debt or in connection with its then outstanding debt.

(2) In connection with entering into an interest rate exchange or swap, hedge, or similar agreement, a municipality may create a reserve fund for the payment of the exchange or swap, hedge, or similar agreement.

(3) An agreement entered into pursuant to this section shall not be included within the total debt of a municipality for any statutory or charter or other debt limitation purpose.

(4) If an interest rate exchange or swap, hedge, or similar agreement described in this section is entered into by a municipality in connection with debt that was not approved by the voters of the municipality, or in connection with a refunding of debt not originally approved by the voters of the municipality, 1 or more of the following apply:

(a) The interest under the agreement constitutes a limited tax full faith and credit pledge from general funds of the municipality.

(b) Subject to any existing contracts, the interest under the agreement shall be payable from any available money or revenue sources, including revenues that shall be specified by the agreement, securing the municipal security in connection with which the agreement is entered into.

(5) If an interest rate exchange or swap, hedge, or similar agreement described in this section is entered into by a municipality in connection with debt that was approved by the voters of the municipality, or in connection with a refunding of debt originally approved by the voters of the municipality, the municipality's interest payment obligation under the agreement shall be considered to be additional interest on the debt, shall constitute an unlimited tax full faith and credit pledge of the municipality, and the municipality shall levy all of the following:

(a) The full amount of taxes required, or in the case of a variable rate obligation the amount reasonably estimated to be required, for the payment of principal and interest on the municipal securities without limitation as to rate or amount and in addition to other taxes that the municipality may be authorized to levy.

(b) The full amount of taxes required, or in the case of a variable rate obligation the amount reasonably

estimated to be required, for the payment of the municipality's net interest obligation under an interest rate exchange or swap, hedge, or similar agreement entered into under this section.

(c) The amounts levied under subdivisions (a) and (b) shall be reduced by any surplus funds on hand in the debt retirement fund in excess of a reasonable reserve as determined by the municipality's chief financial officer.

(6) For purposes of this section, "net interest obligation" means the amount of interest payable by a municipality in a given year under an agreement entered into under this section minus any interest payment received by a municipality from the other party to the agreement in the same period under the agreement, but not less than zero. Termination payments shall constitute interest to the extent that the treatment does not cause the interest rate on the debt to exceed the limits established by this act.

(7) A municipality shall not enter into an agreement under this section unless all of the following conditions are met:

(a) The governing body of the municipality has, by resolution or ordinance, expressly approved the agreement and acknowledged the potential risks associated with the agreement.

(b) The counterparty to the agreement has been assigned a rating of "A" or better, or other rating as the department may determine, by a nationally recognized rating agency at the time the agreement is entered into.

(c) The length of the agreement does not extend beyond the final maturity date of the debt issued in connection with the agreement.

(d) The municipality shall not have waived its right to a jury trial.

(e) The municipality has created a debt management plan.

(f) The municipality has created a swap management plan.

(8) An agreement entered into under this section shall be described in the municipality's annual audit report filed under section 303(1).

(9) As used in this section:

(a) "Debt management plan" means a written debt management plan of the municipality that includes, but is not limited to, the following:

(i) Total amount of debt of the municipality.

(ii) Total amount of variable rate debt of the municipality.

(iii) Analysis of the effect of rising interest rates on variable rate holdings of the municipality.

(iv) Analysis of risk in maintaining variable risk holdings.

(b) "Swap management plan" means a written management plan that includes, but is not limited to, all of the following:

(i) Analysis of the benefits and costs of entering into swap agreements.

(ii) Analysis of the risk associated with entering into swap agreements.

(iii) Analysis of early termination, involuntary termination, default, and cost considerations associated with swap agreements.

(iv) System in place to monitor the status of all outstanding swap agreements.

History: 2001, Act 34, Eff. Mar. 1, 2002;—Am. 2002, Act 500, Imd. Eff. July 3, 2002.

141.2319 Document to be filed by municipality; failure to comply with subsection (1) or (2).

Sec. 319. (1) Within 15 business days of completing the issuance of any municipal security qualified under section 303(3), the municipality shall file a copy of all of the following with the department in a form and manner prescribed by the department:

(a) A copy of the municipal security.

(b) A proof of publication of the notice of sale, if applicable.

(c) A copy of the award resolution or certificate of award including a detail of the annual interest rate and call features on the municipal security.

(d) A copy of the legal opinion regarding the legality and tax status of the municipal security.

(e) A copy of the notice of rating of the municipal security received from a recognized rating agency, if any.

(f) A copy of the resolution or ordinance authorizing the issuance of the municipal security.

(g) A copy of the official statement, if any.

(h) For a refunding security, documentation indicating compliance with section 611.

(i) A filing fee equaling 0.02% of the principal amount of the municipal security issued, but in an amount not less than \$100.00 and not greater than \$1,000.00, as determined by the department.

(j) If the qualifying statement required by section 303(2) was received by the department more than 6 months after the end of the municipality's fiscal year, a late fee of \$100.00 with the first filing thereafter.

(k) For a municipal security issued under section 305(2), documentation indicating compliance with

section 305(2).

(2) Within 15 business days of completing the issuance of any municipal security approved under section 303(7), the municipality shall file all of the following with the department in a form and manner prescribed by the department:

- (a) A copy of the municipal security.
- (b) A proof of publication of the notice of sale, if applicable.
- (c) A copy of the award resolution including a detail of the annual interest rate and call features on the municipal security.
- (d) A copy of the legal opinion regarding the legality and tax status of the municipal security.
- (e) A copy of the notice of rating of the municipal security received from a recognized rating agency, if any.
- (f) A copy of the resolution or ordinance authorizing the issuance of the municipal security.
- (g) A copy of the official statement, if any.
- (h) For a refunding security, documentation indicating compliance with section 611.
- (i) For a municipal security issued under section 305(2), documentation indicating compliance with section 305(2).

(3) The failure to comply with subsection (1) or (2) does not invalidate any of the securities issued or reported under this act.

History: 2001, Act 34, Eff. Mar. 1, 2002;—Am. 2002, Act 541, Imd. Eff. July 26, 2002.

141.2321 Filing in electronic format.

Sec. 321. The department may require that the filings to the department required by this act be filed in an electronic format prescribed by the department.

History: 2001, Act 34, Eff. Mar. 1, 2002.

141.2323 Municipal security issued without department approval; rating.

Sec. 323. The department may require a rating for a municipal security issued without approval of the department as provided in section 303(3) if the principal amount of the municipal security exceeds \$5,000,000.00.

History: 2001, Act 34, Eff. Mar. 1, 2002.