

**CHAPTER 129. PUBLIC FUNDS**

**STATE GENERAL FUND DEFICIT  
Act 108 of 1909**

**129.1 Repealed. 1980, Act 180, Imd. Eff. July 2, 1980.**

## **DEPOSITORIES FOR PUBLIC MONEYS**

### **Act 40 of 1932 (1st Ex. Sess.)**

AN ACT to provide for the designation of depositories for public moneys; to prescribe the effect thereof on the liability for such deposits; to suspend the requirement of surety bonds from depositories of public moneys; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

**History:** 1932, 1st Ex. Sess., Act 40, Imd. Eff. May 14, 1932.

*The People of the State of Michigan enact:*

#### **129.11 Public money; definition.**

Sec. 1. Except as otherwise provided by law, money collected or received by an officer of a local public entity in this state, pursuant to any provision of law authorizing the officer to collect or receive the money, is public money for the purposes of this act. An officer of a local public entity authorized to deposit public money collected or received by the local public entity shall as soon as practicable deposit the public money collected or received in 1 or more financial institutions designated under this act. This section does not prevent a county treasurer from keeping on hand a reasonable amount of money necessary to conduct the affairs of his or her office.

**History:** 1932, 1st Ex. Sess., Act 40, Imd. Eff. May 14, 1932;—CL 1948, 129.11;—Am. 2018, Act 462, Eff. Mar. 29, 2019.

#### **129.12 Resolution providing for designation and deposit of public money; financial institution requirements; limitation on acceptable assets; conduct of proceedings; designation of depositories; deposit of funds; liability.**

Sec. 2. (1) The governing body of a local public entity shall adopt a resolution designating 1 or more financial institutions or types of financial institutions that meet the requirements under subsection (2) as depositories of public money of the local public entity, including, but not limited to, tax money, in the proportion and manner as may be provided in the resolution. Before adopting a resolution under this subsection, the governing body of the local public entity shall consider any recommendation submitted by the treasurer of the local public entity under subsection (3). The designation of a financial institution as a depository of public money under this subsection applies to a successor of the financial institution pursuant to any merger or acquisition.

(2) To be designated as a depository of public money by a local public entity under subsection (1), a financial institution must meet either of the following:

(a) The financial institution maintains a principal office or branch office located in this state under the laws of this state or the United States.

(b) The financial institution does not maintain a principal office or branch office located in this state and all of the following apply:

(i) The local public entity has a geographic boundary bordering another state.

(ii) The financial institution maintains a principal office or branch office in the bordering state under the laws of this state or the United States.

(iii) There is no principal office or branch office of a financial institution that maintains a principal office or branch office in the local public entity.

(3) A treasurer of a local public entity may recommend to the governing body of that local public entity 1 or more financial institutions that meet the requirements of subsection (2) for designation as a depository of public money, using a procurement process that is consistent with best practices for procurement of banking services by that type of local public entity, including, but not limited to, the practices established by the Government Finance Officers Association or the Association of Public Treasurers of the United States and Canada.

(4) Assets acceptable for pledging to secure deposits of public funds are limited to any of the following:

(a) Assets considered acceptable to the state treasurer under section 3 of 1855 PA 105, MCL 21.143, to secure deposits of state surplus funds.

(b) Any of the following:

(i) Securities issued by the Federal Home Loan Mortgage Corporation.

(ii) Securities issued by the Federal National Mortgage Association.

(iii) Securities issued by the Government National Mortgage Association.

(c) Other securities considered acceptable to the depositor of public funds and the financial institution.

(5) All proceedings in connection with the deposit of public money must be conducted and governed under this act and under applicable law not in conflict with this act. Upon designation of 1 or more financial

institutions or types of financial institutions under subsection (1), a treasurer of a local public entity shall deposit all public money collected or received in the designated financial institution or institutions in the proportion and manner as may be provided by the resolution.

(6) If a deposit is made in a designated financial institution in accordance with the resolution adopted under subsection (1), the treasurer of the local public entity and the sureties on the treasurer's bonds are not liable for a loss occasioned or sustained by the failure or default of the designated financial institution. This exemption from liability applies even if applicable law provides for the furnishing of a bond by a financial institution. The treasurer of a local public entity and the sureties on the treasurer's bonds are liable for all money not deposited as provided under this act.

**History:** 1932, 1st Ex. Sess., Act 40, Imd. Eff. May 14, 1932;—CL 1948, 129.12;—Am. 1979, Act 84, Imd. Eff. Aug. 1, 1979;—Am. 1997, Act 31, Imd. Eff. June 19, 1997;—Am. 1997, Act 33, Imd. Eff. June 19, 1997;—Am. 2018, Act 462, Eff. Mar. 29, 2019.

#### **129.13 Repealed. 1997, Act 31, Imd. Eff. June 19, 1997.**

**Compiler's note:** The repealed section pertained to prohibited security.

#### **129.14 Deposit or investment of additional money; cash control ledger; limitation.**

Sec. 4. (1) Notwithstanding section 2, additional money collected or received by a treasurer of a local public entity must not be deposited or invested in a financial institution that is not eligible to be a depository of surplus funds of this state under section 6 of 1855 PA 105, MCL 21.146.

(2) An officer of a local public entity responsible for depositing money belonging to the local public entity shall keep all accounts at a financial institution designated under this act upon the regular books or records of the officer so that each item of all accounts appear on the books or records and shall maintain a cash control ledger recording deposit and investment activity affecting the money, including, but not limited to, a record of the cash and investment equity of each fund of the local public entity. Money deposited with a treasurer under this act, including any surplus money, must be deposited in a financial institution designated by the local public entity under this act or be invested by the treasurer as investment officer for the local public entity in a manner that complies with 1943 PA 20, MCL 129.91 to 129.97a.

**History:** Add. 1979, Act 84, Imd. Eff. Aug. 1, 1979;—Am. 1997, Act 31, Imd. Eff. June 19, 1997;—Am. 1997, Act 33, Imd. Eff. June 19, 1997;—Am. 2018, Act 462, Eff. Mar. 29, 2019.

#### **129.15 Repealed. 2018, Act 462, Eff. Mar. 29, 2019.**

**Compiler's note:** The repealed section pertained to definition of deposit.

#### **129.16 Definitions.**

Sec. 6. As used in this act:

(a) "Deposit" includes the purchase of or investment in shares of a credit union.

(b) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government.

(c) "Governing body" means a council, commission, board, or other official body that has legislative powers over a local public entity.

(d) "Local public entity" means a county, city, village, township, school district, district, authority, municipal corporation, or any other political subdivision organized under the laws of this state.

**History:** Add. 1997, Act 31, Imd. Eff. June 19, 1997;—Add. 1997, Act 33, Imd. Eff. June 19, 1997;—Am. 2018, Act 462, Eff. Mar. 29, 2019.

**RELIEF FROM LIABILITY FOR FUNDS IN DESIGNATED DEPOSITORY**  
**Act 95 of 1935**

AN ACT to relieve all tax collectors, fee collectors, custodians and other officers and former tax collectors, fee collectors, and other officers of the state of Michigan or any of its political subdivisions from liability to any county, township, city, village or school district of the state of Michigan and the state of Michigan, for failure to pay over tax funds, fees and moneys in the possession of such tax collector, fee collector, custodian or other officer but on deposit in a depository designated by or under the laws of the state of Michigan.

**History:** 1935, Act 95, Imd. Eff. May 28, 1935.

*The People of the State of Michigan enact:*

**129.21 Tax collectors relieved from liability for funds in a designated depository.**

Sec. 1. All tax collectors and former tax collectors of the state of Michigan or any of its political subdivisions are hereby relieved from any liability to any county, township, city, village or school district of the state of Michigan and the state of Michigan for failure to pay over tax funds in the possession of such tax collector but on deposit in a depository duly designated by or under the laws of the state of Michigan.

**History:** 1935, Act 95, Imd. Eff. May 28, 1935;—CL 1948, 129.21.

**129.22 Fee collectors relieved from liability for funds in a designated depository.**

Sec. 2. All fee collectors and former fee collectors of the state of Michigan or of any of its political subdivisions are hereby relieved from any liability to any county, township, city, village or school district of the state of Michigan and the state of Michigan for failure to pay over such fees in the possession of such fee collector but on deposit in a depository duly designated by or under the laws of the state of Michigan.

**History:** 1935, Act 95, Imd. Eff. May 28, 1935;—CL 1948, 129.22.

**129.23 Public officials relieved from liability for funds in a designated depository.**

Sec. 3. All officers of the state of Michigan or of any of its political subdivisions who in connection with the performance of the duties of their respective offices receive moneys as custodians, whether such moneys shall have been heretofore so deposited with them, or shall hereafter be so deposited with them, are hereby relieved from any liability to any county, township, city, village or school district of the state of Michigan and the state of Michigan for failure to pay over such moneys so deposited with them in the possession of such officer but on deposit in a depository duly designated by or under the laws of the state of Michigan.

**History:** 1935, Act 95, Imd. Eff. May 28, 1935;—CL 1948, 129.23.

**DEPOSITORIES FOR PUBLIC MONEYS**  
**Act 99 of 1909**

**129.31-129.40 Repealed. 2018, Act 462, Eff. Mar. 29, 2019.**

**DEPOSIT AND SAFEGUARDING OF PUBLIC MONEYS OF VILLAGE**  
**Act 321 of 1909**

AN ACT to provide for the depositing and safeguarding of public moneys belonging to villages within the state of Michigan.

**History:** 1909, Act 321, Eff. Sept. 1, 1909.

*The People of the State of Michigan enact:*

**129.41 Public funds of incorporated village; deposit; secured deposits; limitation on acceptable assets; warrants and orders; profits; liability for loss; ordinance or resolution; conduct and inspection of proceedings; accrual of profits to village general fund.**

Sec. 1. (1) The legislative body of an incorporated village of this state may provide for the depositing and safeguarding of public funds in the manner prescribed in section 3 and this section. The treasurer of an incorporated village within the state, upon giving bond as required by the council, may deposit all public funds of which the treasurer has charge in a financial institution located within the county which the treasurer considers best for the protection of the funds.

(2) Assets acceptable for pledging to secure deposits of village funds are limited to any of the following:

(a) Assets considered acceptable to the state treasurer under section 3 of 1855 PA 105, MCL 21.143, to secure deposits of state surplus funds.

(b) Any of the following:

(i) Securities issued by the federal home loan mortgage corporation.

(ii) Securities issued by the federal national mortgage association.

(iii) Securities issued by the government national mortgage association.

(c) Other securities considered acceptable to the village and the financial institution.

(3) The deposit shall be subject at all times to the warrants and orders of the treasurer required by law to be drawn, and all profits arising from the deposit shall inure to the benefit of the funds.

(4) These deposits shall not release the treasurer from liability for a loss which may occur by the deposit.

(5) The legislative body may provide by ordinance or resolution for the deposit of all public funds belonging to the village coming into the possession of the treasurer in a designated financial institution located within the county and may determine in the ordinance or resolution all details for carrying into effect the authority granted by this section.

(6) All proceedings in connection with the deposit of funds shall be conducted in a manner which insures full publicity and shall be open at all times to the inspection of any citizen. Neither the treasurer nor the treasurer's sureties shall be liable for a loss incurred from deposits made under authority of an ordinance or resolution of the council.

(7) Profits arising from the deposit shall accrue to the benefit of the general fund of the village.

**History:** 1909, Act 321, Eff. Sept. 1, 1909;—CL 1915, 2609;—CL 1929, 1792;—CL 1948, 129.41;—Am. 1956, Act 27, Eff. Aug. 11, 1956;—Am. 1979, Act 77, Imd. Eff. Aug. 1, 1979;—Am. 1997, Act 45, Imd. Eff. June 30, 1997.

**129.42 Security for deposit prohibited.**

Sec. 2. Security in the form of collateral, surety bonds, or another form shall not be taken for the deposit of the public funds.

**History:** Add. 1979, Act 77, Imd. Eff. Aug. 1, 1979.

**129.43 Limitation on deposit of additional public funds.**

Sec. 3. Notwithstanding section 1(1), additional public funds of an incorporated village shall not be deposited in a financial institution which is not eligible to be a depository of surplus funds belonging to this state under section 6 of 1855 PA 105, MCL 21.146.

**History:** Add. 1979, Act 77, Imd. Eff. Aug. 1, 1979;—Am. 1997, Act 45, Imd. Eff. June 30, 1997.

**129.44 "Deposit" defined.**

Sec. 4. As used in this act, "deposit" includes the purchase of, or investment in, shares of a credit union.

**History:** Add. 1979, Act 77, Imd. Eff. Aug. 1, 1979.

**129.45 "Financial institution" defined.**

Sec. 5. As used in this act, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by

an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States.

**History:** Add. 1997, Act 45, Imd. Eff. June 30, 1997.

**BONDS OF PUBLIC OFFICIALS; LIABILITY OF SURETIES**  
**Act 19 of 1934 (1st Ex. Sess.)**

AN ACT relative to the bonds of public officials, and the liability of sureties thereon; and to repeal all acts and parts of acts inconsistent therewith.

**History:** 1934, 1st Ex. Sess., Act 19, Imd. Eff. Mar. 28, 1934.

*The People of the State of Michigan enact:*

**129.51 Bonds of public officials, deputies, assistants; liability of sureties.**

Sec. 1. If any officer of the state, or any officer of any county, township, school district, highway district, drainage district, city or village, or of any other municipal or public corporation within this state, shall be required to file an official statutory bond or bonds, either as additional security or substituted security, the surety or sureties thereon shall not be liable, directly or indirectly, for any acts or defaults committed by such public officer prior to the date of signing of such bond or bonds, or for the failure of any such public officer to pay over on final settlement or to his successor in office, if such failure to pay over be due to an act or default committed prior to the signing of such bond or bonds, or for the failure of such surety or sureties to collect from themselves or from any prior surety or sureties the amount of any loss due to any act or default committed by such public officer prior to the date of the signing of such bond or bonds. The provisions of this act shall apply to all deputies of any such officer, and to all clerks, agents and servants of any such officer.

**History:** 1934, 1st Ex. Sess., Act 19, Imd. Eff. Mar. 28, 1934;—CL 1948, 129.51.

**MISAPPROPRIATION OF PUBLIC FUNDS**  
**Act 94 of 1929**

AN ACT to authorize the institution of suits by taxpayers on behalf of townships or school districts for an accounting or to recover funds misappropriated or unlawfully expended by public officers.

**History:** 1929, Act 94, Eff. Aug. 28, 1929.

*The People of the State of Michigan enact:*

**129.61 Misappropriation of public moneys; suit by taxpayer.**

Sec. 1. Any person or persons, firm or corporation, resident in any township or school district, paying taxes to such political unit, may institute suits or actions at law or in equity on behalf of or for the benefit of the treasurer of such political subdivision, for an accounting and/or the recovery of funds or moneys misappropriated or unlawfully expended by any public officer, board or commission of such political subdivision. Before such suit is instituted a demand shall be made on the public officer, board or commission whose duty it may be to maintain such suit followed by a neglect or refusal to take action in relation thereto. Security for costs shall be filed by the plaintiff or plaintiffs in any such suit or action and all costs and expenses of the same shall be paid by the person or persons instituting the same unless and until a recovery of such funds or moneys be obtained as the result of such proceedings.

**History:** 1929, Act 94, Eff. Aug. 28, 1929;—CL 1929, 2711;—CL 1948, 129.61.



**INVESTMENT OF PUBLIC MONEYS IN U.S. SECURITIES**  
**Act 70 of 1933**

AN ACT to authorize the board of supervisors of any county, or the board of county auditors in those counties having a board of county auditors, to invest public moneys received by county treasurers in interest bearing securities of the United States government; and to authorize the board of county road commissioners of any county to so invest moneys deposited to the credit of the county road fund.

**History:** 1933, Act 70, Imd. Eff. May 5, 1933;—Am. 1956, Act 18, Imd. Eff. Mar. 22, 1956.

*The People of the State of Michigan enact:*

**129.71 Investment of public moneys received by county treasurer and board of county road commissioners.**

Sec. 1. The board of supervisors of any county, or the board of county auditors in those counties having a board of county auditors, is hereby authorized to invest public moneys received by the county treasurers of their respective counties, in interest bearing bonds, notes or other securities of the United States government; and the board of county road commissioners of any county is hereby authorized to so invest moneys deposited to the credit of the county road fund.

**History:** 1933, Act 70, Imd. Eff. May 5, 1933;—CL 1948, 129.71;—Am. 1956, Act 18, Imd. Eff. Mar. 22, 1956.

**INVESTMENT IN BONDS OF HOME OWNERS' LOAN CORPORATION AND OF FEDERAL  
HOME LOAN BANKS  
Act 23 of 1934 (1st Ex. Sess.)**

AN ACT authorizing the investment in bonds of the home owners' loan corporation and bonds of federal home loan banks by the state and all its departments and political subdivisions, including municipal corporations, and instrumentalities, and by any insurance company, building and loan association or company, savings and loan association or company, bank, trust company or other financial institution, and by any executor, administrator, guardian, trustee or fiduciary; authorizing the use of such bonds as security by any depository of funds; and authorizing certain deposits with the state treasurer to be in such bonds.

**History:** 1934, 1st Ex. Sess., Act 23, Imd. Eff. Mar. 28, 1934.

*The People of the State of Michigan enact:*

**129.81 Investment in bonds of home owners' loan corporation, federal home loan bank, or financial institution; secured deposits; limitation on acceptable assets; "financial institution" defined.**

Sec. 1. (1) This state and any of its departments or political subdivisions, including municipal corporations, or instrumentalities, or any insurance company, building and loan association or company, savings and loan association or company, bank, trust company, or other financial institution or any executor, administrator, guardian, trustee, or other fiduciary may invest their funds or money in the bonds of the home owners' loan corporation or in the bonds of any federal home loan bank or in certificates of deposit or depository receipts of any financial institution.

(2) Assets acceptable for pledging to secure deposits of funds under this act are limited to any of the following:

(a) Assets considered acceptable to the state treasurer under section 3 of 1855 PA 105, MCL 21.143, to secure deposits of state surplus funds.

(b) Any of the following:

(i) Securities issued by the federal home loan mortgage corporation.

(ii) Securities issued by the federal national mortgage association.

(iii) Securities issued by the government national mortgage association.

(c) Other securities considered acceptable to the depositor of funds and the financial institution.

(3) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States.

**History:** 1934, 1st Ex. Sess., Act 23, Imd. Eff. Mar. 28, 1934;—CL 1948, 129.81;—Am. 1964, Act 122, Eff. Aug. 28, 1964;—Am. 1997, Act 46, Imd. Eff. June 30, 1997.

**129.82 Public funds; deposit as security.**

Sec. 2. Wherever depositories of public or other funds are required or permitted by law to give security therefor, the bonds of the home owners' loan corporation or of any federal home loan bank may and are hereby authorized to be used as security for any depository bonds or obligations wherein any kind of bonds or other security are required or permitted by law to be deposited as security.

Deposits of trust companies and insurance companies with the state treasurer, are hereby authorized to be in the bonds of the home owners' loan corporation or in the bonds of any federal home loan bank.

**History:** 1934, 1st Ex. Sess., Act 23, Imd. Eff. Mar. 28, 1934;—CL 1948, 129.82.

**129.83 Construction of act.**

Sec. 3. This act shall be construed as supplemental to the laws of this state, and as an additional authorization for the investment of funds and the type of security given by depositories, and the type of deposit authorized to be made by trust companies and insurance companies with the state treasurer.

**History:** 1934, 1st Ex. Sess., Act 23, Imd. Eff. Mar. 28, 1934;—CL 1948, 129.83.

## INVESTMENT OF SURPLUS FUNDS OF POLITICAL SUBDIVISIONS

### Act 20 of 1943

AN ACT relative to the investment of funds of public corporations of the state; and to validate certain investments.

**History:** 1943, Act 20, Imd. Eff. Mar. 13, 1943;—Am. 1988, Act 285, Imd. Eff. Aug. 1, 1988;—Am. 1997, Act 196, Imd. Eff. Dec. 30, 1997.

*The People of the State of Michigan enact:*

#### **129.91 Investment of funds of public corporation; eligible depository; secured deposits; funds limitation on acceptable assets; pooling or coordinating funds; written agreements; investment in certificate of deposit; conditions; “financial institution” defined; additional definitions.**

Sec. 1. (1) Except as provided in section 5, the governing body by resolution may authorize its investment officer to invest the funds of that public corporation in 1 or more of the following:

(a) Bonds, securities, and other obligations of the United States or an agency or instrumentality of the United States.

(b) Certificates of deposit, savings accounts, or depository receipts of a financial institution, but only if the financial institution complies with subsection (2); certificates of deposit obtained through a financial institution as provided in subsection (5); or deposit accounts of a financial institution as provided in subsection (6).

(c) Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 standard rating services and that matures not more than 270 days after the date of purchase.

(d) Repurchase agreements consisting of instruments listed in subdivision (a).

(e) Bankers' acceptances of United States banks.

(f) Obligations of this state or any of its political subdivisions that at the time of purchase are rated as investment grade by not less than 1 standard rating service.

(g) Mutual funds registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64, with authority to purchase only investment vehicles that are legal for direct investment by a public corporation. However, a mutual fund is not disqualified as a permissible investment solely by reason of any of the following:

(i) The purchase of securities on a when-issued or delayed delivery basis.

(ii) The ability to lend portfolio securities as long as the mutual fund receives collateral at all times equal to at least 100% of the value of the securities loaned.

(iii) The limited ability to borrow and pledge a like portion of the portfolio's assets for temporary or emergency purposes.

(h) Obligations described in subdivisions (a) through (g) if purchased through an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(i) Investment pools organized under the surplus funds investment pool act, 1982 PA 367, MCL 129.111 to 129.118.

(j) The investment pools organized under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150.

(2) Except as provided in subsection (5), a public corporation that invests its funds under subsection (1) shall not deposit or invest the funds in a financial institution that is not eligible to be a depository of funds belonging to this state under a law or rule of this state or the United States.

(3) Assets acceptable for pledging to secure deposits of public funds are limited to assets authorized for direct investment under subsection (1).

(4) The governing body by resolution may authorize its investment officer to enter into written agreements with other public corporations to pool or coordinate the funds to be invested under this section with the funds of other public corporations. Agreements allowed under this subsection shall include all of the following:

(a) The types of investments permitted to be purchased with pooled funds.

(b) The rights of members of the pool to withdraw funds from the pooled investments without penalty.

(c) The duration of the agreement and the requirement that the agreement shall not commence until at least 60 days after the public corporations entering the agreement give written notice to an existing local government investment pool which is organized under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150, in those counties where such a pool is operating and accepting deposits on or before September 29, 2006.

- (d) The method by which the pool will be administered.
  - (e) The manner by which the public corporations will respond to liabilities incurred in conjunction with the administration of the pool.
  - (f) The manner in which strict accountability for all funds will be provided for, including an annual statement of all receipts and disbursements.
  - (g) The manner by which the public corporations will adhere to the requirements of section 5.
- (5) In addition to the investments authorized under subsection (1), the governing body by resolution may authorize its investment officer to invest the funds of the public corporation in certificates of deposit in accordance with all of the following conditions:
- (a) The funds are initially invested through a financial institution that is not ineligible to be a depository of surplus funds belonging to this state under section 6 of 1855 PA 105, MCL 21.146.
  - (b) The financial institution arranges for the investment of the funds in certificates of deposit in 1 or more insured depository institutions, as defined in 12 USC 1813, or 1 or more insured credit unions, as defined in 12 USC 1752, for the account of the public corporation.
  - (c) The full amount of the principal and any accrued interest of each certificate of deposit is insured by an agency of the United States.
  - (d) The financial institution acts as custodian for the public corporation with respect to each certificate of deposit.
  - (e) At the same time that the funds of the public corporation are deposited and the certificate or certificates of deposit are issued, the financial institution receives an amount of deposits from customers of other insured depository institutions or insured credit unions equal to or greater than the amount of the funds initially invested by the public corporation through the financial institution.
- (6) In addition to the investments authorized under subsection (1), the governing body by resolution may authorize its investment officer to invest the funds of the public corporation in deposit accounts that meet all of the following conditions:
- (a) The funds are initially deposited in a financial institution that is not ineligible to be a depository of surplus funds belonging to this state under section 6 of 1855 PA 105, MCL 21.146.
  - (b) The financial institution arranges for the deposit of the funds in deposit accounts in 1 or more insured depository institutions, as defined in 12 USC 1813, or 1 or more insured credit unions, as defined in 12 USC 1752, for the account of the public corporation.
  - (c) The full amount of the principal and any accrued interest of each deposit account is insured by an agency of the United States.
  - (d) The financial institution acts as custodian for the public corporation with respect to each deposit account.
  - (e) On the same date that the funds of the public corporation are deposited under subdivision (b), the financial institution receives an amount of deposits from customers of other insured depository institutions or insured credit unions equal to or greater than the amount of the funds initially deposited by the public corporation in the financial institution.
- (7) A public corporation that initially invests its funds through a financial institution that maintains an office located in this state may invest the funds in certificates of deposit as provided under subsection (5).
- (8) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.
- (9) As used in this act:
- (a) "Governing body" means the legislative body, council, commission, board, or other body having legislative powers of a public corporation.
  - (b) "Funds" means the money of a public corporation, the investment of which is not otherwise subject to a public act of this state or bond authorizing ordinance or resolution of a public corporation that permits investment in fewer than all of the investment options listed in subsection (1) or imposes 1 or more conditions upon an investment in an option listed in subsection (1).
  - (c) "Investment officer" means the treasurer or other person designated by statute or charter of a public corporation to act as the investment officer. In the absence of a statutory or charter designation, the governing body of a public corporation shall designate the investment officer.
  - (d) "Public corporation" means a county, city, village, township, port district, drainage district, special assessment district, or metropolitan district of this state, or a board, commission, or another authority or agency created by or under an act of the legislature of this state.

**History:** 1943, Act 20, Imd. Eff. Mar. 13, 1943;—CL 1948, 129.91;—Am. 1964, Act 126, Eff. Aug. 28, 1964;—Am. 1977, Act 66, Imd. Eff. July 20, 1977;—Am. 1978, Act 500, Imd. Eff. Dec. 11, 1978;—Am. 1979, Act 79, Imd. Eff. Aug. 1, 1979;—Am. 1982, Act 217, Imd. Eff. July 8, 1982;—Am. 1988, Act 239, Imd. Eff. July 11, 1988;—Am. 1997, Act 44, Imd. Eff. June 30, 1997;—Am. 1997, Act 196, Imd. Eff. Dec. 30, 1997;—Am. 2006, Act 400, Imd. Eff. Sept. 29, 2006;—Am. 2008, Act 308, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 21, Imd. Eff. May 5, 2009;—Am. 2012, Act 152, Imd. Eff. May 30, 2012.

#### **129.92 Repealed. 1997, Act 196, Imd. Eff. Dec. 30, 1997.**

**Compiler's note:** The repealed section pertained to investment of sinking funds and insurance moneys by school districts.

#### **129.93 Existing investments ratified and validated.**

Sec. 3. Investments made before the effective date of the amendatory act that repealed section 2 of the surplus funds, sinking funds, or insurance funds of a political subdivision of this state in bonds and other obligations of the United States or its instrumentalities or certificates of deposit or depository receipts of a bank that is a member of the federal deposit insurance corporation as provided under section 1 and former section 2 of this act are hereby ratified and validated.

**History:** 1943, Act 20, Imd. Eff. Mar. 13, 1943;—CL 1948, 129.93;—Am. 1964, Act 126, Eff. Aug. 28, 1964;—Am. 1997, Act 196, Imd. Eff. Dec. 30, 1997.

#### **129.94 Funds accumulated under eligible deferred compensation plan; deposit; investment; existing investments ratified and validated.**

Sec. 4. (1) As used in this section:

(a) "Eligible deferred compensation plan" means a deferred compensation plan established and maintained by a governing body, which plan meets the requirements of section 457 of the internal revenue code.

(b) "Financial institution" means a state or nationally chartered bank, a state or federally chartered savings bank, a state or federally chartered savings and loan association, or a state or federally chartered credit union, which financial institution is insured by an agency or instrumentality of the federal government.

(c) "Governing body" means the legislative or governing body of a county, city, village, township, or special assessment district, or an agency, board, or commission of a county, city, village, or township.

(2) The governing body, by resolution, may authorize its treasurer or chief fiscal officer to deposit funds received under an eligible deferred compensation plan in a financial institution authorized by law to do business in this state or with an authorized deferred compensation agent appointed by the governing body. Notwithstanding any other provision of this act, the treasurer or chief fiscal officer, as authorized by resolution of the governing body, may place funds accumulated under an eligible deferred compensation plan with a financial institution authorized to do business in this state, a state or federally licensed investment company or insurance company authorized to do business in this state, or trust established by public employers for the commingled investment of the amounts held under deferred compensation and retirement plans, which funds shall be invested by the financial institution, insurance company, investment company, or trust as directed by the governing body. The investment of eligible deferred compensation plan funds shall be in the manner and for the purposes described in section 457 of the internal revenue code.

(3) The investment of funds accumulated under an eligible deferred compensation plan of a governing body prior to the effective date of the amendatory act that added this section, which investments otherwise meet the requirements of this section, are ratified and validated.

**History:** Add. 1988, Act 285, Imd. Eff. Aug. 1, 1988.

#### **129.95 Investment policy; adoption by governing body.**

Sec. 5. (1) Not more than 180 days after the end of a public corporation's first fiscal year that ends after the effective date of the amendatory act that repealed section 2, a governing body, in consultation with the investment officer, shall adopt an investment policy that, at a minimum, includes all of the following:

(a) A statement of the purpose, scope, and objectives of the policy, including safety, diversification, liquidity, and return on investment.

(b) A delegation of authority to make investments.

(c) A list of authorized investment instruments. If the policy authorizes an investment in mutual funds, it shall indicate whether the authorization is limited to securities whose intention is to maintain a net asset value of \$1.00 per share or also includes securities whose net asset value per share may fluctuate on a periodic basis.

(d) A statement concerning safekeeping, custody, and prudence.

(2) A governing body that as of the effective date of the amendatory act that repealed section 2 has adopted an investment policy that substantially complies with the minimum requirements under subsection (1) is not in violation of this section as long as that policy remains in effect.

**History:** Add. 1997, Act 196, Imd. Eff. Dec. 30, 1997.

**129.96 Execution of order to purchase or trade funds of public corporation; providing copy of investment policy; public corporation subject to subsection (1); report.**

Sec. 6. (1) Subject to subsection (2), before executing an order to purchase or trade the funds of a public corporation, a financial intermediary, broker, or dealer shall be provided with a copy of the public corporation's investment policy and shall do both of the following:

- (a) Acknowledge receipt of the investment policy.
- (b) Agree to comply with the terms of the investment policy regarding the buying or selling of securities.

(2) A public corporation is subject to subsection (1) beginning on the date that the investment policy of a public corporation takes effect or 180 days after the end of the public corporation's first fiscal year ending after the effective date of the amendatory act that repealed section 2, whichever is earlier.

(3) The investment officer shall provide quarterly a written report to the governing body concerning the investment of the funds.

**History:** Add. 1997, Act 196, Imd. Eff. Dec. 30, 1997;—Am. 2007, Act 213, Imd. Eff. Dec. 27, 2007.

**129.97 Long-term or perpetual trust fund; investment of assets; resolution authorizing investment officer same authority as investment fiduciary under MCL 38.1132 to 38.1140m; conditions.**

Sec. 7. Notwithstanding any law or charter provision to the contrary, if a public corporation has a long-term or perpetual trust fund consisting of money and royalties or money derived from oil and gas exploration on property or mineral rights owned by the public corporation, the governing body of the public corporation may by resolution provide its investment officer with the same authority to invest the assets of the long-term or perpetual trust fund as is granted an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m.

**History:** Add. 2008, Act 220, Imd. Eff. July 16, 2008.

**129.97a Investment of assets of special revenue fund by investment officer; resolution granting authority; annual special revenue fund report.**

Sec. 7a. (1) Notwithstanding any law or charter to the contrary, if a public corporation has a special revenue fund consisting of payments for park operations and maintenance, the governing body of the public corporation may by resolution provide its investment officer with the same authority to invest the assets of the special revenue fund as is granted an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m.

(2) The investment officer shall prepare and issue an annual special revenue fund report. The investment officer shall make the annual special revenue fund report available to the citizens of the public corporation. The annual special revenue fund report shall include all of the following:

- (a) The name of the special revenue fund.
- (b) The special revenue fund's investment fiduciaries.
- (c) The special revenue fund's assets and liabilities.
- (d) The special revenue fund's funded ratio.
- (e) The special revenue fund's investment performance.
- (f) The special revenue fund's expenses.

**History:** Add. 2008, Act 404, Imd. Eff. Jan. 6, 2009.

**FACSIMILE SIGNATURES**  
**Act 32 of 1956**

AN ACT to provide for the use of a facsimile signature or signatures of the person or persons required to sign the same by persons signing checks, drafts or other orders for the payment of money by governmental units, municipal corporations and/or certain other public corporations.

**History:** 1956, Act 32, Imd. Eff. Mar. 28, 1956.

*The People of the State of Michigan enact:*

**129.101 Deposited public funds; facsimile signatures on checks or orders for payment of money.**

Sec. 1. Moneys on deposit in any duly designated depository to the credit of any account of the state of Michigan, when so authorized by resolution of the state administrative board, of any county, when so authorized by resolution of its board of supervisors or board of county auditors in those counties in which there is a board of county auditors, of any township, when so authorized by resolution of its township board, of any school district, when so authorized by resolution of its district board or board of education, of any city or village, when so authorized by resolution of its legislative body, or of any other municipal or public corporation within this state, when so authorized by resolution of its governing board, may be drawn upon by checks, drafts or other orders for the payment of money bearing, or purporting to bear, the facsimile signature or signatures of the person or persons required to sign the same; and when the drawing upon any such moneys in such manner is so authorized, such depository shall be entitled to honor and to charge the appropriate account for such checks, drafts and other orders regardless of by whom or by what means any such actual or purported facsimile signature may have been affixed thereto if, in the exercise of ordinary care, such signature would be honored by a bank as being the facsimile signature duly certified to the depository.

**History:** 1956, Act 32, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 20, Eff. Sept. 13, 1958.



## **SURPLUS FUNDS INVESTMENT POOL ACT**

### **Act 367 of 1982**

AN ACT relative to the investment of surplus funds of local units of government of this state in investment pools; to permit the establishment of investment pools by financial institutions; to permit local units of government to invest in investment pools; and to prescribe certain powers and duties of certain local units of government and their officers.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

*The People of the State of Michigan enact:*

#### **129.111 Short title.**

Sec. 1. This act shall be known and may be cited as the "surplus funds investment pool act".

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

#### **129.112 Definitions.**

Sec. 2. (1) As used in this act:

(a) "Depository" means that department of the financial institution which is responsible for managing, investing, and reinvesting funds placed in an investment pool.

(b) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States and which is eligible to be a depository of surplus funds belonging to the state under section 6 of 1855 PA 105, MCL 21.146.

(c) "Local unit" means a county, city, village, township, school district, authority, or any other political subdivision organized under the laws of this state.

(d) "Participant" means a local unit which has entered into a contract with a financial institution and has placed funds in an investment pool managed by that financial institution.

(e) "Surplus funds" means money which belongs to or is under the control of the local unit and is available for investment, not being required by law or agreement with bondholders to be segregated and invested in a specified manner.

(2) Assets acceptable for pledging to secure deposits of township funds are limited to any of the following:

(a) Assets considered acceptable to the state treasurer under section 3 of 1855 PA 105, MCL 21.143, to secure deposits of state surplus funds.

(b) Any of the following:

(i) Securities issued by the federal home loan mortgage corporation.

(ii) Securities issued by the federal national mortgage association.

(iii) Securities issued by the government national mortgage association.

(c) Securities considered acceptable to the township and the financial institution.

**History:** 1982, Act 367, Eff. Mar. 30, 1983;—Am. 1997, Act 48, Imd. Eff. June 30, 1997.

#### **129.113 Placing surplus funds in investment pool; contract with financial institution.**

Sec. 3. The governing body of a local unit may enter into a contract with a financial institution to place surplus funds in an investment pool.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

#### **129.114 Contract between financial institution and local unit; required provisions.**

Sec. 4. Before surplus funds are placed in an investment pool, the financial institution and the local unit shall enter into a written contract which shall include, at a minimum, the following provisions:

(a) The minimum amount of money which may be deposited in the investment pool.

(b) The procedure for the deposit and withdrawal of the money.

(c) The amount of the fee for managing the investment pool, if a management fee is to be charged of the participant by the financial institution.

(d) The terms for distribution of earnings in excess of any management fee, and for the allocation of losses, to participants, in a manner which equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in custody of the investment pool.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.



**129.115 Maintaining separate account for each participant; monthly statement of transactions; report.**

Sec. 5. The depository shall maintain for each participant a separate account designated by the participant's name and number. Each account shall show the deposits, earnings, and withdrawals of, and any fees paid by, the participant. Each participant shall receive a monthly statement of transactions and, upon request, shall be furnished a report showing the investment holdings of the investment pool as of the end of the previous month.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

**129.116 Powers and duties of depository.**

Sec. 6. (1) The depository shall manage, invest, and reinvest the money in an investment pool on behalf of each participant. Subject to the scope of investments allowed by subsection (2), a depository may combine money in an investment pool with other funds the depository may have available for investment.

(2) The depository may invest and reinvest the money in the investment pool only in the manner permitted in section 1 of Act No. 20 of the Public Acts of 1943, as amended, being section 129.91 of the Michigan Compiled Laws.

(3) The depository shall invest the money in the investment pool with the degree of judgment and care which a person of prudence, discretion, and intelligence exercises in the management of his or her own affairs, not for speculation, but for investment, considering the probable safety of his or her capital as well as the probable income to be derived from an investment of his or her capital.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

**129.117 Default in payment of principal, interest, or other income; remedies of depository.**

Sec. 7. If a default occurs in the payment of principal, interest, or other income of an investment pool, the depository shall pursue all remedies available to it at law or in equity.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

**129.118 Act as additional authority for investment of surplus funds.**

Sec. 8. This act shall be considered to provide authority for the investment of surplus funds of a local unit in addition to the authority granted under Act No. 20 of the Public Acts of 1943, as amended, being sections 129.91 to 129.93 of the Michigan Compiled Laws.

**History:** 1982, Act 367, Eff. Mar. 30, 1983.

## **BOND CREMATION ACT**

### **Act 56 of 1962**

AN ACT to provide for the cremation or disintegration of public obligations and matters incidental and necessary thereto.

**History:** 1962, Act 56, Eff. Mar. 28, 1963;—Am. 1972, Act 146, Imd. Eff. May 26, 1972.

*The People of the State of Michigan enact:*

#### **129.121 Short title; bond cremation act.**

Sec. 1. This act shall be known and may be cited as the "bond cremation act".

**History:** 1962, Act 56, Eff. Mar. 28, 1963.

#### **129.122 Bond cremation act; definitions.**

Sec. 2. As used in this act:

(a) "Public corporation" means any county, city, village, township, charter township, school district, community college district, port district, metropolitan district, drainage district, the state or any officer, agency, commission or department thereof, or any other public or governmental authority or agency within the state with the power to issue obligations.

(b) "Obligations" means any evidence of indebtedness, such as bonds, bills, notes, orders, certificates of indebtedness or other like instruments, issued by a public corporation.

(c) "Interest coupon" means the coupon pertaining to any obligation evidencing a right to the payment of a certain sum as interest on an obligation.

(d) "Governing body" means the board of supervisors of a county, the township board of a township, the council, common council, or commission of a city, the council, commission or board of trustees of a village, the board of education or district board of a school district, the county drain commissioner or drainage board of a drainage district, the legislative body of a metropolitan district, the port commission of a port district and, in the case of any other public corporation, the official or official body to whom is designated general governing or legislative powers by law.

(e) "Paying agent" means any one of the banks or trust companies or other financial institutions where the obligations or interest coupons are made payable.

**History:** 1962, Act 56, Eff. Mar. 28, 1963.

#### **129.123 Cremation or disintegration of public obligations or interest coupons.**

Sec. 3. Subject to the provisions of this act, the governing body of any public corporation may authorize the cremation or disintegration of obligations or interest coupons. As an alternative, subject to the provisions of this act, any public corporation may enter into an agreement with a paying agent for the cremation or disintegration of its obligations and interest coupons, which agreement shall be approved and its execution authorized by the governing body.

**History:** 1962, Act 56, Eff. Mar. 28, 1963;—Am. 1963, Act 130, Eff. Sept. 6, 1963;—Am. 1972, Act 146, Imd. Eff. May 26, 1972.

#### **129.124 Public bonds and interest coupons; certificate of cremation, contents, filing.**

Sec. 4. Where obligations and interest coupons are cremated by a public corporation, it shall be done in the presence of the official of the public corporation having custody of the financial records of the public corporation, or a representative designated by such official, and in the presence of 2 additional persons designated by the governing body of the public corporation. Where the obligations and interest coupons are cremated by a paying agent, it shall be done in the presence of at least 2 authorized officers or employees of the paying agent. Within 24 hours after the cremation of any obligations or interest coupons, a certificate of cremation shall be prepared and executed by an officer of the paying agent and the persons in whose presence the obligations or interest coupons were cremated. The certificate shall show the name of the public corporation, the designation or title of the obligations cremated, which in the case of interest coupons shall include the title or designation of the obligations to which they pertain, the aggregate principal amount of obligations cremated, the maturity date of the obligations and interest coupons cremated, the date of the obligations cremated, the denomination of each of the obligations cremated, the number of each of the obligations cremated, the name of the printer of the obligations or interest coupons cremated, and where interest coupons are cremated, the quantity of coupons cremated for each coupon maturity date and the face value of each of the coupons cremated. A copy of the cremation certificate shall be filed within 30 days of its execution with the officer of the public corporation having custody of the financial records of the public

corporation and the municipal finance commission or such other agency or body as may hereafter have power over the issuance of obligations by public corporations.

**History:** 1962, Act 56, Eff. Mar. 28, 1963.

**129.125 Public bonds and interest coupons; obligations not considered public records.**

Sec. 5. The powers conferred by this act shall be construed as constituting complete and independent power and authority to do the things herein authorized, the provisions of any other statute or charter to the contrary notwithstanding. Obligations and interest coupons of public corporations for the purposes of this act shall not be considered to be public records within the meaning of any other statute or charter.

**History:** 1962, Act 56, Eff. Mar. 28, 1963.

## **REPLACING OR PAYING OBLIGATIONS OF PUBLIC CORPORATION**

### **Act 354 of 1972**

AN ACT to authorize the replacement or payment without presentation of lost, destroyed or wrongfully taken bonds or other evidences of indebtedness issued by public corporations; and to prescribe the powers and duties of certain departments and agencies.

**History:** 1972, Act 354, Imd. Eff. Jan. 9, 1973;—Am. 1974, Act 142, Imd. Eff. June 5, 1974.

*The People of the State of Michigan enact:*

#### **129.131 Definitions.**

Sec. 1. As used in this act:

(a) "Paying agent" means either of the following:

(i) For an obligation that is not registered as to payment of principal by or on behalf of the public corporation that issued the obligation, any bank or trust company designated by the public corporation to make payment of principal of or interest on the obligation.

(ii) For an obligation that is registered as to payment of principal by or on behalf of the public corporation that issued the obligation, any bank or trust company that is authorized by the public corporation to authenticate the obligation on behalf of the public corporation.

(b) "Public corporation" means a body corporate organized pursuant to the laws of this state to carry out a public governmental or proprietary function, including, but not limited to, this state, an agency of this state, or a school district, intermediate school district, city, village, township, county, district, commission, authority, university, college, or any combination of these, which is a corporate entity.

(c) "Obligation" means evidence of indebtedness including, but not limited to, a bond, refunding bond, revenue bond, note, certificate of indebtedness and other like instrument issued by a public corporation, and any coupon representing interest on the obligation.

(d) "Governing body" means the legislative body or the official or official body that exercises the general governing powers of a public corporation, or in the case of this state or an agency of this state, the official body designated by law to issue the obligation to be replaced.

(e) "Replacement obligation" means an obligation and any coupon representing interest in connection with the obligation issued under this act.

(f) "Obligor" means either of the following:

(i) A person or entity that has borrowed the proceeds of an obligation from a public corporation and is contractually obligated to make loan repayments sufficient to pay principal of and interest on the obligation.

(ii) A person or entity that has leased, rented, or purchased on an installment basis from a public corporation a facility financed with proceeds of an obligation and that is making payments for the use or purchase of the facility in amounts sufficient to pay principal of and interest on the obligation.

**History:** 1972, Act 354, Imd. Eff. Jan. 9, 1973;—Am. 1974, Act 142, Imd. Eff. June 5, 1974;—Am. 1996, Act 109, Imd. Eff. Mar. 5, 1996.

#### **129.132 Replacement obligations; prerequisites to issuance; exercise of powers by paying agent; resolution; execution; seal.**

Sec. 2. (1) A public corporation, by resolution of the governing body or the state treasurer, may provide for issuance and delivery of a replacement obligation for an unmatured obligation or for payment without presentation of a matured obligation that has been lost, apparently destroyed, or wrongfully taken when furnished with all of the following:

(a) Proof of ownership as required by the governing body.

(b) Proof of loss, destruction, or wrongful taking as required by the governing body.

(c) An open penalty bond of indemnity that was issued by a company rated in 1 of the 3 highest rating categories and 1 of the top 10 financial size categories by a nationally recognized insurance rating agency, and that indemnifies the public corporation, the obligor, if any, and the paying agent against any loss they may suffer on account of issuance and delivery of the replacement obligation, or payment of the obligation without presentation, in amounts and with coverage as required by the governing body.

(d) Payment of the cost of preparation of the replacement obligation and all other costs incurred by the public corporation and the fees, costs, and expenses of the paying agent in connection with the issuance and delivery of the replacement obligation, or payment without presentation of the obligation.

(2) A paying agent may exercise on behalf of the governing body the powers granted to the governing body under subsection (1) if both of the following conditions are met:

(a) The governing body adopts a resolution generally authorizing the paying agent to exercise such powers.  
(b) In each particular case in which the paying agent wishes to exercise such powers, the paying agent notifies the governing body in writing and the governing body does not object within 60 days after notice is given.

(3) A paying agent shall notify the governing body of a public corporation of that paying agent's exercise of powers granted to the governing body under subsection (1) not more than 30 days after exercising such powers.

(4) If a public corporation is organized under the economic development corporations act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws, either the legislative body of the municipality that incorporated the public corporation or the governing body of the public corporation may adopt a resolution under subsection (1) or (2)(a). If the legislative body of the municipality adopts a resolution under subsection (2)(a), the legislative body of the municipality, rather than the governing body of the public corporation, shall be given the notice and may exercise the power to object under subsection (2)(b).

(5) A person holding the same office as the person who executed the obligation originally issued is authorized, upon notice from the paying agent of satisfaction of the conditions described in subsection (1)(a) through (d), to execute and seal, where necessary, a replacement obligation without further action of the governing body.

**History:** 1972, Act 354, Imd. Eff. Jan. 9, 1973;—Am. 1974, Act 142, Imd. Eff. June 5, 1974;—Am. 1996, Act 109, Imd. Eff. Mar. 5, 1996.

### **129.133 Replacement obligations; form; security; execution; formal requirements; indorsement.**

Sec. 3. A replacement obligation shall be of the same form and tenor and be secured in the same manner as the obligation originally issued. The replacement obligation shall be executed in the same manner and subject to the same formal requirements as those provided by law for the obligation originally issued. Obligations that are not registered as to payment of either principal or interest shall be indorsed with the word "replacement".

**History:** 1972, Act 354, Imd. Eff. Jan. 9, 1973;—Am. 1974, Act 142, Imd. Eff. June 5, 1974;—Am. 1996, Act 109, Imd. Eff. Mar. 5, 1996.

### **129.134 Replacement of unmatured interest coupons; payment of matured interest coupons.**

Sec. 4. The governing body may provide for replacement of unmatured interest coupons lost, destroyed, or wrongfully taken. Matured interest coupons shall not be replaced, and replacement coupons shall not be issued separately from a replacement obligation evidencing principal. The governing body may authorize a paying agent to make payment of matured interest coupons lost, destroyed, or wrongfully taken without presentation upon receipt of documentation and indemnification satisfactory to the paying agent and payment of any fees, costs, and expenses of the paying agent.

**History:** 1972, Act 354, Imd. Eff. Jan. 9, 1973;—Am. 1974, Act 142, Imd. Eff. June 5, 1974;—Am. 1996, Act 109, Imd. Eff. Mar. 5, 1996.

### **129.135 Repealed. 2000, Act 117, Imd. Eff. May 26, 2000.**

**Compiler's note:** The repealed section pertained to the authority of the department to promulgate rules to implement the act.

## **LOCAL GOVERNMENT INVESTMENT POOL ACT**

### **Act 121 of 1985**

AN ACT to establish a local government investment pool; to prescribe the powers, duties, and liabilities of certain public officials in relation to an investment pool; to permit local units of government to invest surplus funds in an investment pool; and to prescribe the powers and duties of certain state agencies.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

*The People of the State of Michigan enact:*

#### **129.141 Short title.**

Sec. 1. This act shall be known and may be cited as the "local government investment pool act".

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.142 Definitions.**

Sec. 2. As used in this act:

(a) "Governing body" means the board, council, or other official body that has general governing powers over a local unit.

(b) "Investment pool" means a local government investment pool authorized in section 3.

(c) "Local unit" means a county, city, village, township, authority created pursuant to state law or municipal charter, special assessment district, municipal board or commission established under state law or municipal charter, or intergovernmental board, commission, or council established pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, or Act No. 8 of the Public Acts of the Extra Session of 1967, being sections 124.531 to 124.536 of the Michigan Compiled Laws.

(d) "Participant" means a local unit participating in the investment pool.

(e) "Participating county" means a county that has been authorized by the county governing body to enter into a contract with another local unit pursuant to section 4.

(f) "Safekeeping depository" means a federal reserve bank or other institution which is qualified to hold securities for safekeeping.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.143 Contracts between participating county and local units; local government investment pool; management, investment, and reinvestment.**

Sec. 3. (1) A participating county may contract to accept money from local units within that county for management, investment, and reinvestment by the county treasurer. The treasurer of the participating county may pool that money with money deposited by other local units under this act in a local government investment pool for purposes of management, investment, and reinvestment.

(2) A local unit may enter into a contract with a participating county to place surplus funds in an investment pool.

(3) The treasurer of a participating county shall manage, invest, and reinvest the money in the investment pool on behalf of each local unit that deposits money in the investment pool. The treasurer shall manage, invest, or reinvest the money in the investment pool in the same manner as surplus county funds under Act No. 20 of the Public Acts of 1943, being sections 129.91 to 129.93 of the Michigan Compiled Laws.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.144 Authorization by resolution.**

Sec. 4. (1) A county treasurer shall not enter into a contract with a local unit for deposit of money in an investment pool until authorized to establish an investment pool by a resolution of the county board of commissioners of that participating county.

(2) The treasurer or other chief fiscal officer of a local unit shall not enter into a contract for deposit of money in an investment pool until authorized by a resolution of the governing body of that local unit.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.145 Written contract required; uniformity and contents of contract; filing and approval of proposed uniform contract; filing copies of and amendments to uniform contract.**

Sec. 5. (1) Until the participating county treasurer and the treasurer or other chief fiscal officer of a local unit enter into a written contract regarding the deposit of money in the investment pool, that local unit shall

not deposit money in, and the county treasurer shall not accept money from that local unit for deposit in, the investment pool.

(2) The contract shall be as uniform as practicable for all participants in that county. The contract shall include provisions for at least all of the following:

(a) The minimum amount of money which a local unit shall transfer to the investment pool and the minimum period of time for which that money shall remain in the investment pool.

(b) The maximum amount which a participant may withdraw without notice and the minimum notice period required for withdrawals above that amount.

(c) The period for interest earning computations and interest payments.

(d) The procedure for the deposit and withdrawal of money.

(e) The method of distribution to the participants of earnings. The distribution shall be made in a manner that equitably reflects the differing amount of the deposits of each local unit and the differing periods of time for which the amounts were deposited in the investment pool.

(f) The requirements for the county treasurer to furnish each participant periodic statements which specify the deposits, earnings, and withdrawals of the participant.

(g) The terms for termination of the contract.

(3) A county shall file a proposed uniform contract with the department of treasury. A uniform contract shall be approved by the department of treasury. If the department of treasury fails to act within 10 days after the date the proposed uniform contract is filed, the contract shall be considered approved.

(4) A copy of each executed contract and any amendment to the uniform contract shall be filed with the department of treasury.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.146 Standard of judgment and care.**

Sec. 6. The treasurer of a participating county shall invest the money in the investment pool with the degree of judgment and care, under circumstances then prevailing, that a person of prudence, discretion, and intelligence exercises in the management of his or her own affairs, not for speculation, but for investment, considering the probable safety of his or her capital as well as the probable income to be derived from an investment of his or her capital.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.147 Separate accounts.**

Sec. 7. The treasurer of a participating county shall maintain a separate account designated by name and number for each participant. Each account shall show the deposits, earnings, and withdrawals of the participant.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.148 Safekeeping depositories; security.**

Sec. 8. (1) The treasurer of a participating county may use safekeeping depositories for the holding of securities.

(2) Security in the form of collateral, surety bond, or another form may be taken for the deposits or investments of an investment pool.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.149 Default; powers of treasurer.**

Sec. 9. If a default occurs in the payment of principal, interest, or other income of an investment of the investment pool, the treasurer of the participating county may do 1 or more of the following:

(a) Institute a proceeding to collect the matured principal, interest, or other income.

(b) Accept a compromise, adjustment, or disposition of the matured principal, interest, or other income as the county treasurer considers advisable for the purpose of protecting the money invested in the investment pool.

(c) Accept a compromise or adjustment as to future payments of principal, interest, or other income as the county treasurer considers advisable for the purpose of protecting money invested in the investment pool.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.

#### **129.150 Orders or warrants; limitation; liability for overdraft.**

Sec. 10. An order or warrant shall not be issued upon a participant's account in an amount greater than the total of the account to which that order or warrant applies. If an order or warrant for an amount greater than the total of the account to which the order or warrant applies is issued and the order or warrant is paid, the

county treasurer shall be personally liable under his or her official bond for the overdraft resulting from the payment.

**History:** 1985, Act 121, Imd. Eff. July 31, 1985.



## **AGENCY FINANCING REPORTING ACT**

### **Act 470 of 2002**

AN ACT relative to the reporting of the issuance of certain debt and securities; and to prescribe powers and duties of certain departments, agencies, officials, and employees.

**History:** 2002, Act 470, Imd. Eff. June 21, 2002.

*The People of the State of Michigan enact:*

#### **129.171 Short title.**

Sec. 1. This act shall be known and may be cited as the "agency financing reporting act".

**History:** 2002, Act 470, Imd. Eff. June 21, 2002.

#### **129.173 Definitions.**

Sec. 3. As used in this act:

(a) "Agency" means this state, a state authority, agency, fund, commission, board, or department of this state. Agency also includes a municipality issuing debt exempt from the provisions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or the provisions of the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(b) "Department" means the department of treasury.

(c) "Municipality" means a county, township, city, village, school district, intermediate school district, community college district, metropolitan district, port district, drainage district, district library, or another local governmental authority in this state that has the power to issue a security.

(d) "Security" means an evidence of debt such as a bond, note, contract, obligation, refunding obligation, certificate of indebtedness, or other similar instrument issued by an agency, which pledges payment of the debt by the agency from an identified source of revenue. Security does not include the items described in section 105 of the revised municipal finance act, 2001 PA 34, MCL 141.2105.

**History:** 2002, Act 470, Imd. Eff. June 21, 2002.

#### **129.175 Bulletins; issuance by department.**

Sec. 5. The department may issue bulletins as necessary to carry out the purposes of this act. A bulletin issued under this section shall include a statement of the department's specific statutory authority for any substantive requirement contained within the bulletin.

**History:** 2002, Act 470, Imd. Eff. June 21, 2002.

#### **129.177 Filing; form; manner; noncompliance; electronic format.**

Sec. 7. (1) Within 15 business days of completing the issuance of any security, an agency shall file all of the following with the department in a form and manner prescribed by the department:

(a) A copy of the 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 security, if any.

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

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

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

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

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

(3) 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:** 2002, Act 470, Imd. Eff. June 21, 2002.

## **CONTRACTOR'S BOND FOR PUBLIC BUILDINGS OR WORKS**

### **Act 213 of 1963**

AN ACT to provide a procedure for bonding contractors for public buildings and public works of governmental units; and to repeal certain acts and parts of acts.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

*The People of the State of Michigan enact:*

#### **129.201 Bonds of principal contractor on public building, work, or improvement; irrevocable letter of credit.**

Sec. 1. Before any contract, exceeding \$50,000.00 for the construction, alteration, or repair of any public building or public work or improvement of the state or a county, city, village, township, school district, public educational institution, other political subdivision, public authority, or public agency hereinafter referred to as the "governmental unit", is awarded, the proposed contractor, hereinafter referred to as the "principal contractor", shall furnish at his or her own cost to the governmental unit a performance bond and a payment bond which shall become binding upon the award of the contract to the principal contractor. However, if the principal contractor is a common carrier as defined in section 3 of Act No. 300 of the Public Acts of 1909, as amended, being section 462.3 of the Michigan Compiled Laws, or the designated operator of a state subsidized railroad, the principal contractor may provide an irrevocable letter of credit from a state or national bank or a state or federally chartered savings and loan association instead of the bonds. Neither the invitation for bids, nor any person acting, or purporting to act, on behalf of the governmental unit shall require that the bonds be furnished by a particular bank or surety company, or through a particular agent or broker, or through a bank, company, agent, or broker in any particular locality.

**History:** 1963, Act 213, Eff. Sept. 6, 1963;—Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973;—Am. 1982, Act 11, Imd. Eff. Feb. 17, 1982

#### **129.202 Performance bond; amount; condition; purpose.**

Sec. 2. The performance bond shall be in an amount fixed by the governmental unit but not less than 25% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and terms thereof. The bond shall be solely for the protection of the governmental unit awarding the contract.

**History:** 1963, Act 213, Eff. Sept. 6, 1963;—Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973.

#### **129.203 Payment bond; amount; purpose.**

Sec. 3. The payment bond shall be in an amount fixed by the governmental unit but not less than 25% of the contract amount solely for the protection of claimants, as defined in section 6, supplying labor or materials to the principal contractor or his subcontractors in the prosecution of the work provided for in the contract.

**History:** 1963, Act 213, Eff. Sept. 6, 1963;—Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973.

#### **129.204 Bond, surety, obligee.**

Sec. 4. A bond shall be executed by a surety company authorized to do business in this state. In the case of a contract of the state or a department, board, commission, institution or agency thereof the bonds shall be payable to the people of the state. In the case of all other contracts the bonds shall be payable to the governmental unit.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.205 Filing of bond.**

Sec. 5. The bonds shall be filed in the office of the governmental unit awarding the contract.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.206 Public works, contractor's bond; definitions.**

Sec. 6. A "claimant" means a person having furnished labor, material, or both, used or reasonably required for use in the performance of the contract. "Labor and material" includes that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.207 Enforcement of claims; notice of supplier to principal contractor or governmental unit; payment to subcontractor.**

Sec. 7. A claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which payment bond is furnished under the provisions of section 3, and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which claim is made, may sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the civil action, prosecute such action to final judgment for the sum justly due him and have execution thereon. A claimant not having a direct contractual relationship with the principal contractor shall not have a right of action upon the payment bond unless (a) he has within 30 days after furnishing the first of such material or performing the first of such labor, served on the principal contractor a written notice, which shall inform the principal of the nature of the materials being furnished or to be furnished, or labor being performed or to be performed and identifying the party contracting for such labor or materials and the site for the performance of such labor or the delivery of such materials, and (b) he has given written notice to the principal contractor and the governmental unit involved within 90 days from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the principal contractor, the governmental unit involved, at any place at which said parties maintain a business or residence. The principal contractor shall not be required to make payment to a subcontractor of sums due from the subcontractor to parties performing labor or furnishing materials or supplies, except upon the receipt of the written orders of such parties to pay to the subcontractor the sums due such parties.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.208 Copies of bonds and contracts; fees.**

Sec. 8. The agent in charge of the office of the governmental unit shall furnish to anyone making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made, or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of the bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. An applicant shall pay such reasonable fees for such certified copies as the agent in charge of the office of the governmental unit fixes to cover the actual cost of preparation thereof.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.209 Venue; statute of limitations.**

Sec. 9. An action instituted on the payment bond shall be brought only in the appropriate court in the political subdivision in which the contract was to be performed. No action shall be commenced after the expiration of 1 year from the date on which final payment was made to the principal contractor.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.210 Application of statute.**

Sec. 10. This act shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the effective date hereof, or to any person or bonds in respect to any such contract. The rights, duties, and obligations of parties arising under, or incidental to, bonds executed prior to the effective date of this act shall continue to be governed by the statutes heretofore applicable to such bonds.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.211 Repeal; restriction on other statute.**

Sec. 11. Section 64 of Act No. 59 of the Public Acts of 1915, as amended, being section 247.464 of the Compiled Laws of 1948 is repealed. The provisions of Act No. 187 of the Public Acts of 1905, as amended, being sections 570.101 to 570.105 of the Compiled Laws of 1948, shall not apply to contracts for public buildings or other public works except construction and maintenance contracts of the state highway commissioner.

**History:** 1963, Act 213, Eff. Sept. 6, 1963.

#### **129.212 Act inapplicable to contracts awarded under MCL 280.1 to 280.630.**

Sec. 12. This act does not apply to a contract awarded under the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

**History:** Add. 1989, Act 62, Imd. Eff. June 16, 1989.

## **FINANCIAL TRANSACTION DEVICE PAYMENTS**

### **Act 280 of 1995**

AN ACT to authorize local units of government to accept financial transaction device payments.

**History:** 1995, Act 280, Imd. Eff. Jan. 9, 1996.

*The People of the State of Michigan enact:*

#### **129.221 Definitions.**

Sec. 1. As used in this act:

(a) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(b) "Credit card arrangement" means an unsecured extension of credit for purchasing goods or services from the credit card issuer or any other person that is made to the holder of a credit card and that is accessed with a credit card.

(c) "Financial transaction device" means any of the following:

(i) An electronic funds transfer card.

(ii) A credit card.

(iii) A debit card.

(d) "Governing body" means any of the following:

(i) The council, commission, or other entity vested with the legislative power of a village.

(ii) The council or other entity vested with the legislative power of a city.

(iii) The township board of a township.

(iv) The county board of commissioners of a county.

(v) The board of county road commissioners of a county.

(vi) The board of education of a local school district.

(vii) The board of education of an intermediate school district.

(viii) The board of trustees of a community college district.

(ix) The official body to which is granted general governing powers over an authority or organization of government established by law which may issue obligations pursuant to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, and which may expend funds of the authority or organization.

(e) "Local school district" means a school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or a district governed by a special or local act.

(f) "Local unit" means any of the following:

(i) A village.

(ii) A city.

(iii) A township.

(iv) A county.

(v) A county road commission.

(vi) A local school district.

(vii) An intermediate school district.

(viii) A community college district.

(ix) An authority or organization of government established by law which may issue obligations under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to MCL 141.2821, and which may expend funds of the authority or organization.

**History:** 1995, Act 280, Imd. Eff. Jan. 9, 1996;—Am. 2002, Act 256, Imd. Eff. May 1, 2002.

#### **129.222 Acceptance of payment by financial transaction; prohibition.**

Sec. 2. A local unit shall not accept a payment by financial transaction device if prohibited by law or charter. A local unit shall not accept a payment by financial transaction device more than 6 months after the effective date of this act unless it complies with section 3.

**History:** 1995, Act 280, Imd. Eff. Jan. 9, 1996.

#### **129.223 Adoption of resolution; determination of acceptable financial transaction devices.**

Sec. 3. (1) Before a local unit accepts a payment by financial transaction device for a tax, assessment, or fee, the governing body of the local unit shall adopt a resolution authorizing the acceptance of payments by

financial transaction devices. The resolution shall designate the treasurer of the local unit as responsible for determining the types of financial transaction devices that may be accepted. The resolution may designate an additional officer or employee as jointly responsible with the treasurer for determining the financial transaction devices that may be accepted. However, if the treasurer is not an elected treasurer, the resolution may provide that the determination of the types of financial transaction devices shall be subsequently approved by resolution of the governing body. The determination of the financial transaction devices that may be accepted shall comply with any resolution for the deposit of public money under section 2 of Act No. 40 of the Public Acts of the First Extra Session of 1932, being section 129.12 of the Michigan Compiled Laws, applicable to that local unit. The resolution under this subsection shall specify any taxes, assessments, or fees for which payments by financial transaction devices will not be accepted.

(2) Notwithstanding the resolution adopted under subsection (1), if an elected official's office has direct responsibility to collect a tax, assessment, or fee and the elected official is not a voting member of the governing body of the local unit, the elected official may determine not to accept payments by financial transaction devices for that particular tax, assessment, or fee. Before implementing such a determination, the elected official shall notify the governing body of the local unit in writing of the particular tax, assessment, or fee for which payments by financial transaction devices will not be accepted.

**History:** 1995, Act 280, Imd. Eff. Jan. 9, 1996.

#### **129.224 Authority of courts not affected.**

Sec. 4. This act does not affect the authority of the courts to make determinations concerning the acceptance of financial transaction devices for court costs and fees.

**History:** 1995, Act 280, Imd. Eff. Jan. 9, 1996.

## CREDIT CARD TRANSACTIONS Act 266 of 1995

AN ACT to authorize and regulate credit card transactions involving local units of government, including the use of credit cards by officers and employees of local units of government; and to provide for powers and duties of certain state and local agencies, officers, and employees.

**History:** 1995, Act 266, Eff. July 8, 1996.

*The People of the State of Michigan enact:*

### 129.241 Definitions.

Sec. 1. As used in this act:

(a) "Budget" means a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures.

As used in section 4(1), budget does not include any of the following:

(i) A fund for which the local unit acts as a trustee or agent.

(ii) An intragovernmental service fund.

(iii) An enterprise fund.

(iv) A public improvement or building and site fund.

(v) A special assessment fund.

(b) "Credit card" means a card or device issued under a credit card arrangement by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, by a person licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a.

(c) "Credit card arrangement" means an unsecured extension of credit for purchasing goods or services from the credit card issuer or any other person that is made to the holder of a credit card and that is accessed with a credit card.

(d) "Credit card policy" means a policy adopted by resolution of a local unit under section 3.

(e) "Governing body" means any of the following:

(i) The council, commission, or other entity vested with the legislative power of a village.

(ii) The council or other entity vested with the legislative power of a city.

(iii) The township board of a township.

(iv) The county board of commissioners of a county.

(v) The board of county road commissioners of a county.

(vi) The board of education of a local school district.

(vii) The board of education of an intermediate school district.

(viii) The board of trustees of a community college district.

(ix) The official body to which is granted general governing powers over an authority or organization of government established by law that may issue obligations under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, and that may expend funds of the authority or organization.

(x) A community mental health authority created under section 205 of the mental health code, 1974 PA 258, MCL 330.1205.

(f) "Local school district" means a school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or a district governed by a special or local act.

(g) "Local unit" means any of the following:

(i) A village.

(ii) A city.

(iii) A township.

(iv) A county.

(v) A county road commission.

(vi) A local school district.

(vii) An intermediate school district.

(viii) A community college district.

(ix) An authority or organization of government established by law that may issue obligations under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, and that may expend funds of the authority or organization.

(x) A community mental health authority created under section 205 of the mental health code, 1974 PA 258, MCL 330.1205.



**History:** 1995, Act 266, Eff. July 8, 1996;—Am. 2000, Act 169, Imd. Eff. June 20, 2000;—Am. 2002, Act 257, Imd. Eff. May 1, 2002.

#### **129.242 Credit card arrangement; use of credit cards.**

Sec. 2. (1) Subject to sections 3 and 5, the governing body of a local unit may enter into a credit card arrangement.

(2) A credit card arrangement or the use of credit cards under this act is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or to provisions of law or charter concerning the issuance of debt by a local unit.

**History:** 1995, Act 266, Eff. July 8, 1996;—Am. 2002, Act 257, Imd. Eff. May 1, 2002.

#### **129.243 Adoption of resolution; written policy; provisions.**

Sec. 3. A local unit shall not be a party to a credit card arrangement unless the governing body of the local unit has adopted by resolution a written policy that provides all of the following:

(a) That an officer or employee designated by the credit card policy is responsible for the local unit's credit card issuance, accounting, monitoring, and retrieval and generally for overseeing compliance with the credit card policy.

(b) That a credit card may be used only by an officer or employee of the local unit for the purchase of goods or services for the official business of the local unit. In addition, the credit card policy may limit the specific official business for which credit cards may be used. This subdivision does not limit the applicability of chapter XXIVA or section 174, 175, 219a, or 490a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157m to 750.157w, 750.174, 750.175, 750.219a, and 750.490a of the Michigan Compiled Laws; section 1a of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.1a of the Michigan Compiled Laws; or any other law, or ordinance, applicable to use of a credit card, issued by a local unit, for other than official business of the local unit.

(c) That an officer or employee using credit cards issued by the local unit shall submit to the local unit documentation described in the credit card policy detailing the goods or services purchased, the cost of the goods or services, the date of the purchase, and the official business for which purchased.

(d) That an officer or employee issued a credit card is responsible for its protection and custody and shall immediately notify the local unit if the credit card is lost or stolen.

(e) That an officer or employee issued a credit card shall return the credit card upon the termination of his or her employment or service in office with the local unit.

(f) For a system of internal accounting controls to monitor the use of credit cards issued by the local unit.

(g) For the approval of credit card invoices before payment.

(h) That the balance including interest due on an extension of credit under the credit card arrangement shall be paid for within not more than 60 days of the initial statement date. The local unit shall comply with this provision of the credit card policy.

(i) For disciplinary measures consistent with law for the unauthorized use of a credit card by an officer or employee of the local unit.

(j) Any other matters the governing body considers advisable.

**History:** 1995, Act 266, Eff. July 8, 1996.

#### **129.244 Total combined authorized credit limit; limitation; payment of balance, annual fee, and interest.**

Sec. 4. (1) The total combined authorized credit limit of all credit cards issued by a local unit shall not exceed 5% of the total budget of the local unit for the current fiscal year.

(2) The governing body of a local unit may include in its budget and pay the balance due on any credit cards, including the annual fee and interest.

**History:** 1995, Act 266, Eff. July 8, 1996.

#### **129.245 Limiting or suspending authority to issue and use credit cards; issuance of order; hearing.**

Sec. 5. After a hearing conducted under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the department of treasury may issue an order limiting or suspending the authority of a local unit to issue and use credit cards under this act for failure to comply with the requirements of this act or with the requirements of the local unit's credit card policy.

**History:** 1995, Act 266, Eff. July 8, 1996.

**129.246 Validity of credit card arrangement before effective date of act.**

Sec. 6. A credit card arrangement entered into by a local unit before the effective date of this act is valid but may not be used for credit card transactions on or after the effective date of this act unless the requirements of sections 3 and 4 are complied with.

**History:** 1995, Act 266, Eff. July 8, 1996.

**129.247 Effective date.**

Sec. 7. This act shall take effect 6 months after the date of its enactment.

**History:** 1995, Act 266, Eff. July 8, 1996.



**MICHIGAN TOBACCO SETTLEMENT FINANCE AUTHORITY ACT**  
**Act 226 of 2005**

AN ACT to create the Michigan tobacco settlement finance authority; to create funds and accounts; to provide for the sale by this state and the purchase by the authority of all or a portion of tobacco settlement assets; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority, the state administrative board, the state treasurer, and certain other state officials and state employees; and to make appropriations and prescribe certain conditions for the appropriations.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

*The People of the State of Michigan enact:*

**129.261 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan tobacco settlement finance authority act".

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

**129.262 Legislative findings and declaration.**

Sec. 2. The legislature finds and declares the following:

(a) This state has entered into a master settlement agreement with major tobacco companies that should result in the state receiving substantial sums of money in perpetuity assuming no adverse changes in cigarette consumption, market share, financial condition of those tobacco companies, and changes in law.

(b) The master settlement agreement is a binding and enforceable agreement of this state.

(c) Selling the state's right to receive all or a portion of tobacco settlement payments is a prudent method of managing the risks associated with reliance on the receipt of tobacco settlement payments in perpetuity.

(d) Establishing the authority and execution by the authority of its powers granted under this act fulfill in all respects a public and governmental purpose for the benefit of the people of this state.

(e) The exchange of net proceeds received by the authority from the issuance of bonds plus residual interests for the right to receive all or a portion of tobacco settlement payments constitutes a true sale for a fair price.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

**129.263 Definitions.**

Sec. 3. As used in this act:

(a) "Ancillary facility" means any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange or similar agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, investment agreements, float agreements, forward agreements or other investment arrangements, insurance contract, surety bond, commitment to purchase or sell securities, purchase or sale agreements or commitments or other contracts or agreements and other security agreements approved by the authority, including without limitation any arrangements referred to in this act.

(b) "Authority" means the Michigan tobacco settlement finance authority created under section 4.

(c) "Benefited parties" means persons, firms, or corporations that enter into ancillary facilities with the authority according to the provisions of this act.

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

(e) "Bond" means a bond, note, or other obligation issued by the authority under this act.

(f) "Code" means the United States internal revenue code of 1986, as amended, and any successor provision of law.

(g) "Encumbered tobacco revenues" means that portion of the TSRs that is pledged by the authority to the repayment of any bonds under the terms of the applicable authority resolution, trust agreement, or trust indenture.

(h) "Federal bankruptcy code" means the federal bankruptcy code, 11 USC 101 to 1330.

(i) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in this state under the laws of this state or the United States.

(j) "Financing costs" means all capitalized interest, operating and debt service reserves, costs of issuance, fees for credit and liquidity enhancements, any item of expense directly or indirectly payable or reimbursable

by the authority and related to the authorization, sale, or issuance of bonds, including without limitation underwriting fees, counsel fees, fees of the attorney general and fees and expenses of consultants and fiduciaries, and other costs as the authority determines to be desirable in issuing, securing, and marketing the bonds.

(k) "Interest rate exchange or similar agreement" means a written contract with a counterparty to provide for an exchange of payments based upon fixed or variable interest rates, or both fixed and variable interest rates.

(l) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al., Ingham county circuit court, docket no. 96-84281CZ.

(m) "Net proceeds" means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve or escrow funds or termination or settlement payments under ancillary facilities and to provide the financing costs and other expenses and fees directly related to the authorization and issuance of bonds.

(n) "Operating expenses" means the reasonable operating expenses of the authority, including without limitation the cost of preparation of accounting and other reports, costs of maintenance of the ratings on the bonds, insurance premiums, and costs of authority meetings or other required activities of the authority, counsel fees, including the fees of the attorney general, and fees and expenses incurred for consultants and fiduciaries and any other costs described in section 4(12).

(o) "Outstanding" means, when used with respect to bonds, all bonds other than bonds that shall have been paid in full at maturity or that may be considered not outstanding under the applicable authority resolution, trust indenture or trust agreement authorizing the issuance of the bonds and when used with respect to ancillary facilities, all ancillary facilities other than ancillary facilities that have been paid in full or that may be considered not outstanding under such ancillary facilities.

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

(q) "Qualifying statute" means that term as defined in the master settlement agreement, which is 1999 PA 244, MCL 445.2051 to 445.2052.

(r) "Residual interests" means 1 or more of the following as provided in any sale agreement:

(i) The unencumbered tobacco revenues.

(ii) The net proceeds not previously paid to this state.

(iii) The income of the authority that is in excess of the authority's requirements to pay its operating expenses, debt service, sinking fund requirements, reserve fund or escrow fund requirements, and any other contractual obligations to the owners of the bonds or benefited parties, or that may be incurred in connection with the issuance or repayment of the bonds or the execution or repayment of ancillary facilities.

(iv) Contractual rights, if any, as shall be provided to this state in accordance with the terms of any sale agreements.

(s) "Sale agreement" means any agreement authorized under this act in which this state provides for the sale of all or a portion of the state's tobacco receipts under section 8.

(t) "State treasurer" means the state treasurer of this state or his or her designee who shall be designated by a written instrument signed by the state treasurer and maintained in a permanent file and whose signature shall have the same force and effect as the signature of the state treasurer for all purposes under this act.

(u) "State's tobacco receipts" means:

(i) All tobacco settlement revenue that is received by this state that is required to be made, under the terms of the master settlement agreement, by tobacco manufacturers to this state.

(ii) This state's rights to receive the tobacco settlement revenue under the master settlement agreement.

(v) "TSRs" means the portion, which may include any or all, of this state's tobacco receipts sold to the authority under this act and any sale agreement.

(w) "Unencumbered tobacco revenues" means that portion of the TSRs that are not encumbered tobacco revenues.

(x) "Uniform commercial code" means the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

### **129.264 Michigan tobacco settlement finance authority; creation; separate legal entity; issuance of bonds generally.**

Sec. 4. (1) The Michigan tobacco settlement finance authority is created as a public body corporate and

politic within the department of treasury. The authority is a state institution within the meaning of section 9 of article II of the state constitution of 1963 and an instrumentality of this state exercising public and essential governmental functions. The exercise by the authority of the powers conferred by this act is an essential governmental function of this state.

(2) Notwithstanding the existence of common management, the authority shall be treated and accounted for as a separate legal entity with its separate corporate purposes as set forth in this act. The assets, liabilities, and funds of the authority shall not be consolidated or commingled with those of this state or of any entity capable of being a debtor in a case commenced under the federal bankruptcy code.

(3) The authority shall have power and is hereby authorized from time to time to issue bonds in the principal amount or amounts and with the maturities as the authority shall determine to be necessary to provide sufficient funds for achieving its authorized purposes, consisting of the purchase of all or a portion of the state's tobacco receipts under this act and the payment of or provision for financing costs.

(4) The board of the authority shall authorize the issuance of bonds by resolution. The authority may issue bonds, including refunding bonds, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceedings or the occurrence of any other conditions other than those proceedings, conditions, or things that are specifically required by this act. Every issue of bonds shall be special revenue obligations payable from and secured by a pledge of encumbered tobacco revenues and other assets, including without limitation the proceeds of the bonds deposited in a reserve fund for the benefit of the owners of the bonds, earnings on funds of the authority and other funds as may become available, upon the terms and conditions as specified by the authority in the authority resolution under which the bonds are issued or in a related trust agreement or trust indenture.

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

(6) For each issue of bonds, the authority shall determine all of the following:

(a) The date of issuance.

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

(c) Whether the bonds shall be payable at or prior to maturity.

(d) When the bonds shall mature.

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

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

(g) The form, denominations, and places of payment of principal of and interest on the bonds.

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

(i) Any other terms and conditions necessary to issue the bonds in fully marketable form.

(7) The authority may sell the bonds in the manner determined by the authority board, at public or private sale, and on either a competitive or negotiated basis. The authority shall disburse the net proceeds of the bonds to the state treasurer as provided in section 8.

(8) This act shall govern the creation, perfection, priority, and enforcement of any pledge of revenues or other security made by the authority. Each pledge made by the authority shall be valid and binding at the time the pledge is made. The encumbered tobacco revenues, reserves, or earnings pledged or earnings on the investment of the encumbered tobacco revenues, reserves, or earnings pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act and the lien on that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice of the lien or pledge, and without filing or recording the pledge. The resolution or other instrument by which a pledge is created does not have to be recorded.

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

(10) In the discretion of the authority, any bonds and any ancillary facilities may be secured by a trust agreement or trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without this state. A trust agreement or

trust indenture authorized under this subsection, or an authority resolution providing for the issuance of bonds may provide for the creation and maintenance of reserves as the authority shall determine to be proper and may include covenants setting forth the duties of the authority in relation to the bonds, the ancillary facilities, the income to the authority, the sale agreement, the encumbered tobacco revenues and residual interests. A trust agreement or trust indenture authorized under this subsection or an authority resolution may contain provisions respecting the custody, safeguarding, and application of all money and bonds and may contain provisions for protecting and enforcing the rights and remedies under the sale agreement of the owners of the bonds and benefited parties as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the authority to furnish indemnifying bonds or to pledge obligations as may be required by the authority. Any trust agreement or trust indenture authorized under this subsection or an authority resolution may contain other provisions as the authority may consider reasonable and proper for priorities and subordination among the owners of bonds and benefited parties.

(11) The authority may enter into, amend, or terminate, as it determines to be necessary or appropriate, any ancillary facilities for any of the following purposes:

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

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

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

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

(14) Bonds and ancillary facilities may contain a recital that they are issued pursuant to this act, which recital is conclusive evidence of the validity of the bonds and any ancillary facility and the regularity of the proceedings relating to the bonds and ancillary facilities.

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

(16) A member, officer, employee or agent of the authority shall not have an interest, either directly or indirectly, in any business organization engaged in any business, contract or transaction with the authority or in any contract of any other person engaged in any business with the authority, or in the purchase, sale, lease or transfer of any property to or from the authority.

(17) Bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(18) The issuance of bonds under this act is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(19) A resolution of the authority authorizing bonds, or the provisions of a trust agreement or trust indenture authorized by resolution of the authority, may delegate to an officer or other employee of the authority, or an agent designated by the authority, for the period of time as the authority determines, the

power to cause the issue, sale, and delivery of the bonds within limits on those bonds established by the authority as to any of the following:

- (a) The form.
- (b) The maximum interest rate or rates.
- (c) The maturity date or dates.
- (d) The purchase price.
- (e) The denominations.
- (f) The redemption premiums.
- (g) The nature of the security.
- (h) The selection of an applicable interest rate index.
- (i) Other terms and conditions with respect to the issuance of the bonds as the authority shall prescribe.

(20) The board shall rotate bond counsel when issuing bonds under this act. The board shall authorize and issue bonds in a manner that provides that not less than 2 financial institutions or brokerage firms are involved in marketing and underwriting the bonds. Not less than 1 of the 2 financial institutions or brokerage firms described in this subsection shall meet all of the following:

- (a) Be chartered in this state.
- (b) Have 1/3 or more of its branch offices located in this state.
- (c) Have 25% or more of its employees located in this state.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

**Compiler's note:** For transfer of powers and duties of Michigan tobacco settlement finance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

#### **129.265 Authority; duties; administrative functions.**

Sec. 5. The authority shall exercise its duties independently of the state treasurer. The staffing, budgeting, procurement, and related administrative functions of the authority shall be performed under the direction and supervision of the state treasurer.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.266 Board of directors; membership; terms; vacancy; compensation; reimbursement; chairperson; quorum; vote; agents and employees; discharge of duties by member, officer, employee, or agent; independent public financial advisor.**

Sec. 6. (1) The authority shall exercise its duties through its board of directors.

(2) The board shall be made up of 7 members as follows:

- (a) The state treasurer.
- (b) The director of the department of labor and economic growth.
- (c) Three members with knowledge, skill, or experience in the business or financial fields appointed by the governor with the advice and consent of the senate.

(d) One member appointed by the governor from a list of 2 or more individuals selected by the majority leader of the senate, with knowledge, skill, or experience in the business or financial fields.

(e) One member appointed by the governor from a list of 2 or more individuals selected by the speaker of the house of representatives, with knowledge, skill, or experience in the business or financial fields.

(3) The appointed members shall serve for terms of 4 years. Of the 3 members first appointed, 1 shall be appointed for an initial term of 1 year, 1 shall be appointed for an initial term of 2 years, and 1 shall be appointed for an initial term of 3 years. The appointed members shall serve until a successor is appointed. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(4) The chief executive officer or director of any state department or agency who is a designated member of the board may appoint a representative to serve in his or her absence.

(5) Members of the board shall serve without compensation but may receive reasonable reimbursement for necessary travel and expenses incurred in the discharge of their duties.

(6) The state treasurer shall serve as chairperson of the board.

(7) A majority of the appointed and serving members of the board shall constitute a quorum of the board for the transaction of business. A member may participate in a meeting by the use of amplified telephonic or video conferencing equipment. A member participating by the use of video conferencing equipment shall be considered to be present for purposes of a quorum and for purposes of voting. Actions of the board shall be approved by a majority vote of the members present at a meeting.

(8) The authority may employ or contract for legal, financial, and technical experts, and other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The board may delegate to 1 or more agents or employees those



powers or duties with the limitations as the board considers proper.

(9) The members of the board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, or 1968 PA 318, MCL 15.301 to 15.310.

(10) A member of the board or officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a member of the board or an officer, employee, or agent, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board or officer, employee, or agent of the authority to be correct by the president or the officer of the authority having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the authority.

(11) The board shall hire an independent public financial advisor to provide financial and investment advice regarding the authorization and issuance of bonds and other investment responsibilities of the board under this act. The duties of the independent public financial advisor shall include, but are not limited to, assisting the board in evaluating and selecting underwriters, brokerage firms, and other consultants as required to conduct the bond sale, conduct due diligence on prospective underwriters', brokerage firms', and other consultants' experience, history, and demonstrated adherence to ethical standards, and prepare recommendations based upon their due diligence. The independent public financial advisor shall have personal experience in asset-backed financing, have experience and the ability to ascertain the appropriateness of the pricing of the sales of the state's tobacco receipts, and be able to provide the board with independent financial advice. The independent public financial advisor shall not receive a commission, take down, or other remuneration from an underwriter, brokerage firm, or other consultant for the underwriting or sale of bonds that are secured by TSRs.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

**Compiler's note:** For abolishment of board of directors of Michigan tobacco settlement finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

## **129.267 Powers of authority.**

Sec. 7. The authority shall have all of the following powers:

- (a) To solicit and accept gifts, grants, and loans from any person.
- (b) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.
- (c) To procure insurance against any loss in connection with the property, assets, or activities of the authority.
- (d) To sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.
- (e) To make and amend bylaws.
- (f) To employ and contract with individuals necessary for the operation of the authority.
- (g) To make and execute contracts including without limitation sale agreements, trust agreements, trust indentures, bond purchase agreements, tax regulatory agreements, continuing disclosure agreements, ancillary facilities, and all other instruments necessary or convenient for the exercise of its powers and functions, and commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement.
- (h) To engage the services of financial advisors and experts, legal counsel, placement agents, underwriters, appraisers and other advisors, consultants and fiduciaries as may be necessary to effectuate the purposes of this act.
- (i) To pay its operating expenses and financing costs.
- (j) To pledge the TSRs or other assets as security for the payment of the principal of and interest on any bonds and for its obligations under any ancillary facility.
- (k) To procure insurance, letters of credit, or other credit enhancement with respect to any bonds for the payment of tenders of bonds, or for the payment upon maturity of short-term bonds.
- (l) To enter into any ancillary facility with any person under the terms and conditions as the authority may determine and to provide insurance, letters of credit, or other credit enhancement with respect to any ancillary facility.
- (m) To modify, amend, or replace any existing, or enter into a new, ancillary facility.
- (n) To do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

**129.268 Sale of state's tobacco receipts; terms; agreement; refunding, refinancing, and sale of residual interests; purchase price; remedies; approval by resolution adopted by state administrative board; absolute transfer; limitation on use of net proceeds and earnings.**

Sec. 8. (1) The state budget director with the approval of the state administrative board may sell to the authority, and the authority may purchase, for cash or other consideration and in 1 or more installments, all or a portion of the state's tobacco receipts pursuant to the terms of 1 or more sale agreements. In the alternative, the state budget director with the approval of the state administrative board may sell all or a portion of the state's tobacco receipts for cash or other consideration to a person or persons other than the authority, if the terms of the sale agreement to sell the state's tobacco receipts are in the best interests of this state and the net proceeds of the sale will not exceed \$400,000,000.00. If the sale to a person or persons other than the authority is in the best interests of this state, the state administrative board shall approve the terms of the sale agreement. The sale agreement or combined sale agreements shall provide for the sale of that portion of the state's tobacco receipts sufficient to provide net proceeds to the state in the amount of \$815,000,000.00, of which \$400,000,000.00 shall be deposited to and held, used, and expended by the state treasurer in the manner provided for in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, \$207,800,000.00 shall be deposited in the state school aid fund established by section 11 of article IX of the state constitution of 1963, and the balance shall be deposited in the general fund.

(2) A sale agreement or combined sale agreements under this section may also provide for refunding, refinancing, and the sale by this state of residual interests sufficient to provide net proceeds to the state in the amount of \$60,000,000.00. Any net proceeds resulting from a refunding or refinancing of bonds issued under this act prior to the effective date of the amendatory act that added this subsection or the sale of residual interests existing on or after the effective date of the amendatory act that added this subsection shall be deposited in the general fund.

(3) Any sale agreement shall provide that the purchase price payable by the authority to the state for TSRs shall consist of the net proceeds and the residual interests, if any. In addition, any sale shall be pursuant to 1 or more sale agreements that may contain the terms and conditions considered appropriate by the state budget director to carry out and effectuate the purposes of this section, including without limitation covenants binding this state in favor of the authority and its assignees, including without limitation the owners of the bonds and benefited parties, including a requirement that the state enforce the provisions of the master settlement agreement that require the payment of the TSRs, a requirement that the state enforce the provisions of the qualifying statute, a provision authorizing inclusion of the state's pledge and agreement, as set forth in section 11, in any agreement with owners of the bonds or any benefited parties, and covenants with respect to the application and use of the proceeds of the sale of the state's tobacco receipts to preserve the tax exemption of the interest on any bonds, if issued as tax-exempt. The state budget director in any sale agreement may agree to, and the authority may provide for, the assignment of the authority's right, title, and interest under the sale agreement for the benefit and security of the owners of bonds and benefited parties.

(4) A sale agreement may provide that the remedies available to the authority and the bondholders for any breach of the pledges and agreements of this state set forth in subsection (3) shall be limited to injunctive relief and that this state shall be considered to have diligently enforced the qualifying statute if there has been no judicial determination by a court of competent jurisdiction in this state, in an action commenced by a participating tobacco manufacturer under the master settlement agreement, that this state has failed to diligently enforce the qualifying statute.

(5) The approval of the state administrative board shall be made by a resolution adopted by the state administrative board and that approval together with the sale agreement made pursuant to that approval shall be conclusively presumed to be valid for all purposes unless challenged in an action brought in the court of appeals within 30 days after the adoption of the resolution. All challenges shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Consideration by the court of appeals shall be based solely on the record before the state administrative board and briefs to the court shall be limited to whether the resolution conforms to the constitution and laws of this state and the United States and is within the authority of the state administrative board under this act.

(6) A sale of all or a portion of the state's tobacco receipts to the authority under a sale agreement shall be treated as a true sale and absolute transfer of the state's tobacco receipts transferred and not as a pledge or other security interest for any borrowing. A sale agreement that expressly states that the transfer of all or a portion of the state's tobacco receipts to the authority is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the authority. The characterization of a sale as an absolute transfer by the participants shall not be negated or

adversely affected by the fact that only a portion of the state's tobacco receipts are transferred, or by the acquisition or retention by this state of a residual interest, or by the participation by any state official as a member or officer of the authority, or by whether the state is responsible for collecting the TSRs or otherwise enforcing the master settlement agreement or retains legal title to the portion of the state's tobacco receipts for the purposes of these collection activities, or by any characterization of the authority or its obligations for purposes of accounting, taxation, or securities regulation, or by any other factor whatsoever. A true sale under this act exists regardless of whether the authority has any recourse against this state, or any other term of the sale agreement, including the fact that this state acts as a collector of the state's tobacco receipts or the treatment of the transfer as a financing for any purpose.

(7) On and after the effective date of each sale of TSRs, the state shall have no right, title, or interest in or to the TSRs sold, and the TSRs sold shall be property of the authority and not of this state, and shall be owned, received, held, and disbursed by the authority and not this state. On or before the effective date of a sale described in this subsection, this state through the state treasurer shall notify the escrow agent under the master settlement agreement that this state has sold all or a portion of the state's tobacco receipts to the authority, including, if applicable, a statement as to the percentage sold and shall irrevocably instruct the escrow agent that, subsequent to the date specified in the notice, that portion of the state's tobacco receipts are to be paid directly to the authority or the trustee under the applicable authority resolution, trust agreement, or trust indenture for the benefit of the owners of the bonds and benefited parties until the authority's bonds and ancillary facilities are no longer outstanding. Once the bonds or ancillary facilities are no longer outstanding, an officer or agent of this state who shall receive any TSRs shall hold them in trust for the authority or the trustee, as applicable, and shall promptly remit the same to the authority or the trustee, as applicable.

(8) The net proceeds and any earnings on the net proceeds shall never be pledged to, or made available for, payment of the bonds or ancillary facilities or any interest or redemption price or any other debt or obligation of the authority.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005;—Am. 2007, Act 18, Imd. Eff. June 12, 2007;—Am. 2008, Act 101, Imd. Eff. Apr. 18, 2008.

#### **129.269 Obligations.**

Sec. 9. The issuance of bonds and the execution of any ancillary facility under the provisions of this act shall not directly, or indirectly, or contingently obligate the state or any political subdivision of this state to pay any amounts to the authority or owner of bonds or benefited parties or levy or pledge any form of taxation whatsoever for the bonds or ancillary facilities. The bonds and any ancillary facility are not a debt or liability of this state or any agency or instrumentality of this state, other than the authority as set forth in this act, either legal, moral, or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate this state or any political subdivision of this state, and the bonds and any ancillary facility shall contain on the face of the bond and ancillary facility or other prominent place on the bond or ancillary facility in bold typeface a statement to that effect.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.270 Creation of authority; purpose as public and governmental; property and income exempt from tax; interest.**

Sec. 10. (1) It is determined that the creation of the authority and the carrying out of its authorized purposes is in all respects a public and governmental purpose for the benefit of the people of this state and for the improvement of their health, safety, welfare, comfort, and security, and that these purposes are public purposes and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

(2) The property of the authority and its income and operations shall be exempt from taxation by this state and any political subdivision of this state.

(3) In the case of any bonds, the interest on which is intended to be exempt from federal income tax, the authority shall prescribe restrictions on the use of the proceeds of those bonds and related matters as are necessary to assure the exemption, and the recipients of proceeds of those bonds shall be bound thereby to the extent the restrictions shall be made applicable to them. Any recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income tax, including without limitation this state or any political subdivision of this state, is authorized to execute a tax regulatory agreement with the authority and, as to any political subdivision that is a recipient of the proceeds of bonds bearing interest that is intended to be exempt from federal income, this state. The execution of a tax regulatory agreement may be treated as a condition to receiving any proceeds of a bond issued under this act.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.



### **129.271 Duties of state before payment or discharge of bonds and ancillary facilities.**

Sec. 11. (1) This state hereby pledges and agrees with the authority, and the owners of the bonds and benefited parties, that until all bonds and ancillary facilities, together with the interest on the bonds and ancillary facilities and all costs and expenses in connection with any action or proceedings by or on behalf of owners of bonds or benefited parties, are fully paid and discharged, that this state will do all of the following:

(a) Irrevocably direct the escrow agent under the master settlement agreement to transfer the TSRs directly to the authority or its assignee.

(b) Enforce the authority's rights to receive the TSRs to the full extent permitted by the terms of the master settlement agreement.

(c) Not amend the master settlement agreement in any manner that would materially impair the rights of the owners of the bonds or of the benefited parties.

(d) Not limit or alter the rights of the authority to fulfill the terms of its agreements with owners of the bonds or benefited parties.

(e) Not in any way impair the rights and remedies of owners of the bonds or benefited parties or the security for the bonds or ancillary facilities, provided, that nothing in this act shall be construed to preclude this state's regulation of smoking, and the taxation and regulation of the sale of cigarettes or other tobacco products.

(f) Not fail to enforce the qualifying statute.

(g) Not amend, supersede, or repeal the qualifying statute in any way that would materially adversely affect the amount of any payment to, or materially impair the rights of, the authority, owners of the bonds, or the benefited parties.

(2) The state budget director is authorized and directed to include the pledge and agreement made under this section in sale agreements and the authority is authorized and directed to include the pledge and agreement in any contract with the owners of the bonds and benefited parties.

(3) Prior to the date that is 1 year and 1 day after the authority no longer has any bonds or ancillary facilities outstanding, the authority shall have no authority to file a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or sections as may, from time to time, be in effect, and neither any public officer or any organization, entity, or other person shall authorize the authority to be or become a debtor under chapter 9 of the federal bankruptcy code or any successor or corresponding chapter or sections during that period. This state hereby covenants with the owners of the bonds and benefited parties that this state will not limit or alter the denial of the authority under this subsection during the period referred to in this subsection. The authority is authorized and directed to include this covenant as an agreement of this state in any contract with the owners of the bonds and benefited parties.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

### **129.272 Effect of bonds issued under act.**

Sec. 12. Notwithstanding any restriction contained in any other law, rule, regulation, or order to the contrary, this state and all political subdivisions of this state, their officers, boards, commissioners, departments or other agencies, governmental pension funds, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any sinking funds, money or other funds, including capital, belonging to them or within their control, in any bond. Bonds issued by the authority under this act are hereby made bonds that may properly and legally be deposited with, and received by, any state municipal officers or agency of this state, for any purpose for which the deposit of bonds or other obligations of this state is now, or may be, authorized by law.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

### **129.273 Dissolution of authority.**

Sec. 13. The authority may be dissolved by act of the legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of all debts or obligations. Upon any such dissolution of the authority, all property, funds, and assets of the authority shall be vested in this state.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

### **129.274 Construction of act.**

Sec. 14. This act and all powers granted hereby shall be liberally construed to effectuate its intent and their

purposes, without implied limitations on the powers of the authority, the state budget director, and the state treasurer. This act shall constitute full, complete, and additional authority for all things that are contemplated in this act to be done. All rights and powers granted in this act shall be cumulative with those derived from other sources and shall not, except as expressly stated in this act, be construed in limitation of those rights and powers. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling. If any clause, paragraph, section, or part of this act is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of the clause, paragraph, section, or part but shall be applied in its operation to the clause, sentence, paragraph, section, or part directly involved in the controversy in which the judgment shall have been rendered.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.275 Availability of funds.**

Sec. 15. Subject to any agreements with bondholders, the authority has the power to use any funds available to purchase bonds of the authority at a price determined by the authority.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.276 Report.**

Sec. 16. The authority shall submit an annual report no later than March 1 relating to its activities for the preceding calendar year to the governor, the speaker and minority leader of the house of representatives, and the majority and minority leaders of the senate.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.277 Appropriation.**

Sec. 17. (1) One million dollars is appropriated from the general fund to the authority for the fiscal year ending September 30, 2006 for all of the following purposes:

- (a) Payment of operating expenses of the authority.
- (b) Funding any reserve requirements.

(2) Money appropriated under this section that is not expended before the end of the state fiscal year ending September 30, 2006 shall not revert to the general fund and may be retained and used by the authority for the purposes authorized by subsection (1).

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.278 Legal jurisdiction.**

Sec. 18. Except as otherwise provided in this section, any legal action against the authority shall be brought in the Michigan court of appeals, which shall have exclusive jurisdiction. However, any legal actions against the authority seeking money damages shall be brought in the Michigan court of claims, which shall have exclusive original jurisdiction with respect to actions against the authority seeking money damages.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

#### **129.279 Severability.**

Sec. 19. This act is declared to be severable. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity of that portion or application shall not affect the remaining portions or applications that can be given effect without the invalid portion or application, provided the remaining portions are not determined by the court to be inoperable.

**History:** 2005, Act 226, Imd. Eff. Nov. 21, 2005.

## **DIVESTMENT FROM TERROR ACT**

### **Act 234 of 2008**

AN ACT to prohibit the investment of certain state money or other assets in companies with certain types of business operations in countries designated as state sponsors of terror; to require divestment of any current investments in those companies; and to provide for the powers and duties of certain state and local governmental officers and entities.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

*The People of the State of Michigan enact:*

#### **129.291 Short title.**

Sec. 1. This act shall be known and may be cited as the "divestment from terror act".

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.292 Definitions.**

Sec. 2. As used in this act:

(a) "Active business operations" means all business operations that are not inactive business operations. Active business operations do not include the activities of any business, legal, or governmental entity or institution that provides humanitarian aid to the people of any state sponsors of terror.

(b) "Business operations" means engaging in commerce in any form with a state sponsor of terror, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exists for profit-making purposes.

(d) "Direct holdings" in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(e) "Fiduciary" means any of the following:

(i) The Michigan legislative retirement system board of trustees for the Tier 1 retirement plan available under the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

(ii) The state treasurer for all of the following:

(A) The state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(B) The Tier 1 retirement plan available under the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(C) The Tier 1 retirement plan available under the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(D) The public school employees retirement system created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(iii) The state treasurer in connection with his or her duties under any of the following:

(A) 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610.

(B) 1855 PA 105, MCL 21.141 to 21.147.

(C) Section 7 of the Michigan trust fund act, 2000 PA 489, MCL 12.257.

(D) Children's trust fund under 1982 PA 249, MCL 21.171 to 21.172.

(E) The McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.

(F) Section 503b of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503b.

(iv) The board of trustees of a community college subject to the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195.

(v) The board of directors of the Michigan education trust described in section 10 of the Michigan education trust act, 1986 PA 316, MCL 390.1430.

(vi) The board of the Michigan strategic fund under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(f) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.

(g) "Indirect holdings" in a company means all securities of that company held in an account or fund,

including a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(h) "Scrutinized company" means, except for a company described in subdivision (i), and for a social development company or a company that only meets the criteria of this subdivision because an independently owned franchisee of that company is a scrutinized company, any company that has business operations that involve contracts with or provision of supplies or services to a state sponsor of terror; companies in which a state sponsor of terror has any direct or indirect equity share, consortiums, or projects commissioned by a state sponsor of terror; or companies involved in consortiums and projects commissioned by a state sponsor of terror and 1 or more of the following:

(i) More than 10% of the company's total revenues or assets are directly invested in or earned from or significantly contributed to a state sponsor of terror and the company has failed to take substantial action.

(ii) The company has, with actual knowledge, made an investment of \$20,000,000.00 or more, or any combination of investments of at least \$10,000,000.00 each, which in the aggregate equals or exceeds \$20,000,000.00 in any 12-month period, and which directly or significantly contributes to a state sponsor of terror, and the company has failed to take substantial action.

(i) A scrutinized company does not mean a company which the United States government has excluded from any present federal sanctions regime relating to a state sponsor of terror, or which has obtained from the United States government an applicable license or approval to conduct a transaction with a state sponsor of terror.

(j) "Social development company" means a company licensed by the United States department of treasury pursuant to the federal trade sanction reform and export enhancement act of 2000, P.L. 106-387, or a company lawfully operating under the laws of another country, whose primary purpose in a state sponsor of terror is to provide humanitarian goods or services including, food, other agricultural products, supplies or infrastructure, clothing, shelter, medicines or medical equipment, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, general consumer goods, or services of a purely clerical or reporting nature, to aid the inhabitants of a state sponsor of terror.

(k) "State sponsor of terror" means, subject to section 10 as to applicability, any country determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism.

(l) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008;—Am. 2018, Act 684, Imd. Eff. Dec. 28, 2018.

### **129.293 Scrutinized companies; identification by fiduciary.**

Sec. 3. Within 90 days after the effective date of this act, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or has a current option to have such holdings in the future. The efforts may include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in a state sponsor of terror, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in a state sponsor of terror.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in a state sponsor of terror.

(d) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions against companies conducting business or investing in countries that are designated state sponsors of terror.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

### **129.294 Scrutinized companies; assembly into list; modification; procedure to be adhered to by fiduciary.**

Sec. 4. (1) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in section 3, the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(2) The fiduciary shall update the scrutinized companies list described in subsection (1) on a quarterly basis based on evolving information from, among other sources, those sources listed in section 3. However, if a fiduciary receives credible information that shows that a scrutinized company was wrongfully identified as a

scrutinized company, the fiduciary shall immediately modify the scrutinized company list to remove the name of the scrutinized company.

(3) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list described in subsection (1):

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as described in section 2(e).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in a state sponsor of terror until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its state sponsor of terror-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company, that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this act shall cease to apply to it unless it resumes scrutinized business operations. If, within 9 months following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall not be subject to this act.

(e) If, after 90 days following the fiduciary's first engagement with a company, if the company has not developed and announced a plan to convert its active business operations to inactive business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivision (g), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of the effective date of this act, the fiduciary shall perform due diligence to prevent investment in any private equity fund in violation of this act. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on the effective date of this act creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this act, the fiduciary is not required to, but is strongly encouraged to, replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

### **129.295 Internet website; collection and publication of information.**

Sec. 5. The department of treasury shall collect and publish the following information on the department's internet website no later than 1 year after the effective date of this act and shall periodically update the information at reasonable intervals:

(a) All investments sold, redeemed, divested, or withdrawn in compliance with this section.

(b) All prohibited investments made under this section.

(c) Any progress made under section 4(3)(g).

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

### **129.296 Exemption from conflicting statutory or common law obligations.**

Sec. 6. (1) With respect to actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act, the fiduciary shall be exempt from any conflicting



statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(2) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this act.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.297 Severability.**

Sec. 7. If any provision, section, subsection, sentence, clause, phrase, or word of this act or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.298 Business with Sudan; fiduciary subject to provisions of public employee retirement system investment act.**

Sec. 8. If a scrutinized company does business with the government of Sudan and the fiduciary is subject to the divestment provisions of section 13c of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133c, for that period of time the fiduciary shall follow the divestment criteria contained in section 13c of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133c, and not the divestment provisions of this act.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.299 Business with Iran; fiduciary subject to provisions of public employee retirement system investment act.**

Sec. 9. If a scrutinized company does business with the government of Iran and the fiduciary is subject to the divestment provisions of section 13d of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133d, for that period of time the fiduciary shall follow the divestment criteria contained in section 13d of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133d, and not the divestment provisions of this act.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.300 Applicability of act; dates; extension.**

Sec. 10. (1) If a state sponsor of terror is any of the following countries, then, except as provided in subsection (2), the provisions of this act begin to apply on the following dates:

(a) Syria, January 1, 2010.

(b) Cuba, January 1, 2011.

(c) Any other country, 12 months following the determination by the United States secretary of state.

(2) The state treasurer may extend, not more than 2 times, 1 or more of the dates in which the provisions of this act apply that are described in subsection (1) for 1 year if the state treasurer determines 1 or more of the following:

(a) The constitutionality of the divestment provisions of this act are in conflict with federal law.

(b) The department of treasury is not able to gather sufficient information to prepare an accurate scrutinized companies list.

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

#### **129.301 Divestment of funds; recommendations of department of treasury.**

Sec. 11. Not later than October 1, 2010 and October 1, 2011, and not later than 9 months immediately following the determination of another country as a state sponsor of terror, the department of treasury shall make recommendations to each house of the legislature and to the standing committees of the senate and house of representatives having jurisdiction over issues pertaining to divestment of state funds on what statutory changes are needed to improve the effectiveness of this act and whether the department of treasury has extended or will extend 1 or more of the dates provided in section 10(1) and the reason for that extension as described in section 10(2).

**History:** 2008, Act 234, Imd. Eff. July 17, 2008.

## **IRAN ECONOMIC SANCTIONS ACT**

### **Act 517 of 2012**

AN ACT to prohibit persons who have certain economic relationships with Iran from submitting bids on requests for proposals with this state, political subdivisions of this state, and other public entities; to require bidders for certain public contracts to submit certification of eligibility with the bid; to require reports; and to provide for sanctions for false certification.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

*The People of the State of Michigan enact:*

#### **129.311 Short title.**

Sec. 1. This act shall be known and may be cited as the "Iran economic sanctions act".

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

#### **129.312 Definitions.**

Sec. 2. As used in this act:

(a) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.

(b) "Investment" means 1 or more of the following:

(i) A commitment or contribution of funds or property.

(ii) A loan or other extension of credit.

(iii) The entry into or renewal of a contract for goods or services.

(c) "Investment activity" means 1 or more of the following:

(i) A person who has an investment of \$20,000,000.00 or more in the energy sector of Iran.

(ii) A financial institution that extends \$20,000,000.00 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.

(d) "Iran" means any agency or instrumentality of Iran.

(e) "Iran linked business" means either of the following:

(i) A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.

(ii) A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.

(f) "Person" means any of the following:

(i) An individual, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.

(ii) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the international financial institutional act, 22 USC 262r(c)(3).

(iii) Any successor, subunit, parent company, or subsidiary of, or company under common ownership or control with, any entity described in subparagraph (i) or (ii).

(g) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, public authority, or public airport authority.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

#### **129.313 Ineligibility of Iran linked business to submit request for proposal bid; certification.**

Sec. 3. (1) Beginning April 1, 2013, an Iran linked business is not eligible to submit a bid on a request for proposal with a public entity.

(2) Beginning April 1, 2013, a public entity shall require a person that submits a bid on a request for proposal with the public entity to certify that it is not an Iran linked business.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

#### **129.314 Effect of false certification.**

Sec. 4. If a public entity determines, using credible information available to the public, that a person has submitted a false certification under section 3(2), the public entity shall provide the person with written notice of its determination and of the intent not to enter into or renew a contract with the person. The notice shall include information on how to contest the determination and specify that the person may become eligible for a

future contract with the public entity if the person ceases the activities that cause it to be an Iran linked business. The person shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If a person does not make that demonstration within 90 days after receipt of the notice, the public entity may terminate any existing contract and shall report the name of the person to the attorney general together with information supporting the determination.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

#### **129.315 Civil action; penalty.**

Sec. 5. The attorney general may bring a civil action against any person reported under section 4. If a civil action results in a finding that the person submitted a false certification, the person is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the public entity's investigation, and reasonable attorney fees, in addition to the fine. A person who submitted a false certification shall be ineligible to bid on a request for proposal for 3 years from the date the public entity determines that the person has submitted the false certification.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.

#### **129.316 Conditional effect.**

Sec. 6. The provisions of this act are effective only if Iran is a state sponsor of terror as defined under section 2 of the divestment from terror act, 2008 PA 234, MCL 129.292.

**History:** 2012, Act 517, Eff. Apr. 1, 2013.