

**SUBSTITUTE FOR
SENATE BILL NO. 1009**

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 205 (MCL 330.1205), as amended by 1996
PA 588.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) A county community mental health agency or a
2 community mental health organization that is certified by the
3 department under section 232a may become a community mental
4 health authority as provided in this section through an enabling
5 resolution adopted by the board of commissioners of each creating
6 county after at least 3 public hearings held in accordance with
7 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
8 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws~~
9 1976 PA 267, MCL 15.261 TO 15.275. The resolution is considered
10 adopted if it is approved by a majority of the commissioners

1 elected and serving in each county creating the authority. The
2 enabling resolution is not effective until it has been filed with
3 the secretary of state and with the county clerk of each county
4 creating the authority. If any provision of the enabling resolu-
5 tion conflicts with this act, this act supersedes the conflicting
6 provision.

7 (2) All of the following shall be stated in the enabling
8 resolution:

9 (a) The purpose and the power to be exercised by the commu-
10 nity mental health authority shall be to comply with and carry
11 out the provisions of this act.

12 (b) The duration of the existence of the community mental
13 health authority and the method by which the community mental
14 health authority may be dissolved or terminated by itself or by
15 the county board or boards of commissioners. These provisions
16 shall comply with section 220.

17 (c) The manner in which any net financial assets originally
18 made available to the authority by the participating county or
19 counties will be returned or distributed if the authority is dis-
20 solved or terminated. All other remaining assets, net of
21 liabilities, shall be transferred to the community mental health
22 services program or programs that replace the authority.

23 (d) The liability of the community mental health authority
24 for costs associated with real or personal property purchased or
25 leased by the county for use by the community mental health serv-
26 ices program to the extent necessary to discharge the financial
27 liability if desired by the county or counties.

1 (e) The manner of employing, compensating, transferring, or
2 discharging necessary personnel subject to the provisions of
3 applicable civil service and merit systems, and the following
4 restrictions:

5 (i) Employees of a community mental health authority are
6 public employees. A community mental health authority and its
7 employees are subject to ~~Act No. 336 of the Public Acts of 1947,~~
8 ~~being sections 423.201 to 423.217 of the Michigan Compiled Laws~~
9 1947 PA 336, MCL 423.201 TO 423.217.

10 (ii) Upon the creation of a community mental health authori-
11 ty, the employees of the former community mental health services
12 program shall be transferred to the new authority and appointed
13 as employees subject to all rights and benefits for 1 year. Such
14 employees of the new community mental health authority shall not
15 be placed in a worse position by reason of the transfer for a
16 period of 1 year with respect to workers' compensation, pension,
17 seniority, wages, sick leave, vacation, health and welfare insur-
18 ance, or any other benefit that the employee enjoyed as an
19 employee of the former community mental health services program.
20 Employees who are transferred shall not by reason of the transfer
21 have their accrued pension benefits or credits diminished.

22 (iii) If the former county community mental health agency or
23 community mental health organization was the designated employer
24 or participated in the development of a collective bargaining
25 agreement, the newly established community mental health author-
26 ity shall assume and be bound by the existing collective
27 bargaining agreement. The formation of a community mental health

1 authority shall not adversely affect any existing rights and
2 obligations contained in the existing collective bargaining
3 agreement. For purposes of this provision, participation in the
4 development of a collective bargaining agreement means that a
5 representative of the community mental health agency or organiza-
6 tion actively participated in bargaining sessions with the
7 employer representative and union or was consulted with during
8 the bargaining process.

9 (f) Any other matter consistent with this act that is neces-
10 sary to assure operation of the community mental health authority
11 as agreed upon by the creating county or counties.

12 (3) If a county community mental health agency or a commu-
13 nity mental health organization becomes a community mental health
14 authority pursuant to this section, both of the following apply:

15 (a) All assets, debts, and obligations of the county commu-
16 nity mental health agency or community mental health organiza-
17 tion, including but not limited to equipment, furnishings, sup-
18 plies, cash, and other personal property, shall be transferred to
19 the community mental health authority.

20 (b) All the privileges and immunities from liability and
21 exemptions from laws, ordinances, and rules that are applicable
22 to county community mental health agencies or community mental
23 health organizations and their board members, officers, and
24 administrators, and county elected officials and employees of
25 county government are retained by the authority and the board
26 members, officers, agents, and employees of an authority created
27 under this section.

1 (4) In addition to other powers of a community mental health
2 services program as set forth in this act, a community mental
3 health authority has all of the following powers, whether or not
4 they are specified in the enabling resolution:

5 (a) To fix and collect charges, rates, rents, fees, or other
6 charges and to collect interest.

7 (b) To make purchases and contracts.

8 (c) To transfer, divide, or distribute assets, liabilities,
9 or contingent liabilities, unless the community mental health
10 authority is a single-county community mental health services
11 program and the county has notified the department of its inten-
12 tion to terminate participation in the community mental health
13 services program. During the interim period between notification
14 by a county under section 220 of its intent to terminate partici-
15 pation in a multi-county community mental health services program
16 and the official termination of that participation, a community
17 mental health authority's power under this subdivision is subject
18 to any agreement between the community mental health authority
19 and the county that is terminating participation, if that agree-
20 ment is consistent with the enabling resolution that created the
21 authority.

22 (d) To accept gifts, grants, or bequests and determine the
23 manner in which those gifts, grants, or bequests may be used con-
24 sistent with the donor's request.

25 (e) To acquire, own, operate, maintain, lease, or sell real
26 or personal property. Before taking official action to sell

1 residential property, however, the authority shall do all of the
2 following:

3 (i) Implement a plan for alternative housing arrangements
4 for recipients residing on the property.

5 (ii) Provide the recipients residing on the property or
6 their legal guardians, if any, an opportunity to offer their com-
7 ments and concerns regarding the sale and planned alternatives.

8 (iii) Respond to those comments and concerns in writing.

9 (f) To do the following in its own name:

10 (i) Enter into contracts and agreements.

11 (ii) Employ staff.

12 (iii) Acquire, construct, manage, maintain, or operate
13 buildings or improvements.

14 (iv) Subject to subdivision (e), acquire, own, operate,
15 maintain, lease, or dispose of real or personal property, unless
16 the community mental health authority is a single-county mental
17 health services program and the county has notified the depart-
18 ment of its intention to terminate participation in the community
19 mental health services program. During the interim period
20 between notification by a county under section 220 of its intent
21 to terminate participation in a multi-county community mental
22 health services program and the official termination of that par-
23 ticipation, a community mental health authority's power under
24 this subdivision is subject to any agreement between the commu-
25 nity mental health authority and the county that is terminating
26 participation, if that agreement is consistent with the enabling
27 resolution that created the authority.

1 (v) Incur debts, liabilities, or obligations that do not
2 constitute the debts, liabilities, or obligations of the creating
3 county or counties.

4 (vi) Commence litigation and defend itself in litigation.

5 (g) To invest funds in accordance with statutes regarding
6 investments.

7 (h) To set up reserve accounts, utilizing state funds in the
8 same proportion that state funds relate to all revenue sources,
9 to cover vested employee benefits including but not limited to
10 accrued vacation, health benefits, the employee payout portion of
11 accrued sick leave, if any, and worker's compensation. In addi-
12 tion, an authority may set up reserve accounts for depreciation
13 of capital assets and for expected future expenditures for an
14 organizational retirement plan.

15 (i) To develop a charge schedule for services provided to
16 the public and utilize the charge schedule for first and
17 third-party payers. The charge schedule may include charges that
18 are higher than costs for some service units by spreading nonrev-
19 enue service unit costs to revenue-producing service unit costs
20 with total charges not exceeding total costs. All revenue over
21 cost generated in this manner shall be utilized to provide serv-
22 ices to priority populations.

23 (5) In addition to other duties and responsibilities of a
24 community mental health services program as set forth in this
25 act, a community mental health authority shall do all of the
26 following:

1 (a) Provide to each county creating the authority and to the
2 department a copy of an annual independent audit performed by a
3 certified public accountant in accordance with governmental
4 auditing standards issued by the comptroller of the United
5 States.

6 (b) Be responsible for all executive administration, person-
7 nel administration, finance, accounting, and management informa-
8 tion system functions. The authority may discharge this respon-
9 sibility through direct staff or by contracting for services.

10 (6) A county that has created a community mental health
11 authority is not liable for any intentional, negligent, or
12 grossly negligent act or omission, for any financial affairs, or
13 for any obligation of a community mental health authority, its
14 board, employees, representatives, or agents. This subsection
15 applies only to county government.

16 (7) A community mental health authority shall not levy any
17 type of tax or issue any type of bond in its own name or finan-
18 cially obligate any unit of government other than itself.

19 (8) An employee of a community mental health authority is
20 not a county employee. The community mental health authority is
21 the employer with regard to all laws pertaining to employee and
22 employer rights, benefits, and responsibilities.

23 (9) As a public governmental body, a community mental health
24 authority is subject to the open meetings act, ~~Act No. 267 of~~
25 ~~the Public Acts of 1976, being sections 15.261 to 15.275 of the~~
26 ~~Michigan Compiled Laws~~ 1976 PA 267, MCL 15.261 TO 15.275, and
27 the freedom of information act, ~~Act No. 442 of the Public Acts~~

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1 of 1976, being sections 15.231 to 15.246 of the Michigan Compiled
2 Laws— 1976 PA 442, MCL 15.231 TO 15.246, except for those docu-
3 ments produced as a part of the peer review process required in
4 section 143a and made confidential by section 748(9).

5 (10) A COMMUNITY MENTAL HEALTH AUTHORITY MAY BORROW MONEY TO
6 FINANCE OR REFINANCE THE PURCHASE OF REAL PROPERTY OR TANGIBLE
7 PERSONAL PROPERTY OF THE AUTHORITY. THESE CONTRACTUAL OBLIGA-
8 TIONS SHALL BE SECURED BY A MORTGAGE ON THE REAL PROPERTY OR A
9 SECURITY INTEREST OR OTHER LIEN ON THE TANGIBLE PERSONAL
10 PROPERTY. THESE CONTRACTUAL OBLIGATIONS SHALL BE FOR NOT LONGER
11 THAN THE USEFUL LIFE OF THE COLLATERAL AND SHALL BE AUTHORIZED BY
12 RESOLUTION APPROVED BY A MAJORITY OF THE COMMUNITY MENTAL HEALTH
13 BOARD. UNLESS AN EXCEPTION TO PRIOR APPROVAL IS AVAILABLE UNDER
14 SECTION 10 OR 11 OF CHAPTER III OF THE MUNICIPAL FINANCE ACT,
15 1943 PA 202, MCL 133.10 AND 133.11, A MORTGAGE GIVEN BY A COMMU-
16 NITY MENTAL HEALTH AUTHORITY TO FINANCE THE PURCHASE OF REAL
17 PROPERTY UNDER THIS SUBSECTION SHALL BE APPROVED BY THE DEPART-
18 MENT OF TREASURY, BUT IS NOT OTHERWISE SUBJECT TO THE MUNICIPAL
19 FINANCE ACT, 1943 PA 202, MCL 131.1 TO 139.3.

20 (11) A COMMUNITY MENTAL HEALTH AUTHORITY MAY ENTER INTO AN
21 INSTALLMENT PURCHASE AGREEMENT FOR THE PURCHASE OR REFINANCING OF
22 TANGIBLE PERSONAL PROPERTY FOR PUBLIC PURPOSES. THE INSTALLMENT
23 PURCHASE AGREEMENT FOR THE PURCHASE OF TANGIBLE PERSONAL PROPERTY
24 SHALL NOT BE FOR A LONGER TERM THAN THE USEFUL LIFE OF THE TANGI-
25 BLE PERSONAL PROPERTY. THE INSTALLMENT PURCHASE AGREEMENTS
26 DESCRIBED IN THIS SUBSECTION ARE NOT SUBJECT TO THE PROVISIONS OF
27 THE MUNICIPAL FINANCE ACT, 1943 PA 202, MCL 131.1 TO 139.3. THE

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1 TOTAL OF ALL OUTSTANDING INSTALLMENT PURCHASE AGREEMENTS UNDER
2 THIS SUBSECTION SHALL NOT EXCEED 1% OF THE TAXABLE VALUE OF ALL
3 PROPERTY LOCATED WITHIN THE AREA SERVED BY THAT COMMUNITY MENTAL
4 HEALTH AUTHORITY.

5 (12) IF A COMMUNITY MENTAL HEALTH AUTHORITY HAS FINANCED THE
6 PURCHASE OF PROPERTY IN A SUBSTANTIALLY SIMILAR MANNER TO THAT AS
7 DESCRIBED IN SUBSECTION (10) OR (11), PRIOR TO THE EFFECTIVE DATE
8 OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, THAT PURCHASE
9 IS RATIFIED AS IF IT WAS MADE UNDER SUBSECTION (10) OR (11).

10 (13) A COMMUNITY MENTAL HEALTH AUTHORITY MAY OBTAIN A LINE
11 OF CREDIT TO SECURE FUNDS FOR AUTHORITY OPERATIONS OR TO PAY PRE-
12 VIOUS LOANS OBTAINED FOR AUTHORITY OPERATIONS UNDER THIS OR ANY
13 OTHER ACT. THE LINE OF CREDIT SHALL BE AUTHORIZED BY A RESOLU-
14 TION APPROVED BY A MAJORITY OF THE COMMUNITY MENTAL HEALTH
15 BOARD. THE AUTHORITY SHALL NOT BORROW AGAINST THE LINE OF CREDIT
16 AN AMOUNT GREATER THAN THE AVERAGE OF 2 MONTHS' REVENUE FROM CON-
17 TRACTED SOURCES AS DETERMINED BY THE COMMUNITY MENTAL HEALTH
18 AUTHORITY.