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**SFA**



**BILL ANALYSIS**

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Senate Bill 29 (as enrolled)  
Sponsor: Senator Joanne G. Emmons  
Senate Committee: Finance  
House Committee: Tax Policy

**PUBLIC ACT 34 of 2001**

Date Completed: 8-7-01

**RATIONALE**

The Municipal Finance Act prescribes the powers and duties of the Michigan Department of Treasury to regulate the borrowing and issuance of obligations by municipalities, and places various requirements on the municipalities. The statute was enacted in 1943. Some people feel that the Act contains many provisions that are out of date, and that numerous amendments to the Act through the years have made it difficult to read and understand. It was suggested that the Act be repealed and recodified.

**respect to any security issued pursuant to a Department order that was issued before May 1, 2002.**

**The bill validates any securities previously issued under, or in accordance with, the authority contained in the Municipal Finance Act. Any security that, by the terms of the statute that authorizes its issuance is exempt from the Municipal Finance Act, is exempt from the bill.**

**CONTENT**

**The bill creates the "Revised Municipal Finance Act" to regulate borrowing by municipalities, and their issuance of "securities"; repeal the Municipal Finance Act in 2002; and prescribe the powers and duties of the Department of Treasury to protect the credit of the State and its municipalities.**

**The bill does the following:**

**The bill will take effect March 1, 2002. The Municipal Finance Act will be repealed on that day, (except that sections 10 and 11 of Chapter III will be repealed on April 30, 2002, as described below). The bill also repeals the administrative rules of the Municipal Finance Division on March 1, 2002.**

- Prohibits a municipality from issuing "municipal securities" except in accordance with the bill.
- Requires each municipality annually to file with the Department an audit report, accompanied by a qualifying statement prescribed by the Department.
- Allows a municipality to issue municipal securities without further approval from the Department, until the next qualifying statement is due, if the Department determines that the municipality is in compliance with the bill's criteria.
- Prohibits a municipality from issuing municipal securities without the Department's prior approval, if the Department determines that the municipality is not qualified.
- Prescribes fees that municipalities must pay to issue securities.

**Under the bill, all orders issued by the Department approving the issuance of securities will continue in force and effect until October 31, 2002. The terms of the Municipal Finance Act will apply with**

- **Provides that an authorized municipal security may be sold at a competitive sale or negotiated sale, as determined by a resolution adopted by the municipality's governing body.**
- **Specifies that if a municipality issues short-term municipal securities in anticipation of the collection of taxes for the next succeeding fiscal year, the authorizing resolution must contain an irrevocable provision for a tax levy for repayment of the securities.**
- **Allows a municipality to issue a short-term municipal security in anticipation of the proceeds of a long-term municipal security it proposes to issue, or in anticipation of receiving grants from the State or the United States, under certain circumstances.**
- **Allows a county, city, village, or township to issue a long-term municipal security to pay the cost of any capital improvement items, under certain circumstances, and provides that such a security may not exceed 5% of the State equalized valuation of the local unit's assessed property.**
- **Specifies the circumstances under which refunding securities may be issued; and prohibits a municipality from issuing refunding securities unless the net present value of the principal and interest to be paid on them, including the cost of issuance, is less than the net present value of the principal and interest to be paid on the security to be refunded.**
- **Provides that the State or any State authority, agency, fund, commission, board, or department is not required to obtain the approval of the Department before issuing municipal securities, or to file any qualifying or audit reports.**

#### Definitions

Under the bill, a "municipality" is a county, township, city, village, school district, intermediate school district, community college district, metropolitan district, port district, drainage district, district library, or another governmental authority or agency that has the power to issue a security. "Security" means an evidence of debt such as a bond, note, contract, obligation, refunding obligation, certificate of indebtedness, or other similar instrument issued by a municipality, which pledges payment of the debt by the

municipality from an identified source of revenue. "Debt" means all borrowed money, loans, and other indebtedness, including principal and interest, evidenced by bonds, obligations, refunding obligations, notes, contracts, securities, refunding securities, municipal securities, or certificates of indebtedness that are lawfully issued or assumed, in whole or in part, by a municipality, or will be evidenced by a judgment or decree against the municipality.

"Municipal security" means a security that when issued was not exempt from the bill or the Municipal Finance Act, by the provisions of the bill or the Municipal Finance Act, or by the provisions of the law authorizing its issuance, and that is payable from or secured by any of the following: ad valorem real and personal property taxes; special assessments; the limited or unlimited full faith and credit pledge of the municipality; or other sources of revenue described in the bill for debt or securities. A municipal security does not include any of the following:

- A contract for the purchase of real or personal property.
- A contract for the lease of real or personal property with or without an option to purchase.
- A contract, lease, note, or other security given in connection with a contract for the purchase or lease of real or personal property.
- A security that is evidence of an emergency loan in conjunction with the Emergency Municipal Loan Act, or qualified agricultural loans under Public Act 105 of 1855 (which authorizes the lending of State surplus funds under certain conditions).
- A mortgage secured by real property and its corresponding security to the extent secured by the mortgage.

#### Department Powers

The bill authorizes the Department of Treasury to do the following:

- Aid, advise, and consult with any municipality with respect to fiscal questions arising from and relating to its proposed or outstanding securities.
- Issue bulletins or adopt rules as necessary to carry out the purposes of the new Act. A bulletin must state the Department's

specific statutory authority for any substantive requirement contained in the bulletin. A bulletin that addresses filings, approvals, or determinations regarding issuance of an obligation (or any modification of an existing bulletin that addresses these matters) may not take effect unless the Department issues the bulletin with at least a 30-day public comment period.

- Examine the books and records of any municipality to ascertain if it is complying with the requirements of the Department, the statutes of the State, and its charter, ordinances, and resolutions, in relation to its municipal securities. The Department has full power to examine witnesses on oath, and compel the attendance of witnesses, the giving of testimony, and the production of books, papers, and records. Any person duly subpoenaed who neglects to attend or testify is guilty of a misdemeanor.
- Enforce compliance with any provision of the new Act or any law, charter, ordinance, or resolution with respect to debts or securities subject to its jurisdiction including the levy and collection of taxes for the payment of debt.
- Render financial advisory, paying agent, registration, and transfer services and materials, including assistance in the preparation and issuance of a municipality's municipal securities; prepare explanatory manuals; conduct training seminars; and, upon request of a municipality, assist the municipality in issuing its municipal securities. The Department may impose a fee upon municipalities requesting its services or materials; the fee is limited to the cost incurred by the Department in providing the service.

If any municipality is aggrieved by any determination of the Department, it may notify the Department and appeal the determination as a contested case pursuant to the Administrative Procedures Act.

#### General Provisions

Qualifying Statements. The bill provides that each municipality must file an annual audit report with the Department within six months from the end of its fiscal year or as otherwise provided in the Uniform Budgeting and Accounting Act. Accompanying the report, a municipality must file a qualifying statement, on a form and in the manner provided by the

Department, which must be certified by the municipality's chief administrative officer.

Within 30 business days of receiving the qualifying statement, the Department must determine if the municipality complies with the requirements of the bill for issuing securities without further approval. If the Department determines that the municipality complies, or if the Department fails to notify the municipality of its determination within 30 business days, the municipality may proceed to issue municipal securities without further approval from the Department until 30 business days after the next qualifying statement is due or until the Department makes a new determination, whichever occurs first.

Issuance without Approval. Under the bill, "qualified status" means that a municipality has filed a qualifying statement and has been determined by the Department to be qualified to issue municipal securities without further approval. To qualify to issue municipal securities without further approval from the Department, a municipality must be in material compliance with all of the following, as determined by the Department:

- The municipality is not operating under the Local Government Fiscal Responsibility Act.
- In the preceding five fiscal years or current fiscal year, the municipality did not issue securities that were authorized by either the Fiscal Stabilization Act or the Emergency Municipal Loan Act (other than a security issued under that Act for a loan authorized by the local Emergency Financial Assistance Loan Board, in fiscal year 1998-99, to a county with a population over 1,500,000).
- The municipality was not required by the terms of a court order or judgment to levy a tax in the preceding fiscal year. (The Department may determine that a court order or judgment to levy a tax is not material if it did not have an adverse financial impact on the municipality.)
- The most recent audit report, as required by the Uniform Budget and Accounting Act, was filed with the Department within six months from the end of the municipality's fiscal year.
- The debt retirement fund balance for any municipal security that is funded from an unlimited tax levy does not exceed 150% of the amount required for principal and

- interest payments due for that security in the next fiscal year.
- The municipality is not currently exceeding its statutory or constitutional debt limits.
  - The municipality has no outstanding securities that were not authorized by statute.
  - The municipality is not currently, and during the preceding fiscal year was not, in violation of any provisions in the covenants for an outstanding security.
  - The municipality was not delinquent more than once in the preceding fiscal year in transferring employee taxes withheld to the appropriate agency, transferring taxes collected as agent for another taxing entity to that taxing unit, or making all required pension, retirement, or benefit plan contributions.
  - The most recent delinquent property taxes of the municipality, without regard to payments received from the county under the General Property Tax Act, did not exceed 18% of the amount levied.
  - The municipality, in the preceding 12 months, did not submit a qualifying statement or an application for any other municipal security that was materially false or incorrect.
  - The municipality is not in default on any debt, excluding industrial development revenue bonds issued under the Industrial Development Revenue Bond Act, economic development corporation bonds issued under the Economic Development Corporations Act, bonds issued by a local hospital finance authority for a private hospital under the Hospital Finance Authority Act, or any other debt for which the municipality is not financially liable.
  - The municipality did not end the immediately preceding fiscal year with a deficit in any fund, unless the municipality has filed a financial plan to correct the deficit condition under Section 21 of the State Revenue Sharing Act, that is acceptable to the Department. (Under Section 21, a local government that ends its fiscal year in a deficit condition must formulate and file a financial plan with the Department of Treasury to correct the condition.)
  - The municipality has not been found by a court to be in violation of any finance or tax-related State or Federal statutes, during the preceding fiscal year.

- The municipality has not been found by the Department to be in violation of the new Act during the preceding fiscal year.
- The municipality did not issue a refunding security (a municipal security issued to refund an outstanding security) in the preceding fiscal year to avoid a potential default on an outstanding security.

If a municipality is notified within 30 business days of filing the qualifying statement that it does not comply with one or more of the above provisions, the municipality may correct the noncompliance and request a reconsideration from the Department. The request must indicate the action taken by the municipality to correct the noncompliance. Within 30 business days of receiving the request, the Department must determine if the municipality complies with the requirements; if the Department fails to notify the municipality of its determination within 30 business days, the municipality will be granted qualified status. If a municipality is notified that it does not comply with the requirements, the municipality may not issue municipal securities under the bill without the prior written approval of the Department.

The Department may require a rating for a municipal security issued without the Department's approval, if the principal amount of the issue exceeds \$5 million.

The bill states that a determination by the Department that a municipality has been granted qualifying status constitutes an order granting exception from prior approval of that municipality's securities under the Municipal Finance Act.

Prior Approval Requirement. To request prior written approval to issue a municipal security, a municipality must submit an application and supporting documentation to the Department on a form and in a manner prescribed by the Department, which must be certified by the municipality's chief administrative officer. A filing fee equal to .03% of the principal amount of the proposed municipal security, but not less than \$800 or more than \$2,000, as determined by the Department, must accompany each application. If the Department received the required qualifying statement more than six months after the end of the municipality's fiscal year, a late fee of \$100 must accompany the first application filed after that date.

Within 30 business days of receiving an application, the fee, and supporting documentation from a municipality, the Department must determine whether the municipality has met all of the following requirements: has indicated the authority to issue the municipal security requested; is projected to be able to repay the security when due; has filed with the Department information indicating compliance with the requirements of the bill or adequately addressed any noncompliance; and, if required by the Department, has obtained an investment grade rating for the municipal security or has purchased insurance for payment of the principal and interest on it to the holders of the security, or has otherwise enhanced the creditworthiness of the security.

If the Department determines that these requirements have been met, the Department must approve the issuance of the proposed municipal security. If the Department determines that the requirements have not been met, it must issue to the municipality a notice of deficiency that prevents the issuance of the proposed municipal security, stating the specific deficiencies and problems with it. After they have been addressed as determined by the Department, it must approve the issuance of the proposed municipal security.

Prior Approval Transition. Currently, under the Municipal Finance Act, Sections 10 and 11 of Chapter III allow a municipality to issue obligations without the prior approval of the Department if the municipality meets certain conditions; and require the municipality to file certain documents with the Department upon issuing an obligation that does not require prior approval. Under the bill, Sections 10 and 11 will be repealed on April 30, 2002. The bill provides that beginning March 1, 2002 (the effective date of the new Act), and ending April 30, 2002, a municipality planning to issue a municipal security may either seek approval or exception from prior approval from the Department in accordance with Sections 10 and 11; or seek qualified status to issue municipal securities without Department approval, as provided in the bill.

If a municipality seeks qualified status between March 1, 2002, and May 1, 2002, and is determined by the Department to comply with the new qualifying requirements (or if the Department fails to notify the municipality of its determination within 30 business days of

receiving a qualifying statement), the municipality may issue municipal securities without further approval from the Department until 30 business days after the next qualifying statement is due or received by the Department, whichever occurs first. If a municipality is not granted qualified status, or if it does not file a qualifying statement, the municipality must obtain the prior written approval to issue municipal securities until it obtains qualified status.

Under the bill, all Department orders granting exceptions from prior approval of debts or securities will continue in force and effect until the expiration date expressly contained in the orders. The terms of the Municipal Finance Act and the administrative rules of the Municipal Finance Division will apply with respect to any securities issued pursuant to a Department order issued before May 1, 2002.

State Agency Exception. The bill specifies that the State or any authority, agency, fund, commission, board, or department of the State is not required to obtain Department of Treasury approval before issuing securities or to file any qualifying or audit reports under these provisions. Further, a State authority, agency, fund, commission, board, or department that is required to obtain approval or exception from prior approval from the Department under the current Municipal Finance Act must instead file with the Department a statement of intent to issue a security, on a form prescribed by the Department. Within 10 days of receiving that statement, the Department must issue the State entity an order granting exception from prior approval. If the Department fails to comply, the State entity will be considered to have obtained any required approval or exception from prior approval.

Interest Rates/Discounts. Under the bill, municipal securities authorized by law to be issued by a municipality may, notwithstanding the provisions of a charter, bear a rate of interest subject to a maximum rate established by the governing body of the municipality, but the rate may not exceed 18% per year or a per annum rate determined by the Department at the request of the municipality, whichever is higher. In making its determination, the Department must establish a rate that bears a reasonable relationship to 80% of the adjusted prime rate determined by the Department.

The bill further provides that municipal securities may not be sold at a discount exceeding 10% of their principal amount, unless one or more of the following conditions apply, as determined by the Department:

- The sale will result in the more even distribution for the municipality of total debt service on proposed and outstanding municipal securities.
- The sale will result in an interest cost saving when compared with the best available alternative that does not include the sale of a municipal security at a discount exceeding 10% of the principal amount.
- The issuance is based on the availability of specific revenues previously pledged for another purpose and lawfully available for that purpose.
- The municipal security is issued to the State or the Federal government to secure a loan or agreement.

A municipal security issued under one or more of those conditions (other than an issue to the State or Federal government) must be rated investment grade by a nationally recognized rating agency or have insurance for payment of the principal and interest on the security to its holders. Not more than 25% of the total principal amount of any authorized issue of a municipal security must meet the first three qualifications. A municipal security meeting the above requirements that is a refunding security must not have a maturity that exceeds the maturity of the existing municipal security.

Also, notwithstanding the provisions of a charter, a municipal security may bear no interest if sold in accordance with a Federal program by which the holder of the security, as a result of holding it, may declare a credit against a Federal tax.

In addition, a municipal security may bear no interest and appreciate as to principal amount if it meets the requirements specified above for sale at a discount exceeding 10% of the principal. The accreted principal amount of a municipal security must be considered interest and be within the bill's interest rate limitations.

Competitive or Negotiated Sale. The bill permits an authorized municipal security to be sold at a competitive sale or a negotiated sale

as determined in the authorizing resolution. If a municipality determines to sell a municipal security at a negotiated sale, the municipality's governing body must expressly state in the resolution the method and reasons for choosing a negotiated sale instead of a competitive sale.

If a municipality determines to sell a municipal security at a competitive sale, the municipality must publish notice of the sale at least seven days before it, in a publication printed in English and circulated in the State. The municipality must award the security to the bidder whose bid meets all specifications and requirements and results in the lowest interest cost, unless all bids are rejected.

Filing Requirements. The bill prescribes filing requirements that a municipality must fulfill after issuing municipal securities (for both municipalities that obtain qualified status and those that need prior approval); and for a State department, authority, agency, or board after issuing securities. Within 15 business days of completing the issuance of a security, a municipality or a State department, authority, agency, or board must file with the Department copies of various documents, including a copy of the security, the award resolution including detail of the annual interest rate, the legal opinion regarding the legality and tax status of the issue, and other documents specified in the bill. A municipality with qualified status that issues a municipal security also must include a filing fee, equal to .02% of the principal amount of the issue, but not less than \$100 or more than \$1,000 as determined by the Department. (As noted above, a municipality without qualified status must submit a filing fee upon applying for prior approval.) Further, if the Department receives a municipality's qualifying statement more than six months after the end of the municipality's fiscal year, the municipality must include a \$100 late fee with its first filing fee.

The bill specifies that the failure of a municipality or a State department authority, agency, or board to comply with the filing requirements does not invalidate the obligations issued.

#### Municipality Powers

Notwithstanding any ordinance or charter provision to the contrary, the bill allows a

municipality, in determining to issue a municipal security, to do one or more of the following:

- Authorize and enter into transactions, including insurance contracts and agreements for lines of credit, to enhance timely payment of a municipal security.
- Authorize payment of the cost of issuance from the security's proceeds or other funds.
- Authorize principal and interest to be payable from taxes or other revenues of the municipality; proceeds of the municipal security; earnings on proceeds of the security or other funds held for its payment; and/or proceeds of other transactions.
- Authorize an officer of the municipality to perform various specified duties in relation to selling, buying, refunding, and delivering municipal securities.

A municipality may provide that a municipal security additionally secured (as provided above) may be payable on demand or before maturity at the option of the holder, as provided in the authorizing resolution.

A municipality may enter into an interest rate exchange, swap, hedge, or similar agreement, in order to manage its debt service. Such an agreement may not be included within the total debt of the municipality for purposes of statutory or charter debt limitations; and must be payable as a limited tax full faith and credit pledge from the municipality's general fund or, subject to existing contracts, from any available money or revenue sources securing the municipal security.

The governing body of a municipality may provide for a municipal security to be registrable, authenticated, transferred, or exchanged (if mutilated), as provided in the bill.

#### Short-Term Municipal Securities

Tax and Revenue Anticipation. The bill allows a municipality, by resolution and without a vote of the electors, to issue short-term municipal securities in anticipation of and payable from taxes to be collected by the municipality for its next fiscal year or the taxes for a current fiscal year, or both if the taxes are levied in the same calendar year.

If a municipality issues a municipal security in anticipation of the collection of the taxes for the next fiscal year, the authorizing resolution must contain an irrevocable provision for the levy of a tax in that fiscal year for the purpose for which the municipal security is to be made, and for repayment of the security from the receipt of taxes. The municipality may issue the short-term municipal security to pay for "operating expenditures", which means any of the following:

- Necessary operating expenditures of the municipality that could not reasonably have been foreseen and adequately provided for in the tax levy for the current fiscal year.
- Payment of an expenditure in the current fiscal year that cannot be funded because of a delay in or failure of receipt of budgeted revenue.
- Payment of budgeted expenditures in the current fiscal year that precede budgeted revenues.

The amount of the municipal securities issued to pay operating expenditures may not exceed 50% of the operating tax levy for the current fiscal year, or, if the operating tax levy for the succeeding fiscal year is determined, then 50% of the levy for that fiscal year.

A municipality may issue short-term tax anticipation municipal securities to pay for one or more capital improvements that can be legally and properly provided for in its budget for the fiscal year in which the municipality issues the security. The principal amount issued for this purpose may not exceed the sum set forth in the authorizing resolution to be levied for the improvement.

A municipality may issue short-term municipal securities in anticipation of the collection of taxes for a current fiscal year for the payment of operating expenditures, debt services charges, and/or capital improvements. The bill prescribes the maximum amount of the municipal securities that may be issued for the various purposes, expressed as a percentage of the taxes to be levied.

The bill allows a municipality to issue short-term municipal securities in anticipation of tax collections for the current fiscal year for the payment of one or more capital improvements that are legally and properly provided for in the tax levy of the current fiscal year. The principal amount of the municipal securities

issued for this purpose may not exceed the anticipated collection, based on the delinquency in collections of the levy of the preceding fiscal year, of the sum included in the tax levy for that purpose and remaining unpaid at the time the authorizing resolution is passed.

The bill provides that the principal amount outstanding of any short-term municipal security issued in anticipation of the collection of taxes for the succeeding fiscal year must be deducted from the total principal amount of any short-term municipal security issued in anticipation of the collection of taxes for a current fiscal year.

A municipality may, by resolution of its governing body and without a vote of the electors, issue short-term municipal securities in anticipation of revenue sharing payments under the State Revenue Sharing Act, for its next fiscal year or for a current fiscal year, as provided in the bill. The proceeds of the issue may be used only for the payment of operating expenditures. The principal amount of the issue may not exceed 50% of the total payments received in the municipality's preceding fiscal year, as certified by the Department.

The bill requires a municipality that issues a short-term municipal security in anticipation of tax collections or revenue sharing payments to set aside, in a special fund, a percentage of the taxes or payments to be used for payment of principal and interest on the issue. Money in a special fund must be deposited in a bank account separate from any other money of the municipality, and must be used only for the purpose of retiring the issue.

Other Revenue Anticipation. The bill authorizes a municipality, by resolution of its governing body and without a vote of its electors, to issue a short-term municipal security in anticipation of the proceeds of a long-term municipal security that it proposes to issue, or that will be issued in its behalf. The municipality must pledge for the payment of the principal, interest, and redemption premiums, if any, on the short-term municipal security from one or more of the sources and under the terms specified in the bill. The principal amount of the short-term municipal security may not exceed 50% of the principal amount of the proposed long-term municipal security. The municipality must declare the necessity of the short-term municipal security

and state its purpose, its principal amount, and an estimated principal payment schedule for and an estimated or maximum average annual interest rate on the short-term municipal security. The proceeds of the short-term municipal security may be used only for the purpose that the proceeds of the long-term municipal security may be applied, the costs of issuing the short-term municipal security, and payment of its principal and interest.

In addition, by resolution of its governing body and without a vote of its electors, a municipality may issue a short-term municipal security in anticipation of the receipt of grants from the State, the United States, or any agency or instrumentality of either. The municipality must pledge for the payment of the principal, interest, and redemption premiums, if any, on that municipal security from one or more of the sources and on the terms provided in the bill. The principal amount of the security may not exceed 50% of the amount remaining to be received by the municipality that is not still subject to an appropriation from the granting agency under a written contract that has been accepted by resolution of the municipality. The bill also specifies maturity requirements and interest rates for the issue. The proceeds of the municipal security may be used only for the purpose that the proceeds of the grant may be applied, the costs of issuance of the municipal security, and the payment of its principal and interest.

Interest. The bill provides that a short-term municipal security must bear no interest or interest subject to the bill's general provisions. The interest must be payable no later than the estimated time of collection of an amount sufficient for its payment out of the taxes or revenue pledged for the municipal security, as determined by the governing body of the municipality.

#### Long-Term Municipal Securities

Maturity and Redemption. Except as otherwise provided in law or in Part VI (Refunding) of the bill, municipal securities issued by a municipality may not mature later than the estimated period of usefulness of the property or improvement for which they are issued. In addition, municipal securities may not mature later than the following:



- For municipal securities issued in anticipation of special assessments, two years from the time fixed by law for the payment of the last installment of the assessments from which the municipal securities are payable.
- For municipal securities issued to meet an emergency for relief from fire, flood, or other calamity, five years after the date of issuance.
- For municipal securities issued to pay judgments against the municipality, except judgments in condemnation proceedings, and municipal securities issued to purchase personal property, other than material for permanent construction, machinery for public utilities, or original furnishings and equipment of new buildings, 10 years after issuance.
- For all other municipal securities, 30 years after issuance.

The bill provides that single issue long-term municipal securities may mature serially and/or be subject to mandatory redemption. The bill also prescribes maturity and redemption time limits.

A municipal security issued by a school district that is sold in accordance with a Federal program in which the holder of the security, as a result of the holding, may declare a credit against Federal tax, is exempt from the required maturity and redemption dates if the school district deposits certain payments in trust, as provided in the bill.

By resolution, the governing body of a municipality may permit the municipality to purchase municipal securities in the open market, at a price not greater than the payment on the next redemption date, in order to satisfy all or part of the next scheduled mandatory redemption.

A municipality's governing body also may provide that some or all of the principal amounts maturing in any year may be redeemed at the option of the municipality at the times, on the terms and conditions, and at the price provided by resolution, although a municipality may not agree to pay a premium exceeding 3% of the principal amount being redeemed.

Special Assessment Requirements. The total amount of long-term municipal securities secured by special assessments and pledging

the limited tax full faith and credit of the municipality may at no time by reason of future issues, other than issues of refunding securities, exceed 12% of the assessed value of the taxable property in a municipality. A municipality may not issue municipal securities secured by special assessments in any calendar year in an amount greater than 3% of the assessed value of the municipality, unless authorized by majority vote of the electors or by a larger vote as provided by statute or charter.

A municipality that issues a municipal security in anticipation of special assessments may charge a rate of interest on the unpaid balance of the special assessments in excess of a charter or ordinance limit on the issue, but not in excess of 1% above the average rate of interest borne by the municipal security.

Interest. A municipality may pay interest that accrues on a long-term municipal security during the first three years after the date of issuance from the proceeds of the sale. In addition, a municipality may establish a reserve fund (in an amount not exceeding 15% of the principal amount of the municipal security) from the proceeds of the sale of the municipal security, which must be held solely for the payment of principal and interest on the security.

Drains/Water/Sewer. The bill provides that any county, township, city, or village, by resolution of its governing body and without a vote of its electors, may issue long-term municipal securities for the purpose of funding any part or all of a county or intercounty drain special assessment made against the local unit under the Drain Code. The bill specifies the requirements that the municipal securities must meet.

A municipality may deliver municipal securities to the State or the Federal government for the purpose of defraying all or part of the cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing any water supply or sewage disposal system or public building or other public improvement.

Capital Improvements. A county, city, village, or township may by resolution of its governing body and without a vote of its electors, issue a long-term municipal security to pay the cost of any capital improvement items, provided

that the amount of taxes necessary to pay the principal and interest on that security, together with other taxes levied for the same year, does not exceed the limit authorized by law. Municipal securities issued under these provisions may not exceed 5% of the State equalized valuation of the local unit's assessed property. The bill requires a local unit to publish a notice of intent to issue, before issuing the municipal securities, and prescribes the conditions under which a local unit's electors may request a referendum on the issue.

Obligations for Insurance. The bill allows a municipality by resolution or intergovernmental contract, without a vote of its electors, to issue long-term municipal securities secured by a limited tax full faith and credit pledge for the following purposes:

- Paying premiums and other charges for coverages provided by an insurance pool established under Public Act 35 of 1951, or evidencing fixed payment securities or securities to make payments under specified contingencies pursuant to an intergovernmental self-insurance pool contract approved by the State Treasurer under that Act. (Public Act 35 of 1951 allows two or more municipal corporations to form a group self-insurance pool to provide mutual risk for various types of insurance.)
- Establishing funds, reserves, or accounts in amounts determined by the municipality to defray losses for which insurance coverage could be provided by an insurer under the Insurance Code, but for which the municipality has determined to self-insure.

These municipal securities may not be considered debt of the municipality for statutory, charter, or constitutional debt limitations.

The municipal securities may not be issued for more than 30 years, and must meet further requirements specified in the bill.

#### Tax Levies/Debt Retirement

The bill provides that if a municipality has municipal securities outstanding, or with the approval of its electors has authorized the issuance of municipal securities to be paid from collections of its next tax levy, it must include all of the following in the amount of taxes levied each year:

- An amount such that the estimated collections will be sufficient to pay promptly, when due, the interest on all municipal securities and the portion of the principal falling due before the time of the following year's tax collection.
- An amount, if there are outstanding mandatory redemption refunding securities, sufficient to provide the required deposit into the sinking fund for that purpose before the time of the following year's tax collection.
- An amount, if there are outstanding mandatory redemption municipal securities other than certain refunding securities, that if deposited annually into a sinking fund will, with the existing sinking fund pertaining to the municipal securities and the increment of them, be sufficient to pay the municipal securities at maturity.

The bill states that these provisions do not limit the amount required to be levied in a year for the purposes prescribed above, by the terms of an ordinance or resolution authorizing the issuance of the municipal securities.

If the municipal securities were authorized or issued before December 23, 1978, or were approved by the electors of the municipality, it must levy the full amount of taxes required by these provisions for the payment of the securities without limitation as to rate or amount and in addition to other taxes that the municipality may be authorized to levy. If the municipal securities were authorized or issued after December 22, 1978, or were not approved by the electors of the municipality, it must set aside each year from the levy and collection of ad valorem taxes as required under the bill as a first budget obligation for the payment of the municipal securities. The ad valorem taxes, however, are subject to applicable charter, statutory, or constitutional rate limitations.

If there is surplus money on hand for the payment of principal or interest at the time an annual tax levy is made, and the authorizing resolution does not provide for the disposition of that money, the annual levy must be adjusted to reflect available funds.

Money remaining in a debt retirement fund from the levy of a tax after the retirement of all municipal securities payable from that fund must first be used to pay other outstanding unlimited tax full faith and credit municipal

securities of the municipality, next be used to pay any other outstanding limited tax full faith and credit municipal securities, and finally be deposited in the municipality's general fund.

Debt retirement funds must be accounted for separately and used only to retire the municipality's municipal securities for which the funds were created, with the following exceptions: 1) A common debt retirement fund maintained by a school district under Section 1223 of the Revised School Code (which authorizes a school board to invest debt retirement funds under certain circumstances) does not have to be accounted for separately; and 2) money remaining in a debt retirement fund from the levy of a tax after all municipal securities are retired does not have to be used for debt retirement. When any municipality completes the retirement of municipal securities, or accumulates sufficient funds in the debt retirement fund for the retirement of the securities, the governing body of the municipality must certify to the county treasurer that the securities are retired, or that the debt retirement fund is sufficient to retire them.

Any municipality issuing a mandatory redemption refunding security under Part VI of the bill (Refunding) must provide a sinking fund or funds for the retirement of the refunding security, and deposit in each sinking fund annually an amount sufficient to pay the principal of the refunding security at or before maturity. All sinking fund money for the retirement of a refunding security must be accounted for separately and be used only for the payment or purchase of the refunding security.

### Refunding

The bill provides that a municipality may, by resolution or ordinance and without a vote of the electors, refund all or any part of its outstanding securities by issuing refunding securities. A refunding security may be issued in a principal amount greater than the principal amount of the outstanding security to be refunded, as necessary to effect the refunding under a refunding plan. To the extent provided by the proceedings authorizing the refunding security, principal, interest, and redemption premiums on the refunding security must be secured by and payable from any or all of the following:

- Taxes or special assessments pledged for payment of the municipal security being refunded.
- The proceeds of the refunding security.
- The reserve, if any, established for the payment of the principal of, or interest and redemption premiums on, the refunding security or the outstanding security to be refunded.
- The proceeds of any insurance, letter of credit, or line of credit acquired as security for the refunding security.
- The proceeds of any refunding securities issued to refund the refunding security.
- Revenues pledged for the outstanding security being refunded.
- Investment earnings or profits on any of the sources described above.

A municipality may use the proceeds of a refunding security to pay interest accrued, or to accrue, to the earliest or any subsequent date of redemption, purchase, or maturity of the outstanding security to be refunded, a redemption premium (if any), and any commission, service fee, and other expense necessary to be paid in connection with the outstanding security. A municipality may use the proceeds of a refunding security for other costs specified in the bill, including costs to issue the refunding security and other necessary incidental expenses. Further, the proceeds of a refunding security and other available money may be applied to payment of the principal, interest, or redemption premiums on the refunded outstanding securities at maturity or on any prior redemption date; or may be deposited in trust for use to purchase and deposit various U.S. obligations and other obligations guaranteed by the U.S. government, as specified in the bill.

The bill prohibits a municipality from refunding its outstanding securities by issuing a refunding security unless the net present value of the principal and interest to be paid on the refunding security, including the cost of issuance, is less than the net present value of the principal and interest to be paid on the security being refunded, as calculated using a method approved by the Department. (This prohibition does not apply to securities delivered to the State or Federal government to defray costs for water or sewer systems, public buildings, or other public improvement.) A municipality may obtain an exception from this restriction if the Department finds that a

reasonable basis for the exception exists; that is, the refunding is required by a State or Federal agency; is a short-term municipal security issued in anticipation of the proceeds of a long-term municipal security; is necessary to avoid a potential default on an outstanding security; or is necessary to reduce or eliminate requirements of ordinances or covenants applicable to the existing outstanding security.

Any outstanding security of a municipality that has been assumed in part by another municipality may be refunded by the municipalities as to their respective liabilities.

The bill states that it may not be construed to prohibit a municipality from refunding any of its outstanding securities even though some other municipality may be obligated to contribute to the payment of those securities. Refunding authorized under this provision does not relieve any other municipality from a pledge to make a contribution to the payment of an outstanding security.

The debt from refunding securities and the tax levies used to repay them may not be deemed to be within any statutory or charter limitation of tax rate or of outstanding debt limit, but must be deemed authorized in addition to any statutory or charter limitation of tax rate or outstanding debt limit.

Refunding securities issued to refund municipal securities issued under the Drain Code must be of the same character as the outstanding municipal securities refunded, and must be construed as a continuation of them. Refunding securities issued to refund outstanding municipal securities secured by an unlimited tax pledge also must be secured by an unlimited tax pledge. Refunding securities for outstanding securities issued under the Revenue Bond Act must be secured by the same pledge as the outstanding securities being refunded. All other refunding securities must be secured by a limited tax full faith and credit pledge of the issuing municipality.

The bill specifies that refunding securities are not subject to certain maturity, redemption, and premium requirements the bill places on long-term municipal securities.

MCL 141.2101-141.2821

## **ARGUMENTS**

### **Supporting Argument**

The bill recodifies the current 58-year-old Act, retaining much of its structure while removing obsolete and unnecessary provisions and updating the Act's language to match current debt issuance practices. Many have said that the present Act is close to unreadable, and causes much confusion. The bill corrects these problems, clearly stating the powers and duties of the Department and municipalities that wish to issue municipal securities, thus easing the burden of compliance for municipalities in many ways. In particular, many local units of government have long complained that the Department's approval process for issuance of obligations is cumbersome and needlessly time consuming. By allowing a municipality to issue municipal securities without further State approval once the Department determines the municipality to be in compliance with prescribed qualifying requirements, the bill will make borrowing easier for the municipality while maintaining proper oversight by the State. Further, because the Department's involvement in approving proposed issues by municipalities is lessened, the Department will be better able to focus its efforts on municipalities that do not achieve qualified status and perhaps need greater attention when proposing to issue municipal securities.

### **Opposing Argument**

Under the current Act, in general, a municipality may sell obligations at a private (negotiated) sale if the obligations are less than \$100,000 or more than \$12 million. Obligations offered for amounts between \$100,000 and \$12 million must be sold at a public (competitive bid) sale. The bill, however, allows a negotiated sale under any circumstances. While there may be good reasons for negotiated sales, competitive sales generally produce lower interest rates, and offer less opportunity for, or appearance of, backroom deals that benefit the parties involved in the sale rather than the taxpayer. Existing provisions that require competitive sales should be retained.

**Response:** There does not appear to be any rationale for the current requirement that issues between \$100,000 and \$12 million be sold at competitive sale, while other issues may be negotiated. Further, there are several exceptions to the requirement. If a municipality has received a bid or bids at

public sale and rejects them, the obligations may be sold by negotiated sale; if the municipality receives no bids at a public offering, it may seek a negotiated sale; it may sell obligations to Federal or State agencies by negotiated sale; and, finally, a municipality may seek a waiver from the public sale requirement from the Department. In addition, nothing in the bill prevents a municipality from offering its issues at public sale; instead, it allows a municipality greater flexibility to hold either a public or negotiated sale.

Legislative Analyst: G. Towne

### **FISCAL IMPACT**

State Impact: Under the bill, State revenues will be altered by an unknown amount because of changes in filing requirements and filing fees. Under current law, the Department of Treasury receives approximately \$250,000 per year in fees from local units to review and approve the issuance of debt or obligations. The current fee structure is being replaced with a new fee structure. Under the bill, local units will be required annually to submit an audit report and a qualifying statement to be able to issue debt or obligations without further approval from the Department of Treasury. Because the degree to which local units will alter debt issuance under the bill is unknown, State revenues might change due to altered financial activity even if the fee revenue under the bill is comparable to existing fee revenue.

All local units will be required to remit a filing fee for debt issued or proposed to be issued. For a unit granted qualified status, within 15 days of issuing a security the local unit must pay a filing fee of 0.02% of the debt, but not less than \$100 or more than \$1,000. If the local unit filed the annually required reports late, then a \$100 late fee is required with this filing. Those local units not granted qualified status will have to obtain prior approval before each bond issuance by submitting an application and supporting documentation and paying a filing fee of 0.03% of the debt proposed to be issued, but not less than \$800 or more than \$2,000. A \$100 late filing fee also will be imposed, if applicable. How the collection of these fees will compare with current fees is indeterminate.

Local Impact: Since under certain conditions local units will no longer be required to seek prior approval from the State for sales of bonds and other debt obligations, the timing of fees related to bond issuance will be altered. Other expenses, such as costs of obtaining a rating or insurance, may differ from current law. As with State revenues, the bill's effect on local units' total fees and other expenses is unknown. Other provisions of the bill allow local units to issue debt more easily or increase the length of maturity for certain construction-related debt obligations. If local units take advantage of these provisions, then annual debt service payments by local units might increase or decrease. To what extent local units will increase debt issuance under the bill is unknown, although any impact is expected to be minimal because the bill makes no changes that substantively alter the incentives for issuing debt or alter the amount of debt issued. The bill's only significant change from current law exhibiting a fiscal impact is that certain home rule cities will no longer be able to issue certain debt relating to school district finances and anticipated collections of delinquent property taxes. The fiscal impact of this change is unknown, since it affects few jurisdictions, minimally alters the purposes for which a home rule city may issue debt, and primarily affects only what a local unit may pledge to repay such debt.

Fiscal Analyst: D. Zin  
J. Runnels

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