

Act No. 382
Public Acts of 2002
Approved by the Governor
May 24, 2002
Filed with the Secretary of State
May 24, 2002
EFFECTIVE DATE: May 24, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senator Bullard

ENROLLED SENATE BILL No. 1177

AN ACT to amend 1964 PA 183, entitled "An act creating the state building authority with power to acquire, construct, furnish, equip, own, improve, enlarge, operate, mortgage, and maintain facilities for the use of the state or any of its agencies; to act as a developer or co-owner of facilities as a condominium project for the use of the state or any of its agencies; to authorize the execution of leases pertaining to those facilities by the building authority with the state or any of its agencies; to authorize the payment of true rentals by the state; to provide for the issuance of revenue obligations by the building authority to be paid from the true rentals to be paid by the state and other resources and security provided for and pledged by the building authority; to authorize the creation of funds; to authorize the conveyance of lands by the state or any of its agencies for the purposes authorized in this act; to authorize the appointment of a trustee for bondholders; to permit remedies for the benefit of parties in interest; to provide for other powers and duties of the authority; and to provide for other matters in relation to the authority and its obligations," by amending section 8 (MCL 830.418), as amended by 1997 PA 127.

The People of the State of Michigan enact:

Sec. 8. (1) By resolution or resolutions of its board, the building authority may provide for the issuance of revenue obligations, which may include revenue bonds, revenue notes, or other evidences of revenue indebtedness, and refunding revenue bonds or notes, or other refunding evidences of indebtedness, the obligations for which shall not become a general obligation of this state or a charge against this state, but all revenue obligations and the interest on the revenue obligations and the call premiums for the revenue obligations shall be payable solely from true rental, except to the extent paid from the proceeds of sale of revenue obligations and any additional security provided for and pledged, or from other funds as provided in this act, and each revenue obligation shall have such a statement printed on the face of the revenue obligation. If the resolution of the building authority provides for interest coupons to be attached to a revenue obligation, each interest coupon shall have a statement printed on the coupon that the coupon is not a general obligation of this state or the building authority but is payable solely from certain revenues as specified in the revenue obligation. Revenue obligations may be issued for the purpose of paying part or all of the costs of the facilities or for the purpose of refunding or advance refunding, in whole or in part, outstanding revenue obligations

issued pursuant to this act whether the obligations to be refunded or advance refunded have matured or are redeemable or shall mature or become redeemable after being refunded. The cost of the facilities may include an allowance for legal, engineering, architectural, and consulting services; interest on revenue obligations becoming due before the collection of the first true rental available for the payment of those revenue obligations; a reserve for the payment of principal, interest, and redemption premiums on the revenue obligations of the authority; and other necessary incidental expenses including, but not limited to, placement fees; fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, or commitments to purchase obligations issued pursuant to this act; fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure; or any other fees or charges for any other security provided to assure timely payment of the obligations.

(2) The proceeds of a revenue obligation issue may be used to pay the cost of facilities that are subject to more than 1 lease if either subdivision (a) or (b) is true:

(a) Both of the following are true:

(i) The resolution authorizing the revenue obligations provides for the use of a specific allocable portion of the revenue obligation proceeds to pay the estimated cost of each of the facilities, together with the allocable portion of the reserves, discount, interest on the obligations becoming due before the first true rental available for payment of the obligations, and obligation issuance expense with respect to each facility.

(ii) The true rental and other funds of the building authority and other security as provided in this act available for the revenue obligations including other funds as provided in this act are sufficient to pay the allocable portion of the revenue obligation issue for which the true rental and other funds and security are pledged.

(b) The obligation is part of an interim financing pool described in subsection (20).

(3) Revenue obligations that refund outstanding obligations may include the payment of interest accrued, or to accrue, to the earliest or any subsequent date of redemption, purchase, or maturity of the revenue obligations to be refunded, redemption premium, if any, and any commission, service fee, and other expense necessary to be paid in connection with revenue obligations that refund outstanding obligations. Proceeds of refunding revenue obligations may also be used to pay part of the cost of issuance of the refunding revenue obligations, interest on the refunding revenue obligations, a reserve for the payment of principal, interest, and redemption premiums on the refunding revenue obligations, and other necessary incidental expenses including, but not limited to, placement fees; fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, or commitments to purchase obligations issued pursuant to this act; fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure; or any other fees or charges for any other security provided to assure timely payment of the obligations. The building authority may also provide for the withdrawal of any funds from a reserve created for the payment of principal, interest, and redemption premiums on the refunded obligations and for the deposit of those funds in the reserve for the payment of principal, interest, and redemption premiums on the refunding obligations or may provide for use of that reserve money to pay principal, interest, and redemption premiums on the obligations to be refunded. Obligations issued to refund outstanding obligations may be issued in a principal amount greater than, the same as, or less than the principal amount of the obligations to be refunded, and subject to the maximum rate of interest provided in subsection (8), may bear interest rates that are higher than, the same as, or lower than the interest rates of the obligations to be refunded. If obligations are issued to refund outstanding obligations of the authority, a lease whose rental has been pledged for repayment of the obligations to be refunded shall not be terminated solely by reason of the payment or provision for payment of the obligations to be refunded, and the lease and all of the rights and obligations under the lease remain in full force and effect in accordance with its terms.

(4) Except as otherwise provided in this section, the building authority shall use income or profit derived from the investment of money in a fund or account of the building authority, including the proceeds of sale of the revenue obligations, only for the purpose of paying principal, interest, and redemption premiums on the revenue obligations of the building authority, or for any purpose for which the proceeds of the revenue obligations may be used under this act, as determined by the resolution of the board authorizing the issuance of revenue obligations.

(5) Within limits considered appropriate and established by the board, the board may authorize by resolution a member of the board or the person appointed by the building authority as its chief operating officer or chief staff person, if the authorization limits or prescribes the maximum interest rates, minimum price, maximum principal amount, and the latest maturity date of the obligations, to do any of the following:

(a) Determine interest rates or methods for determining interest rates for, maturities of, principal amounts of, denominations of, dates of issuance of, interest payment dates for, redemption rights and the terms under which redemption rights may be waived, transferred, or sold, prepayment rights with respect to, the purchase price of, and the type of funds for settlement of obligations.

(b) Determine which, if any, letter of credit, line of credit, standby note or bond purchase agreement, bond insurance, or other agreement providing security or liquidity for obligations of the building authority, approved by the board, provides a cost savings and should be entered into in connection with the issuance of the obligations of the building authority.

(c) Take any other action on behalf of the board within limitations established by the board as the board considers necessary in connection with the issuance of obligations of the building authority.

(6) To the extent provided by resolution of the board, principal of, and interest and redemption premiums on, revenue obligations issued for the purpose of paying all or part of the cost of the facilities shall be secured by and payable only from any or all of the following sources:

(a) The true rental derived from the facilities constructed or acquired with the proceeds of the revenue obligations.

(b) The proceeds of revenue obligations.

(c) The reserve, if any, established for the payment of principal of, or interest or redemption premiums on, the obligations.

(d) The proceeds of insurance, a letter of credit, or a line of credit acquired as security for the revenue obligations.

(e) The proceeds of obligations issued to refund the revenue obligations.

(f) The proceeds of the foreclosure or enforcement of a mortgage, security interest, or deed of trust on the facilities financed by the revenue obligations granted by the authority as security for the revenue obligations.

(g) Other funds of the authority not previously pledged for other obligations of the authority, including funds of the authority derived from rentals and other revenues, investment income or profit, or funds or accounts relating to other facilities, and payments received pursuant to an agreement to manage payment, revenue, or interest rate exposure as provided in subsection (19).

(h) Investment earnings and profits on any or all of the sources described in subdivisions (a) to (g).

(7) To the extent provided by resolution of the board, principal of, and interest and redemption premiums on, refunding revenue obligations shall be secured by and payable only from any or all of the following sources:

(a) The true rental derived from the facilities constructed or acquired with the proceeds of the obligations being refunded.

(b) The proceeds of the refunding obligations.

(c) The reserve, if any, established for the payment of the principal of, or interest and redemption premiums on, the refunding obligations or the obligations to be refunded.

(d) The proceeds of insurance, a letter of credit, or a line of credit acquired as security for the revenue obligations.

(e) The proceeds of obligations issued to refund the refunding obligations.

(f) The proceeds of the foreclosure or enforcement of any mortgage, security interest, or deed of trust on the facilities financed from the proceeds of the obligations being refunded, granted by the authority as security for the refunding obligations.

(g) Other funds of the authority not previously pledged for other obligations of the authority, including other funds of the authority derived from rentals and other revenues, investment income or profit, or funds or accounts relating to other facilities, and payments received pursuant to an agreement to manage payment, revenue, or interest rate exposure as provided in subsection (19).

(h) Investment earnings or profits on any of the sources described in subdivisions (a) to (g).

(8) Obligations issued under this act may be either serial obligations or term obligations, or any combination of serial or term obligations. The obligations shall mature not more than 40 years from their date, and in any event not more than 1 year from the due date of the last true rental pledged for the payment of the obligations, and may bear interest at fixed or variable interest rates, or may be without stated interest, but the net interest rate or rates of interest, taking into account any discount on the sale of the obligations, shall not exceed a rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The obligations may be sold at a discount.

(9) Except as otherwise provided in this subsection, in the resolution or resolutions authorizing the issuance of the obligations, the board shall determine the principal amount of the obligations to be issued, the registration provisions, the date of issuance, the obligation numbers, the obligation denominations, the obligation designations, the obligation maturities, the interest payment dates, the paying agent or paying agents or the method of selection of the agent or agents, the rights of prior redemption of the obligations, and the terms under which redemption rights may be waived, transferred, or sold, the rights of the holders to require prepayment of the principal of or interest on the obligations, the maximum rate of interest, the method of execution of the obligations, and such other provisions respecting the obligations, the rights of the holders of the obligations, the security for the obligations, and the procedures for disbursement of the obligation proceeds and for the investment of the proceeds of obligations and money for the payment of obligations. Rather than making the determinations required by this subsection, the board may authorize a person identified in subsection (5) to make the determinations and take the actions authorized under subsection (5).

(10) The board in the resolution or resolutions authorizing the issuance of obligations may provide for the assignment of the true rental to be paid by the state under the lease or leases to 1 of the paying agents for the obligations or to a trustee, as provided in this act, in which case the state shall pay the rental to the paying agent or

trustee. For the purposes and within the limitations set forth in this act, the board may by resolution covenant to issue or cause to be issued, or use its best efforts to issue or cause to be issued, refunding revenue obligations to refund obligations issued under this act.

(11) The board in the resolution, or resolutions, authorizing the obligations may provide for the terms and conditions upon which the holders of the obligations, or a portion of the obligations or a trustee for the obligations, is entitled to the appointment of a receiver. The receiver may enter and take possession of the facility, may lease and maintain the facility, may prescribe rentals and collect, receive, and apply income and revenues thereafter arising from the facility in the same manner and to the same extent that the authority is so authorized. The resolution or resolutions may provide for the appointment of a trustee for the holders of the obligations, may give to the trustee the appropriate rights, duties, remedies, and powers, with or without the execution of a deed of trust or mortgage, necessary and appropriate to secure the obligations, and may provide that the principal of and interest on any obligations issued under this act shall be secured by a mortgage, security interest, or deed of trust covering the facility, which mortgage, security interest, or deed of trust may contain the covenants, agreements, and remedies as will properly safeguard the obligations as may be provided for in the resolution or resolutions authorizing the obligations, including the right to sell the facility upon foreclosure sale, not inconsistent with this act.

(12) All obligations and the interest coupons, if any, attached to the obligations are declared to be fully negotiable and to have all of the qualities incident to negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, subject only to the provisions for registration of the obligations that may appear on the obligations. The obligations and interest on the obligations are exempt from all taxation by this state or any of its political subdivisions.

(13) The obligations may be sold at private or at public sale under the procedures and subject to the conditions prescribed by resolution of the board.

(14) The building authority may issue additional obligations of equal standing with respect to the pledge of the true rentals and additional security provided pursuant to this act with previously issued obligations of the building authority issued to acquire or construct a facility or facilities, or to refund the obligations, for the purpose of completing, or making additions, improvements, or replacements to, the facility or facilities for which the previous obligations of the authority were issued or to refund all or part of obligations previously issued for such a facility, under the terms and conditions provided in the resolution authorizing the previous issue of obligations.

(15) The authority shall not have obligations outstanding at any 1 time for any of its corporate purposes in a principal amount totaling more than \$2,700,000,000.00, which limitations shall not include principal appreciation as provided in subsection (17) or obligations or portions of obligations used to pay for any of the following:

- (a) Amounts set aside for payment of interest becoming due before the collection of the first true rental available.
- (b) Amounts set aside for a reserve for payment of principal, interest, and redemption premiums.
- (c) Costs of issuance of the obligations and the discount, if any, on sale.

(d) The sums expected to be set aside for the purposes provided in this subsection for any obligations authorized by the authority but not sold. The amount set aside or expected to be set aside for the purposes provided in this subsection shall be conclusively determined by a certificate setting forth the amounts executed by the executive director of the building authority. In addition, there shall be excluded from the limitation obligations issued to refund prior obligations if those prior obligations will not be retired within 90 days after the date of issuance of the refunding obligations. If an obligation is issued to retire a prior obligation within 90 days after the date of issuance of the refunding obligation, the obligation is counted against the limitation when the refunded obligation is retired.

(16) The authority may apply and pledge, if not already pledged, all or any unpledged part of the true rental and other revenues of a facility; income and profit from the investment of money pertaining to a facility; and money in a fund or account of the authority pertaining to a facility to pay the principal, interest, and redemption premiums on revenue obligations of the authority other than those to which the true rental and other revenues, investment income, or profit or funds or accounts pertain; to pay amounts due under an agreement to manage payment, revenue, or interest rate exposure regardless of the obligations or investments to which the agreement relates; or to pay part or all of the cost of additional facilities to be acquired by the authority for the use of the state. The authority may establish a separate fund into which the rental and other revenues, investment income or profit, or money of such a fund or account shall be deposited to be used to pay principal, interest, and redemption premiums on outstanding obligations of the authority or to acquire facilities for the use of this state. The authority shall not acquire a facility unless the acquisition is approved by the state administrative board and by a concurrent resolution of the legislature approved by a majority of the members elected to and serving in each house. The authority may pledge any or all of the foregoing to the payment of revenue obligations of the authority other than those to which they pertain. If the true rental and other revenues, investment income or profit, or the money in funds or accounts to be applied as specified in this subsection pertain to a facility leased to the state and an institution of higher education pursuant to a lease executed and delivered before January 1, 1983, no application or pledge thereof may be made unless approved by the institution of higher education.

(17) If the authority issues an obligation that appreciates in principal amount, the amount of principal appreciation each year on that obligation, after the date of original issuance, shall not be considered to be principal indebtedness for the purposes of the limitation in subsection (15) or any other limitation. The appreciation of principal after the date of original issue shall be considered interest and shall be within the interest rate limitations set forth in this act.

(18) Of the \$2,700,000,000.00 authorized under subsection (15), priority shall be determined by the joint capital outlay committee.

(19) In connection with an obligation issued previously or to be issued under this act or an investment made previously or to be made, the board may by resolution authorize and approve the execution and delivery of an agreement to manage payment, revenue, or interest rate exposure. The agreement may include, but is not limited to, an interest rate exchange agreement, an agreement providing for payment or receipt of money based on levels of or changes in interest rates, an agreement to exchange cash flows or series of payments, or an agreement providing for or incorporating interest rate caps, collars, floors, or locks. Subject to a prior pledge or lien created under this act, a payment to be made by the building authority under an agreement described in this subsection is payable, together with other obligations of the building authority, from those sources described in subsections (6) and (7), all with the parity or priority and upon the conditions set forth in the board's resolution. An agreement entered into under this subsection is not a general obligation of this state or the building authority, and the agreement does not count against the limitation on outstanding obligations contained in subsection (15).

(20) The building authority may authorize by resolution a pool of obligations to meet interim financing needs. A pool may be issued in 1 or more series, may relate to 1 or more projects, and is subject to all of the following:

(a) The board's resolution approving the pool shall state at least all of the following:

(i) The name or designation of the pool to distinguish it from any other pool issued under this subsection.

(ii) The latest date by which an obligation issued under the pool must mature, which shall not be later than 5 years after the date on which the pool is established. The duration of the pool shall be the time from the date on which the pool is established to the latest possible maturity date of obligations issued pursuant to the pool, or sooner as provided by resolution.

(iii) The maximum par amount of obligations that may be outstanding at any time during the duration of the pool. The resolution may state the maximum par amount of obligations that may be issued pursuant to the pool.

(iv) Other terms of the obligations as provided in subsection (8) or the limits within which the chief operating officer, chief staff person, or member of the board shall determine those terms as provided in subsection (5).

(v) The security for obligations issued pursuant to the pool.

(vi) Other provisions, not inconsistent with the terms of this act, that the board determines to be necessary or appropriate to the pool.

(b) Proceeds of obligations issued as part of a pool established under this subsection may be used for any of the purposes for which revenue obligations of the building authority may be used as described in subsection (1). However, an obligation shall not be issued with respect to a facility unless all of the following are true:

(i) The board approves the financing of the facility pursuant to the pool, which approval may be made at the same time as or after the establishment of the pool.

(ii) The board approves the proposed form of lease for the facility, which approval may be made prior to, at the same time as, or after the establishment of the pool.

(iii) The state administrative board, an institution of higher education, if applicable, and the legislature have approved the form of the lease as required by section 7, which approval may be made prior to, at the same time as, or after the establishment of the pool.

(iv) The aggregate amounts of obligations issued and outstanding with respect to a facility under a pool, together with other obligations that may have been issued and are outstanding with respect to the facility under this act do not exceed the cost of the facility, including allowable interest costs, as approved by the state administrative board, an institution of higher education, if applicable, and the legislature.

(v) On or before the issuance of obligations the proceeds of which are to finance the acquisition, construction, renovation, or rehabilitation of the facility, the building authority and the state, and, if applicable, an institution of higher education, enter into the lease or an agreement to construct or acquire the facility, which lease or agreement sets forth the terms and conditions under which the building authority will finance the construction or acquisition of the facility for lease to the state or to the state and any applicable institution of higher education.

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

(22) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.