

Act No. 541  
Public Acts of 2002  
Approved by the Governor  
July 25, 2002  
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**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Senator Emmons

# **ENROLLED SENATE BILL No. 1302**

AN ACT to amend 2001 PA 34, entitled "An act relative to the borrowing of money and the issuance of certain debt and securities; to provide for tax levies and sinking funds; to prescribe powers and duties of certain departments, state agencies, officials, and employees; to impose certain duties, requirements, and filing fees upon political subdivisions of this state; to authorize the issuance of certain debt and securities; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 105, 303, 319, 401, 517, and 809 (MCL 141.2105, 141.2303, 141.2319, 141.2401, 141.2517, and 141.2809) and by adding sections 304, 308, and 802; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 105. A municipal security does not include any of the following:

- (a) A contract for the purchase of real or personal property.
- (b) A contract for the lease of real or personal property with or without an option to purchase.
- (c) A contract, lease, note, or other security given in connection with a contract described in subdivision (a) or (b).
- (d) A security that is evidence of an emergency loan under section 1 of 1855 PA 105, MCL 21.141, in conjunction with the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, or qualified agricultural loans under section 2a of 1855 PA 105, MCL 21.142a.
- (e) A mortgage secured by real property and its corresponding security to the extent secured by the mortgage.
- (f) A contract between 1 or more municipalities under whose terms 1 or more municipalities pledge their revenues or full faith and credit to secure payment of a proposed municipal security issued by 1 of the municipalities.

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

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

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

(a) The municipality is not operating under the provisions of the local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291.

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

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

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

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

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

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

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

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

(j) The most recent delinquent property taxes of the municipality, without regard to payments received from the county under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, did not exceed 18% of the amount levied.

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

(l) The municipality is not in default on the payment of any debt, excluding industrial development revenue bonds issued under the industrial development revenue bond act of 1963, 1963 PA 62, MCL 125.1251 to 125.1267, economic development corporation bonds issued under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, bonds issued by a local hospital finance authority for a private hospital under the hospital finance authority act, 1969 PA 38, MCL 331.31 to 331.84, or any other debt for which the municipality is not financially liable.

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

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

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

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

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

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

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

(7) If a municipality has not been granted qualified status, the municipality must obtain, for each municipal security, the prior written approval of the department to issue a municipal security. To request prior written approval to issue a municipal security, the municipality shall submit an application and supporting documentation to the department on a form and in a manner prescribed by the department, which shall be certified by the chief administrative officer. A filing fee equal to 0.03% of the principal amount of the municipal security to be issued, but not less than \$800.00 and not greater than \$2,000.00 as determined by the department, shall accompany each application. If the qualifying statement

required by subsection (2) was received by the department more than 6 months after the end of the municipality's fiscal year, a late fee of \$100.00 shall accompany the first application filed after that date. Within 30 business days of receiving an application, the fee, and supporting documentation from a municipality, the department shall make a determination whether the municipality has met all of the following requirements:

- (a) Has indicated the authority to issue the municipal security requested.
- (b) Is projected to be able to repay the municipal security when due.
- (c) Has filed information with the department indicating compliance with the requirements of subsection (3) or adequately addressed any noncompliance with subsection (3) as determined by the department.
- (d) If required by the department, has obtained an investment grade rating for the municipal security or has purchased insurance for payment of the principal and interest on the municipal security to the holders of the municipal security, or has otherwise enhanced the creditworthiness of the municipal security.
- (8) If the department determines that the requirements in subsection (7) have been met, the department shall approve the issuance of the proposed municipal security. If the department determines that the requirements in subsection (7) have not been met, the department shall issue a notice of deficiency to the municipality that prevents the issuance of the proposed municipal security. The notice of deficiency shall state the specific deficiencies and problems with the proposed issuance. After the deficiencies and problems have been addressed as determined by the department, the department shall approve the issuance of the proposed municipal security.
- (9) A determination by the department that a municipality has been granted qualified status constitutes an order granting exception from prior approval under former 1943 PA 202, of that municipality's securities.

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

- (a) If all of the municipalities contracting to pay the municipal security have been granted qualified status, then the issuance of the municipal security is subject to section 303(2).
- (b) Except as provided in subdivision (c), if 1 or more of the municipalities contracting to pay the municipal security have not been granted qualified status, then the issuance of the municipal security is subject to section 303(7).
- (c) If 1 or more of the municipalities contracting to pay the municipal security have not been granted qualified status and the other municipalities representing over 50% of the contractual obligation have been granted qualified status and the municipality that issues the municipal security has been granted qualified status and pledges its full faith and credit on the municipal security, then the issuance of the municipal security is subject to section 303(2).

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

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

- (a) A copy of the municipal security.
- (b) A proof of publication of the notice of sale, if applicable.
- (c) A copy of the award resolution or certificate of award including a detail of the annual interest rate and call features on the municipal security.
- (d) A copy of the legal opinion regarding the legality and tax status of the municipal security.
- (e) A copy of the notice of rating of the municipal security received from a recognized rating agency, if any.
- (f) A copy of the resolution or ordinance authorizing the issuance of the municipal security.
- (g) A copy of the official statement, if any.
- (h) For a refunding security, documentation indicating compliance with section 611.
- (i) A filing fee equaling 0.02% of the principal amount of the municipal security issued, but in an amount not less than \$100.00 and not greater than \$1,000.00, as determined by the department.
- (j) If the qualifying statement required by section 303(2) was received by the department more than 6 months after the end of the municipality's fiscal year, a late fee of \$100.00 with the first filing thereafter.
- (k) For a municipal security issued under section 305(2), documentation indicating compliance with section 305(2).

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

(a) A copy of the municipal security.

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

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

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

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

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

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

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

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

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

Sec. 401. (1) A municipality may, by resolution of its governing body, and without a vote of the electors, issue short-term municipal securities in anticipation of and payable from taxes to be collected by the municipality for its then next succeeding fiscal year or the taxes for a current fiscal year, or if the taxes for the next succeeding fiscal year and the taxes for the current fiscal year are both levied in the same calendar year, then in anticipation of and payable from the collection of both of the taxes.

(2) By resolution of its governing body and without a vote of the electors, an authority organized under 1957 PA 206, MCL 259.621 to 259.631, or a public airport authority created or incorporated under the public airport authority act, chapter VIA of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.108 to 259.125c, may borrow money and issue short-term municipal securities maturing not more than 1 year from the date of issue in anticipation of the collection of revenues to which it will be entitled to receive within 1 year from the date of the short-term municipal securities' issuance. The amount of the short-term municipal securities issued under this section shall not exceed 50% of the revenues collected in the preceding fiscal year not pledged for the payment of a security other than a short-term municipal security issued under this section as conclusively certified by the governing body of the authority. The resolution shall provide for the pledging of all or a portion of the revenues of the authority not previously pledged for the payment of a security. The resolution may also provide for the pledging of other assets of the authority as additional security for the payment of the short-term municipal security. The resolution also shall provide that from the receipts of the revenues in anticipation of which the authority issued the short-term municipal security, there shall be set aside in a special fund to be used for the payment of principal and interest on the short-term municipal security a portion of each dollar received that is not less than 125% of the percentage that the principal amount of the short-term municipal security bears to the amount certified as the revenues estimated to be collected, until the amount set aside is sufficient for the payment of principal and interest on the short-term municipal security. The amount set aside shall be used only for the payment of the principal and interest on the short-term municipal security until the short-term municipal security is paid as to both principal and interest. Except when in conflict with the requirements of section 9 of 1957 PA 206, MCL 259.629, the short-term municipal securities authorized under this subsection are subject to this act.

Sec. 517. (1) A county, city, village, or township may by resolution of its governing body, and without a vote of its electors, issue a municipal security under this section to pay the cost of any capital improvement items, provided that the amount of taxes necessary to pay the principal and interest on that municipal security, together with the taxes levied for the same year, shall not exceed the limit authorized by law.

(2) If a county, city, village, or township issues a municipal security under this section, before issuance, the county, city, village, or township shall publish a notice of intent to issue the municipal security. The notice of intent shall be directed to the electors of the county, city, village, or township, shall be published in a newspaper that has general circulation in the county, city, village, or township, and shall state the maximum amount of municipal securities to be issued, the purpose of the municipal securities, the source of payment, the right of referendum on the issuance of the municipal securities, and any other information the county, city, village, or township determines necessary to adequately inform the electors of the nature of the issue. The notice of intent shall not be less than 1/4 page in size in the newspaper. If, within 45 days after the publication of the notice of intent, a petition, signed by not less than 10% or 15,000 of the registered electors, whichever is less, residing within the county, city, village, or township, is filed with the governing body of the county, city, village, or township, requesting a referendum upon the question of the issuance of the municipal securities, then the municipality shall not issue the municipal securities until authorized by the vote of a majority of the electors of the county, city, village, or township qualified to vote and voting on the question at a general or special election. A special election called for this purpose shall not be included in a statutory or charter limitation as to the number of special elections to be called within a period of time. Signatures on the petition shall be

verified by a person under oath as the actual signatures of the persons whose names are signed to the petition, and the governing body of the county, city, village, or township shall have the same power to reject signatures and petitions as city clerks under section 25 of the home rule city act, 1909 PA 279, MCL 117.25. The number of registered electors in the county, city, village, or township shall be determined by the governing body of the county, city, village, or township.

(3) Municipal securities issued under subsection (1) by a county, city, village, or township shall not exceed 5% of the state equalized valuation of the property assessed in that county, city, village, or township.

Sec. 802. (1) If a municipality fails to pay any installment of principal or interest on an outstanding municipal security on or before its due date, the state treasurer, for a municipality other than a school district, or the superintendent of public instruction, for a school district, may take that action it considers advisable to investigate the municipality's fiscal affairs, may consult with the governing body of the municipality, and may negotiate with the municipality's creditors in order to assist the municipality in developing a plan for financing, adjusting, or compromising the outstanding municipal security for which a payment of an installment of principal or interest had not been paid. As a component of a plan for financing the outstanding municipal security that has been defaulted upon, the department may agree and shall have the power to withhold all or part of state payments under an appropriation made to the municipality, the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921, or the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772, that the municipality is entitled to receive and to use these withheld amounts to pay unpaid amounts or subsequently due amounts, or both, of principal and interest on the outstanding municipal security.

(2) When a plan is developed that the department finds to be fair and equitable and reasonably within the ability of the municipality to meet, the department shall enter an order finding that it is fair, equitable, and within the ability of the municipality to meet. The department shall then advise the governing body to take the necessary steps to implement the plan. If the governing body declines or refuses to do so within 90 days after receiving the department's advice, the department shall be vested with all powers of the municipality, its governing body, and its officers that are necessary to implement the plan. When the department is vested with the authority to implement the plan, the members of the governing body and all officers and employees of the municipality shall be under an affirmative duty to do all things the department determines to be necessary to implement the plan. The department may institute appropriate proceedings in the courts of this state, including those for writs of mandamus and injunctions, to enforce the department's implementation of the plan and compliance with the plan by the governing body and other officers and employees of the municipality.

Sec. 809. All orders approving the issuance of securities issued by the department shall continue in force and effect until October 31, 2002. The terms of former 1943 PA 202 and the administrative rules of the municipal finance division shall apply with respect to any security issued pursuant to an order of the department that was issued before May 1, 2002.

Enacting section 1. Section 815 of the revised municipal finance act, 2001 PA 34, MCL 141.2815, is repealed.

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 .....

.....  
Governor.