

SENATE BILL No. 1189

March 23, 2006, Introduced by Senators GOSCHKA, JOHNSON, BIRKHOLZ, BARCIA, PRUSI, HARDIMAN, KUIPERS, SIKKEMA and HAMMERSTROM and referred to the Committee on Appropriations.

A bill 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 2002 PA 382.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) By resolution or resolutions of its board, the

1 building authority may provide for the issuance of revenue
2 obligations, which may include revenue bonds, revenue notes, or
3 other evidences of revenue indebtedness, and refunding revenue
4 bonds or notes, or other refunding evidences of indebtedness, the
5 obligations for which shall not become a general obligation of this
6 state or a charge against this state, but all revenue obligations
7 and the interest on the revenue obligations and the call premiums
8 for the revenue obligations shall be payable solely from true
9 rental, except to the extent paid from the proceeds of sale of
10 revenue obligations and any additional security provided for and
11 pledged, or from other funds as provided in this act, and each
12 revenue obligation shall have such a statement printed on the face
13 of the revenue obligation. If the resolution of the building
14 authority provides for interest coupons to be attached to a revenue
15 obligation, each interest coupon shall have a statement printed on
16 the coupon that the coupon is not a general obligation of this
17 state or the building authority but is payable solely from certain
18 revenues as specified in the revenue obligation. Revenue
19 obligations may be issued for the purpose of paying part or all of
20 the costs of the facilities or for the purpose of refunding or
21 advance refunding, in whole or in part, outstanding revenue
22 obligations issued ~~pursuant to~~ **UNDER** this act whether the
23 obligations to be refunded or advance refunded have matured or are
24 redeemable or shall mature or become redeemable after being
25 refunded. The cost of the facilities may include an allowance for
26 legal, engineering, architectural, and consulting services;
27 interest on revenue obligations becoming due before the collection

1 of the first true rental available for the payment of those revenue
2 obligations; a reserve for the payment of principal, interest, and
3 redemption premiums on the revenue obligations of the authority;
4 and other necessary incidental expenses including, but not limited
5 to, placement fees; fees or charges for insurance, letters of
6 credit, lines of credit, remarketing agreements, or commitments to
7 purchase obligations issued ~~pursuant to~~ **UNDER** this act; fees or
8 charges associated with an agreement to manage payment, revenue, or
9 interest rate exposure; or any other fees or charges for any other
10 security provided to assure timely payment of the obligations.

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

14 (a) Both of the following are true:

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

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

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

3 (3) Revenue obligations that refund outstanding obligations
4 may include the payment of interest accrued, or to accrue, to the
5 earliest or any subsequent date of redemption, purchase, or
6 maturity of the revenue obligations to be refunded, redemption
7 premium, if any, and any commission, service fee, and other expense
8 necessary to be paid in connection with revenue obligations that
9 refund outstanding obligations. Proceeds of refunding revenue
10 obligations may also be used to pay part of the cost of issuance of
11 the refunding revenue obligations, interest on the refunding
12 revenue obligations, a reserve for the payment of principal,
13 interest, and redemption premiums on the refunding revenue
14 obligations, and other necessary incidental expenses including, but
15 not limited to, placement fees; fees or charges for insurance,
16 letters of credit, lines of credit, remarketing agreements, or
17 commitments to purchase obligations issued ~~pursuant to~~ **UNDER** this
18 act; fees or charges associated with an agreement to manage
19 payment, revenue, or interest rate exposure; or any other fees or
20 charges for any other security provided to assure timely payment of
21 the obligations. The building authority may also provide for the
22 withdrawal of any funds from a reserve created for the payment of
23 principal, interest, and redemption premiums on the refunded
24 obligations and for the deposit of those funds in the reserve for
25 the payment of principal, interest, and redemption premiums on the
26 refunding obligations or may provide for use of that reserve money
27 to pay principal, interest, and redemption premiums on the

1 obligations to be refunded. Obligations issued to refund
2 outstanding obligations may be issued in a principal amount greater
3 than, the same as, or less than the principal amount of the
4 obligations to be refunded, and subject to the maximum rate of
5 interest provided in subsection (8), may bear interest rates that
6 are higher than, the same as, or lower than the interest rates of
7 the obligations to be refunded. If obligations are issued to refund
8 outstanding obligations of the authority, a lease whose rental has
9 been pledged for repayment of the obligations to be refunded shall
10 not be terminated solely by reason of the payment or provision for
11 payment of the obligations to be refunded, and the lease and all of
12 the rights and obligations under the lease remain in full force and
13 effect in accordance with its terms.

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

23 (5) Within limits considered appropriate and established by
24 the board, the board may authorize by resolution a member of the
25 board or the person appointed by the building authority as its
26 chief operating officer or chief staff person, if the authorization
27 limits or prescribes the maximum interest rates, minimum price,

1 maximum principal amount, and the latest maturity date of the
2 obligations, to do any of the following:

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

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

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

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

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

27 (b) The proceeds of revenue obligations.

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

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

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

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

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

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

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

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

27 (b) The proceeds of the refunding obligations.

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

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

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

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

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

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

21 (8) Obligations issued under this act may be either serial
22 obligations or term obligations, or any combination of serial or
23 term obligations. The obligations shall mature not more than 40
24 years from their date, and in any event not more than 1 year from
25 the due date of the last true rental pledged for the payment of the
26 obligations, and may bear interest at fixed or variable interest
27 rates, or may be without stated interest, but the net interest rate

1 or rates of interest, taking into account any discount on the sale
2 of the obligations, shall not exceed a rate permitted by the
3 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
4 141.2821. The obligations may be sold at a discount.

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

25 (10) The board in the resolution or resolutions authorizing
26 the issuance of obligations may provide for the assignment of the
27 true rental to be paid by the state under the lease or leases to 1

1 of the paying agents for the obligations or to a trustee, as
2 provided in this act, in which case the state shall pay the rental
3 to the paying agent or trustee. For the purposes and within the
4 limitations set forth in this act, the board may by resolution
5 covenant to issue or cause to be issued, or use its best efforts to
6 issue or cause to be issued, refunding revenue obligations to
7 refund obligations issued under this act.

8 (11) The board in the resolution, or resolutions, authorizing
9 the obligations may provide for the terms and conditions upon which
10 the holders of the obligations, or a portion of the obligations or
11 a trustee for the obligations, is entitled to the appointment of a
12 receiver. The receiver may enter and take possession of the
13 facility, may lease and maintain the facility, may prescribe
14 rentals and collect, receive, and apply income and revenues
15 thereafter arising from the facility in the same manner and to the
16 same extent that the authority is so authorized. The resolution or
17 resolutions may provide for the appointment of a trustee for the
18 holders of the obligations, may give to the trustee the appropriate
19 rights, duties, remedies, and powers, with or without the execution
20 of a deed of trust or mortgage, necessary and appropriate to secure
21 the obligations, and may provide that the principal of and interest
22 on any obligations issued under this act shall be secured by a
23 mortgage, security interest, or deed of trust covering the
24 facility, which mortgage, security interest, or deed of trust may
25 contain the covenants, agreements, and remedies as will properly
26 safeguard the obligations as may be provided for in the resolution
27 or resolutions authorizing the obligations, including the right to

1 sell the facility upon foreclosure sale, not inconsistent with this
2 act.

3 (12) All obligations and the interest coupons, if any,
4 attached to the obligations are declared to be fully negotiable and
5 to have all of the qualities incident to negotiable instruments
6 under the uniform commercial code, 1962 PA 174, MCL 440.1101 to
7 440.11102, subject only to the provisions for registration of the
8 obligations that may appear on the obligations. The obligations and
9 interest on the obligations are exempt from all taxation by this
10 state or any of its political subdivisions.

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

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

25 (15) The authority shall not have obligations outstanding at
26 any 1 time for any of its corporate purposes in a principal amount
27 totaling more than ~~-\$2,700,000,000.00-~~ **\$4,000,000,000.00**, which

1 limitations shall not include principal appreciation as provided in
2 subsection (17) or obligations or portions of obligations used to
3 pay for any of the following:

4 (a) Amounts set aside for payment of interest becoming due
5 before the collection of the first true rental available.

6 (b) Amounts set aside for a reserve for payment of principal,
7 interest, and redemption premiums.

8 (c) Costs of issuance of the obligations and the discount, if
9 any, on sale.

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

23 (16) The authority may apply and pledge, if not already
24 pledged, all or any unpledged part of the true rental and other
25 revenues of a facility; income and profit from the investment of
26 money pertaining to a facility; and money in a fund or account of
27 the authority pertaining to a facility to pay the principal,

1 interest, and redemption premiums on revenue obligations of the
2 authority other than those to which the true rental and other
3 revenues, investment income, or profit or funds or accounts
4 pertain; to pay amounts due under an agreement to manage payment,
5 revenue, or interest rate exposure regardless of the obligations or
6 investments to which the agreement relates; or to pay part or all
7 of the cost of additional facilities to be acquired by the
8 authority for the use of the state. The authority may establish a
9 separate fund into which the rental and other revenues, investment
10 income or profit, or money of such a fund or account shall be
11 deposited to be used to pay principal, interest, and redemption
12 premiums on outstanding obligations of the authority or to acquire
13 facilities for the use of this state. The authority shall not
14 acquire a facility unless the acquisition is approved by the state
15 administrative board and by a concurrent resolution of the
16 legislature approved by a majority of the members elected to and
17 serving in each house. The authority may pledge any or all of the
18 foregoing to the payment of revenue obligations of the authority
19 other than those to which they pertain. If the true rental and
20 other revenues, investment income or profit, or the money in funds
21 or accounts to be applied as specified in this subsection pertain
22 to a facility leased to the state and an institution of higher
23 education ~~pursuant to~~ **UNDER** a lease executed and delivered before
24 January 1, 1983, no application or pledge thereof may be made
25 unless approved by the institution of higher education.

26 (17) If the authority issues an obligation that appreciates in
27 principal amount, the amount of principal appreciation each year on

1 that obligation, after the date of original issuance, shall not be
2 considered to be principal indebtedness for the purposes of the
3 limitation in subsection (15) or any other limitation. The
4 appreciation of principal after the date of original issue shall be
5 considered interest and shall be within the interest rate
6 limitations set forth in this act.

7 (18) Of the ~~-\$2,700,000,000.00~~ **\$4,000,000,000.00** authorized
8 under subsection (15), priority shall be determined by the joint
9 capital outlay committee.

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

1 limitation on outstanding obligations contained in subsection (15).

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

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

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

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

16 (iii) The maximum par amount of obligations that may be
17 outstanding at any time during the duration of the pool. The
18 resolution may state the maximum par amount of obligations that may
19 be issued ~~pursuant to~~ **UNDER** the pool.

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

24 (v) The security for obligations issued ~~pursuant to~~ **UNDER**
25 the pool.

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

1 the pool.

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

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

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

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

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

26 (v) On or before the issuance of obligations the proceeds of
27 which are to finance the acquisition, construction, renovation, or

1 rehabilitation of the facility, the building authority and the
2 state, and, if applicable, an institution of higher education,
3 enter into the lease or an agreement to construct or acquire the
4 facility, which lease or agreement sets forth the terms and
5 conditions under which the building authority will finance the
6 construction or acquisition of the facility for lease to the state
7 or to the state and any applicable institution of higher education.

8 (21) Bonds and notes issued under this act are not subject to
9 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to
10 141.2821.

11 (22) The issuance of bonds and notes under this act is subject
12 to the agency financing reporting act, **2002 PA 470, MCL 129.171 TO**
13 **129.177.**