

Legislative Analysis



ALLOW FOR REFUNDING OF FINANCIAL RECOVERY BONDS

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House Bill 4716

Sponsor: Rep. John Olumba

Committee: Local, Intergovernmental, and Regional Affairs

Complete to 6-21-11

(Enacted as Public Act 143 of 2011)

A SUMMARY OF HOUSE BILL 4716 AS INTRODUCED 6-9-11

House Bill 4716 would amend the Home Rule City Act (MCL 117.36a) to allow a city that had issued financial recovery bonds to refund (refinance) all or a portion of those bonds.

Now under the law, when a financial emergency exists under the Local Government and School District Fiscal Accountability Act, a city may issue financial recovery bonds in amounts greater than the limitations established by the city charter or by the Home Rule City Act. The act places limitations on the amount of debt sold, the purpose for the revenue (e.g. court-ordered judgments), and requires the approval of the Local Emergency Financial Assistance Loan Board created under the Emergency Municipal Loan Act of 1980.

House Bill 4716 specifies that a city that issued financial recovery bonds could ***refund all or a portion of those bonds***, subject to the terms and conditions approved by the Local Emergency Financial Assistance Loan Board. However, under the bill, the emergency loan board could not approve any term or condition that materially altered any existing term, condition, lien, or priority that applied to the bonds before the refunding, if the approval would constitute an impermissible contract impairment.

Further, the bill specifies that if financial recovery bonds are or have been issued by a city, the city may provide additional security for the prior bonds, and may issue financial recovery bonds to be sold to the Michigan Finance Authority for the purpose of refunding all or a portion of the prior bonds (or other obligations of the city), and for other purposes, as approved by the Local Emergency Financial Assistance Loan Board.

Under the bill, a city may, by resolution or order, provide for the deposit of revenues pledged for the payment of prior bonds or bonds issued under this subsection into a separate account for the purpose of paying principal and interest on those obligation, the associated administrative costs, and any other obligations issued by the city that are secured by those revenues. (For purposes of this subsection, principal and interest may include termination fees and credit enhancement fees, if any.)

In addition, if the city enters into an agreement with a third party that has a duty to collect or distribute to the city all or a portion of the revenues pledged for bond payments to a

trustee, then a statutory lien and trust is created, applicable to those revenues received from the third party by the trustee, and that statutory lien and trust is paramount and superior to all other liens and interests of any kind. (The lien and trust created is perfected without delivery, recording or notice.)

The bill specifies that the revenues held by a trustee under such an agreement would be exempt from being levied upon, taken, or applied toward paying the debts or liabilities of the city, other than for payment of debt service on the obligations to which the lien applies.

Further, a statutory lien and trust created by this subsection applicable to distributable aid received from the state treasurer by an escrow agent or trustee would apply only to the distributable aid (as defined in the Fiscal Stabilization Act). After it had been appropriated, it would be subject to any subsequent reduction of that appropriation by operation of law or executive order. The bill specifies that nothing in this subsection of the law would abridge or reduce the ability of the state treasurer to withhold distributable aid from a city, as provided in the State Revenue Sharing Act of 1971.

Finally, House Bill 4716 specifies that this subsection of the law shall not be construed to do any of the following: (a) create or constitute state indebtedness; (b) require the state to continue to impose and collect taxes from which distributable aid is paid, or to make payments of distributable aid; or (c) limit or prohibit the state from repealing or amending a law enacted for the distributable aid, or for the manner, time, or amount of distributable aid.

FISCAL IMPACT:

The bill is being examined for potential fiscal impacts.

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