MUNICIPAL LIGHTING AUTHORITY ACT

Act 392 of 2012

AN ACT to provide for the creation of certain lighting authorities for the purpose of operating lighting systems; to provide for the powers and duties of the authorities; to provide for the conveyance of operational jurisdiction over certain operations to authorities; to provide for the assumption of certain contracts, bonds, notes, and other evidences of indebtedness and liabilities related to the provision of lighting authorities; to authorize expenditures from certain funds; to finance the acquisition of property and the development of certain public improvements or related facilities; to provide for the issuance of bonds and notes; to authorize certain investments; and to impose certain powers and duties upon state and local departments, agencies, and officers.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

The People of the State of Michigan enact:

CAUTION! This document is from an archive and may contain outdated information.

123.1261 Short title.

Sec. 1.

This act shall be known and may be cited as the "municipal lighting authority act".

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1263 Definitions.

Sec. 3.

As used in this act:

(a) "Ancillary facility" means any revolving credit agreement, agreement establishing a line of credit, or a letter of credit; reimbursement agreement; interest rate exchange or similar agreement; currency exchange agreement; commodity exchange agreement; interest rate floor or cap; option, put, call, or similar agreement to hedge payment, currency, commodity, rate, spread, or similar exposure; investment agreement; float agreement; forward agreement or other investment arrangement; insurance contract; surety bond; commitment to purchase or sell securities; purchase or sale agreement or commitment; or other contract or agreement or other security agreement approved by an authority under this act, including without limitation any arrangement referred to in this act.

(b) "Authority" means a lighting authority incorporated under this act.

(c) "Best value" means a contract and procurement process to be followed by an authority that encourages and considers bids from locally headquartered companies and that considers use of the local workforce.

(d) "Board" means the board of directors of an authority.

(e) "Chief executive officer" means the mayor of the city.

(f) "Lighting system" or "system" means plants, works, instrumentalities, and properties used or useful in connection with providing lighting and necessary resources and appurtenances for the system.

(g) "Local government" means a city with a population of more than 600,000.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1265 Legislative intent; authority; manner of carrying out powers; public municipal corporation;

lighting system assets; transfer of ownership or operational control.

Sec. 5.

(1) It is the intent of this act to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to a local government.

(2) The powers of the authority shall be carried out in a manner authorized by this act.

(3) A local government, by majority vote of its governing body, may incorporate an authority comprising the territory within its respective limits for acquiring, constructing, consolidating, purchasing, operating, or maintaining a municipally owned lighting system. The authority is a public municipal corporation with the rights, powers, and duties as provided in this act.

(4) Nothing in this act, nor the creation of an authority, shall be construed as transferring the ownership of any lighting system assets to the authority unless the transfer is specified in the articles of incorporation of the authority as provided in section 9 and the transfer is ratified in accordance with all applicable laws.

(5) A transfer of ownership or operational control of a lighting system to an authority shall not be considered a sale, lease, or disposal of any kind of an asset by the local government under any state or local law.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1267 Alteration of laws and regulations of utility franchise.

Sec. 7.

Nothing in this act shall be considered to alter the laws and regulations regarding utility franchises unless explicitly stated. The creation of an authority shall not be considered to create a new franchise as long as the authority only provides service within its own territory, which shall be composed of the territory within the local government and any area that the local government may be serving or permitted to serve under law on the effective date of this act.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1269 Articles of incorporation.

Sec. 9.

(1) A local government may adopt articles of incorporation by a majority vote of its governing body and incorporate an authority for the purpose of acquiring, owning, improving, enlarging, extending, constructing, operating, or maintaining a lighting system and providing lighting services.

(2) The articles of incorporation adopted under subsection (1) shall be signed by the mayor and clerk of that local government.

(3) The articles of incorporation adopted by a local government under subsection (1) shall be in a form substantially as follows:

"The foregoing articles of incorporation were adopted by the _____ of the _____ of _____ County, Michigan, at a meeting held on the ____ day of _____, _____.

_____
_____ of the
_____."

(4) The articles of incorporation shall specify best value objectives.

(5) One printed copy of the articles of incorporation certified as a true copy by the person or persons designated by the certification, with the date and place of the publication, shall be filed with the secretary of state and the clerk of the county in which the authority provides services. The authority becomes effective at the time provided in the articles of incorporation, but shall not be effective before the filing with the secretary of state and the county clerk.

(6) The validity of an authority is conclusively presumed unless questioned in an original action filed in the court

of appeals within 60 days after the creation of the authority. The court of appeals has original jurisdiction to hear an action under this subsection. The court of appeals shall hear the action in an expedited manner.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1271 Authority as public municipal corporation and public body corporate; powers; maintenance of books and records; implementation of best value supply chain and procurement practice.

Sec. 11.

(1) An authority is a public municipal corporation. The authority is a public body corporate with the power to sue and be sued in any court of this state. The authority possesses all the powers necessary to carry out the purposes of its incorporation. The enumeration of any powers in this act shall not be construed as a limitation on an authority's general powers.

(2) An authority may do any of the following:

(a) Adopt bylaws for the regulation of the authority's affairs and the conducting of its business.

(b) Adopt an official seal and alter the seal at its pleasure.

(c) Maintain an office at a place or places within this state as it may designate.

(d) Sue and be sued in its own name, plead, and be impleaded.

(e) Determine the location of any project constructed by it under this act and determine, in its discretion and without reference to any other provisions of this act or any other law, the design, standards, and the materials of construction, and construct, maintain, repair, and operate the project.

(f) Issue bonds of the authority for any of its corporate purposes under those means as provided in this act.

(g) Adopt and promulgate rules and regulations for the use of any project operated or constructed by it under the provisions of this act.

(h) Acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act.

(i) Engage engineering, legal, and other professional services as considered necessary to effectuate the purposes of the authority.

(3) The authority shall maintain its books and records and its funds on an enterprise fund basis. An authority shall not pay any net proceeds or profits to its local government, but may pay the local government for services provided.

(4) Following the appointment of the authority board, the board shall implement a best value supply chain and procurement practice and shall annually report to the governing body of the local government.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1273 Board of directors; appointment; expiration of term; qualifications; certification to be signed by board member; report by attorney general; failure of board member to make required certification.

Sec. 13.

(1) An authority created under this act shall be directed and governed by a board of directors consisting of 5 members appointed as provided in this section.

(2) The board shall be appointed as follows:

(a) Two members who are residents of the local government appointed by the chief executive officer of the local government for a term of service of 3 years, except that for the first appointments to the board, 1 of the members shall be appointed for a term of service of 4 years. If the chief executive officer of the local government fails to make an appointment to the board of directors within 42 days after the authority is created or fails to fill a vacancy on the authority within 70 days of the vacancy occurring, then the governing body of the local government has the power to make the appointment.

(b) Two members who are residents of the local government appointed by the governing body of the local government for a term of service of 3 years, except that for the first appointments to the board, 1 of the members

CAUTION! This document is from an archive and may contain outdated information.

shall be appointed for a term of service of 4 years. If the governing body of the local government fails to make an appointment to the board of directors within 42 days after the authority is created or fails to fill a vacancy on the authority within 70 days of the vacancy occurring, then the chief executive officer of the local government has the power to make the appointment.

(c) One member who is a resident of the local government appointed by the governing body of the local government, from a list of 3 names provided by the chief executive officer of the local government, for a term of service of 3 years.

(3) Notwithstanding any other provision of this act, the term of a member appointed to the board of directors under subsection (2) shall expire upon expiration of the term of the chief executive officer or the governing body of the local government.

(4) At least 1 board member appointed to an authority board shall be a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(5) At least 1 board member appointed to an authority board shall be a certified public accountant who is licensed as a certified public accountant under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736, or shall qualify as a financial expert as that term is defined by rule by the United States securities and exchange commission pursuant to section 407 of the Sarbanes-Oxley act of 2002, Public Law 107-204.

(6) At least 1 board member appointed to an authority board shall be an attorney licensed to practice in this state.

(7) At the time of his or her appointment to a board of directors, and no later than January 31 of each year, a board member of an authority board shall make a certification, signed under penalty of perjury, to the attorney general that states all of the following:

(a) Except as otherwise provided in this subdivision, he or she is not currently employed by or receiving a pension or any other form of income from any entity that has sought or received a contract with the authority. For purposes of this subdivision, income does not include stock dividends from or the sale of stock of publicly traded shares constituting less than 0.1% ownership in the entity.

(b) Except as otherwise provided in this subdivision, he or she does not own an interest in any entity that has sought or received a contract with the authority. For purposes of this subdivision, own does not include the ownership in the form of publicly traded shares constituting less than 0.1% ownership in the entity.

(c) He or she does not serve as an officer, director, or in a similar decision-making role in any entity that has sought or received a contract with the authority or that has a financial interest contrary to the authority in connection with any financing of the authority.

(8) A person shall not begin service as a board member until he or she completes and files the certification with the attorney general as required under this section.

(9) The attorney general shall publish a report no later than the last day of February of each year stating whether each member of an authority's board has filed the required certification and whether the certification was complete. The report shall be made available to the public on the office of attorney general's website as soon as practicable. If a report indicates that a board member has failed to make the required certification, a copy of the report shall be sent to the chief executive officer of each local government that authorized the incorporation of the authority and to the board member who failed to make the required certification. The local government shall provide the last known address for that board member to the attorney general upon request.

(10) If the required certification is not filed by a board member by the third day of March following the publication of the report by the attorney general, the term of office for that board member who fails to make the required certification under this section shall automatically terminate on the last day of March following the publication of the report by the attorney general.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1275 Meeting; selection of officers; bond; employees and other professional services; quorum; rules and bylaws; business conducted at public meeting; compliance with freedom of information act; annual audit; progress reports.

Sec. 15.

(1) Within 30 days following the appointment of the last board member to the board, the board shall hold its first meeting.

(2) At its first meeting, the board shall select a chairperson, treasurer, and any other officers as the board considers necessary. The board shall require the treasurer to post a suitable bond of not less than $100,000.00 issued by a responsible bonding entity, with the cost of the premium of the bond paid for by the authority.

(3) The board shall select, employ, and fix the compensation for employees of the board and contract for those engineering, legal, and other professional services that the board considers necessary to effectuate the purposes of the authority.

(4) A majority of the members of the board constitute a quorum for the purpose of conducting business and exercising powers of the authority. Official action may be taken by an authority upon the vote of a majority of the board members present, unless the articles of incorporation or authority bylaws require a larger number.

(5) The board shall adopt rules and bylaws governing its procedures and the holding of meetings. The board shall designate an office or location as its principal place of business.

(6) The business of the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. After organization, a board shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time.

(7) A board shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) A board shall provide for a system of accounts for the authority to conform to a uniform system required by law and for the auditing of the accounts of the authority. The board shall obtain an annual audit of the authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements.

(9) The board shall provide a monthly progress report to the chief executive officer and the governing body of the local government and shall make that monthly progress report available on the authority's internet website.

(10) The board shall provide an annual progress report to the chairpersons of the senate and house government operations committees and shall make that annual progress report available on the authority's internet website. The annual progress report shall detail the authority's operating revenues, expenditures, vendor contracts, and all major decisions on lighting within the local government, including all rulings concerning the future locations of streetlights within the local government.

CAUTION! This document is from an archive and may contain outdated information.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1277 Plan for next 3 succeeding years; contents; acceptance or rejection by local governing body; revised plan; rejection; final proposed plan; adoption.

Sec. 17.

(1) On or before March 15 after the creation of the authority, and on or before March 15 of every second year after the creation of the authority, the board shall prepare and submit to the governing body of the local government a plan for the next 3 succeeding fiscal years. The plan shall contain all of the following:

(a) The number and placement of streetlights in the local government composing the authority.

(b) A budget that includes, but is not limited to, the following:

(i) Anticipated expenses of administration, operation, and maintenance of the authority and the lighting system.

(ii) Any reserve to be established for the administration, operation, and maintenance of the authority and the lighting system.

(iii) A statement showing the amounts necessary to retire all principal and interest on any bonds of the authority maturing during the applicable fiscal years.

(iv) A plan to implement best value practices.

(v) Any other item specified in the articles of incorporation of the authority.

(c) The budget prepared by the authority shall provide that any money derived from the collection of rates and charges shall be applied and used by the authority in the following manner and in the following priority:

(i) To provide for the payment during each fiscal year of all current expenses of administration, operation, and maintenance as may be necessary to preserve the lighting system in good repair and working order, including payments required under bonded indebtedness incurred in accordance with the authorization contained in this act.

(ii) In the discretion of the board, there may be set aside during each fiscal year money to provide a reserve fund for replacements or major repairs and improvements not anticipated or considered to be a part of current expenses of administration, operation, or maintenance of the lighting system.

(2) The governing body of the local government composing the authority may vote to accept or reject the plan. The governing body of the local government does not have the power to amend the plan in any respect. Unless the governing body of the local government votes to reject the plan within 45 days of its submittal, the plan is considered approved.

(3) If the governing body of the local government rejects the plan as provided in subsection (2), the authority shall revise the plan and shall submit the revised plan to the governing body of the local government within 30 days of the vote that rejected the plan.

(4) The governing body of the local government may vote to accept or reject the revised plan within 30 days of its submittal. Unless the governing body of the local government votes to reject the revised plan, the revised plan is considered approved.

(5) If the governing body of the local government votes to reject the revised plan, the governing body of the local government must contemporaneously adopt, by a vote of at least 2/3 of the members of the governing body of the local government elected and serving, a resolution that includes a list of items that, if altered, would result in a vote to adopt the plan. Failure to adopt a resolution in compliance with this subsection is considered acceptance of the revised plan by the governing body of the local government.

(6) If the governing body of the local government votes to reject the revised plan and submits the required resolution as provided in subsection (5), the authority shall prepare a final proposed plan not more than 20 days following the vote to reject the revised plan. The final proposed plan shall be sent to the chief executive officer of the local government, and the chief executive officer shall make the final proposed plan available on the local government's internet website as soon as is practicable. The final proposed plan shall also be made available at a public hearing to be held not more than 10 days after the final proposed plan is complete. Public comment shall be taken at the public hearing concerning the final proposed plan. On or after the tenth day after the public hearing, the authority shall vote on the final proposed plan.

(7) Except as otherwise provided in this subsection, if 2/3 of the board members of the authority vote to adopt the final proposed plan, it is adopted. If the final proposed plan incorporates a majority of the items identified in the appropriate resolution or resolutions adopted by the governing body of the local government, then the final proposed plan is adopted if approved by a majority vote of the board of directors of the authority.

(8) If a plan is not adopted on or before July 1 of the year in which a plan is required to be prepared under subsection (1), then the adopted plan shall be the final proposed plan, except that all changes identified in the resolution of the governing body submitted under this act are considered amendments to the final proposed plan so that the plan as adopted contains all changes listed in the resolution from the governing body.

(9) A plan adopted by the board may be amended by a vote of 4 of the 5 members on the board.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1279 Fiscal year; commencement; ending.

Sec. 19.

Unless the board, by resolution, establishes a different fiscal year, the fiscal year of the authority shall commence on July 1 of each year and end on the following June 30.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1280 Collective bargaining agreement; employment relationship between existing employees of local government and proposed authority; transfer of employees to authority; representation by labor organization; single seniority list; employee entering military service.

Sec. 20.

(1) The local government has the responsibility, authority, and right to manage and direct on behalf of the public the services performed or exercised as provided in the articles of incorporation to the extent the articles of incorporation are consistent with, and not otherwise limited by, this act.

(2) The contents or language of the articles of incorporation under this act shall be a permissive subject of collective bargaining between the local government and a bargaining representative of its employees. If the local government and a bargaining representative of its employees engage in collective bargaining before the articles of incorporation are approved and the local government and that bargaining representative reach an agreement on issues that would obligate an entity that will function as an employer in the authority, the articles of incorporation shall include those obligations.

(3) Nothing in this act creates an employment relationship between the existing employees of the local government and the proposed authority.

(4) An authority is effective through its articles of incorporation at least 180 days before the actual transfer of personnel and equipment. Before the authority's effective date, the local government shall affirm in writing to the authority those employees, if any, who will be transferred to the authority.

(5) If any employees who are transferred to the authority are represented by a labor organization, those employees are subject to their previous terms and conditions of employment until those terms and conditions of employment are modified in accordance with 1947 PA 336, MCL 423.201 to 423.217, or for 6 months after the transfer to the authority, whichever is earlier. Negotiations on a collective bargaining agreement with an authority shall begin no later than 180 days before the date the employees, if any, transfer to the authority.

(6) Subject to subsection (7), a representative of the employees or group of employees who previously represented or was entitled to represent the employees or group of employees under 1947 PA 336, MCL 423.201 to 423.217, shall continue to represent the employees or group of employees if those employees or group of employees are transferred to the authority.

(7) This section does not limit the rights of employees, under applicable law, to assert that a bargaining representative protected by subsection (6) is no longer their representative. The employees of the authority are eligible as of the day the authority becomes effective through its articles of incorporation to choose their representative under 1947 PA 336, MCL 423.201 to 423.217. This subsection does not extend the time limits as provided in subsection (4).

(8) If multiple labor organizations assert the right to represent all or part of the authority's workforce or where a substantial portion of the transferred employees were not previously represented, in the absence of a voluntary mutual agreement, at the request of any party or on the initiative of the Michigan employment relations commission, the Michigan employment relations commission shall conduct a representation election.

(9) In the absence of a voluntary mutual agreement, the authority's workforce shall be merged by using a single seniority list for each of the same or similar classifications. The single seniority list shall be composed of all employees from the local government employed or having recall rights on the date of transfer and shall be used for purposes that include, but are not limited to, initial assignments, layoffs, recalls, and job bidding. Disputes concerning the single seniority list or use of the single seniority list shall be heard by a single arbitrator appointed by the Michigan employment relations commission.

(10) Nothing in this section requires a local government or an authority to assume a collective bargaining agreement between another local government and its employees.

(11) An employee who left the employ of the local government to enter the military service of the United States shall have the same employment rights as to the local government or the authority as he or she would have had under 1951 PA 263, MCL 35.351 to 35.356.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1281 Issuance of bonds.

Sec. 21.

(1) For the purpose of constructing, acquiring, improving, enlarging, or extending a lighting system, including the payment of engineering, legal, and financing expenses, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority, the authority may borrow money and issue revenue bonds and notes for the purposes provided in this section. The aggregate principal amount of the bonds and notes at no time shall exceed 5% of the total state equalized valuation of the property assessed in the local government comprising the authority.

(2) Revenue bonds are payable upon the terms and conditions specified by the authority in the resolution under which the authority issues the bonds or in a related trust agreement or trust indenture. The board of directors in the resolution authorizing the bonds, a trust indenture, ancillary facility, or other agreement entered into with respect to

bonds of the authority may pledge any funds received or to be received by the authority for the payment of the bonds or other obligations of the authority under the agreement and create a first lien in favor of the holders of the bonds or a party subject to the agreement, including, but not limited to, funds received pursuant to a contract entered into under section 25. The principal of and interest on the bonds shall be payable, except as provided in this act, solely from the proceeds described in the resolution authorizing the bonds or trust indenture, and the proceeds may include revenues pledged directly to authority bonds pursuant to a contract entered into under section 25 by the local government.

(3) The resolution authorizing the issuance of bonds under this section shall include all of the following:

(a) A statement that the bonds are revenue bonds.

(b) A statement briefly describing the lighting system to be constructed, acquired, improved, or extended and the estimated cost of the lighting system.

(c) A statement that the contracts for services of the authority have been entered into with the local government comprising the authority.

(d) In the case of refunding bonds, identification of the parameters under which the bonds can be issued.

(e) Delegation for a time period at the board of directors' discretion to an officer, employee, or designated agent of the authority the power to issue, sell, and deliver bonds within the limits on those bonds established by the authority as to any of the following:

(i) Form.

(ii) Maximum interest rates.

(iii) Maturity dates.

(iv) Purchase price.

(v) Denominations.

(vi) Redemption dates and premiums, if any.

(vii) Nature of the security.

(viii) Selection of an applicable interest rate index.

(ix) The terms of ancillary facilities entered into in connection with the issuance of bonds.

(x) Other terms and conditions with respect to the bond issue that the authority prescribes.

(f) Specification of other details and matters that are considered necessary or advisable to provide for the prompt and orderly retirement of the bonds and the interest on the bonds at maturity.

(g) Provision for the deposit of revenues pledged for the payment of bonds issued under this section into a separate account for the purpose of paying principal and interest on those bonds, the administrative costs associated with those bonds, and any other bonds issued by the authority that are secured by those revenues. For purposes of this subdivision, principal and interest may include any fees related to an ancillary facility, if any.

(4) An authority may issue bonds under this section to refund any bonds by issuing new bonds if it considers the refunding expedient, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds that are outstanding and partly for restructuring or any of the authority's other authorized purposes.

(5) Bonds issued under this act shall not mature more than 30 years from the date of the original issuance.

(6) An authority may issue bond anticipation notes secured by the issuance of revenue bonds issued under this section in addition to the revenues that the authority is permitted to pledge as provided in this section.

(7) Any bonds issued under this act shall be sold to the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(8) Bonds issued by an authority under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds issued by an authority under this act are not subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1283 Ancillary facility.

Sec. 23.

(1) An authority may enter into, amend, or terminate, as it determines necessary or appropriate, any ancillary facility for any of the following purposes:

(a) To facilitate the issue, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including without limitation bond insurance, letters of credit, and liquidity facilities.

(b) To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

(2) An authority may enter into, amend, or terminate any ancillary facility as it determines necessary or

appropriate or to place the obligations or investments of the authority, as represented by the bonds or the investment of bond proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority. The ancillary facility may include without limitation contracts commonly known as interest swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. The authority may enter into these contracts or arrangements in connection with, or incidental to, entering into, or maintaining any agreement that secures bonds of the authority or any investment of reserves, or contract providing for investment of reserves, or similar ancillary facility guaranteeing an investment rate for a period of years.

(3) An authority's determination that an ancillary facility, or the amendment or termination of an ancillary facility, is necessary or appropriate is conclusive. The authority may determine the terms and conditions of an ancillary facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

(4) Before an authority enters into any ancillary facility, the authority must have the consent of the Michigan finance authority.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information

123.1285 Contracts; trust agreement; definitions.

Sec. 25.

(1) An authority and the local government comprising the authority may enter into a contract providing for the construction, acquisition, improvement, enlargement, or extension of a lighting system, including the payment of engineering, legal, and financing expenses in connection with the lighting system, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority. Contracts shall provide for the rates and charges for the local government. The local government may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. If the local government makes this pledge, it may include in its annual tax levy an amount sufficient so the estimated collections from the tax levy will be sufficient to promptly pay when due the portion of the obligation falling due before the time of the following year's tax collection, subject to constitutional, statutory, and charter limitations. If the contract or an unlimited tax pledge in support of the contract has been approved by the electors of the local government, the tax may be in addition to any tax that the local government may otherwise be authorized to levy and may be imposed without limitation as to rate or amount, but shall not be in excess of the rate or amount necessary to pay the contractual obligation. If, at the time of making the annual tax levy, there are other funds on hand earmarked for the payment of the contractual obligation, credit for those funds may be taken upon the annual levy for the payment of the obligation. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The contract may provide for other funds to be raised and pledged by the local government by the use of 1 or more of the following additional methods:

(a) The levy of special assessments to the extent legally permitted by the local government. The procedures relative to the levying and collection of the special assessments shall conform as nearly as is applicable to charter or statutory provisions for the levying and collection, except that a petition is not required from property owners.

(b) The levy and collection of charges to users and beneficiaries of the service or services furnished by the lighting system.

(c) A pledge of revenue that would otherwise be received by the local government under the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, as provided in subsection (3).

(d) The receipt of money derived from the imposition of taxes by this state, except to the extent that the use of the money for this purpose is expressly prohibited by the state constitution of 1963.

(e) The receipt of other funds that may be validly used for this purpose.

(3) If an authority issues bonds pursuant to this section to be paid from revenues from a contract entered into pursuant to this section, the local government, in furtherance of its obligations under the contract, may by resolution or order pledge revenues to be received by the local government pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, to bonds of the authority issued pursuant to the contract. If the local government pledges these revenues, all of the following apply:

(a) Before the pledge and the contract become effective, the local government shall do all of the following:

(i) Enter into a trust agreement with the authority, the Michigan finance authority, and a trustee to provide for both of the following:

(A) Collection of pledged revenues by public utilities and resale customers.

(B) Direct payment of those pledged revenues to the trustee for the purposes provided in this act.

(ii) Levy the tax.

(iii) Send a notice to each public utility and resale customer collecting the tax to remit those collections to the trustee designated in the trust agreement, pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177.

(iv) Take all other steps necessary and convenient to arrange for and ensure the orderly collection of the taxes.

(b) After the pledge and contract become effective, the local government shall continue to do all of the following:

(i) Levy the tax at not lower than the rate at which the tax is levied when the contract becomes effective.

(ii) Take all other steps necessary and convenient to ensure orderly collection of the taxes.

(iii) Perform all of its other lawful obligations under the contract.

(c) The pledged revenues collected or to be collected by public utilities and resale customers shall be held in trust to be applied for the sole and exclusive benefit of authority bondholders to the extent and in the manner provided for by this act, the contract, and the trust agreement, and may not be commingled with any other funds.

(d) The pledged revenues are exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the local government other than for payment of debt service on the authority bonds and related administrative costs to which the contract and trust agreement apply. The pledged revenues shall be exempt from any further taxes or special assessments of this state or a political subdivision of this state.

(e) Although the pledged revenues are held in trust, to the extent that the local government or authority retains any interest in the pledged revenues, and solely to that extent, the pledged revenues shall be subject to a lien in favor of the authority bondholders. This lien is paramount and superior to all other liens and interests of any kind, including any interest of the local government or the authority, and shall be for the sole purpose of ensuring payment of the principal, interest, and related administrative costs of authority bonds secured by the contract and the trust agreement. The lien created is effected and perfected without delivery, recording, or notice.

(4) A trust agreement may provide that, should the trustee determine that it holds funds in excess of those it reasonably considers necessary to make bond payments obligated under the contract and trust agreement, the trustee may release some or all of the excess funds from the trust and distribute them to the local government.

(5) The local government may not enter into a contract pledging revenues pursuant to subsection (3) that would result in outstanding bonds secured by those pledged revenues having an aggregate annual debt service that exceeds $12,500,000.00 in any 1 year taking into account any anticipated federal credits as determined by the authority.

(6) As used in this section:

(a) "Bonds" includes any ancillary facility or other financing instruments entered into by the authority if the facilities are permitted by the contract entered into between the local government and the authority.

(b) "Pledged revenues" means all money to be received by the local government pursuant to the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177, to the extent pledged for repayment of authority bonds under the contract.

(c) "Public utilities" and "resale customers" mean those terms as defined in the city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information

123.1287 Property as public property; exemption from taxes.

Sec. 27.

(1) The property of an authority created under this act is public property devoted to an essential public and governmental purpose. Income of an authority is for a public and governmental purpose.

(2) Except as otherwise provided in this subsection, the property of an authority created under this act and its income, activities, and operations are exempt from all taxes and special assessments of this state or a political subdivision of this state. Property of an authority and its income, activities, and operations that are leased to private persons are not exempt from any tax or special assessment of this state or a political subdivision of this state. Property of an authority is exempt from any ad valorem property taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or other law of this state authorizing the taxation of real or personal property. An authority is an entity of government for purposes of section 4a(1)(a) of the general sales tax act, 1933 PA 167, MCL 205.54a, and section 4(1)(h) of the use tax act, 1937 PA 94, MCL 205.94.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1289 Acquisition of property.

Sec. 29.

An authority may acquire property for a lighting system by purchase, construction, lease, gift, or devise, either within or outside its corporate limits. The authority may hold, manage, control, sell, exchange, or lease the property, except that if the property at issue was purchased, constructed, gifted, devised, leased, or otherwise came into the authority's ownership or control from the local government, the authority may not sell, exchange, or otherwise dispose of the property unless the other party to the transaction is the local government that previously owned the property so that the property will return to the ownership of the local government that owned the property before the transfer to the authority.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

CAUTION! This document is from an archive and may contain outdated information.

123.1291 Advance or loan of money from local governing body to authority.

Sec. 31.

The governing body of the local government comprising the authority may advance or loan to the authority any money required for administrative expenses or for the purpose of obtaining maps, plans, designs, specifications, and cost estimates of a proposed lighting system. An advance or loan may be included as a part of any bond issue by the authority under this act and repaid to the local government upon the sale of the bonds.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1293 Powers in addition to charter or statute.

Sec. 33.

The powers granted under this act are in addition to those granted by any charter or statute.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012

123.1295 Construction of act.

Sec. 35.

This act shall be liberally construed in the interest of the public health, safety, and welfare of the persons and property within an authority created under this act.

History: 2012, Act 392, Imd. Eff. Dec. 19, 2012