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BILL ANALYSIS

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Senate Bill 838 (as enacted) **PUBLIC ACT 575 of 2018**
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Michigan Competitiveness

Date Completed: 6-11-19

CONTENT

The bill amended the Revised Municipal Finance Act to do the following:

-- Authorize, until December 31, 2023, counties, cities, villages, and townships to issue municipal securities to pay an amount not to exceed the difference between 95% of the actuarial value of liabilities and 100% of the actuarial or market value of assets for the costs of the unfunded pension liability for certain retirement programs.
-- Authorize, until December 31, 2023, counties, cities, villages, and townships to issue municipal securities to pay an amount not to exceed the difference between 60% of the actuarial value of liabilities and 100% of the actuarial or market value of assets for the costs of certain unfunded pension liabilities.
-- Require a county, city, village, or township to conduct an internal or external review to verify eligible participants in a defined benefit (DB) retirement plan or postemployment health care plan with 100 or more combined active and retired members within one year before the issuance of a municipal security.
-- Require a comprehensive financial plan to be posted on the county's, city's, village's, or township's website, if it maintains a website, and at the office of the clerk no later than the date the notice of intent was published.
-- Modify what must be included in a comprehensive financial plan.
-- Require the proceeds of a municipal security covering unfunded pension liabilities, in addition to accrued unfunded health care liabilities, to be deposited in particular types of fund or trust.
-- Require a trust created under these provisions to invest its funds in the investment instruments, subject to the investment limitations governing the investment of assets of public employee retirement systems under the Public Employee Retirement System Investment Act.
-- Require a municipal security to mature by no later than the date the final amortized payment for the unfunded pension liability or the unfunded accrued health care liability would have been made had the county, city, village, or township not elected to issue a municipal security.

The bill took effect on December 28, 2018.

Municipal Security Limitations

Previously, the Revised Municipal Finance Act authorized a county, city, village, or township, through December 31, 2018, to issue a municipal security to pay all or part of the costs of the unfunded pension liability for a retirement program, in connection with the partial or complete cessation of accruals to a DB plan or the closure of the DB plan to new or existing employees and the implementation of a defined contribution plan, or to fund costs of a municipality that had already ceased accruals to a DB plan.

Under the bill, a county, city, village, or township, through December 31, 2023, may issue a municipal security to pay an amount not to exceed the difference between 95% of the actuarial value of liabilities and 100% of the actuarial or market value of assets for a retirement program, in connection with the partial or complete cessation of accruals to a DB plan or the closure of the DB plan to new or existing employees and the implementation of a defined contribution plan, or to fund costs of a municipality that has already ceased accruals to a DB plan.

Previously, through December 31, 2018, a county, city, village, or township also was authorized to issue a municipal security to pay the costs of the unfunded accrued health care liability if the amount of taxes necessary to pay the principal and interest on that municipal security, together with the taxes levied for the same year, did not exceed the limit authorized by law, or to refund all or a portion of a contract obligation issued for the same purpose.

Under the bill, through December 31, 2023, in connection with the closure of a postemployment health care plan to new employees, or to fund the costs of a municipality that has already closed its postemployment health care plan to new employees, the municipality may issue a municipal security to pay an amount not to exceed the difference between 60% of the actuarial value of liabilities and 100% of the actuarial or market value of assets of the costs of the unfunded accrued health care liability if the amount of taxes necessary to pay the principal and interest on that municipal security, together with the taxes levied for the same year, do not exceed the limit authorized by law, or to refund all or a portion of a contract obligation issued for the same purpose.

Internal or External Review

The bill requires a county, city, village, or township to conduct an internal or external review to verify eligible participants in a DB retirement plan or postemployment health care plan with 100 or more combined active and retired members within one year before the issuance of a municipal security under these provisions. The review also must verify that the eligible participants are receiving appropriate pension or other postemployment benefits consistent with their plan.

Comprehensive Financial Plan

The Act requires a county, city, village, or township to prepare and make available to the public a comprehensive financial plan before it issues a municipal security under these provisions. The bill requires the financial plan to be posted in a prominent and conspicuous location on the municipality's website, if it maintains a website, and at the office of the clerk no later than the date the notice of intent was published. The plan must be approved by ordinance or resolution of its governing body on or before the notice of intent was published.

The Act lists components that must be included in the comprehensive financial plan. Among those components, the Act previously required the following to be included in the plan:

-- An analysis of the current and future obligations of the county, city, village, or township with respect to each retirement program and each postemployment health care benefit program of the township.

-- A debt service amortization schedule and a description of actions required to satisfy the schedule.

The bill modifies these provisions to the following:

-- The analysis of the current and future obligations of the county, city, village, or township with respect to each retirement program and each postemployment health care benefit program must include the program expected to be funded with a municipal security and all other programs not being funded with a municipal security.
-- A debt limit calculation that must be in accordance with statutory, charter, and constitutional debt limits.

The bill also requires the plan to include the following:

-- The debt service schedule for a municipal security issued under these provisions must not materially deviate from level or descending annual debt service, or a level annual or descending debt service when taking into account other municipal securities of the county, city, village, or township unless otherwise approved by the Department of Treasury for a period not to exceed five years from the date of issuance.
-- The projected net present value savings between the actuarially determined amortization payments at the plan's investment rate of return and the municipal security's debt service requirements at the time of issuance, calculated using a method approved by the Department, must be at least 15% of the par amount of a proposed municipal security issued for unfunded retirement programs or must be at least 20% of the par amount of a proposed municipal security issued for unfunded health care liabilities unless the Department determines that otherwise the plan in its entirety is in the financial best interest of the county, city, village, or township.
-- A comparison of the current investment rate of return assumption of the DB plan or postemployment health care plan and the actual annualized investment rates of returns for the past year, five years, and 10 years of those plans.
-- The following acknowledgement: "Since the actuarial value of the defined benefit plan or postemployment health care plan's assets and liabilities are subject to change, the county, city, village, or township acknowledges that it is possible the unfunded accrued pension liability or unfunded accrued health care liability may increase after the issuance of the municipal security, thereby requiring the county, city, village, or township to make additional actuarially determined amortization payments to the defined benefit plan or postemployment health care plan beyond the principal and interest payments due on the municipal security."
-- A certification that the county's, city's, village's, or township's most recent audit report indicates the sum of all its DB plans' actual contributions for the same period are 100% or greater than the sum of all the municipality's DB plans' actuarially determined contributions for the most recent three fiscal years.
-- A certification that the county, city, village, or township is compliant on any reporting requirements in accordance with the Protecting Local Government Retirement and Benefits Act.

The proceeds from the municipal security also may not fund capitalized interest on the municipal security or any required unfunded actuarial liability payments not made before the issuance of the security.

<u>Trusts</u>

Previously, except for a refunding, the Revised Municipal Finance Act required the proceeds of a municipal security issued under these provisions covering unfunded health care liability to be deposited in any of the following:

-- A health care trust fund.
-- A trust created by the issuer that had as its beneficiary a health care trust fund.
-- For a county, city, village, or township, a restricted fund within a trust that would have been used only to retire the municipal securities issued for a purpose described above.

Under the bill, except for a refunding, the proceeds of a municipal security issued under these provisions covering unfunded pension liability or accrued unfunded health care liability, or both, must be deposited in any the following:

-- A health care trust fund.
-- A trust created by a county, city, village, or township that has as its beneficiary a pension trust fund, or a health care trust fund.
-- For a county, city, village, or township, a restricted fund within a trust that would only be used to retire the municipal securities issued for the purposes described above.

The Act authorizes a county, city, village, or township to create a trust to carry out the purposes of the provisions above. Previously, the Act required a trust created under these provisions to invest its funds in the same manner as funds invested by a health care trust fund. Under the bill, a trust created under these provisions must invest its funds in the investment instruments and subject to the investment limitations governing the investment of assets of public employee retirement systems under the Public Employee Retirement System Investment Act.

The Revised Municipal Finance Act requires a trust created under these provisions to report its financial condition according to generally accepted accounting principles, and be tax-exempt under the Internal Revenue Code. The bill also requires a fund receiving proceeds of a municipal security to comply with these requirements.

Recession Agreement

The Act requires a county, city, village, or township that issues a municipal security under these provisions to covenant with the holders of the municipal security and the State that it will not, after the issuance of the security and while the security is outstanding, rescind whatever action it has taken to make a partial or complete cessation of accruals to a DB plan or the closure of the DB plan for new or existing employees. The bill also includes in this provision the closure of a postemployment health care plan for new or existing employees for which the municipal security was issued.

Refunding Security

Previously, if a county, city, village, or township had issued a municipal security under these provisions, the Act allowed that municipality to issue a refunding security to refund that municipal security under these provisions after December 31, 2018, if that refunding security did not have a final maturity later than the final maturity of the municipal security being refunded and if the municipality that issued the security had been assigned a credit rating within the category of AA or higher or the equivalent by at least one nationally recognized rating agency in connection with the refunding security. The bill extends this provision through December 31, 2023, and also requires the municipality that issued the municipal security to be assigned a credit rating within the category of A, instead of AA, or higher or the equivalent by at least one nationally recognized rating agency in connection with the refunding security.

Municipal Security Maturation

Under the bill, unless otherwise approved by the Department, a municipal security issued under these provisions must mature by no later than the date the final amortized payment for the unfunded pension liability or the unfunded accrued health care liability would have been made had the county, city, village, or township not elected to issue a municipal security under these provisions.

MCL 141.2518 Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have no fiscal impact on State government. Local governments that issue securities for unfunded pension or health care liabilities or refunded those securities pursuant to the bill potentially will have reduced costs.

Fiscal Analyst: David Zin