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**PUBLIC EDUCATIONAL FACILITIES
AUTHORITY**

**Senate Bill 1506 as passed by the Senate
Sponsor: Sen. Shirley Johnson**

Addendum to SFA Analysis (12-10-02)

**Senate Committee: Education
House Committee: Education**

ADDENDUM TO SENATE FISCAL AGENCY ANALYSIS OF SB 1506 DATED 11-20-02:

HOUSE COMMITTEE ACTION:

The members of the House Education Committee adopted the Senate-passed version of the bill without amendments.

Note: Senate Bill 1506 was amended on the Senate floor during deliberations by the Committee of the Whole. Changes to the bill that were made on the Senate floor are not included in the SFA analysis dated 11-20-02. Briefly, those changes include the following modifications to the bill:

- A paragraph of legislative intent was added to declare that the authority and the powers conferred by the act constitute a necessary program and serve a necessary public purpose.
- A definition of “developer” was added, and the term is defined to mean an individual, corporation, limited or general partnership, joint venture, or limited liability company that has entered into a public-private partnership agreement.
- A definition of “developer obligations” was added, to mean a promissory note, loan agreement, or other evidence of indebtedness of a developer.
- Generally throughout the bill, the term “obligation” was clarified to mean either a “public school obligation,” or a “developer obligation.”
- The definition for “obligation” was deleted, and a new definition was added for “public school obligation”, which is defined to mean a bond, note, loan agreement, or other evidence of indebtedness issued by a public school for a purpose authorized by law.
- The definition for “public-private partnership agreement” was deleted. (The term was defined to mean that term as defined in subsection (k)(2) of section 142 of the federal Internal Revenue Code of 1986.)
- The definition for “person” was changed to mean an individual, corporation, limited or general partnership, joint venture, limited liability company, or other legal entity. (Formerly the definition for “person” also included a governmental entity, including state authorities,

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municipalities, counties, and townships; police, fire, and other public safety organizations; judicial entities, medical entities, Indian tribes, schools, colleges, universities, tribally controlled community colleges, hospitals, libraries, community centers; and local economic development entities. In the earlier definition, except to the extent that state authorities, police, fire, and other public safety organizations, judicial entities, medical entities, schools, colleges, universities, hospitals, and libraries may constitute state entities, person did not include this state.)

In addition to the changes in the definitions used in the act, the bill was amended by the Senate to alter the authorizing language. Formerly, the bill specified that the authority could assist through financing and refinancing the construction, acquisition, rehabilitation, refurbishing, and equipping of public schools as provided in section 142 of the federal Internal Revenue Code of 1986. This provision was retained, but it was modified to “authorize the issuance of bonds and notes to provide funds to be loaned to developers.” Formerly, the bill also specified that the authority could authorize the issuance of bonds and notes to provide funds to purchase obligations of public schools, and developers’ obligations. This provision was modified to authorize the issuance of bonds and notes to provide funds to purchase public school obligations.

The powers of the authority were altered by the Senate during its deliberations as the Committee of the Whole. In the earlier version of the bill, the authority could loan money to a public school or a developer at a rate or rates as the authority determined, and was authorized to purchase and sell (and to commit to purchase and sell) obligations and developer obligations. This provision was modified to eliminate all references to the sale of obligations. Instead, the provision would allow the authority to loan money to a public school or a developer at a rate or rates as the authority determined, and to purchase or acquire public school and developer obligations.

References to board members were changed throughout the bill to refer instead to trustees.

A provision that specified that the state treasurer could, by written instrument, delegate a duty or power conferred by law to a person, was altered to specify instead that the state treasurer could, by written instrument, delegate a duty or power conferred by law “to a representative in the department of treasury.”

Formerly the bill specified that a majority of the serving trustees of the board would constitute a quorum for the transaction of business, and actions would be approved by a majority vote of the trustees present at a meeting. This provision was modified to specify instead that actions of the board could be approved by a majority vote of the trustees present at a meeting “at which a quorum is present.”

In the earlier version, the authority could lend money to a developer or a public school through the purchase by the authority of obligations of the developer or of the public school. This provision was modified to specify instead that the authority could lend money to a public school through the purchase by the authority of public school obligations “in fully marketable form” of the public school. In addition, the provision now specifies that the authority “may lend

money to a developer under the terms of a promissory note, loan agreement, or other evidence of indebtedness.”

The Senate Committee of the Whole removed a provision that specified the following: “Unless approved by a concurrent resolution of the legislature, the authority shall not provide preferential treatment in the rate of interest for a particular obligation purchased by the authority that is based upon other than financial and credit considerations and shall not forgive or relinquish all or part of the interest or principal of a particular obligation or of obligations of a particular purpose.”

A new provision was added to specify that the authority could issue authority bonds or notes in the principal amounts the authority considered necessary to provide funds for “entering into a loan agreement or acquiring a promissory note, developer obligation, or other evidence of indebtedness from a developer in this state or in any other state.”

The earlier version of the bill required that the notes and bonds be authorized by resolution of the authority and mature at the time, as provided in the resolution. This provision was modified to require that the maturity period of the notes and bonds could not exceed 50 years.

The bill would specify certain provisions that could be included in the authority’s resolution related to authorizing notes or bonds. Formerly one of those provisions specified that the establishment of a contractual right to require mandatory tender for purchase of the notes or bonds in an instrument separate from the notes or bonds. Further, the bill specified that the “instrument may be issued or sold by the authority to investors.” This reference to the sale of the instrument was deleted.

A new provision was added to specify that “in addition, a public school may pledge for the payment of a public school obligation purchased by the authority the public school’s full faith and credit as determined by the governing board of the public school.” Further, a provision was added to specify that a developer could borrow money and provide security for the borrowing in accordance with the laws of the state.

Several changes were made concerning the default by public schools or developers. Formerly the bill specified that upon the sale and issuance of obligations to the authority by a public school or developer, that school or developer would have been held, and considered to have agreed to, a list of consequences, if the developer failed to pay the interest on or the principal of the obligations held or owned by the authority when due and payable. The bill retains this provision and also specifies the default consequences “upon the delivery of a promissory note, loan agreement, or other evidence of indebtedness from a developer to the authority.” Two of the particular consequences for default were modified. Formerly the bill specified that the public school or developer would waive all and any defenses to the nonpayment, and further, that “the authority upon the nonpayment would constitute a holder or owner of the obligations in default.” The bill would eliminate this latter consequence, so that instead the public school or developer would waive all and any defenses to the nonpayment of the public school obligation or evidence of indebtedness.

Further, Senate floor amendments eliminated a consequence of a defaulting party that specified “that all of the obligations of the issue of obligations of that public school or developer as to which there had been a non-payment shall for all of the purposes of this section, be held and considered to have become due and payable and to be unpaid.”

Finally, the bill specifies that the authority’s powers and duties described in Executive Order No. 2002-3, MCL 12.192, would be transferred to the authority by a Type I transfer. Under the earlier version of the bill, those powers and duties would have been transferred to the authority by a Type II transfer. (In a Type II transfer, the functions of an existing entity are transferred to a principal department. In a Type I transfer, the board, office, commission, or agency transferred by the governor is given some area of independent authority, and statutory powers and functions, including adjudication, must be exercised independently of the department head and without interference of supervision by the head of the department to which it was transferred.)

POSITIONS:

A representative of the Department of Treasury testified in support of the bill. (12-5-02)

The Michigan Education Association supports the bill. (12-5-02)

Oakland Schools supports the bill. (12-5-02)

A representative of the Michigan State Building and Construction Trades testified in opposition to the bill. (12-5-02)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.