House Legislative Analysis Section
House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

PUBLIC EDUCATIONAL FACILITIES AUTHORITY

House Bill 6515
Sponsor: Rep. Tom Meyer
Committee: Education

Complete to 11-27-02

A SUMMARY OF HOUSE BILL 6515 AS INTRODUCED 11-7-02

House Bill 6515 would create a new law to establish the Michigan Public Educational Facilities Authority, which would operate independently of, but be located within, the Department of Treasury. However, the bill specifies that the budgeting, personnel, procurement, and related administrative functions of the authority would be performed under the supervision of the state treasurer.

Duties. The authority could a) assist through financing and refinancing the construction, acquisition, rehabilitation, refurbishing, and equipping of public schools as provided in section 142 of the Internal Revenue Code, and b) authorize the issuance of bonds and notes to provide funds to purchase obligations of public schools and developers. A complete list of the powers and duties of the authority are included in section 4 (which describes its powers, overall), section 7 (which concerns lending money to a developer or public school), sections 8, 9, and 10 (which concern issuing bonds or notes to provide funds), and section 11 (which concerns the creation of special funds as reserve funds to secure notes and bonds).

Members. Under the bill, the duties of the authority would be vested in a five-member board of trustees to include the state treasurer, and four members appointed by the governor with the advice and consent of the Senate. Not more than two of the trustees could be members of the same political party. Each trustee would hold office for a four-year term, however the original appointees would be appointed to staggered terms, two serving four years, one serving three years, and one serving one year. The governor would designate one member to serve as chairperson, and the chair would serve at the pleasure of the governor. The board would meet at the call of the chair (and as may be provided in bylaws), and a majority of those serving would constitute a quorum.

Until all members were appointed and took office, the current members of the board of trustees of the Michigan Public Educational Facilities Authority serving under Executive Order 2002-3 (MCL 12.192) would be members of the board. Further and under the bill, all the powers, duties, functions, responsibilities, debts, and liabilities, including outstanding bonds, notes, and other obligations of the authority that was established by Executive Order 2002-3 would be transferred to the authority that would be established by statute, by a type II transfer (as described in section 3 of the Executive Reorganization Act (MCL 16.103).

Liability. The bill specifies that the bonds and notes of the authority would not be in any way a debt or liability of the state, and would not create or constitute any indebtedness, liability, or obligation of the state, or be or constitute a pledge of the faith and credit of the state. Instead, all authority bonds and notes, unless funded or refunded by bonds or notes of the authority, would be payable solely from revenues or funds pledged or available for their payment. Each bond and note would contain on its face a statement to the effect that the authority was obligated to pay the principal of and the interest on the bond or note, only from revenues or funds of the authority, and that the state was not obligated to pay the principal or interest, and that neither the faith and credit nor the taxing power of the state was pledged to the payment of the principal or interest on the bond or note.

In addition, the bill specifies that neither the members of the board, nor any person executing the notes or bonds under the act would be liable personally on the notes or bonds, nor would they be subject to any personal liability or accountability by reason of the issuance of the notes or bonds. The bill does specify, however, that the state would pledge not to limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders, or in any way impair the rights and remedies of the holders until the notes or bonds were fully met and discharged.

Default. The bill specifies that in the event of a default by the authority that continued for 30 days, or if the authority failed or refused to comply with the act, then the holders of 51 percent or more in aggregate principal amount of the notes or bonds of that issue then outstanding could apply to the circuit court of Ingham County for the appointment of a trustee to represent the holders of the notes or bonds. The duties of that trustee would include, among other things, enforcing all rights of the bondholders or noteholders, including bringing suit, and declaring the notes or bonds due and payable (first giving 30 days notice in writing to the governor, the authority, the state treasurer, and the attorney general).

Tax-free securities. The bill further specifies that the notes and bonds of the authority would be securities in which all parties so authorized could properly and legally invest funds, including capital. Those parties would include public officers and bodies of the state and municipalities, as well as insurance companies and associations and other persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, administrators, guardians, executors, trustees and other fiduciaries, and others authorized to invest in obligations of the state.

Under the bill, the state would "covenant" with the purchasers and holders of notes and bonds that the notes and bonds, as well as the income from the notes and bonds and all its fees, charges, grants, revenues, receipts, and other money received would be exempt from all state, city, county, or other taxation.

Authority property tax-free. The bill specifies that the property of the authority and its income and operation would be devoted to an essential public and governmental function, and would be exempt from all taxation and special assessments by the state, or any of its political subdivisions.

Authority fees. The bill specifies that the authority could charge a fee for a public school or developer to utilize its services, and it also authorizes a public school to pay that fee.

Annual report to CEPI. The bill would require the authority to prepare and submit an annual report to the Center for Educational Performance and Information that included the total number of bond issues, dollar amount of the bond issues, number of public schools assisted, the geographic distribution of the bond financing, and the types of facilities financed.

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.