

HOUSE BILL No. 4665

April 26, 2005, Introduced by Reps. Condino, Miller, Byrum, Clack, Gleason, Alma Smith, Hopgood, Vagnozzi, Donigan, Accavitti, Farrah, Mayes, Lemmons, III, Polidori and Tobocman and referred to the Committee on Appropriations.

A bill to amend 1964 PA 183, entitled

"An act creating the state building authority with power to acquire, construct, furnish, equip, own, improve, enlarge, operate, mortgage, and maintain facilities for the use of the state or any of its agencies; to act as a developer or co-owner of facilities as a condominium project for the use of the state or any of its agencies; to authorize the execution of leases pertaining to those facilities by the building authority with the state or any of its agencies; to authorize the payment of true rentals by the state; to provide for the issuance of revenue obligations by the building authority to be paid from the true rentals to be paid by the state and other resources and security provided for and pledged by the building authority; to authorize the creation of funds; to authorize the conveyance of lands by the state or any of its agencies for the purposes authorized in this act; to authorize the appointment of a trustee for bondholders; to permit remedies for the benefit of parties in interest; to provide for other powers and duties of the authority; and to provide for other matters in relation to the authority and its obligations,"

by amending sections 1, 1a, 3, and 7 (MCL 830.411, 830.411a, 830.413, and 830.417), sections 1 and 7 as amended by 1994 PA 252 and sections 1a and 3 as amended by 1988 PA 248.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Building authority" means the state building authority
3 created by this act.

4 (b) "State" means the legislative, executive, and judicial
5 branches of state government and includes institutions of higher
6 education.

7 (c) "Existing facilities" means all existing buildings and
8 other facilities, the sites for the buildings or facilities, and
9 furnishings or equipment for the buildings or facilities located on
10 real property acquired by the building authority under the terms of
11 this act.

12 (d) "Facilities" means furnishings or equipment, **CAPITAL**
13 **MAINTENANCE IMPROVEMENTS**, existing facilities, and all new
14 buildings, parking structures and lots, and other facilities, the
15 sites for the buildings, structures, or facilities, and furnishings
16 or equipment for the buildings, structures, or facilities in any
17 way acquired or constructed by the building authority under this
18 act.

19 (e) "True rental" means the rental required to be paid by the
20 state to the building authority under a lease between the state and
21 the building authority entered into under this act. The true rental
22 shall be paid by the state to the building authority or its
23 assignee periodically as specified in the lease with the building
24 authority and shall be in periodic amounts that do not exceed the
25 economic or market value to the state of the leased facilities. The
26 economic or market value to the state of the leased facilities
27 shall be determined by the state administrative board before the

1 execution of a lease by the state under this act by an appraisal
2 made by or for the state using commonly employed procedures that
3 will fairly determine economic or market value. When using
4 procedures commonly employed by appraisers, an appraisal may set
5 forth a range for the true rental that reflects variations that may
6 occur in the components upon which the appraisal is based. If a
7 lease is only for furnishings or equipment, the state
8 administrative board may employ an appraiser to determine the
9 economic or market value to the state of the furnishings or
10 equipment, or the state administrative board may approve an
11 alternative method to determine the economic or market value to the
12 state of the furnishings or equipment. The alternative method may
13 include the determination of the economic or market value to the
14 state by a person who is in the business of leasing furnishings or
15 equipment.

16 (f) "Board" means the board of trustees of the building
17 authority.

18 (g) "Bond" or "obligation" means a bond, note, or other debt
19 obligation issued by the building authority under section 8.

20 (h) "Institution of higher education" means a college or
21 university listed in section 4 or 5 of article VIII of the state
22 constitution of 1963 or described in section 6 of article VIII of
23 the state constitution of 1963 or a community or junior college
24 established under section 7 of article VIII of the state
25 constitution of 1963.

26 (i) "Equipment" means machinery, hardware, or any other type
27 of equipment or a group of integrally related equipment, which

1 shall meet all of the following:

2 (i) The equipment or the predominant portion of the group of
3 integrally related equipment is located in or is physically
4 connected to a state occupied building or facility or is located on
5 state owned property.

6 (ii) The portion of the group of integrally related equipment
7 that is not described in subparagraph (i) is integral to the
8 functioning of the integrally related equipment described in
9 subparagraph (i).

10 (iii) The projected useful life of the equipment is 5 years or
11 more.

12 (j) "Party in interest" includes an owner of an obligation
13 issued under this act; a counterparty to an agreement relating to
14 security or management of payment, revenue, or interest rate
15 exposure, including, but not limited to, a bank, bond insurance
16 provider, or security firm, as its interest appears; and a trustee
17 or fiduciary duly designated by the building authority or otherwise
18 to act on behalf of 1 or more owners or counterparties.

19 **(K) "CAPITAL MAINTENANCE IMPROVEMENTS" MEANS AN EXPENDITURE TO**
20 **PROVIDE CAPITAL MAINTENANCE THAT IS AN ASSET DEPRECIABLE UNDER THE**
21 **INTERNAL REVENUE CODE THAT IS USED BY THIS STATE OR AN INSTITUTION**
22 **OF HIGHER EDUCATION.**

23 Sec. 1a. The legislature finds all of the following:

24 (a) That there is a present need for the state, its agencies,
25 and departments, in order to carry out necessary governmental
26 functions and enterprises and to provide necessary services to the
27 people of the state as mandated or permitted by constitution and

1 law, to do both of the following:

2 (i) Rent, lease, or otherwise acquire additional buildings,
3 together with necessary parking structures and lots, facilities,
4 furnishings, equipment, and sites.

5 (ii) Renovate or restore properties owned or used by ~~the~~ **THIS**
6 state.

7 (b) That ~~the~~ **THIS** state now rents and leases from private
8 owners at a substantial cost space and furnishings or equipment in
9 many communities in order to provide services, and as ~~the~~ **THIS**
10 state continues to grow it will be necessary to rent or lease
11 substantial additional space and furnishings or equipment from
12 private owners at substantial additional cost to provide services.

13 (c) That the state building authority is created by this act
14 with the powers granted in this act to do both of the following:

15 (i) Provide additional space and furnishings or equipment in
16 the best locations and in the most economical and efficient manner.

17 (ii) Improve existing facilities through **CAPITAL MAINTENANCE**
18 **IMPROVEMENTS OR** the restoration or renovation of those facilities.

19 Sec. 3. The building authority may do any of the following:

20 (a) Adopt bylaws for the regulation of its affairs and the
21 conduct of its business.

22 (b) Adopt an official seal.

23 (c) Maintain a principal office at a place within this state.

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

26 (e) Acquire, construct, furnish, equip, improve, restore,
27 renovate, enlarge, own, operate, and maintain facilities that are

1 approved by concurrent resolution of the legislature for the use of
2 ~~the~~ **THIS** state or an agency of ~~the~~ **THIS** state.

3 (f) Acquire in the name of the building authority, hold, and
4 dispose of real and personal property, or an interest in real and
5 personal property, in the exercise of its powers and the
6 performance of its duties.

7 (g) Act as a developer or co-owner of a facility that is a
8 condominium project under the condominium act, ~~Act No. 59 of the~~
9 ~~Public Acts of 1978, as amended, being sections 559.101 to 559.275~~
10 ~~of the Michigan Compiled Laws~~ **1978 PA 59, MCL 559.101 TO 559.276,**
11 in the exercise of its powers and the performance of its duties.

12 (h) Borrow money for a corporate purpose as prescribed in this
13 act, issue negotiable revenue bonds payable solely from the true
14 rental except to the extent paid from the proceeds of sale of
15 revenue obligations and any additional security provided for and
16 pledged by the building authority in the resolution authorizing
17 revenue obligations under section 8, and provide for the payment of
18 the bonds and the rights of the holders of the bonds and mortgage
19 facilities in favor of the holders of bonds issued under this act.

20 (i) Make and enter into contracts, leases, and other
21 instruments necessary or incident to the performance of its duties
22 and the execution of its powers. A lease may include provisions for
23 construction, improvement, restoration, renovation, **CAPITAL**
24 **MAINTENANCE IMPROVEMENTS**, operation, use, and disposition of the
25 facilities on payment of the bonds. If the cost of a contract for
26 construction, materials, or services, other than compensation for
27 personal or professional services, involves an expenditure of more

1 than \$5,000.00, the building authority shall make a written
2 contract with the lowest qualified bidder, after advertisement for
3 not less than 2 consecutive weeks in a newspaper of general
4 circulation in this state, and in other publications as determined
5 by the building authority.

6 (j) Employ and fix the compensation of consulting engineers,
7 architects, superintendents, managers, and other construction,
8 accounting, appraisal, and financial experts, attorneys, and other
9 employees and agents as the authority determines are necessary to
10 perform its duties and functions under this act.

11 (k) Receive and accept from a federal agency grants for or in
12 aid of the construction of facilities and receive and accept aid or
13 contributions from any source of either money, property, labor, or
14 other things of value, to be held, used, and applied only for the
15 purposes for which the grants and contributions were made.

16 (l) Require fidelity bonds from employees handling money of the
17 building authority. The bonds shall be in sums and subject to the
18 terms and conditions that the board considers satisfactory.

19 (m) Do all acts necessary or, in the opinion of the building
20 authority, convenient to carry out the powers expressly granted.

21 (n) Require that final actions of the board are entered in the
22 journal of the board. A writing prepared, owned, used, in the
23 possession of, or retained by the board in the performance of an
24 official function shall be made available to the public in
25 compliance with the freedom of information act, ~~Act No. 442 of the~~
26 ~~Public Acts of 1976, as amended, being sections 15.231 to 15.246 of~~
27 ~~the Michigan Compiled Laws 1976 PA 442, MCL 15.231 TO 15.246.~~

1 (o) Require that the books and records of account of the
2 building authority are audited annually by the auditor general, or
3 if the auditor general is unable to act, by an independent
4 certified public accountant appointed by the auditor general.

5 (p) Make and enter into contracts for insurance, letters of
6 credit, and commitments to purchase its revenue obligations, or
7 enter into other transactions to provide separate security to
8 assure the timely payment of any revenue obligations of the
9 building authority. A contract of the building authority permitted
10 by this section shall not be a general obligation of the state or
11 building authority.

12 Sec. 7. (1) The state may lease facilities from the building
13 authority for public purposes within the concepts provided in this
14 act, upon terms and conditions agreed upon and subject to the
15 limitations and provisions provided in section 6. Before execution,
16 a lease shall be approved by the state administrative board and,
17 except as provided in ~~subsection~~ **SUBSECTIONS (3) AND (4)**, by
18 concurrent resolution of the legislature concurred in by a majority
19 of the members elected to and serving in each house. The votes and
20 names of the members voting shall be entered in the journal. The
21 lease as approved by the building authority and the administrative
22 board, and if required, the legislature or an institution of higher
23 education, may provide for a determinable true rental as a range as
24 permitted under section 1(e).

25 (2) If a lease is approved containing a true rental stated as
26 a range, then actual rental to be paid under the lease shall be
27 fixed at an amount certified by the appraiser and, after the

1 certification, shall be approved by the state administrative board
2 and the building authority. The appraiser shall not certify, and
3 the board and authority shall not approve, a true rental amount
4 unless the amount is fixed within or below the stated range. A
5 lease shall not be executed more than 3 years after its approval by
6 the legislature. The state shall pay to the building authority or
7 its assignee the true rental at the times, in the manner, and at
8 the place specified in the lease. The governor and the budget
9 director shall include in the annual budget of the state for each
10 year an amount fully sufficient to pay the true rental required to
11 be paid by the state to the building authority or its assignee
12 required by any lease under this act. If the lease is for an
13 institution of higher education, then in addition, the lease shall
14 be authorized by the institution of higher education and signed by
15 its authorized officers.

16 (3) The state, except institutions of higher education, may
17 lease from the building authority property that is comprised only
18 of furnishings or equipment if all of the following requirements
19 are met:

20 (a) Before a lease that is only for furnishings or equipment
21 is executed, the general form of the lease shall be approved by
22 concurrent resolution of the legislature concurred in by a majority
23 of the members elected to and serving in each house. The form of
24 the lease approved by the legislature need not contain a
25 description of the property to be leased or the rental or a rental
26 range. However, before the state executes the lease, the
27 description of the property to be leased and the rental shall be

1 approved by the state administrative board as provided in
2 subsection (2). The concurrent resolution of the legislature
3 approving the form of lease shall also approve a maximum amount of
4 furnishings and equipment that may be leased during the 2 years
5 following the approval of the lease pursuant to the form of lease
6 approved.

7 (b) A lease that is only for furnishings or equipment shall be
8 executed only if the furnishings or equipment are for use by a
9 state agency as determined under the management and budget act,
10 ~~Act No. 431 of the Public Acts of 1984, being sections 18.1101 to~~
11 ~~18.1594 of the Michigan Compiled Laws 1984 PA 431, MCL 18.1101 TO~~
12 ~~18.1594.~~

13 (4) THROUGH SEPTEMBER 30, 2007, AN INSTITUTION OF HIGHER
14 EDUCATION, THIS STATE, AND THE BUILDING AUTHORITY MAY ENTER INTO A
15 LEASE FOR CAPITAL MAINTENANCE IMPROVEMENTS IF, BEFORE A LEASE THAT
16 IS ONLY FOR CAPITAL MAINTENANCE IMPROVEMENTS IS EXECUTED, THE
17 GENERAL FORM OF THE LEASE IS APPROVED BY CONCURRENT RESOLUTION OF
18 THE LEGISLATURE CONCURRED IN BY A MAJORITY OF THE MEMBERS ELECTED
19 TO AND SERVING IN EACH HOUSE. THE FORM OF THE LEASE APPROVED BY THE
20 LEGISLATURE NEED NOT CONTAIN A DESCRIPTION OF THE CAPITAL
21 MAINTENANCE IMPROVEMENTS TO BE LEASED OR THE RENTAL OR A RENTAL
22 RANGE. HOWEVER, BEFORE THIS STATE EXECUTES THE LEASE, THE
23 DESCRIPTION OF THE CAPITAL MAINTENANCE IMPROVEMENTS TO BE LEASED
24 AND THE RENTAL SHALL BE APPROVED BY THE STATE ADMINISTRATIVE BOARD.

25 (5) THE BUILDING AUTHORITY SHALL RETAIN TITLE TO CAPITAL
26 MAINTENANCE IMPROVEMENTS DURING THE TERM OF A LEASE APPROVED UNDER
27 SUBSECTION (4). THE BUILDING AUTHORITY SHALL NOT BE REQUIRED TO

1 HAVE ANY OWNERSHIP INTEREST IN THE STRUCTURE TO WHICH A CAPITAL
2 MAINTENANCE IMPROVEMENT IS MADE. TITLE TO THE CAPITAL MAINTENANCE
3 IMPROVEMENT SHALL BE EVIDENCED BY A BILL OF SALE.

4 (6) THE ACTUAL RENTAL TO BE PAID UNDER A LEASE APPROVED UNDER
5 SUBSECTION (4) FOR A CAPITAL MAINTENANCE IMPROVEMENT SHALL BE
6 DETERMINED BY AN APPRAISER OR BY AN ALTERNATE METHOD AND, AFTER THE
7 DETERMINATION, SHALL BE APPROVED BY THE STATE ADMINISTRATIVE BOARD
8 AND THE BUILDING AUTHORITY. THE STATE ADMINISTRATIVE BOARD SHALL
9 APPROVE ANY ALTERNATE METHOD FOR DETERMINING ACTUAL RENTAL, AND AN
10 ALTERNATE METHOD MAY INCLUDE A DETERMINATION BY A PERSON OR
11 BUSINESS THAT IS IN THE BUSINESS OF PROVIDING CAPITAL MAINTENANCE
12 IMPROVEMENTS TO INSTITUTIONS OF HIGHER EDUCATION.

13 (7) THE STATE SHALL PAY TO THE BUILDING AUTHORITY OR ITS
14 ASSIGNEE THE TRUE RENTAL AT THE TIMES, IN THE MANNER, AND AT THE
15 PLACE SPECIFIED IN THE LEASE APPROVED UNDER SUBSECTION (4). THE
16 GOVERNOR AND THE BUDGET DIRECTOR SHALL INCLUDE IN THE ANNUAL BUDGET
17 OF THE STATE FOR EACH YEAR AN AMOUNT FULLY SUFFICIENT TO PAY THE
18 TRUE RENTAL REQUIRED TO BE PAID BY THIS STATE TO THE BUILDING
19 AUTHORITY OR ITS ASSIGNEE REQUIRED BY ANY LEASE UNDER THIS ACT.