

## **MUNICIPAL HEALTH FACILITIES CORPORATIONS ACT (EXCERPT)**

**Act 230 of 1987**

**Chapter 4**

### **331.1401 Board of trustees or subsidiary board; power to borrow money and issue notes; resolution; applicability of revised municipal finance act.**

Sec. 401.

(1) A board of trustees or subsidiary board may borrow money and issue notes, which shall mature not more than 18 months from the date of their issuance, for the purpose of meeting current expenses of operation and maintenance of its health care facilities and health services. The resolution authorizing the issuance of the notes shall provide for the pledging of income and revenues of the corporation or subsidiary corporation for the payment of the notes, and may also provide for a special sinking fund into which there shall be paid as collected, a sufficient fund from the revenues of the corporation or subsidiary corporation to retire both the principal and interest of the notes at or before maturity. The resolution may also provide for the mortgaging, pledging, or granting of security interests or other liens in other assets of the corporation or subsidiary corporation as additional security for the payment of the notes.

(2) Except as provided in subsection (3), notes issued under this section are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The issuance of notes described in this subsection is subject to the agency financing reporting act.

(3) Notes issued under this section that pledge the full faith and credit of the corporation are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989 ;-- Am. 2002, Act 395, Imd. Eff. May 30, 2002

### **331.1402 Corporation or subsidiary corporation; additional powers; prohibited conduct.**

Sec. 402.

In addition to the powers provided elsewhere in this act, a corporation or subsidiary corporation may, subject to approval of the county board of commissioners, city council, or village council, borrow money, issue bonds, and exercise the powers provided in the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.139 of the Michigan Compiled Laws, or issue bonds, notes, or other obligations pursuant to other applicable law. However, whether or not otherwise permitted by law, a corporation or a subsidiary corporation shall not borrow funds from, lease property from, or acquire property pursuant to a lease purchase agreement with a local hospital authority incorporated under the hospital finance authority act, Act No. 38 of the Public Acts of 1969, being sections 331.31 to 331.84 of the Michigan Compiled Laws, nor shall a corporation or subsidiary corporation otherwise receive the proceeds of bonds issued by such a local hospital authority, except as consideration for property transferred by the corporation or subsidiary corporation to a third party.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989

### **331.1403 Corporation or subsidiary corporation; additional powers; refinancing or refunding indebtedness; redemption; limitation; determination of board of trustees or subsidiary conclusive; exception.**

Sec. 403.

(1) Subject to the approvals required under sections 406(1) and 412, a corporation or a subsidiary corporation may do any or all of the following:

(a) Borrow money and issue 1 or more series of its corporation obligations pursuant to this act in order to finance all or part of the project costs of health care facilities.

(b) Either as part of an issue of corporation obligations for the purposes described in subdivision (a) or separately, borrow money and issue 1 or more series of corporation obligations in order to refinance, refund, or refund in advance any indebtedness of a corporation or subsidiary corporation or any existing indebtedness of the county undertaken for the benefit of the corporation or the subsidiary corporation, in whole or in part. Corporation obligations may be issued to refinance, refund, or refund in advance outstanding indebtedness for any 1 or more of the following purposes:

(i) To reduce the total amount of the debt service costs which would be payable over the term of the outstanding indebtedness.

(ii) To reduce the present value of the debt service costs which would be payable over the term of the outstanding indebtedness.

(iii) To produce a repayment schedule for the corporation obligations more favorable to the issuer than the payment schedule on the bonds being refinanced, refunded, or refunded in advance.

(iv) To secure the release of the local governmental unit from any indebtedness or guaranty undertaken on behalf of the corporation or the subsidiary corporation or to secure terms for any such indebtedness or guaranty more favorable to the local governmental unit.

(v) To enable the corporation or the subsidiary corporation to issue corporation obligations for the purposes described in subdivision (a).

(vi) To enable the corporation or the subsidiary corporation to provide adequate security for the corporation obligations being issued.

(vii) To eliminate restrictions or requirements determined by the corporation or the subsidiary corporation to be excessively burdensome to it or to the local governmental unit.

(viii) To pay when due outstanding corporation obligations or indebtedness incurred by a corporation or subsidiary corporation or by a local governmental unit on behalf of a corporation or subsidiary corporation.

(2) Corporation obligations issued for refinancing and refunding purposes may be issued whether the indebtedness to be refinanced or refunded has or has not matured, is or is not redeemable on the date of issuance of the corporation obligations or is or is not subject to redemption prior to maturity. Refunding corporation obligations shall not be issued unless the issuing corporation or subsidiary corporation determines that there will be sufficient assets or revenues to pay when due the principal or interest on the refunding corporation obligations, other costs, expenses, and charges in connection with the issuance of the refunding corporation obligations and any charges or obligations of the corporation or subsidiary corporation which may be prior or equal to the refunding corporation obligations.

(3) Outstanding indebtedness being refinanced, refunded, or refunded in advance may be called for redemption before maturity on the first possible date, or may be allowed to remain outstanding beyond the first possible date or redemption, either to a later redemption date or to maturity.

(4) Corporation obligations issued for the purposes of refinancing, refunding, or refunding in advance outstanding indebtedness shall not exceed the amount of principal, interest and redemption premium, if any, of the indebtedness to be refinanced, refunded, or refunded in advance, which has not been paid or provided for, plus such additional amounts as may be required to carry out the purposes of the refinancing or refunding described in subsection (1)(b), plus the marketing, financing, legal, and other costs incurred or to be incurred in connection with the refinancing, refunding, or refunding in advance and the issuance of the corporation obligations, including the costs of funding reserves and paying capitalized interest on the corporation obligations for a period not to exceed 1 year after issuance of the corporation obligations.

(5) The determination of the board of trustees or subsidiary board with respect to the necessity of refinancing, refunding, or refunding in advance, the expediency of refinancing, refunding, or refunding in advance, the sufficiency of assets and revenues to meet corporation obligations and the adequacy of security shall be conclusive, except with respect to the approval of the department of treasury when prior approval is required.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989

### **331.1404 Corporation obligations as general obligations of issuing corporation or subsidiary corporation; corporation obligations neither local governmental unit nor state debt.**

Sec. 404.

(1) Except as expressly provided by the corporation or subsidiary corporation or as otherwise provided in this act, every issue of its corporation obligations shall be general obligations of the issuing corporation or subsidiary corporation payable out of any properties, revenues, or money available to the corporation or subsidiary

corporation, including, without limitation, revenues derived from the operation of health services, from the operation, lease, or disposition of health care facilities and other properties, from gifts or grants available for these purposes, from amounts borrowed, including refinancings or refundings, from the proceeds of health care facilities and other assets and from investment earnings from any of those sources, subject only to agreements with holders of particular corporation obligations or holders of other notes and obligations mortgaging, pledging, or granting security interests or other liens in particular properties, revenues, or money.

(2) A corporation obligation shall not be an obligation of nor constitute a debt of the local governmental unit for purposes of any constitutional, charter or statutory limitation unless the local governmental unit has pledged its full faith and credit to the guaranty of such corporation obligation pursuant to section 305. A corporation obligation shall not constitute a debt of or in any way obligate the state.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989

### **331.1405 Provisions of resolution authorizing issuance of corporation obligations as part of contract.**

Sec. 405.

A resolution authorizing issuance of corporation obligations may contain provisions, which shall be part of the contract with the holders of such corporation obligations, as to:

(a) Use and disposition of net revenues derived from the operation of health care facilities and provision of health services, including the pledging or creation and perfection of security interests and other liens in such net revenues and investment earnings and profits thereon to pay principal or interest on the corporation obligations, the creation of reserves or sinking funds and the regulation and disposition of reserves and sinking funds.

(b) Operation, management, and control of health care facilities and health services provided by the corporation or subsidiary corporation, including the granting of mortgages, deeds of trust, security interests, and other liens in health care facilities and other property, which may include additions, improvements, or extensions made after issuance to secure payment of principal and interest on the corporation obligations.

(c) Limitations on the purposes to which the proceeds of corporation obligations may be applied and pledging those proceeds to secure payment of principal and interest on the corporation obligations.

(d) Limitations on the issuance of additional corporation obligations and other indebtedness, and the terms and conditions upon which additional corporation obligations and other indebtedness may be issued.

(e) Insurance to be maintained with respect to the health care facilities and health services or alternatives thereto and the collection, use, and disposition of the proceeds of insurance.

(f) The terms and conditions upon which the holders of corporation obligations, or a portion of the corporation obligations, or any trustees for such holders, shall be entitled to appointment of a receiver by a court which has jurisdiction for the corporation or subsidiary corporation or for all or part of the property of a corporation or subsidiary corporation.

(g) The procedure by which the contract with the holders of corporation obligations may be amended or abrogated, the amount of corporation obligations, if any, the holders of which must consent to an amendment or abrogation, and the manner in which a required consent may be given.

(h) Vesting in 1 or more trustees, which may be individuals or corporations domiciled or located within or outside the state, of property, rights, powers, remedies, and duties which are necessary or convenient, with or without the execution of a mortgage or deed of trust in favor of the trustee or trustees.

(i) Payment or rebate of investment earnings or profits on the proceeds of corporation obligations or on funds deposited for the payment of principal, interest, or premiums on such corporation obligations to the issuing corporation or subsidiary corporation or its successor.

(j) Covenants and agreements to safeguard the corporation obligations not inconsistent with this act and other applicable law.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

### **331.1406 Corporation obligations generally.**

Sec. 406.

(1) Corporation obligations shall be authorized by resolution adopted by a majority vote of the members serving on the board of trustees of the corporation or the subsidiary board of the subsidiary corporation issuing the corporation obligations. However, the resolution shall not take effect until issuance of the corporation obligations has been approved by a majority vote of the members serving on the county board of commissioners, city council, or village council and, in the case of issuance of corporation obligations by a subsidiary corporation, also by a majority vote of the members serving on the board of trustees of its parent corporation. Approval of issuance of corporation obligations by the county board of commissioners, city council, or village council and, if applicable, by the board of trustees of the parent corporation, may take place before or after adoption of the resolution authorizing issuance by the issuing corporation or subsidiary corporation.

(2) Corporation obligations shall be dated, have the maturities, bear interest at the times and the rates, be in the denominations, be in the form, either coupon or registered or both and either certificate or book entry, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places and be subject to the terms of redemption and other terms as the resolution provides. Corporation obligations may be sold and remarketed by the corporation or subsidiary corporation or by an authorized officer or agent of the corporation or subsidiary corporation, at public or private sale, at the price or prices, the interest rates, and the maturities as the corporation or subsidiary corporation or an authorized officer or agent of the corporation or subsidiary corporation determines in accordance with limits established by the corporation or subsidiary corporation. The corporation or subsidiary corporation may authorize rates of interest that are variable by reference to 1 or more interest rate indices designated by the corporation or subsidiary corporation or to the rate or rates of interest borne by 1 or more series of obligations of the state or the United States, or to a rate or rates of interest announced by the bank or savings and loan association organized under the laws of the United States or any state as the corporation or subsidiary corporation may designate. The corporation obligations may be sold at a discount and at an interest rate or rates that may be varied by an authorized officer or agent of the corporation or subsidiary corporation within the limits established by the corporation or subsidiary corporation as provided in the resolution. Corporation obligations shall not be sold at a price that would make the interest costs on the money borrowed exceed the maximum interest rate then permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989 ;-- Am. 2002, Act 395, Imd. Eff. May 30, 2002

### **331.1407 Refunding corporation obligations.**

Sec. 407.

(1) To protect the rights of the holders of bonds or other obligations to be refunded, the proceeds of corporation obligations issued for refunding purposes and any other funds set aside for such purposes, and the investment earnings and profits, to the extent required to be held for future retirement of bonds or other obligations to be refunded, for interest or premiums thereon, or for expenses relating to the refunding, shall be held in trust by a qualified bank or savings and loan association organized under the laws of the United States or any state or the state treasurer pursuant to a trust agreement with the corporation or subsidiary corporation issuing the refunding corporation obligation. This subsection shall not apply if the instruments governing the bonds or other obligation to be refunded require a different disposition of such funds, in which case the terms of the instruments shall apply.

(2) Proceeds of refunding corporation obligations not immediately required for the purposes set forth in subsection (1) may be invested pursuant to the trust agreement in direct obligations of the United States, or in obligations, the principal and interest of which are guaranteed by the United States. If, however, the instruments governing the bonds or other obligations to be refunded provide for defeasance of security upon issuance of the refunding corporation obligation or contain different requirements for the investment of funds, the funds shall be deposited and invested in accordance with the requirements of the instruments.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

### **331.1408 Security instruments to continue in effect until principal and interest on corporation obligations paid in full; terms of security instrument; recital.**

Sec. 408.

(1) The provisions of this act, any resolution and any mortgage, deed of trust, or other security instrument shall continue in effect until all principal and interest on the corporation obligations has been fully paid or payment has been duly provided for. Any resolution, mortgage, deed of trust, or other security instrument governing the issuance of or securing corporation obligations may provide terms under which it is enforceable by the holder or holders of corporation obligations or a trustee or trustees for their benefit by mandamus, foreclosure, or other appropriate action in any court of competent jurisdiction.

(2) The resolution authorizing corporation obligations shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

### **331.1409 Lien of pledge.**

Sec. 409.

Any pledge made by a corporation or a subsidiary corporation to secure corporation obligations shall be valid and binding from the time the pledge is made. The money or property so pledged and thereafter received by the corporation or subsidiary corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the corporation or the subsidiary corporation, without regard to whether such parties have notice thereof. Neither the resolution nor any instrument by which a pledge is made need be recorded.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

### **331.1410 Personal liability on notes or corporation obligations.**

Sec. 410.

Neither the trustees of a corporation or subsidiary corporation nor any person executing notes or corporation obligations under this act shall be liable personally on the notes or corporation obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

### **331.1411 Pledge and agreement of state.**

Sec. 411.

The state pledges and agrees with the holders of notes and corporation obligations issued under this act, that the state will not limit or alter the rights vested in any corporation or subsidiary corporation to fulfill the terms of any agreements made with the holders thereof, nor will in any way impair the rights and remedies of the holders until the notes or corporation obligations, together with interest thereon, with interest on any unpaid installments of interest, if applicable, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. Any corporation or subsidiary corporation is authorized to include this pledge and agreement of the state in any agreement with holders of such notes or corporation obligations.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

**331.1412 Corporation obligations; statutory provisions to which issuance of obligations subject; legality.**

Sec. 412.

(1) Except as provided in subsection (2), the corporation obligations shall not be subject to the provisions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The issuance of corporate obligations described in this subsection is subject to the agency financing reporting act.

(2) Corporate obligations for which a local governmental unit pledges its full faith and credit to guarantee payment are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1987, Act 230, Eff. Feb. 27, 1988 ;-- Am. 1988, Act 502, Eff. Jan. 1, 1989 ;-- Am. 2002, Act 395, Imd. Eff. May 30, 2002

**331.1413 Corporation obligations as negotiable instruments under uniform commercial code.**

Sec. 413.

Whether or not notes or corporation obligations issued pursuant to this act are of such form or character as to be negotiable instruments under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws, the notes and corporation obligations authorized to be issued under this act are negotiable instruments, within the meaning of and for all purposes of the uniform commercial code, Act No. 174 of the Public Acts of 1962, subject only to the provisions of the notes or corporation obligations for registration.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

**331.1414 Notes and corporation obligations as investment securities.**

Sec. 414.

The notes and corporation obligations of any corporation or subsidiary issued pursuant to this act are securities in which all public officers and bodies of this state and all municipalities, municipal subdivisions, and public bodies corporate, all insurance companies and associations, and other persons carrying on the insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, credit unions, investment companies, personal representatives, administrators, conservators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

**History:** 1987, Act 230, Eff. Feb. 27, 1988

**331.1415 State covenants with purchasers, subsequent holders, and transferees of notes and corporation obligations.**

Sec. 415.

The state covenants with the purchasers and all subsequent holders and transferees of notes and corporation obligations issued pursuant to this act, in consideration of the acceptance of and payment for such notes and

corporation obligations issued pursuant to this act and the income therefrom and all gifts, grants, revenues, receipts, and other money received or to be received, pledged to pay or secure the payment of such notes or corporation obligations shall be free and exempt from all state, city, county, or other taxation provided by the laws of this state, except for estate, inheritance and gift taxes, and taxes on transfers.

**History:** 1987, Act 230, Eff. Feb. 27, 1988