

巻 末 資 料

巻末Ⅰ 米国現地調査の概要

巻末Ⅱ 参考文献リスト

巻末Ⅲ 参考資料

巻末I 米国現地調査の概要

■ 現地調査における訪問先及び入手資料

訪問先	日付	面談者
業界団体 TBMA (The Bond Market Association)	2006.3.13 10:00-12:00	<ul style="list-style-type: none"> • Leslie M. Norwood , Vice President and Assistant General Counsel • Peter Roberson , Director of Policy Analysis
	<入手資料> <ul style="list-style-type: none"> • TBMA プレゼン資料（組織概要、米国債券の動向、地方債の発行統計等） • 同（September 2005、January 2006、February 2006）「Research ～Middle Market Bond Dealer Report～」 • 同（2001）「The Fundamentals of Municipal Bonds」 • 同（2004）「Which way to Market? Competitive vs. Negotiated Sales」 • S&P RATINGSDIRECT 「North Texas Tollway Authority; Transportation, Toll Roads Bridges」 • 同「Triborough Bridge and Tunnel Authority, New York; Transportation, Toll Roads Bridges」 • 同「Massachusetts Water Resources Authority; Utility, Water/Sewer」 • 同「New York City Municipal Water Finance Authority; Utility, Water/Sewer」 • 同「Summary: Chicago O'Hare Intl Arpt, IL; Transportation, Airport」 • 同「Port Authority of New York & New Jersey; Transportation, Ports/Port Authorities」 • 同「U.S. Municipal Rating Transitions And Defaults, 1986-2003」 • Moody's Investors Service (2002) 「Moody's US Municipal Bond Rating Scale」 • Fitch IBCA 「Municipal Default Risk」 • ASPEN PUBLISHERS, INC. 「Exchange Act Rules」 • National Federation of Municipal Analysts 「disclosure guidelines」（ガイドラインのタイトル一覧表のみ） • Government Finance Officers Association 「Committee on Governmental Debt Management」（1994）「Selecting and Managing the Method of Sale of State and Local Government Bonds」 • 同（1997）「Preparing RFPs to Select Financial Advisors and Underwriters」 • 同（1998）「Issuer's Role in Selection of Underwriter's Counsel」 • 同（1998）「Selecting Bond Counsel」 • 同（1996 and 2000）「Pricing Bonds in a Negotiated Sale」 • 同（2002）「Using a Web site for Disclosure」 	
保証会社 MBIA Insurance Corporation	2006.3.13 15:00-18:00	<ul style="list-style-type: none"> • Daniel E. McManus, Jr., Director, Deputy General Counsel • Christopher, P. Chafizadeh ,Director Head of Housing & Higher Educationan/5018(c)3 Global Public Finance Enterprise Finance Department • John J. Jordan , Director Public Finance Division Global Utilities • James L. McGrane , Vice President Risk Management • Stephen Halpert , Managing Director Global Pricing • Barbara Flikinger (Ms.) , Managing Director Risk Management
	<入手資料> <ul style="list-style-type: none"> • MBIA 「Ministry of Land, Infrastructure & Transportation of Japan March 13, 2006」 • 同「Ministry of Land, Infrastructure and Transport March 13, 2006」 • 同（1999）「The Municipal Bond Market: Fundamentals」 	

訪問先	日付	面談者
格付会社 Standard & Poor's	2006.3.14 10:00-12:00	<ul style="list-style-type: none"> Colleen Woodell (Ms.), Managing Director Liz Sweeney (Ms.), Director
	<入手資料> <ul style="list-style-type: none"> S&P (2005) 「Public Finance Criteria」 同 PUBLIC FINANCE 「U.S. Municipal Rating Transitions And Defaults, 1986-2005」 同 「U.S. Not-For-Profit Health Care 2005 Median Ratios: Improvement Continues Across The Rating Spectrum」 同 「Allegheny Country Hospital Development Authority West Penn Allegheny Health System」 同 「University of Pennsylvania Health Service」 (Pennsylvania Higher Education Facilities Authority) 同 「Jefferson Health System, Pennsylvania」 (Pennsylvania Economic Development Financing Authority) 同 「U.S. Not-For-Profit Health Care 2006 Outlook: Emerging Evidence Of A Turning Tide」 	
引受業者 UBS	2006.3.15 10:00-13:00	<ul style="list-style-type: none"> Jim W. Ziglar, Jr., Associate Director/ Municipal Securities Group Jefferey Scruggs, Managing Director/ Municipal Securities Group Freda J. Wang (Ms.), Managing Director/ Municipal Securities Group Randall L. Finken, Executive Director/ Municipal Securities Group Brad Gewehr, Managing Director/ Municipal Securities Group Edward Young, Analyst/ Municipal Securities Group Daniel R. Irvin, Managing Director/ Municipal Securities Group
	<入手資料> <ul style="list-style-type: none"> UBS Investment Bank 「MLIT, Policy Research Institute for Land, Infrastructure and Transport」 デトロイト市の下水処理事業 目論見書等の関係書類 「Sewage Disposal System Senior Lien Revenue Bonds, Series 2003(B)」 テキサス市の交通事業 目論見書等の関係書類 「Central Texas Regional Mobility Authority Senior Lien/Subordinate Lien Revenue Bonds, Series 2005」 City of Atlanta Water and Wastewater Revenue Bonds Series 2004」 ニューヨーク市のコンベンションセンター開発事業 目論見書 (NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION Revenue Bonds (Hotel Unit Fee Secured) Series 2005) 	
発行体 New York City of Management and Budget	2006.3.15 14:00-16:00	<ul style="list-style-type: none"> Mark Page , Director, Office of Management and Budget Ray Orlando , Director, Media and Investor Relations, OMB
	<入手資料> <ul style="list-style-type: none"> New York City of Municipal Water Finance Authority Water and Sewer System Revenue Bonds, Fiscal 2006 Series B, Series C, Second General Resolution Revenue Bonds, Fiscal 2006 Series BB The City of New York、New York City Transitional Finance Authority、TSASC, Inc. (2003) 「Request for Proposals For Financial Advisor Services 」 The City of New York (2004) 「Comprehensive Annual Financial Report of the Comptroller of The City of New York for the Fiscal Years Ended June 30,2004 and 2003」 	

なお、現地調査終了後、いずれの訪問先についても追加質問や資料照会などを行い、特に UBS、MBIA においては日本法人にもご協力を頂いた。さらに、法律の解釈が重要となる手続については弁護士事務所であるオリック・ヘリントン・アンド・サトクリフ LLP に書面照会を行った。

卷末II 参考文献リスト

第2章

- 2.1 国土交通省国土交通政策研究所（2005）「事業目的別歳入債券の有効活用に関する研究」国土交通政策研究 第56号
- 2.2 土居丈朗、林伴子、鈴木伸幸（2005a）「地方債と地方財政規律－諸外国の教訓－」内閣府経済社会総合研究所 ESRI Discussion Paper Series No.155
- 2.3 The Bond Market Association 「the Municipal Bond Credit Report : September 2005」（2005） p.2
- 2.4 秋山義則（2002）「アメリカ州・地方債市場における民間信用補完と州信用支援」、彦根論叢 334、pp.131－164
- 2.5 秋山義則（1993）「アメリカにおけるインフラ整備金融の新展開－州・地方の公的金融活動を中心に－」、証券研究 106、pp.43－91
- 2.6 秋山義則（1998）「アメリカ州・地方債制度の形成過程」、彦根論叢 310、pp.63－100
- 2.7 日本政策投資銀行（2004）「金融保証（モノライン）保険業界の概要」日本政策投資銀行研究 N-86 駐在員事務所報告
- 2.8 ミシガン州 1933 年 RB 法（Revenue Bond Act of 1933）
- 2.9 連邦破産法(U.S. Code Title11 : Bankruptcy) 928 条(a)
- 2.10 稲生信男（2005）「地方債制度の再構築に関する研究」、文部科学省 科学研究費補助金 基盤研究C
- 2.11 財団法人自治体国際化協会（1990）「アメリカの地方債」CLAIR REPORT No.14
- 2.12 財団法人社会経済生産性本部（2000）『「地方分権と地域活性化」～地方分権は地域から日本を変える～』
- 2.13 New York State Consolidated Laws Chapter43-A Public Authorities Law
- 2.14 同法第 5 条 Public Utility Authorities Title2-A. New York City Municipal Water Finance Authority
- 2.15 内国歳入法 第 265 条(a)(2)
- 2.16 IRS Revenue Procedure 72-18, 1972-1 C.B. 740 Section3.05

第3章

- 3.1 地方債制度研究会（総務省自治税務局）「地方債のあらまし」
- 3.2 田中 信孝（2004）「財投制度改革と『市場原理』による規律づけの問題(2・完)」八戸大学紀要（通号 28）、pp.1－29
- 3.3 地方財務（2006a）「対談：協議制移行で求められる地方債の発行管理と財政分析～自治体の対応と市場の反応～」4月号、pp.1－27
- 3.4 地方財務（2006b）「特別企画：協議制移行で求められる地方債の発行管理の考え方と手法 第1回協議制移行で何が変わったか」1月号、pp.2－21
- 3.5 みずほ総合研究所株式会社（2005）「地方債制度改革における論点～財政規律の強化と市場からの資金調達可能な地方債制度の確立に向けて～」
- 3.6 土居丈朗、林伴子、鈴木伸幸（2005b）「地方債と地域金融機関－金融機関アンケート調査結果を踏まえた地方債制度の今後のあり方－」内閣府経済社会総合研究所 ESRI Discussion Paper Series No.154

- 3.7 財団法人地方債協会（2006）「財団法人地方債協会（2006）「市場化を踏まえた投資家層の拡大・商品の多様化と地方債管理」地方債に関する調査研究委員会報告書」
- 3.8 地方分権 21 世紀ビジョン懇談会「地方分権 21 世紀ビジョン懇談会報告書」（2006 年 7 月 3 日）

第 4 章

- 4.1 国土交通省国土交通政策研究所（2005）「事業目的別歳入債券の有効活用に関する研究」国土交通政策研究 第 56 号
- 4.2 ミシガン州 1933 年 RB 法 第 141.107 条、第 141.108 条、第 141.109 条、第 141.122 条、第 141.124 条
- 4.3 フロリダ州 1953 年 RB 法
- 4.4 Oregon State Treasury Municipal Debt Advisory Commission（1998）「Oregon Bond Manual」4th Edition
- 4.5 土居丈朗、林伴子、鈴木伸幸（2005a）「地方債と地方財政規律 ―諸外国の教訓―」内閣府経済社会総合研究所 ESRI Discussion Paper Series No.155
- 4.6 Municipal Securities Rulemaking Board の HP（<http://www.msrb.org/msrb1/glossary/default.asp>）
- 4.7 Governmental Finance Officers Association『Committee on Governmental Debt Management』（1994）「Selecting and Managing the Method of Sale of State and Local Government Bonds」
- 4.8 稲生信男（2003a）「自治体改革と地方債制度―マーケットとの協働」学陽書房
- 4.9 The Bond Market Association（2001）「The Fundamentals of Municipal Bonds」
- 4.10 日本政策投資銀行（2004）「金融保証（モノライン）保険業界の概要」日本政策投資銀行研究 N-86 駐在員事務所報告
- 4.11 日本政策投資銀行（2005）「米国におけるスタジアム・ファイナンス」日本政策投資銀行研究 W-75、N-89 駐在員事務所報告
- 4.12 City of Detroit, Michigan「Official Statement」（Sewage Disposal System Senior Lien Revenue Bonds(Variable Rate Demand), Series 2003(B)）
- 4.13 日本政策投資銀行 HP の金融用語集（<http://www.dbj.go.jp/japanese/glossary/ka.html>）
- 4.14 「Official Statement Dated March 8, 2006」（New York City Municipal Water Finance Authority Water and Sewer System Revenue Bonds, Fiscal 2006 Series D）
- 4.15 New York City Transitional Finance Authority（2004）「Annual Report for Fiscal Year 2004」
- 4.16 内国歳入法 第 103 条、第 141 条(b)(1),(b)(2),(c),(e), 第 148 条、第 149 条
- 4.17 学文社「増補版 現代経営用語の基礎知識」（2005 年、三浦后美による解説）
- 4.18 企業財務協議会・日本資本市場協議会「社債・CP・融資法制の構造と改革への視点」（法制調査研究プロジェクト報告）<http://www.enkt.org/katudou/pdf/project.pdf>
- 4.19 稲生信男（2003b）「米国地方債における情報開示（ディスクロージャー）制度」、都市問題 第 94 巻第 12 号、pp.67－87
- 4.20 Mysak, Joe, (1998)「Handbook For Muni-Bond Issuers. Princeton, NJ」Bloomberg

Professional Library

- 4.21 National Federation of Municipal Analysts(2006)「Recommended Best Practices in Disclosure for Water and Sewer Transactions」
- 4.22 Governmental Finance Officers Association『Committee on Governmental Debt Management』(1997)「Preparing RFPs to Select Financial Advisors and Underwriters」
- 4.23 Standard & Poor's (2005a)「Public Finance Criteria」
- 4.24 Standard & Poor's (2005b)「Public Finance」(Allegheny Country Hospital Development Authority West Penn Allegheny Health System)
- 4.25 Moody's Investors Service (2002)「Moody's U.S. Municipal Bond Rating Scale」
- 4.26 Moody's Investors Service (2006)「Default and Recovery Rates of Corporate Bond Issuers, 1920-2005」
- 4.27 The City of New York (2005)「Comprehensive Annual Financial Report of the Comptroller of The City of New York for the Fiscal Years Ended June 30,2005」
- 4.28 The City of New York、New York City Transitional Finance Authority、TSASC, Inc. (2003)「Request for Proposals For Financial Advisor Services 」
- 4.29 Governmental Finance Officers Association『Committee on Governmental Debt Management』(1998)「Selecting Bond Counsel」

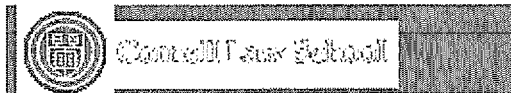
第5章

- 5.1 福岡市 PFI 事業推進委員会 (2005)「タラソ福岡の経営破綻に関する調査検討報告書『タラソ福岡の経営破綻を越えて ～PFI 事業の適正な推進のために～』(平成 17 年 5 月 12 日)」
- 5.2 足立 伸 (2003)「地方自治体破産制度の展望」
- 5.3 株式会社 PHP 総合研究所 (2006)「PHP 政策研究レポート」Vol.9 No.99
- 5.4 財団法人地方債協会 (2006)「市場化を踏まえた投資家層の拡大・商品の多様化と地方債管理」地方債に関する調査研究委員会報告書

卷末III 参考資料

1. 連邦破産法 (U.S. Code Title11 : Bankruptcy) 第 928 条 (a)
2. 内国歳入法第 103 条、第 141 条 (b) (1), (b) (2), (c), (e)、第 148 条、第 149 条、第 265 条 (a) (2)
3. IRS (内国歳入庁) Revenue Procedure 72-18, 1972-1 C.B. 740 Section 3.05
4. IRS (内国歳入庁) Form 8038-G
5. ミシガン州 1933 年 RB 法
6. New York City Municipal Water Finance Authority Law
7. Governmental Finance Officers Association『Committee on Governmental Debt Management』(1994)「Selecting and Managing the Method of Sale of State and Local Government Bonds」
8. 同 (1997)「Preparing RFPs to Select Financial Advisors and Underwriters」
9. 同 (1998)「Selecting Bond Council」
10. National Federation of Municipal Analysts『disclosure guidelines』(ガイドラインのタイトルのみ)、National Federation of Municipal Analysts (2006)「Recommended Best Practices in Disclosure for Water and Sewer Transactions」
11. The City of New York、New York City Transitional Finance Authority、TSASC, Inc. (2003)「Request for Proposals For Financial Advisor Services」
12. New York City Transitional Finance Authority (2005)「Annual Report for Fiscal Year 2004」
13. The City of New York (2005)「Comprehensive Annual Financial Report of the Comptroller of The City of New York for the Fiscal Years Ended June 30, 2005」

1. 連邦破産法 (U. S. Code Title11 : Bankruptcy) 第 928 条(a)



LII / Legal Information Institute

U.S. Code collection

TITLE 11

TITLE 11—BANKRUPTCY

How Current is This?

- CHAPTER 1—GENERAL PROVISIONS
- CHAPTER 3—CASE ADMINISTRATION
- CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE
- CHAPTER 7—LIQUIDATION
- CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY
- CHAPTER 11—REORGANIZATION
- CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME
- CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME
- [CHAPTER 15—REPEALED]
 - Federal Rules of Bankruptcy Procedure
 - Federal Bankruptcy Forms

*Search
this title:*

Notes
Your
comments

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

CHAPTER 9 - ADJUSTMENT OF DEBTS OF A MUNICIPALITY

SUBCHAPTER I - GENERAL PROVISIONS

Sec.

- 901. Applicability of other sections of this title.
- 902. Definitions for this chapter.
- 903. Reservation of State power to control municipalities.
- 904. Limitation on jurisdiction and powers of court.

SUBCHAPTER II - ADMINISTRATION

- 921. Petition and proceedings relating to petition.
- 922. Automatic stay of enforcement of claims against the debtor.
- 923. Notice.
- 924. List of creditors.
- 925. Effect of list of claims.
- 926. Avoiding powers.
- 927. Limitation on recourse.
- 928. Post petition effect of security interest.
- 929. Municipal leases.
- 930. Dismissal.

SUBCHAPTER III - THE PLAN

- 941. Filing of plan.
- 942. Modification of plan.
- 943. Confirmation.
- 944. Effect of confirmation.
- 945. Continuing jurisdiction and closing of the case.
- 946. Effect of exchange of securities before the date of the filing of the petition.

AMENDMENTS

1988 - Pub. L. 100-597, Sec. 11, Nov. 3, 1988, 102 Stat. 3030, added items 927 to 929 and redesignated former item 927 as 930.

SUBCHAPTER I - GENERAL PROVISIONS

Sec. 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 557, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e) of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

Sec. 902. Definitions for this chapter

In this chapter -

(1) 'property of the estate', when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means property of the debtor;

(2) 'special revenues' means -

(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

(B) special excise taxes imposed on particular activities or transactions;

(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

(E) taxes specifically levied to finance one or more projects or systems, excluding receipts from general property, sales, or income taxes (other than tax-increment financing) levied to finance the general purposes of the debtor;

(3) 'special tax payer' means record owner or holder of legal or equitable title to real property against which a special assessment or special tax has been levied the proceeds of which are the sole source of payment of an

obligation issued by the debtor to defray the cost of an improvement relating to such real property;

(4) 'special tax payer affected by the plan' means special tax payer with respect to whose real property the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (2) of this section assessed against such real property; and

(5) 'trustee', when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means debtor, except as provided in section 926 of this title.

Sec. 903. Reservation of State power to control municipalities

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but -

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

Sec. 904. Limitation on jurisdiction and powers of court

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with -

(1) any of the political or governmental powers of the debtor;

(2) any of the property or revenues of the debtor; or

(3) the debtor's use or enjoyment of any income-producing property.

SUBCHAPTER II - ADMINISTRATION

Sec. 921. Petition and proceedings relating to petition

(a) Notwithstanding sections 109(d) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

(b) The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced shall designate the bankruptcy judge to conduct the case.

(c) After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter.

(e) The court may not, on account of an appeal from an order for relief, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

Sec. 922. Automatic stay of enforcement of claims against the debtor

(a) A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and

(2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.

(b) Subsections (c), (d), (e), (f), and (g) of section 362 of this title apply to a stay under subsection (a) of this section the same as such subsections apply to a stay under section 362(a) of this title.

(c) If the debtor provides, under section 362, 364, or 922 of this title, adequate protection of the interest of the holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection such creditor has a claim arising from the stay of action against such property under section 362 or 922 of this title or from the granting of a lien under section 364(d) of this title, then such claim shall be allowable as an administrative expense under section 503(b) of this title.

(d) Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.

Sec. 923. Notice

There shall be given notice of the commencement of a case under this chapter, notice of an order for relief under this chapter, and notice of the dismissal of a case under this chapter. Such notice shall also be published at least once a week for three successive weeks in at least one newspaper of

general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates.

Sec. 924. List of creditors

The debtor shall file a list of creditors.

Sec. 925. Effect of list of claims

A proof of claim is deemed filed under section 501 of this title for any claim that appears in the list filed under section 924 of this title, except a claim that is listed as disputed, contingent, or unliquidated.

Sec. 926. Avoiding powers

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

Sec. 927. Limitation on recourse

The holder of a claim payable solely from special revenues of the debtor under applicable nonbankruptcy law shall not be treated as having recourse against the debtor on account of such claim pursuant to section 1111(b) of this title.

Sec. 928. Post petition effect of security interest

(a) Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Any such lien on special revenues, other than municipal betterment assessments, derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.

Sec. 929. Municipal leases

A lease to a municipality shall not be treated as an executory contract or unexpired lease for the purposes of section 365 or 502(b)(6) of this title solely by reason of its being subject to termination in the event the debtor fails to appropriate rent.

Sec. 930. Dismissal

(a) After notice and a hearing, the court may dismiss a case under this chapter for cause, including -

- (1) want of prosecution;
 - (2) unreasonable delay by the debtor that is prejudicial to creditors;
 - (3) failure to propose a plan within the time fixed under section 941 of this title;
 - (4) if a plan is not accepted within any time fixed by the court;
 - (5) denial of confirmation of a plan under section 943(b) of this title and denial of additional time for filing another plan or a modification of a plan; or
 - (6) if the court has retained jurisdiction after confirmation of a plan -
 - (A) material default by the debtor with respect to a term of such plan;
- or

(B) termination of such plan by reason of the occurrence of a condition specified in such plan.

(b) The court shall dismiss a case under this chapter if confirmation of a plan under this chapter is refused.

SUBCHAPTER III - THE PLAN**Sec. 941. Filing of plan**

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

Sec. 942. Modification of plan

The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of this chapter. After the debtor files a modification, the plan as modified becomes the plan.

Sec. 943. Confirmation

- (a) A special tax payer may object to confirmation of a plan.
- (b) The court shall confirm the plan if -
 - (1) the plan complies with the provisions of this title made applicable by sections 103(e) and 901 of this title;
 - (2) the plan complies with the provisions of this chapter;

(3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;

(4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;

(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim;

(6) any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and

(7) the plan is in the best interests of creditors and is feasible.

Sec. 944. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and any creditor, whether or not -

(1) a proof of such creditor's claim is filed or deemed filed under section 501 of this title;

(2) such claim is allowed under section 502 of this title; or

(3) such creditor has accepted the plan.

(b) Except as provided in subsection (c) of this section, the debtor is discharged from all debts as of the time when -

(1) the plan is confirmed;

(2) the debtor deposits any consideration to be distributed under the plan with a disbursing agent appointed by the court; and

(3) the court has determined -

(A) that any security so deposited will constitute, after distribution, a valid legal obligation of the debtor; and

(B) that any provision made to pay or secure payment of such obligation is valid.

(c) The debtor is not discharged under subsection (b) of this section from any debt -

(1) excepted from discharge by the plan or order confirming the plan; or

(2) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case.

Sec. 945. Continuing jurisdiction and closing of the case

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

Sec. 946. Effect of exchange of securities before the date of the filing of the petition

The exchange of a new security under the plan for a claim covered by the plan, whether such exchange occurred before or after the date of the filing of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

2. 内国歳入法第 103 条、第 141 条(b) (1), (b) (2), (c), (e)、
第 148 条、第 149 条、第 265 条(a) (2)

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART III > § 103[Prev](#) | [Next](#)**§ 103. Interest on State and local bonds***How Current Is This?***(a) Exclusion**

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions

Subsection (a) shall not apply to—

(1) Private activity bond which is not a qualified bond

Any private activity bond which is not a qualified bond (within the meaning of section 141).

(2) Arbitrage bond

Any arbitrage bond (within the meaning of section 148).

(3) Bond not in registered form, etc.

Any bond unless such bond meets the applicable requirements of section 149.

(c) Definitions

For purposes of this section and part IV—

(1) State or local bond

The term "State or local bond" means an obligation of a State or political subdivision thereof.

(2) State

The term "State" includes the District of Columbia and any possession of the United States.

[Search
this title:](#)[Notes](#)
[Updates](#)
[Parallel
authorities
\(CFR\)](#)
[Your
comments](#)[Prev](#) | [Next](#)

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART IV > Subpart A > § 141[Prev](#) | [Next](#)**§ 141. Private activity bond; qualified bond***How Current Is This?***(a) Private activity bond**

For purposes of this title, the term "private activity bond" means any bond issued as part of an issue—

- (1) which meets—
 - (A) the private business use test of paragraph (1) of subsection (b), and
 - (B) the private security or payment test of paragraph (2) of subsection (b), or
- (2) which meets the private loan financing test of subsection (c).

(b) Private business tests**(1) Private business use test**

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

(2) Private security or payment test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

- (A) secured by any interest in—
 - (i) property used or to be used for a private business use, or
 - (ii) payments in respect of such property, or
- (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(3) 5 percent test for private business use not related or disproportionate to government use financed by the issue**(A) In general**

An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

- (i) by substituting "5 percent" for "10 percent" each place it appears, and
- (ii) by taking into account only—
 - (I) the proceeds of the issue which are to be used for any private business use which is not related to any government use of such proceeds,
 - (II) the disproportionate related business use proceeds of the issue, and
 - (III) payments, property, and borrowed money with respect to any use of proceeds described in subclause (I) or (II).

(B) Disproportionate related business use proceeds

For purposes of subparagraph (A), the disproportionate related business use proceeds of an issue is an amount equal to the aggregate of the excesses (determined under the following sentence) for each private business use of the proceeds of an issue which is related to a government use of such proceeds. The excess determined under this sentence is the excess of—

- (i) the proceeds of the issue which are to be used for the private business use, over
- (ii) the proceeds of the issue which are to be used for the government use to which such private business use relates.

[Search this title:](#)[Notes](#)
[Updates](#)
[Parallel authorities \(CFR\)](#)
[Your comments](#)

(4) Lower limitation for certain output facilities

An issue 5 percent or more of the proceeds of which are to be used with respect to any output facility (other than a facility for the furnishing of water) shall be treated as meeting the tests of paragraphs (1) and (2) if the nonqualified amount with respect to such issue exceeds the excess of—

(A) \$15,000,000, over

(B) the aggregate nonqualified amounts with respect to all prior tax-exempt issues 5 percent or more of the proceeds of which are or will be used with respect to such facility (or any other facility which is part of the same project).

There shall not be taken into account under subparagraph (B) any bond which is not outstanding at the time of the later issue or which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue.

(5) Coordination with volume cap where nonqualified amount exceeds \$15,000,000

If the nonqualified amount with respect to an issue—

(A) exceeds \$15,000,000, but

(B) does not exceed the amount which would cause a bond which is part of such issue to be treated as a private activity bond without regard to this paragraph,

such bond shall nonetheless be treated as a private activity bond unless the issuer allocates a portion of its volume cap under section 146 to such issue in an amount equal to the excess of such nonqualified amount over \$15,000,000.

(6) Private business use defined

(A) In general

For purposes of this subsection, the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For purposes of the preceding sentence, use as a member of the general public shall not be taken into account.

(B) Clarification of trade or business

For purposes of the 1st sentence of subparagraph (A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

(7) Government use

The term "government use" means any use other than a private business use.

(8) Nonqualified amount

For purposes of this subsection, the term "nonqualified amount" means, with respect to an issue, the lesser of—

(A) the proceeds of such issue which are to be used for any private business use, or

(B) the proceeds of such issue with respect to which there are payments (or property or borrowed money) described in paragraph (2).

(9) Exception for qualified 501(c)(3) bonds

There shall not be taken into account under this subsection or subsection (c) the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified 501(c)(3) bond if the issuer elects to treat such portion as a qualified 501(c)(3) bond.

(c) Private loan financing test

(1) In general

An issue meets the test of this subsection if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) \$5,000,000.

(2) Exception for tax assessment, etc., loans

For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function, or

(B) is a nonpurpose investment (within the meaning of section 148 (f)(6)(A)).

(d) Certain issues used to acquire nongovernmental output property treated as private activity bonds

(1) In general

For purposes of this title, the term "private activity bond" includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

- (A) 5 percent of such proceeds, or
- (B) \$5,000,000.

(2) Nongovernmental output property

Except as otherwise provided in this subsection, for purposes of paragraph (1), the term "nongovernmental output property" means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

(3) Exception for property acquired to provide output to certain areas

For purposes of paragraph (1)—

(A) In general

The term "nongovernmental output property" shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

- (i) a qualified service area of the governmental unit acquiring the property, or
- (ii) a qualified annexed area of such unit.

(B) Definitions

For purposes of subparagraph (A)—

(i) **Qualified service area** The term "qualified service area" means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

(ii) **Qualified annexed area** The term "qualified annexed area" means, with respect to the governmental unit acquiring the property, any area if—

(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

(II) output from such property is made available to all members of the general public in the annexed area, and

(III) the annexed area is not greater than 10 percent of such qualified service area.

(C) Limitation on size of annexed area not to apply where output capacity does not increase by more than 10 percent

Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

(D) Rules for determining relative size, etc.

For purposes of subparagraphs (B)(ii) and (C)—

(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

(4) Exception for property converted to nonoutput use

For purposes of paragraph (1)—

(A) In general

The term “nongovernmental output property” shall not include any property which is to be converted to a use not in connection with an output facility.

(B) Exception

Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

(5) Special rules

In the case of a bond which is a private activity bond solely by reason of this subsection—

(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

(B) paragraph (8) of section 142 (a) shall be applied as if it did not contain “local”.

(6) Treatment of joint action agencies

With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property.

(e) Qualified bond

For purposes of this part, the term “qualified bond” means any private activity bond if—

(1) In general

Such bond is—

- (A)** an exempt facility bond,
- (B)** a qualified mortgage bond,
- (C)** a qualified veterans’ mortgage bond,
- (D)** a qualified small issue bond,
- (E)** a qualified student loan bond,
- (F)** a qualified redevelopment bond, or
- (G)** a qualified 501(c)(3) bond.

(2) Volume cap

Such bond is issued as part of an issue which meets the applicable requirements of section 146, and ^[1]

(3) Other requirements

Such bond meets the applicable requirements of each subsection of section 147.

[1] So in original. Probably should end with a period after “146”.

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART IV > Subpart B > § 148

[Prev](#) | [Next](#)

§ 148. Arbitrage

[How Current is This?](#)

(a) Arbitrage bond defined

For purposes of section 103, the term "arbitrage bond" means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

- (1) to acquire higher yielding investments, or
- (2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

(b) Higher yielding investments

For purposes of this section—

(1) In general

The term "higher yielding investments" means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

(2) Investment property

The term "investment property" means—

- (A) any security (within the meaning of section 165 (g)(2)(A) or (B)),
- (B) any obligation,
- (C) any annuity contract,
- (D) any investment-type property, or
- (E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

(3) Alternative minimum tax bonds treated as investment property in certain cases

(A) In general

Except as provided in subparagraph (B), the term "investment property" does not include any tax-exempt bond.

(B) Exception

With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57 (a)(5)(C)), the term "investment property" includes a specified private activity bond (as so defined).

(c) Temporary period exception

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

(2) Limitation on temporary period for pooled financings

(A) In general

The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

[Search
this title:](#)[Notes](#)
[Updates](#)
[Parallel
authorities
\(CFR\)](#)
[Your
comments](#)

(B) Shorter temporary period for loan repayments, etc.

Subparagraph (A) shall be applied by substituting "3 months" for "6 months" with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

(C) Bonds used to provide construction financing

In the case of an issue described in subparagraph (A) any portion of which is used to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(C)(iv))—

- (i) rules similar to the rules of subsection (f)(4)(C)(v) shall apply, and
- (ii) subparagraph (A) shall be applied with respect to such portion by substituting "2 years" for "6 months".

(D) Exception for mortgage revenue bonds

This paragraph shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

(d) Special rules for reasonably required reserve or replacement fund

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

(2) Limitation on amount in reserve or replacement fund which may be financed by issue

A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

(e) Minor portion may be invested in higher yielding investments

Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

- (1) 5 percent of the proceeds of the issue, or
- (2) \$100,000.

(f) Required rebate to the United States

(1) In general

A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified veterans' mortgage bond.

(2) Rebate to United States

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

- (A) the excess of—
 - (i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over
 - (ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

- (B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

(3) Due date of payments under paragraph (2)

Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is

required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue. A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond. In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.

(4) Special rules for applying paragraph (2)

(A) In general

In determining the aggregate amount earned on nonpurpose investments for purposes of paragraph (2)—

- (i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and
- (ii) any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than \$100,000.

In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147 (b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.

(B) Temporary investments

Under regulations prescribed by the Secretary—

- (i) In general An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—
 - (I) the gross proceeds of such issue are expended for the governmental purposes for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and
 - (II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund).

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only.

- (ii) Additional period for certain bonds

- (I) In general In the case of an issue described in subclause (II), clause (I) shall be applied by substituting "1 year" for "6 months" each place it appears with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (I) if such portion does not exceed 5 percent of the proceeds of the issue.

- (II) Issues to which subclause (I) applies An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

- (iii) Safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended

- (I) In general For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the proceeds of such issue.

- (II) Cumulative cash flow deficit For purposes of subclause (I), the term "cumulative cash flow deficit" means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

- (III) Period involved For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earlier of the date 6 months after such date of issuance or the date of the computation of cumulative cash flow deficit.

- (iv) Payments of principal not to affect requirements For purposes of this

subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue.

(C) Exception from rebate for certain proceeds to be used to finance construction expenditures

(i) In general In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

(ii) Spending requirements The spending requirements of this clause are met if at least—

(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

(iii) Exception for reasonable retainage The spending requirement of clause (ii) shall be treated as met if—

(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

(iv) Construction issue For purposes of this subparagraph, the term "construction issue" means any issue if—

(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term "construction" includes reconstruction and rehabilitation, and rules similar to the rules of section 142 (b) (1)(B) shall apply.

(v) Portions of issues used for construction If—

(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

(vi) Available construction proceeds For purposes of this subparagraph—

(I) In general The term "available construction proceeds" means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(II) Earnings on reserve included only for certain periods The term "available construction proceeds" shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

(III) Payments on acquired purpose obligations excluded The term "available construction proceeds" shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

(IV) Election to rebate on earnings on reserve At the election of the issuer, the term "available construction proceeds" shall not include earnings on any reasonably required reserve or replacement fund.

(vii) Election to pay penalty in lieu of rebate

(I) In general At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 11/2 percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

(II) Termination The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

(viii) Election to terminate 11/2 percent penalty At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

(I) 3 percent penalty The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

(II) Yield restriction at close of temporary period The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

(III) Redemption of bonds at earliest call date The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

(ix) Election to terminate 11/2 percent penalty before end of temporary period
If—

(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

(III) the issuer has made the election under clause (viii), and

(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

(x) Failure to pay penalties In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

(xi) Election for pooled financing bonds At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

(xii) Payments of principal not to affect requirements For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

(xiii) Refunding bonds

(I) In general Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

(II) Determination of construction portion of issue For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

(III) Coordination with rebate requirement on refunding bonds The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

(xiv) Determination of initial temporary period For purposes of this subparagraph,¹¹ the end of the initial temporary period shall be determined without regard to section 149 (d)(3)(A)(iv).

(xv) Elections Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

(xvi) Time for payment of penalties Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates.

(xvii) Treatment of bona fide debt service funds If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue.

(D) Exception for governmental units issuing \$5,000,000 or less of bonds

(i) In general An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

(I) the issue is issued by a governmental unit with general taxing powers,

(II) no bond which is part of such issue is a private activity bond,

(III) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

(IV) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit during the calendar year in which such issue is issued is not reasonably expected to exceed \$5,000,000.

(ii) Aggregation of issuers For purposes of subclause (IV) of clause (i)—

(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

(II) all bonds issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit.

(III) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(IV) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

(iii) Certain refunding bonds not taken into account in determining small issuer status There shall not be taken into account under subclause (IV) of clause (i)

any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iv) Certain issues issued by subordinate governmental units, etc., exempt from rebate requirement. An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

(I) \$5,000,000, or

(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the \$5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) Determination of whether refunding bonds eligible for exception from rebate requirement. If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

(I) the aggregate face amount of such issue does not exceed \$5,000,000,

(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147 (b)(2)(A).

(vi) Refundings of bonds issued under law prior to Tax Reform Act of 1986. If section 141 (a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

(I) such issue was issued by a governmental unit with general taxing powers,

(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103 (b)(2), but without regard to subparagraph (B) of section 103 (b)(3)) or a private loan bond (as defined in section 103 (o)(2)(A), but without regard to any exception from such definition other than section 103 (o)(2)(C)), and

(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed \$5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141 (a) does not apply shall not be treated as private activity bonds.

(vii) Increase in exception for bonds financing public school capital expenditures. Each of the \$5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of \$10,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.

(5) Exemption from gross income of sum rebated

Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

(6) Definitions

For purposes of this subsection and subsections (c) and (d)—

(A) Nonpurpose investment

The term “nonpurpose investment” means any investment property which—

- (i) is acquired with the gross proceeds of an issue, and
- (ii) is not acquired in order to carry out the governmental purpose of the issue.

(B) Gross proceeds

Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

- (i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and
- (ii) amounts to be used to pay debt service on the issue.

(7) Penalty in lieu of loss of tax exemption

In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

- (A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),
- (B) the failure to meet such requirements is not due to willful neglect, and
- (C) the issuer pays to the United States a penalty in an amount equal to the sum of—
 - (i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus
 - (ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

(g) Student loan incentive payments

Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

(h) Determinations of yield

For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

[1] So in original. Probably should be “subparagraph,”.

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART IV > Subpart B > § 149

[Prev](#) | [Next](#)

§ 149. Bonds must be registered to be tax exempt; other requirements

[How Current is This?](#)

(a) Bonds must be registered to be tax exempt

(1) General rule

Nothing in section 103 (a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

(2) Registration-required bond

For purposes of paragraph (1), the term "registration-required bond" means any bond other than a bond which—

- (A) is not of a type offered to the public,
- (B) has a maturity (at issue) of not more than 1 year, or
- (C) is described in section 163 (f)(2)(B).

(3) Special rules

(A) Book entries permitted

For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

(B) Nominees

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of paragraph (1) where there is a nominee or chain of nominees.

(b) Federally guaranteed bond is not tax exempt

(1) In general

Section 103 (a) shall not apply to any State or local bond if such bond is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), a bond is federally guaranteed if—

- (A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),
- (B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—
 - (i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or
 - (ii) invested (directly or indirectly) in federally insured deposits or accounts, or
- (C) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

(3) Exceptions

(A) Certain insurance programs

A bond shall not be treated as federally guaranteed by reason of—

- (i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,
- (ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans, or
- (iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest

[Search
this title:](#)[Notes](#)
[Updates](#)
[Parallel
authorities
\(CFR\)](#)
[Your
comments](#)

Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984.

(B) Debt service, etc.

Paragraph (1) shall not apply to—

- (i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,
- (ii) investments of a bona fide debt service fund,
- (iii) investments of a reserve which meet the requirements of section 148 (d),
- (iv) investments in bonds issued by the United States Treasury, or
- (v) other investments permitted under regulations.

(C) Exception for housing programs

(i) In general Except as provided in clause (ii), paragraph (1) shall not apply to—

- (I) a private activity bond for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937,
- (II) a qualified mortgage bond, or
- (III) a qualified veterans' mortgage bond.

(ii) Exception not to apply where bond invested in federally insured deposits or accounts Clause (i) shall not apply to any bond which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

(D) Loans to, or guarantees by, financial institutions

Except as provided in paragraph (2)(B)(ii), a bond which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution unless such guarantee constitutes a federally insured deposit or account.

(4) Definitions

For purposes of this subsection—

(A) Treatment of certain entities with authority to borrow from United States

To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of an exempt facility bond, a qualified small issue bond, and a qualified student loan bond, nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

(B) Federally insured deposit or account

The term "federally insured deposit or account" means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

(c) Tax exemption must be derived from this title

(1) General rule

Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(2) Certain prior exemptions

(A) Prior exemptions continued

For purposes of this title, notwithstanding any provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103 (a).

(B) Additional requirements for bonds issued after 1983

Subparagraph (A) shall not apply to a bond (not described in subparagraph (C)) issued after 1983 if the appropriate requirements of this part (or the corresponding provisions of prior law) are not met with respect to such bond.

(C) Description of bond

A bond is described in this subparagraph (and treated as described in subparagraph (A)) if—

- (i) such bond is issued pursuant to the Northwest Power Act (16 U.S.C. 839d), as in effect on July 18, 1984;
- (ii) such bond is issued pursuant to section 608(a)(6)(A) of Public Law 97-468, as in effect on the date of the enactment of the Tax Reform Act of 1986; or
- (iii) such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

(d) Advance refundings

(1) In general

Nothing in section 103 (a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4).

(2) Certain private activity bonds

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond).

(3) Other bonds

(A) In general

An issue is described in this paragraph if any bond (issued as part of such issue), hereinafter in this paragraph referred to as the "refunding bond", is issued to advance refund a bond unless—

- (i) the refunding bond is only—
 - (I) the 1st advance refunding of the original bond if the original bond is issued after 1985, or
 - (II) the 1st or 2nd advance refunding of the original bond if the original bond was issued before 1986,
- (ii) in the case of refunded bonds issued before 1986, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed at par or at a premium of 3 percent or less,
- (iii) in the case of refunded bonds issued after 1985, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed,
- (iv) the initial temporary period under section 148 (c) ends—
 - (I) with respect to the proceeds of the refunding bond not later than 30 days after the date of issue of such bond, and
 - (II) with respect to the proceeds of the refunded bond on the date of issue of the refunding bond, and
- (v) in the case of refunded bonds to which section 148 (e) did not apply, on and after the date of issue of the refunding bond, the amount of proceeds of the refunded bond invested in higher yielding investments (as defined in section 148 (b)) which are nonpurpose investments (as defined in section 148 (f)(6)(A)) does not exceed—
 - (I) the amount so invested as part of a reasonably required reserve or replacement fund or during an allowable temporary period, and
 - (II) the amount which is equal to the lesser of 5 percent of the proceeds of the issue of which the refunded bond is a part or \$100,000 (to the extent such amount is allocable to the refunded bond).

(B) Special rules for redemptions

- (i) Issuer must redeem only if debt service savings Clause (ii) and (iii) of subparagraph (A) shall apply only if the issuer may realize present value debt service savings (determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.
- (ii) Redemptions not required before 90th day For purposes of clauses (ii) and (iii) of subparagraph (A), the earliest date referred to in such clauses shall not be earlier than the 90th day after the date of issuance of the refunding bond.

(4) Abusive transactions prohibited

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund another bond and a device is employed in connection with the issuance of such issue to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates.

(5) Advance refunding

For purposes of this part, a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

(6) Special rules for purposes of paragraph (3)

For purposes of paragraph (3), bonds issued before the date of the enactment of this subsection shall be taken into account under subparagraph (A)(i) thereof except—

(A) a refunding which occurred before 1986 shall be treated as an advance refunding only if the refunding bond was issued more than 180 days before the redemption of the refunded bond, and

(B) a bond issued before 1986, shall be treated as advance refunded no more than once before March 15, 1986.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Information reporting

(1) In general

Nothing in section 103 (a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of paragraph (2).

(2) Information reporting requirements

A bond satisfies the requirements of this paragraph if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement), a statement concerning the issue of which the bond is a part which contains—

(A) the name and address of the issuer,

(B) the date of issue, the amount of net proceeds of the issue, the stated interest rate, term, and face amount of each bond which is part of the issue, the amount of issuance costs of the issue, and the amount of reserves of the issue,

(C) where required, the name of the applicable elected representative who approved the issue, or a description of the voter referendum by which the issue was approved,

(D) the name, address, and employer identification number of—

(i) each initial principal user of any facility provided with the proceeds of the issue,

(ii) the common parent of any affiliated group of corporations (within the meaning of section 1504(a)) of which such initial principal user is a member, and

(iii) if the issue is treated as a separate issue under section 144 (a)(6)(A), any person treated as a principal user under section 144 (a)(6)(B),

(E) a description of any property to be financed from the proceeds of the issue,

(F) a certification by a State official designated by State law (or, where there is no such official, the Governor) that the bond meets the requirements of section 146 (relating to cap on private activity bonds), if applicable, and

(G) such other information as the Secretary may require.

Subparagraphs (C) and (D) shall not apply to any bond which is not a private activity bond. The Secretary may provide that certain information specified in the 1st sentence need not be included in the statement with respect to an issue where the inclusion of such information is not necessary to carry out the purposes of this subsection.

(3) Extension of time

The Secretary may grant an extension of time for the filing of any statement required under paragraph (2) if the failure to file in a timely fashion is not due to willful neglect.

(f) Treatment of certain pooled financing bonds

(1) In general

Section 103 (a) shall not apply to any pooled financing bond unless, with respect to the issue of which such bond is a part, the requirements of paragraphs (2) and (3) are met.

(2) Reasonable expectation requirement

(A) In general

The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that as of the close of the 3-year period beginning on the date of issuance of the issue, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers.

(B) Certain factors may not be taken into account in determining expectations

Expectations as to changes in interest rates or in the provisions of this title (or in the regulations or rulings thereunder) may not be taken into account in determining whether expectations are reasonable for purposes of this paragraph.

(C) Net proceeds

For purposes of subparagraph (A), the term "net proceeds" has the meaning given such term by section 150 but shall not include proceeds used to finance issuance costs and shall not include proceeds necessary to pay interest (during such period) on the bonds which are part of the issue.

(D) Refunding bonds

For purposes of subparagraph (A), in the case of a refunding bond, the date of issuance taken into account is the date of issuance of the original bond.

(3) Cost of issuance payment requirements

The requirements of this paragraph are met with respect to an issue if—

(A) the payment of legal and underwriting costs associated with the issuance of the issue is not contingent, and

(B) at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the issue are paid not later than the 180th day after the date of the issuance of the issue.

(4) Pooled financing bond

For purposes of this subsection—

(A) In general

The term "pooled financing bond" means any bond issued as part of an issue more than \$5,000,000 of the proceeds of which are reasonably expected (at the time of the issuance of the bonds) to be used (or are intentionally used) directly or indirectly to make or finance loans to 2 or more ultimate borrowers.

(B) Exceptions

Such term shall not include any bond if—

(i) section 146 applies to the issue of which such bond is a part (other than by reason of section 141 (b)(5)) or would apply but for section 146 (i), or

(ii) section 143 (l)(3) applies to such issue.

(5) Definition of loan; treatment of mixed use issues

(A) Loan

For purposes of this subsection, the term "loan" does not include—

(i) any loan which is a nonpurpose investment (within the meaning of section 148 (f)(6)(A), determined without regard to section 148 (b)(3)), and

(ii) any use of proceeds by an agency of the issuer unless such agency is a political subdivision or instrumentality of the issuer.

(B) Portion of issue to be used for loans treated as separate issue

If only a portion of the proceeds of an issue is reasonably expected (at the time of issuance of the bond) to be used (or is intentionally used) as described in paragraph (4) (A), such portion and the other portion of such issue shall be treated as separate issues for purposes of determining whether such portion meets the requirements of this subsection.

(g) Treatment of hedge bonds

(1) In general

Section 103 (a) shall not apply to any hedge bond unless, with respect to the issue of which such bond is a part—

- (A) the requirement of paragraph (2) is met, and
- (B) the requirement of subsection (f)(3) is met.

(2) Reasonable expectations as to when proceeds will be spent

An issue meets the requirement of this paragraph if the issuer reasonably expects that—

- (A) 10 percent of the spendable proceeds of the issue will be spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued,
- (B) 30 percent of the spendable proceeds of the issue will be spent for such purposes within the 2-year period beginning on such date,
- (C) 60 percent of the spendable proceeds of the issue will be spent for such purposes within the 3-year period beginning on such date, and
- (D) 85 percent of the spendable proceeds of the issue will be spent for such purposes within the 5-year period beginning on such date.

(3) Hedge bond

(A) In general

For purposes of this subsection, the term "hedge bond" means any bond issued as part of an issue unless—

- (i) the issuer reasonably expects that 85 percent of the spendable proceeds of the issue will be used to carry out the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued, and
- (ii) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments (as defined in section 148 (f)(6)(A)) having a substantially guaranteed yield for 4 years or more.

(B) Exception for investment in tax-exempt bonds not subject to minimum tax

(i) In general Such term shall not include any bond issued as part of an issue 95 percent of the net proceeds of which are invested in bonds—

- (I) the interest on which is not includible in gross income under section 103, and
- (II) which are not specified private activity bonds (as defined in section 57 (a)(5)(C)).

(ii) Amounts in bona fide debt service fund Amounts in a bona fide debt service fund shall be treated as invested in bonds described in clause (i).

(iii) Amounts held pending reinvestment or redemption Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i).

(C) Exception for refunding bonds

(i) In general A refunding bond shall be treated as meeting the requirements of this subsection only if the original bond met such requirements.

(ii) General rule for refunding of pre-effective date bonds A refunding bond shall be treated as meeting the requirements of this subsection if—

- (I) this subsection does not apply to the original bond,
- (II) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and
- (III) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iii) Refunding of pre-effective date bonds entitled to 5-year temporary period A refunding bond shall be treated as meeting the requirements of this subsection if—

- (I) this subsection does not apply to the original bond,
- (II) the issuer reasonably expected that 85 percent of the spendable proceeds of the issue of which the original bond is a part would be used to carry out the governmental purposes of the issue within the 5-year period beginning on the date the original bonds were issued but did not reasonably expect that 85 percent of such proceeds would be so spent within the 3-year period beginning on such date, and
- (III) at least 85 percent of the spendable proceeds of the original issue

(and all other prior original issues issued to finance the governmental purposes of such issue) were spent before the date the refunding bonds are issued.

(4) Special rules

For purposes of this subsection—

(A) Construction period in excess of 5 years

The Secretary may, at the request of any issuer, provide that the requirement of paragraph (2) shall be treated as met with respect to the portion of the spendable proceeds of an issue which is to be used for any construction project having a construction period in excess of 5 years if it is reasonably expected that such proceeds will be spent over a reasonable construction schedule specified in such request.

(B) Rules for determining expectations

The rules of subsection (f)(2)(B) shall apply.

(5) Regulations

The Secretary may prescribe regulations to prevent the avoidance of the rules of this subsection, including through the aggregation of projects within a single issue.

[Prev](#) | [Next](#)

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART IX > § 265

[Prev](#) | [Next](#)

§ 265. Expenses and interest relating to tax-exempt income

*How Current is This?***(a) General rule**

No deduction shall be allowed for—

(1) Expenses

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest

Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle.

(3) Certain regulated investment companies

In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222 (9)).

(4) Interest related to exempt-interest dividends

Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term "interest" includes any amount paid or incurred—

- (i) by any person making a short sale in connection with personal property used in such short sale, or
- (ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

- (i) the taxpayer provides cash as collateral for any short sale, and
- (ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.

(6) Section not to apply with respect to parsonage and military housing allowances

No deduction shall be denied under this section for interest on a mortgage on, or real property taxes on, the home of the taxpayer by reason of the receipt of an amount as—

- (A) a military housing allowance, or
- (B) a parsonage allowance excludable from gross income under section 107.

(b) Pro rata allocation of interest expense of financial institutions to tax-exempt interest**(1) In general**[Search
this title:](#)[Notes](#)
[Updates](#)
[Parallel
authorities
\(CFR\)](#)
[Your
comments](#)

In the case of a financial institution, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to tax-exempt interest.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt interest is an amount which bears the same ratio to such interest expense as—

- (A) the taxpayer's average adjusted bases (within the meaning of section 1016) of tax-exempt obligations acquired after August 7, 1986, bears to
- (B) such average adjusted bases for all assets of the taxpayer.

(3) Exception for certain tax-exempt obligations

(A) In general

Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291 (e)(1)(B) as if it were acquired on August 7, 1986.

(B) Qualified tax-exempt obligation

(i) In general For purposes of subparagraph (A), the term "qualified tax-exempt obligation" means a tax-exempt obligation—

- (I) which is issued after August 7, 1986, by a qualified small issuer,
- (II) which is not a private activity bond (as defined in section 141), and
- (III) which is designated by the issuer for purposes of this paragraph.

(ii) Certain bonds not treated as private activity bonds For purposes of clause (i)(II), there shall not be treated as a private activity bond—

- (I) any qualified 501(c)(3) bond (as defined in section 145), or
- (II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103 (b) (2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103 (o)(2) (A), as so in effect, but without regard to any exemption from such definition other than section 103 (o)(2)(A)).

(C) Qualified small issuer

(i) In general For purposes of subparagraph (B), the term "qualified small issuer" means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed \$10,000,000.

(ii) Obligations not taken into account in determining status as qualified small issuer For purposes of clause (i), an obligation is described in this clause if such obligation is—

- (I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),
- (II) an obligation to which section 141 (a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103 (b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103 (o)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103 (o)(2)(A)), or
- (III) an obligation issued to refund (other than to advance refund within the meaning of section 149 (d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

(iii) Allocation of amount of issue in certain cases In the case of an issue under which more than 1 governmental entity receives benefits, if—

- (I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and
- (II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

(D) Limitation on amount of obligations which may be designated

(i) In general Not more than \$10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

(ii) Certain refundings of designated obligations deemed designated Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147 (b) (2)(A).

(iii) Certain obligations may not be designated or deemed designated No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

(I) any obligation issued as part of such issue is issued to refund another obligation, and

(II) the aggregate face amount of such issue exceeds \$10,000,000.

(E) Aggregation of issuers

For purposes of subparagraphs (C) and (D)—

(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

(F) Treatment of composite issues

In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue).

(4) Definitions

For purposes of this subsection—

(A) Interest expense

The term "interest expense" means the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year (determined without regard to this subsection, section 264, and section 291). For purposes of the preceding sentence, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(B) Tax-exempt obligation

The term "tax-exempt obligation" means any obligation the interest on which is wholly exempt from taxes imposed by this subtitle. Such term includes shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Financial institution

For purposes of this subsection, the term "financial institution" means any person who—

- (A) accepts deposits from the public in the ordinary course of such person's trade or business, and is subject to Federal or State supervision as a financial institution, or
- (B) is a corporation described in section 585 (a)(2).

(6) Special rules

(A) Coordination with subsection (a)

If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt obligation—

- (i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and
- (ii) for purposes of applying paragraph (2), the adjusted basis of such tax-exempt obligation shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This section shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

[Prev](#) | [Next](#)

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

3. IRS (内国歳入庁) Revenue Procedure 72-18, 1972-1 C.B. 740

Section 3.05



Free Database Search

ScreenSavers.com



You have 1 FREE 3-D Aquarium
Screensaver waiting for you!



OK

[Home Page](#)

[Coverage](#)

[Terms of Use](#)

[Privacy](#)

SEARCHING: **Revenue Procedures**

RESULTS: FOUND: 25 HITS IN 7 DOCUMENTS SEARCHING ON 72-18

[First hit](#)

[Next document](#)

[Previous document](#)

[Back to results](#)

[New search](#)

Revenue Procedure 72-18
Internal Revenue Procedure
1972-1 C.B. 740

26 CFR 601.201: Rulings and determination letter.
(Also Part I, Section 265; 1.265-2.)

Certain taxpayers holding tax-exempt State and local obligations are provided guidelines for the application of Section 265(2) of the Code, relating to the nondeductibility of interest on indebtedness incurred for obligations on which interest is exempt from tax.

Rev. Proc. 72-18

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to set forth guidelines for taxpayers and field offices of the Internal Revenue Service for the application of section 265 (2) of the Internal Revenue Code of 1954 to certain taxpayers holding state and local obligations the interest on which is wholly exempt from Federal income tax. Guidelines for the application of section 265 (2) of the Code to banks holding such tax-exempt obligations were set forth in Revenue Procedure 70-20, C.B. 1970-2, 499. This Revenue Procedure provides guidelines for the application of section 265(2) of the Code to individuals, to dealers in tax-exempt obligations, and to business enterprises that are not dealers in tax-exempt obligations, and to banks in situations not dealt with in Revenue Procedure 70-20.

SEC. 2. BACKGROUND.

.01 Section 265 (2) of the Code provides, with two exceptions not here relevant, that no deductions shall be allowed for interest on indebtedness "incurred or continued to purchase or carry obligations * * * the interest on which is wholly exempt" from Federal income tax.

.02 Section 265 (2) of the Code is derived from section 1201(1) of the Revenue Act of 1917 and section 234 (a) (2) of the Revenue Act of 1918. It is clear from the legislative history. of those sections and of subsequent unsuccessful efforts to amend such sections (or their successors) that Congress intended to disallow interest under section 265 (2) of the Code only upon a showing of a purpose by the taxpayer to use borrowed funds to purchase or carry tax-exempt securities. See, e.g., H. Rept. 767, 65th Cong., 10; S. Rept. 617, 65th Cong., 6, 7 (1918) ; 65 Cong. Rec. 7541-7542 (1924) ; and 67 Cong. Rec. 2964 (1925).

.03 Where the required purposive relationship is established, section 265 (2) of the Code will

be applicable even though the taxpayer does not receive tax-exempt interest, as for example, where the taxpayer holds defaulted obligations (see *Clyde C. Pierce Corp. v. Commissioner* , 120 F. 2d 206 (1941)) , or where the taxpayer holds the obligation for a period before interest begins to accrue (see *Illinois Terminal Railroad Co. v. United States* , 375 F. 2d 1016, 1022 (1967)) . Similarly, section 265 (2) of the Code may be applicable even though the taxpayer's purpose in purchasing or carrying the tax-exempt obligations is to produce a taxable profit rather than tax-exempt interest. See *Denman v. Slayton* , 282 U.S. 514 (1931) .

SEC. 3. GENERAL RULES.

.01 Section 265 (2) of the Code is only applicable where the indebtedness is incurred or continued for the purpose of purchasing or carrying tax-exempt securities. Accordingly, the application of section 265 (2) of the Code requires a determination, based on all the facts and circumstances, as to the taxpayer's purpose in incurring or continuing each item of indebtedness. Such purpose may, however, be established either by direct evidence or by circumstantial evidence.

.02 Direct evidence of a purpose to *purchase* tax-exempt obligations exists where the proceeds of indebtedness are used for, and are directly traceable to, the purchase of tax-exempt obligations. *Wynn v. United States* , 411 F. 2d 614 (1969), certiorari denied 396 U.S. 1008 (1970) . Section 265 (2) does not apply, however, where proceeds of a bona fide business indebtedness are temporarily invested in tax-exempt obligations under circumstances similar to those set forth in Revenue Ruling 55-389, C.B. 1955-1, 276.

.03 Direct evidence of a purpose to *carry* tax-exempt obligations exists where tax-exempt obligations are used as collateral for indebtedness. "[O]ne who borrows to buy tax-exempts and one who borrows against tax-exempts already owned are in virtually the same economic position. Section 265 (2) makes no distinction between them." *Wisconsin Cheeseman v. United States* , 338 F. 2d 420, at 422 (1968) .

.04 In the absence of direct evidence linking indebtedness with the purchase or carrying of tax-exempt obligations as illustrated in paragraphs .02 and .03 above, section 265 (2) of the Code will apply only if the totality of facts and circumstances supports a reasonable inference that the purpose to purchase or carry tax-exempt obligations exists. Stated alternatively, section 265 (2) will apply only where the totality of facts and circumstances establishes a "sufficiently direct relationship" between the borrowing and the investment in tax-exempt obligations. See *Wisconsin Cheeseman* , 338 F. 2d 420, at 422. The guidelines set forth in sections 4, 5, and 6 shall be applied to determine whether such a relationship exists.

.05 Generally, where a taxpayer's investment in tax-exempt obligations is insubstantial, the purpose to purchase or carry tax-exempt obligations will not ordinarily be inferred in the absence of direct evidence as set forth in sections 3.02 and 3.03. In the case of an individual, investment in tax-exempt obligations shall be presumed insubstantial only where during the taxable year the average amount of the tax-exempt obligations (valued at their adjusted basis) does not exceed 2 percent of the average adjusted basis of his portfolio investments (as defined in section 4.04) and any assets held in the active conduct of a trade or business. In the case of a corporation, an investment in tax-exempt obligations shall be presumed insubstantial only where during the taxable year the average amount of the tax-exempt obligations (valued at their adjusted basis) does not exceed 2 percent of the average total assets (valued at their adjusted basis) held in the active conduct of the trade or business. This paragraph shall not apply to a dealer in tax-exempt obligations.

SEC. 4. GUIDELINES FOR INDIVIDUALS.

.01 In the absence of direct evidence of the purpose to purchase or carry tax-exempt

obligations (as set forth in sections 3.02 and 3.03) , the rules set forth in this section shall apply.

.02 An individual taxpayer may incur a variety of indebtedness of a personal nature, ranging from short-term credit for purchases of goods and services for personal consumption to a mortgage incurred to purchase or improve a residence or other real property which is held for personal use. Generally, section 265 (2) of the Code will not apply to indebtedness of this type, because the purpose to purchase or carry tax-exempt obligations cannot reasonably be inferred where a personal purpose unrelated to the tax-exempt obligations ordinarily dominates the transaction. For example, section 265 (2) of the Code generally will not apply to an individual who holds salable municipal bonds and takes out a mortgage to buy a residence instead of selling his municipal bonds to finance the purchase price. Under such circumstances the purpose of incurring the indebtedness is so directly related to the personal purpose of acquiring a residence that no sufficiently direct relationship between the borrowing and the investment in tax-exempt obligations -nay reasonably be inferred.

.03 The purpose to purchase or carry tax-exempt obligations generally does not exist with respect to indebtedness incurred or continued by an individual in connection with the active conduct of trade or business (other than a dealer in tax-exempt obligations) unless it is determined that the borrowing was in excess of business needs. However, there is a rebuttable presumption that the purpose to *carry* tax-exempt obligations exists where the taxpayer reasonably could have foreseen at the time of purchasing the tax-exempt obligations that indebtedness probably would have to be incurred to meet future economic needs of the business of an ordinary, recurrent variety. See *Wisconsin Cheeseman v. United States* , 388 F. 2d 420, at 422. The presumption may be rebutted, however, if the taxpayer demonstrates that business reasons, unrelated to the purchase or carrying of tax-exempt obligations, dominated the transaction.

.04 Generally, a purpose to *carry* tax-exempt obligations will be inferred, unless rebutted by other evidence, wherever the taxpayer has outstanding indebtedness which is not directly connected with personal expenditures (see section 4.02) and is not incurred or continued in connection with the active conduct of a trade or business (see section 4.03) and the taxpayer owns tax-exempt obligations. This inference will be made even though the indebtedness is ostensibly incurred or continued to purchase or carry other portfolio investments.

Portfolio investment for the purposes of this Revenue Procedure includes transactions entered into for profit (including investment in real estate) which are not connected with the active conduct of a trade or business. Purchase and sale of securities shall not constitute the active conduct of a trade or business unless the taxpayer is a dealer in securities within the meaning of section 1.471-5 of the Income Tax Regulations. A substantial ownership interest in a corporation will not be considered a portfolio investment. For example,. where a taxpayer owns at least 80 percent of the voting stock of a corporation that is engaged in the active conduct of a trade or business, the investment in such controlling interest shall not be considered to be a portfolio investment.

A sufficiently direct relationship between the incurring or continuing of indebtedness and the purchasing or carrying of tax-exempt obligations will generally exist where indebtedness is incurred to finance portfolio investment because the choice of whether to finance a new portfolio investment through borrowing or through the liquidation of an existing investment in tax-exempt obligations typically involves a purpose either to maximize profit or to maintain a diversified portfolio. This purpose necessarily involves a decision, whether articulated by the taxpayer or not, to incur (or continue) the indebtedness, at least in part, to purchase or carry the existing investment in tax-exempt obligations.

A taxpayer may rebut the presumption that section 265 (2) of the Code applies in the above

circumstances by establishing that he could not have liquidated his holdings of tax-exempt obligations in order to avoid incurring indebtedness. The presumption may be overcome where, for example, liquidation is not possible because the tax-exempt obligations cannot be sold. The presumption would not be rebutted, however, by a showing that the tax-exempt obligations could only have been liquidated with difficulty or at a loss; or that the taxpayer owned other investment assets such as common stock that could have been liquidated; or that an investment advisor recommended that a prudent man should maintain a particular percentage of assets in tax-exempt obligations. Similarly, the presumption would not be rebutted by a showing that liquidating the holdings of tax-exempt obligations would not have produced sufficient cash to equal the amount borrowed.

The provisions of this paragraph may be illustrated by the following example:

Taxpayer A, an individual, owns common stock listed on a national securities exchange, having an adjusted basis of \$200,000; he owns rental property having an adjusted basis of \$200,000; he has cash of \$10,000; and he owns readily marketable municipal bonds having an adjusted basis of \$41,000. A borrows \$100,000 to invest in a limited partnership interest in a real estate syndicate and pays \$8,000 interest on the loan which he claims as an interest deduction for the taxable year. Under these facts and circumstances, there is a presumption that the \$100,000 indebtedness which is incurred to finance A's portfolio investment is also incurred to carry A's existing investment in tax-exempt bonds since there are no additional facts or circumstances to rebut the presumption. Accordingly, a portion of the \$8,000 interest payment will be disallowed under section 265 (2) of the Code.

See section 7 concerning the amount to be disallowed.

.05 In the case of a partnership which incurs indebtedness or which holds tax-exempt obligations, the partners shall be treated as incurring or holding their partnership share of such indebtedness or tax-exempt obligations. For purposes of this Revenue Procedure, the interest of a partner in the partnership's assets and indebtedness shall be determined in accordance with his capital interest in the partnership. The purposes for which the partnership incurs any indebtedness shall be attributed to the general partners in applying section 265 (2) . A general partner's interest in corporate stock owned by a partnership will ordinarily be considered a portfolio investment unless the partnership meets the substantial ownership requirement of section 4.04; and (1) the partner has at least an 80 percent interest in the partnership or (2) the business of the corporation and of the partner are closely related and the partner has an interest of more than 50 percent in the partnership. A limited partnership interest will be considered as representing portfolio investment.

SEC. 5. GUIDELINES FOR DEALERS IN TAX-EXEMPT OBLIGATIONS.

.01 A dealer in tax-exempt obligations (whether a corporation, partnership, or sole proprietorship) is subject to section 265 (2) of the Code where it is established that indebtedness is incurred or continued for the purpose of holding tax-exempt obligations, even though the tax-exempt obligations are held for the purpose of resale at a gain rather than for the purpose of receiving tax-exempt interest income. See *Denman v. Slayton, supra* .

.02 Where the proceeds of indebtedness are directly traceable to the purchase of tax-exempt obligations by a dealer in such obligations, section 265 (2) of the Code applies as specified in section 3.02. Direct tracing may occur for example, where a brokerage business maintains a municipal bond account with a bank through which it purchases and sells all of its municipal bonds, with the brokerage business incurring an indebtedness to the bank during any period in which purchases exceed receipts from sales in the account. See *Wynn v. United States, supra* . As provided in section 7, where there is such direct tracing the entire interest on the indebtedness is nondeductible under section 265 (2) of the Code.

.03 Where indebtedness is incurred or continued for the general purpose of carrying on a brokerage business which includes the purchase of both taxable and tax-exempt obligations, and the use of the borrowed funds cannot be directly traced, it is reasonable to infer that the

borrowed funds were used for all the activities of the business which include the purchase of tax-exempt obligations. Accordingly, section 265 (2) of the Code is applicable in such circumstances. See *Commissioner v. Leslie*, 413 F. 2d 636 (1969), certiorari denied, 396 U.S. 1007 (1970). However, in such a case only an allocable portion of the interest deduction is disallowed, as provided in section 7.

.04 The purpose to purchase or carry tax-exempt obligations generally cannot be inferred where indebtedness is incurred to acquire or improve physical facilities. In such circumstances a dominant business purpose apart from the purchasing or carrying of tax-exempt obligations is sufficiently established, with the result that any inference that the indebtedness was incurred or continued for the proscribed purpose is adequately rebutted. Compare *Wisconsin Cheeseman*, *supra*.

SEC. 6. GUIDELINES FOR CORPORATIONS THAT ARE NOT DEALERS IN TAX-EXEMPT OBLIGATIONS.

.01 Where there is no direct evidence of the purpose to purchase or carry tax-exempt obligations (as set forth in sections 3.02 and 3.03), the rules set forth in this section shall apply to a corporation which is not a dealer in tax-exempt obligations.

The purpose to purchase or carry tax-exempt obligations will generally not be inferred with respect to indebtedness incurred or continued to provide funds for carrying on an active trade or business, not involving the holding of tax-exempt obligations, unless it is determined that the borrowing was in excess of business needs. Thus the purpose may be present where the borrowings exceed the reasonable needs of business or provide funds for portfolio investments. For example, where indebtedness is incurred and the proceeds are used, directly or indirectly, to purchase tax-exempt obligations which are retained for a substantial period of time as an investment, the purpose to purchase or carry tax-exempt obligations may be inferred. Similarly, where the taxpayer invests a disproportionately large portion of its liquid assets in tax-exempt obligations and there are no facts indicating that such investment is related to the reasonable needs of the taxpayer's business operations or is required on the basis of the financial conditions prevailing with respect thereto, the required purpose may also be inferred with respect to indebtedness of the taxpayer. On the other hand, temporary, short-term, investment of working capital in tax-exempt obligations, particularly where such obligations are of a nature suited for such investment (such as 90 day tax anticipation notes), and where such investments are liquidated frequently to provide funds for use in the taxpayer's business, normally provides no basis for inferring that the purpose to purchase or carry tax-exempt obligations exists with respect to indebtedness of the taxpayer. An inference may arise, however, with respect to indebtedness which is itself short-term and is incurred other than in the normal course of the taxpayer's trade or business.

.02 Generally, the purpose to *carry* tax-exempt obligations will be inferred unless rebutted by other evidence where the taxpayer could reasonably have foreseen at the time of purchasing the tax-exempt obligations that indebtedness probably would have to be incurred to meet future economic needs of the corporation of an ordinary, recurrent variety. For example, a purpose to carry tax-exempt obligations can be inferred in a case (such as *Wisconsin Cheeseman*, *supra*) where the regular business pattern of a corporation shows that it would be required to borrow funds to meet its recurring needs for working capital if it bought or retained tax-exempt obligations as a long-term investment. The presumption will not apply, however, if the taxpayer demonstrates that business reasons unrelated to the purchase or carrying of tax-exempt obligations dominated the transaction. For example, the purpose to carry tax-exempt obligations generally cannot be inferred where a mortgage debt is incurred to finance a new plant which is a nonrecurrent major expenditure. In such cases, a dominant business purpose, other than the purchase or carrying of tax-exempt obligations will normally exist and, accordingly, any inference will be rebutted. On the other hand, the purpose to *carry* tax-exempt obligations can be inferred

where a corporation *continues* indebtedness which it could discharge, in whole or in part, by liquidating its holdings of tax-exempt obligations without withdrawing any capital which is committed to, or held in reserve for, the corporation's regular business activities. See *Illinois Terminal Railroad Co. v. United States*, *supra*.

.03 The required relationship will generally not be present where the taxpayer's holdings of tax-exempt obligations are nonnegotiable obligations acquired in the ordinary course of business in payment for services performed for, or goods supplied to, state or local governments. *R. B. George Machinery Co.*, 26B.T.A.594 (1932) (Acquiesced C.B. XI-2, 4). Similarly, it generally will not be present where such holdings are required as a condition to performing a contract to provide services or property other than money to a state or local government in the ordinary course of the taxpayer's trade or business. See *Commissioner v. Bagley & Sewall Co.*, 221 F. 2d 944 (1955).

SEC. 7. PROCEDURES.

.01 When there is direct evidence under sections 3.02 and 3.03 establishing a purpose to purchase or carry tax-exempt obligations (either because tax-exempt obligations were used as collateral for indebtedness or the proceeds of indebtedness were directly traceable to the holding of particular tax-exempt obligations) no part of the interest paid or incurred on such indebtedness may be deducted. However, if only a fractional part of the indebtedness is directly traceable to the holding of particular tax-exempt obligations, the same fractional part of the interest paid or incurred on such indebtedness will be disallowed. For example, if A borrows \$100,000 from a bank and invests \$75,000 of the proceeds in tax-exempt obligations, 75 percent of the interest paid on the bank borrowing would be disallowed as a deduction.

.02 In any other case where interest is to be disallowed in accordance with this Revenue Procedure, an allocable portion of the interest on such indebtedness will be disallowed. The amount of interest on such indebtedness to be disallowed shall be determined by multiplying the total interest on such indebtedness by a fraction, the numerator of which is the average amount during the taxable year of the taxpayer's tax-exempt obligations (valued at their adjusted basis) and the denominator of which is the average amount during the taxable year of the taxpayer's total assets (valued at their adjusted basis) minus the amount of any indebtedness the interest on which is not subject to disallowance to any extent under this Revenue Procedure.

SEC. 8. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to Assistant Commissioner (Technical), Attention: T: I: C, Washington, D.C. 20224.

First hit	Next document	Previous document	Back to results	New search
---------------------------	-------------------------------	-----------------------------------	---------------------------------	----------------------------

4. IRS (内国歳入庁) Form 8038-G

Part I Reporting Authority			If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number		
3 Number and street (or P.O. box if mail is not delivered to street address)		Room/suite	4 Report number	
			3	
5 City, town, or post office, state, and ZIP code		6 Date of issue		
7 Name of issue		8 CUSIP number		
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative		
		()		

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule	
11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ▶	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	\$	\$	years	%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)	
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	years
33 Enter the last date on which the refunded bonds will be called	
34 Enter the date(s) the refunded bonds were issued	

Part VI Miscellaneous	
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract ▶	37a
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer ▶ and the date of the issue ▶	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.	
	Signature of issuer's authorized representative	Type or print name and title

5. ミシガン州 1933 年 RB 法

THE REVENUE BOND ACT OF 1933
Act 94 of 1933

AN ACT to authorize public corporations to purchase, acquire, construct, improve, enlarge, extend, or repair public improvements within or without their corporate limits, and to own, operate, and maintain the same; to authorize the condemnation of property for such public improvements; to provide for the imposition and collection of charges, fees, rentals, or rates for the services, facilities, and commodities furnished by such public improvements; to provide for the issuance of bonds and refunding bonds payable from the revenues of public improvements; to provide for a pledge by public corporations of their full faith and credit and the levy of taxes without limitation as to rate or amount to the extent necessary for the payment of the bonds, or for advancing money from general funds for payment of bonds; to provide for payment, retirement, and security of such bonds; to provide for the imposition of special assessment bonds for the purpose of refunding outstanding revenue bonds; to prescribe the powers and duties of the department of treasury and of the municipal finance commission or its successor agency relative to such bonds and relative to private activity bonds issued by a state or local governmental entity; to provide for other matters in respect to such public improvements and bonds and to validate action taken and bonds issued; and to prescribe penalties and provide remedies.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1935, Act 66, Imd. Eff. May 17, 1935;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1959, Act 78, Imd. Eff. June 29, 1959;—Am. 1969, Act 87, Imd. Eff. July 24, 1969;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 1987, Act 263, Imd. Eff. Dec. 28, 1987;—Am. 1998, Act 196, Eff. Mar. 23, 1999.

The People of the State of Michigan enact:

141.101 Short title; revenue bond act of 1933.

Sec. 1. This act shall be known and may be cited as “the revenue bond act of 1933.”

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1935, Act 66, Imd. Eff. May 17, 1935;—Am. 1939, Act 2, Imd. Eff. Feb. 15, 1939;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.101.

141.102 Construction of act.

Sec. 2. This act shall be construed as cumulative authority for the exercise of the powers herein granted and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this act to create full and complete additional and alternate methods for the exercise of such powers. The powers conferred by this act shall not be affected or limited by any other statute or by any charter, except as otherwise herein provided. The functions, powers and duties of the state commissioner of health in connection with any such public improvement shall remain unaffected by this act.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.102.

141.103 Definitions.

Sec. 3. As used in this act:

(a) “Public corporation” means a county, city, village, township, school district, port district, or metropolitan district of the state or a combination of these if authorized by law to act jointly; an authority created by or under an act of the legislature; or a municipal health facilities corporation or subsidiary municipal health facilities corporation incorporated as provided in the municipal health facilities corporations act, 1987 PA 230, MCL 331.1101 to 331.1507.

(b) “Public improvements” means only the following improvements: housing facilities; garbage disposal plants; rubbish disposal plants; incinerators; transportation systems, including plants, works, instrumentalities, and properties used or useful in connection with those systems; sewage disposal systems, including sanitary sewers, combined sanitary and storm sewers, plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, or disposal of sewage or industrial wastes; storm water systems, including storm sewers, plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, or disposal of storm water; water supply systems, including plants, works, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, or the distribution of water; utility systems for supplying light, heat, or power, including plants, works, instrumentalities, and properties used or useful in connection with those systems; approved cable television systems, approved cable communication systems, or telephone systems, including plants, works, instrumentalities, and properties used or useful in connection with those systems; automobile parking facilities, including within or as part of the facilities areas or buildings that may be rented or leased to private

enterprises serving the public; yacht basins; harbors; docks; wharves; terminal facilities; elevated highways; bridges over, tunnels under, and ferries across bodies of water; community buildings; public wholesale markets for farm and food products; stadiums; convention halls; auditoriums; dormitories; hospitals and other health care facilities; buildings devoted to public use; museums; parks; recreational facilities; reforestation projects; aeronautical facilities; and marine railways; or any right or interest in or equipment for these improvements. The term “public improvement” means the whole or a part of any of these improvements or of any combination of these improvements or any interest or participation in these improvements, as determined by the governing body. The definition contained in this subdivision does not broaden or enlarge the extent of a particular public improvement made by a public corporation.

(c) “Borrower” means a public corporation exercising the power to issue bonds as provided in this act.

(d) “Governing body” means for a county, the board of commissioners; for a city, the body having legislative powers; for a village, the body having legislative powers; for a township, the township board; for a school district, the board of education; for a port district, the port commission; for a metropolitan district, the legislative body of the district; for a municipal health facilities corporation, the board of trustees; for a nonprofit subsidiary municipal health facilities corporation, the nonprofit subsidiary board; and for an authority, the body in which is lodged general governing powers. If the charter of a public corporation or applicable law provides that a separate board has general management over a public improvement, “governing body” means, with respect to that public improvement, the separate board, subject to review by the legislative body of the public corporation as the charter or law may provide. Unless the charter or law specifically provides otherwise, the separate board shall adopt the bond authorizing ordinance, but shall not pledge full faith and credit.

(e) “Rates” means the charges, fees, rentals, and rates that may be fixed and imposed for the services, facilities, and commodities furnished by a public improvement.

(f) “Revenues” means the income derived from the rates charged for the services, facilities, and commodities furnished by a public improvement. Revenues include, to the extent provided in the authorizing ordinance, earnings on investment of funds of the public improvement and other revenues derived from or pledged to operation of the public improvement.

(g) “Net revenues” means the revenues of a public improvement remaining after deducting the reasonable expenses of administration, operation, and maintenance of the public improvement.

(h) “Project cost” or “costs” means the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing a public improvement, including any engineering, architectural, legal, accounting, financial, and other expenses incident to the public improvement. Project costs include interest on the bonds, and other obligations of the borrower issued to pay project costs, during the period of construction and until full revenues are developed. Project costs include a reserve or addition to a reserve for payment of principal and interest on the bonds and the amount required for operation and maintenance until sufficient revenues have developed.

(i) “Ordinance” means an ordinance, resolution, or other appropriate legislative enactment of the governing body of a public corporation.

(j) “Approved cable television system” or “approved cable communication system” means a cable television or communication system to which 1 of the following applies:

(i) A municipality acquires or establishes the system either before January 1, 1987 or before a system is established in that municipality by a private person.

(ii) A municipality acquires or establishes the system after a system is established in that municipality by a private person and after approval by a majority of the electors in the affected area of that municipality voting on the question of the sale of revenue bonds to finance the acquisition or establishment of the municipal system.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.103;—Am. 1949, Act 244, Eff. Sept. 23, 1949;—Am. 1952, Act 152, Imd. Eff. Apr. 24, 1952;—Am. 1954, Act 136, Eff. Aug. 13, 1954;—Am. 1956, Act 134, Imd. Eff. Apr. 13, 1956;—Am. 1966, Act 294, Imd. Eff. July 14, 1966;—Am. 1968, Act 253, Imd. Eff. July 1, 1968;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1986, Act 40, Imd. Eff. Mar. 17, 1986;—Am. 1986, Act 246, Imd. Eff. Dec. 4, 1986;—Am. 1987, Act 229, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 501, Imd. Eff. Dec. 29, 1988;—Am. 1992, Act 305, Imd. Eff. Dec. 21, 1992;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.104 Municipal public improvements; limitations; bonds; acquiring utility for supplying light, heat or power; referendum; powers exercised.

Sec. 4. Any public corporation is authorized to purchase, acquire, construct, improve, enlarge, extend or repair 1 or more public improvements and to own, operate and maintain the same, within or without its

corporate limits, and to furnish the services, facilities and commodities of any such public improvement to users within or without its corporate limits. The exercise by any public corporation of such powers outside its corporate limits shall be subject to the legal rights of the political subdivision within which such powers are to be exercised and shall also be subject to any and all constitutional and statutory provisions relating thereto. The authority herein granted shall be further limited as follows:

(a) No public corporation shall establish warehouses for the purpose of storing or dispensing alcoholic beverages.

(b) School districts shall be limited to such public improvements as are within the scope of their powers under other statutory provisions.

(c) Port districts shall be limited to such public improvements as are within the scope of their powers under acts creating the same.

(e) No public corporation may acquire a utility for the supplying of light, heat or power unless such proposition shall have first received the affirmative vote of 3/5 of the electors of such public corporation voting thereon at a regular or special municipal election.

The powers in this act granted may be exercised notwithstanding that no bonds are issued hereunder.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.104;—Am. 1954, Act 136, Eff. Aug. 13, 1954;—Am. 1966, Act 179, Imd. Eff. July 1, 1966.

141.105 Estimate of cost and period of usefulness.

Sec. 5. Whenever the governing body of any public corporation shall determine to purchase, acquire, construct, improve, enlarge, extend and/or repair any public improvement and to issue bonds under this act, it shall first cause an estimate to be made of the cost and the period of usefulness thereof, and the fact that such estimate has been made and the amount and period of time thereof shall appear in the ordinance authorizing and providing for the issuance of the bonds.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1935, Act 66, Imd. Eff. May 17, 1935;—Am. 1939, Act 2, Imd. Eff. Feb. 15, 1939;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.105;—Am. 1949, Act 244, Eff. Sept. 23, 1949.

141.106 Ordinances; adoption; purpose; approval or disapproval; veto; effective date; referendum; record; authentication; publication.

Sec. 6. The governing body of a public corporation by the affirmative vote of a majority of its elected members, at the meeting at which it is introduced or any subsequent meeting, may adopt an ordinance relating to the exercise of the powers granted in this act and to other matters necessary or desirable to effectuate this act, to provide for the adequate operation of a public improvement established under this act, and to insure the security of bonds issued. The adoption shall be subject to applicable statutory or charter provisions in respect to the approval or disapproval of the chief executive or other officer of the public corporation and the adoption of the ordinance over his or her veto, except in case of the adoption of an ordinance under this act by the board of commissioners of a county, it shall not be necessary to submit the ordinance to the governor for approval. An ordinance adopted under this act shall become effective upon its adoption unless otherwise specified in the ordinance. It shall not be subject to a referendum vote of the electors of the public corporation except as provided in section 33. The ordinance shall be recorded in the minutes of the meeting of the governing body of the public corporation as soon as practicable after its passage. The record shall be authenticated by the signatures of the presiding officer and the clerk or other recording officer of the governing body. The ordinance shall be published once in a newspaper of general circulation within the boundaries of the public corporation. The publication of the ordinance as a part of the minutes of the meeting at which it was adopted, shall be considered a publication in conformity with this act. Except as otherwise provided in this act, this section shall constitute the sole requirements in respect to the adoption and publication of an ordinance and shall not be limited by a charter or statutory provisions.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.106;—Am. 1978, Act 216, Imd. Eff. June 5, 1978.

141.107 Bonds; issuance; form; term; interest; exclusion from net bonded indebtedness; registration; pledge of funds; statutory first lien.

Sec. 7. (1) For the purpose of defraying the whole or a part of project costs, a public corporation may borrow money and issue its negotiable bonds. The bonds shall not be issued unless and until authorized by an ordinance, which shall set forth a brief description of the contemplated project, the estimated cost of the project, and the amount, maximum rate of interest, and time of payment of the bonds. The bonds shall be serial bonds or term bonds, or a combination of serial and term bonds, and shall be payable semiannually or annually by maturity of serial bonds or maturity or required redemption of term bonds. The last annual

principal installment shall be not longer than the estimated period of usefulness of the public improvement for which the bond is issued, but the last installment shall not be more than 40 years from the date of the bond. The bonds shall bear interest, payable as provided in the authorizing ordinance, except that the first interest installment shall be payable not later than 10 months following the delivery date of the bonds. The bonds and coupons shall be substantially in the form provided in the authorizing ordinance and shall be executed in the manner prescribed in the bond, which may be by facsimile signature or signatures. The bonds and the interest on the bonds shall be made payable in lawful money of the United States, and shall be exempt from taxation by this state or by any taxing authority within this state. The public corporation may provide that the redemption of term bonds may be satisfied in whole or in part by the purchase and cancellation of term bonds otherwise required to be redeemed. As used in this subsection, "annual principal installment" means a maturity of serial bonds, an amount of term bonds required to be redeemed in that year, or a maturity of term bonds less amounts previously required to be redeemed.

(2) The principal of and interest on the bonds shall be payable, except as provided in this act, solely from the net revenues derived from the operation of the public improvement purchased, acquired, constructed, improved, enlarged, extended, or repaired from the proceeds of the bonds, as shall be pledged to the bonds in the authorizing ordinance, which may include if the ordinance so provides, net revenues derived by reason of future improvements, enlargements, extensions, or repairs to the improvement, and payments made to the public corporation issuing the bonds by any other governmental entity pursuant to another law of this state or the United States for payment of principal and interest on the bonds, even though the payments are made from or include grants or other funds provided by this state or the United States or the proceeds of taxes levied on taxable property as provided by other law.

(3) As additional security for the payment of bonds that are used to finance the local share of projects that receive more than 25% of financing from federal or state grants or that are being initially purchased, in whole or in part, by the Michigan municipal bond authority created under the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076, or if specifically authorized by another law pertaining to the public improvements for which bonds are to be issued under this act, a public corporation, by majority vote of the elected members of its governing body, may include as a part of the ordinance authorizing the issuance of the bonds a pledge of its full faith and credit for payment of the principal of an interest on the bonds. For bonds issued for airports or airport improvements under the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, a public corporation, by majority vote of the elected members of its governing body, may agree that if funds pledged for payment of bonds are not sufficient to pay principal and interest on the bonds as the bonds become due, the public corporation shall advance sufficient funds out of its general funds for the payment if the proceeds of the bonds are used exclusively within the territorial limits of the county in which the political corporation is located. If a pledge is made, and the net revenues primarily pledged to the payment are insufficient to make a payment, the public corporation shall be obligated to pay the bonds and interest on the bonds in the same manner and to the same extent as other general obligation bonds of the public corporation, including the levy, when necessary, of a tax on all taxable property in the public corporation without limitation as to rate or amount, in addition to all other taxes that the public corporation is authorized to levy, but not exceeding the rate or amount necessary to make the payment. If a public corporation makes payment from taxes or general funds pursuant to a full faith and credit pledge or agreement to advance, it shall be reimbursed from net revenues subsequently received by the public improvement for which the bonds are issued that are not otherwise pledged or encumbered. A bond or coupon issued under this act shall not be general obligation or constitute an indebtedness of the borrower unless its full faith and credit are pledged. Unless a public corporation pledges its full faith and credit for the payment of bonds issued pursuant to this act, or unless otherwise exempt, the amount of the bonds shall not be included in computing the net bonded indebtedness of the public corporation for the purposes of debt limitations imposed by any statutory or charter provisions. Bonds may be made registerable as to principal, or principal and interest, under terms and conditions determined by the governing body of the borrower.

(4) The governing body in the ordinance authorizing the bonds or in an agreement entered into under section 7a(1)(a) may pledge any funds established by the ordinance or agreement for the payment of the bonds or other obligations of the public corporation under the agreement and create a statutory first lien in favor of the holders of the bonds or a party subject to the agreement.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1935, Act 66, Imd. Eff. May 17, 1935;—Am. 1939, Act 2, Imd. Eff. Feb. 15, 1939;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.107;—Am. 1949, Act 244, Eff. Sept. 23, 1949;—Am. 1960, Act 24, Eff. Aug. 17, 1960;—Am. 1969, Act 87, Imd. Eff. July 24, 1969;—Am. 1973, Act 40, Imd. Eff. June 29, 1973;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1985, Act 26, Imd. Eff. May 31, 1985;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.107a Powers of public corporation in determining to issue bonds; terms of payment; interest; sale or remarketing; tender of bonds by holders; determining aggregate authorized amount of bonds outstanding; remarketing or resale of tendered bonds or incurrence of obligation of public corporation; provisions of section construed.

Sec. 7a. (1) A public corporation in determining to issue bonds, including refunding bonds, may do the following:

(a) As additional security to assure timely payment of the bonds, authorize and enter into an insurance contract, agreement for lines of credit, letter of credit, commitment to purchase obligations, remarketing agreement, reimbursement agreement, tender agreement, and any other transaction to provide security to assure timely payment of any bond, and may pledge and create a statutory lien on 1 or more of the following for timely payment of the bonds or payment of any obligations of the public corporation under any of the foregoing:

- (i) Proceeds of additional security provided to assure timely payment of the bonds.
- (ii) Proceeds of bonds.
- (iii) Earnings on proceeds of bonds or other funds held for payment of bonds.
- (iv) Revenues.

(b) If the bonds are additionally secured as provided in subsection (1)(a), authorize, from the proceeds of the bonds or other available funds, payment of the cost of issuing the bonds, which may include, but is not limited to, fees for placement, fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, tender agreements, or purchase or sales agreements or commitments, or other agreements to provide security to assure timely payment of bonds.

(c) Authorize or provide for an officer of the public corporation, but only within limitations which shall be contained in the ordinance of the governing body authorizing the bonds, to do 1 or more of the following:

- (i) Sell and deliver and receive payment for bonds.
- (ii) Refund bonds by the delivery of new bonds, whether or not the bonds to be refunded have matured or are subject to redemption prior to maturity on the date of delivery of the refunding bonds.
- (iii) Buy and hold without cancellation or sell bonds so issued.
- (iv) Deliver bonds partly to refund bonds and partly for any other authorized purpose.
- (v) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, optional or mandatory redemption or tender rights, obligations to be exercised by the public corporation or the holder of the bond, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(2) If the bonds are additionally secured as provided in subsection (1)(a) and notwithstanding other provisions of this act, the bonds, including an obligation of the public corporation to a provider of additional security under subsection (1)(a) relating to that additional security, may be made payable on demand or prior to maturity at the option of the public corporation or the holder, or made subject to a tender, right, or obligation, at the time and in the manner determined by the governing body in the ordinance authorizing the bonds. If payable on demand or prior to maturity at the option of the public corporation or the holder, or if subject to a tender, right, or obligation, the bonds, including an obligation of the public corporation to a provider of additional security under subsection (1)(a) relating to that additional security, may bear no rate of interest or bear interest at a rate or rates which may be variable and which shall not be subject to the limitations provided in section 12, may be in a form with or without interest coupons, and may be sold at discount which shall not be subject to the limitation on discount provided in section 12 all as provided by the governing body in the ordinance authorizing the bonds.

(3) Bonds which are additionally secured under subsection (1)(a), and which are tendered by the holder or considered tendered as provided in this subsection to the public corporation, to the trustee appointed pursuant to section 38, or to any other entity appointed pursuant to an agreement authorized by subsection (1)(a), shall not be redeemed by an optional or mandatory tender, but may be sold or remarketed by the public corporation, by the trustee appointed pursuant to section 38, or by any other entity appointed pursuant to an agreement authorized by subsection (1)(a) without the sale or remarketing being a reissuance or refunding. If so provided by the governing body in the ordinance authorizing the bonds, bonds which are additionally secured under the provisions of subsection (1)(a) may contain provisions under which the holders of the bonds may be considered to have tendered the bonds pursuant to the ordinance and the bonds. For purposes of determining the aggregate authorized amount of bonds outstanding, bonds which are considered tendered are no longer outstanding and may be replaced without redemption by bonds which may be sold or remarketed as provided in this subsection without the sale or remarketing being a reissuance or refunding.

(4) The remarketing or resale of tendered bonds or the incurrence of an obligation of the public corporation pursuant to an agreement providing additional security under subsection (1)(a) is not subject to referendum by the qualified electors of the public corporation pursuant to section 33 and may be sold or remarketed in the case of tendered bonds, or incurred in the case of an obligation pursuant to an agreement providing additional security under section 7a(1)(a), at public or private sale as determined by the governing body in the ordinance authorizing the bonds. The remarketing or resale of tendered bonds is not subject to the prior approval of the department of treasury as provided in this act if the original issue of bonds to which the tendered bonds or agreement relates was approved or excepted from approval by the department of treasury.

(5) The provisions of this section specify general authority under this act, may be exercised notwithstanding a charter provision to the contrary, and may be included in bonds issued before the effective date of this section which bonds are ratified and validated by this section.

(6) The amendatory act which added this section shall not be construed to expand or diminish the authority of a public corporation to pledge its full faith and credit without a referendum of the qualified electors.

History: Add. 1985, Act 26, Imd. Eff. May 31, 1985.

141.108 Lien on revenue in favor of bondholders.

Sec. 8. There shall be created in the authorizing ordinance a lien, by this act made a statutory lien, upon the net revenues pledged to the payment of the principal of and interest upon such bonds, to and in favor of the holders of such bonds and the interest coupons pertaining thereto, and each of such holders, which liens shall be a first lien upon such net revenues, except where there exists a prior lien or liens then such new lien shall be subject thereto.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1935, Act 66, Imd. Eff. May 17, 1935;—Am. 1939, Act 2, Imd. Eff. Feb. 15, 1939;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.108.

141.109 Statutory lien on net revenues; duration; enforcement.

Sec. 9. The net revenues which are pledged shall be and remain subject to the statutory lien until the payment in full of the principal of and interest upon the bonds unless the authorizing ordinance provides for earlier discharge of the lien by substitution of other security. The holder of the bonds, representing in the aggregate not less than 20% of the entire issue then outstanding, may protect and enforce the statutory lien and enforce and compel the performance of all duties of the officials of the borrower, including the fixing of sufficient rates, the collection of revenues, the proper segregation of revenues, and the proper application of the revenues. The statutory lien shall not be construed to give a holder or owner of a bond or coupon authority to compel the sale of the public improvement, the revenues of which are pledged to the improvement.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.109;—Am. 1978, Act 216, Imd. Eff. June 5, 1978.

141.110 Receiverships for public improvements.

Sec. 10. If there be any default in the payment of the principal of or interest upon any of said bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate on behalf of the borrower, under the direction of said court, any public improvement the revenues of which are pledged to the payment of such principal and interest; and by and with the approval of said court, to fix and charge rates and collect revenues sufficient to provide for the payment of any bonds or other obligations outstanding against the revenues of said public improvement and for the payment of the expenses of operating and maintaining the same and to apply the income and revenues of said public improvement in conformity with this act and the ordinance providing for the issuance of such bonds and in accordance with such orders as the court shall make.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.110.

141.111 Bonds; application of other laws and charters.

Sec. 11. The bonds authorized hereunder shall not be subject to any limitations or provisions contained in the laws of the state of Michigan, pertaining to public corporations or in the charters of public corporations, as now in force or hereafter amended, other than as provided for in this act.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.111.

141.112 Bonds; discount; sale price; interest; competitive or negotiated sale; notice; publication.

Sec. 12. (1) Bonds issued under this act may be sold at a discount but may not be sold at a price that would make the interest cost on the money borrowed after deducting any premium or adding any discount exceed

10% per annum or the maximum rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, whichever is greater, and may bear a stated rate of interest or no rate of interest.

(2) A public corporation may sell bonds at a competitive sale or a negotiated sale as determined in the authorizing ordinance. If a public corporation determines to sell a bond at a negotiated sale, the governing body shall expressly state the method and reasons for choosing a negotiated sale instead of a competitive sale in the resolution or ordinance authorizing the issuance or sale of the bonds.

(3) Bonds sold at a competitive sale shall not be sold until notice by publication at least 7 days before the sale in a publication printed in the English language and circulated in this state that carries as a part of its regular service notices of the sale of municipal bonds.

(4) A public corporation shall award a bond sold at a competitive sale to the bidder whose bid meets all specifications and requirements and results in the lowest interest cost to the public corporation, unless all bids are rejected.

(5) A public corporation may accept bids for the purchase of a bond made in person, by mail, by facsimile, by electronic means, or by any other means authorized by the public corporation.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.112;—Am. 1949, Act 244, Eff. Sept. 23, 1949;—Am. 1968, Act 68, Imd. Eff. May 28, 1968;—Am. 1973, Act 40, Imd. Eff. June 29, 1973;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1982, Act 485, Imd. Eff. Dec. 30, 1982;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 1985, Act 26, Imd. Eff. May 31, 1985;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.112a Bonds subject to revised municipal finance act.

Sec. 12a. (1) Bonds issued under this act for which a municipality pledges its full faith and credit are also subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, except for part VI and section 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2601 to 141.2613, and MCL 141.2503.

(2) For bonds issued under this act, the first principal amount maturity date or mandatory redemption date shall be not later than 5 years after the date of issuance and some principal amount shall mature or be subject to mandatory redemption in each subsequent year of the term of the bond.

(3) As used in this section, "municipality" means that term as defined in the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(4) Except as otherwise provided in this act, bonds subject to this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 2002, Act 465, Imd. Eff. June 21, 2002.

141.112b Bulletins; issuance by department of treasury.

Sec. 12b. The department of treasury is authorized to issue bulletins as necessary to carry out the purposes of this act. A bulletin issued under this section shall include a statement of the department's specific statutory authority for any substantive requirement contained within the bulletin.

History: Add. 2002, Act 465, Imd. Eff. June 21, 2002.

141.113 Bonds; statement on face of bond or on face of interest coupon.

Sec. 13. (1) There shall be plainly stated on the face of each bond: that it is issued under this act; that it is a self-liquidating bond and is not a general obligation of the borrower, unless the full faith and credit of the issuer are pledged; that it does not constitute an indebtedness of the borrower within any constitutional, statutory, or charter limitation; that the principal of the bond and the interest on the bond are payable solely from revenues, which shall be identified by reference to the public improvement, or part of the public improvement, from which the revenues are to be derived; and that the payment of the principal and interest are secured by a statutory lien on the revenues, the priority of which lien shall be stated.

(2) Unless the full faith and credit of the borrower are pledged, there shall be plainly stated on the face of each interest coupon language substantially as follows: This coupon is not a general obligation of the borrower and is payable solely from certain revenues as set forth in the bond to which this coupon pertains.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.113;—Am. 1969, Act 87, Imd. Eff. July 24, 1969;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978.

141.114 Bonds; qualities of negotiable instruments.

Sec. 14. The bonds shall have all the qualities of negotiable instruments as provided for in the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—CL 1948, 141.114;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 2000, Act 350, Eff. Mar. 28, 2001.

141.115 Bonds; deposit and investment of sale proceeds.

Sec. 15. The governing body shall require that the proceeds of the sale of bonds issued under this act be deposited in an account or accounts separate from other money of the borrower in 1 or more banks, savings and loan associations, or credit unions, each having unimpaired capital and surplus amounting to at least \$2,000,000.00 or that are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, or the national credit union share insurance fund. However, the proceeds may be invested, in whole or in part, in the manner provided in section 24 for other funds, if the investment is authorized in the ordinance or approved by the department of treasury.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.115;—Am. 1951, Act 63, Eff. Sept. 28, 1951;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 1988, Act 228, Eff. Oct. 1, 1988.

141.116 Bonds; use of sale proceeds; cancellation of bonds acquired by purchase; payment of capitalized interest.

Sec. 16. Money received from the sale of bonds shall be used solely for the payment of project costs. An unexpended balance of the proceeds of the sale of any bonds remaining after the completion of the project for which issued, may be used for the improvement, enlargement, or extension of the public improvement, if the use is approved by the department of treasury. Any remaining balance shall be paid immediately into the bond and interest redemption deposit account for the bonds, and the money shall be used only for meeting bond reserve requirements or for the redemption or purchase, at not more than the fair market value, of outstanding bonds of the issue from which the proceeds were derived. Bonds acquired by purchase shall be canceled and shall not be reissued. Each ordinance shall state the period for which interest is to be capitalized, and the amount of reserves to be funded from the bonds. Upon receipt of the proceeds of the bonds, there shall be set aside, in the bond and interest redemption deposit account, the amount of interest that will accrue during the period at the interest rate specified in the bonds and the amount required to be set aside in the bond and interest redemption account. Money set aside shall be used solely for the payment of the capitalized interest or to satisfy bond reserve requirements.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.116;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.117 Bonds; validity of signatures.

Sec. 17. In case any of the officers whose signatures or counter-signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures or counter-signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—CL 1948, 141.117.

141.118 Charges for services; providing medical care without charge or at reduced rates.

Sec. 18. (1) Except as provided in subsection (2), free service shall not be furnished by a public improvement to a person, firm, or corporation, public or private, or to a public agency or instrumentality. The reasonable cost and value of any service rendered to a public corporation, including the borrower, by a public improvement shall be charged against the public corporation and shall be paid for as the service accrues from the public corporation's current funds or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, and those charges, when so paid, shall be accounted for in the same manner as other revenues of the public improvement.

(2) A public improvement that is a hospital or other health care facility may provide medical care to the indigent without charge or at reduced rates and may provide medical care without charge to comply with conditions for the receipt of a grant or contribution from a public or private donor.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.118;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1987, Act 229, Imd. Eff. Dec. 28, 1987.

141.119 Additional bonds.

Sec. 19. (1) A borrower issuing bonds for any public improvement pursuant to this act, at the time of the authorization of the bonds, may provide in the authorizing ordinance for the issuance of additional bonds of

equal standing for its completion in the event the bonds first authorized shall prove to be insufficient therefor, or for its subsequent enlargement, extension, improvement, or repair, or to refund part or all of 1 or more outstanding issues, or for any of these purposes, which additional bonds may be issued and be negotiated from time to time as the proceeds therefrom may be necessary for that purpose. The bonds, when sold, shall have equal standing with those issued in the first instance. The additional bonds may be issued in separate series from the original bonds, with different dates of issuance, and with changes in the form thereof which are consistent with that equality of standing.

(2) The provisions of section 7 providing for annual installments, the amounts of the installments, and the due date of the first installment shall not be controlling as to each additional series whether the additional series is of equal or subordinate standing. Instead, section 7 shall be applied to the combined annual principal installments and interest at actual rates on outstanding bonds and at the maximum authorized rate on the additional series. Additional bonds of equal standing shall not be issued unless authorized as provided in this section.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.119;—Am. 1969, Act 87, Imd. Eff. July 24, 1969;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978.

141.120 Revenue refunding bonds.

Sec. 20. (1) If a borrower has outstanding any bonds issued under this act, it may issue and negotiate new bonds under this act for the purpose of providing for the retirement of those outstanding bonds, in whole or in part. The new bonds shall be designated “revenue refunding bonds”. Except as otherwise provided in the refunding ordinance, revenue refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds to be refunded, or may be payable from earnings on investments held in trust to pay refunded bonds for the period of time specified in the ordinance authorizing the bonds or from any other source provided in the ordinance authorizing the refunding bonds. The revenue refunding bonds may be issued to include the amount of any premium to be paid upon the calling of the bonds to be refunded, interest to the maturity or the earliest or any subsequent redemption date of the bonds to be refunded, and the cost of issuing the refunding bonds, or if the bonds are not callable, any premium necessary to be paid in order to secure the surrender of the bonds to be refunded. This section shall not be construed as providing for the redemption of noncallable unmatured bonds without the consent of the holder or holders of the bonds.

(2) The borrower may issue bonds partly to refund outstanding bonds, which portion shall be considered a revenue refunding bond for purposes of this section, and partly for any other purpose contemplated by this act but which would not include loans for private mortgage purposes.

(3) Bonds issued to refund outstanding bonds and bonds issued partly to refund outstanding bonds and partly for any other purposes may be issued in a principal amount and may bear an interest rate that is greater than, the same as, or lower than the principal amount and interest rate of the bonds to be refunded. The refunding bonds and the bonds issued pursuant to subsection (2) may be sold as provided in section 12 or, to the extent the bond is issued to refund an outstanding bond, may be exchanged for the obligations to be refunded by the obligations, and if sold, the proceeds attributable to the purpose of refunding an outstanding obligation shall be deposited in a bank, trust company, savings and loan association, or credit union in a special trust account or escrow account to be used only for the payment at maturity or redemption or purchase of the outstanding bonds. If refunding bonds or bonds issued pursuant to subsection (2) are to be issued and sold for the sole or partial purpose of refunding unmatured noncallable bonds, the latter shall be surrendered and canceled at the time of the delivery to the purchaser of the refunding bonds, or the proceeds of the bonds attributable to the purpose of refunding an outstanding obligation and sufficient other funds shall be deposited in trust to pay principal and interest to maturity or principal, interest, and redemption premium to the earliest or any subsequent redemption date together with irrevocable instructions to the paying agent to call the bonds for redemption on that date. The borrower may deposit in trust direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States that do not permit redemption at the option of the issuer and the principal and interest on which when due, without reinvestment, provide funds sufficient to pay principal, interest, and call premium, when due, on the bonds being refunded.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.120;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 1988, Act 228, Eff. Oct. 1, 1988.

141.120a Combined public improvements; bonds; revenues pledged; retirement.

Sec. 20a. Any public corporation may determine to operate 2 or more public improvements as a combined public improvement and in such case it may pledge the revenues of such combined public improvement to the

payment of revenue bonds issued to defray the cost of purchasing, acquiring, constructing, improving, enlarging, extending and/or repairing the whole or any part of such combined public improvement. Whenever any public corporation shall determine to issue any bonds under this act and pledge thereto the revenues of a public improvement or a combined public improvement, if there shall be outstanding bonds pledging the revenues of such public improvement or any unit or units of such combined public improvement, then such new bonds may be issued subject to such prior pledge, or may include an amount sufficient to retire such outstanding bonds, and to the extent that they are issued for such retirement, they shall be subject to the provisions of section 20 of this act, except that in lieu of being designated as refunding bonds, such new bonds shall recite the extent to which they refund outstanding obligations.

History: Add. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.120a.

141.120b Issuance of revenue bonds to retire outstanding bonds for public improvements; revenue refunding bonds; noncallable unmatured bonds.

Sec. 20b. If a township, city, or village has outstanding bonds issued for acquiring or constructing public improvements, whether the bonds are payable from revenues, special assessments, or taxes, it may issue revenue bonds under this act for the purpose of retiring the outstanding bonds. If a city or village has issued refunding bonds, including in a single series, or bonds for 1 or more of the public improvements together with bonds for other purposes, the governing body may designate by number and amount the refunding bonds of the series that represent the original bonds issued for the public improvements and may refund the bonds designated by the issuance of revenue refunding bonds under this act. The revenue refunding bonds shall be valid notwithstanding a defect in the proceedings for the issuance of the bonds refunded or for the acquisition of the public improvement if, at the time of refunding, the public improvement can be acquired and revenue bonds can be issued for the improvement under this act. If this act applies to the issuance, the new bonds shall be authorized in the same manner, shall be subject to the same conditions, shall be secured to the same extent, and shall have the same source of payment as other bonds issued under this act for like improvements. The bonds may include the costs of issuing the bonds and the amount of the premium to be paid on the calling of the outstanding bonds, or if the bonds are not callable, the premium necessary to be paid to secure the surrender of the bonds. If revenue refunding bonds are to be issued, the amount due upon a bond to be refunded may be reduced by consent of the holder of the bond, and refunding bonds may be issued for the reduced amount. This section shall not be construed as providing for the redemption of noncallable unmatured bonds without the consent of the holder of the bond. The bonds may be exchanged for the outstanding bonds or may be sold as provided in section 12. If sold, the proceeds shall be deposited in a bank, trust company, savings and loan association, or credit union in a special trust account or escrow account to be used only for the redemption or purchase of the outstanding bonds. If refunding bonds are to be issued and sold for the purpose of refunding noncallable unmatured bonds, the noncallable unmatured bonds shall be surrendered and canceled at the time of the delivery to the purchaser of the refunding bonds, or sufficient funds deposited in trust to pay principal and interest to maturity on noncallable bonds and principal, interest, and redemption premium to the earliest redemption date on callable bonds together with irrevocable instructions to the paying agent to call the bonds for redemption on that date. If the ordinance authorizing the bonds to be refunded permits, the borrower may deposit in trust direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States that do not permit redemption at the option of the issuer and the principal and interest on which when due, without reinvestment, provide funds sufficient to pay principal, interest, and call premium, when due, on the bonds being refunded.

History: Add. 1943, Act 219, Imd. Eff. Apr. 20, 1943;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.120b;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1988, Act 228, Eff. Oct. 1, 1988.

141.120c Parking revenue bonds; special assessments on benefited properties.

Sec. 20c. When a borrower has outstanding any parking revenue bonds issued under the provisions of this act, it may thereafter levy special assessments against properties specially benefited by the parking facilities originally financed by the bonds, but no assessment shall be made at large, and may issue special assessment bonds therefor in anticipation of the payment of the special assessments for the purpose of providing for the retirement of the outstanding bonds in whole or in part. The special assessment bonds may pledge the full faith and credit of the public corporation issuing them, as determined by the governing body of the public corporation. The special assessment bonds may be issued to include the amount of any premium to be paid upon the calling of the parking revenue bonds to be refunded or if such bonds are not callable, any premium necessary to be paid in order to secure the surrender of the bonds to be refunded; but the amount of the premium so included shall not exceed 5% of the principal amount of the bonds to be refunded. The procedures for levying the special assessments and for issuing the special assessment bonds shall be the same

as that provided by charter or other applicable law. Nothing in this section shall be construed as providing for the refunding of noncallable unmatured bonds without the consent of the holders thereof.

History: Add. 1959, Act 78, Imd. Eff. June 29, 1959.

141.121 Rates for services; sufficiency; fixing and revising; pledge for payment of bonds; charges for services as lien on premises; certification of delinquent charges; notice of tenants' responsibility for payment of charges; cash deposit; discontinuance of service to enforce payment of charges; validation of enforcement methods included in ordinance.

Sec. 21. (1) Rates for services furnished by a public improvement shall be fixed before the issuance of the bonds. The rates shall be sufficient to provide for all the following:

(a) The payment of the expenses of administration and operation and the expenses for the maintenance of the public improvement as may be necessary to preserve the public improvement in good repair and working order.

(b) The payment of the interest on and the principal of bonds payable from the public improvements when the bonds become due and payable.

(c) The creation of any reserve for the bonds as required in the ordinance.

(d) Other expenditures and funds for the public improvement as the ordinance may require.

(2) The rates shall be fixed and revised by the governing body of the borrower so as to produce the amount described in subsection (1). The borrower shall covenant and agree in the ordinance authorizing the issuance of the bonds and on the face of each bond to maintain at all times the rates for services furnished by the public improvement sufficient to provide for the amount described in subsection (1). Rates pledged for the payment of bonds that are fixed and established pursuant to a contract or lease shall not be subject to revision or change, except in the manner provided in the lease or contract.

(3) Charges for services furnished to a premises may be a lien on the premises, and those charges delinquent for 6 months or more may be certified annually to the proper tax assessing officer or agency who shall enter the lien on the next tax roll against the premises to which the services shall have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the roll and the enforcement of the lien for the taxes. The time and manner of certification and other details in respect to the collection of the charges and the enforcement of the lien shall be prescribed by the ordinance adopted by the governing body of the public corporation. However, in a case when a tenant is responsible for the payment of the charges and the governing body is so notified in writing, the notice to include a copy of the lease of the affected premises, if there is one, then the charges shall not become a lien against the premises after the date of the notice. In the event of filing of the notice, the public corporation shall render no further service to the premises until a cash deposit in a sum fixed in the ordinance authorizing the issuance of bonds under this act is made as security for the payment of the charges. In addition to any other lawful enforcement methods, the payment of charges for water service to any premises may be enforced by discontinuing the water service to the premises and the payment of charges for sewage disposal service or storm water disposal service to a premises may be enforced by discontinuing the water service, the sewage disposal service, or the storm water disposal service to the premises, or any combination of the services. The inclusion of these methods of enforcing the payment of charges in an ordinance adopted before February 26, 1974, is validated.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.121;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1992, Act 305, Imd. Eff. Dec. 21, 1992.

141.122 Accounting of revenues; order of priority; disposition of surplus.

Sec. 22. (1) In the authorizing ordinance the governing body of the borrower shall provide that the revenues of the public improvement be accounted for separately from the other funds and accounts of the borrower in the following order of recorded priority:

(a) After provision for the payment for the next succeeding period of all current expenses of administration and operation and the current expenses for that period for maintenance as may be necessary to preserve the public improvement in good repair and working order.

(b) There shall be next set aside a sum sufficient to provide for the payment of the principal of and the interest upon all bonds payable from those revenues, as and when the bonds become due and payable. This account shall be designated "bond and interest redemption account". In the event that the revenues of any operating year over and above those necessary for the operation and maintenance expenses shall be insufficient to pay the principal of and interest on the bonds maturing in any operating year, then an additional amount sufficient to pay the principal and interest shall be set aside out of the revenues of the next succeeding

operating year, after provision for the expenses of operation and maintenance. In respect to the allocation and use of money in the bond and interest redemption account, due recognition shall be given as to priority rights, if any, between different issues or series of outstanding bonds. The public corporation may provide by ordinance that a reasonable excess amount shall be set aside in the bond and interest redemption account from time to time so as to produce and provide a reserve to meet any possible future deficiencies.

(c) Next there shall be set aside, in the manner and priority provided by the ordinance, the sum or sums necessary for the additional accounts as may be required.

(2) Revenues remaining, after satisfaction of subsection (1), at the end of any operating year shall be considered surplus and shall be disposed of by the governing body as provided in this act.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.122;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.123 Appropriation and use of revenues for payment of operation and maintenance expenses; appropriation and use of moneys raised by tax levy.

Sec. 23. The borrower may appropriate and use, and may covenant to appropriate and use, any part of its available income or revenues derived from any source other than from the operation of the public improvement in paying any expenses of operation or maintenance of the public improvement, but nothing in this act shall be construed to require the borrower to do so. Where the borrower is an authority incorporated under Act No. 31 of the Public Acts of the First Extra Session of 1948, as amended, being sections 123.951 to 123.965 of the Michigan Compiled Laws, any public corporation to which the public improvement or other property is leased by the authority may appropriate and use, and may covenant to appropriate and use, any part of its available income or revenues derived from any source other than from the operation of the public improvement or other property in paying any expenses of operation or maintenance of the public improvement or other property, but this act shall not be construed to require the public corporation to do so. The provisions of this act requiring the production, setting aside, and use of revenues for payment of operation and maintenance expenses shall be deemed to refer to such expenses, if any, which are in excess of any income or revenue appropriated and used as authorized in this section. Moneys raised by levy of taxes without limitation as to rate or amount in fulfillment of the pledge by a public corporation of its full faith and credit shall be appropriated only to the bond and interest redemption fund, and used only to pay principal of and interest on bonds.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.123;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974.

141.124 Money in several accounts of public improvement; separate deposit account; investment.

Sec. 24. (1) Money in the several accounts of the public improvement shall be deposited as designated by the governing body of the borrower. Money in the several accounts of the public improvement, except money in the bond and interest redemption account and money derived from the proceeds of sale of the bonds each of which shall be kept in a separate deposit account, may be kept in 1 deposit account. In that case the money in the combined deposit accounts shall be allocated on the books and records of the borrower to the various accounts in the manner provided in the authorizing ordinance. The governing body of the borrower may provide that the money in the several accounts of the public improvement may be kept in separate depository accounts. The money in the bond and interest redemption account shall be accounted for separately.

(2) Subject to the limitations and conditions provided in the authorizing ordinance, money in the several accounts of the public improvement may be invested in accordance with the public corporation's investment policy adopted by the legislative body or governing body of the public corporation under 1943 PA 20, MCL 129.91 to 129.96.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.124;—Am. 1960, Act 91, Eff. Aug. 17, 1960;—Am. 1963, Act 192, Eff. Sept. 6, 1963;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1985, Act 26, Imd. Eff. May 31, 1985;—Am. 1987, Act 263, Imd. Eff. Dec. 28, 1987;—Am. 1988, Act 228, Eff. Oct. 1, 1988;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.125 Fixing dates of operating year for public improvement.

Sec. 25. The ordinance authorizing the issuance of such bonds shall fix the dates of the beginning and ending of the operating year for such public improvement, subject to the right of the department of treasury to require that it correspond with the fiscal year of the borrower.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.125;—Am.

1983, Act 76, Imd. Eff. June 6, 1983.

141.126 Receiving fund surplus; deposit.

Sec. 26. Any money remaining in the accounts of the public improvement at the end of any operating year, which under the provisions of section 22 shall be considered surplus, may be transferred to other accounts of the public improvement or may be used for the purpose or purposes as the governing body may determine to be for the best interests of the borrower, unless some other disposition shall have been made in the ordinance authorizing the issuance of bonds under this act. In the event that money of the public improvement is insufficient to provide for the current expenses of the operation and maintenance account or the bond and interest redemption account, any money or securities in other accounts of the public improvement shall be transferred first to the operation and maintenance account and second to the bond and interest redemption account to the extent of any deficits in those accounts.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.126;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.127 Issuance of bonds by public corporation; applicable laws.

Sec. 27. A public corporation issuing bonds under this act is subject to all of the following:

(a) If the public corporation issuing the bonds meets the requirements of qualified status under section 303(3) of the revised municipal finance act, 2001 PA 34, MCL 141.2303, the public corporation complies with section 319(1) of the revised municipal finance act, 2001 PA 34, MCL 141.2319.

(b) If the public corporation issuing the bonds does not meet the requirements of qualified status under section 303(3) of the revised municipal finance act, 2001 PA 34, MCL 141.2303, the public corporation meets the requirements of section 303(7) and (8) and section 319(2) of the revised municipal finance act, 2001 PA 34, MCL 141.2303 and 141.2319.

(c) Section 321 of the revised municipal finance act, 2001 PA 34, MCL 141.2321.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.127;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 1985, Act 26, Imd. Eff. May 31, 1985;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.128 Effect of approval permitting issuance of bonds.

Sec. 28. Qualification or approval to issue obligations under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, that permits the issuance of bonds under this act shall not be considered an approval of the legality of issuing bonds under this act.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.128;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.129 Service rates not subject to supervision by state agency.

Sec. 29. Rates charged for the services furnished by any public improvement purchased, acquired, constructed, improved, enlarged, extended and/or repaired under the provisions of this act shall not be subject to supervision or regulation by any state bureau, board, commission or other like instrumentality or agency thereof.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1937, Act 246, Imd. Eff. July 21, 1937;—Am. 1939, Act 34, Eff. Sept. 29, 1939;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.129.

141.130 Books of record and account; annual audit report.

Sec. 30. (1) Any borrower issuing revenue bonds under this act shall install, maintain, and keep proper books of record and account, separate from other records and accounts of such borrower, in which full and correct entries shall be made of all dealings or transactions of or in relation to the properties, business, and affairs of the public improvement.

(2) Each public corporation shall file an audit report annually with the department of treasury within 6 months from the end of its fiscal year or as otherwise provided in the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.130;—Am. 1963, Act 192, Eff. Sept. 6, 1963;—Am. 1983, Act 76, Imd. Eff. June 6, 1983;—Am. 2002, Act 465, Imd. Eff. June 21, 2002.

141.131 Redemption of bonds before maturity.

Sec. 31. The governing body of the borrower authorizing bonds under this act may make provisions in the authorizing ordinance for the redemption before maturity of the bonds or a part of the bonds. In case of refunding, bonds of an issue less than all the outstanding bonds of the issue, shall not be called for redemption

unless the borrower has on hand in its bond and interest redemption fund sufficient money to refund the bonds not otherwise appropriated or pledged, in excess of the amount of interest and principal maturing within the next 12 months from the redemption date.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.131;—Am. 1978, Act 216, Imd. Eff. June 5, 1978.

141.132 Breach of contract not authorized; pledging of revenues; disconnection of lands not to affect liability under bond issue.

Sec. 32. Nothing in this act shall be construed as authorizing any borrower to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of gross revenues only where consistent with outstanding obligations of such borrower. The severance of any lands from the jurisdiction of the borrower subsequent to the issuance of bonds under this act, shall be subject to the obligations created by the issuance of such bonds.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—CL 1948, 141.132.

141.133 Issuance of bonds without submitting proposition to voters for approval; notice of intent to issue bonds; petition requesting referendum; special election; verification and rejection of signatures; determining number of registered electors.

Sec. 33. Unless otherwise provided in this act, the powers conferred upon public corporations by this act shall be exercised by their respective governing bodies and this act shall be construed as authorizing the issuance of bonds under this act without submitting the proposition for the approval of the proposition to the voters of the borrowers. Except in the case of refunding bonds or bonds issued to comply with an order of a court or an order or permit requirement of a state or federal agency of competent jurisdiction to prevent or limit pollution of the environment, the governing body shall publish a notice of intent to issue bonds. If within 45 days after the publication of the notice a petition, signed by not less than 10% or 15,000 of the registered electors, whichever is less, residing within the limits of the borrower, is filed with the clerk, or other recording officer, of the borrower, requesting a referendum upon the question of the issuance of the bonds, then the bonds shall not be issued until approved by the vote of a majority of the electors of the borrower qualified to vote and voting on the bonds at a general or special election. The notice shall be directed to the electors of the borrower, and, if the borrower is an authority, to the electors of its constituent public corporations, and shall be published in a newspaper which has general circulation in the territory of the borrower, and shall state the maximum amount of bonds to be issued, the purpose of the bonds, source of payment, right of referendum on the bonds, and other information the governing body determines necessary to adequately inform the electors of the nature of the issue. A special election called for this purpose shall not be included in a statutory or charter limitation as to the number of special elections to be called within a period of time. Signatures on the petition shall be verified by a person under oath, as the actual signatures of the persons whose names are signed to the petition, and the clerk, or other recording officer, of the borrower shall have the same power to reject signatures and petitions as city clerks pursuant to section 25 of Act No. 279 of the Public Acts of 1909, as amended, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in any borrower shall be determined by the township or city registration books, or both, or if the borrower is a village, then by the village registration books. Section 5(g) of Act No. 279 of the Public Acts of 1909, as amended, being section 117.5 of the Michigan Compiled Laws, relative to notice of intention to issue bonds, shall not apply to the authorization of the issuance of bonds under this act.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—Am. 1941, Act 210, Imd. Eff. June 16, 1941;—Am. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—Am. 1947, Act 204, Imd. Eff. June 13, 1947;—CL 1948, 141.133;—Am. 1969, Act 79, Imd. Eff. July 23, 1969;—Am. 1974, Act 27, Imd. Eff. Feb. 26, 1974;—Am. 1978, Act 216, Imd. Eff. June 5, 1978;—Am. 1982, Act 188, Imd. Eff. June 21, 1982.

141.133a Validation of bonds heretofore issued.

Sec. 33a. All bonds heretofore issued under this act as originally adopted or subsequently amended are hereby validated. A public corporation shall not contest the validity of any such bonds after the bonds have been sold and delivered and the public corporation has received the consideration therefor.

History: Add. 1974, Act 27, Imd. Eff. Feb. 26, 1974.

141.133b Violation of §§ 168.1 to 168.992 applicable to petitions; penalties.

Sec. 33b. A petition under section 33, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116,

MCL 168.1 to 168.992.

History: Add. 1998, Act 196, Eff. Mar. 23, 1999.

141.134 Liberal construction of act.

Sec. 34. This act, being necessary for and to secure the public health, safety, convenience and welfare of the counties, cities, incorporated villages, townships, school districts, port districts, and metropolitan districts of the state of Michigan, shall be liberally construed to effect the purposes hereof.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—CL 1948, 141.134.

141.136 Immediate necessity.

Sec. 36. This act, being necessary for and to secure the public health, safety, convenience and welfare of the counties, cities, incorporated villages, townships, school districts, port districts, and metropolitan districts of the state of Michigan, shall be given immediate effect.

History: 1933, Act 94, Imd. Eff. May 26, 1933;—CL 1948, 141.136.

141.137 Condemnation of property.

Sec. 37. Public corporations shall have the right and power to condemn property for public improvements. In the condemnation of property, public corporations may proceed under any act applicable thereto, or they may invoke and proceed under the provisions of Act No. 149 of the Public Acts of 1911, as the same may from time to time exist, and in so doing shall have all the rights, powers and privileges granted to “public corporation” as defined in that act.

History: Add. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.137.

Compiler's note: For provisions of Act 149 of 1911, referred to in this section, see § 213.21 et seq.

141.138 Trustee; appointment; powers and duties; pledging of trust funds.

Sec. 38. An ordinance authorizing the issuance of bonds under this act may provide for the appointment of a trustee with the powers and duties prescribed in the ordinance in respect to the bonds and the payment and security of the bonds including provision that funds, including the proceeds of bonds, which are trust funds under the ordinance, may be held in trust by the trustee for the primary benefit and payment of the holders of the bonds. These trust funds may also be pledged by the trustee pursuant to the ordinance to an entity providing additional security for the bonds pursuant to section 7a(1)(a).

History: Add. 1946, 1st Ex. Sess., Act 23, Eff. June 7, 1946;—CL 1948, 141.138;—Am. 1985, Act 26, Imd. Eff. May 31, 1985.

141.139 Water pollution; prevention or abatement; public corporation may accept grants or aid from U.S. government.

Sec. 39. Any public corporation is hereby authorized to apply for and accept grants or any other aid which the United States government or any agency thereof has authorized or may hereafter authorize to be given or made to the several states of the United States or to any political subdivisions or agencies thereof within the states for the construction of public improvements, including all necessary action preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution.

History: Add. 1949, Act 244, Eff. Sept. 23, 1949.

***** 141.140 SUBSECTION (1) SHALL NOT APPLY AFTER DECEMBER 31, 1988: See (4) of 141.140 *****

141.140 Allocation system for private activity bonds; establishment; purpose; applicability; ratification of prior allocations; revocation of allocation; applicability of subsection (1).

Sec. 40. (1) Until otherwise provided by law, the state treasurer may establish and maintain an allocation system for private activity bonds, which system shall be considered to provide, pursuant to the authority granted by section 146(e) of the internal revenue code, a different formula for allocating the state ceiling among governmental units of the state having the authority to issue bonds from the formula provided in the internal revenue code. The allocation system established by the state treasurer shall apply to allocations made against the unified volume limitation per calendar year 1988 and each year thereafter and for bonds issued after December 31, 1987, that have allocations ratified by subsection (2).

(2) An allocation made under executive orders 1984-11, 1985-7, 1986-6, and 1986-18 for bonds issued on or after January 1, 1988, shall be considered ratified and issued with an allocation authorized by this section unless the allocation issued pursuant to an executive order was a carryforward allocation for the state volume cap for any calendar year prior to 1986.

(3) An allocation made other than through orders issued pursuant to this section or executive orders 1984-11, 1985-7, 1986-6 and 1986-18 is revoked.

(4) Subsection (1) shall not apply after December 31, 1988.

History: Add. 1987, Act 263, Imd. Eff. Dec. 28, 1987.