

HOUSE BILL No. 5654

March 16, 2004, Introduced by Reps. LaJoy, Stakoe, Ward, Hune, Taub, Robertson, Emmons, Brandenburg, Ruth Johnson, Acciavatti, Hoogendyk, Milosch, Garfield, Caswell, Pastor, Nitz, Stahl, Huizenga, Amos, Hummel, Moolenaar, Drolet, Meyer, Steil, Pappageorge and Stewart and referred to the Committee on Local Government and Urban Policy.

A bill to provide for review, management, planning, and control of the financial operation of municipal units of local government; to prescribe the powers and duties of certain state and local agencies and officials; to provide for the appointments of financial monitors and financial managers and to require the development of various financial plans to regulate expenditures and investments by a local government; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "municipal fiscal responsibility act".

3 Sec. 2. As used in this act:

4 (a) "Chief administrative officer" means any of the
5 following:

6 (i) The manager of a village or, if a village does not employ

1 a manager, the president of the village.

2 (ii) The city manager of a city or, if a city does not employ
3 a city manager, the mayor of the city.

4 (iii) The manager of a township, the superintendent of a
5 charter township, or, if the township does not employ a manager
6 or superintendent, the supervisor of the township.

7 (iv) The elected county executive or appointed county manager
8 or, if the county does not employ or elect a county executive or
9 manager, the chairperson of the county board of commissioners of
10 the county or the county controller.

11 (v) The chief operating officer of an authority or a public
12 utility owned by a city, village, township, or county.

13 (b) "Continuing operations plan" means the plan required to
14 be filed under section 5.

15 (c) "Emergency financial manager" means the emergency
16 financial manager appointed under section 6(3)(c).

17 (d) "Financial monitor" means the financial monitor appointed
18 under section 6(3)(b).

19 (e) "Local government" means a city, village, township,
20 county, authority established by law, or public utility owned by
21 a city, village, township, or county.

22 Sec. 3. For purposes of this act, each community will be
23 assigned a fiscal score. The score will be based on the 5 key
24 areas of fund balance, general fund tax revenues, general fund
25 other revenues, capital expenditures, and ratio of pension
26 benefits to current benefits. The score shall be calculated by
27 the local auditor and submitted with the audit report. Points

1 are assigned as follows, and the cumulative total is a
 2 community's fiscal score:

3 (a) General fund, fund balance:

4	15% or greater	-1 points
5	Less than 10% > 5%	0 points
6	Less than 5% > 0%	5 points
7	Less than 0% > -5%	10 points
8	Less than -5%	15 points

9 (b) General fund tax revenue trend including any adjustments
 10 made by the state tax tribunal, number of years on a downward
 11 trend:

12	1 year	0
13	2 years	5
14	3 years	10
15	4 years	15
16	5 years	20

17 (c) General fund other revenues less any transfers made into
 18 the fund, number of years on a downward trend:

19	1 year	0 points
20	2 years	5 points
21	3 years	10 points
22	4 years	15 points
23	5 years	20 points

24 (d) Capital expenditures, less any equipment replacement
 25 funds, as a percent of general fund budget:

26	5% or greater	0 points
27	4%	5 points

1	3%	10 points
2	2%	15 points
3	1% or less	20 points

4 (e) Ratio of pension benefits and required contributions to
5 current pay and benefits:

6	50% or less	0 points
7	50-59%	5 points
8	60-69%	10 points
9	70-79%	15 points
10	80% or more	20 points

11 Sec. 4. The state treasurer shall be authorized and
12 required to invoke this act upon the existence of any 1 or more
13 of the following occurrences:

14 (a) The governing body or the chief administrative officer of
15 a local government requests the state treasurer to make an
16 investigation. The request shall be in writing and identify the
17 financial issues existing or threatened underlying the request.

18 (b) The state treasurer receives written notification from
19 the trustee, actuary, or at least 10% of the beneficiaries of a
20 local pension fund alleging that a local government has not
21 timely deposited its minimum obligation payment to the local
22 government pension fund as required by law.

23 (c) The state treasurer receives written notification that
24 employees of the local government have not been paid and it has
25 been at least 7 days after the scheduled date of payment.

26 (d) The state treasurer receives written notification from a
27 trustee, paying agent, or bondholder of a default in a bond

1 payment or a violation of 1 or more bond covenants.

2 (e) The state treasurer receives a resolution from either the
3 state senate or the house of representatives requesting a
4 preliminary review under this section.

5 (f) The local government has violated the conditions of an
6 order issued under, or of a requirement of, the revised municipal
7 finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other
8 law governing the issuance of bonds or notes.

9 (g) The local government has violated the conditions of an
10 order issued under the emergency municipal loan act, 1980 PA 243,
11 MCL 141.931 to 141.942.

12 (h) The local government has violated the requirements of
13 sections 17 to 20 of the uniform budgeting and accounting act,
14 1968 PA 2, MCL 141.421 to 141.440a.

15 (i) The local government has failed to provide an annual
16 financial report or audit that conforms with the minimum
17 procedures and standards of the state treasurer and is required
18 under the uniform budgeting and accounting act, 1968 PA 2, MCL
19 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55.

20 (j) The local government is delinquent in the distribution of
21 tax revenues, as required by law, that it has collected for
22 another taxing jurisdiction, and that taxing jurisdiction
23 requests a preliminary review.

24 (k) A court has ordered an additional tax levy without the
25 prior approval of the governing body of the local government.

26 (l) The local government's fiscal score under section 3 is 25
27 or greater.

1 Sec. 5. The state treasurer shall investigate the financial
2 condition of the local government as required by the existence of
3 any of the conditions or occurrences under section 4. The
4 investigation shall be commenced within 15 days following the
5 receipt of notification of an occurrence under section 4. The
6 investigation shall be completed within 30 days. The state
7 treasurer shall appoint an investigating team consisting of
8 representatives of the state treasurer, the auditor general, and
9 other state officials or other persons with relevant professional
10 experience.

11 Sec. 6. (1) The investigating team appointed under section
12 5 shall have full power to examine all books and records of the
13 local government and utilize the services of other state agencies
14 and employees.

15 (2) The investigating team shall report its findings to the
16 state treasurer within 30 days following the date of its
17 appointment. Upon request, the state treasurer may grant one
18 30-day extension. A copy of the report to the state treasurer
19 shall be forwarded to the chief administrative officer and the
20 governing body of the local government, the speaker of the house
21 of representatives, and the senate majority leader.

22 (3) The investigating team shall include in its report that
23 the local government should be considered a tier 1 local
24 government, tier 2 local government, or tier 3 local government
25 based on the following:

26 (a) A tier 1 local government is a local government that has
27 any of the conditions or occurrences set forth under section 4 or

1 a fiscal score between 25 and 40, or both.

2 (b) A tier 2 local government is a local government that has
3 any of the conditions or occurrences set forth under section 4 or
4 a fiscal score between 41 and 55, or both, or a community that
5 has failed to comply with the terms of its continuing operations
6 plan.

7 (c) A tier 3 local government is a local government that has
8 more than 1 of the conditions or occurrences set forth under
9 section 4, has a fiscal score of 56 or greater, or has failed to
10 comply with the recovery plan developed by the financial
11 monitor.

12 Sec. 7. Within 10 days of the receipt of the report
13 provided for in section 4, the state treasurer shall make 1 of
14 the following determinations, which is final and nonappealable in
15 any administrative or judicial forum:

16 (a) If the investigating team concludes that the local
17 government should be classified as a tier 1 local government, the
18 state treasurer shall require that the local government file,
19 within 30 days, a continuing operations plan. The local
20 government shall be required to file subsequent continuing
21 operations plans within 30 days of the completion of the
22 municipality's audit with the state treasurer annually so long as
23 the local government is a tier 1 local government. The state
24 treasurer shall approve or reject the plan within 30 days of
25 receiving the plan. If a plan is rejected, a tier 1 local
26 government shall refile within 30 days addressing any concerns
27 raised by the state treasurer. If the local government does not

1 receive approval upon the second submission, then the community
2 shall be a tier 2 local government. A community will return to
3 normal status when the condition that caused the tier 1 status is
4 corrected and the local government's fiscal score is less than
5 25. The continuing operations plan shall be in a form prescribed
6 by the state treasurer and shall include the following:

7 (i) A detailed 3-year projected budget of revenues and
8 expenditures, which demonstrates that the local government's
9 expenditures will not exceed its revenues and that any existing
10 deficits will be eliminated during the 3-year period.

11 (ii) A cash flow projection for the 3-year period.

12 (iii) An operating plan for the 3-year period, together with
13 a narrative explanation of the operating plan that delineates the
14 changes being made to ensure future viability for the local
15 government.

16 (iv) A plan showing reasonable and necessary maintenance and
17 capital expenditures so as to ensure the local government's
18 continued viability.

19 (b) If the investigating team concludes that the local
20 government should be classified as a tier 2 local government, the
21 state treasurer shall appoint within 15 days a financial monitor
22 to oversee and assist the local government. The financial
23 monitor shall be chosen solely on the basis of his or her
24 competence and shall not have been an elected or appointed
25 official or employee of the local government for which appointed
26 for at least 5 years before the appointment. The financial
27 monitor does not have to be a resident of the local government.

1 The financial monitor shall serve at the pleasure of the state
2 treasurer and is entitled to compensation and reimbursement for
3 actual and necessary expenses from the state as approved by the
4 state treasurer. The financial monitor may appoint additional
5 staff and secure professional assistance as he or she considers
6 necessary. A local government's state shared revenues under the
7 Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL
8 141.901 to 141.921, shall be withheld from the local government
9 in amounts necessary to pay the financial monitor. The financial
10 monitor shall serve until the local government is returned to
11 tier 1. The community will return to tier 1 status when the
12 conditions that caused the tier 2 status are corrected and the
13 local government's fiscal score is less than 40. A financial
14 monitor shall develop, in consultation with the local government,
15 a financial recovery plan that shall include the following:

- 16 (i) A detailed 5-year projected budget of revenues and
17 expenditures that demonstrates that the local government's
18 expenditures will not exceed its revenues and that any existing
19 deficits will be eliminated during the 5-year period.
- 20 (ii) A cash flow projection for the 5-year period.
- 21 (iii) An operating plan for the 5-year period, together with
22 a narrative explanation of the operating plan.
- 23 (iv) A plan showing reasonable and necessary maintenance and
24 capital expenditures so as to ensure the local government's
25 continued viability.
- 26 (v) Quarterly compliance reports to both the state treasurer
27 and the chief administrative officer of the local government

1 demonstrating compliance with the plan.

2 (c) If the investigating team concludes that the local
3 government should be classified as a tier 3 local government, the
4 state treasurer shall appoint within 5 days an emergency
5 financial manager to act for and on behalf of the local
6 government. The manager shall have broad powers to attempt to
7 rectify the tier 3 local government status. The manager shall be
8 chosen solely on the basis of his or her competence and shall not
9 have been an elected or appointed official or employee of the
10 local government for which appointed for at least 5 years before
11 the appointment. The manager need not be a resident of the local
12 government. The manager shall serve at the pleasure of the state
13 treasurer and is entitled to compensation and reimbursement for
14 actual and necessary expenses from the state as approved by the
15 state treasurer. The manager may appoint additional staff and
16 secure professional assistance as he or she considers necessary.
17 A local government's state shared revenues under the Glenn Steil
18 state revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to
19 141.921, shall be withheld from the local government in amounts
20 necessary to pay the manager. The manager shall make quarterly
21 reports to the state treasurer with respect to the financial
22 status of the tier 3 local government. The manager shall
23 continue until the local government is returned to tier 2
24 status. The manager may continue in the capacity of the monitor
25 at the discretion of the state treasurer. A community will
26 return to tier 2 status when the conditions that cause the tier 3
27 status are corrected and the local government's fiscal score is

1 less than 56.

2 Sec. 8. The financial manager shall issue to the
3 appropriate officials or employees of the local government the
4 orders the manager considers necessary to accomplish the purposes
5 of this act. An order issued under this section is binding on
6 the local officials and employees.

7 Sec. 9. The financial manager shall take all actions
8 considered necessary by the manager in order to alleviate the
9 financial situation of the tier 3 local government, including,
10 but not limited to, any of the following:

11 (a) Analyzing factors and circumstances contributing to the
12 financial condition of the local government and recommending
13 steps to be taken to correct the condition.

14 (b) Amending, revising, approving, or disapproving the
15 budget of the local government and limiting the total amount
16 appropriated or expended during the balance of the financial
17 emergency.

18 (c) Requiring and approving or disapproving or amending or
19 revising a plan for liquidating all outstanding debt of the local
20 government.

21 (d) Requiring and prescribing the form of special reports to
22 be made by the finance officer of the local government to its
23 governing body, the creditors of the local government, the
24 manager, or the public.

25 (e) Examining all records and books of account and requiring
26 under the procedures of the uniform budgeting and accounting act,
27 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to

1 21.55, the attendance of witnesses and the production of books,
2 papers, contracts, and other documents relevant to an analysis of
3 the financial condition of the local government.

4 (f) Making, approving, or disapproving any appropriation,
5 contract, expenditure, or loan, the creation of any new position,
6 or the filling of any vacancy in a permanent position by any
7 appointing authority.

8 (g) Reviewing payrolls or other claims against the local
9 government before payment.

10 (h) Exercising all of the authority of the local government
11 to renegotiate existing labor contracts and act as an agent of
12 the unit in collective bargaining with employees or
13 representatives and approve any contract or agreement.

14 Compulsory arbitration under 1969 PA 312, MCL 423.231 to 423.247,
15 shall not be applicable to any labor contract with a local
16 government which is a tier 3 local government so long as the
17 local government remains a tier 3 local government.

18 (i) Unless prohibited by law or charter, consolidating
19 departments or transferring functions from 1 department to
20 another, appointing, supervising, and, at his or her discretion,
21 removing heads of departments other than elected officials, and,
22 as necessary in his or her discretion, setting or adjusting
23 salaries and other compensation.

24 (j) Employing or contracting for, at the expense of the
25 local government, auditors, attorneys, and other technical
26 personnel considered necessary to implement this act.

27 (k) Requiring compliance with the orders of the manager by

1 court action.

2 (l) Except as restricted by charter or otherwise, selling or
3 otherwise using the assets of the local government to meet past
4 or current obligations, provided the use of assets for this
5 purpose does not endanger public health, safety, or welfare.

6 (m) Applying for a loan from the state on behalf of the
7 local government, subject to the conditions of the emergency
8 municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, in a
9 sufficient amount to pay the expenses of the manager and for
10 other lawful purposes.

11 (n) Approving or disapproving of the issuance of obligations
12 of the local government on behalf of the local government,
13 subject to the conditions of the revised municipal finance act,
14 2001 PA 34, MCL 141.2101 to 141.2821.

15 (o) Entering into agreements with other local governments or
16 the state for the provision of services.

17 (p) Exercising the authority and responsibilities affecting
18 the financial condition of the local government as otherwise
19 provided by law had the manager not been appointed.

20 (q) Setting and revising rates for utility services of the
21 local government.

22 (r) Preparing current and future budgets as well as amending
23 current budgets for both capital purposes and operating
24 purposes.

25 (s) Entering into agreements with creditors for the payment
26 of existing debts, including the settlement of claims by the
27 creditors.

1 (t) Entering into agreements with creditors to restructure
2 debt on terms, at rates of interest, and with security as
3 approved by the state treasurer.

4 (u) Setting and approving all actuarial assumptions for
5 pension obligations of the local government with the
6 recommendation of a qualified actuary.

7 (v) Calling for a special election for the purpose of
8 amending the charter of the local government.

9 Sec. 10. The financial manager shall provide monthly
10 reports to the state treasurer summarizing the activities
11 undertaken by the manager, as well as the financial condition of
12 the community.

13 Sec. 11. (1) If, in the judgment of the financial manager,
14 no reasonable alternative to alleviating the financial status of
15 the local government which is a tier 3 local government exists,
16 then the manager, after giving 10 days' written notice to the
17 state treasurer, may authorize the local government to seek
18 protection under 11 USC 101 to 1330.

19 (2) The notice to the state treasurer under subsection (1)
20 shall include a determination by the manager that no feasible
21 financial plan can be adopted that can satisfactorily resolve the
22 financial emergency of the local government in a timely manner or
23 a determination by the manager that a plan, in effect for at
24 least 180 days, cannot be implemented, as written or as it might
25 be amended, in a manner that can satisfactorily resolve the
26 financial emergency in a timely manner.

27 Sec. 12. With the written concurrence of the state

1 treasurer, a local government which is a tier 2 local government
2 shall be considered a tier 1 local government if the financial
3 manager makes that determination in his or her quarterly
4 compliance report required under this act. A determination shall
5 not be made until all of the factors giving rise to the tier 2
6 local government status of the local government have been
7 addressed and corrected.

8 Sec. 13. With written concurrence of the state treasurer, a
9 local government which is a tier 3 local government shall be
10 considered a tier 2 local government if the financial manager
11 makes that determination in his or her quarterly report required
12 under this act. A determination shall not be made until every
13 factor giving rise to the tier 3 local government status of the
14 local government has been addressed and corrected.

15 Sec. 14. The state, any member of an investigating team,
16 the financial monitor, and the financial manager are not liable
17 for any obligation or claim held against a local government
18 resulting from actions taken under this act.

19 Sec. 15. This act shall not be construed to give the
20 financial monitor or the financial manager the power to impose
21 taxes over and above those already authorized without the
22 approval of a majority of the qualified electors voting at a duly
23 called regular or special election.

24 Sec. 16. Elected officials of a local government shall
25 provide the assistance and information necessary and properly
26 requested by an investigating team, the financial monitor, or the
27 financial manager in the effectuation of their respective duties

1 and powers and of the purposes of this act. Failure of an
2 elected official of a local government to comply with this
3 section is considered gross neglect of duty.

4 Enacting section 1. Sections 1 through 26 of the local
5 government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to
6 141.1226, are repealed.

7 Enacting section 2. This act is repealed effective December
8 31, 2007.