

HOUSE BILL No. 5610

April 28, 2016, Introduced by Reps. Wittenberg, Yanez, Cochran, Chang, Durhal, Gay-Dagnogo, Moss, Singh, Liberati, Hovey-Wright, Plawecki, LaGrand, Pagan, Hoadley, Greimel, Neeley, Smiley, Irwin, Greig, Townsend, Schor, Brinks, Garrett, Talabi, Byrd, Robinson, Chirkun, Banks, Zemke and Geiss and referred to the Committee on Local Government.

A bill to amend 2012 PA 436, entitled
"Local financial stability and choice act,"
by amending section 12 (MCL 141.1552).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) An emergency manager may take 1 or more of the
2 following additional actions with respect to a local government
3 that is in receivership, notwithstanding any charter provision to
4 the contrary:

5 (a) Analyze factors and circumstances contributing to the
6 financial emergency of the local government and initiate steps to
7 correct the condition.

8 (b) Amend, revise, approve, or disapprove the budget of the
9 local government, and limit the total amount appropriated or
10 expended.

1 (c) Receive and disburse on behalf of the local government all
2 federal, state, and local funds earmarked for the local government.
3 These funds may include, but are not limited to, funds for specific
4 programs and the retirement of debt.

5 (d) Require and approve or disapprove, or amend or revise, a
6 plan for paying all outstanding obligations of the local
7 government.

8 (e) Require and prescribe the form of special reports to be
9 made by the finance officer of the local government to its
10 governing body, the creditors of the local government, the
11 emergency manager, or the public.

12 (f) Examine all records and books of account, and require
13 under the procedures of the uniform budgeting and accounting act,
14 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to
15 21.55, or both, the attendance of witnesses and the production of
16 books, papers, contracts, and other documents relevant to an
17 analysis of the financial condition of the local government.

18 (g) Make, approve, or disapprove any appropriation, contract,
19 expenditure, or loan, the creation of any new position, or the
20 filling of any vacancy in a position by any appointing authority.

21 (h) Review payrolls or other claims against the local
22 government before payment.

23 (i) Notwithstanding any minimum staffing level requirement
24 established by charter or contract, establish and implement
25 staffing levels for the local government.

26 (j) Reject, modify, or terminate 1 or more terms and
27 conditions of an existing contract.

1 (k) Subject to section 19, after meeting and conferring with
2 the appropriate bargaining representative and, if in the emergency
3 manager's sole discretion and judgment, a prompt and satisfactory
4 resolution is unlikely to be obtained, reject, modify, or terminate
5 1 or more terms and conditions of an existing collective bargaining
6 agreement. The rejection, modification, or termination of 1 or more
7 terms and conditions of an existing collective bargaining agreement
8 under this subdivision is a legitimate exercise of the state's
9 sovereign powers if the emergency manager and state treasurer
10 determine that all of the following conditions are satisfied:

11 (i) The financial emergency in the local government has
12 created a circumstance in which it is reasonable and necessary for
13 the state to intercede to serve a significant and legitimate public
14 purpose.

15 (ii) Any plan involving the rejection, modification, or
16 termination of 1 or more terms and conditions of an existing
17 collective bargaining agreement is reasonable and necessary to deal
18 with a broad, generalized economic problem.

19 (iii) Any plan involving the rejection, modification, or
20 termination of 1 or more terms and conditions of an existing
21 collective bargaining agreement is directly related to and designed
22 to address the financial emergency for the benefit of the public as
23 a whole.

24 (iv) Any plan involving the rejection, modification, or
25 termination of 1 or more terms and conditions of an existing
26 collective bargaining agreement is temporary and does not target
27 specific classes of employees.

1 (l) Act as sole agent of the local government in collective
2 bargaining with employees or representatives and approve any
3 contract or agreement.

4 (m) If a municipal government's pension fund is not
5 actuarially funded at a level of 80% or more, according to the most
6 recent governmental accounting standards board's applicable
7 standards, at the time the most recent comprehensive annual
8 financial report for the municipal government or its pension fund
9 was due, the emergency manager may remove 1 or more of the serving
10 trustees of the local pension board or, if the state treasurer
11 appoints the emergency manager as the sole trustee of the local
12 pension board, replace all the serving trustees of the local
13 pension board. For the purpose of determining the pension fund
14 level under this subdivision, the valuation shall exclude the net
15 value of pension bonds or evidence of indebtedness. The annual
16 actuarial valuation for the municipal government's pension fund
17 shall use the actuarial accrued liabilities and the actuarial value
18 of assets. If a pension fund uses the aggregate actuarial cost
19 method or a method involving a frozen accrued liability, the
20 retirement system actuary shall use the entry age normal actuarial
21 cost method. If the emergency manager serves as sole trustee of the
22 local pension board, all of the following apply:

23 (i) The emergency manager shall assume and exercise the
24 authority and fiduciary responsibilities of the local pension board
25 including, to the extent applicable, setting and approval of all
26 actuarial assumptions for pension obligations of a municipal
27 government to the local pension fund.

1 (ii) The emergency manager shall fully comply with the public
2 employee retirement system investment act, 1965 PA 314, MCL 38.1132
3 to ~~38.1140m~~, **38.1141**, and section 24 of article IX of the state
4 constitution of 1963, and any actions taken shall be consistent
5 with the pension fund's qualified plan status under the federal
6 internal revenue code.

7 (iii) The emergency manager shall not make changes to a local
8 pension fund without identifying the changes and the costs and
9 benefits associated with the changes and receiving the state
10 treasurer's approval for the changes. If a change includes the
11 transfer of funds from 1 pension fund to another pension fund, the
12 valuation of the pension fund receiving the transfer must be
13 actuarially funded at a level of 80% or more, according to the most
14 recent governmental accounting standards board's applicable
15 standards, at the time the most recent comprehensive annual
16 financial report for the municipal government was due.

17 (iv) The emergency manager's assumption and exercise of the
18 authority and fiduciary responsibilities of the local pension board
19 shall end not later than the termination of the receivership of the
20 municipal government as provided in this act.

21 (n) Consolidate or eliminate departments of the local
22 government or transfer functions from 1 department to another and
23 appoint, supervise, and, at his or her discretion, remove
24 administrators, including heads of departments other than elected
25 officials.

26 (o) Employ or contract for, at the expense of the local
27 government and with the approval of the state financial authority,

1 auditors and other technical personnel considered necessary to
2 implement this act.

3 (p) Retain 1 or more persons or firms, which may be an
4 individual or firm selected from a list approved by the state
5 treasurer, to perform the duties of a local inspector or a local
6 auditor as described in this subdivision. The duties of a local
7 inspector are to assure integrity, economy, efficiency, and
8 effectiveness in the operations of the local government by
9 conducting meaningful and accurate investigations and forensic
10 audits, and to detect and deter waste, fraud, and abuse. At least
11 annually, a report of the local inspector shall be submitted to the
12 emergency manager, the state treasurer, the superintendent of
13 public instruction if the local government is a school district,
14 and each state senator and state representative who represents that
15 local government. The annual report of the local inspector shall be
16 posted on the local government's website within 7 days after the
17 report is submitted. The duties of a local auditor are to assure
18 that internal controls over local government operations are
19 designed and operating effectively to mitigate risks that hamper
20 the achievement of the emergency manager's financial plan, assure
21 that local government operations are effective and efficient,
22 assure that financial information is accurate, reliable, and
23 timely, comply with policies, regulations, and applicable laws, and
24 assure assets are properly managed. At least annually, a report of
25 the local auditor shall be submitted to the emergency manager, the
26 state treasurer, the superintendent of public instruction if the
27 local government is a school district, and each state senator and

1 state representative who represents that local government. The
2 annual report of the local auditor shall be posted on the local
3 government's website within 7 days after the report is submitted.

4 (q) An emergency manager may initiate court proceedings in the
5 Michigan court of claims or in the circuit court of the county in
6 which the local government is located in the name of the local
7 government to enforce compliance with any of his or her orders or
8 any constitutional or legislative mandates, or to restrain
9 violations of any constitutional or legislative power or his or her
10 orders.

11 (r) Subject to section 19, if provided in the financial and
12 operating plan, or otherwise with the prior written approval of the
13 governor or his or her designee, sell, lease, convey, assign, or
14 otherwise use or transfer the assets, liabilities, functions, or
15 responsibilities of the local government, provided the use or
16 transfer of assets, liabilities, functions, or responsibilities for
17 this purpose does not endanger the health, safety, or welfare of
18 residents of the local government or unconstitutionally impair a
19 bond, note, security, or uncontested legal obligation of the local
20 government.

21 (s) Apply for a loan from the state on behalf of the local
22 government, subject to the conditions of the emergency municipal
23 loan act, 1980 PA 243, MCL 141.931 to 141.942.

24 (t) Order, as necessary, 1 or more millage elections for the
25 local government consistent with the Michigan election law, 1954 PA
26 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article
27 IX of the state constitution of 1963, and any other applicable

1 state law.

2 (u) Subject to section 19, authorize the borrowing of money by
3 the local government as provided by law.

4 (v) Approve or disapprove of the issuance of obligations of
5 the local government on behalf of the local government under this
6 subdivision. An election to approve or disapprove of the issuance
7 of obligations of the local government pursuant to this subdivision
8 shall only be held at the general November election.

9 (w) Enter into agreements with creditors or other persons or
10 entities for the payment of existing debts, including the
11 settlement of claims by the creditors.

12 (x) Enter into agreements with creditors or other persons or
13 entities to restructure debt on terms, at rates of interest, and
14 with security as shall be agreed among the parties, subject to
15 approval by the state treasurer.

16 (y) Enter into agreements with other local governments, public
17 bodies, or entities for the provision of services, the joint
18 exercise of powers, or the transfer of functions and
19 responsibilities.

20 (z) For municipal governments, enter into agreements with
21 other units of municipal government to transfer property of the
22 municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as
23 otherwise provided by law, subject to approval by the state
24 treasurer.

25 (aa) Enter into agreements with 1 or more other local
26 governments or public bodies for the consolidation of services.

27 (bb) For a city, village, or township, the emergency manager

1 may recommend to the state boundary commission that the municipal
2 government consolidate with 1 or more other municipal governments,
3 if the emergency manager determines that consolidation would
4 materially alleviate the financial emergency of the municipal
5 government and would not materially and adversely affect the
6 financial situation of the government or governments with which the
7 municipal government in receivership is consolidated. Consolidation
8 under this subdivision shall proceed as provided by law.

9 (cc) For municipal governments, with approval of the governor,
10 disincorporate or dissolve the municipal government and assign its
11 assets, debts, and liabilities as provided by law. The
12 disincorporation or dissolution of the local government is subject
13 to a vote of the electors of that local government if required by
14 law.

15 (dd) Exercise solely, for and on behalf of the local
16 government, all other authority and responsibilities of the chief
17 administrative officer and governing body concerning the adoption,
18 amendment, and enforcement of ordinances or resolutions of the
19 local government as provided in the following acts:

20 (i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

21 (ii) The fourth class city act, 1895 PA 215, MCL 81.1 to
22 113.20.

23 (iii) The charter township act, 1947 PA 359, MCL 42.1 to
24 42.34.

25 (iv) 1851 PA 156, MCL 46.1 to 46.32.

26 (v) 1966 PA 293, MCL 45.501 to 45.521.

27 (vi) The general law village act, 1895 PA 3, MCL 61.1 to

1 74.25.

2 (vii) The home rule village act, 1909 PA 278, MCL 78.1 to
3 78.28.

4 (viii) The revised school code, 1976 PA 451, MCL 380.1 to
5 380.1852.

6 (ix) The state school aid act of 1979, 1979 PA 94, MCL
7 388.1601 to 388.1896.

8 (ee) ~~Take~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), TAKE**
9 any other action or exercise any power or authority of any officer,
10 employee, department, board, commission, or other similar entity of
11 the local government, whether elected or appointed, relating to the
12 operation of the local government. ~~The~~ **EXCEPT AS OTHERWISE PROVIDED**
13 **IN SUBSECTION (5), THE** power of the emergency manager shall be
14 superior to and supersede the power of any of the foregoing
15 officers or entities.

16 (ff) Remove, replace, appoint, or confirm the appointments to
17 any office, board, commission, authority, or other entity which is
18 within or is a component unit of the local government.

19 (2) Except as otherwise provided in this act, during the
20 pendency of the receivership, the authority of the chief
21 administrative officer and governing body to exercise power for and
22 on behalf of the local government under law, charter, and ordinance
23 shall be suspended and vested in the emergency manager.

24 (3) Except as otherwise provided in this subsection, any
25 contract involving a cumulative value of \$50,000.00 or more is
26 subject to competitive bidding by an emergency manager. However, if
27 a potential contract involves a cumulative value of \$50,000.00 or

1 more, the emergency manager may submit the potential contract to
2 the state treasurer for review and the state treasurer may
3 authorize that the potential contract is not subject to competitive
4 bidding.

5 (4) An emergency manager appointed for a city or village shall
6 not sell or transfer a public utility furnishing light, heat, or
7 power without the approval of a majority of the electors of the
8 city or village voting thereon, or a greater number if the city or
9 village charter provides, as required by section 25 of article VII
10 of the state constitution of 1963. In addition, an emergency
11 manager appointed for a city or village shall not utilize the
12 assets of a public utility furnishing heat, light, or power, the
13 finances of which are separately maintained and accounted for by
14 the city or village, to satisfy the general obligations of the city
15 or village.

16 (5) **THE POWER OF AN EMERGENCY MANAGER IS NOT SUPERIOR TO AND**
17 **DOES NOT SUPERSEDE THE POWER OF THE STATE FIRE MARSHAL, THE**
18 **COMMANDING OFFICER OF THE FIRE DEPARTMENT OF A CITY, VILLAGE,**
19 **TOWNSHIP, OR COUNTY, OR A FIRE FIGHTER IN UNIFORM ACTING UNDER THE**
20 **ORDERS AND DIRECTIONS OF THE COMMANDING OFFICER OF THE FIRE**
21 **DEPARTMENT IN SITUATIONS INVOLVING DANGEROUS CONDITIONS AS PROVIDED**
22 **IN SECTION 7A OF THE FIRE PREVENTION CODE, 1941 PA 207, MCL 29.7A.**

23 Enacting section 1. This amendatory act takes effect 90 days
24 after the date it is enacted into law.

25 Enacting section 2. This amendatory act does not take effect
26 unless Senate Bill No.____ or House Bill No. 5609 (request no.
27 03082'15) of the 98th Legislature is enacted into law.