

HOUSE BILL No. 5626

December 1, 2009, Introduced by Reps. Cushingberry, Durhal, Constan, Robert Jones, Hammel, Johnson, Leland, Young, Womack and Dean and referred to the Committee on Appropriations.

A bill to amend 1981 PA 80, entitled
"Fiscal stabilization act,"
by amending sections 4 and 9 (MCL 141.1004 and 141.1009), section 4
as amended by 2002 PA 444 and section 9 as amended by 1987 PA 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) Before a city may make application to the board
2 for approval to issue bonds or obligations under this act, the
3 legislative body of the city shall determine by resolution that all
4 of the following conditions exist:

5 (a) The city had an accumulated operating deficit as of the
6 end of the last completed fiscal year or is projected to have an
7 accumulated operating deficit at the end of the current fiscal
8 year. The determination of the existence of an accumulated
9 operating deficit or a projected accumulated operating deficit

1 shall be made in accordance with generally accepted accounting
2 principles.

3 (b) The amount of the deficit exceeds the amount that the city
4 may borrow from the emergency municipal loan fund pursuant to the
5 emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

6 (c) The amount of the deficit is more than the city can fund
7 by issuing tax anticipation notes under the revised municipal
8 finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

9 (2) Before a county may make application to the board for
10 approval to issue bonds or obligations under this act, the
11 legislative body of the county shall determine by resolution that
12 the county had an accumulated operating deficit as of the end of
13 the last completed fiscal year or is projected to have an
14 accumulated operating deficit at the end of the current fiscal
15 year. The determination of the existence of an accumulated
16 operating deficit or a projected accumulated operating deficit
17 shall be made in accordance with generally accepted accounting
18 principles.

19 (3) If the legislative body of a city or county determines
20 that all of the conditions described in subsection (1) or (2)
21 exist, respectively, it shall also in the same resolution make the
22 following determinations:

23 (a) The amount of the accumulated operating deficit that was
24 incurred or is projected to exist at the end of the current fiscal
25 year.

26 (b) The maximum amount of bonds or obligations necessary to
27 fund the deficit and provide funds for the purposes described in

1 section 5.

2 (4) Before adopting a resolution authorizing the issuance of
3 the bonds or obligations, the city or county shall apply to the
4 secretary of the board for an order approving issuance of the bonds
5 or obligations by the city or county and shall attach to the
6 application a copy of the resolution described in this section.

7 (5) The board shall require that the city or county provide
8 the board with a statement signed by the chief executive officer of
9 the city or county, if a charter county, or the chairperson of the
10 board of county commissioners, which statement indicates how the
11 city or county intends to avoid future deficits. The statement is a
12 condition that shall be met as part of the application by the city
13 or county to the board for issuance of bonds or obligations under
14 this act.

15 (6) Within 7 days after receipt of a full and complete
16 application as determined by the board, the board shall issue an
17 order approving issuance of bonds or obligations by the city or
18 county in an amount not exceeding the amount determined to be
19 necessary by the legislative body of the city or county under
20 subsection (3) or denying the application.

21 (7) After approval of the board, the determinations and
22 findings made by the legislative body of the city or county
23 pursuant to this section are conclusive.

24 (8) The maximum amount of bonds or obligations that are
25 unlimited or limited tax bonds or obligations that may be issued by
26 a city or county under this act shall not exceed 3% of the state
27 equalized valuation of real and personal property located within

the territorial boundaries of the city or county, respectively. ~~7~~
~~or the maximum principal amount of all bonds or obligations that~~
~~may be issued by a city or county under this act shall not exceed~~
~~\$125,000,000.00.~~ The limitations provided by this subsection do not
include bonds or obligations or portions of bonds or obligations
used to pay for any of the following:

(a) Amounts set aside for a reserve for payment of principal,
interest, and redemption premiums.

(b) Expected costs of issuance of the bonds or obligations.

(c) The amount of any discount.

(d) Bonds or obligations issued to refund outstanding bonds or
obligations.

(9) Except as provided in section 7, the issuance of bonds or
obligations under this act are not subject to the revised municipal
finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The issuance of
bonds or obligations described in this subsection is subject to the
agency financing reporting act, **2002 PA 470, MCL 129.171 TO**
129.177.

Sec. 9. (1) All bonds or obligations issued pursuant to this
act before the effective date of the amendatory act that added
subsection (2) are subject to the requirements of the Michigan
municipal distributable aid bond act, ~~Act No. 97 of the Public Acts~~
~~of 1981, being sections 141.1021 to 141.1030 of the Michigan~~
~~Compiled Laws~~ **1981 PA 97, MCL 141.1021 TO 141.1030.**

(2) Unless otherwise provided by the city or county in the
resolution required by section 4, bonds or obligations issued
pursuant to this act on or after the effective date of the

1 amendatory act that added this subsection are not subject to the
2 requirements of the Michigan municipal distributable aid bond act,
3 ~~Act No. 97 of the Public Acts of 1981, 1981 PA 97, MCL 141.1021 TO~~
4 **141.1030**, notwithstanding that distributable aid is pledged or
5 assigned to secure bonds or obligations under this act.

6 (3) In the resolution authorizing the bonds or obligations,
7 the legislative body of the city or county may provide for **THE**
8 appointment of a trustee, escrow agent, or other person to hold
9 funds or reserves for payment of the bonds or obligations and to
10 perform other duties as the city or county determines, may provide
11 for the vesting in the trustee, escrow agent, or other designated
12 person the property, rights, powers, and remedies as the city or
13 county determines, ~~may pledge and create a lien upon any~~
14 ~~unencumbered revenues or taxes of the city or county,~~ and may
15 provide for payment of ~~pledged~~ **PREVIOUSLY UNENCUMBERED** revenues or
16 taxes **OF THE CITY OR COUNTY** directly to a paying agent, trustee,
17 escrow agent, the state treasurer, or other person to be held and
18 used solely for payment of principal and interest on the bonds or
19 obligations. **THE MONEY PAID OR TO BE PAID TO A PAYING AGENT,**
20 **TRUSTEE, ESCROW AGENT, THE STATE TREASURER, OR OTHER PERSON FOR THE**
21 **PAYMENT OF PRINCIPAL OF AND INTEREST ON THE BONDS OR OBLIGATIONS**
22 **ISSUED PURSUANT TO THIS ACT SHALL BE SUBJECT TO A LIEN THAT IS A**
23 **STATUTORY LIEN PARAMOUNT AND SUPERIOR TO ALL OTHER LIENS AND**
24 **INTERESTS OF ANY KIND FOR THE SOLE PURPOSE OF PAYING THE PRINCIPAL**
25 **OF AND INTEREST ON BONDS AND OBLIGATIONS ISSUED PURSUANT TO THIS**
26 **ACT. THE MONEY TO BE PAID TO AND THE MONEY HELD BY THE PAYING**
27 **AGENT, TRUSTEE, ESCROW AGENT, STATE TREASURER, OR OTHER PERSON**

1 UNDER THIS ACT SHALL BE EXEMPT FROM BEING LEVIED UPON, TAKEN,
2 SEQUESTERED, OR APPLIED TOWARD PAYING THE DEBTS OR LIABILITIES OF
3 THE CITY OR COUNTY OTHER THAN FOR PAYMENT OF DEBT SERVICE ON THE
4 BONDS OR OBLIGATIONS TO WHICH THEY APPLY, AND THE HOLDERS OF THE
5 BONDS OR OBLIGATIONS ISSUED PURSUANT TO THIS ACT SHALL HAVE A FIRST
6 PRIORITY LIEN PARAMOUNT AND SUPERIOR TO ALL OTHER LIENS AND
7 INTERESTS OF ANY KIND ON THE MONEY TO BE PAID TO AND THE MONEY HELD
8 BY THE PAYING AGENT, TRUSTEE, ESCROW AGENT, STATE TREASURER, OR
9 OTHER PERSON UNDER THIS ACT FOR THE PURPOSE OF PAYING PRINCIPAL OF
10 AND INTEREST ON THE BONDS OR OBLIGATIONS. ~~A pledge pursuant to LIEN~~
11 ~~CREATED UNDER this act~~ SECTION for THE benefit of bondholders or
12 others is perfected without delivery, recording, or notice. The
13 resolution authorizing the bonds or obligations also may provide
14 for covenants and promises with respect to fiscal, budget, and
15 accounting matters that are considered necessary or appropriate in
16 the judgment of the city or county to sell the bonds or obligations
17 to the best advantage of the city or county.

18 (4) In the resolution authorizing the bonds or obligations,
19 ~~for the payment of the bonds or obligations, the city or county may~~
20 ~~further pledge money~~ PROVIDE FOR THE PAYMENT OF THE BONDS OR
21 OBLIGATIONS WITH DISTRIBUTABLE AID received or to be received by
22 the city or county. ~~derived from the imposition of taxes by the~~
23 ~~state and returned or to be returned to the city or county as~~
24 ~~provided by law except for money that the state constitution of~~
25 ~~1963 prohibits for use for such a pledge.~~ The city or county and
26 the state treasurer may enter into an agreement providing for the
27 direct payment of ~~that money, which is derived from taxes that are~~

1 ~~collected by the state and returned to the city or county as~~
2 ~~provided by law, DISTRIBUTABLE AID to a PAYING AGENT, trustee, and~~
3 ~~that money may be pledged by the city or county for the payment of~~
4 ~~bonds or obligations issued under ESCROW AGENT, OR OTHER PERSON TO~~
5 ~~BE USED FOR THE SOLE PURPOSE OF PAYING THE PRINCIPAL OF AND~~
6 ~~INTEREST ON BONDS AND OBLIGATIONS ISSUED PURSUANT TO this act. If~~
7 ~~the city or county and the state treasurer enter into such an~~
8 ~~agreement, the state treasurer SHALL HOLD THE DISTRIBUTABLE AID IN~~
9 ~~TRUST FOR THE SOLE BENEFIT OF THE HOLDERS OF THE BONDS OR~~
10 ~~OBLIGATIONS ISSUED PURSUANT TO THIS ACT AND shall pay the pledged~~
11 ~~money DISTRIBUTABLE AID in accordance with the provisions of the~~
12 ~~agreement. THE DISTRIBUTABLE AID PAID OR TO BE PAID TO A PAYING~~
13 ~~AGENT, TRUSTEE, ESCROW AGENT, OR OTHER PERSON FOR THE PURPOSE OF~~
14 ~~PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS OR OBLIGATIONS~~
15 ~~ISSUED PURSUANT TO THIS ACT SHALL BE SUBJECT TO A LIEN AND TRUST~~
16 ~~THAT IS A STATUTORY LIEN AND TRUST PARAMOUNT AND SUPERIOR TO ALL~~
17 ~~OTHER LIENS AND INTERESTS OF ANY KIND, FOR THE SOLE PURPOSE OF~~
18 ~~PAYING THE PRINCIPAL OF AND INTEREST ON BONDS AND OBLIGATIONS~~
19 ~~ISSUED PURSUANT TO THIS ACT. THE LIEN CREATED UNDER THIS SECTION~~
20 ~~FOR THE BENEFIT OF BONDHOLDERS OR OTHERS IS PERFECTED WITHOUT~~
21 ~~DELIVERY, RECORDING, OR NOTICE. THE DISTRIBUTABLE AID HELD OR TO BE~~
22 ~~HELD BY THE PAYING AGENT, TRUSTEE, ESCROW AGENT, OR OTHER PERSON~~
23 ~~SHALL BE HELD IN TRUST FOR THE SOLE BENEFIT OF THE HOLDERS OF THE~~
24 ~~BONDS OR OBLIGATIONS ISSUED PURSUANT TO THIS ACT AND SHALL BE~~
25 ~~EXEMPT FROM BEING LEVIED UPON, TAKEN, SEQUESTERED, OR APPLIED~~
26 ~~TOWARD PAYING THE DEBTS OR LIABILITIES OF THE CITY OR COUNTY OTHER~~
27 ~~THAN FOR PAYMENT OF DEBT SERVICE ON THE BONDS OR OBLIGATIONS TO~~

1 WHICH THEY APPLY AND THE HOLDERS OF THE BONDS OR OBLIGATIONS ISSUED
2 PURSUANT TO THIS ACT SHALL HAVE A FIRST PRIORITY LIEN PARAMOUNT AND
3 SUPERIOR TO ALL OTHER LIENS AND INTERESTS OF ANY KIND ON THE
4 DISTRIBUTABLE AID HELD OR TO BE HELD UNDER THIS ACT FOR THE PURPOSE
5 OF PAYING PRINCIPAL OF AND INTEREST ON THE BONDS OR OBLIGATIONS.

6 (5) THE STATE OF MICHIGAN COVENANTS WITH THE PURCHASERS,
7 HOLDERS, OWNERS, AND THEIR ASSIGNS, BENEFICIARIES, EXECUTORS, AND
8 ADMINISTRATORS OF BONDS OR OBLIGATIONS SECURED BY DISTRIBUTABLE AID
9 THAT IT WILL NOT REPEAL, REVOKE, RESCIND, MODIFY, OR AMEND THIS
10 SECTION SO AS TO CREATE A LIEN OR CHARGE ON OR PLEDGE, ASSIGNMENT,
11 DIVERSION, WITHHOLDING, PAYMENT, OR OTHER USE OR DEDUCTION FROM ANY
12 DISTRIBUTABLE AID OR OTHER AMOUNTS SECURING BONDS OR OBLIGATIONS
13 PURSUANT TO THIS ACT THAT IS PRIOR IN TIME OR SUPERIOR IN RIGHT TO
14 THE PAYMENT REQUIRED BY THIS SECTION. This ~~subsection~~ SECTION shall
15 not be construed to do any of the following:

16 (a) Create or constitute state indebtedness.

17 (b) Require the state to continue to impose and collect taxes
18 from which distributable aid is paid or to make payments of
19 distributable aid.

20 (c) Limit or prohibit the state from repealing or amending a
21 law enacted for the imposition of taxes from which distributable
22 aid is paid, for the payment or apportionment of distributable aid,
23 or for the manner, time, or amount of distributable aid.

24 (6) ~~(5)~~ With respect to bonds or obligations issued on or
25 before September 30, 1988, in the resolution authorizing the bonds
26 or obligations, the legislative body of the city or county may
27 provide that, from each collection of ad valorem property taxes

1 after the issuance of the bonds or obligations, there shall be set
 2 aside in a special fund, to be used for the payment of principal
 3 and interest on the bonds or obligations, an amount equal to the
 4 total amount of the collection multiplied by a fraction determined
 5 as follows:

6 (a) The numerator of the fraction is 125% of the amount of
 7 principal and interest coming due on the bonds or obligations in
 8 the current fiscal year.

9 (b) The denominator of the fraction is the total amount of the
 10 tax levied for the current fiscal year multiplied by a fraction,
 11 the numerator of which is the total of the taxes collected during
 12 the 5 prior fiscal years and the denominator of which is the total
 13 of taxes levied during the 5 prior fiscal years.

14 ~~—— (6) An authorizing resolution under subsection (4) or (5) may~~
 15 ~~provide that all or any portion of the taxes collected and set~~
 16 ~~aside as provided in subsection (5) shall not be used for any other~~
 17 ~~purpose.~~

18 (7) As used in this section, "distributable aid" means ~~that~~
 19 ~~term as defined in section 2 of the Michigan municipal~~
 20 ~~distributable aid bond act, Act No. 97 of the Public Acts of 1981,~~
 21 ~~being section 141.1022 of the Michigan Compiled Laws~~ **STATE SHARED**
 22 **REVENUES PROVIDED FOR IN THE GLENN STEIL STATE REVENUE SHARING ACT**
 23 **OF 1971, 1971 PA 140, MCL 141.901 TO 141.921, ANY OTHER LAW**
 24 **PROVIDING FOR DISTRIBUTION OF STATE SHARED REVENUES THAT ARE**
 25 **DERIVED FROM THE SAME TAXES DISTRIBUTED UNDER THE GLENN STEIL STATE**
 26 **REVENUE SHARING ACT OF 1971, 1971 PA 140, MCL 141.901 TO 141.921,**
 27 **AND ANY LAW PROVIDING REIMBURSEMENT TO A MUNICIPALITY UNDER THE**

1 STATE CONSTITUTION OF 1963 AS REIMBURSEMENT FOR REVENUE THAT WOULD
2 OTHERWISE BE COLLECTED FROM TAXES IMPOSED BY THE MUNICIPALITY.