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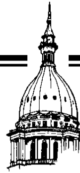

BILL ANALYSIS

Telephone: (517) 373-5383
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House Bill 5566 (Substitute S-5 as reported)
House Bill 5567 (Substitute S-2 as reported)
House Bill 5568 (Substitute S-1 as reported)
House Bill 5569 (Substitute S-4 as reported)
House Bill 5570 (as passed by the House)
Sponsor: Representative Cindy Denby (H.B. 5566)
Representative Al Pscholka (H.B. 5567)
Representative Holly Hughes (H.B. 5568)
Representative Mark Ouimet (H.B. 5569)
Representative Bill Rogers (H.B. 5570)
House Committee: Local, Intergovernmental, and Regional Affairs
Senate Committee: Appropriations

CONTENT

House Bill 5566 (S-5) would amend the Emergency Municipal Loan Act to include a school district as a municipality, from October 1, 2011, to September 30, 2018, to which the Local Emergency Financial Assistance Board could issue emergency loans if certain criteria were satisfied. The bill also would amend the Act in a number of other ways, including changing the limit on State emergency loan issuance from $5.0 million annually, to a total of $85.0 million ($50.0 million to school districts and $35.0 million to municipalities other than school districts) between October 1, 2011, and September 30, 2018, and to $10.0 million annually thereafter. The limit on emergency loan issuance for a single municipality would change from $3.0 million annually to $20.0 million in total for those seven years, and to $4.0 million annually thereafter.

House Bill 5567 (S-2) would amend the Revised School Code, House Bill 5568 (S-1) would amend the State School Aid Act, House Bill 5569 (S-4) would amend Public Act 105 of 1855 (which provides for the disposition of surplus State funds), and House Bill 5570 would amend the Shared Credit Rating Act, with respect to emergency loans to school districts and local units of government.

All of the bills are tie-barred to each other, and are described in detail below.

House Bill 5566 (S-4)

Specifically, the bill would prohibit the Local Emergency Financial Assistance Board from authorizing a loan under the Emergency Municipal Loan Act to a municipality other than a school district until 30 days after the effective date of the bill. The bill also would prohibit a municipality from using the proceeds of such a loan to finance any costs associated with a special assessment or special assessment district established after the bill's effective date.

The bill would allow a school district that borrowed money under the Act to repay obligations from money advanced or previously advanced to the district, or approved or previously approved for advancement to the district, under Section

15(2) of the State School Aid Act (which House Bill 5568 would amend), or money borrowed under Section 1225 of the Revised School Code (which authorizes districts to borrow money for school operations).

In the case of a school district, the Board could require the direct assignment of revenue or money that may be pledged by a school district under Section 1211 of the Revised School Code (which House Bill 5567 would amend), for repayment of a loan of any State money appropriated to a municipality. After September 30, 2012, the Board could restructure payments, but not the outstanding principal balance or interest, on a loan to a municipality/school district if all of the following applied:

-- For a school district, the district's foundation allowance was less in the fiscal year following the fiscal year in which the loan was authorized; and the district was in compliance with all requirements for receipt of the foundation allowance and any other requirements applicable to the district.
-- For a municipality other than a school district, the municipality received less statutory revenue sharing, combined with any economic vitality incentive program money payable to the municipality, in the fiscal year following the fiscal year in which the loan was authorized; and the municipality was in compliance with all conditions for economic vitality incentive program money or statutory revenue sharing, or other requirements applicable to the municipality under the Glenn Steil State Revenue Sharing Act.
-- The municipality was in compliance with the terms of the loan and any other requirements applicable to the municipality under the Emergency Municipal Loan Act, any requirements relating to a deficit elimination plan under State law, and any applicable consent agreement or order of an emergency manager under the Local Government and School District Fiscal Accountability Act.
-- The restructuring of payments complied with applicable Federal law.
-- The loan had not been sold or transferred under Section 6a (which the bill would add, as described below).

The Emergency Municipal Loan Act requires one or both of the following to have occurred within the six months immediately preceding the loan request: the municipality has issued tax anticipation notes or revenue sharing notes under the Revised Municipal Finance Act; and/or the Department of Treasury has acted upon a request by the municipality to issue such notes. The bill would extend this provision to school districts' notes issued under Section 1225 of the Revised School Code. Additionally, the bill would require one or both of these criteria to have occurred within 18 months immediately preceding the loan request, as opposed to six months.

The Emergency Municipal Loan Act requires the governing body of a municipality to provide, by resolution, for the submission of an application to the Board, if it desires to request such a loan. The municipality is required to certify and substantiate certain information and a number of conditions to be eligible for consideration for the loan. One of those conditions is that the municipality is required to meet one or more of the following:

-- Its income tax revenue growth rate is .90 or less, or the municipality has two or more emergency loans outstanding at the time its application is submitted and its income tax revenue growth rate is 1.3 or less.
-- Its local tax base growth rate is 75% or less of the statewide tax base growth rate.
-- The State equalized valuation of real and personal property within the municipality is less at the time the loan application is made than that of the immediately preceding year.

The bill would retain these elements of this condition, and add the following:

-- The municipality was levying the maximum number of mills it was authorized to levy as approved by the

voters and had either of the following: one or more delinquent special assessments; and/or outstanding bonds, notes, or other evidences of indebtedness that were issued in anticipation of a contract obligation with, or an assessment obligation against, another municipality that had one or more delinquent special assessments that were levied to satisfy, in whole or in part, the contract or assessment obligation.

-- For a school district, its membership at the time the loan application was made had declined over a preceding three-State-fiscal-year period by a total of 15% or more, as determined by the Department of Treasury.

-- The municipality was in receivership or subject to a consent agreement under the Local Government and School District Fiscal Accountability Act, or a successor statute, and loan authorization by the Board was necessary to implement a financial and operating plan, a consent agreement, or a continuing operations plan or recovery plan for the municipality under that Act.

-- The municipality was one for which a financial emergency had been confirmed to exist and responsibilities for the municipality were vested in an emergency financial manager under former Public Act 72 of 1990 or it was a municipality for which a consent agreement, including a plan to address a serious financial problem, was in place for the municipality under that Act. This provision would apply only if the Local Government and School District Fiscal Accountability Act was repealed or otherwise not effective and former Public Act 72 of 1990 would again be in effect or applicable.

The Emergency Municipal Loan Act requires such a loan to have an annual rate or rates of interest, if any, as established by the Board. The Board may establish the interest rate or rates as fixed for the term of the loan, or at a rate calculated upon a formula that varies the rate annually. The bill would allow the Board to provide that the interest rate or rates for a loan could adjust to a rate or rates determined at the time of the sale or transfer by the State Treasurer to be sufficient to facilitate the sale of the loans under Section 6a.

Additionally, the Act provides that if the interest rate for such a loan is a single fixed rate, the annual rate of interest for the term of a loan may not exceed the average rate of interest earned at the time the loan is approved by the Board on the investment of surplus funds, other than those surplus funds invested under the Act. The bill would eliminate this requirement and instead provides that for a single fixed rate, the annual rate of interest for the term of the loan could not be less than the municipal 10-year rate as determined by the State Treasurer. The Board could consider a higher interest rate based on both the market interest rates and the risk of the municipality requesting the loan. Interest payments would be made due and payable based upon the determination of the Board or State Treasurer, and all of the principal would have to be repaid within 30 years from the date of issuance.

The bill would add Section 6a to allow the State Treasurer to do the following:

-- Sell or transfer a loan under the Act and enter into an agreement related to the sale or transfer of the loan, as well as assign to the purchaser or transferee of a loan all security pledged for the loan by a municipality. A loan sold or transferred would have to be secured in the same manner as a loan not sold or transferred, including benefiting from the security provided by Section 6(4) (which provides for the State Treasurer to withhold revenue sharing payments).

-- Enter into an agreement with the purchaser or transferee of a loan to repurchase the loan at a price and time or upon the occurrence of an event provided in the agreement.

-- Except as otherwise provided, at the time a loan was sold or transferred, set the interest rate, or the method of determining the interest rate, on the

loan being sold or transferred, including a loan made before the effective date of the bill, at a rate the Treasurer determined necessary and advisable to accomplish the sale or transfer. A rate could not exceed the maximum rate otherwise authorized by law.

-- When a loan was sold or transferred, make changes to the terms of the loan, including a loan made before the bill's effective date, as the Treasurer determined necessary and advisable to permit a purchaser or transferee to sell obligations secured by the loans as tax-exempt under Federal law, including modifying redemption provisions, principal amortization, and interest and principal payment dates of the loan. The Treasurer also could require a municipality to make certain covenants determined necessary or advisable relating to the tax-exempt status of the obligations of a purchaser or transferee.

-- At any time, require a municipality to enter into an agreement with a purchaser or transferee of a loan regarding continuing disclosure obligations under Federal law or any other matters the Treasurer determined were necessary and advisable. The Treasurer could require entry into an agreement with a recipient of a loan issued before the bill's effective date.

If a loan were sold or transferred, the bill would require the State Treasurer to notify the Governor, the Senate Majority and Minority Leaders, the Speaker of the House of Representatives, the House Minority Leader, and the Senate and House Fiscal Agencies.

The Act requires a municipality that receives such a loan to employ a full-time professional administrator to direct or participate directly in the management of the municipality's operations until otherwise ordered by the Board. The bill would allow a municipality the option, instead, to contract with a person with expertise in municipal finance and administration.

The bill would require a municipality in receivership under the Local Government and School District Fiscal Accountability Act, or a successor statute, to compensate the emergency manager for the municipality and reimburse the emergency manager's actual and necessary expenses as provided under that Act, or a successor statute. If the municipality were under a consent agreement, the municipality would have to compensate those officials who were required to be compensated under the consent agreement and reimburse their actual and necessary expenses as provided under the agreement.

If the Local Government and School District Fiscal Accountability Act were repealed or otherwise not effective and former Public Act 72 of 1990 were again in effect or applicable and an emergency financial manager were in place, the bill would require the municipality to compensate the emergency financial manager and reimburse his or her actual and necessary expenses, as well as compensate those officials who were required to be compensated under a consent agreement that was in place and reimburse their actual and necessary expenses as provided under the agreement.

If it were determined that the municipality receiving such a loan was not in compliance with all of the requirements of Section 7(1) of the Emergency Loan Act (concerning duties of a municipality receiving a loan) and with the five-year plan to balance future expenditures with anticipated revenue, submitted under Section 4(1), the State Treasurer could modify the terms of the loan to require a higher interest rate or to accelerate the repayment of the loan.

House Bill 5567 (S-2)

The bill would amend the Revised School Code to allow a school district to pledge millage levied for the repayment of a loan under the Emergency Municipal Loan Act, money borrowed by the district under Section 1225 of the Code (which authorizes a district to borrow money for

school operations), or the repayment of advances, overpayments, or other obligations of the district to the State under Section 15 of the State School Aid Act (the section that House Bill 5568 would amend).

"School operating purposes" would include expenditures for deficiencies in years prior to the immediately preceding year, including repayment of an emergency loan under the Emergency Municipal Loan Act.

The bill also would extend certain requirements of first class school districts to districts that were previously first class school districts.

House Bill 5568 (S-1)

The bill would amend the State School Aid Act to allow the Department of Education to advance school aid payments to school districts if a district would otherwise experience significant hardship in satisfying its financial obligations.

The bill would allow the Department to recover State aid overpayments to a district from the proceeds of an emergency loan to the district, or from the proceeds of millage levied or pledged under Section 1211 of the Revised School Code (a section that House Bill 5567 would amend).

The Act allows the Department to make an appropriate deduction or payment to a school district if, because of the receipt of new or updated data, the Department determines during a fiscal year that the amount paid to a district or intermediate school district under the Act for a prior fiscal year was incorrect under the law in effect for that year. The bill specifies that if the district did not receive an allocation for the fiscal year or if the allocation were not sufficient to pay the amount of any deduction, the amount of any deduction otherwise applicable would be satisfied from the proceeds of an emergency loan, or from the proceeds of millage levied or pledged under Section 1211 of the Revised School Code.

House Bill 5569 (S-4)

The bill would amend Public Act 105 of 1855 to change the amount of loans that may be made from surplus funds from $5.0 million annually, to a total of $85.0 million ($50.0 million to school districts and $35.0 million to municipalities other than school districts) between October 1, 2011, and September 30, 2018, and to $10.0 million annually thereafter. A limit on emergency loan issuance from surplus funds for a single municipality or school district would be set at $20.0 million total for those seven years, and at $4.0 million annually thereafter.

The bill would allow the State Treasurer to sell, assign, transfer, or repurchase loans made from surplus funds or from proceeds of the sale, assignment, or transfer of a loan under Section 6a of the Emergency Municipal Loan Act (the section that House Bill 5566 would add). He or she would be required to use surplus funds to repurchase a loan.

House Bill 5570

The bill would amend the Shared Credit Rating Act to do the following:

-- Define "emergency loan board loan" as a loan made by the State of Michigan to a governmental unit pursuant to the Emergency Municipal Loan Act.
-- Include an Emergency Loan Board loan in the definition of a "municipal obligation".
-- Allow the Board to enter into agreements with the State Treasurer for the purchase, assignment, or transfer of Emergency Loan Board loans and the repurchase, reassignment, or transfer of those loans.
-- Allow the Michigan Finance Authority to purchase or accept by assignment or transfer municipal obligations that are Emergency Loan Board loans.

MCL 141.931 et al. (H.B. 5566)
380.1211 & 380.1216 (H.B. 5567)
388.1615 (H.B. 5568)
21.141 (H.B. 5569)

141.1053 et al. (H.B. 5570)

FISCAL IMPACT

House Bill 5566 (S-5)

The bill could result in numerous fiscal impacts on local units of government, but the impacts would depend upon the extent to which the local units used the emergency loans available under the package of bills. The bills would generally increase local unit expenses associated with borrowing under the Emergency Municipal Loan Act. However, the bills also would alter the timing of interest and principal payments relative to current law. As a result, in some years, expenses could be higher or lower than under current law. The actual magnitude of any changes in expenses or timing would depend on the specific circumstances of the affected local units, the specific loans affected, and the choices of the State Treasurer and the Local Emergency Financial Assistance Loan Board.

Under current law, loans may be issued at a variety of different interest rates (or without interest) but the maximum interest allowed equals the average rate of interest earned on the State's surplus funds at the time the loan is made. Under current economic conditions, those rates are very low and not much above a fraction of a percent. The bills instead would place a minimum interest rate on loans equal to the average rate on 10-year municipal securities. (Currently, 20-year rates are in the 4% range, and 10-year U.S. Treasury bills rates are approximately 2.0%.)

Examples of the changes in timing for loan payments include those on both the principal and interest. Under current law, the principal on loans does not enter repayment until 10 years after the loan is made and is repaid in no less than 10 installments (usually annual installments). The bill would allow repayment of principal to begin immediately and would not allow a loan to remain outstanding for more than 30 years. Under current law, interest payments must begin one year after the loan is issued, but the bill would allow interest payments to begin at any time set by the Treasurer or the Board.

The bill would allow the Treasurer to change the terms of a loan under certain circumstances, including the terms on loans that have already been issued. These changes could include changes to interest rates, repayment terms, and redemption provisions. The bill also would change the eligibility requirements for obtaining a loan, generally making loan qualification more rigorous, as well as increasing the maximum amounts that may be borrowed, and would require compensation for the emergency manager, emergency financial manager, and other officials required to be compensated according to the respective statute or consent agreement under which the municipality with an emergency loan is governed.

Adding school districts to the list of municipalities able to request an emergency loan, as provided under the bill, would allow for a new source of revenue to financially struggling districts, and likely provide additional flexibility in terms of meeting financial obligations, during the period between October 1, 2012, and September 30, 2018. Specific examples of pending fiscal difficulty can be found in two school districts, which, without the ability to seek and be granted an emergency loan, are expected to default on repaying their State Aid notes due in August 2012. According to the Department of Treasury, if one or both of the districts default on repaying those State Aid notes, then no new borrowing by *any* other school districts can occur under the program. Therefore, this package is necessary to allow those two districts to seek emergency loans, the proceeds of which would be used to repay the State Aid notes due in August, and avoid default and closure of the lending program for other districts.

Currently, the State has issued emergency loans with remaining outstanding balance totaling approximately $68.0 million.

House Bill 5567 (S-2)

The bill would allow the 18-mill local nonhomestead levy (levied for school operating purposes) to be pledged for the repayment of a loan under the Emergency Municipal Loan Act. The 18-mill nonhomestead levy also could be pledged for money borrowed by schools under Section 1225 of the School Code, or the repayment of advances, overpayments, or other obligations of the district to the State. This would provide districts seeking emergency loans or other borrowings an additional source of revenue for pledging revenue toward securing those loans, and provide greater flexibility in budgeting during fiscal distress. The pledge of school operating taxes by a school district to repay certain debt obligations would have a positive impact on the School Aid budget to the extent that the State would be better able to receive the repayment of any advance or overpayment or, under the package of bills, emergency municipal loan made to a school district.

One incidental fiscal impact that could result from the changes proposed by this bill would occur in the instance of a local district choosing to convert to a charter school, then further using the 18-mill revenue (previously funding a portion of the local district's foundation allowance) for the repayment of an emergency loan. Under the School Aid Act, a charter school's foundation allowance is entirely funded with State money, while a local district's foundation allowance is a combination of local revenue (generated by the 18-mill revenue) and State aid. If a local district converted to a charter school, then its foundation allowance would be entirely paid out of State money, and the 18-mill revenue would be redirected from supporting the foundation allowance to repaying an emergency loan. This would mean an increase of State costs under the School Aid Act, equivalent to the amount of money raised by the 18-mill levy, but redirected for the repayment of an emergency loan.

House Bills 5568 (S-1), 5569 (S-4), & 5570

The other three bills in the package would implement the provisions outlined in the above two bills. House Bill 5568 further would provide additional security to the School Aid Fund by allowing an emergency loan or proceeds from the 18-mill levy to satisfy an overpayment made by the Department of Education under the School Aid Act, if a district's State Aid payments under that Act were not sufficient to refund the overpayment.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.