

# SENATE BILL No. 561

October 1, 2013, Introduced by Senators BRANDENBURG, GREGORY, ROBERTSON, PROOS, SCHUITMAKER and JONES and referred to the Committee on Local Government and Elections.

A bill to amend 2012 PA 436, entitled  
"Local financial stability and choice act,"  
by amending sections 10, 12, and 27 (MCL 141.1550, 141.1552, and  
141.1567) and by adding section 10a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 10. (1) An emergency manager shall issue to the  
2 appropriate local elected and appointed officials and employees,  
3 agents, and contractors of the local government the orders the  
4 emergency manager considers necessary to accomplish the purposes of  
5 this act, including, but not limited to, orders for the timely and  
6 satisfactory implementation of a financial and operating plan,  
7 including an educational plan for a school district, or to take  
8 actions, or refrain from taking actions, to enable the orderly  
9 accomplishment of the financial and operating plan. An order issued

1 under this section is binding on the local elected and appointed  
2 officials and employees, agents, and contractors of the local  
3 government to whom it is issued. Local elected and appointed  
4 officials and employees, agents, and contractors of the local  
5 government shall take and direct those actions that are necessary  
6 and advisable to maintain compliance with the financial and  
7 operating plan.

8 (2) If an order of the emergency manager under subsection (1)  
9 is not carried out and the failure to carry out an order is  
10 disrupting the emergency manager's ability to manage the local  
11 government, the emergency manager, in addition to other remedies  
12 provided in this act, may prohibit the local elected or appointed  
13 official or employee, agent, or contractor of the local government  
14 from access to the local government's office facilities, electronic  
15 mail, and internal information systems.

16 (3) **THIS SECTION IS SUBJECT TO SECTION 10A.**

17 **SEC. 10A. IF AN EMERGENCY MANAGER IS APPOINTED FOR A COUNTY,**  
18 **THE COUNTY TREASURER OF THAT COUNTY RETAINS ALL OF HIS OR HER**  
19 **POWERS AND DUTIES AS PROVIDED BY LAW, INCLUDING, BUT NOT LIMITED**  
20 **TO, ALL OF THE POWERS AND DUTIES PROVIDED UNDER THE FOLLOWING:**

21 (A) **SECTIONS 35 TO 48 OF 1846 RS 14, MCL 48.35 TO 48.48.**

22 (B) **THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.1 TO**  
23 **211.155.**

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

1 (a) Analyze factors and circumstances contributing to the  
2 financial emergency of the local government and initiate steps to  
3 correct the condition.

4 (b) Amend, revise, approve, or disapprove the budget of the  
5 local government, and limit the total amount appropriated or  
6 expended.

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

11 (d) Require and approve or disapprove, or amend or revise, a  
12 plan for paying all outstanding obligations of the local  
13 government.

14 (e) Require and prescribe the form of special reports to be  
15 made by the finance officer of the local government to its  
16 governing body, the creditors of the local government, the  
17 emergency manager, or the public.

18 (f) Examine all records and books of account, and require  
19 under the procedures of the uniform budgeting and accounting act,  
20 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to  
21 21.55, or both, the attendance of witnesses and the production of  
22 books, papers, contracts, and other documents relevant to an  
23 analysis of the financial condition of the local government.

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

27 (h) Review payrolls or other claims against the local

1 government before payment.

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

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

7 (k) Subject to section 19, after meeting and conferring with  
8 the appropriate bargaining representative and, if in the emergency  
9 manager's sole discretion and judgment, a prompt and satisfactory  
10 resolution is unlikely to be obtained, reject, modify, or terminate  
11 1 or more terms and conditions of an existing collective bargaining  
12 agreement. The rejection, modification, or termination of 1 or more  
13 terms and conditions of an existing collective bargaining agreement  
14 under this subdivision is a legitimate exercise of the state's  
15 sovereign powers if the emergency manager and state treasurer  
16 determine that all of the following conditions are satisfied:

17 (i) The financial emergency in the local government has created  
18 a circumstance in which it is reasonable and necessary for the  
19 state to intercede to serve a significant and legitimate public  
20 purpose.

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

25 (iii) Any plan involving the rejection, modification, or  
26 termination of 1 or more terms and conditions of an existing  
27 collective bargaining agreement is directly related to and designed

1 to address the financial emergency for the benefit of the public as  
2 a whole.

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

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

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

1 local pension board, all of the following apply:

2 (i) The emergency manager shall assume and exercise the  
3 authority and fiduciary responsibilities of the local pension board  
4 including, to the extent applicable, setting and approval of all  
5 actuarial assumptions for pension obligations of a municipal  
6 government to the local pension fund.

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

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

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

27 (n) Consolidate or eliminate departments of the local

1 government or transfer functions from 1 department to another and  
2 appoint, supervise, and, at his or her discretion, remove  
3 administrators, including heads of departments other than elected  
4 officials.

5 (o) Employ or contract for, at the expense of the local  
6 government and with the approval of the state financial authority,  
7 auditors and other technical personnel considered necessary to  
8 implement this act.

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

1 assure that financial information is accurate, reliable, and  
2 timely, comply with policies, regulations, and applicable laws, and  
3 assure assets are properly managed. At least annually, a report of  
4 the local auditor shall be submitted to the emergency manager, the  
5 state treasurer, the superintendent of public instruction if the  
6 local government is a school district, and each state senator and  
7 state representative who represents that local government. The  
8 annual report of the local auditor shall be posted on the local  
9 government's website within 7 days after the report is submitted.

10 (q) An emergency manager may initiate court proceedings in the  
11 Michigan court of claims or in the circuit court of the county in  
12 which the local government is located in the name of the local  
13 government to enforce compliance with any of his or her orders or  
14 any constitutional or legislative mandates, or to restrain  
15 violations of any constitutional or legislative power or his or her  
16 orders.

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

27 (s) Apply for a loan from the state on behalf of the local



1 government, subject to the conditions of the emergency municipal  
2 loan act, 1980 PA 243, MCL 141.931 to 141.942.

3 (t) Order, as necessary, 1 or more millage elections for the  
4 local government consistent with the Michigan election law, 1954 PA  
5 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article  
6 IX of the state constitution of 1963, and any other applicable  
7 state law.

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

10 (v) Approve or disapprove of the issuance of obligations of  
11 the local government on behalf of the local government under this  
12 subdivision. An election to approve or disapprove of the issuance  
13 of obligations of the local government pursuant to this subdivision  
14 shall only be held at the general November election.

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

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

22 (y) Enter into agreements with other local governments, public  
23 bodies, or entities for the provision of services, the joint  
24 exercise of powers, or the transfer of functions and  
25 responsibilities.

26 (z) For municipal governments, enter into agreements with  
27 other units of municipal government to transfer property of the

1 municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as  
2 otherwise provided by law, subject to approval by the state  
3 treasurer.

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

6 (bb) For a city, village, or township, the emergency manager  
7 may recommend to the state boundary commission that the municipal  
8 government consolidate with 1 or more other municipal governments,  
9 if the emergency manager determines that consolidation would  
10 materially alleviate the financial emergency of the municipal  
11 government and would not materially and adversely affect the  
12 financial situation of the government or governments with which the  
13 municipal government in receivership is consolidated. Consolidation  
14 under this subdivision shall proceed as provided by law.

15 (cc) For municipal governments, with approval of the governor,  
16 disincorporate or dissolve the municipal government and assign its  
17 assets, debts, and liabilities as provided by law. The  
18 disincorporation or dissolution of the local government is subject  
19 to a vote of the electors of that local government if required by  
20 law.

21 (dd) Exercise solely, for and on behalf of the local  
22 government, all other authority and responsibilities of the chief  
23 administrative officer and governing body concerning the adoption,  
24 amendment, and enforcement of ordinances or resolutions of the  
25 local government as provided in the following acts:

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

27 (ii) The fourth class city act, 1895 PA 215, MCL 81.1 to

1 113.20.

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

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

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

5 (vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

6 (vii) The home rule village act, 1909 PA 278, MCL 78.1 to  
7 78.28.

8 (viii) The revised school code, 1976 PA 451, MCL 380.1 to  
9 380.1852.

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

12 (ee) ~~Take~~**SUBJECT TO SECTION 10A, TAKE** any other action or  
13 exercise any power or authority of any officer, employee,  
14 department, board, commission, or other similar entity of the local  
15 government, whether elected or appointed, relating to the operation  
16 of the local government. ~~The~~**SUBJECT TO SECTION 10A, THE** power of  
17 the emergency manager shall be superior to and supersede the power  
18 of any of the foregoing officers or entities.

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

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

27 (3) Except as otherwise provided in this subsection, any

1 contract involving a cumulative value of \$50,000.00 or more is  
2 subject to competitive bidding by an emergency manager. However, if  
3 a potential contract involves a cumulative value of \$50,000.00 or  
4 more, the emergency manager may submit the potential contract to  
5 the state treasurer for review and the state treasurer may  
6 authorize that the potential contract is not subject to competitive  
7 bidding.

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

19 Sec. 27. (1) The local elected and appointed officials and  
20 employees, agents, and contractors of a local government shall  
21 promptly and fully provide the assistance and information necessary  
22 and properly requested by the state financial authority, a review  
23 team, or the emergency manager in the effectuation of their duties  
24 and powers and of the purposes of this act. If the review team or  
25 emergency manager believes that a local elected or appointed  
26 official or employee, agent, or contractor of the local government  
27 is not answering questions accurately or completely or is not

1 furnishing information requested, the review team or emergency  
2 manager may issue subpoenas and administer oaths to the local  
3 elected or appointed official or employee, agent, or contractor to  
4 furnish answers to questions or to furnish documents or records, or  
5 both. If the local elected or appointed official or employee,  
6 agent, or contractor refuses, the review team or emergency manager  
7 may bring an action in the circuit court in which the local  
8 government is located or the Michigan court of claims, as  
9 determined by the review team or emergency manager, to compel  
10 testimony and furnish records and documents. An action in mandamus  
11 may be used to enforce this section.

12 (2) Failure of a local government official to abide by this  
13 act shall be considered gross neglect of duty, which the review  
14 team or emergency manager may report to the state financial  
15 authority and the attorney general. Following review and a hearing  
16 with a local government elected official, the state financial  
17 authority may recommend to the governor that the governor remove  
18 the elected official from office. If the governor removes the  
19 elected official from office, the resulting vacancy in office shall  
20 be filled as prescribed by law.

21 (3) A local government placed in receivership under this act  
22 is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a  
23 period of 5 years from the date the local government is placed in  
24 receivership or until the time the receivership is terminated,  
25 whichever occurs first.

26 (4) SUBSECTIONS (1) AND (2) ARE SUBJECT TO SECTION 10A.