

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4326

A bill to amend 2012 PA 436, entitled
"Local financial stability and choice act,"
by amending sections 2 and 4 (MCL 141.1542 and 141.1544).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Chapter 9" means chapter 9 of title 11 of the United
3 States Code, 11 USC 901 to 946.

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

5 (i) The manager of a village or, if a village does not employ
6 a manager, the president of the village.

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

9 (iii) The manager of a township or the manager or
10 superintendent of a charter township or, if the township does not

1 employ a manager or superintendent, the supervisor of the township.

2 (iv) The elected county executive or appointed county manager
3 of a county or, if the county has not adopted the provisions of
4 either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL
5 45.501 to 45.521, the county's chairperson of the county board of
6 commissioners.

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

9 (vi) The superintendent of a school district.

10 (c) "Creditor" means either of the following:

11 (i) An entity that has a noncontingent claim against a local
12 government that arose at the time of or before the commencement of
13 the neutral evaluation process and whose claim represents at least
14 \$5,000,000.00 or comprises more than 5% of the local government's
15 debt or obligations, whichever is less.

16 (ii) An entity that would have a noncontingent claim against
17 the local government upon the rejection of an executory contract or
18 unexpired lease in a chapter 9 case and whose claim would represent
19 at least \$5,000,000.00 or would comprise more than 5% of the local
20 government's debt or obligations, whichever is less.

21 (d) "Debtor" means a local government that is authorized to
22 proceed under chapter 9 by this act and that meets the requirements
23 of chapter 9.

24 (e) "Emergency manager" means an emergency manager appointed
25 under section 9. An emergency manager includes an emergency
26 financial manager appointed under former 1988 PA 101 or former 1990
27 PA 72 who was acting in that capacity on ~~the effective date of this~~

1 ~~act.~~ **MARCH 28, 2013.**

2 (f) "Entity" means a partnership, nonprofit or business
3 corporation, limited liability company, labor organization, or any
4 other association, corporation, trust, or other legal entity.

5 (g) "Financial and operating plan" means a written financial
6 and operating plan for a local government under section 11,
7 including an educational plan for a school district.

8 (h) "Good faith" means participation by an interested party or
9 a local government representative in the neutral evaluation process
10 with the intent to negotiate a resolution of the issues that are
11 the subject of the neutral evaluation process, including the timely
12 provision of complete and accurate information to provide the
13 relevant participants through the neutral evaluation process with
14 sufficient information, in a confidential manner, to negotiate the
15 readjustment of the local government's debt.

16 (i) "Interested party" means a trustee, a committee of
17 creditors, an affected creditor, an indenture trustee, a pension
18 fund, a bondholder, a union that under its collective bargaining
19 agreements has standing to initiate contract negotiations with the
20 local government, or a representative selected by an association of
21 retired employees of the public entity who receive income or
22 benefits from the public entity. A local government may invite
23 holders of contingent claims to participate as interested parties
24 in the neutral evaluation process if the local government
25 determines that the contingency is likely to occur and the claim
26 may represent at least \$5,000,000.00 or comprise more than 5% of
27 the local government's debt or obligations, whichever is less.

1 (j) "Local emergency financial assistance loan board" means
2 the local emergency financial assistance loan board created under
3 section 2 of the emergency municipal loan act, 1980 PA 243, MCL
4 141.932.

5 (k) "Local government" means a municipal government or a
6 school district.

7 (l) "Local government representative" means the person or
8 persons designated by the governing body of the local government
9 with authority to make recommendations and to attend the neutral
10 evaluation process on behalf of the governing body of the local
11 government.

12 (m) "Local inspector" means a certified forensic accountant,
13 certified public accountant, attorney, or similarly credentialed
14 person whose responsibility it is to determine the existence of
15 proper internal and management controls, fraud, criminal activity,
16 or any other accounting or management deficiencies.

17 (n) "Municipal government" means a city, a village, a
18 township, a charter township, a county, a department of county
19 government if the county has an elected county executive under 1966
20 PA 293, MCL 45.501 to 45.521, an authority established by law, or a
21 public utility owned by a city, village, township, or county.

22 (o) "Neutral evaluation process" means a form of alternative
23 dispute resolution or mediation between a local government and
24 interested parties as provided for in section 25.

25 (p) "Neutral evaluator" means an impartial, unbiased person or
26 entity, commonly known as a mediator, who assists local governments
27 and interested parties in reaching their own settlement of issues

1 under this act, who is not aligned with any party, and who has no
2 authoritative decision-making power.

3 (q) "Receivership" means the process under this act by which a
4 financial emergency is addressed through the appointment of an
5 emergency manager. Receivership does not include chapter 9 or any
6 provision under federal bankruptcy law.

7 (r) "Review team" means a review team appointed under section
8 4.

9 (s) "School board" means the governing body of a school
10 district.

11 (t) "School district" means a school district as that term is
12 defined in section 6 of the revised school code, 1976 PA 451, MCL
13 380.6, or an intermediate school district as that term is defined
14 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

15 (u) "State financial authority" means the following:

16 (i) For a municipal government, the state treasurer.

17 (ii) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (iii),**
18 **FOR** a school district, the superintendent of public instruction.

19 **(iii) FOR A SCHOOL DISTRICT SUBJECT TO A DEFICIT ELIMINATION**
20 **PLAN UNDER SECTION 1220 OF THE REVISED SCHOOL CODE, 1976 PA 451,**
21 **MCL 380.1220, THE STATE TREASURER.**

22 (v) "Strong mayor" means a mayor who has been granted veto
23 power for any purpose under the charter of that local government.

24 (w) "Strong mayor approval" means approval of a resolution
25 under 1 of the following conditions:

26 (i) The strong mayor approves the resolution.

27 (ii) The resolution is approved by the governing body with

1 sufficient votes to override a veto by the strong mayor.

2 (iii) The strong mayor vetoes the resolution and the governing
3 body overrides the veto.

4 Sec. 4. (1) ~~The~~ **SUBJECT TO SUBSECTION (2), THE** state financial
5 authority may conduct a preliminary review to determine the
6 existence of probable financial stress within a local government if
7 1 or more of the following occur:

8 (a) The governing body or the chief administrative officer of
9 a local government requests a preliminary review. The request shall
10 be in writing and shall identify the existing or anticipated
11 financial conditions or events that make the request necessary.

12 (b) The state financial authority receives a written request
13 from a creditor with an undisputed claim that remains unpaid 6
14 months after its due date against the local government that exceeds
15 the greater of \$10,000.00 or 1% of the annual general fund budget
16 of the local government, provided that the creditor notifies the
17 local government in writing at least 30 days before his or her
18 request to the state financial authority of his or her intention to
19 submit a written request under this subdivision.

20 (c) The state financial authority receives a petition
21 containing specific allegations of local government financial
22 distress signed by a number of registered electors residing within
23 the local government's jurisdiction equal to not less than 5% of
24 the total vote cast for all candidates for governor within the
25 local government's jurisdiction at the last preceding election at
26 which a governor was elected. Petitions shall not be filed under
27 this subdivision within 60 days before any election of the local

1 government.

2 (d) The state financial authority receives written
3 notification that a local government has not timely deposited its
4 minimum obligation payment to the local government pension fund as
5 required by law.

6 (e) The state financial authority receives written
7 notification that the local government has failed for a period of 7
8 days or more after the scheduled date of payment to pay wages and
9 salaries or other compensation owed to employees or benefits owed
10 to retirees.

11 (f) The state financial authority receives written
12 notification from a trustee, paying agent, bondholder, or auditor
13 engaged by the local government of a default in a bond or note
14 payment or a violation of 1 or more bond or note covenants.

15 (g) The state financial authority of a local government
16 receives a resolution from either the senate or the house of
17 representatives requesting a preliminary review.

18 (h) The local government has violated a requirement of, or a
19 condition of an order issued pursuant to, former 1943 PA 202, the
20 revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the
21 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
22 141.2821, or any other law governing the issuance of bonds or
23 notes.

24 (i) The municipal government has violated the conditions of an
25 order issued by the local emergency financial assistance loan board
26 pursuant to the emergency municipal loan act, 1980 PA 243, MCL
27 141.931 to 141.942.

1 (j) The local government has violated a requirement of
2 sections 17 to 20 of the uniform budgeting and accounting act, 1968
3 PA 2, MCL 141.437 to 141.440.

4 (k) The local government fails to timely file an annual
5 financial report or audit that conforms with the minimum procedures
6 and standards of the state financial authority and is required for
7 local governments under the uniform budgeting and accounting act,
8 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to
9 21.55.

10 (l) If the local government is a school district, the school
11 district fails to provide an annual financial report or audit that
12 conforms with the minimum procedures and standards of the
13 superintendent of public instruction and is required under the
14 revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the
15 state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

16 (m) The municipal government is delinquent in the distribution
17 of tax revenues, as required by law, that it has collected for
18 another taxing jurisdiction, and that taxing jurisdiction requests
19 a preliminary review.

20 (n) The local government is in breach of its obligations under
21 a deficit elimination plan or an agreement entered into pursuant to
22 a deficit elimination plan.

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

25 (p) The municipal government has ended a fiscal year in a
26 deficit condition as defined in section 21 of the Glenn Steil state
27 revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has

1 failed to comply with the requirements of that section for filing
2 or instituting a financial plan to correct the deficit condition.

3 (q) The school district ended its most recently completed
4 fiscal year with a deficit in 1 or more of its funds and the school
5 district has not submitted a deficit elimination plan to the state
6 financial authority within 30 days after the district's deadline
7 for submission of its annual financial statement.

8 (r) The local government has been assigned a long-term debt
9 rating within or below the BBB category or its equivalent by 1 or
10 more nationally recognized credit rating agencies.

11 (s) The existence of other facts or circumstances that, in the
12 state treasurer's sole discretion for a municipal government, are
13 indicative of probable financial stress or that, in the state
14 treasurer's or superintendent of public instruction's sole
15 discretion for a school district, are indicative of probable
16 financial stress.

17 (2) IF 1 OR MORE OF THE FOLLOWING OCCUR, THE STATE FINANCIAL
18 AUTHORITY OF THE SCHOOL DISTRICT SHALL CONDUCT A PRELIMINARY REVIEW
19 TO DETERMINE THE EXISTENCE OF PROBABLE FINANCIAL STRESS WITHIN THE
20 SCHOOL DISTRICT:

21 (A) THE SCHOOL DISTRICT IS SUBJECT TO A DEFICIT ELIMINATION
22 PLAN UNDER SECTION 1220 OF THE REVISED SCHOOL CODE, 1976 PA 451,
23 MCL 380.1220, AND THE STATE TREASURER DETERMINES THAT THE SCHOOL
24 DISTRICT HAS FAILED TO SUBMIT OR MATERIALLY COMPLY WITH THE
25 REQUIREMENTS OF THE DEFICIT ELIMINATION PLAN.

26 (B) THE SCHOOL DISTRICT IS SUBJECT TO A DEFICIT ELIMINATION
27 PLAN UNDER SECTION 1220 OF THE REVISED SCHOOL CODE, 1976 PA 451,

1 MCL 380.1220, THAT PROVIDES FOR THE ELIMINATION OF DEFICIT OVER A
2 PERIOD EXCEEDING 5 YEARS.

3 (3) ~~(2)~~—Before commencing the preliminary review under
4 subsection (1) OR (2), the state financial authority shall provide
5 the local government specific written notification that it intends
6 to conduct a preliminary review. Elected and appointed officials of
7 a local government shall promptly and fully provide the assistance
8 and information requested by the state financial authority for that
9 local government in conducting the preliminary review. The state
10 financial authority shall provide an interim report of its findings
11 to the local government within 20 days following the commencement
12 of the preliminary review. In addition, a copy of the interim
13 report shall be provided to each state senator and state
14 representative who represents that local government. The local
15 government may provide comments to the state financial authority
16 concerning the interim report within 5 days after the interim
17 report is provided to the local government. The state financial
18 authority shall prepare and provide a final report detailing its
19 preliminary review to the local emergency financial assistance loan
20 board. In addition, a copy of the final report shall be provided to
21 each state senator and state representative who represents that
22 local government. The final report shall be posted on the
23 department of treasury's website within 7 days after the final
24 report is provided to the local emergency financial assistance loan
25 board. The preliminary review and final report by the state
26 financial authority shall be completed within 30 days following
27 commencement of the preliminary review. **FOR A PRELIMINARY REVIEW**

1 CONDUCTED UNDER SUBSECTION (2), IF THE FINAL REPORT PREPARED BY THE
2 STATE FINANCIAL AUTHORITY CONFIRMS THE EXISTENCE OF ANY OF THE
3 FACTORS PROVIDED IN SUBSECTION (2)(A) OR (B), THE STATE FINANCIAL
4 AUTHORITY'S CONFIRMATION IS PRIMA FACIE EVIDENCE THAT PROBABLE
5 FINANCIAL STRESS EXISTS FOR THAT SCHOOL DISTRICT. Within 20 days
6 after receiving the final report from the state financial
7 authority, the local emergency financial assistance loan board
8 shall determine if probable financial stress exists for the local
9 government.

10 (4) ~~(3)~~—If a finding of probable financial stress is made for
11 a municipal government by the local emergency financial assistance
12 loan board under subsection ~~(2)~~, ~~(3)~~, the governor shall appoint a
13 review team for that municipal government consisting of the state
14 treasurer or his or her designee, the director of the department of
15 technology, management, and budget or his or her designee, a
16 nominee of the senate majority leader, and a nominee of the speaker
17 of the house of representatives. The governor may appoint other
18 state officials or other persons with relevant professional
19 experience to serve on a review team to undertake a municipal
20 financial management review.

21 (5) ~~(4)~~—If a finding of probable financial stress is made for
22 a school district by the local emergency financial assistance loan
23 board under subsection ~~(2)~~, ~~(3)~~, the governor shall appoint a
24 review team for that school district consisting of the state
25 treasurer or his or her designee, the superintendent of public
26 instruction or his or her designee, the director of the department
27 of technology, management, and budget or his or her designee, a

1 nominee of the senate majority leader, and a nominee of the speaker
2 of the house of representatives. The governor may appoint other
3 state officials or other persons with relevant professional
4 experience to serve on a review team to undertake a school district
5 financial management review.

6 (6) ~~(5)~~—The department of treasury shall provide staff support
7 to each review team appointed under this section.

8 (7) ~~(6)~~—A review team appointed under former 1988 PA 101 or
9 former 1990 PA 72 and serving immediately ~~prior to the effective~~
10 ~~date of this act~~ **BEFORE MARCH 28, 2013** shall continue under this
11 act to fulfill its powers and duties. All proceedings and actions
12 taken by the governor, the state treasurer, the superintendent of
13 public instruction, the local emergency financial assistance loan
14 board, or a review team under former 2011 PA 4, former 1988 PA 101,
15 or former 1990 PA 72 before ~~the effective date of this act~~ **MARCH**
16 **28, 2013** are ratified and are enforceable as if the proceedings and
17 actions were taken under this act, and a consent agreement entered
18 into under former 2011 PA 4, former 1988 PA 101, or former 1990 PA
19 72 that was in effect immediately ~~prior to the effective date of~~
20 ~~this act~~ **BEFORE MARCH 28, 2013** is ratified and is binding and
21 enforceable under this act.