

# HOUSE BILL No. 4326

March 11, 2015, Introduced by Rep. Poleski and referred to the Committee on Financial Liability Reform.

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 a  
6 manager, the president of the village.

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

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

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

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

8           (vi) The superintendent of a school district.

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

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

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

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

23          (e) "Emergency manager" means an emergency manager appointed  
24 under section 9. An emergency manager includes an emergency  
25 financial manager appointed under former 1988 PA 101 or former 1990  
26 PA 72 who was acting in that capacity on ~~the effective date of this~~  
27 ~~act.~~ **MARCH 28, 2013.**

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

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

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

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

27 (j) "Local emergency financial assistance loan board" means

1 the local emergency financial assistance loan board created under  
2 section 2 of the emergency municipal loan act, 1980 PA 243, MCL  
3 141.932.

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

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

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

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

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

24 (p) "Neutral evaluator" means an impartial, unbiased person or  
25 entity, commonly known as a mediator, who assists local governments  
26 and interested parties in reaching their own settlement of issues  
27 under this act, who is not aligned with any party, and who has no

1 authoritative decision-making power.

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

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

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

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

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

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

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

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

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

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

25 (i) The strong mayor approves the resolution.

26 (ii) The resolution is approved by the governing body with  
27 sufficient votes to override a veto by the strong mayor.

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

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

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

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

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

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

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

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

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

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

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

27 (j) The local government has violated a requirement of

1 sections 17 to 20 of the uniform budgeting and accounting act, 1968  
2 PA 2, MCL 141.437 to 141.440.

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

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

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

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

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

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



1 or instituting a financial plan to correct the deficit condition.

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

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

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

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

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

25 (B) THE SCHOOL DISTRICT IS SUBJECT TO A DEFICIT ELIMINATION  
26 PLAN UNDER SECTION 1220 OF THE REVISED SCHOOL CODE, 1976 PA 451,  
27 MCL 380.1220, THAT PROVIDES FOR THE ELIMINATION OF DEFICIT OVER A

**1 PERIOD EXCEEDING 5 YEARS.**

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

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

9 (4) ~~(3)~~—If a finding of probable financial stress is made for  
10 a municipal government by the local emergency financial assistance  
11 loan board under subsection ~~(2)~~, ~~(3)~~, the governor shall appoint a  
12 review team for that municipal government consisting of the state  
13 treasurer or his or her designee, the director of the department of  
14 technology, management, and budget or his or her designee, a  
15 nominee of the senate majority leader, and a nominee of the speaker  
16 of the house of representatives. The governor may appoint other  
17 state officials or other persons with relevant professional  
18 experience to serve on a review team to undertake a municipal  
19 financial management review.

20 (5) ~~(4)~~—If a finding of probable financial stress is made for  
21 a school district by the local emergency financial assistance loan  
22 board under subsection ~~(2)~~, ~~(3)~~, the governor shall appoint a  
23 review team for that school district consisting of the state  
24 treasurer or his or her designee, the superintendent of public  
25 instruction or his or her designee, the director of the department  
26 of technology, management, and budget or his or her designee, a  
27 nominee of the senate majority leader, and a nominee of the speaker

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

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

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

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