

# HOUSE BILL No. 6032

November 9, 2016, Introduced by Rep. Irwin and referred to the Committee on Government Operations.

A bill to amend 2012 PA 436, entitled "Local financial stability and choice act," by amending the title and section 9 (MCL 141.1549) and by adding section 7b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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### TITLE

An act to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to

1 provide criteria to be used in determining the financial condition  
2 of local units of government and school districts; to authorize a  
3 declaration of the existence of a financial emergency within a  
4 local unit of government or school district; to prescribe remedial  
5 measures to address a financial emergency within a local unit of  
6 government or school district; to provide for a review and appeal  
7 process; to provide for the appointment and to prescribe the powers  
8 and duties of an emergency manager for a local unit of government  
9 or school district; to provide for the ~~modification or termination~~  
10 **RENEGOTIATION** of contracts under certain circumstances; to provide  
11 for the termination of a financial emergency within a local unit of  
12 government or school district; to provide a process by which a  
13 local unit of government or school district may file for  
14 bankruptcy; to prescribe the powers and duties of certain state  
15 agencies and officials and officials within local units of  
16 government and school districts; **TO CREATE THE OFFICE OF THE LOCAL**  
17 **GOVERNMENT FINANCIAL EMERGENCY OMBUDSMAN; TO PRESCRIBE THE POWERS**  
18 **AND DUTIES OF THE LOCAL GOVERNMENT FINANCIAL EMERGENCY OMBUDSMAN**  
19 **AND THE LEGISLATIVE COUNCIL;** to provide for appropriations; and to  
20 repeal acts and parts of acts.

21 **SEC. 7B. (1) THE OFFICE OF THE LOCAL GOVERNMENT FINANCIAL**  
22 **EMERGENCY OMBUDSMAN IS CREATED WITHIN THE LEGISLATIVE COUNCIL.**

23 **(2) THE PRINCIPAL EXECUTIVE OFFICER OF THE OFFICE OF THE LOCAL**  
24 **GOVERNMENT FINANCIAL EMERGENCY OMBUDSMAN IS THE LOCAL GOVERNMENT**  
25 **FINANCIAL EMERGENCY OMBUDSMAN WHO, SUBJECT TO THIS SUBSECTION,**  
26 **SHALL BE APPOINTED BY AND SERVE AT THE PLEASURE OF THE COUNCIL. THE**  
27 **OMBUDSMAN SHALL HAVE A MINIMUM OF 3 YEARS' EXPERIENCE IN MUNICIPAL**

1 OR SCHOOL DISTRICT OPERATIONS.

2 (3) THE COUNCIL SHALL ESTABLISH PROCEDURES FOR APPROVING THE  
3 BUDGET OF THE OFFICE OF THE LOCAL GOVERNMENT FINANCIAL EMERGENCY  
4 OMBUDSMAN, FOR EXPENDING FUNDS OF THE OFFICE, AND FOR THE  
5 EMPLOYMENT OF PERSONNEL FOR THE OFFICE.

6 (4) THE OMBUDSMAN MAY COMMENCE AN INVESTIGATION UPON EITHER OF  
7 THE FOLLOWING:

8 (A) RECEIPT OF A COMPLAINT FROM AN EMPLOYEE OR RESIDENT OF A  
9 LOCAL GOVERNMENT IN A FINANCIAL EMERGENCY OR A LEGISLATOR, OR ON  
10 THE OMBUDSMAN'S OWN INITIATIVE, CONCERNING ANY ACT THAT IS ALLEGED  
11 TO BE CONTRARY TO LAW.

12 (B) THE OMBUDSMAN'S OWN INITIATIVE FOR SIGNIFICANT PUBLIC  
13 HEALTH AND SAFETY ISSUES AND OTHER MATTERS FOR WHICH THERE IS NO  
14 EFFECTIVE REMEDY.

15 (5) SUBJECT TO COUNCIL APPROVAL, THE OMBUDSMAN SHALL ESTABLISH  
16 PROCEDURES FOR RECEIVING AND PROCESSING COMPLAINTS, CONDUCTING  
17 INVESTIGATIONS, HOLDING HEARINGS, AND REPORTING FINDINGS RESULTING  
18 FROM THE INVESTIGATIONS.

19 (6) UPON REQUEST AND WITHOUT THE REQUIREMENT OF A RELEASE, THE  
20 OMBUDSMAN SHALL BE GIVEN ACCESS TO ALL INFORMATION, RECORDS, AND  
21 DOCUMENTS IN THE POSSESSION OF THE DEPARTMENT, EMERGENCY MANAGER,  
22 OR LOCAL GOVERNMENT THAT THE OMBUDSMAN CONSIDERS NECESSARY IN AN  
23 INVESTIGATION.

24 (7) UPON REQUEST AND WITHOUT NOTICE, THE OMBUDSMAN SHALL BE  
25 GRANTED ENTRANCE TO INSPECT AT ANY TIME ANY PREMISES UNDER THE  
26 CONTROL OF A LOCAL GOVERNMENT IN A FINANCIAL EMERGENCY.

27 (8) THE OMBUDSMAN MAY HOLD INFORMAL HEARINGS AND MAY REQUEST

1 THAT ANY PERSON APPEAR BEFORE THE OMBUDSMAN, OR AT A HEARING, AND  
2 GIVE TESTIMONY OR PRODUCE DOCUMENTARY OR OTHER EVIDENCE THAT THE  
3 OMBUDSMAN CONSIDERS RELEVANT TO A MATTER UNDER INVESTIGATION.

4 (9) THE OMBUDSMAN SHALL ADVISE A COMPLAINANT TO PURSUE ALL  
5 REMEDIES OPEN TO THE COMPLAINANT. THE OMBUDSMAN MAY REQUEST AND  
6 SHALL RECEIVE FROM THE DEPARTMENT, EMERGENCY MANAGER, OR LOCAL  
7 GOVERNMENT A PROGRESS REPORT CONCERNING THE PROCESSING OF A  
8 COMPLAINT. AFTER ANY ACTION IS TAKEN ON A COMPLAINT, THE OMBUDSMAN  
9 MAY CONDUCT FURTHER INVESTIGATION ON THE REQUEST OF A COMPLAINANT  
10 OR ON HIS OR HER OWN INITIATIVE. THE OMBUDSMAN IS NOT REQUIRED TO  
11 CONDUCT AN INVESTIGATION ON A COMPLAINT BROUGHT BEFORE THE  
12 OMBUDSMAN. A PERSON IS NOT ENTITLED AS A RIGHT TO BE HEARD BY THE  
13 OMBUDSMAN.

14 (10) UPON RECEIVING A COMPLAINT FROM A LEGISLATOR OR AN  
15 EMPLOYEE OR RESIDENT OF A LOCAL GOVERNMENT IN A FINANCIAL EMERGENCY  
16 UNDER SUBSECTION (4) AND DECIDING TO INVESTIGATE THE COMPLAINT, THE  
17 OMBUDSMAN SHALL NOTIFY THE COMPLAINANT, THE LOCAL GOVERNMENT  
18 AFFECTED, THE EMERGENCY MANAGER APPOINTED FOR THE LOCAL GOVERNMENT  
19 AFFECTED, IF APPLICABLE, AND THE DEPARTMENT. IF THE OMBUDSMAN  
20 DECLINES TO INVESTIGATE, THE OMBUDSMAN SHALL NOTIFY THE  
21 COMPLAINANT, IN WRITING, AND INFORM THE EMERGENCY MANAGER, IF  
22 APPLICABLE, AND LOCAL GOVERNMENT AFFECTED OF THE REASONS FOR THE  
23 OMBUDSMAN'S DECISION.

24 (11) UPON REQUEST OF THE OMBUDSMAN, THE COUNCIL MAY HOLD A  
25 HEARING. THE COUNCIL MAY ADMINISTER OATHS, SUBPOENA WITNESSES, AND  
26 EXAMINE BOOKS AND RECORDS OF THE DEPARTMENT, AN EMERGENCY MANAGER,  
27 OR A PERSON, PARTNERSHIP, OR CORPORATION INVOLVED, IN ACCORDANCE

1 WITH SECTION 104 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL  
2 4.1104, IN A MATTER THAT IS OR WAS A PROPER SUBJECT OF  
3 INVESTIGATION BY THE OMBUDSMAN UNDER THIS ACT.

4 (12) CORRESPONDENCE BETWEEN THE OMBUDSMAN AND A COMPLAINANT IS  
5 CONFIDENTIAL AND SHALL BE PROCESSED AS PRIVILEGED CORRESPONDENCE.  
6 THE OMBUDSMAN SHALL MAINTAIN SECRECY WITH RESPECT TO ALL MATTERS  
7 AND IDENTITIES OF THE COMPLAINANTS OR PERSONS FROM WHOM INFORMATION  
8 IS ACQUIRED, EXCEPT SO FAR AS DISCLOSURES MAY BE NECESSARY TO  
9 ENABLE THE OMBUDSMAN TO PERFORM THE DUTIES OF THE OFFICE AND TO  
10 SUPPORT ANY RECOMMENDATIONS RESULTING FROM AN INVESTIGATION. A  
11 REPORT PREPARED AND RECOMMENDATIONS MADE BY THE OMBUDSMAN AND  
12 SUBMITTED TO THE COUNCIL UNDER SUBSECTION (13) ARE EXEMPT FROM  
13 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL  
14 15.231 TO 15.246.

15 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE  
16 OMBUDSMAN SHALL COMPLETE AN INVESTIGATION WITHIN 90 DAYS AFTER THE  
17 DATE A COMPLAINT IS RECEIVED BY THE OMBUDSMAN. THE OMBUDSMAN MAY,  
18 IN HIS OR HER OWN DISCRETION AND IF CONSIDERED NECESSARY, EXTEND  
19 THE TIME TO COMPLETE AN INVESTIGATION BY AN ADDITIONAL 90 DAYS, BUT  
20 AN OMBUDSMAN SHALL COMPLETE AN INVESTIGATION NO LATER THAN 180 DAYS  
21 AFTER THE DATE A COMPLAINT IS RECEIVED BY THE OMBUDSMAN. THE  
22 OMBUDSMAN SHALL PREPARE AND SUBMIT A REPORT OF THE FINDINGS OF AN  
23 INVESTIGATION AND MAKE RECOMMENDATIONS TO THE COUNCIL WITHIN 30  
24 DAYS AFTER COMPLETING THE INVESTIGATION IF THE OMBUDSMAN FINDS ANY  
25 OF THE FOLLOWING:

26 (A) A MATTER THAT SHOULD BE CONSIDERED BY THE DEPARTMENT.

27 (B) AN ACTION THAT SHOULD BE MODIFIED OR CANCELED.

1 (C) A STATUTE OR RULE THAT SHOULD BE ALTERED.

2 (D) ACTIONS FOR WHICH JUSTIFICATION IS NECESSARY.

3 (E) SIGNIFICANT PUBLIC HEALTH AND SAFETY ISSUES AS DETERMINED  
4 BY THE COUNCIL.

5 (F) ANY OTHER SIGNIFICANT CONCERNS AS DETERMINED BY THE  
6 COUNCIL.

7 (14) SUBJECT TO SUBSECTION (15), THE COUNCIL MAY FORWARD THE  
8 REPORT PREPARED AND SUBMITTED UNDER SUBSECTION (13) TO THE  
9 DEPARTMENT, THE EMERGENCY MANAGER, THE LOCAL GOVERNMENT AFFECTED,  
10 OR THE COMPLAINANT WHO REQUESTED THE REPORT.

11 (15) BEFORE ANNOUNCING A CONCLUSION OR RECOMMENDATION THAT  
12 EXPRESSLY OR BY IMPLICATION CRITICIZES A PERSON, AN EMERGENCY  
13 MANAGER, OR THE DEPARTMENT, THE OMBUDSMAN SHALL CONSULT WITH THAT  
14 PERSON, EMERGENCY MANAGER, OR DEPARTMENT. WHEN PUBLISHING AN  
15 OPINION ADVERSE TO THE EMERGENCY MANAGER, THE DEPARTMENT, OR ANY  
16 PERSON, THE OMBUDSMAN SHALL INCLUDE IN THAT PUBLICATION A STATEMENT  
17 OF REASONABLE LENGTH MADE TO HIM OR HER BY THE EMERGENCY MANAGER,  
18 DEPARTMENT, OR PERSON IN DEFENSE OR MITIGATION OF THE ACTION IF  
19 THAT STATEMENT IS PROVIDED WITHIN A REASONABLE PERIOD OF TIME  
20 DETERMINED BY THE COUNCIL. THE OMBUDSMAN MAY REQUEST TO BE NOTIFIED  
21 BY THE EMERGENCY MANAGER OR DEPARTMENT, WITHIN A SPECIFIED TIME, OF  
22 ANY ACTION TAKEN ON ANY RECOMMENDATION PRESENTED. THE OMBUDSMAN  
23 SHALL NOTIFY THE COMPLAINANT OF THE ACTIONS TAKEN BY THE OFFICE,  
24 THE EMERGENCY MANAGER, IF APPLICABLE, AND THE DEPARTMENT.

25 (16) THE OMBUDSMAN SHALL SUBMIT TO THE COUNCIL AND THE  
26 LEGISLATURE AN ANNUAL REPORT ON THE CONDUCT OF THE OFFICE.

27 (17) A PERSON, THE DEPARTMENT, OR AN EMERGENCY MANAGER SHALL

1 NOT HINDER THE LAWFUL ACTIONS OF THE OMBUDSMAN OR EMPLOYEES OF THE  
2 OFFICE, OR WILLFULLY REFUSE TO COMPLY WITH LAWFUL DEMANDS OF THE  
3 OFFICE. IF AN EMERGENCY MANAGER HINDERS THE LAWFUL ACTIONS OF THE  
4 OMBUDSMAN OR EMPLOYEES OF THE OFFICE, THE OMBUDSMAN SHALL REPORT  
5 THAT TO THE COUNCIL AND THE GOVERNOR. THE GOVERNOR SHALL PROVIDE A  
6 WARNING TO THAT EMERGENCY MANAGER. IF AN EMERGENCY MANAGER  
7 CONTINUES TO HINDER THE LAWFUL ACTIONS OF THE OMBUDSMAN OR  
8 EMPLOYEES OF THE OFFICE, THAT EMERGENCY MANAGER SHALL BE REMOVED BY  
9 THE GOVERNOR AND THE LOCAL GOVERNMENT SHALL SELECT 1 OF THE OTHER  
10 LOCAL GOVERNMENT OPTIONS AS PROVIDED IN SECTION 7.

11 (18) EMPLOYEES OF A LOCAL GOVERNMENT SHALL NOT BE PENALIZED IN  
12 ANY WAY BY AN OFFICIAL, AN EMERGENCY MANAGER, OR THE DEPARTMENT AS  
13 A RESULT OF FILING A COMPLAINT, COMPLAINING TO A LEGISLATOR, OR  
14 COOPERATING WITH THE OMBUDSMAN IN INVESTIGATING A COMPLAINT.

15 (19) THE AUTHORITY GRANTED THE OMBUDSMAN IS IN ADDITION TO THE  
16 AUTHORITY GRANTED UNDER THE PROVISIONS OF ANY OTHER ACT OR RULE  
17 UNDER WHICH THE REMEDY OR RIGHT OF APPEAL OR OBJECTION IS PROVIDED  
18 FOR A PERSON, OR ANY PROCEDURE PROVIDED FOR THE INQUIRY INTO OR  
19 INVESTIGATION OF ANY MATTER. THE AUTHORITY GRANTED THE OMBUDSMAN  
20 SHALL NOT BE CONSTRUED TO LIMIT OR AFFECT THE REMEDY OR RIGHT OF  
21 APPEAL OR OBJECTION AND SHALL NOT BE CONSIDERED PART OF AN  
22 EXCLUSIONARY PROCESS.

23 (20) AS USED IN THIS SECTION:

24 (A) "COMPLAINANT" MEANS AN EMPLOYEE OR RESIDENT OF A LOCAL  
25 GOVERNMENT IN A FINANCIAL EMERGENCY WHO FILES A COMPLAINT UNDER  
26 SUBSECTION (4).

27 (B) "COUNCIL" MEANS THE LEGISLATIVE COUNCIL ESTABLISHED UNDER

1 SECTION 15 OF ARTICLE IV OF THE STATE CONSTITUTION OF 1963.

2 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF TREASURY.

3 (D) "LEGISLATOR" MEANS A MEMBER OF THE SENATE OR THE HOUSE OF  
4 REPRESENTATIVES OF THIS STATE.

5 (E) "OFFICE" MEANS THE OFFICE OF THE LOCAL GOVERNMENT  
6 FINANCIAL EMERGENCY OMBUDSMAN CREATED UNDER THIS ACT.

7 (F) "OFFICIAL" MEANS AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT  
8 OF TREASURY.

9 (G) "OMBUDSMAN" MEANS THE OFFICE OF THE LOCAL GOVERNMENT  
10 FINANCIAL EMERGENCY OMBUDSMAN.

11 Sec. 9. (1) The governor may appoint an emergency manager to  
12 address a financial emergency within that local government as  
13 provided for in this act.

14 (2) Upon appointment, an emergency manager shall act for and  
15 in the place and stead of the governing body and the office of  
16 chief administrative officer of the local government. The emergency  
17 manager shall have broad powers in receivership to rectify the  
18 financial emergency and to assure the fiscal accountability of the  
19 local government and the local government's capacity to provide or  
20 cause to be provided necessary governmental services essential to  
21 the public health, safety, and welfare. Following appointment of an  
22 emergency manager and during the pendency of receivership, the  
23 governing body and the chief administrative officer of the local  
24 government shall not exercise any of the powers of those offices  
25 except as may be specifically authorized in writing by the  
26 emergency manager or as otherwise provided by this act and are  
27 subject to any conditions required by the emergency manager.

1 (3) All of the following apply to an emergency manager:

2 (a) The emergency manager shall have a minimum of 5 years'  
3 experience and demonstrable expertise in business, financial, or  
4 local or state budgetary matters.

5 (b) The emergency manager may, but need not, be a resident of  
6 the local government.

7 (c) The emergency manager shall be an individual.

8 (d) Except as otherwise provided in this subdivision **AND**  
9 **SECTION 7B(17)**, the emergency manager shall serve at the pleasure  
10 of the governor. An emergency manager is subject to impeachment and  
11 conviction by the legislature as if he or she were a civil officer  
12 under section 7 of article XI of the state constitution of 1963. A  
13 vacancy in the office of emergency manager shall be filled in the  
14 same manner as the original appointment.

15 (e) The emergency manager's compensation shall be paid by this  
16 state and shall be set forth in a contract approved by the state  
17 treasurer. The contract shall be posted on the department of  
18 treasury's website within 7 days after the contract is approved by  
19 the state treasurer.

20 (f) In addition to the salary provided to an emergency manager  
21 in a contract approved by the state treasurer under subdivision  
22 (e), this state may receive and distribute private funds to an  
23 emergency manager. As used in this subdivision, "private funds"  
24 means any money the state receives for the purpose of allocating  
25 additional salary to an emergency manager. Private funds  
26 distributed under this subdivision are subject to section 1 of 1901  
27 PA 145, MCL 21.161, and section 17 of article IX of the state

1 constitution of 1963.

2 (4) In addition to staff otherwise authorized by law, an  
3 emergency manager shall appoint additional staff and secure  
4 professional assistance as the emergency manager considers  
5 necessary to fulfill his or her appointment.

6 (5) The emergency manager shall submit quarterly reports to  
7 the state treasurer with respect to the financial condition of the  
8 local government in receivership, with a copy to the superintendent  
9 of public instruction if the local government is a school district  
10 and a copy to each state senator and state representative who  
11 represents that local government. In addition, each quarterly  
12 report shall be posted on the local government's website within 7  
13 days after the report is submitted to the state treasurer.

14 (6) The emergency manager shall continue in the capacity of an  
15 emergency manager as follows:

16 (a) Until removed by the governor or the legislature as  
17 provided in subsection (3)(d). If an emergency manager is removed,  
18 the governor shall within 30 days of the removal appoint a new  
19 emergency manager.

20 (b) Until the financial emergency is rectified.

21 (c) If the emergency manager has served for at least 18 months  
22 after his or her appointment under this act, the emergency manager  
23 may, by resolution, be removed by a 2/3 vote of the governing body  
24 of the local government. If the local government has a strong  
25 mayor, the resolution requires strong mayor approval before the  
26 emergency manager may be removed. Notwithstanding section 7(4), if  
27 the emergency manager is removed under this subsection and the

1 local government has not previously breached a consent agreement  
2 under this act, the local government may within 10 days negotiate a  
3 consent agreement with the state treasurer. If a consent agreement  
4 is not agreed upon within 10 days, the local government shall  
5 proceed with the neutral evaluation process pursuant to section 25.

6 (7) A local government shall be removed from receivership when  
7 the financial conditions are corrected in a sustainable fashion as  
8 provided in this act. In addition, the local government may be  
9 removed from receivership if an emergency manager is removed under  
10 subsection (6)(c) and the governing body of the local government by  
11 2/3 vote approves a resolution for the local government to be  
12 removed from receivership. If the local government has a strong  
13 mayor, the resolution requires strong mayor approval before the  
14 local government is removed from receivership. A local government  
15 that is removed from receivership while a financial emergency  
16 continues to exist as determined by the governor shall proceed  
17 under the neutral evaluation process pursuant to section 25.

18 (8) The governor may delegate his or her duties under this  
19 section to the state treasurer.

20 (9) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323,  
21 an emergency manager is subject to all of the following:

22 (a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.

23 (b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.

24 (c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a  
25 state officer.

26 (10) An emergency financial manager appointed under former  
27 1988 PA 101 or former 1990 PA 72, and serving immediately ~~prior to~~

1 ~~the effective date of this act, BEFORE MARCH 28, 2013,~~ shall be  
2 considered an emergency manager under this act and shall continue  
3 under this act to fulfill his or her powers and duties.

4 Notwithstanding any other provision of this act, the governor may  
5 appoint a person who was appointed as an emergency manager under  
6 former 2011 PA 4 or an emergency financial manager under former  
7 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager  
8 under this act.

9 (11) Notwithstanding section 7(4) and subject to the  
10 requirements of this section, if an emergency manager has served  
11 for less than 18 months after his or her appointment under this  
12 act, the governing body of the local government may pass a  
13 resolution petitioning the governor to remove the emergency manager  
14 as provided in this section and allow the local government to  
15 proceed under the neutral evaluation process as provided in section  
16 25. If the local government has a strong mayor, the resolution  
17 requires strong mayor approval. If the governor accepts the  
18 resolution, notwithstanding section 7(4), the local government  
19 shall proceed under the neutral evaluation process as provided in  
20 section 25.

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

23 Enacting section 2. This amendatory act does not take effect  
24 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 6030 (request no.  
25 05679'16) of the 98th Legislature is enacted into law.