

SENATE BILL No. 160

February 25, 2015, Introduced by Senators BOOHER, SMITH and JOHNSON and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending section 36a (MCL 117.36a), as amended by 2011 PA 143.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36a. (1) Except as otherwise provided under this section,
2 if a financial emergency exists under the ~~local government and~~
3 ~~school district fiscal accountability act, 2011 PA 4, MCL 141.1501~~
4 ~~to 141.1531,~~ **LOCAL FINANCIAL STABILITY AND CHOICE ACT, 2012 PA 436,**
5 **MCL 141.1541 TO 141.1575,** a city may issue financial recovery bonds
6 in amounts greater than the limitations established by the city
7 charter or this act.

8 (2) Any financial recovery bonds issued under this section are
9 subject to the terms and conditions approved by the local emergency
10 financial assistance loan board created under the emergency
11 municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

1 (3) Any financial recovery bonds issued under this section are
2 not subject to section 5(g).

3 (4) Notwithstanding subsection (1), the net indebtedness of a
4 city, reduced by any amounts excluded under section 4a(4), shall
5 not exceed 20% of the assessed value of the city.

6 (5) Notwithstanding subsection (4), the net indebtedness of a
7 city that issues financial recovery bonds under subsection (6),
8 reduced by any amounts excluded under section 4a(4), shall not
9 exceed 12% of the assessed value of the city, adjusted for
10 additions as provided under section 4a(9).

11 (6) If financial recovery bonds are issued under this
12 subsection by a city with a population of less than 10,000
13 ~~according to the latest federal decennial census and~~ **THAT IS**
14 located in a county organized under 1966 PA 293, MCL 45.501 to
15 45.521, the city may provide in the order authorizing the issuance
16 of the bonds for the deposit of revenues generated from taxes
17 levied by the city, including a tax levied by the city to pay a
18 judgment or comply with a court order, into an escrow account to be
19 used for the purpose of paying principal of and interest on the
20 bonds and the administrative costs associated with issuing the
21 bonds, and the tax revenues may be pledged by the city for the
22 payment of the bonds issued under this section. Bonds issued under
23 this subsection shall be limited in amount to that necessary to pay
24 court-ordered judgments against the city existing on May 25, 2011
25 and administrative costs associated with issuing the bonds. If the
26 city enters into an agreement with a third-party tax collector
27 pursuant to which the third-party tax collector has the duty to

1 collect taxes that otherwise would be collected by the city
2 treasurer, the agreement shall also provide for the direct payment
3 of all tax revenues pledged for payment of bonds issued pursuant to
4 this section collected by the third-party tax collector to a
5 trustee to be deposited into an escrow account and used for the
6 sole purpose of paying principal of and interest on the bonds. If
7 the city and a third-party tax collector enter into an agreement
8 providing for the direct payment of taxes to a trustee, a statutory
9 lien and trust is created applicable to those tax revenues received
10 or to be received from the third-party tax collector by the
11 trustee. The tax revenues paid or to be paid to a trustee for the
12 purpose of paying the principal of and interest on the bonds issued
13 pursuant to this section shall be subject to a lien and trust,
14 which is a statutory lien and trust paramount and superior to all
15 other liens and interests of any kind, for the sole purpose of
16 paying the principal of and interest on bonds issued pursuant to
17 this section and any other bonds subsequently issued by the city
18 sharing a parity or subordinate pledge of those tax revenues. The
19 lien and trust created under this subsection for the benefit of
20 bondholders or others is perfected without delivery, recording, or
21 notice. The tax revenues held or to be held by a trustee shall be
22 held in trust for the sole benefit of the holders of the bonds
23 issued pursuant to this section and are exempt from being levied
24 upon, taken, sequestered, or applied toward paying the debts or
25 liabilities of the city other than for payment of debt service on
26 the bonds to which the lien applies. As used in this subsection,
27 "third-party tax collector" means a party that is not the city

1 treasurer or other elected or appointed city official with whom the
2 city has entered into a contractual agreement pursuant to which the
3 third-party tax collector agrees to collect taxes that otherwise
4 would be collected by the city treasurer.

5 (7) A city that issues financial recovery bonds under this
6 section subsequently may refund all or a portion of those bonds
7 subject to the terms and conditions approved by the local emergency
8 financial assistance loan board. However, the local emergency
9 financial assistance loan board shall not approve any term or
10 condition under this subsection that materially alters any existing
11 term, condition, lien, or priority that applied to the bonds before
12 the refunding if the approval would constitute an impermissible
13 contract impairment. If financial recovery bonds are or have been
14 issued by a city under this section, the city may provide
15 additional security for the prior bonds pursuant to this subsection
16 and may issue financial recovery bonds pursuant to this subsection
17 to be sold to the Michigan finance authority for the purpose of
18 refunding all or a portion of the prior bonds, or other obligations
19 of the city, and for such other purposes as approved by the local
20 emergency financial assistance loan board. A city may by resolution
21 or order provide for the deposit of revenues pledged for the
22 payment of prior bonds or bonds issued pursuant to this subsection
23 into a separate account for the purpose of paying principal and
24 interest on those obligations, the administrative costs associated
25 with those obligations, and any other obligations issued by the
26 city that are secured by those revenues. For purposes of this
27 subsection, principal and interest may include termination fees and

1 credit enhancement fees, if any. If the city enters into an
2 agreement with a third party that has a duty or obligation under
3 the agreement or under state law to collect for, pay, remit,
4 disburse, or distribute to the city all or a portion of the
5 revenues pledged by the city for the payment of principal and
6 interest on prior bonds or bonds issued pursuant to this
7 subsection, the agreement shall also provide for the direct payment
8 of the revenues that the third party has a duty or obligation to
9 collect for, pay, remit, disburse, or distribute to the city, and
10 that the city has pledged for payment of the prior bonds or bonds
11 issued pursuant to this subsection, to a trustee to be deposited
12 into ~~an escrow~~ **A TRUST** account and used for the sole purpose of
13 paying principal of and interest on the prior bonds or bonds issued
14 pursuant to this subsection and related administrative costs and
15 any other obligations issued by the city that are secured by those
16 revenues. The agreement shall be authorized by resolution or order
17 of the city and approved by the local emergency financial
18 assistance loan board. If the city and a third party enter into an
19 agreement providing for the direct payment of the revenues pledged
20 by the city for the payment of prior bonds or bonds issued pursuant
21 to this subsection to a trustee, a statutory lien and trust is
22 created applicable to those revenues received ~~or to be received~~
23 from the third party by the trustee, and the revenues paid ~~or to be~~
24 ~~paid~~ to a trustee for the purpose of paying the principal and
25 interest on prior bonds or bonds issued pursuant to this subsection
26 shall be subject to a lien and trust that is a statutory lien and
27 trust paramount and superior to all other liens and interests of

1 any kind, for the sole purpose of paying the principal and interest
2 on the prior bonds of the city or bonds of the city issued pursuant
3 to this subsection and related administrative costs and any other
4 obligations issued by the city that are secured by those revenues.
5 The lien and trust created under this subsection is perfected
6 without delivery, recording, or notice. The revenues held ~~or to be~~
7 ~~held~~ by a trustee pursuant to an agreement shall be held in trust
8 pursuant to this subsection and are exempt from being levied upon,
9 taken, sequestered, or applied toward paying the debts or
10 liabilities of the city other than for payment of debt service on
11 the obligations and related administrative costs to which the lien
12 applies. A statutory lien and trust created by this subsection
13 applicable to distributable aid received ~~or to be received~~ from the
14 state treasurer by a paying agent, escrow agent, or trustee, shall
15 apply only to the distributable aid, as that term is defined in
16 section 9 of the fiscal stabilization act, 1981 PA 80, MCL
17 141.1009, after it has been appropriated and shall be subject to
18 any subsequent reduction of that appropriation by operation of law
19 or executive order. Nothing in this subsection shall abridge or
20 reduce the ability of the state treasurer to withhold distributable
21 aid from a city as provided by the Glenn Steil state revenue
22 sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921. Financial
23 recovery bonds issued pursuant to this subsection are not subject
24 to subsection (4). This subsection shall not be construed to do any
25 of the following:

26 (a) Create or constitute state indebtedness.

27 (b) Require the state to continue to impose and collect taxes

1 from which distributable aid is paid or to make payments of
2 distributable aid.

3 (c) Limit or prohibit the state from repealing or amending a
4 law enacted for the distributable aid, or for the manner, time, or
5 amount of distributable aid.

6 (8) IF A CITY WITH A POPULATION OF MORE THAN 600,000 THAT IS
7 LOCATED IN A COUNTY ORGANIZED UNDER 1966 PA 293, MCL 45.501 TO
8 45.521, ISSUES OR HAS ISSUED FINANCIAL RECOVERY BONDS PURSUANT TO
9 SUBSECTION (7), AND THE CITY, AS A SPECIFIED CONDITION OF THE
10 ISSUANCE, HAS ENTERED INTO AN AGREEMENT WITH A TRUSTEE FOR THE
11 DEPOSIT INTO A SEGREGATED TRUST ACCOUNT UNDER THE CONTROL OF THE
12 TRUSTEE OF REVENUES OF THE CITY THAT HAVE BEEN PLEDGED TO THE
13 TRUSTEE FOR THE PURPOSE OF REPAYING THOSE BONDS, AND THE CITY HAS
14 RECEIVED THE APPROVAL OF THE STATE TREASURER, THEN, AT ALL TIMES
15 AFTER THE ISSUANCE OF THE BONDS AND BEFORE THE DEPOSIT OF THE
16 REVENUES OF THE CITY INTO THE TRUST ACCOUNT, THE REVENUES OF THE
17 CITY TO BE DEPOSITED ARE HELD IN TRUST FOR THE BENEFIT OF THE
18 TRUSTEE AND THE BONDS BY ANY PARTY THAT COMES INTO POSSESSION OF
19 THE REVENUES. THE REVENUES ARE HELD IN TRUST FOR THE BENEFIT OF THE
20 TRUSTEE AND THE BONDS REGARDLESS OF WHETHER THE CITY DIRECTLY
21 COLLECTS THE REVENUES, A THIRD PARTY COLLECTS THE REVENUES ON THE
22 CITY'S BEHALF, OR ANY OTHER PERSON COMES INTO POSSESSION OF THE
23 REVENUES, AND THE REVENUES REMAIN SUBJECT TO THE TRUST REGARDLESS
24 OF SUBSEQUENT TRANSFER OR TRANSFERS OF THE REVENUES UNTIL SUCH TIME
25 AS THE REVENUES ARE RECEIVED BY THE TRUSTEE APPOINTED UNDER THE
26 AGREEMENT FOR REPAYMENT OF THE BONDS. TO THE EXTENT THAT THE CITY
27 OR ANY OTHER PERSON HOLDS A RESIDUAL OR OTHER INTEREST IN THE

1 REVENUES HELD IN TRUST AND TO BE DEPOSITED WITH THE TRUSTEE IN THE
2 TRUST ACCOUNT, THE INTEREST IS SUBORDINATE TO A LIEN IN THE
3 REVENUES IN FAVOR OF THE TRUSTEE FOR THE PURPOSE OF ENSURING
4 DELIVERY OF THE REVENUES TO THE TRUST ACCOUNT. THIS LIEN ARISES BY
5 OPERATION OF LAW AND WITHOUT FURTHER ACT OR NOTICE OF ANY KIND AT
6 THE EARLIEST TIME THAT THE CITY HAS OR ACQUIRES ANY RIGHTS IN THE
7 REVENUES PLEDGED PURSUANT TO THE AGREEMENT, IS AND WILL REMAIN
8 PARAMOUNT AND SUPERIOR TO ALL OTHER LIENS AND INTERESTS OF ANY
9 KIND, AND IS PERFECTED WITHOUT DELIVERY, RECORDING, OR NOTICE. THE
10 REVENUES HELD IN TRUST AND TO BE DEPOSITED INTO THE TRUST ACCOUNT
11 PURSUANT TO THIS SUBSECTION ARE EXEMPT FROM BEING LEVIED UPON,
12 TAKEN, SEQUESTERED, OR APPLIED TOWARD PAYING THE DEBTS OR
13 LIABILITIES OF THE CITY OTHER THAN THOSE EXPRESSLY SPECIFIED IN THE
14 AGREEMENT DESCRIBED IN THIS SUBSECTION AND SUBSECTION (7).

15 (9) ~~(8)~~—Financial recovery bonds issued under this section are
16 not subject to the revised municipal finance act, 2001 PA 34, MCL
17 141.2101 to 141.2821.

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