

SENATE BILL No. 822

February 24, 2016, Introduced by Senator HANSEN and referred to the Committee on Government Operations.

A bill to amend 1980 PA 243, entitled
"Emergency municipal loan act,"
by amending sections 2, 3, 4, and 6 (MCL 141.932, 141.933, 141.934,
and 141.936), as amended by 2015 PA 115; and to repeal acts and
parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) There is created a local emergency financial
2 assistance loan board within the department of treasury. This board
3 ~~shall consist~~ **CONSISTS** of the state treasurer, the director of the
4 department of licensing and regulatory affairs, and the director of
5 the department of technology, management, and budget. Except for
6 budgeting, procurement, and related functions of the board that
7 shall be performed under the direction and supervision of the state

1 treasurer, the board shall exercise its prescribed statutory
2 powers, duties, and functions independently of the department of
3 treasury.

4 (2) The board has the powers necessary to carry out and
5 effectuate the purposes and provisions of this act, and powers
6 vested in the board under other laws of this state, including, but
7 not limited to, all of the following powers:

8 (a) To act by an order issued in the name of the board and
9 signed by the members of the board. The signature of the designee
10 of a member, when the designee is acting for his or her principal,
11 has the same force and effect as the signature of the member.

12 (b) To authorize and make loans; to renegotiate the terms of
13 outstanding loans; and to make, execute, and deliver contracts and
14 other instruments necessary or convenient to the exercise of its
15 powers.

16 (c) To aid, advise, and consult with a municipality with
17 respect to fiscal questions arising from and relating to its
18 proposed or outstanding loans.

19 (d) To promulgate rules under the administrative procedures
20 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that it considers
21 necessary.

22 (e) To examine the books and records of a municipality
23 applying for or receiving a loan under this act for the purpose of
24 ascertaining if the municipality is complying, in relation to a
25 loan under this act, with the requirements of the board, the laws
26 of this state, and the charter, ordinances, and resolutions of the
27 municipality. Additionally, for effectuating this purpose, the

1 board may require sworn statements from any officer or employee of
2 the municipality and may require the municipality to furnish a
3 statement of its financial condition. The board has full power, in
4 furtherance of its investigations, to examine witnesses on oath, to
5 compel the attendance of witnesses, to compel the giving of
6 testimony, and to compel the production of books, papers, and
7 records. Witnesses may be summoned by the board by its process upon
8 the payment of the same fees as are allowed to witnesses attending
9 in the circuit court for the county in which a hearing is held. A
10 person duly subpoenaed under this section who fails to attend or
11 testify at the place named in the subpoena served for that purpose
12 is guilty of a misdemeanor.

13 (f) To serve notice upon a municipality of an order relating
14 to the municipality issued by the board. A municipality has prima
15 facie notice of and is bound by an order of the board if notice has
16 been served upon it by registered mail addressed to any officer of
17 the municipality upon whom legal process may be served.

18 (g) To enforce compliance with its orders; with the terms of
19 outstanding loans; with any provision of this act; or, in relation
20 to a loan under this act, with any law of this state or with the
21 charter, ordinances, or resolutions of a municipality that received
22 a loan under this act. As 1 method to enforce compliance, the board
23 may institute appropriate proceedings in the courts of this state,
24 including proceedings for writs of mandamus and injunctions.

25 (h) To subject a loan to the terms and conditions the board
26 considers necessary to ensure compliance with the uniform budgeting
27 and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and to

1 ensure timely repayment of the loan, including, but not limited to,
2 requiring the direct assignment for repayment of a loan of any
3 state money appropriated to the municipality or, for a municipality
4 that is a school district, other revenue or money that may be
5 pledged by a school district under section 1211 of the revised
6 school code, 1976 PA 451, MCL 380.1211, or other law. For a loan
7 entered into after ~~the effective date of the amendatory act that~~
8 ~~added this sentence,~~ **JULY 7, 2015**, if a municipality does not make
9 any scheduled repayment on a loan, the department of treasury shall
10 require the direct assignment for repayment of the loan, in the
11 amount equal to the minimum of the interest due on the loan and up
12 to 5% of the loan, from any state money appropriated to the
13 municipality or, for a municipality that is a school district,
14 other revenue or money that may be pledged by a school district
15 under section 1211 of the revised school code, 1976 PA 451, MCL
16 380.1211, or other law.

17 (i) To provide loan terms specifying conditions and events of
18 default and remedies available upon default by a municipality.

19 (j) To impose loan terms upon the disbursement of a loan
20 authorized to be made under section 3(2)(b) or (3).

21 (3) The board shall review each application for a loan from a
22 municipality to determine if the municipality satisfies the
23 requirements of this act. Except for loans authorized under section
24 3(2) or (3), upon determining those applications that satisfy the
25 application eligibility requirements of section 4, ~~and, for~~
26 ~~subsequent annual loans, section 8,~~ the board may authorize an
27 annual loan to 1 or more of those eligible applicants upon

1 declaring that a local fiscal emergency exists in the municipality.
2 For loans authorized under section 3(2) or (3), the board may
3 authorize a loan upon determining that the municipality has
4 satisfied the requirements of this act applicable to loans under
5 section 3(2) or (3).

6 (4) All actions of the board shall be approved by all members
7 of the board. All meetings of the board shall be conducted at a
8 public meeting held in compliance with the open meetings act, 1976
9 PA 267, MCL 15.261 to 15.275.

10 (5) Subject to the requirements of this act, the board has the
11 sole authority to determine all of the following:

12 (a) The amount of a loan.

13 (b) The rate or rates of interest on a loan.

14 (c) Any other condition related to a loan including, but not
15 limited to, requiring that the proceeds of a loan be used for
16 specified purposes.

17 (6) The department of treasury shall provide staff services to
18 the board to carry out this act.

19 (7) A municipality may do 1 or more of the following:

20 (a) Borrow money under this act, and issue evidences of
21 indebtedness for repayment of obligations, including, but not
22 limited to, money advanced or previously advanced to a school
23 district or approved or previously approved for advancement to a
24 school district under section 15(2) of the state school aid act of
25 1979, 1979 PA 94, MCL 388.1615, or money borrowed by the school
26 district under section 1225 of the revised school code, 1976 PA
27 451, MCL 380.1225.

1 (b) Enter into a loan agreement with the board.

2 (c) Issue its notes evidencing the loan.

3 (d) Assign and convey any revenues allocated to it for
4 repayment of the loan.

5 (e) Take any other action necessary to receive, secure, or
6 repay a loan under this act.

7 Sec. 3. (1) ~~For state fiscal years ending before October 1,~~
8 ~~2011, the~~ **THE** board may authorize loans under this act to
9 municipalities ~~that total up to \$5,000,000.00 in a state fiscal~~
10 ~~year. For state fiscal years beginning after September 30, 2018,~~
11 ~~the board may authorize loans under this act to municipalities that~~
12 ~~total up to \$10,000,000.00 in a state fiscal year, but a loan to a~~
13 ~~single municipality shall not exceed \$4,000,000.00 in a state~~
14 ~~fiscal year. For the period beginning on October 1, 2011 and ending~~
15 ~~on September 30, 2018, the board may do all of the following:~~

16 ~~—— (a) Authorize loans to municipalities other than school~~
17 ~~districts that total up to \$48,000,000.00 during the period. Loans~~
18 ~~to a single municipality under this subdivision shall not total~~
19 ~~more than \$20,000,000.00.~~

20 ~~—— (b) Authorize loans to municipalities that are school~~
21 ~~districts that total up to \$70,000,000.00 during the period. Loans~~
22 ~~to a single school district under this subdivision shall not total~~
23 ~~more than \$20,000,000.00. The board shall not authorize a loan to a~~
24 ~~school district organized as a school district of the first class~~
25 ~~under part 6 of the revised school code, 1976 PA 451, MCL 380.401~~
26 ~~to 380.485.~~ **IF THE STATE TREASURER DETERMINES THAT THE AMOUNT OF THE**
27 **LOAN, WHEN COMBINED WITH THE OUTSTANDING PRINCIPAL OF OTHER LOANS**

1 AUTHORIZED BY THE BOARD UNDER THIS SUBSECTION, WOULD NOT EXCEED THE
2 LOAN CAPACITY OF THIS STATE.

3 (2) The board may authorize loans under this act to a county
4 within the following limitations:

5 (a) In the 1998-99 state fiscal year, the board may authorize
6 loans under this act to a county with a population greater than
7 1,500,000.

8 (b) For a state fiscal year in which the block grant
9 appropriated to a county with a population of more than 1,500,000
10 that is organized under 1966 PA 293, MCL 45.501 to 45.521, and that
11 is a county juvenile agency is less than the amount required to be
12 distributed to that county in that year under the social welfare
13 act, 1939 PA 280, MCL 400.1 to 400.119b, the board may authorize a
14 loan to that county in an amount not greater than the difference
15 between the amount of the block grant and the amount required to be
16 distributed to that county for that fiscal year under the social
17 welfare act, 1939 PA 280, MCL 400.1 to 400.119b. The board is not
18 required to authorize loans under this subdivision to a county for
19 more than 1 state fiscal year.

20 (3) If in a state fiscal year the block grant appropriated to
21 a county other than a county described in subsection (2) that is a
22 county juvenile agency is less than the amount required to be
23 distributed to that county in that year under the social welfare
24 act, 1939 PA 280, MCL 400.1 to 400.119b, the board may authorize a
25 loan to that county in an amount not greater than the difference
26 between the amount of the block grant and the amount required to be
27 distributed to that county under the social welfare act, 1939 PA

1 280, MCL 400.1 to 400.119b, in that state fiscal year.

2 (4) Sections 6(2) ~~, AND 7 , and 8~~ and the conditions listed in
3 section 4(1) do not apply to a loan authorized under subsection (2)
4 or (3).

5 (5) The proceeds of a loan made under subsection (2) or (3)
6 shall be maintained in a separate account and shall not be
7 commingled with the county's general fund or any other special fund
8 or account.

9 (6) The state treasurer or his or her designee shall monitor
10 the expenditure of the proceeds of any loan made under subsection
11 (2) or (3).

12 (7) The proceeds of a loan made under subsection (2) or (3)
13 are subject to the county juvenile agency act, 1998 PA 518, MCL
14 45.621 to 45.631.

15 (8) Except as otherwise provided in this subsection, revenue
16 for loans made under this act shall be provided from the surplus
17 funds of this state under authorization granted under section 1 of
18 1855 PA 105, MCL 21.141, **OR FROM THE REPAYMENT PROCEEDS OF OTHER**
19 **LOANS ISSUED UNDER THIS ACT OR SOLD OR TRANSFERRED UNDER SECTION**
20 **6A.** Alternatively, for a school district, revenue for a loan made
21 under this act may be provided from money advanced to the school
22 district by this state from money appropriated from the state
23 school aid fund established under section 11 of article IX of the
24 state constitution of 1963 and payable to the school district under
25 the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to
26 388.1896.

27 (9) After September 30, 2012, the board may restructure

1 payments, but not the outstanding principal balance or interest, on
2 a loan to a municipality under subsection (1) if all of the
3 following apply:

4 (a) The municipality is in compliance with the terms of the
5 loan and any other requirements applicable to the municipality
6 under this act.

7 (b) The municipality is in compliance with any requirements
8 relating to a deficit elimination plan under state law.

9 (c) The municipality is in compliance with any applicable

10 **NEUTRAL EVALUATION PROCESS, SETTLEMENT AGREEMENT**, consent
11 agreement, or order of an emergency manager under the local
12 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
13 141.1575, or a successor statute.

14 (d) For a municipality that is a school district, the school
15 district is in compliance with all requirements for receipt of the
16 foundation allowance and any other requirements applicable to the
17 school district under the state school aid act of 1979, 1979 PA 94,
18 MCL 388.1601 to 388.1896.

19 (e) For a municipality other than a school district, the
20 municipality is in compliance with ~~all conditions for economic~~
21 ~~vitality incentive program money or~~ statutory revenue sharing or
22 other requirements applicable to the municipality under the Glenn
23 Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.901
24 to 141.921.

25 (f) The restructuring of payments complies with applicable
26 law.

27 (g) The loan has not been sold or transferred under section

1 6a.

2 (10) As used in this section, "county juvenile agency" means
3 that term as defined in section 2 of the county juvenile agency
4 act, 1998 PA 518, MCL 45.622.

5 Sec. 4. (1) If the governing body of a municipality desires to
6 request a loan, it shall provide by resolution for the submission
7 of an application to the board for a loan made under this act. The
8 municipality shall certify and substantiate all of the following
9 information and conditions to be eligible for consideration for a
10 loan authorization by the board:

11 (a) A deficit for the municipality's general fund is projected
12 for the current fiscal year.

13 (b) That 1 or both of the following have occurred within the
14 18 months immediately preceding the loan request:

15 (i) The municipality has issued tax anticipation notes or
16 revenue sharing notes under the revised municipal finance act, 2001
17 PA 34, MCL 141.2101 to 141.2821, or for a school district, issued
18 notes under section 1225 **OR 1356** of the revised school code, 1976
19 PA 451, MCL 380.1225 **AND 380.1356**.

20 (ii) The department of treasury has acted upon a request by
21 the municipality to issue tax anticipation notes or revenue sharing
22 notes under the revised municipal finance act, 2001 PA 34, MCL
23 141.2101 to 141.2821.

24 (c) The municipality meets 1 or more of the following
25 conditions:

26 (i) Its income tax revenue growth rate is .90 or less, or the
27 municipality has 2 or more emergency loans outstanding at the time

1 its application is submitted and its income tax revenue growth rate
2 is 1.3 or less.

3 (ii) Its local tax base growth rate is 75% or less of the
4 statewide tax base growth rate.

5 (iii) The state equalized valuation of real and personal
6 property within the municipality at the time the loan application
7 is made is less than the state equalized valuation of real and
8 personal property within the municipality in the immediately
9 preceding year.

10 (iv) The municipality is levying the maximum number of mills
11 it is authorized to levy as approved by the voters and has either
12 of the following:

13 (A) One or more delinquent special assessments.

14 (B) Outstanding bonds, notes, or other evidences of
15 indebtedness that were issued in anticipation of a contract
16 obligation with, or an assessment obligation against, another
17 municipality that has 1 or more delinquent special assessments that
18 were levied to satisfy, in whole or in part, the contract or
19 assessment obligation.

20 (v) For a school district, the department of treasury
21 determines that 1 or more of the following apply:

22 (A) The school district's membership under section 6 of the
23 state school aid act of 1979, 1979 PA 94, MCL 388.1606, at the time
24 the loan application is made has declined over the preceding 3-
25 state-fiscal-year period by a total of 15% or more.

26 (B) The loan will assist the school district in resolving a
27 financial emergency or fiscal stress within the school district.

1 (vi) The municipality is in receivership, **IS IN THE NEUTRAL**
2 **EVALUATION PROCESS**, or is subject to a consent agreement under the
3 local financial stability and choice act, 2012 PA 436, MCL 141.1541
4 to 141.1575, or a successor statute, and loan authorization by the
5 board is necessary to implement a financial and operating plan, a
6 consent agreement, **A SETTLEMENT AGREEMENT**, or a continuing
7 operations plan or recovery plan for the municipality under the
8 local financial stability and choice act, 2012 PA 436, MCL 141.1541
9 to 141.1575, or a successor statute.

10 (d) The municipality submits a 5-year plan, that has been
11 approved by the governing body of the municipality, and that will
12 balance future expenditures with anticipated revenues.

13 (2) If the board determines it necessary, the board may
14 inspect, copy, or audit the books and records of a municipality.

15 (3) Subsection (1) does not apply to a loan authorized under
16 section 3(2) or (3).

17 Sec. 6. (1) A loan made under this act shall bear an annual
18 rate or rates of interest, if any, as established by the board
19 under section 2(5). The board may establish interest for a loan
20 under this act either at a rate or rates that are fixed for the
21 term of the loan or, if the formula is approved by the board at the
22 time the loan is made or renegotiated as authorized in section 2,
23 at a rate calculated upon a formula that varies the rate annually.
24 The board may provide that the interest rate or rates for a loan
25 under this act may adjust to an interest rate or rates determined
26 at the time of the sale or transfer by the state treasurer to be
27 sufficient to facilitate the sale of the loans under section 6a.

1 Except for loans sold or transferred under section 6a, if the
2 interest rate for a loan under this act is a single fixed rate, the
3 annual rate of interest for the term of a loan shall not be less
4 than the municipal 10-year rate as determined by the state
5 treasurer. The board may consider a higher interest rate based on
6 both the market interest rates and the risk of the municipality
7 requesting the loan. Except for loans sold or transferred under
8 section 6a, if the interest rate for a loan under this section is
9 not a single fixed rate, ~~all~~**BOTH** of the following apply to the
10 loan:

11 (a) The annual rate of interest for the loan shall not be less
12 than 2.5%, but the board may consider a higher interest rate based
13 on both the market interest rates and the risk of the municipality
14 requesting the loan.

15 (b) If the loan includes an interest-only repayment period,
16 the interest-only repayment period shall not be more than 60
17 months.

18 (2) Interest payments are due and payable as determined by the
19 board or the state treasurer under section 6a. Repayment of all of
20 the principal shall be made not more than 30 years from the date of
21 issuance determined by the board or state treasurer under section
22 6a, except as provided in subsection (5). This subsection, ~~sections~~
23 **SECTION 7, and 8,** and the conditions listed in section 4(1) do not
24 apply to a loan authorized under section 3(2) or (3).

25 (3) The loan agreement between the board and a county for a
26 loan authorized under section 3(2) or (3) shall establish the
27 schedule for payment of the principal of and interest on the loan,

1 the nature of the obligation of the county to repay a loan made
2 under this act, and any security for that loan. Payments of
3 principal and interest for a loan authorized by section 3(2) shall
4 be limited to revenues allocated to the county under the health and
5 safety fund act, 1987 PA 264, MCL 141.471 to 141.479, minus those
6 revenues authorized by the board in the loan agreement for use in
7 the payment of other county obligations.

8 (4) Unless other state appropriations to a municipality are
9 pledged or assigned in an amount sufficient for the municipality to
10 make a required principal or interest payment, if the
11 municipality's payment of required principal or interest is
12 delinquent, the state treasurer may withhold the amount of all
13 delinquent payments that are due on a loan issued under this act
14 from state payments to the municipality under the Glenn Steil state
15 revenue sharing act of 1971, 1971 PA 140, MCL 141.901 to 141.921,
16 **OR FROM THE MUNICIPALITY'S PORTION OF THE REVENUE GENERATED BY THE**
17 **LOCAL COMMUNITY STABILIZATION SHARE TAX LEVIED UNDER THE USE TAX**
18 **ACT, 1937 PA 94, MCL 205.91 TO 205.111, AND PAYABLE BY THE**
19 **DEPARTMENT OF TREASURY TO THE LOCAL COMMUNITY STABILIZATION**
20 **AUTHORITY CREATED UNDER THE LOCAL COMMUNITY STABILIZATION AUTHORITY**
21 **ACT, 2014 PA 86, MCL 123.1341 TO 123.1362, FOR DISTRIBUTION TO THE**
22 **MUNICIPALITY OR OTHER GOVERNMENTAL ENTITIES, OR BOTH.**

23 (5) Except for loans sold or transferred under section 6a or
24 as otherwise determined by the board, notwithstanding the payment
25 schedules and methods established by this section or by the terms
26 of a loan agreement, a municipality may initiate repayment of all
27 or part of a loan made under this act at an earlier date or may

1 make repayment in fewer installment payments, or both. The board
2 shall not condition either eligibility for consideration for a loan
3 or the grant of a loan under this act on repayment schedules and
4 terms other than those required by subsections (1), (2), (3), and
5 (4). In addition, failure of a municipality to make repayments
6 under terms or a schedule it has instituted under this subsection
7 does not disqualify the municipality from eligibility for
8 consideration for loans in subsequent fiscal years.

9 (6) A loan issued under this act shall be a general obligation
10 of the municipality except that a loan issued under section 3(2)
11 shall not be a general obligation of the municipality and shall be
12 repaid solely from specific revenues pledged for repayment of the
13 loan.

14 Enacting section 1. Sections 5 and 8 of the emergency
15 municipal loan act, 1980 PA 243, MCL 141.935 and 141.938, are
16 repealed.

17 Enacting section 2. This amendatory act takes effect 90 days
18 after the date it is enacted into law.

19 Enacting section 3. This amendatory act does not take effect
20 unless Senate Bill No. 821

21 of the 98th Legislature is enacted into law.