

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4214

A bill to safeguard and assure the fiscal accountability of units of local government, including school districts; to preserve the capacity of units of local government 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 units of local government and the provision of services by units of local government, including school districts; to provide criteria to be used in determining the financial condition of units of local government, including school districts; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state departments, boards, agencies,

officials, and employees, and officials and employees of units of local government, including school districts; to provide for placing units of local government, including school districts, into receivership; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager; to require the development of financial and operational plans to regulate expenditures, investments, and the provision of services by units of local government, including school districts, in a state of financial stress or financial emergency; to provide for the modification or termination of contracts under certain circumstances; to set forth the conditions for termination of a local government financial emergency; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "local
2 government and school district fiscal accountability act".

3 Sec. 3. The legislature hereby determines that the health,
4 safety, and welfare of the citizens of this state would be
5 materially and adversely affected by the insolvency of local
6 governments and that the fiscal accountability of local governments
7 is vitally necessary to the interests of the citizens of this state
8 to assure the provision of necessary governmental services
9 essential to public health, safety, and welfare. The legislature
10 further determines that it is vitally necessary to protect the
11 credit of this state and its political subdivisions and that it is
12 necessary for the public good and it is a valid public purpose for
13 this state to take action and to assist a local government in a

1 condition of financial stress or financial emergency so as to
2 remedy the stress or emergency by requiring prudent fiscal
3 management and efficient provision of services, permitting the
4 restructuring of contractual obligations, and prescribing the
5 powers and duties of state and local government officials and
6 emergency managers. The legislature, therefore, determines that the
7 authority and powers conferred by this act constitute a necessary
8 program and serve a valid public purpose.

9 Sec. 5. As used in this act:

10 (a) "Chief administrative officer" means any of the following:

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

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

15 (iii) The manager of a township or the manager or superintendent
16 of a charter township, or if the township does not employ a manager
17 or superintendent, the supervisor of the township.

18 (iv) The elected county executive or appointed county manager
19 of a county; or if the county has not adopted the provisions of
20 either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL
21 45.501 to 45.521, the county's chairperson of the county board of
22 commissioners.

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

25 (vi) The superintendent of a school district.

26 (b) "Emergency manager" or "manager" means the emergency
27 manager appointed under section 15. An emergency manager includes

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1 an emergency financial manager appointed under former 1988 PA 101
2 or former 1990 PA 72.

<<(c)>> "Entity" means a partnership, nonprofit or business corporation, limited liability company, labor organization, or any other association, corporation, trust, or other legal entity.

(d) "Financial and operating plan" means a written financial and operating plan for a local government under section 18, including an academic and educational plan for a school district.

3 (e)>> "Local government" means a municipal government or a
4 school district.

5 <<(f)>> "Local inspector" means a certified forensic accountant,
6 certified public accountant, attorney, or similarly credentialed
7 person whose responsibility it is to determine the existence of
8 proper internal and management controls, fraud, criminal activity,
9 or any other accounting or management deficiencies.

10 <<(g)>> "Municipal government" means a city, a village, a
11 township, a charter township, a county, an authority established by
12 law, or a public utility owned by a city, village, township, or
13 county.

14 <<(h)>> "Review team" means a review team designated under section
15 12.

16 <<(i)>> "School board" means the governing body of a school
17 district.

18 <<(j)>> "School district" means a school district as that term is
19 defined in section 6 of the revised school code, 1976 PA 451, MCL
20 380.6, or an intermediate school district as that term is defined
21 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

22 <<(k)>> "State financial authority" means the following:

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

24 (ii) For a school district, the superintendent of public
25 instruction.

26 Sec. 12. (1) The state financial authority of a local
27 government may conduct a preliminary review to determine the

1 existence of a local government financial problem if 1 or more of
2 the following occur:

3 (a) The governing body or the chief administrative officer of
4 a local government requests a preliminary review under this act.
5 The request shall be in writing and shall identify the existing or
6 anticipated financial conditions or events that make the request
7 necessary.

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

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

25 (d) The state financial authority receives written
26 notification that a local government has not timely deposited its
27 minimum obligation payment to the local government pension fund as

1 required by law.

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

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

11 (g) The state financial authority of a local government
12 receives a resolution from either the senate or the house of
13 representatives requesting a preliminary review under this section.

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

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

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

27 (k) The local government fails to timely file an annual

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1 financial report or audit that conforms with the minimum procedures
2 and standards of the state financial authority and is required for
3 local governments under the uniform budgeting and accounting act,
4 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to
5 21.55. In addition, if the local government is a school district,
6 the school district fails to provide an annual financial report or
7 audit that conforms with the minimum procedures and standards of
8 the superintendent of public instruction and is required under the
9 revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and <<
10 >> 1979 PA 94, MCL 388.1601 to 388.1772.

11 (l) A municipal government is delinquent in the distribution of
12 tax revenues, as required by law, that it has collected for another
13 taxing jurisdiction, and that taxing jurisdiction requests a
14 preliminary review.

15 (m) A local government is in breach of its obligations under a
16 deficit elimination plan or an agreement entered into pursuant to a
17 deficit elimination plan.

18 (n) A court has ordered an additional tax levy without the
19 prior approval of the governing body of the local government.

20 (o) A municipal government has ended a fiscal year in a
21 deficit condition as defined in section 21 of the Glenn Steil state
22 revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has
23 failed to comply with the requirements of that section for filing
24 or instituting a financial plan to correct the deficit condition.

25 (p) A school district ended its most recently completed fiscal
26 year with a deficit in 1 or more of its funds and the school
27 district has not submitted a deficit elimination plan to the state

1 financial authority within 30 days after the district's deadline
2 for submission of its annual financial statement.

3 (q) A local government has been assigned a long-term debt
4 rating within or below the BBB category or its equivalent by 1 or
5 more nationally recognized credit rating agencies.

6 (r) The existence of other facts or circumstances that in the
7 state treasurer's sole discretion for a municipal government are
8 indicative of municipal financial stress, or, that in the
9 superintendent of public instruction's sole discretion for a school
10 district are indicative of school district financial stress.

11 (2) If the state financial authority determines that a
12 preliminary review is appropriate under this section, before
13 commencing the preliminary review the state financial authority
14 shall give the local government specific written notification of
15 the review. The preliminary review shall be completed within 30
16 days following its commencement. Elected and appointed officials of
17 a local government shall promptly and fully provide the assistance
18 and information requested by the state financial authority for that
19 local government in conducting the preliminary review.

20 (3) If a finding of probable financial stress is made for a
21 municipal government under subsection (2), the governor shall
22 appoint a review team for that municipal government consisting of
23 the state treasurer or his or her designee, the director of the
24 department of technology, management, and budget or his or her
25 designee, a nominee of the senate majority leader, and a nominee of
26 the speaker of the house of representatives. The governor may
27 appoint other state officials or other persons with relevant

1 professional experience to serve on a review team to undertake a
2 municipal financial management review.

3 (4) If a finding of probable financial stress is made for a
4 school district under subsection (2), the governor shall appoint a
5 review team for that school district consisting of the state
6 treasurer or his or her designee, the superintendent of public
7 instruction or his or her designee, the director of the department
8 of technology, management, and budget or his or her designee, a
9 nominee of the senate majority leader, and a nominee of the speaker
10 of the house of representatives. The governor may appoint other
11 state officials or other persons with relevant professional
12 experience to serve on a review team to undertake a school district
13 financial management review.

14 (5) The department of treasury shall provide staff support to
15 each review team.

16 (6) A review team appointed under former 1988 PA 101 or former
17 1990 PA 72 and serving on the effective date of this act shall
18 continue under this act to fulfill their powers and duties. All
19 proceedings and actions taken by the governor, the state treasurer,
20 or a review team under former 1988 PA 101 or former 1990 PA 72
21 before the effective date of this act are ratified and are
22 enforceable as if the proceedings and actions were taken under this
23 act, and a consent agreement entered into under former 1988 PA 101
24 or former 1990 PA 72 is ratified and is binding and enforceable
25 under this act.

26 Sec. 13. (1) The review team shall have full power in its
27 review to perform all of the following functions:

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1 (a) Examine the books and records of the local government.

2 (b) Utilize the services of other state agencies and
3 employees.

4 (c) Negotiate and sign a consent agreement with the chief
5 administrative officer of the local government. The consent
6 agreement may provide for remedial measures considered necessary to
7 address the local financial problem and provide for the financial
8 stability of the local government and may include either a
9 continuing operations plan or recovery plan as described in section
10 14a. The consent agreement may utilize state financial management
11 and technical assistance as necessary in order to alleviate the
12 local financial problem. The consent agreement shall also provide
13 for periodic financial status reports to the state financial
14 authority. In order for the consent agreement to go into effect, it
15 shall be approved, by resolution, by the governing body of the
16 local government and shall be approved and executed by the state
17 financial authority. A consent agreement shall provide that in the
18 event of a material uncured breach of the consent agreement, the
19 state treasurer<<

20 >> is
21 authorized to place the local government in receivership as
22 provided under section 15.

23 (2) The review team shall meet with the local government as
24 part of its review. At this meeting, the review team shall receive,
25 discuss, and consider information provided by the local government
26 concerning the financial condition of the local government.

27 (3) The review team shall report its findings to the governor,

1 with a copy to the state financial authority, within 60 days
2 following the appointment of the review team under section 12 or
3 earlier if required by the governor. Upon request, the governor may
4 grant one 30-day extension of this 60-day time limit. A copy of the
5 report shall be forwarded by the state treasurer to the chief
6 administrative officer and the governing body of the local
7 government, the speaker of the house of representatives, the senate
8 majority leader, and the superintendent of public instruction if
9 the local government is a school district. The report shall include
10 the existence, or an indication of the likely occurrence, of any of
11 the following:

12 (a) A default in the payment of principal or interest upon
13 bonded obligations, notes, or other municipal securities for which
14 no funds or insufficient funds are on hand and, if required,
15 segregated in a special trust fund.

16 (b) Failure for a period of 30 days or more beyond the due
17 date to transfer 1 or more of the following to the appropriate
18 agency:

19 (i) Taxes withheld on the income of employees.

20 (ii) For a municipal government, taxes collected by the
21 municipal government as agent for another governmental unit, school
22 district, or other entity or taxing authority.

23 (iii) Any contribution required by a pension, retirement, or
24 benefit plan.

25 (c) Failure for a period of 7 days or more after the scheduled
26 date of payment to pay wages and salaries or other compensation
27 owed to employees or benefits owed to retirees.

1 (d) The total amount of accounts payable for the current
2 fiscal year, as determined by the state financial authority's
3 uniform chart of accounts, is in excess of 10% of the total
4 expenditures of the local government in that fiscal year.

5 (e) Failure to eliminate an existing deficit in any fund of
6 the local government within the 2-year period preceding the end of
7 the local government's fiscal year during which the review team
8 report is received.

9 (f) Projection of a deficit in the general fund of the local
10 government for the current fiscal year in excess of 5% of the
11 budgeted revenues for the general fund.

12 (g) Failure to comply in all material respects with the terms
13 of an approved deficit elimination plan or an agreement entered
14 into pursuant to a deficit elimination plan.

15 (h) Existence of material loans to the general fund from other
16 local government funds that are not regularly settled between the
17 funds or that are increasing in scope.

18 (i) Existence after the close of the fiscal year of material
19 recurring unbudgeted subsidies from the general fund to other major
20 funds as defined under government accounting standards board
21 principles.

22 (j) Existence of a structural operating deficit.

23 (k) Use of restricted revenues for purposes not authorized by
24 law.

25 (l) Any other facts and circumstances indicative of local
26 government financial stress or financial emergency.

27 (4) The review team shall include 1 of the following

1 conclusions in its report:

2 (a) The local government is not in financial stress or is in a
3 condition of mild financial stress as provided in section 14.

4 (b) The local government is in a condition of severe financial
5 stress as provided in section 14, but a consent agreement
6 containing a plan to resolve the problem has been adopted pursuant
7 to subsection (1)(c).

8 (c) The local government is in a condition of severe financial
9 stress as provided in section 14, and a consent agreement has not
10 been adopted pursuant to subsection (1)(c).

11 (d) A financial emergency exists as provided in section 14 and
12 no satisfactory plan exists to resolve the emergency.

13 (5) The review team may, with the approval of the state
14 financial authority, appoint an individual or firm to carry out the
15 review and submit a report to the review team for approval. The
16 department of treasury may enter into a contract with the
17 individual or firm respecting the terms and conditions of the
18 appointment.

19 Sec. 14. (1) For purposes of this act, a local government is
20 considered to be in a condition of no financial stress or mild
21 financial stress if the report required in section 13 concludes
22 that none of the factors in section 13(3) exist or are likely to
23 occur within the current or next succeeding fiscal year or, if they
24 occur, do not threaten the local government's capability to provide
25 necessary governmental services essential to public health, safety,
26 and welfare.

27 (2) For purposes of this act, a local government is considered

1 to be in a condition of severe financial stress if either of the
2 following occurs:

3 (a) The report required in section 13 concludes that 1 or more
4 of the factors in section 13(3) exist or are likely to occur within
5 the current or next succeeding fiscal year and, if left
6 unaddressed, may threaten the local government's future capability
7 to provide necessary governmental services essential to the public
8 health, safety, and welfare.

9 (b) The chief administrative officer of the local government
10 recommends that the local government be considered in severe
11 financial stress.

12 (3) For purposes of this act, a local government is considered
13 to be in a condition of financial emergency if any of the following
14 occur:

15 (a) The report required in section 13 concludes that 2 or more
16 of the factors in section 13(3) exist or are likely to occur within
17 the current fiscal year and threaten the local government's current
18 and future capability to provide necessary governmental services
19 essential to the public health, safety, and welfare.

20 (b) The local government has failed to provide timely and
21 accurate information enabling the review team to complete its
22 report under section 13.

23 (c) The local government has failed to comply in all material
24 respects with a continuing operations plan or recovery plan, as
25 provided in section 14a, or with the terms of an approved deficit
26 elimination plan or an agreement entered into pursuant to a deficit
27 elimination plan.

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1 (d) The local government is in material breach of a consent
2 agreement entered into under section 13(1)(c).

3 (e) The local government is in a condition of severe financial
4 stress as provided in subsection (2), and a consent agreement has
5 not been adopted pursuant to section 13(1)(c).

6 (f) The chief administrative officer of the local government,
7 based upon the existence or likely occurrence of 1 or more of the
8 factors in section 13(3), recommends that a financial emergency be
9 declared and the state treasurer<<

10

11 >> concurs with the recommendation.

12 Sec. 14a. (1) A consent agreement as provided in section
13 13(1)(c) may require a continuing operations plan or a recovery
14 plan if required by the state financial authority.

15 (2) If the state treasurer<<

16

17 >> requires that a consent agreement include a
18 continuing operations plan, the local government shall prepare and
19 file the continuing operations plan with the state <<treasurer

20 >> as provided for in the consent agreement. The state
21 financial authority shall approve or reject the initial continuing
22 operations plan within 14 days of receiving it from the local
23 government. If a plan is rejected, the local government shall
24 refile an amended plan within 30 days of the rejection addressing
25 any concerns raised by the state financial authority. If the
26 amended plan is rejected, then the local government is considered
27 to be in material breach of the consent agreement. The local

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1 government is required to file annual updates to its continuing
2 operations plan. The annual updates shall be included with the
3 annual filing of the local government's audit report with the state
4 financial authority as long as the continuing operations plan
5 remains in effect.

6 (3) The continuing operations plan shall be in a form
7 prescribed by the state financial authority, but shall, at a
8 minimum, include all of the following:

9 (a) A detailed projected budget of revenues and expenditures
10 over not less than 3 fiscal years which demonstrates that the local
11 government's expenditures will not exceed its revenues and that any
12 existing deficits will be eliminated during the projected budget
13 period.

14 (b) A cash flow projection for the budget period.

15 (c) An operating plan for the budget period that assures
16 <<fiscal accountability>> for the local government.

17 (d) A plan showing reasonable and necessary maintenance and
18 capital expenditures so as to assure the local government's
19 <<fiscal accountability>>.

20 (e) An evaluation of the costs associated with pension and
21 postemployment health care obligations for which the local
22 government is responsible and a plan for how those costs will be
23 addressed within the budget period.

24 (f) A provision for submitting quarterly compliance reports to
25 the state financial authority demonstrating compliance with the
26 continuing operations plan.

27 (4) If a continuing operations plan is approved for a

1 municipal government, the municipal government shall amend the
2 budget and general appropriations ordinance adopted by the
3 municipal government under the uniform budgeting and accounting
4 act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or
5 advisable to give full effect to the continuing operations plan. If
6 a continuing operations plan is approved for a school district, the
7 school district shall amend the budget adopted by the school
8 district under the uniform budgeting and accounting act, 1968 PA 2,
9 MCL 141.421 to 141.440a, to the extent necessary or advisable to
10 give full effect to the continuing operations plan. The chief
11 administrative officer, the chief financial officer, the governing
12 body, and other officials of the local government shall take and
13 direct such actions as may be necessary or advisable to maintain
14 the local government's operations in compliance with the continuing
15 operations plan.

16 (5) If the state financial authority requires that a consent
17 agreement include a recovery plan, the state financial authority
18 shall develop and adopt, in consultation with the review team if
19 desired by the state financial authority, a recovery plan. If a
20 recovery plan is developed and adopted for the local government,
21 the local government thereafter is required to file annual updates
22 to its recovery plan. The annual updates shall be included with the
23 annual filing of the local government's audit report with the state
24 financial authority as long as the recovery plan remains in effect.

25 (6) A recovery plan may include terms and provisions as may be
26 approved in the discretion of the state treasurer, including, but
27 not limited to, any 1 or more of the following:

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1 (a) A detailed projected budget of revenues and expenditures
2 over not less than 3 fiscal years which demonstrates that the local
3 government's expenditures will not exceed its revenues and that any
4 existing deficits will be eliminated during the projected budget
5 period.

6 (b) A cash flow projection for the budget period.

7 (c) An operating plan for the budget period that assures
8 <<fiscal accountability>> for the local government.

9 (d) A plan showing reasonable and necessary maintenance and
10 capital expenditures so as to assure the local government's
11 <<fiscal accountability>>.

12 (e) An evaluation of costs associated with pension and
13 postemployment health care obligations for which the local
14 government is responsible and a plan for how those costs will be
15 addressed to assure that current obligations are met and that steps
16 are taken to reduce future unfunded obligations.

17 (f) Procedures for cash control and cash management,
18 including, but not limited to, procedures for timely collection,
19 securing, depositing, balancing, and expending of cash, and may
20 include the designation of appropriate fiduciaries.

21 (g) A provision for submitting quarterly compliance reports to
22 the state financial authority and the chief administrative officer
23 of the local government that demonstrates compliance with the
24 recovery plan.

25 (7) The recovery plan may include the appointment of a local
26 auditor or local inspector, or both, in accordance with section
27 19(1)(p).

1 (8) If a recovery plan is developed and adopted by the state
2 financial authority for a local government, the recovery plan shall
3 supersede the budget and general appropriations ordinance adopted
4 by the local government under the uniform budgeting and accounting
5 act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general
6 appropriations ordinance is considered amended to the extent
7 necessary or advisable to give full effect to the recovery plan. In
8 the event of any inconsistency between the recovery plan and the
9 budget or general appropriations ordinance, the recovery plan shall
10 control. The chief administrative officer, the chief financial
11 officer, the governing body, and other officers of the local
12 government shall take and direct actions as may be necessary or
13 advisable to bring and maintain the local government's operations
14 in compliance with the recovery plan.

15 (9) Except as otherwise provided in this subsection, the
16 consent agreement may include a grant to the chief administrative
17 officer, the chief financial officer, the governing body, or other
18 officers of the local government by the state treasurer of 1 or
19 more of the powers prescribed for emergency managers in section 19
20 for such periods and upon such terms and conditions as the state
21 treasurer considers necessary or convenient, in the state
22 treasurer's discretion to enable the local government to achieve
23 the goals and objectives of the consent agreement. However, the
24 consent agreement shall not include a grant to the chief
25 administrative officer, the chief financial officer, the governing
26 body, or other officers of the local government of the powers
27 prescribed for emergency managers in section 19(1)(k).

1 (10) Unless the state treasurer determines otherwise,
2 beginning 30 days after the date a local government enters into a
3 consent agreement under this act, that local government is not
4 subject to section 15(1) of 1947 PA 336, MCL 423.215, for the
5 remaining term of the consent agreement.

6 (11) The consent agreement may provide for the required
7 retention by the local government of a consultant for the purpose
8 of assisting the local government to achieve the goals and
9 objectives of the consent agreement.

10 (12) A local government is released from the requirements
11 under this section upon compliance with the consent agreement as
12 determined by the state financial authority.

13 Sec. 15. (1) Within 10 days after receipt of the report
14 provided for in section 13, the governor shall make 1 of the
15 following determinations:

16 (a) The local government is not in a condition of severe
17 financial stress.

18 (b) The local government is in a condition of severe financial
19 stress as provided in section 14, but a consent agreement
20 containing a plan to resolve the financial stress has been adopted
21 under this act.

22 (c) A local government financial emergency exists
23 as provided in section 14 and no satisfactory plan exists to
24 resolve the emergency.

25 (d) The local government entered into a consent agreement
26 containing a continuing operations plan or recovery plan to resolve
27 a financial problem, but materially breached that consent

1 agreement.

2 (2) If the governor determines pursuant to subsection (1) that
3 a financial emergency exists, the governor shall provide the
4 governing body and chief administrative officer of the local
5 government with a written notification of the determination,
6 findings of fact utilized as the basis upon which this
7 determination was made, a concise and explicit statement of the
8 underlying facts supporting the factual findings, and notice that
9 the chief administrative officer or the governing body of the local
10 government has 7 days after the date of the notification to request
11 a hearing conducted by the state financial authority or the state
12 financial authority's designee. Following the hearing, or if no
13 hearing is requested following the expiration of the deadline by
14 which a hearing may be requested, the governor, in his or her sole
15 discretion based upon the record, shall either confirm or revoke,
16 in writing, the determination of the existence of a financial
17 emergency. If confirmed, the governor shall provide a written
18 report to the governing body and chief administrative officer of
19 the local government of the findings of fact of the continuing or
20 newly developed conditions or events providing a basis for the
21 confirmation of a financial emergency, and a concise and explicit
22 statement of the underlying facts supporting these factual
23 findings.

24 (3) A local government for which a financial emergency
25 determination under this section has been confirmed to exist may,
26 by resolution adopted by a vote of 2/3 of the members of its
27 governing body elected and serving, appeal this determination

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1 within 10 business days to the Ingham county circuit court. The
2 court shall not set aside a determination of financial emergency by
3 the governor unless it finds that the determination is either of
4 the following:

5 (a) Not supported by competent, material, and substantial
6 evidence on the whole record.

7 (b) Arbitrary, capricious, or clearly an abuse or unwarranted
8 exercise of discretion.

9 (4) Upon the confirmation of a finding of a financial
10 emergency, the governor shall declare the local government in
11 receivership and shall appoint an emergency manager to act for and
12 in the place and stead of the governing body and the office of
13 chief administrative officer of the local government. The emergency
14 manager shall have broad powers in receivership to rectify the
15 financial emergency and to <<assure the fiscal accountability of the
16 local government and>> the local government's capacity
17 to provide <<or cause to be provided>> necessary governmental services
18 essential to the public
19 health, safety, and welfare. Upon the declaration of receivership
20 and during the pendency of receivership, the governing body and the
21 chief administrative officer of the local government may not
22 exercise any of the powers of those offices except as may be
23 specifically authorized in writing by the emergency manager and are
24 subject to any conditions required by the emergency manager.

25 (5) All of the following apply to an emergency manager:

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

(b) The emergency manager may but need not be a resident of

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1 the local government.

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

3 (d) Except as otherwise provided in this subdivision, the
4 emergency manager shall serve at the pleasure of the governor. An
5 emergency manager is <<subject to impeachment and conviction by
6 the legislature as if he or she were a civil officer under section 7 of
7 article XI of the state constitution of 1963.

8

9

10 A vacancy in the office of emergency manager
shall be filled in the same manner as the original appointment.>>

11 (e) The emergency manager's compensation and reimbursement for
12 actual and necessary expenses shall be paid by the local government
13 and shall be set forth in a contract approved by the state
14 treasurer. The contract shall be posted on the department of
15 treasury's website within 7 days after the contract is approved by
16 the state treasurer.

17 (6) In addition to staff otherwise authorized by law, an
18 emergency manager shall appoint additional staff and secure
19 professional assistance as the emergency manager considers
20 necessary to fulfill his or her appointment.

21 (7) The emergency manager shall make quarterly reports to the
22 state treasurer with respect to the financial condition of the
23 local government in receivership, with a copy to the superintendent
24 of public instruction if the local government is a school district.

25 (8) The emergency manager shall continue in the capacity of an
26 emergency manager as follows:

27 (a) Until removed by the governor or the legislature as

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1 provided in subsection (5)(d). If an emergency manager is removed
 2 pursuant to this subdivision, the governor shall within 30 days of
 3 the removal appoint a new emergency manager.

4 (b) Until the financial emergency is rectified.

5 (9) A local government shall be removed from receivership when
 6 the financial conditions are corrected in a sustainable fashion as
 7 determined by the state treasurer in accordance with this act.

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

<<Sec. 15a. Notwithstanding section 3(1) of 1968 PA 317, MCL
 15.323, an emergency manager appointed under this act or former 1988 PA
 101 or former 1990 PA 72 is subject to all of the following:

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

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

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

10 Sec. 16. An emergency financial manager appointed under former
 11 1988 PA 101 or former 1990 PA 72, and serving on the effective date
 12 of this act, shall continue under this act to fulfill his or her
 13 powers and duties.

14 Sec. 17. (1) The emergency manager shall issue to the
 15 appropriate local elected and appointed officials and employees,
 16 agents, and contractors of the local government the orders the
 17 manager considers necessary to accomplish the purposes of this act,
 18 including, but not limited to, orders for the timely and
 19 satisfactory implementation of a financial and operating plan
 20 developed pursuant to section 18, including an academic <<and>>
 21 educational plan for a school district, or to take actions, or
 22 refrain from taking actions, to enable the orderly accomplishment
 23 of the financial and operating plan. An order issued under this
 24 section is binding on the local elected and appointed officials and
 25 employees, agents, and contractors of the local government to whom
 26 it is issued. Local elected and appointed officials and employees,
 27 agents, and contractors of the local government shall take and

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1 direct those actions that are necessary and advisable to maintain
2 compliance with the financial and operating plan.

3 (2) If an order of the emergency manager under subsection (1)
4 is not reasonably carried out and the failure to carry out an order
5 is disrupting the emergency manager's ability to manage the local
6 government, the emergency manager, in addition to other remedies
7 provided in this act, may prohibit the local elected or appointed
8 official or employee, agent, or contractor of the local government
9 from access to the local government's office facilities, electronic
10 mail, and internal information systems.

11 Sec. 18. (1) The emergency manager shall develop and may amend
12 a written financial and operating plan for the local government.
13 The plan shall have the objectives of assuring that the local
14 government is able to provide necessary <<or cause to be provided>>
15 governmental services
16 essential to the public health, safety, and welfare <<
17 >> and <<assuring>> the fiscal accountability of
18 the local government. The financial and operating plan shall
19 provide for all of the following:

20 (a) Conducting all aspects of the operations of the local
21 government within the resources available according to the
22 emergency manager's revenue estimate.

23 (b) The payment in full of the scheduled debt service
24 requirements on all bonds, notes, and municipal securities of the
25 local government and all other uncontested legal obligations.

26 (c) The modification, rejection, termination, and
27 renegotiation of contracts pursuant to section 19.

(d) The timely deposit of required payments to the pension

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1 fund for the local government or in which the local government
2 participates.

3 (e) For school districts, an academic <<and>> educational
4 plan.

5 (f) Any other actions considered necessary by the emergency
6 manager in the emergency manager's discretion to achieve the
7 objectives of the financial and operating plan, alleviate the
8 financial emergency, and remove the local government from
9 receivership.

10 (2) Within 45 days after the emergency manager's appointment,
11 the emergency manager shall submit the financial and operating plan
12 to the state treasurer, with a copy to the superintendent of public
13 instruction if the local government is a school district, and to
14 the chief administrative officer and governing body of the local
15 government. The plan shall be regularly reexamined by the emergency
16 manager and the state treasurer and may be modified from time to
17 time by the emergency manager with notice to the state treasurer.
18 If the emergency manager reduces his or her revenue estimates, the
19 emergency manager shall modify the plan to conform to the revised
20 revenue estimates.

21 (3) The financial and operating plan shall be in a form as
22 provided by the state treasurer and shall contain that information
23 for each year during which year the plan is in effect that the
24 emergency manager, in consultation with the state financial
25 authority, specifies. The financial and operating plan may serve as
26 a deficit elimination plan otherwise required by law if so approved
27 by the state financial authority.

1 (4) The emergency manager, within 30 days of submitting the
2 financial and operating plan to the state financial authority,
3 shall conduct a public informational meeting on the plan and any
4 modifications to the plan. This subsection does not mean that the
5 emergency manager must receive public approval before he or she
6 implements the plan or any modification of the plan.

7 Sec. 19. (1) An emergency manager may take 1 or more of the
8 following additional actions with respect to a local government
9 which is in receivership, notwithstanding any charter provision to
10 the contrary:

11 (a) Analyze factors and circumstances contributing to the
12 financial emergency of the local government and initiate steps to
13 correct the condition.

14 (b) Amend, revise, approve, or disapprove the budget of the
15 local government, and limit the total amount appropriated or
16 expended.

17 (c) Receive and disburse on behalf of the local government all
18 federal, state, and local funds earmarked for the local government.
19 These funds may include, but are not limited to, funds for specific
20 programs and the retirement of debt.

21 (d) Require and approve or disapprove, or amend or revise a
22 plan for paying all outstanding obligations of the local
23 government.

24 (e) Require and prescribe the form of special reports to be
25 made by the finance officer of the local government to its
26 governing body, the creditors of the local government, the
27 emergency manager, or the public.

1 (f) Examine all records and books of account, and require
2 under the procedures of the uniform budgeting and accounting act,
3 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to
4 21.55, or both, the attendance of witnesses and the production of
5 books, papers, contracts, and other documents relevant to an
6 analysis of the financial condition of the local government.

7 (g) Make, approve, or disapprove any appropriation, contract,
8 expenditure, or loan, the creation of any new position, or the
9 filling of any vacancy in a position by any appointing authority.

10 (h) Review payrolls or other claims against the local
11 government before payment.

12 (i) Notwithstanding any minimum staffing level requirement
13 established by charter or contract, establish and implement
14 staffing levels for the local government.

15 (j) Reject, modify, or terminate 1 or more terms and
16 conditions of an existing contract.

17 (k) After meeting and conferring with the appropriate
18 bargaining representative and, if in the emergency manager's sole
19 discretion and judgment, a prompt and satisfactory resolution is
20 unlikely to be obtained, reject, modify, or terminate 1 or more
21 terms and conditions of an existing collective bargaining
22 agreement. The rejection, modification, or termination of 1 or more
23 terms and conditions of an existing collective bargaining agreement
24 under this subdivision is a legitimate exercise of the state's
25 sovereign powers if the emergency manager and state treasurer
26 determine that all of the following conditions are satisfied:

27 (i) The financial emergency in the local government has created

1 a circumstance in which it is reasonable and necessary for the
2 state to intercede to serve a significant and legitimate public
3 purpose.

4 (ii) Any plan involving the rejection, modification, or
5 termination of 1 or more terms and conditions of an existing
6 collective bargaining agreement is reasonable and necessary to deal
7 with a broad, generalized economic problem.

8 (iii) Any plan involving the rejection, modification, or
9 termination of 1 or more terms and conditions of an existing
10 collective bargaining agreement is directly related to and designed
11 to address the financial emergency for the benefit of the public as
12 a whole.

13 (iv) Any plan involving the rejection, modification, or
14 termination of 1 or more terms and conditions of an existing
15 collective bargaining agreement is temporary and does not target
16 specific classes of employees.

17 (l) Act as sole agent of the local government in collective
18 bargaining with employees or representatives and approve any
19 contract or agreement.

20 (m) If a municipal government's pension fund is not
21 actuarially funded at a level of 80% or more, according to the most
22 recent governmental accounting standards board's applicable
23 standards, at the time the most recent comprehensive annual
24 financial report for the municipal government or its pension fund
25 was due, the emergency manager may remove 1 or more of the serving
26 trustees of the local pension board or, if the state treasurer
27 appoints the emergency manager as the sole trustee of the local

1 pension board, replace all the serving trustees of the local
2 pension board. For the purpose of determining the pension fund
3 level under this subdivision, the valuation shall exclude the net
4 value of pension bonds or evidence of indebtedness. The annual
5 actuarial valuation for the municipal government's pension fund
6 shall use the actuarial accrued liabilities and the actuarial value
7 of assets. If a pension fund uses the aggregate actuarial cost
8 method or a method involving a frozen accrued liability, the
9 retirement system actuary shall use the entry age normal actuarial
10 cost method. If the emergency manager serves as sole trustee of the
11 local pension board, all of the following apply:

12 (i) The emergency manager shall assume and exercise the
13 authority and fiduciary responsibilities of the local pension
14 board, including to the extent applicable, setting and approval of
15 all actuarial assumptions for pension obligations of a municipal
16 government to the local pension fund.

17 (ii) The emergency manager shall fully comply with the public
18 employee retirement system investment act, 1965 PA 314, MCL 38.1132
19 to 38.1140m, and section 24 of article IX of the state constitution
20 of 1963, and any actions taken shall be consistent with the pension
21 fund's qualified plan status under the federal internal revenue
22 code.

23 (iii) The emergency manager shall not make changes to a local
24 pension fund without identifying the changes and the costs and
25 benefits associated with the changes and receiving the state
26 treasurer's approval for the changes. If a change includes the
27 transfer of funds from 1 pension fund to another pension fund, the

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1 valuation of the pension fund receiving the transfer must be
2 actuarially funded at a level of 80% or more, according to the most
3 recent governmental accounting standards board's applicable
4 standards, at the time the most recent comprehensive annual
5 financial report for the municipal government was due.

<<(iv) The emergency manager's assumption and exercise of the
authority and fiduciary responsibilities of the local pension board shall
end not later than the termination of the receivership of the municipal
government as provided in this act.>>

6 (n) Consolidate or eliminate departments of the local
7 government or transfer functions from 1 department to another and
8 appoint, supervise, and, at his or her discretion, remove
9 administrators, including heads of departments other than elected
10 officials.

11 (o) Employ or contract for, at the expense of the local
12 government and with the approval of the state financial authority,
13 auditors and other technical personnel considered necessary to
14 implement this act.

15 (p) Retain 1 or more persons or firms, which may be an
16 individual or firm selected from a list approved by the state
17 treasurer, to perform the duties of a local inspector or a local
18 auditor as described in this subdivision. The duties of a local
19 inspector are to assure integrity, economy, efficiency, and
20 effectiveness in the operations of the local government by
21 conducting meaningful and accurate investigations and forensic
22 audits, and to detect and deter waste, fraud, and abuse. At least
23 annually, a report of the local inspector shall be submitted to the
24 emergency manager, the state treasurer, and the superintendent of
25 public instruction if the local government is a school district.
26 The duties of a local auditor are to assure that internal controls
27 over local government operations are designed and operating

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1 effectively to mitigate risks that hamper the achievement of the
2 emergency manager's financial plan, assure that local government
3 operations are effective and efficient, assure that financial
4 information is accurate, reliable, and timely, comply with
5 policies, regulations, and applicable laws, and assure assets are
6 properly <<managed>>. At least annually, a report of the local
7 auditor shall be submitted to the emergency manager, the state
8 treasurer, and the superintendent of public instruction if the
9 local government is a school district.

10 (q) An emergency manager may initiate court proceedings in
11 Ingham county circuit court in the name of the local government to
12 enforce compliance with any of his or her orders or any
13 constitutional or legislative mandates, or to restrain violations
14 of any constitutional or legislative power of his or her orders.
15 <<(r) If provided in the financial and operating plan, or
16 otherwise with the prior written approval of the governor or his or
17 her designee, sell, lease, convey, assign, or otherwise use or transfer
18 the assets, liabilities, functions, or responsibilities of the local
19 government, provided the use or transfer of assets, liabilities,
20 functions, or responsibilities for this purpose does not endanger the
health, safety, or welfare of residents of the local government or
unconstitutionally impair a bond, note, security, or uncontested legal
obligation of the local government.>>

21 (s) Apply for a loan from the state on behalf of the local
22 government, subject to the conditions of the emergency municipal
23 loan act, 1980 PA 243, MCL 141.931 to 141.942, in a sufficient
24 amount to pay the expenses of the emergency manager and for other
25 lawful purposes.

26 (t) Order, as necessary, 1 or more millage elections for the
27 local government consistent with the Michigan election law, 1954 PA

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1 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article
2 IX of the state constitution of 1963, and any other applicable
3 state law. A millage election ordered for a local government
4 pursuant to this subdivision shall only be held at the general
5 November election.

6 (u) Authorize the borrowing of money by the local government
7 as provided by law.

8 (v) Approve or disapprove of the issuance of obligations of
9 the local government on behalf of the local government under this
10 subdivision. An election to approve or disapprove of the issuance
11 of obligations of the local government pursuant to this subdivision
12 shall only be held at the general November election.

13 (w) Enter into agreements with creditors <<or other persons or
14 entities>> for the payment of
15 existing debts, including the settlement of claims by the
16 creditors.

17 (x) Enter into agreements with creditors <<or other persons or
18 entities>> to restructure debt
19 on terms, at rates of interest, and with security as shall be
20 agreed among the parties, subject to approval by the state
21 treasurer.

22 <<(y) Enter into agreements with other local governments,
23 public bodies, or entities for the provision of services, the joint
24 exercise of powers, or the transfer of functions and responsibilities.>>

25 (z) For municipal governments, enter into agreements with
26 other units of <<municipal>> government to transfer property of the
27 municipal
28 government under 1984 PA 425, MCL 124.21 to 124.30, or as otherwise
29 provided by law, subject to approval by the state treasurer.

30 (aa) Enter into agreements with 1 or more other local

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1 governments <<or public bodies>> for the consolidation of services.

2 (bb) For a city, village, or township, the emergency manager
3 may recommend to the state boundary commission that the municipal
4 government consolidate with 1 or more other municipal governments,
5 if the emergency manager determines that consolidation would
6 materially alleviate the financial emergency of the municipal
7 government and would not materially and adversely affect the
8 financial situation of the government or governments with which the
9 municipal government in receivership is consolidated. Consolidation
10 under this subdivision shall proceed as provided by law.

11 (cc) For municipal governments, with approval of the governor,
12 disincorporate or dissolve the municipal government and assign its
13 assets, debts, and liabilities as provided by law.

14 (dd) Exercise solely, for and on behalf of the local
15 government, all other authority and responsibilities of the chief
16 administrative officer and governing body concerning the adoption,
17 amendment, and enforcement of ordinances or resolutions of the
18 local government as provided in the following acts:

19 (i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

20 (ii) The fourth class city act, 1895 PA 215, MCL 81.1 to
21 113.20.

22 (iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

23 (iv) 1851 PA 156, MCL 46.1 to 46.32.

24 (v) 1966 PA 293, MCL 45.501 to 45.521.

25 (vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

26 (vii) The home rule village act, 1909 PA 278, MCL 78.1 to
27 78.28.

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1 (viii) The revised school code, 1976 PA 451, MCL 380.1 to
2 380.1852.

3 <<(ix) 1979 PA 94, MCL 388.1601 to 388.1772.

4 >>

5 (ee) Take any other action or exercise any power or authority
6 of any officer, employee, department, board, commission, or other
7 similar entity of the local government, whether elected or
8 appointed, relating to the operation of the local government. The
9 power of the emergency manager shall be superior to and supersede
10 the power of any of the foregoing <<officers or>> entities.

11 (ff) Remove, replace, appoint, or confirm the appointments to
12 any <<office,>> board, commission, authority, or other entity which is
<<within or is>> a
13 component unit of the local government.

14 (2) Except as otherwise provided in this act, during the
15 pendency of the receivership, the authority of the chief
16 administrative officer and governing body to exercise power for and
17 on behalf of the local government under law<<, charter, and ordinance>>
shall be
18 suspended <<and vested in the emergency manager>>.

19 (3) Except as otherwise provided in this subsection, any
20 contract involving a cumulative value of \$50,000.00 or more is
21 subject to competitive bidding by an emergency manager. However, if
22 a potential contract involves a cumulative value of \$50,000.00 or
23 more, the emergency manager may submit the potential contract to
24 the state treasurer for review and the state treasurer may
25 authorize that the potential contract is not subject to competitive
26 bidding.

27 (4) An emergency manager appointed for a city or village shall

1 not sell or transfer a public utility furnishing light, heat, or
2 power without the approval of a majority of the electors of the
3 city or village voting thereon, or a greater number if the city or
4 village charter provides, as required by section 25 of article VII
5 of the state constitution of 1963. In addition, an emergency
6 manager appointed for a city or village shall not utilize the
7 assets of a public utility furnishing heat, light, or power, the
8 finances of which are separately maintained and accounted for by
9 the city or village, to satisfy the general obligations of the city
10 or village.

11 Sec. 19a. Immediately upon the local government being placed
12 in receivership under section 15 and during the pendency of the
13 receivership, the salary, wages, or other compensation, including
14 the accrual of postemployment benefits, and other benefits of the
15 chief administrative officer and members of the governing body of
16 the local government shall be eliminated. This section does not
17 authorize the impairment of vested pension benefits. If an
18 emergency manager has reduced, suspended, or eliminated the salary,
19 wages, or other compensation of the chief administrative officer
20 and members of the governing body of a local government before the
21 effective date of this act, the reduction, suspension, or
22 elimination is valid to the same extent had it occurred after the
23 effective date of this act. The emergency manager may restore, in
24 whole or in part, any of the salary, wages, other compensation, or
25 benefits of the chief administrative officer and members of the
26 governing body during the pendency of the receivership, for such
27 time and on such terms as the emergency manager considers

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1 appropriate, to the extent that the manager finds that the
2 restoration of salary, wages, compensation, or benefits is
3 consistent with the financial and operating plan.

4 Sec. 20. In addition to the actions authorized in section 19,
5 an emergency manager for a school district may take 1 or more of
6 the following additional actions with respect to a school district
7 that is in receivership:

8 (a) Negotiate, renegotiate, approve, and enter into contracts
9 on behalf of the school district.

10 (b) Receive and disburse on behalf of the school district all
11 federal, state, and local funds earmarked for the school district.
12 These funds may include, but are not limited to, funds for specific
13 programs and the retirement of debt.

14 (c) Seek approval from the superintendent of public
15 instruction for a reduced class schedule in accordance with
16 administrative rules governing the distribution of state school
17 aid.

18 (d) Sell<<, assign, transfer,>> or otherwise use the assets of the
19 school district to
20 meet past or current obligations <<or assure the fiscal accountability
21 of the school district>>, provided the use<<, assignment, or transfer>>
22 of assets for

23 this purpose does not impair the education of the pupils of the
24 school district. The power under this subdivision includes the
25 closing of schools or other school buildings in the school
26 district.

27 (e) Approve or disapprove of the issuance of obligations of
the school district.

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1 (f)>> Exercise solely, for and on behalf of the school district,
2 all other authority and responsibilities affecting the school
3 district that are prescribed by law to the school board and
4 superintendent of the school district.

5 <<(g)>> Employ or contract for, at the expense of the school
6 district, school administrators considered necessary to implement
7 this act.

8 Sec. 20a. Unless the potential sale and value of an asset is
9 included in the emergency manager's financial and operating plan
10 prepared under section 18, the emergency manager shall not sell an
11 asset of the local government valued at more than \$50,000.00
12 without the state treasurer's approval.

<<Sec. 20b. A provision of an existing collective bargaining
agreement that authorizes the payment of a benefit upon the death of a
police officer or firefighter that occurs in the line of duty shall
not be impaired and is not subject to any provision of this act
authorizing an emergency manager to reject, modify, or terminate 1 or
more terms of an existing collective bargaining agreement.>>

13 Sec. 21. The emergency manager shall, on his or her own or
14 upon the advice of the local inspector if a local inspector has
15 been retained, make a determination as to whether possible criminal
16 conduct contributed to the financial situation resulting in the
17 local government's receivership status. If the emergency manager
18 determines that there is reason to believe that criminal conduct
19 has occurred, the manager shall refer the matter to the attorney
20 general and the local prosecuting attorney for investigation.

21 Sec. 22. (1) An emergency manager appointed under this act
22 shall file with the governor, the senate majority leader, the
23 speaker of the house of representatives, and the clerk of the local
24 government that is in receivership, and shall post on the internet
25 on the website of the local government, a report that contains all
26 of the following:

27 (a) A description of each expenditure made, approved, or

1 disapproved during the reporting period that has a cumulative value
2 of \$5,000.00 or more and the source of the funds.

3 (b) A list of each contract that the emergency manager awarded
4 or approved with a cumulative value of \$5,000.00 or more, the
5 purpose of the contract, and the identity of the contractor.

6 (c) A description of each loan sought, approved, or
7 disapproved during the reporting period that has a cumulative value
8 of \$5,000.00 or more and the proposed use of the funds.

9 (d) A description of any new position created or any vacancy
10 in a position filled by the appointing authority.

11 (e) A description of any position that has been eliminated or
12 from which an employee has been laid off.

13 (f) A copy of the contract with the emergency manager as
14 provided in section 15(5)(e).

15 (g) The salary and benefits of the emergency manager.

16 (h) The financial and operating plan as required under section
17 18.

18 (2) The report required under this section shall be submitted
19 every 3 months, beginning 6 months after the emergency manager's
20 appointment.

21 Sec. 23. (1) If, in the judgment of the emergency manager, no
22 reasonable alternative to rectifying the financial emergency of the
23 local government which is in receivership exists, then the
24 emergency manager may recommend to the governor and the state
25 treasurer that the local government be authorized to proceed under
26 title 11 of the United States Code, 11 USC 101 to 1532. If the
27 governor approves of the recommendation, the governor shall inform

1 the state treasurer and the emergency manager in writing of the
2 decision, with a copy to the superintendent of public instruction
3 if the local government is a school district. Upon receipt of the
4 written approval, the emergency manager is authorized to proceed
5 under title 11 of the United States Code, 11 USC 101 to 1532. This
6 section empowers the local government for which an emergency
7 manager has been appointed to become a debtor under title 11 of the
8 United States Code, 11 USC 101 to 1532, as required by section 109
9 of title 11 of the United States Code, 11 USC 109, and empowers the
10 emergency manager to act exclusively on the local government's
11 behalf in any such case under title 11 of the United States Code,
12 11 USC 101 to 1532.

13 (2) The recommendation to the governor and the state treasurer
14 under subsection (1) shall include 1 of the following:

15 (a) A determination by the emergency manager that no feasible
16 financial plan can be adopted that can satisfactorily rectify the
17 financial emergency of the local government in a timely manner.

18 (b) A determination by the emergency manager that a plan, in
19 effect for at least 180 days, cannot be implemented as written or
20 as it might be amended in a manner that can satisfactorily rectify
21 the financial emergency in a timely manner.

22 (3) The emergency manager shall provide a copy of the
23 recommendation as provided under subsection (1) to the
24 superintendent of public instruction if the local government is a
25 school district.

26 Sec. 24. A local government that is in receivership is
27 considered to be in a condition of financial emergency until the

1 emergency manager declares the financial emergency to be rectified
2 in his or her quarterly report to the state treasurer required
3 under section 15, and is subject to the written concurrence of the
4 state treasurer, and the concurrence of the superintendent of
5 public instruction if the local government is a school district.
6 The declaration shall not be made until the financial conditions
7 have been addressed and rectified.

8 Sec. 25. (1) An emergency manager is immune from liability as
9 provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person
10 employed by an emergency manager is immune from liability as
11 provided in section 7(2) of 1964 PA 170, MCL 691.1407.

12 (2) The attorney general shall defend any civil claim, demand,
13 or lawsuit which challenges any of the following:

14 (a) The validity of this act.

15 (b) The authority of a state official or officer acting under
16 this act.

17 (c) The authority of an emergency manager if the emergency
18 manager is or was acting within the scope of authority for an
19 emergency manager under this act.

20 (3) With respect to any aspect of a receivership under this
21 act, the costs incurred by the attorney general in carrying out the
22 responsibilities of subsection (2) for attorneys, experts, court
23 filing fees, and other reasonable and necessary expenses shall be
24 at the expense of the local government that is subject to that
25 receivership and shall be reimbursed to the attorney general by the
26 local government. The failure of a municipal government that is or
27 was in receivership to remit to the attorney general the costs

1 incurred by the attorney general within 30 days after written
2 notice to the municipal government from the attorney general of the
3 costs is a debt owed to this state and shall be recovered by the
4 state treasurer as provided in section 17a(5) of the Glenn Steil
5 state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The
6 failure of a school district that is or was in receivership to
7 remit to the attorney general the costs incurred by the attorney
8 general within 30 days after written notice to the school district
9 from the attorney general of the costs is a debt owed to this state
10 and shall be recovered by the state treasurer as provided in the
11 state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

12 (4) An emergency manager may procure and maintain, at the
13 expense of the local government for which the emergency manager is
14 appointed, worker's compensation, general liability, professional
15 liability, and motor vehicle insurance for the emergency manager
16 and any employee, agent, appointee, or contractor of the emergency
17 manager as may be provided to elected officials, appointed
18 officials, or employees of the local government. The insurance
19 procured and maintained by an emergency manager may extend to any
20 claim, demand, or lawsuit asserted or costs recovered against the
21 emergency manager and any employee, agent, appointee, or contractor
22 of the emergency manager from the date of appointment of the
23 emergency manager to the expiration of the applicable statute of
24 limitation if the claim, demand, or lawsuit asserted or costs
25 recovered against the emergency manager or any employee, agent,
26 appointee, or contractor of the emergency manager resulted from
27 conduct of the emergency manager or any employee, agent, appointee,

1 or contractor of the emergency manager taken in accordance with this
2 act during the emergency manager's term of service.

3 (5) If, after the date that the service of an emergency
4 manager is concluded, the emergency manager or any employee, agent,
5 appointee, or contractor of the emergency manager is subject to a
6 claim, demand, or lawsuit arising from an action taken during the
7 service of that emergency manager, and not covered by a procured
8 worker's compensation, general liability, professional liability,
9 or motor vehicle insurance, litigation expenses of the emergency
10 manager or any employee, agent, appointee, or contractor of the
11 emergency manager, including attorney fees for civil and criminal
12 proceedings and preparation for reasonably anticipated proceedings,
13 and payments made in settlement of civil proceedings both filed and
14 anticipated, shall be paid out of the funds of the local government
15 that is or was subject to the receivership administered by that
16 emergency manager, provided that the litigation expenses are
17 approved by the state treasurer and that the state treasurer
18 determines that the conduct resulting in actual or threatened legal
19 proceedings that is the basis for the payment is based upon both of
20 the following:

21 (a) The scope of authority of the person or entity seeking the
22 payment.

23 (b) The conduct occurred on behalf of a local government while
24 it was in receivership under this act.

25 (6) The failure of a municipal government to honor and remit
26 the legal expenses of a former emergency manager or any employee,
27 agent, appointee, or contractor of the emergency manager as

1 required by this section is a debt owed to this state and shall be
2 recovered by the state treasurer as provided in section 17a(5) of
3 the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL
4 141.917a. The failure of a school district to honor and remit the
5 legal expenses of a former emergency manager or any employee,
6 agent, appointee, or contractor of the emergency manager as
7 required by this section is a debt owed to this state and shall be
8 recovered by the state treasurer as provide in the state school aid
9 act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

10 Sec. 26. (1) The local elected and appointed officials and
11 employees, agents, and contractors of a local government shall
12 promptly and fully provide the assistance and information necessary
13 and properly requested by the state financial authority, a review
14 team, or the emergency manager in the effectuation of their duties
15 and powers and of the purposes of this act. If the review team or
16 emergency manager believes that a local elected or appointed
17 official or employee, agent, or contractor of the local government
18 is not answering questions accurately or completely or is not
19 furnishing information requested, the review team or emergency
20 manager may issue subpoenas and administer oaths to the local
21 elected or appointed official or employee, agent, or contractor to
22 furnish answers to questions or to furnish documents or records, or
23 both. If the local elected or appointed official or employee,
24 agent, or contractor refuses, the review team or emergency manager
25 may bring an action in the circuit court in which the local
26 government is located or Ingham county circuit court, as determined
27 by the emergency manager, to compel testimony and furnish records

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1 and documents. An action in mandamus may be used to enforce this
2 section.

3 (2) Failure of a local government official to abide by this
4 act shall be considered gross neglect of duty, which the review
5 team or emergency manager may report to the state financial
6 authority and the attorney general. Following review and a hearing
7 with a local government elected official, the state financial
8 authority may recommend to the governor that the governor remove
9 the elected official from office. If the governor removes the
10 elected official from office, the resulting vacancy in office shall
11 be filled as prescribed by law.

12 (3) Subject to section 30(2), a local government placed in
13 receivership under this act is not subject to section 15(1) of 1947
14 PA 336, MCL 423.215, for a period of 5 years from the date the
15 local government is placed in receivership or until the time the
16 receivership is terminated, whichever occurs first.

17 Sec. 27. (1) Before the termination of receivership and the
18 completion of the emergency manager's term, the manager shall adopt
19 and implement a 2-year budget<<, including all contractual and
20 employment agreements,>> for the local government commencing
21 with the termination of receivership. <<
22

23 >>

24 (2) After the completion of the emergency manager's term and
25 the termination of receivership, the governing body of the local
26 government shall not amend <<

27 >> the 2-year budget adopted under

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1 subsection (1) without the approval of the state treasurer, and
2 shall not revise any <<order or>> ordinance implemented by the
emergency manager
3 during his or her term prior to 1 year after the termination of
4 receivership.

5 Sec. 28. This act is not construed to give the emergency
6 manager or the state financial authority the power to impose taxes,
7 over and above those already authorized by law, without the
8 approval at an election of a majority of the qualified electors
9 voting on the question.

10 Sec. 29. The state financial authority is authorized and
11 directed to issue bulletins or adopt rules as necessary to carry
12 out the purposes of this act. A rule adopted under this section
13 shall be adopted in accordance with the administrative procedures
14 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

15 Sec. 30. (1) An emergency financial manager appointed and
16 serving under state law prior to the effective date of this act
17 shall continue under this act as an emergency manager for the local
18 government and shall fulfill his or her duties and responsibilities
19 and exercise all of the powers granted under former 1988 PA 101 or
20 former 1990 PA 72. Except as provided in subsection (2), the
21 provisions of this act shall apply to any local government for
22 which an emergency financial manager is appointed and serving as of
23 the effective date of this act.

24 (2) For a local government for which an emergency financial
25 manager is serving as of the effective date of this act, the
26 provisions of section 26(3) shall not become applicable until 60
27 days after the effective date of this act.

1 Sec. 31. If any portion of this act or the application of this
2 act to any person or circumstances is found to be invalid by a
3 court, the invalidity shall not affect the remaining portions or
4 applications of the act which can be given effect without the
5 invalid portion or application. The provisions of this act are
6 severable.

7 Enacting section 1. The local government fiscal responsibility
8 act, 1990 PA 72, MCL 141.1201 to 141.1291, is repealed.

9 Enacting section 2. This act does not take effect unless
10 Senate Bill No. 158 of the 96th Legislature is enacted into law.