

SENATE BILL NO. 314

May 09, 2019, Introduced by Senator ALEXANDER and referred to the Committee on Government Operations.

A bill to amend 2012 PA 436, entitled "Local financial stability and choice act," by amending sections 12 and 14 (MCL 141.1552 and 141.1554), and by adding sections 12a and 14a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) An emergency manager may take 1 or more of the
2 following additional actions with respect to a local government
3 that is in receivership, notwithstanding any charter provision to
4 the contrary:

1 (a) Analyze factors and circumstances contributing to the
2 financial emergency of the local government and initiate steps to
3 correct the condition.

4 (b) Amend, revise, approve, or disapprove the budget of the
5 local government, and limit the total amount appropriated or
6 expended.

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

11 (d) Require and approve or disapprove, or amend or revise, a
12 plan for paying all outstanding obligations of the local
13 government.

14 (e) Require and prescribe the form of special reports to be
15 made by the finance officer of the local government to its
16 governing body, the creditors of the local government, the
17 emergency manager, or the public.

18 (f) Examine all records and books of account, and require
19 under the procedures of the uniform budgeting and accounting act,
20 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to
21 21.55, or both, the attendance of witnesses and the production of
22 books, papers, contracts, and other documents relevant to an
23 analysis of the financial condition of the local government.

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

27 (h) Review payrolls or other claims against the local
28 government before payment.

29 (i) Notwithstanding any minimum staffing level requirement

1 established by charter or contract, establish and implement
2 staffing levels for the local government.

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

5 (k) Subject to section 19, after meeting and conferring with
6 the appropriate bargaining representative and, if in the emergency
7 manager's sole discretion and judgment, a prompt and satisfactory
8 resolution is unlikely to be obtained, reject, modify, or terminate
9 1 or more terms and conditions of an existing collective bargaining
10 agreement. The rejection, modification, or termination of 1 or more
11 terms and conditions of an existing collective bargaining agreement
12 under this subdivision is a legitimate exercise of the state's
13 sovereign powers if the emergency manager and state treasurer
14 determine that all of the following conditions are satisfied:

15 (i) The financial emergency in the local government has created
16 a circumstance in which it is reasonable and necessary for the
17 state to intercede to serve a significant and legitimate public
18 purpose.

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

23 (iii) Any plan involving the rejection, modification, or
24 termination of 1 or more terms and conditions of an existing
25 collective bargaining agreement is directly related to and designed
26 to address the financial emergency for the benefit of the public as
27 a whole.

28 (iv) Any plan involving the rejection, modification, or
29 termination of 1 or more terms and conditions of an existing

1 collective bargaining agreement is temporary and does not target
2 specific classes of employees.

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

6 (m) If a municipal government's pension fund is not
7 actuarially funded at a level of 80% or more, according to the most
8 recent governmental accounting standards board's applicable
9 standards, at the time the most recent comprehensive annual
10 financial report for the municipal government or its pension fund
11 was due, the emergency manager may remove 1 or more of the serving
12 trustees of the local pension board or, if the state treasurer
13 appoints the emergency manager as the sole trustee of the local
14 pension board, replace all the serving trustees of the local
15 pension board. For the purpose of determining the pension fund
16 level under this subdivision, the valuation ~~shall~~**must** exclude the
17 net value of pension bonds or evidence of indebtedness. The annual
18 actuarial valuation for the municipal government's pension fund
19 ~~shall~~**must** use the actuarial accrued liabilities and the actuarial
20 value of assets. If a pension fund uses the aggregate actuarial
21 cost method or a method involving a frozen accrued liability, the
22 retirement system actuary shall use the entry age normal actuarial
23 cost method. If the emergency manager serves as sole trustee of the
24 local pension board, all of the following apply:

25 (i) The emergency manager shall assume and exercise the
26 authority and fiduciary responsibilities of the local pension board
27 including, to the extent applicable, setting and approval of all
28 actuarial assumptions for pension obligations of a municipal
29 government to the local pension fund.

1 (ii) The emergency manager shall fully comply with the public
 2 employee retirement system investment act, 1965 PA 314, MCL 38.1132
 3 to ~~38.1140m, 38.1141~~, and section 24 of article IX of the state
 4 constitution of 1963, and any actions taken ~~shall~~**must** be
 5 consistent with the pension fund's qualified plan status under the
 6 federal internal revenue code.

7 (iii) The emergency manager shall not make changes to a local
 8 pension fund without identifying the changes and the costs and
 9 benefits associated with the changes and receiving the state
 10 treasurer's approval for the changes. If a change includes the
 11 transfer of funds from 1 pension fund to another pension fund, the
 12 valuation of the pension fund receiving the transfer must be
 13 actuarially funded at a level of 80% or more, according to the most
 14 recent ~~governmental accounting standards board's~~**Governmental**
 15 **Accounting Standards Board's** applicable standards, at the time the
 16 most recent comprehensive annual financial report for the municipal
 17 government was due.

18 (iv) The emergency manager's assumption and exercise of the
 19 authority and fiduciary responsibilities of the local pension board
 20 ~~shall~~**must** end not later than the termination of the receivership
 21 of the municipal government as provided in this act.

22 (n) Consolidate or eliminate departments of the local
 23 government or transfer functions from 1 department to another and
 24 appoint, supervise, and, at his or her discretion, remove
 25 administrators, including heads of departments other than elected
 26 officials.

27 (o) Employ or contract for, at the expense of the local
 28 government and with the approval of the state financial authority,
 29 auditors and other technical personnel considered necessary to

1 implement this act.

2 (p) Retain 1 or more persons or firms, ~~which~~**that** may be an
3 individual or firm selected from a list approved by the state
4 treasurer, to perform the duties of a local inspector or a local
5 auditor as described in this subdivision. The duties of a local
6 inspector are to assure integrity, economy, efficiency, and
7 effectiveness in the operations of the local government by
8 conducting meaningful and accurate investigations and forensic
9 audits, and to detect and deter waste, fraud, and abuse. At least
10 annually, a report of the local inspector ~~shall~~**must** be submitted
11 to the emergency manager, the state treasurer, the superintendent
12 of public instruction if the local government is a school district,
13 and each state senator and state representative who represents that
14 local government. The annual report of the local inspector ~~shall~~
15 **must** be posted on the local government's website within 7 days
16 after the report is submitted. The duties of a local auditor are to
17 assure that internal controls over local government operations are
18 designed and operating effectively to mitigate risks that hamper
19 the achievement of the emergency manager's financial plan, assure
20 that local government operations are effective and efficient,
21 assure that financial information is accurate, reliable, and
22 timely, comply with policies, regulations, and applicable laws, and
23 assure assets are properly managed. At least annually, a report of
24 the local auditor ~~shall~~**must** be submitted to the emergency manager,
25 the state treasurer, the superintendent of public instruction if
26 the local government is a school district, and each state senator
27 and state representative who represents that local government. The
28 annual report of the local auditor ~~shall~~**must** be posted on the
29 local government's website within 7 days after the report is

1 submitted.

2 (q) ~~An emergency manager may initiate~~ **Initiate** court
3 proceedings in the Michigan court of claims or in the circuit court
4 of the county in which the local government is located in the name
5 of the local government to enforce compliance with any of his or
6 her orders or any constitutional or legislative mandates, or to
7 restrain violations of any constitutional or legislative power or
8 his or her orders.

9 (r) Subject to section 19, if provided in the financial and
10 operating plan, or otherwise with the prior written approval of the
11 governor or his or her designee, sell, lease, convey, assign, or
12 otherwise use or transfer the assets, liabilities, functions, or
13 responsibilities of the local government, provided the use or
14 transfer of assets, liabilities, functions, or responsibilities for
15 this purpose does not endanger the health, safety, or welfare of
16 residents of the local government or unconstitutionally impair a
17 bond, note, security, or uncontested legal obligation of the local
18 government.

19 (s) Apply for a loan from the state on behalf of the local
20 government, subject to the conditions of the emergency municipal
21 loan act, 1980 PA 243, MCL 141.931 to 141.942.

22 (t) Order, as necessary, 1 or more millage elections for the
23 local government consistent with the Michigan election law, 1954 PA
24 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article
25 IX of the state constitution of 1963, and any other applicable
26 state law.

27 (u) Subject to section 19, authorize the borrowing of money by
28 the local government as provided by law.

29 (v) ~~Approve~~ **Subject to sections 12a and 14a, approve** or

1 disapprove of ~~the issuance of~~ **issuing** obligations of the local
2 government on behalf of the local government under this
3 subdivision. An election to approve or disapprove of ~~the issuance~~
4 ~~of~~ **issuing** obligations of the local government ~~pursuant to~~ **under**
5 this subdivision ~~shall~~ **must** only be held at the general November
6 election.

7 (w) Enter into agreements with creditors or other persons or
8 entities for the payment of existing debts, including the
9 settlement of claims by the creditors.

10 (x) Enter into agreements with creditors or other persons or
11 entities to restructure debt on terms, at rates of interest, and
12 with security as ~~shall be~~ **is** agreed among the parties, subject to
13 approval by the state treasurer.

14 (y) Enter into agreements with other local governments, public
15 bodies, or entities for the provision of services, the joint
16 exercise of powers, or the transfer of functions and
17 responsibilities.

18 (z) For municipal governments, enter into agreements with
19 other units of municipal government to transfer property of the
20 municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as
21 otherwise provided by law, subject to approval by the state
22 treasurer.

23 (aa) Enter into agreements with 1 or more other local
24 governments or public bodies for the consolidation of services.

25 (bb) For a city, village, or township, the emergency manager
26 may recommend to the state boundary commission that the municipal
27 government consolidate with 1 or more other municipal governments,
28 if the emergency manager determines that consolidation would
29 materially alleviate the financial emergency of the municipal

1 government and would not materially and adversely affect the
2 financial situation of the government or governments with which the
3 municipal government in receivership is consolidated. Consolidation
4 under this subdivision ~~shall~~**must** proceed as provided by law.

5 (cc) For municipal governments, with approval of the governor,
6 disincorporate or dissolve the municipal government and assign its
7 assets, debts, and liabilities as provided by law. The
8 disincorporation or dissolution of the local government is subject
9 to a vote of the electors of that local government if required by
10 law.

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

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

17 (ii) The fourth class city act, 1895 PA 215, MCL 81.1 to
18 113.20.

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

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

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

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

23 (vii) The home rule village act, 1909 PA 278, MCL 78.1 to
24 78.28.

25 (viii) The revised school code, 1976 PA 451, MCL 380.1 to
26 380.1852.

27 (ix) The state school aid act of 1979, 1979 PA 94, MCL 388.1601
28 to ~~388.1896~~**388.1897**.

1 (ee) Take any other action or exercise any power or authority
2 of any officer, employee, department, board, commission, or other
3 similar entity of the local government, whether elected or
4 appointed, relating to the operation of the local government. The
5 power of the emergency manager ~~shall be~~ **is** superior to and
6 ~~supersede~~ **supersedes** the power of any of the foregoing officers or
7 entities.

8 (ff) Remove, replace, appoint, or confirm the appointments to
9 any office, board, commission, authority, or other entity ~~which~~
10 **that** is within or is a component unit of the local government.

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

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

24 (4) An emergency manager appointed for a city or village shall
25 not sell or transfer a public utility furnishing light, heat, or
26 power without the approval of a majority of the electors of the
27 city or village voting thereon, or a greater number if the city or
28 village charter provides, as required by section 25 of article VII
29 of the state constitution of 1963. In addition, an emergency

1 manager appointed for a city or village shall not utilize the
2 assets of a public utility furnishing heat, light, or power, the
3 finances of which are separately maintained and accounted for by
4 the city or village, to satisfy the general obligations of the city
5 or village.

6 **Sec. 12a. (1) If, before the effective date of the amendatory**
7 **act that added this section, an emergency manager appointed for a**
8 **municipal government approves of issuing an obligation as provided**
9 **in section 12(1)(v), upon termination of the receivership this**
10 **state shall pay, assume, or refund the remaining amount of that**
11 **obligation.**

12 **(2) If, on or after the effective date of the amendatory act**
13 **that added this section, an emergency manager appointed for a**
14 **municipal government approves of issuing an obligation as provided**
15 **in section 12(1)(v), that obligation must be issued on behalf of**
16 **and in the name of this state or a department or agency of this**
17 **state.**

18 **Sec. 14. In addition to the actions otherwise authorized in**
19 **this act, an emergency manager for a school district may take 1 or**
20 **more of the following additional actions with respect to a school**
21 **district that is in receivership:**

22 **(a) Negotiate, renegotiate, approve, and enter into contracts**
23 **on behalf of the school district.**

24 **(b) Receive and disburse on behalf of the school district all**
25 **federal, state, and local funds earmarked for the school district.**
26 **These funds may include, but are not limited to, funds for specific**
27 **programs and the retirement of debt.**

28 **(c) Seek approval from the superintendent of public**
29 **instruction for a reduced class schedule in accordance with**

1 administrative rules governing the distribution of state school
2 aid.

3 (d) Subject to section 19, sell, assign, transfer, or
4 otherwise use the assets of the school district to meet past or
5 current obligations or assure the fiscal accountability of the
6 school district, provided the use, assignment, or transfer of
7 assets for this purpose does not impair the education of the pupils
8 of the school district. The power under this subdivision includes
9 the closing of schools or other school buildings in the school
10 district.

11 (e) ~~Approve~~ **Subject to section 14a, approve** or disapprove of
12 ~~the issuance of~~ **issuing** obligations of the school district.

13 (f) Exercise solely, for and on behalf of the school district,
14 all other authority and responsibilities affecting the school
15 district that are prescribed by law to the school board and
16 superintendent of the school district.

17 (g) With the approval of the state treasurer, employ or
18 contract for, at the expense of the school district, school
19 administrators considered necessary to implement this act.

20 **Sec. 14a. (1) If, before the effective date of the amendatory**
21 **act that added this section, an emergency manager appointed for a**
22 **school district approves of issuing an obligation as provided in**
23 **section 14(e), upon termination of the receivership this state**
24 **shall pay, assume, or refund the remaining amount of that**
25 **obligation.**

26 (2) If, on or after the effective date of the amendatory act
27 that added this section, an emergency manager appointed for a
28 school district approves of issuing an obligation as provided in
29 section 14(e), that obligation must be issued on behalf of and in

1 the name of this state or a department or agency of this state.