

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 865

A bill to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to provide criteria to be used in determining the financial condition of local units of government and school districts; to authorize a declaration of the existence of a financial emergency within a local unit of government or school district; to prescribe remedial measures to address a financial emergency within a local unit of

government or school district; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager for a local unit of government or school district; to provide for the modification or termination of contracts under certain circumstances; to provide for the termination of a financial emergency within a local unit of government or school district; to provide a process by which a local unit of government or school district may file for bankruptcy; to prescribe the powers and duties of certain state agencies and officials and officials within local units of government and school districts; to provide for appropriations; 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 financial stability and choice act".

3           Sec. 2. As used in this act:

4           (a) "Chapter 9" means chapter 9 of title 11 of the United  
5 States Code, 11 USC 901 to 946.

6           (b) "Chief administrative officer" means any of the following:

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

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

11           (iii) The manager of a township or the manager or superintendent  
12 of a charter township or, if the township does not employ a manager  
13 or superintendent, the supervisor of the township.

14           (iv) The elected county executive or appointed county manager

1 of a county or, if the county has not adopted the provisions of  
2 either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL  
3 45.501 to 45.521, the county's chairperson of the county board of  
4 commissioners.

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

7 (vi) The superintendent of a school district.

8 (c) "Creditor" means either of the following:

9 (i) An entity that has a noncontingent claim against a local  
10 government that arose at the time of or before the commencement of  
11 the neutral evaluation process and whose claim represents at least  
12 \$5,000,000.00 or comprises more than 5% of the local government's  
13 debt or obligations, whichever is less.

14 (ii) An entity that would have a noncontingent claim against  
15 the local government upon the rejection of an executory contract or  
16 unexpired lease in a chapter 9 case and whose claim would represent  
17 at least \$5,000,000.00 or would comprise more than 5% of the local  
18 government's debt or obligations, whichever is less.

19 (d) "Debtor" means a local government that is authorized to  
20 proceed under chapter 9 by this act and that meets the requirements  
21 of chapter 9.

22 (e) "Emergency manager" means an emergency manager appointed  
23 under section 9. An emergency manager includes an emergency  
24 financial manager appointed under former 1988 PA 101 or former 1990  
25 PA 72 who was acting in that capacity on the effective date of this  
26 act.

27 (f) "Entity" means a partnership, nonprofit or business

1 corporation, limited liability company, labor organization, or any  
2 other association, corporation, trust, or other legal entity.

3 (g) "Financial and operating plan" means a written financial  
4 and operating plan for a local government under section 11,  
5 including an educational plan for a school district.

6 (h) "Good faith" means participation by an interested party or  
7 a local government representative in the neutral evaluation process  
8 with the intent to negotiate a resolution of the issues that are  
9 the subject of the neutral evaluation process, including the timely  
10 provision of complete and accurate information to provide the  
11 relevant participants through the neutral evaluation process with  
12 sufficient information, in a confidential manner, to negotiate the  
13 readjustment of the local government's debt.

14 (i) "Interested party" means a trustee, a committee of  
15 creditors, an affected creditor, an indenture trustee, a pension  
16 fund, a bondholder, a union that under its collective bargaining  
17 agreements has standing to initiate contract negotiations with the  
18 local government, or a representative selected by an association of  
19 retired employees of the public entity who receive income or  
20 benefits from the public entity. A local government may invite  
21 holders of contingent claims to participate as interested parties  
22 in the neutral evaluation process if the local government  
23 determines that the contingency is likely to occur and the claim  
24 may represent at least \$5,000,000.00 or comprise more than 5% of  
25 the local government's debt or obligations, whichever is less.

26 (j) "Local emergency financial assistance loan board" means  
27 the local emergency financial assistance loan board created under

1 section 2 of the emergency municipal loan act, 1980 PA 243, MCL  
2 141.932.

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

5 (l) "Local government representative" means the person or  
6 persons designated by the governing body of the local government  
7 with authority to make recommendations and to attend the neutral  
8 evaluation process on behalf of the governing body of the local  
9 government.

10 (m) "Local inspector" means a certified forensic accountant,  
11 certified public accountant, attorney, or similarly credentialed  
12 person whose responsibility it is to determine the existence of  
13 proper internal and management controls, fraud, criminal activity,  
14 or any other accounting or management deficiencies.

15 (n) "Municipal government" means a city, a village, a  
16 township, a charter township, a county, a department of county  
17 government if the county has an elected county executive under 1966  
18 PA 293, MCL 45.501 to 45.521, an authority established by law, or a  
19 public utility owned by a city, village, township, or county.

20 (o) "Neutral evaluation process" means a form of alternative  
21 dispute resolution or mediation between a local government and  
22 interested parties as provided for in section 25.

23 (p) "Neutral evaluator" means an impartial, unbiased person or  
24 entity, commonly known as a mediator, who assists local governments  
25 and interested parties in reaching their own settlement of issues  
26 under this act, who is not aligned with any party, and who has no  
27 authoritative decision-making power.

1 (q) "Receivership" means the process under this act by which a  
2 financial emergency is addressed through the appointment of an  
3 emergency manager. Receivership does not include chapter 9 or any  
4 provision under federal bankruptcy law.

5 (r) "Review team" means a review team appointed under section  
6 4.

7 (s) "School board" means the governing body of a school  
8 district.

9 (t) "School district" means a school district as that term is  
10 defined in section 6 of the revised school code, 1976 PA 451, MCL  
11 380.6, or an intermediate school district as that term is defined  
12 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

13 (u) "State financial authority" means the following:

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

15 (ii) For a school district, the superintendent of public  
16 instruction.

17 (v) "Strong mayor" means a mayor who has been granted veto  
18 power for any purpose under the charter of that local government.

19 (w) "Strong mayor approval" means approval of a resolution  
20 under 1 of the following conditions:

21 (i) The strong mayor approves the resolution.

22 (ii) The resolution is approved by the governing body with  
23 sufficient votes to override a veto by the strong mayor.

24 (iii) The strong mayor vetoes the resolution and the governing  
25 body overrides the veto.

26 Sec. 3. The legislature finds and declares all of the  
27 following:

1           (a) That the health, safety, and welfare of the citizens of  
2 this state would be materially and adversely affected by the  
3 insolvency of local governments and that the fiscal accountability  
4 of local governments is vitally necessary to the interests of the  
5 citizens of this state to assure the provision of necessary  
6 governmental services essential to public health, safety, and  
7 welfare.

8           (b) That it is vitally necessary to protect the credit of this  
9 state and its political subdivisions and that it is necessary for  
10 the public good and it is a valid public purpose for this state to  
11 take action and to assist a local government in a financial  
12 emergency so as to remedy the financial emergency by requiring  
13 prudent fiscal management and efficient provision of services,  
14 permitting the restructuring of contractual obligations, and  
15 prescribing the powers and duties of state and local government  
16 officials and emergency managers.

17           (c) That the fiscal stability of local governments is  
18 necessary to the health, safety, and welfare of the citizens of  
19 this state and it is a valid public purpose for this state to  
20 assist a local government in a condition of financial emergency by  
21 providing for procedures of alternative dispute resolution between  
22 a local government and its creditors to resolve disputes, to  
23 determine criteria for establishing the existence of a financial  
24 emergency, and to set forth the conditions for a local government  
25 to exercise powers under federal bankruptcy law.

26           (d) That the authority and powers conferred by this act  
27 constitute a necessary program and serve a valid public purpose.

1           Sec. 4. (1) The state financial authority may conduct a  
2 preliminary review to determine the existence of probable financial  
3 stress within a local government if 1 or more of the following  
4 occur:

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

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

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

26           (d) The state financial authority receives written  
27 notification that a local government has not timely deposited its



1 minimum obligation payment to the local government pension fund as  
2 required by law.

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

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

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

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

21 (i) The municipal government has violated the conditions of an  
22 order issued by the local emergency financial assistance loan board  
23 pursuant to the emergency municipal loan act, 1980 PA 243, MCL  
24 141.931 to 141.942.

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

1           (k) The local government fails to timely file an annual  
2 financial report or audit that conforms with the minimum procedures  
3 and standards of the state financial authority and is required for  
4 local governments under the uniform budgeting and accounting act,  
5 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to  
6 21.55.

7           (l) If the local government is a school district, the school  
8 district fails to provide an annual financial report or audit that  
9 conforms with the minimum procedures and standards of the  
10 superintendent of public instruction and is required under the  
11 revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the  
12 state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

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

17           (n) The local government is in breach of its obligations under  
18 a deficit elimination plan or an agreement entered into pursuant to  
19 a deficit elimination plan.

20           (o) A court has ordered an additional tax levy without the  
21 prior approval of the governing body of the local government.

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

27           (q) The school district ended its most recently completed

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 fiscal year with a deficit in 1 or more of its funds and the school  
2 district has not submitted a deficit elimination plan to the state  
3 financial authority within 30 days after the district's deadline  
4 for submission of its annual financial statement.

5 (r) The local government has been assigned a long-term debt  
6 rating within or below the BBB category or its equivalent by 1 or  
7 more nationally recognized credit rating agencies.

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

14 (2) Before commencing the preliminary review under subsection  
15 (1), the state financial authority shall provide the local  
16 government specific written notification that it intends to conduct  
17 a preliminary review. Elected and appointed officials of a local  
18 government shall promptly and fully provide the assistance and  
19 information requested by the state financial authority for that  
20 local government in conducting the preliminary review. The state  
21 financial authority shall provide an interim report of its findings  
22 to the local government within 20 days following the commencement  
23 of the preliminary review. [In addition, a copy of the interim report  
shall be provided to each state senator and state representative who  
represents that local government.] The local government may provide  
24 comments to the state financial authority concerning the interim  
25 report within 5 days after the interim report is provided to the  
26 local government. The state financial authority shall prepare and  
27 provide a final report detailing its preliminary review to the

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 local emergency financial assistance loan board. [In addition, a copy of  
the final report shall be provided to each state senator and state  
representative who represents that local government.] The final report  
2 shall be posted on the department of treasury's website within 7  
3 days after the final report is provided to the local emergency  
4 financial assistance loan board. The preliminary review and final  
5 report by the state financial authority shall be completed within  
6 30 days following commencement of the preliminary review. Within 20  
7 days after receiving the final report from the state financial  
8 authority, the local emergency financial assistance loan board  
9 shall determine if probable financial stress exists for the local  
10 government.

11 (3) If a finding of probable financial stress is made for a  
12 municipal government by the local emergency financial assistance  
13 loan board under subsection (2), the governor shall appoint a  
14 review team for that municipal government consisting of the state  
15 treasurer or his or her designee, the director of the department of  
16 technology, management, and budget or his or her designee, a  
17 nominee of the senate majority leader, and a nominee of the speaker  
18 of the house of representatives. The governor may appoint other  
19 state officials or other persons with relevant professional  
20 experience to serve on a review team to undertake a municipal  
21 financial management review.

22 (4) If a finding of probable financial stress is made for a  
23 school district by the local emergency financial assistance loan  
24 board under subsection (2), the governor shall appoint a review  
25 team for that school district consisting of the state treasurer or  
26 his or her designee, the superintendent of public instruction or  
27 his or her designee, the director of the department of technology,

1 management, and budget or his or her designee, a nominee of the  
2 senate majority leader, and a nominee of the speaker of the house  
3 of representatives. The governor may appoint other state officials  
4 or other persons with relevant professional experience to serve on  
5 a review team to undertake a school district financial management  
6 review.

7 (5) The department of treasury shall provide staff support to  
8 each review team appointed under this section.

9 (6) A review team appointed under former 1988 PA 101 or former  
10 1990 PA 72 and serving immediately prior to the effective date of  
11 this act shall continue under this act to fulfill its powers and  
12 duties. All proceedings and actions taken by the governor, the  
13 state treasurer, the superintendent of public instruction, the  
14 local emergency financial assistance loan board, or a review team  
15 under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72  
16 before the effective date of this act are ratified and are  
17 enforceable as if the proceedings and actions were taken under this  
18 act, and a consent agreement entered into under former 2011 PA 4,  
19 former 1988 PA 101, or former 1990 PA 72 that was in effect  
20 immediately prior to the effective date of this act is ratified and  
21 is binding and enforceable under this act.

22 Sec. 5. (1) In conducting its review, the review team may do  
23 either or both of the following:

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

25 (b) Utilize the services of other state agencies and  
26 employees.

27 (2) The review team shall meet with the local government as

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 part of its review. At this meeting, the review team shall receive,  
2 discuss, and consider information provided by the local government  
3 concerning the financial condition of the local government. In  
4 addition, the review team shall hold at least 1 public information  
5 meeting in the jurisdiction of the local government at which the  
6 public may provide comment.

7 (3) The review team shall submit a written report of its  
8 findings to the governor within 60 days following its appointment  
9 or earlier if required by the governor. Upon request, the governor  
10 may grant one 30-day extension of this 60-day time limit. A copy of  
11 the report shall be forwarded by the state treasurer to the chief  
12 administrative officer and the governing body of the local  
13 government, the speaker of the house of representatives, the senate  
14 majority leader, [ ] the superintendent of public instruction if  
15 the local government is a school district[, and each state senator and  
state representative who represents that local government]. The report  
shall be  
16 posted on the department of treasury's website within 7 days after  
17 the report is submitted to the governor. The report shall include  
18 the existence, or an indication of the likely occurrence, of any of  
19 the following:

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

24 (b) Failure for a period of 30 days or more beyond the due  
25 date to transfer 1 or more of the following to the appropriate  
26 agency:

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

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

4           (iii) Any contribution required by a pension, retirement, or  
5 benefit plan.

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

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

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

17           (f) Projection of a deficit in the general fund of the local  
18 government for the current fiscal year in excess of 5% of the  
19 budgeted revenues for the general fund.

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

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

26           (i) Existence after the close of the fiscal year of material  
27 recurring unbudgeted subsidies from the general fund to other major

1 funds as defined under government accounting standards board  
2 principles.

3 (j) Existence of a structural operating deficit.

4 (k) Use of restricted revenues for purposes not authorized by  
5 law.

6 (l) The likelihood that the local government is or will be  
7 unable to pay its obligations within 60 days after the date of the  
8 review team's reporting its findings to the governor.

9 (m) Any other facts and circumstances indicative of local  
10 government financial emergency.

11 (4) The review team shall include 1 of the following  
12 conclusions in its report:

13 (a) A financial emergency does not exist within the local  
14 government.

15 (b) A financial emergency exists within the local government.

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

22 (6) For purposes of this section:

23 (a) A financial emergency does not exist within a local  
24 government if the report under subsection (3) concludes that none  
25 of the factors in subsection (3) exist or are likely to occur  
26 within the current or next succeeding fiscal year or, if they  
27 occur, do not threaten the local government's capability to provide



1 necessary governmental services essential to public health, safety,  
2 and welfare.

3 (b) A financial emergency exists within a local government if  
4 any of the following occur:

5 (i) The report under subsection (3) concludes that 1 or more of  
6 the factors in subsection (3) exist or are likely to occur within  
7 the current or next succeeding fiscal year and threaten the local  
8 government's current and future capability to provide necessary  
9 governmental services essential to the public health, safety, and  
10 welfare.

11 (ii) The local government has failed to provide timely and  
12 accurate information enabling the review team to complete its  
13 report under subsection (3).

14 (iii) The local government has failed to comply in all material  
15 respects with the terms of an approved deficit elimination plan or  
16 an agreement entered into pursuant to a deficit elimination plan.

17 (iv) The chief administrative officer of the local government  
18 concludes that 1 or more of the factors in subsection (3) exist or  
19 are likely to occur within the current or next succeeding fiscal  
20 year and threaten the local government's current and future  
21 capability to provide necessary governmental services essential to  
22 the public health, safety, and welfare, and the chief  
23 administrative officer recommends that a financial emergency be  
24 declared and the state treasurer concurs with the recommendation.

25 Sec. 6. (1) Within 10 days after receipt of the report under  
26 section 5, the governor shall make 1 of the following  
27 determinations:

1 (a) A financial emergency does not exist within the local  
2 government.

3 (b) A financial emergency exists within the local government.

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

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 a concise and explicit statement of the underlying facts supporting  
2 these factual findings. [In addition, a copy of the report shall be  
provided to each state senator and state representative who represents  
that local government.] The report shall be posted on the  
3 department of treasury's website within 7 days after the report is  
4 provided to the governing body and chief executive officer of the  
5 local government.

6 (3) A local government for which a financial emergency  
7 determination under this section has been confirmed to exist may,  
8 by resolution adopted by a vote of 2/3 of the members of its  
9 governing body elected and serving, appeal this determination  
10 within 10 business days to the Michigan court of claims. A local  
11 government may, by resolution adopted by a vote of 2/3 of the  
12 members of its governing body elected and serving, waive its right  
13 to appeal as provided in this subsection. The court shall not set  
14 aside a determination of financial emergency by the governor unless  
15 it finds that the determination is either of the following:

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

18 (b) Arbitrary, capricious, or clearly an abuse or unwarranted  
19 exercise of discretion.

20 Sec. 7. (1) Notwithstanding section 6(3), upon the  
21 confirmation of a finding of a financial emergency under section 6,  
22 the governing body of the local government shall, by resolution  
23 within 7 days after the confirmation of a finding of a financial  
24 emergency, select 1 of the following local government options to  
25 address the financial emergency:

26 (a) The consent agreement option pursuant to section 8.

27 (b) The emergency manager option pursuant to section 9.

1 (c) The neutral evaluation process option pursuant to section  
2 25.

3 (d) The chapter 9 bankruptcy option pursuant to section 26.

4 (2) Subject to subsection (3), if the local government has a  
5 strong mayor, the resolution under subsection (1) requires strong  
6 mayor approval. If the local government is a school district, the  
7 resolution shall be approved by the school board. The resolution  
8 shall be filed with the state treasurer, with a copy to the  
9 superintendent of public instruction if the local government is a  
10 school district.

11 (3) If the governing body of the local government does not  
12 pass a resolution as required under subsection (1), the local  
13 government shall proceed under the neutral evaluation process  
14 pursuant to section 25.

15 (4) Subject to section 9(6)(c) and (11), unless authorized by  
16 the governor, a local government shall not utilize 1 of the local  
17 options listed in subsection (1)(a) to (d) more than 1 time.

18 Sec. 8. (1) The chief administrative officer of a local  
19 government may negotiate and sign a consent agreement with the  
20 state treasurer as provided for in this act. If the local  
21 government is a school district and the consent agreement contains  
22 an educational plan, the consent agreement shall also be signed by  
23 the superintendent of public instruction. The consent agreement  
24 shall provide for remedial measures considered necessary to address  
25 the financial emergency within the local government and provide for  
26 the financial stability of the local government. The consent  
27 agreement may utilize state financial management and technical

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 assistance as necessary in order to alleviate the financial  
2 emergency. The consent agreement shall also provide for periodic  
3 financial status reports to the state treasurer[, with a copy of each  
report to each state senator and state representative who represents  
that local government]. The consent  
4 agreement may provide for a board appointed by the governor to  
5 monitor the local government's compliance with the consent  
6 agreement. In order for the consent agreement to go into effect, it  
7 shall be approved, by resolution, by the governing body of the  
8 local government and shall be approved and executed by the state  
9 treasurer. Nothing in the consent agreement shall limit the ability  
10 of the state treasurer in his or her sole discretion to declare a  
11 material breach of the consent agreement. A consent agreement shall  
12 provide that in the event of a material uncured breach of the  
13 consent agreement, the governor may place the local government in  
14 receivership or in the neutral evaluation process. If within 30  
15 days after a local government selects the consent agreement option  
16 under section 7(1)(a) or sooner in the discretion of the state  
17 treasurer, a consent agreement cannot be agreed upon, the state  
18 treasurer shall require the local government to proceed under 1 of  
19 the other local options provided for in section 7.

20 (2) A consent agreement as provided in subsection (1) may  
21 require a continuing operations plan or a recovery plan if required  
22 by the state treasurer.

23 (3) If the state treasurer requires that a consent agreement  
24 include a continuing operations plan, the local government shall  
25 prepare and file the continuing operations plan with the state  
26 treasurer as provided for in the consent agreement. The state  
27 treasurer shall approve or reject the initial continuing operations

1 plan within 14 days of receiving it from the local government. If a  
2 continuing operations plan is rejected, the local government shall  
3 refile an amended plan within 30 days of the rejection, addressing  
4 any concerns raised by the state treasurer or the superintendent of  
5 public instruction regarding an educational plan. If the amended  
6 plan is rejected, then the local government may be considered to be  
7 in material breach of the consent agreement. The local government  
8 shall file annual updates to its continuing operations plan. The  
9 annual updates shall be included with the annual filing of the  
10 local government's audit report with the state financial authority  
11 as long as the continuing operations plan remains in effect.

12 (4) The continuing operations plan shall be in a form  
13 prescribed by the state treasurer but shall, at a minimum, include  
14 all of the following:

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

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

21 (c) An operating plan for the budget period that assures  
22 fiscal accountability for the local government.

23 (d) A plan showing reasonable and necessary maintenance and  
24 capital expenditures so as to assure the local government's fiscal  
25 accountability.

26 (e) An evaluation of the costs associated with pension and  
27 postemployment health care obligations for which the local

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 government is responsible and a plan for how those costs will be  
2 addressed within the budget period.

3 (f) A provision for submitting quarterly compliance reports to  
4 the state treasurer demonstrating compliance with the continuing  
5 operations plan[, with a copy of each report to each state senator and  
6 state representative who represents that local government]. Each  
7 quarterly compliance report shall be posted  
8 on the local government's website within 7 days after the report is  
9 submitted to the state treasurer.

10 (5) If a continuing operations plan is approved for a  
11 municipal government, the municipal government shall amend the  
12 budget and general appropriations ordinance adopted by the  
13 municipal government under the uniform budgeting and accounting  
14 act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or  
15 advisable to give full effect to the continuing operations plan. If  
16 a continuing operations plan is approved for a school district, the  
17 school district shall amend the budget adopted by the school  
18 district under the uniform budgeting and accounting act, 1968 PA 2,  
19 MCL 141.421 to 141.440a, to the extent necessary or advisable to  
20 give full effect to the continuing operations plan. The chief  
21 administrative officer, the chief financial officer, the governing  
22 body, and other officials of the local government shall take and  
23 direct such actions as may be necessary or advisable to maintain  
24 the local government's operations in compliance with the continuing  
25 operations plan.

26 (6) If the state treasurer requires that a consent agreement  
27 include a recovery plan, the state treasurer, with input from the  
local government, shall develop and adopt a recovery plan. If a  
recovery plan is developed and adopted for the local government,

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

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

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

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

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

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

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

24 (f) Procedures for cash control and cash management,  
25 including, but not limited to, procedures for timely collection,  
26 securing, depositing, balancing, and expending of cash. Procedures  
27 for cash control and cash management may include the designation of



Senate Bill No. 865 (H-6) as amended December 12, 2012  
1 appropriate fiduciaries.

2 (g) A provision for submitting quarterly compliance reports to  
3 the state treasurer and the chief administrative officer of the  
4 local government that demonstrate compliance with the recovery  
5 plan[, with a copy of each report to each state senator and state  
representative who represents that local government]. Each quarterly  
6 compliance report shall be posted on the local  
7 government's website within 7 days after the report is submitted to  
8 the state treasurer.

9 (8) The recovery plan may include the appointment of a local  
10 auditor or local inspector, or both, in accordance with section  
11 12(1)(p).

12 (9) If a recovery plan is developed and adopted by the state  
13 treasurer for a local government, the recovery plan shall supersede  
14 the budget and general appropriations ordinance adopted by the  
15 local government under the uniform budgeting and accounting act,  
16 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general  
17 appropriations ordinance is considered amended to the extent  
18 necessary or advisable to give full effect to the recovery plan. In  
19 the event of any inconsistency between the recovery plan and the  
20 budget or general appropriations ordinance, the recovery plan shall  
21 control. The chief administrative officer, the chief financial  
22 officer, the governing body, and other officers of the local  
23 government shall take and direct actions as may be necessary or  
24 advisable to bring and maintain the local government's operations  
25 in compliance with the recovery plan.

26 (10) Except as otherwise provided in this subsection, the  
27 consent agreement may include a grant to the chief administrative  
officer, the chief financial officer, the governing body, or other

1 officers of the local government by the state treasurer of 1 or  
2 more of the powers prescribed for emergency managers as otherwise  
3 provided in this act for such periods and upon such terms and  
4 conditions as the state treasurer considers necessary or  
5 convenient, in the state treasurer's discretion to enable the local  
6 government to achieve the goals and objectives of the consent  
7 agreement. However, the consent agreement shall not include a grant  
8 to the chief administrative officer, the chief financial officer,  
9 the governing body, or other officers of the local government of  
10 the powers prescribed for emergency managers in section 12(1)(k).

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

16 (12) The consent agreement may provide for the required  
17 retention by the local government of a consultant for the purpose  
18 of assisting the local government to achieve the goals and  
19 objectives of the consent agreement.

20 (13) A local government is released from the requirements  
21 under this section upon compliance with the consent agreement as  
22 determined by the state treasurer.

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

26 (2) Upon appointment, an emergency manager shall act for and  
27 in the place and stead of the governing body and the office of

1 chief administrative officer of the local government. The emergency  
2 manager shall have broad powers in receivership to rectify the  
3 financial emergency and to assure the fiscal accountability of the  
4 local government and the local government's capacity to provide or  
5 cause to be provided necessary governmental services essential to  
6 the public health, safety, and welfare. Following appointment of an  
7 emergency manager and during the pendency of receivership, the  
8 governing body and the chief administrative officer of the local  
9 government shall not exercise any of the powers of those offices  
10 except as may be specifically authorized in writing by the  
11 emergency manager or as otherwise provided by this act and are  
12 subject to any conditions required by the emergency manager.

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

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

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

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

20 (d) Except as otherwise provided in this subdivision, the  
21 emergency manager shall serve at the pleasure of the governor. An  
22 emergency manager is subject to impeachment and conviction by the  
23 legislature as if he or she were a civil officer under section 7 of  
24 article XI of the state constitution of 1963. A vacancy in the  
25 office of emergency manager shall be filled in the same manner as  
26 the original appointment.

27 (e) The emergency manager's compensation shall be paid by this

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 state and shall be set forth in a contract approved by the state  
2 treasurer. The contract shall be posted on the department of  
3 treasury's website within 7 days after the contract is approved by  
4 the state treasurer.

5 (f) In addition to the salary provided to an emergency manager  
6 in a contract approved by the state treasurer under subdivision  
7 (e), this state may receive and distribute private funds to an  
8 emergency manager. As used in this subdivision, "private funds"  
9 means any money the state receives for the purpose of allocating  
10 additional salary to an emergency manager. Private funds  
11 distributed under this subdivision are subject to section 1 of 1901  
12 PA 145, MCL 21.161, and section 17 of article IX of the state  
13 constitution of 1963.

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

18 (5) The emergency manager shall submit quarterly reports to  
19 the state treasurer with respect to the financial condition of the  
20 local government in receivership, with a copy to the superintendent  
21 of public instruction if the local government is a school district [and  
22 a copy to each state senator and state representative who represents  
23 that local government].

24 In addition, each quarterly report shall be posted on the local  
25 government's website within 7 days after the report is submitted to  
26 the state treasurer.

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

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

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

4 (b) Until the financial emergency is rectified.

5 (c) If the emergency manager has served for at least 18 months  
6 after his or her appointment under this act, the emergency manager  
7 may, by resolution, be removed by a 2/3 vote of the governing body  
8 of the local government. If the local government has a strong  
9 mayor, the resolution requires strong mayor approval before the  
10 emergency manager may be removed. Notwithstanding section 7(4), if  
11 the emergency manager is removed under this subsection and the  
12 local government has not previously breached a consent agreement  
13 under this act, the local government may within 10 days negotiate a  
14 consent agreement with the state treasurer. If a consent agreement  
15 is not agreed upon within 10 days, the local government shall  
16 proceed with the neutral evaluation process pursuant to section 25.

17 (7) A local government shall be removed from receivership when  
18 the financial conditions are corrected in a sustainable fashion as  
19 provided in this act. In addition, the local government may be  
20 removed from receivership if an emergency manager is removed under  
21 subsection (6)(c) and the governing body of the local government by  
22 2/3 vote approves a resolution for the local government to be  
23 removed from receivership. If the local government has a strong  
24 mayor, the resolution requires strong mayor approval before the  
25 local government is removed from receivership. A local government  
26 that is removed from receivership while a financial emergency  
27 continues to exist as determined by the governor shall proceed

1 under the neutral evaluation process pursuant to section 25.

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

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

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

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

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

10 (10) An emergency financial manager appointed under former  
11 1988 PA 101 or former 1990 PA 72, and serving immediately prior to  
12 the effective date of this act, shall be considered an emergency  
13 manager under this act and shall continue under this act to fulfill  
14 his or her powers and duties. Notwithstanding any other provision  
15 of this act, the governor may appoint a person who was appointed as  
16 an emergency manager under former 2011 PA 4 or an emergency  
17 financial manager under former 1988 PA 101 or former 1990 PA 72 to  
18 serve as an emergency manager under this act.

19 (11) Notwithstanding section 7(4) and subject to the  
20 requirements of this section, if an emergency manager has served  
21 for less than 18 months after his or her appointment under this  
22 act, the governing body of the local government may pass a  
23 resolution petitioning the governor to remove the emergency manager  
24 as provided in this section and allow the local government to  
25 proceed under the neutral evaluation process as provided in section  
26 25. If the local government has a strong mayor, the resolution  
27 requires strong mayor approval. If the governor accepts the

1 resolution, notwithstanding section 7(4), the local government  
2 shall proceed under the neutral evaluation process as provided in  
3 section 25.

4       Sec. 10. (1) An emergency manager shall issue to the  
5 appropriate local elected and appointed officials and employees,  
6 agents, and contractors of the local government the orders the  
7 emergency manager considers necessary to accomplish the purposes of  
8 this act, including, but not limited to, orders for the timely and  
9 satisfactory implementation of a financial and operating plan,  
10 including an educational plan for a school district, or to take  
11 actions, or refrain from taking actions, to enable the orderly  
12 accomplishment of the financial and operating plan. An order issued  
13 under this section is binding on the local elected and appointed  
14 officials and employees, agents, and contractors of the local  
15 government to whom it is issued. Local elected and appointed  
16 officials and employees, agents, and contractors of the local  
17 government shall take and direct those actions that are necessary  
18 and advisable to maintain compliance with the financial and  
19 operating plan.

20       (2) If an order of the emergency manager under subsection (1)  
21 is not carried out and the failure to carry out an order is  
22 disrupting the emergency manager's ability to manage the local  
23 government, the emergency manager, in addition to other remedies  
24 provided in this act, may prohibit the local elected or appointed  
25 official or employee, agent, or contractor of the local government  
26 from access to the local government's office facilities, electronic  
27 mail, and internal information systems.

1           Sec. 11. (1) An emergency manager shall develop and may amend  
2 a written financial and operating plan for the local government.  
3 The plan shall have the objectives of assuring that the local  
4 government is able to provide or cause to be provided governmental  
5 services essential to the public health, safety, and welfare and  
6 assuring the fiscal accountability of the local government. The  
7 financial and operating plan shall provide for all of the  
8 following:

9           (a) Conducting all aspects of the operations of the local  
10 government within the resources available according to the  
11 emergency manager's revenue estimate.

12           (b) The payment in full of the scheduled debt service  
13 requirements on all bonds, notes, and municipal securities of the  
14 local government, contract obligations in anticipation of which  
15 bonds, notes, and municipal securities are issued, and all other  
16 uncontested legal obligations.

17           (c) The modification, rejection, termination, and  
18 renegotiation of contracts pursuant to section 12.

19           (d) The timely deposit of required payments to the pension  
20 fund for the local government or in which the local government  
21 participates.

22           (e) For school districts, an educational plan.

23           (f) Any other actions considered necessary by the emergency  
24 manager in the emergency manager's discretion to achieve the  
25 objectives of the financial and operating plan, alleviate the  
26 financial emergency, and remove the local government from  
27 receivership.



1           (2) Within 45 days after the emergency manager's appointment,  
2 the emergency manager shall submit the financial and operating  
3 plan, and an educational plan if the local government is a school  
4 district, to the state treasurer, with a copy to the superintendent  
5 of public instruction if the local government is a school district,  
6 and to the chief administrative officer and governing body of the  
7 local government. The plan shall be regularly reexamined by the  
8 emergency manager and the state treasurer and may be modified from  
9 time to time by the emergency manager with notice to the state  
10 treasurer. If the emergency manager reduces his or her revenue  
11 estimates, the emergency manager shall modify the plan to conform  
12 to the revised revenue estimates.

13           (3) The financial and operating plan shall be in a form as  
14 provided by the state treasurer and shall contain that information  
15 for each year during which year the plan is in effect that the  
16 emergency manager, in consultation with the state financial  
17 authority, specifies. The financial and operating plan may serve as  
18 a deficit elimination plan otherwise required by law if so approved  
19 by the state financial authority.

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

26           (5) For a local government in receivership immediately prior  
27 to the effective date of this act, a financial and operating plan

1 for that local government adopted under former 2011 PA 4 or a  
2 financial plan for that local government adopted under former 1990  
3 PA 72 shall be effective and enforceable as a financial and  
4 operating plan for the local government under this act until  
5 modified or rescinded under this act.

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

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

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

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

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

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

27 (f) Examine all records and books of account, and require

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

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

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

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

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

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

26 (i) The financial emergency in the local government has created  
27 a circumstance in which it is reasonable and necessary for the

1 state to intercede to serve a significant and legitimate public  
2 purpose.

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

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

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

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

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

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

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

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

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

Senate Bill No. 865 (H-6) as amended December 12, 2012

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

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

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

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

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

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 public instruction if the local government is a school district[, and  
each state senator and state representative who represents that local  
government].

2 The annual report of the local inspector shall be posted on the  
3 local government's website within 7 days after the report is  
4 submitted. The duties of a local auditor are to assure that  
5 internal controls over local government operations are designed and  
6 operating effectively to mitigate risks that hamper the achievement  
7 of the emergency manager's financial plan, assure that local  
8 government operations are effective and efficient, assure that  
9 financial information is accurate, reliable, and timely, comply  
10 with policies, regulations, and applicable laws, and assure assets  
11 are properly managed. At least annually, a report of the local  
12 auditor shall be submitted to the emergency manager, the state  
13 treasurer, [ ] the superintendent of public instruction if the  
14 local government is a school district[, and each state senator and state  
representative who represents that local government]. The annual report  
of the  
15 local auditor shall be posted on the local government's website  
16 within 7 days after the report is submitted.

17 (q) An emergency manager may initiate court proceedings in the  
18 Michigan court of claims or in the circuit court of the county in  
19 which the local government is located in the name of the local  
20 government to enforce compliance with any of his or her orders or  
21 any constitutional or legislative mandates, or to restrain  
22 violations of any constitutional or legislative power or his or her  
23 orders.

24 (r) Subject to section 19, if provided in the financial and  
25 operating plan, or otherwise with the prior written approval of the  
26 governor or his or her designee, sell, lease, convey, assign, or  
27 otherwise use or transfer the assets, liabilities, functions, or

1 responsibilities of the local government, provided the use or  
2 transfer of assets, liabilities, functions, or responsibilities for  
3 this purpose does not endanger the health, safety, or welfare of  
4 residents of the local government or unconstitutionally impair a  
5 bond, note, security, or uncontested legal obligation of the local  
6 government.

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

10 (t) Order, as necessary, 1 or more millage elections for the  
11 local government consistent with the Michigan election law, 1954 PA  
12 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article  
13 IX of the state constitution of 1963, and any other applicable  
14 state law.

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

17 (v) Approve or disapprove of the issuance of obligations of  
18 the local government on behalf of the local government under this  
19 subdivision. An election to approve or disapprove of the issuance  
20 of obligations of the local government pursuant to this subdivision  
21 shall only be held at the general November election.

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

25 (x) Enter into agreements with creditors or other persons or  
26 entities to restructure debt on terms, at rates of interest, and  
27 with security as shall be agreed among the parties, subject to



1 approval by the state treasurer.

2 (y) Enter into agreements with other local governments, public  
3 bodies, or entities for the provision of services, the joint  
4 exercise of powers, or the transfer of functions and  
5 responsibilities.

6 (z) For municipal governments, enter into agreements with  
7 other units of municipal government to transfer property of the  
8 municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as  
9 otherwise provided by law, subject to approval by the state  
10 treasurer.

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

13 (bb) For a city, village, or township, the emergency manager  
14 may recommend to the state boundary commission that the municipal  
15 government consolidate with 1 or more other municipal governments,  
16 if the emergency manager determines that consolidation would  
17 materially alleviate the financial emergency of the municipal  
18 government and would not materially and adversely affect the  
19 financial situation of the government or governments with which the  
20 municipal government in receivership is consolidated. Consolidation  
21 under this subdivision shall proceed as provided by law.

22 (cc) For municipal governments, with approval of the governor,  
23 disincorporate or dissolve the municipal government and assign its  
24 assets, debts, and liabilities as provided by law. The  
25 disincorporation or dissolution of the local government is subject  
26 to a vote of the electors of that local government if required by  
27 law.

1 (dd) Exercise solely, for and on behalf of the local  
2 government, all other authority and responsibilities of the chief  
3 administrative officer and governing body concerning the adoption,  
4 amendment, and enforcement of ordinances or resolutions of the  
5 local government as provided in the following acts:

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

7 (ii) The fourth class city act, 1895 PA 215, MCL 81.1 to  
8 113.20.

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

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

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

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

13 (vii) The home rule village act, 1909 PA 278, MCL 78.1 to  
14 78.28.

15 (viii) The revised school code, 1976 PA 451, MCL 380.1 to  
16 380.1852.

17 (ix) The state school aid act of 1979, 1979 PA 94, MCL 388.1601  
18 to 388.1896.

19 (ee) Take any other action or exercise any power or authority  
20 of any officer, employee, department, board, commission, or other  
21 similar entity of the local government, whether elected or  
22 appointed, relating to the operation of the local government. The  
23 power of the emergency manager shall be superior to and supersede  
24 the power of any of the foregoing officers or entities.

25 (ff) Remove, replace, appoint, or confirm the appointments to  
26 any office, board, commission, authority, or other entity which is  
27 within or is a component unit of the local government.

1           (2) Except as otherwise provided in this act, during the  
2 pendency of the receivership, the authority of the chief  
3 administrative officer and governing body to exercise power for and  
4 on behalf of the local government under law, charter, and ordinance  
5 shall be suspended and vested in the emergency manager.

6           (3) Except as otherwise provided in this subsection, any  
7 contract involving a cumulative value of \$50,000.00 or more is  
8 subject to competitive bidding by an emergency manager. However, if  
9 a potential contract involves a cumulative value of \$50,000.00 or  
10 more, the emergency manager may submit the potential contract to  
11 the state treasurer for review and the state treasurer may  
12 authorize that the potential contract is not subject to competitive  
13 bidding.

14           (4) An emergency manager appointed for a city or village shall  
15 not sell or transfer a public utility furnishing light, heat, or  
16 power without the approval of a majority of the electors of the  
17 city or village voting thereon, or a greater number if the city or  
18 village charter provides, as required by section 25 of article VII  
19 of the state constitution of 1963. In addition, an emergency  
20 manager appointed for a city or village shall not utilize the  
21 assets of a public utility furnishing heat, light, or power, the  
22 finances of which are separately maintained and accounted for by  
23 the city or village, to satisfy the general obligations of the city  
24 or village.

25           Sec. 13. Upon appointment of an emergency manager and during  
26 the pendency of the receivership, the salary, wages, or other  
27 compensation, including the accrual of postemployment benefits, and

1 other benefits of the chief administrative officer and members of  
2 the governing body of the local government shall be eliminated.  
3 This section does not authorize the impairment of vested pension  
4 benefits. If an emergency manager has reduced, suspended, or  
5 eliminated the salary, wages, or other compensation of the chief  
6 administrative officer and members of the governing body of a local  
7 government before the effective date of this act, the reduction,  
8 suspension, or elimination is valid to the same extent had it  
9 occurred after the effective date of this act. The emergency  
10 manager may restore, in whole or in part, any of the salary, wages,  
11 other compensation, or benefits of the chief administrative officer  
12 and members of the governing body during the pendency of the  
13 receivership, for such time and on such terms as the emergency  
14 manager considers appropriate, to the extent that the emergency  
15 manager finds that the restoration of salary, wages, compensation,  
16 or benefits is consistent with the financial and operating plan.

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

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

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

27       (c) Seek approval from the superintendent of public

1 instruction for a reduced class schedule in accordance with  
2 administrative rules governing the distribution of state school  
3 aid.

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

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

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

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

21 Sec. 15. (1) Unless the potential sale and value of an asset  
22 is included in the emergency manager's financial and operating  
23 plan, the emergency manager shall not sell an asset of the local  
24 government valued at more than \$50,000.00 without the state  
25 treasurer's approval.

26 (2) A provision of an existing collective bargaining agreement  
27 that authorizes the payment of a benefit upon the death of a police

Senate Bill No. 865 (H-6) as amended December 12, 2012

1 officer or firefighter that occurs in the line of duty shall not be  
2 impaired and is not subject to any provision of this act  
3 authorizing an emergency manager to reject, modify, or terminate 1  
4 or more terms of an existing collective bargaining agreement.

5       Sec. 16. An emergency manager shall, on his or her own or upon  
6 the advice of the local inspector if a local inspector has been  
7 retained, make a determination as to whether possible criminal  
8 conduct contributed to the financial situation resulting in the  
9 local government's receivership status. If the emergency manager  
10 determines that there is reason to believe that criminal conduct  
11 has occurred, the manager shall refer the matter to the attorney  
12 general and the local prosecuting attorney for investigation.

13       Sec. 17. Beginning 6 months after an emergency manager's  
14 appointment, and every 3 months thereafter, an emergency manager  
15 shall submit to the governor, the state treasurer, the senate  
16 majority leader, the speaker of the house of representatives, [each state  
17 senator and state representative who represents the local government  
18 that is in receivership,] and  
19 the clerk of the local government that is in receivership, and  
20 shall post on the internet on the website of the local government,  
21 a report that contains all of the following:

22       (a) A description of each expenditure made, approved, or  
23 disapproved during the reporting period that has a cumulative value  
24 of \$5,000.00 or more and the source of the funds.

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

28       (c) A description of each loan sought, approved, or  
29 disapproved during the reporting period that has a cumulative value

1 of \$5,000.00 or more and the proposed use of the funds.

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

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

6 (f) A copy of the contract with the emergency manager as  
7 provided in section 9(3)(e).

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

9 (h) The financial and operating plan.

10 Sec. 18. (1) If, in the judgment of the emergency manager, no  
11 reasonable alternative to rectifying the financial emergency of the  
12 local government which is in receivership exists, then the  
13 emergency manager may recommend to the governor and the state  
14 treasurer that the local government be authorized to proceed under  
15 chapter 9. If the governor approves of the recommendation, the  
16 governor shall inform the state treasurer and the emergency manager  
17 in writing of the decision, with a copy to the superintendent of  
18 public instruction if the local government is a school district.  
19 The governor may place contingencies on a local government in order  
20 to proceed under chapter 9. Upon receipt of the written approval,  
21 the emergency manager is authorized to proceed under chapter 9.  
22 This section empowers the local government for which an emergency  
23 manager has been appointed to become a debtor under title 11 of the  
24 United States Code, 11 USC 101 to 1532, as required by section 109  
25 of title 11 of the United States Code, 11 USC 109, and empowers the  
26 emergency manager to act exclusively on the local government's  
27 behalf in any such case under chapter 9.

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

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

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

10           (3) The emergency manager shall provide a copy of the  
11 recommendation as provided under subsection (1) to the  
12 superintendent of public instruction if the local government is a  
13 school district.

14           Sec. 19. (1) Except as otherwise provided in this subsection,  
15 before an emergency manager executes an action under section  
16 12(1)(k), (r), or (u) or section 14(d), he or she shall submit his  
17 or her proposed action to the governing body of the local  
18 government. The governing body of the local government shall have  
19 10 days from the date of submission to approve or disapprove the  
20 action proposed by the emergency manager. If the governing body of  
21 the local government does not act within 10 days, the proposed  
22 action is considered approved by the governing body of the local  
23 government and the emergency manager may then execute the proposed  
24 action. For an action under section 12(1)(r) or section 14(d), this  
25 subsection only applies if the asset, liability, function, or  
26 responsibility involves an amount of \$50,000.00 or more.

27           (2) If the governing body of the local government disapproves



1 the proposed action within 10 days, the governing body of the local  
2 government shall, within 7 days of its disapproval of the action  
3 proposed by the emergency manager, submit to the local emergency  
4 financial assistance loan board an alternative proposal that would  
5 yield substantially the same financial result as the action  
6 proposed by the emergency manager. The local emergency financial  
7 assistance loan board shall have 30 days to review both the  
8 alternative proposal submitted by the governing body of the local  
9 government and the action proposed by the emergency manager and to  
10 approve either the alternative proposal submitted by the governing  
11 body of the local government or the action proposed by the  
12 emergency manager. The local emergency financial assistance loan  
13 board shall approve the proposal that best serves the interest of  
14 the public in that local government. The emergency manager shall  
15 implement the alternative proposal submitted by the governing body  
16 of the local government or the action proposed by the emergency  
17 manager, whichever is approved by the local emergency financial  
18 assistance loan board.

19       Sec. 20. (1) An emergency manager is immune from liability as  
20 provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person  
21 employed by an emergency manager is immune from liability as  
22 provided in section 7(2) of 1964 PA 170, MCL 691.1407.

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

25       (a) The validity of this act.

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

1 (c) The authority of an emergency manager if the emergency  
2 manager is or was acting within the scope of authority for an  
3 emergency manager under this act.

4 (3) With respect to any aspect of a receivership under this  
5 act, the costs incurred by the attorney general in carrying out the  
6 responsibilities of subsection (2) for attorneys, experts, court  
7 filing fees, and other reasonable and necessary expenses shall be  
8 at the expense of the local government that is subject to that  
9 receivership and shall be reimbursed to the attorney general by the  
10 local government. The failure of a municipal government that is or  
11 was in receivership to remit to the attorney general the costs  
12 incurred by the attorney general within 30 days after written  
13 notice to the municipal government from the attorney general of the  
14 costs is a debt owed to this state and shall be recovered by the  
15 state treasurer as provided in section 17a(5) of the Glenn Steil  
16 state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The  
17 failure of a school district that is or was in receivership to  
18 remit to the attorney general the costs incurred by the attorney  
19 general within 30 days after written notice to the school district  
20 from the attorney general of the costs is a debt owed to this state  
21 and shall be recovered by the state treasurer as provided in the  
22 state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

23 (4) An emergency manager may procure and maintain, at the  
24 expense of the local government for which the emergency manager is  
25 appointed, worker's compensation, general liability, professional  
26 liability, and motor vehicle insurance for the emergency manager  
27 and any employee, agent, appointee, or contractor of the emergency

1 manager as may be provided to elected officials, appointed  
2 officials, or employees of the local government. The insurance  
3 procured and maintained by an emergency manager may extend to any  
4 claim, demand, or lawsuit asserted or costs recovered against the  
5 emergency manager and any employee, agent, appointee, or contractor  
6 of the emergency manager from the date of appointment of the  
7 emergency manager to the expiration of the applicable statute of  
8 limitation if the claim, demand, or lawsuit asserted or costs  
9 recovered against the emergency manager or any employee, agent,  
10 appointee, or contractor of the emergency manager resulted from  
11 conduct of the emergency manager or any employee, agent, appointee,  
12 or contractor of the emergency manager taken in accordance with  
13 this act during the emergency manager's term of service.

14 (5) If, after the date that the service of an emergency  
15 manager is concluded, the emergency manager or any employee, agent,  
16 appointee, or contractor of the emergency manager is subject to a  
17 claim, demand, or lawsuit arising from an action taken during the  
18 service of that emergency manager, and not covered by a procured  
19 worker's compensation, general liability, professional liability,  
20 or motor vehicle insurance, litigation expenses of the emergency  
21 manager or any employee, agent, appointee, or contractor of the  
22 emergency manager, including attorney fees for civil and criminal  
23 proceedings and preparation for reasonably anticipated proceedings,  
24 and payments made in settlement of civil proceedings both filed and  
25 anticipated, shall be paid out of the funds of the local government  
26 that is or was subject to the receivership administered by that  
27 emergency manager, provided that the litigation expenses are

1 approved by the state treasurer and that the state treasurer  
2 determines that the conduct resulting in actual or threatened legal  
3 proceedings that is the basis for the payment is based upon both of  
4 the following:

5 (a) The scope of authority of the person or entity seeking the  
6 payment.

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

9 (6) The failure of a municipal government to honor and remit  
10 the legal expenses of a former emergency manager or any employee,  
11 agent, appointee, or contractor of the emergency manager as  
12 required by this section is a debt owed to this state and shall be  
13 recovered by the state treasurer as provided in section 17a(5) of  
14 the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL  
15 141.917a. The failure of a school district to honor and remit the  
16 legal expenses of a former emergency manager or any employee,  
17 agent, appointee, or contractor of the emergency manager as  
18 required by this section is a debt owed to this state and shall be  
19 recovered by the state treasurer as provided in the state school  
20 aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

21 Sec. 21. (1) Before the termination of receivership and the  
22 completion of the emergency manager's term, or if a transition  
23 advisory board is appointed under section 23, then before the  
24 transition advisory board is appointed, the emergency manager shall  
25 adopt and implement a 2-year budget, including all contractual and  
26 employment agreements, for the local government commencing with the  
27 termination of receivership.

1           (2) After the completion of the emergency manager's term and  
2 the termination of receivership, the governing body of the local  
3 government shall not amend the 2-year budget adopted under  
4 subsection (1) without the approval of the state treasurer, and  
5 shall not revise any order or ordinance implemented by the  
6 emergency manager during his or her term prior to 1 year after the  
7 termination of receivership.

8           Sec. 22. (1) If an emergency manager determines that the  
9 financial emergency that he or she was appointed to manage has been  
10 rectified, the emergency manager shall inform the governor and the  
11 state treasurer.

12           (2) If the governor disagrees with the emergency manager's  
13 determination that the financial emergency has been rectified, the  
14 governor shall inform the emergency manager and the term of the  
15 emergency manager shall continue or the governor shall appoint a  
16 new emergency manager.

17           (3) Subject to subsection (4), if the governor agrees that the  
18 financial emergency has been rectified, the emergency manager has  
19 adopted a 2-year budget as required under section 21, and the  
20 financial conditions of the local government have been corrected in  
21 a sustainable fashion as required under section 9(7), the governor  
22 may do either of the following:

23           (a) Remove the local government from receivership.

24           (b) Appoint a receivership transition advisory board as  
25 provided in section 23.

26           (4) Before removing a local government from receivership, the  
27 governor may impose 1 or more of the following conditions on the

1 local government:

2 (a) The implementation of financial best practices within the  
3 local government.

4 (b) The adoption of a model charter or model charter  
5 provisions.

6 (c) Pursue financial or managerial training to ensure that  
7 official responsibilities are properly discharged.

8 Sec. 23. (1) Before removing a local government from  
9 receivership, the governor may appoint a receivership transition  
10 advisory board to monitor the affairs of the local government until  
11 the receivership is terminated.

12 (2) A receivership transition advisory board shall consist of  
13 the state treasurer or his or her designee, the director of the  
14 department of technology, management, and budget or his or her  
15 designee, and, if the local government is a school district, the  
16 superintendent of public instruction or his or her designee. The  
17 governor also may appoint to a receivership transition advisory  
18 board 1 or more other individuals with relevant professional  
19 experience, including 1 or more residents of the local government.

20 (3) A receivership transition advisory board serves at the  
21 pleasure of the governor.

22 (4) At its first meeting, a receivership transition advisory  
23 board shall adopt rules of procedure to govern its conduct,  
24 meetings, and periodic reporting to the governor. Procedural rules  
25 required by this section are not subject to the administrative  
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

27 (5) A receivership transition advisory board may do all of the

1 following:

2 (a) Require the local government to annually convene a  
3 consensus revenue estimating conference for the purpose of arriving  
4 at a consensus estimate of revenues to be available for the ensuing  
5 fiscal year of the local government.

6 (b) Require the local government to provide monthly cash flow  
7 projections and a comparison of budgeted revenues and expenditures  
8 to actual revenues and expenditures.

9 (c) Review proposed and amended budgets of the local  
10 government. A proposed budget or budget amendment shall not take  
11 effect unless approved by the receivership transition advisory  
12 board.

13 (d) Review requests by the local government to issue debt  
14 under the revised municipal finance act, 2001 PA 34, MCL 141.2101  
15 to 141.2821, or any other law governing the issuance of bonds or  
16 notes.

17 (e) Review proposed collective bargaining agreements  
18 negotiated under section 15(1) of 1947 PA 336, MCL 423.215. A  
19 proposed collective bargaining agreement shall not take effect  
20 unless approved by the receivership transition advisory board.

21 (f) Review compliance by the local government with a deficit  
22 elimination plan submitted under section 21 of the Glenn Steil  
23 state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

24 (g) Review proposed judgment levies before submission to a  
25 court under section 6093 or 6094 of the revised judicature act of  
26 1961, 1961 PA 236, MCL 600.6093 and 600.6094.

27 (h) Perform any other duties assigned by the governor at the

1 time the receivership transition advisory board is appointed.

2 (6) A receivership transition advisory board is a public body  
3 as that term is defined in section 2 of the open meetings act, 1976  
4 PA 267, MCL 15.262, and meetings of a receivership transition  
5 advisory board are subject to the open meetings act, 1976 PA 267,  
6 MCL 15.261 to 15.275. A receivership transition advisory board is  
7 also a public body as that term is defined in section 2 of the  
8 freedom of information act, 1976 PA 442, MCL 15.232, and a public  
9 record in the possession of a receivership transition advisory  
10 board is subject to the freedom of information act, 1976 PA 442,  
11 MCL 15.231 to 15.246.

12 Sec. 24. The governor may, upon his or her own initiative or  
13 after receiving a recommendation from a receivership transition  
14 advisory board, determine that the financial conditions of a local  
15 government have not been corrected in a sustainable fashion as  
16 required under section 9(7) and appoint a new emergency manager.

17 Sec. 25. (1) A neutral evaluation process may be utilized as  
18 provided for in this act. The state treasurer may, in his or her  
19 own discretion, determine that the state monitor the neutral  
20 evaluation process initiated by a local government under this  
21 section and may identify 1 or more individuals who may attend and  
22 observe the neutral evaluation process. A local government shall  
23 initiate the neutral evaluation process by providing notice by  
24 certified mail of a request for neutral evaluation process to all  
25 interested parties. If the local government does not provide notice  
26 under this subsection to all interested parties within 7 days after  
27 selecting the neutral evaluation process option, the treasurer may



1 require the local government to go into receivership and proceed  
2 under section 9.

3 (2) An interested party shall respond within 10 business days  
4 of receipt of notice of the local government's request for neutral  
5 evaluation process.

6 (3) The local government and the interested parties agreeing  
7 to participate in the neutral evaluation process shall, through a  
8 mutually agreed-upon process, select a neutral evaluator to oversee  
9 the neutral evaluation process and facilitate all discussions in an  
10 effort to resolve their disputes.

11 (4) If the local government and interested parties fail to  
12 agree on a neutral evaluator within 7 days after the interested  
13 parties have responded to the notification sent by the local  
14 government, the local government shall, within 7 days, select 5  
15 qualified neutral evaluators and provide their names, references,  
16 and backgrounds to the participating interested parties. Within 3  
17 business days, a majority of participating interested parties may  
18 disqualify up to 4 names from the list. If a majority of  
19 participating interested parties disqualify 4 names from the list,  
20 the remaining candidate shall be the neutral evaluator. If the  
21 majority of participating parties disqualify fewer than 4 names,  
22 the local government shall choose which of the remaining candidates  
23 shall be the neutral evaluator.

24 (5) If an interested party objects to the qualifications of  
25 the neutral evaluator after the process for selection in subsection  
26 (4) is complete, the interested party may appeal to the state  
27 treasurer to determine if the neutral evaluator meets the

1 qualifications under subsection (6). If the state treasurer  
2 determines that the qualifications have been met, the neutral  
3 evaluation process shall continue. If the state treasurer  
4 determines that the qualifications have not been met, the state  
5 treasurer shall select the neutral evaluator.

6 (6) A neutral evaluator shall have experience and training in  
7 conflict resolution and alternative dispute resolution and have at  
8 least 1 of the following qualifications:

9 (a) At least 10 years of high-level business or legal  
10 experience involving bankruptcy or service as a United States  
11 bankruptcy judge.

12 (b) At least 10 years of combined professional experience or  
13 training in municipal finance in 1 or more of the following areas:

14 (i) Municipal organization.

15 (ii) Municipal debt restructuring.

16 (iii) Municipal finance dispute resolution.

17 (iv) Chapter 9 bankruptcy.

18 (v) Public finance.

19 (vi) Taxation.

20 (vii) Michigan constitutional law.

21 (viii) Michigan labor law.

22 (ix) Federal labor law.

23 (7) The neutral evaluator's performance shall be impartial,  
24 objective, independent, and free from prejudice. The neutral  
25 evaluator shall not act with partiality or prejudice based on any  
26 participant's personal characteristics, background, values, or  
27 beliefs, or performance during the neutral evaluation process.

1           (8) The neutral evaluator shall avoid a conflict of interest  
2 and the appearance of a conflict of interest during the neutral  
3 evaluation process. The neutral evaluator shall make a reasonable  
4 inquiry to determine whether there are any facts that a reasonable  
5 individual would consider likely to create a potential or actual  
6 conflict of interest. Notwithstanding subsection (16), if the  
7 neutral evaluator is informed of the existence of any facts that a  
8 reasonable individual would consider likely to create a potential  
9 or actual conflict of interest, the neutral evaluator shall  
10 disclose these facts in writing to the local government and all  
11 interested parties involved in the neutral evaluation process. If  
12 any participating interested party to the neutral evaluation  
13 process objects to the neutral evaluator, that interested party  
14 shall notify the local government and all other participating  
15 interested parties to the neutral evaluation process, including the  
16 neutral evaluator, within 15 days of receipt of the notice from the  
17 neutral evaluator. The neutral evaluator shall withdraw, and a new  
18 neutral evaluator shall be selected as provided in subsections (3)  
19 and (4).

20           (9) Before commencing a neutral evaluation process, the  
21 neutral evaluator shall not establish another fiscal or fiduciary  
22 relationship with any of the interested parties or the local  
23 government in a manner that would raise questions about the  
24 integrity of the neutral evaluation process, except that the  
25 neutral evaluator may conduct further neutral evaluation processes  
26 regarding other potential local public entities that may involve  
27 some of the same or similar constituents to a prior mediation.

1           (10) The neutral evaluator shall conduct the neutral  
2 evaluation process in a manner that promotes voluntary, uncoerced  
3 decision making in which each participant makes free and informed  
4 choices regarding the neutral evaluation process and outcome.

5           (11) The neutral evaluator shall not impose a settlement on  
6 the participants. The neutral evaluator shall use his or her best  
7 efforts to assist the participants to reach a satisfactory  
8 resolution of their disputes. Subject to the discretion of the  
9 neutral evaluator, the neutral evaluator may make oral or written  
10 recommendations for a settlement or plan of readjustment to a  
11 participant privately or to all participants jointly.

12           (12) The neutral evaluator shall inform the local government  
13 and all participants of the provisions of chapter 9 relative to  
14 other chapters of title 11 of the United States Code, 11 USC 101 to  
15 1532. This instruction shall highlight the limited authority of  
16 United States bankruptcy judges in chapter 9, including, but not  
17 limited to, the restriction on federal bankruptcy judges' authority  
18 to interfere with or force liquidation of a local government's  
19 property and the lack of flexibility available to federal  
20 bankruptcy judges to reduce or cram down debt repayments and  
21 similar efforts not available to reorganize the operations of the  
22 local government that may be available to a corporate entity.

23           (13) The neutral evaluator may request from the participants  
24 documentation and other information that the neutral evaluator  
25 believes may be helpful in assisting the participants to address  
26 the obligations between them. This documentation may include the  
27 status of funds of the local government that clearly distinguishes

1 between general funds and special funds and the proposed plan of  
2 readjustment prepared by the local government. The participants  
3 shall respond to a request from the neutral evaluator in a timely  
4 manner.

5 (14) The neutral evaluator shall provide counsel and guidance  
6 to all participants, shall not be a legal representative of any  
7 participant, and shall not have a fiduciary duty to any  
8 participant.

9 (15) If a settlement with all interested parties and the local  
10 government occurs, the neutral evaluator may assist the  
11 participants in negotiating a pre-petitioned, pre-agreed-upon plan  
12 of readjustment in connection with a potential chapter 9 filing.

13 (16) If at any time during the neutral evaluation process the  
14 local government and a majority of the representatives of the  
15 interested parties participating in the neutral evaluation process  
16 wish to remove the neutral evaluator, the local government or any  
17 interested party may make a request to the other interested parties  
18 to remove the neutral evaluator. If the local government and a  
19 majority of the interested parties agree that the neutral evaluator  
20 should be removed and agree on who should replace the neutral  
21 evaluator, the local government and the interested parties shall  
22 select a new neutral evaluator.

23 (17) The local government and all interested parties  
24 participating in the neutral evaluation process shall negotiate in  
25 good faith.

26 (18) The local government and each interested party shall  
27 provide a representative to attend all sessions of a neutral

1 evaluation process. Each representative shall have the authority to  
2 settle and resolve disputes or shall be in a position to present  
3 any proposed settlement or plan of readjustment to the participants  
4 in the neutral evaluation process.

5 (19) The local government and the participating interested  
6 parties shall maintain the confidentiality of the neutral  
7 evaluation process and shall not at the conclusion of the neutral  
8 evaluation process or during any bankruptcy proceeding disclose  
9 statements made, information disclosed, or documents prepared or  
10 produced unless a judge in a chapter 9 bankruptcy proceeding orders  
11 that the information be disclosed to determine the eligibility of a  
12 local government to proceed with a bankruptcy proceeding under  
13 chapter 9, or as otherwise required by law.

14 (20) A neutral evaluation process authorized by this act shall  
15 not last for more than 60 days following the date the neutral  
16 evaluator is initially selected, unless the local government or a  
17 majority of participating interested parties elect to extend the  
18 neutral evaluation process for up to 30 additional days. The  
19 neutral evaluation process shall not last for more than 90 days  
20 following the date the neutral evaluator is initially selected.

21 (21) The local government shall pay 50% of the costs of a  
22 neutral evaluation process, including, but not limited to, the fees  
23 of the neutral evaluator, and the interested parties shall pay the  
24 balance of the costs of the neutral evaluation process, unless  
25 otherwise agreed to by the local government and a majority of the  
26 interested parties.

27 (22) The neutral evaluation process shall end if any of the

1 following occur:

2 (a) The local government and the participating interested  
3 parties execute a settlement agreement. However, if the state  
4 treasurer determines that the settlement agreement does not provide  
5 sufficient savings to the local government, the state treasurer  
6 shall provide notice to the local government that the settlement  
7 agreement does not provide sufficient savings to the local  
8 government and the local government shall proceed under 1 of the  
9 other local government options as provided in section 7.

10 (b) The local government and the participating interested  
11 parties reach an agreement or proposed plan of readjustment that  
12 requires the approval of a bankruptcy judge.

13 (c) The neutral evaluation process has exceeded 60 days  
14 following the date the neutral evaluator was selected, the local  
15 government and the participating interested parties have not  
16 reached an agreement, and neither the local government nor a  
17 majority of the interested parties elect to extend the neutral  
18 evaluation process past the initial 60-day time period.

19 (d) The local government initiated the neutral evaluation  
20 process under subsection (1) and did not receive a response from  
21 any interested party within the time specified in subsection (2).

22 (e) The fiscal condition of the local government deteriorates  
23 to the point that necessitates the need to proceed under the  
24 chapter 9 bankruptcy option pursuant to section 26.

25 (23) If the 60-day time period for a neutral evaluation  
26 process expires, including any extension of the neutral evaluation  
27 process past the initial 60-day time period under subsection (20),

1 and the neutral evaluation process is complete with differences  
2 resolved, the neutral evaluation process shall be concluded. If the  
3 neutral evaluation process does not resolve all pending disputes  
4 with the local government and the interested parties, or if  
5 subsection (22)(b), (c), or (d) applies, the governing body of the  
6 local government shall adopt a resolution recommending that the  
7 local government proceed under chapter 9 and submit the resolution  
8 to the governor and the state treasurer. Except as otherwise  
9 provided in this subsection, if the local government has a strong  
10 mayor, the resolution requires strong mayor approval before the  
11 local government proceeds under chapter 9. The resolution shall  
12 include a statement determining that the financial condition of the  
13 local government jeopardizes the health, safety, and welfare of the  
14 residents who reside within the local government or service area of  
15 the local government absent the protections of chapter 9. If the  
16 governor approves the resolution for the local government to  
17 proceed under chapter 9, the governor shall inform the local  
18 government in writing of the decision. The governor may place  
19 contingencies on a local government in order to proceed under  
20 chapter 9 including, but not limited to, appointing a person to act  
21 exclusively on behalf of the local government in the chapter 9  
22 bankruptcy proceedings. If the governing body of the local  
23 government fails to adopt a resolution within 7 days after the  
24 neutral evaluation process is concluded as provided in this  
25 subsection, the governor may appoint a person to act exclusively on  
26 behalf of the local government in chapter 9 bankruptcy proceedings.  
27 If the governor does not appoint a person to act exclusively on



1 behalf of the local government in chapter 9 bankruptcy proceedings,  
2 the chief administrative officer of the local government shall act  
3 exclusively on behalf of the local government in chapter 9  
4 bankruptcy proceedings. Upon receiving written approval from the  
5 governor under section 26, the local government may file a petition  
6 under chapter 9 and exercise powers under federal bankruptcy law.

7       Sec. 26. (1) With the written approval of the governor, a  
8 local government may file a petition under chapter 9 and exercise  
9 powers pursuant to federal bankruptcy law if the local government  
10 adopts a resolution, by a majority vote of the governing body of  
11 the local government, that declares a financial emergency in the  
12 local government. Except as otherwise provided in this subsection,  
13 if the local government has a strong mayor, the resolution requires  
14 strong mayor approval. The resolution shall include a statement  
15 determining that the financial condition of the local government  
16 jeopardizes the health, safety, and welfare of the residents who  
17 reside within the local government or service area of the local  
18 government absent the protections of chapter 9 and that the local  
19 government is or will be unable to pay its obligations within 60  
20 days following the adoption of the resolution.

21       (2) If the governor approves a local government to proceed  
22 under chapter 9, the governor shall inform the local government in  
23 writing of the decision. The governor may place contingencies on a  
24 local government in order to proceed under chapter 9 including, but  
25 not limited to, appointing a person to act exclusively on behalf of  
26 the local government in the chapter 9 bankruptcy proceedings. If  
27 the governor does not appoint a person to act exclusively on behalf

1 of the local government in chapter 9 bankruptcy proceedings, the  
2 chief administrative officer of the local government shall act  
3 exclusively on behalf of the local government in chapter 9  
4 bankruptcy proceedings. Upon receipt of the written approval and  
5 subject to this subsection, the local government may proceed under  
6 chapter 9 and exercise powers under federal bankruptcy law.

7 (3) If the governor does not approve a local government to  
8 proceed under chapter 9, the local government shall within 7 days  
9 select 1 of the other local options as provided in section 7.

10 Sec. 27. (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 the Michigan court of claims, as  
27 determined by the review team or emergency manager, to compel

1 testimony and furnish records and documents. An action in mandamus  
2 may be used to enforce this 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) A local government placed in receivership under this act  
13 is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a  
14 period of 5 years from the date the local government is placed in  
15 receivership or until the time the receivership is terminated,  
16 whichever occurs first.

17 Sec. 28. This act does not give the emergency manager or the  
18 state financial authority the power to impose taxes, over and above  
19 those already authorized by law, without the approval at an  
20 election of a majority of the qualified electors voting on the  
21 question.

22 Sec. 29. The state financial authority shall issue bulletins  
23 or promulgate rules as necessary to carry out the purposes of this  
24 act. Rules shall be promulgated pursuant to the administrative  
25 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

26 Sec. 30. (1) All of the following actions that occurred under  
27 former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before

1 the effective date of this act are effective under this act:

2 (a) A determination by the state treasurer or superintendent  
3 of public instruction pursuant to a preliminary review of the  
4 existence of probable financial stress or a serious financial  
5 problem in a local government.

6 (b) The appointment of a review team.

7 (c) The findings and conclusion contained in a review team  
8 report submitted to the governor.

9 (d) A determination by the governor of a financial emergency  
10 in a local government.

11 (e) A confirmation by the governor of a financial emergency in  
12 a local government.

13 (2) An action contained in subsection (1) need not be  
14 reenacted or reaffirmed in any manner to be effective under this  
15 act.

16 Sec. 31. An emergency manager or emergency financial manager  
17 appointed and serving under state law immediately prior to the  
18 effective date of this act shall continue under this act as an  
19 emergency manager for the local government.

20 Sec. 32. This act does not impose any liability or  
21 responsibility in law or equity upon this state, any department,  
22 agency, or other entity of this state, or any officer or employee  
23 of this state, or any member of a receivership transition advisory  
24 board, for any action taken by any local government under this act,  
25 for any violation of the provisions of this act by any local  
26 government, or for any failure to comply with the provisions of  
27 this act by any local government. A cause of action against this

1 state or any department, agency, or entity of this state, or any  
2 officer or employee of this state acting in his or her official  
3 capacity, or any membership of a receivership transition advisory  
4 board acting in his or her official capacity, may not be maintained  
5 for any activity authorized by this act, or for the act of a local  
6 government filing under chapter 9, including any proceeding  
7 following a local government's filing.

8       Sec. 33. If any portion of this act or the application of this  
9 act to any person or circumstances is found to be invalid by a  
10 court, the invalidity shall not affect the remaining portions or  
11 applications of this act which can be given effect without the  
12 invalid portion or application. The provisions of this act are  
13 severable.

14       Sec. 34. For the fiscal year ending September 30, 2013,  
15 \$780,000.00 is appropriated from the general fund to the department  
16 of treasury to administer the provisions of this act and to pay the  
17 salaries of emergency managers. The appropriation made and the  
18 expenditures authorized to be made by the department of treasury  
19 are subject to the management and budget act, 1984 PA 431, MCL  
20 18.1101 to 18.1594.

21       Sec. 35. (1) For the fiscal year ending September 30, 2013,  
22 \$5,000,000.00 is appropriated from the general fund to the  
23 department of treasury to administer the provisions of this act, to  
24 secure the services of financial consultants, lawyers, work-out  
25 experts, and other professionals to assist in the implementation of  
26 this act, and to assist local governments in proceeding under  
27 chapter 9.

1           (2) The appropriation authorized in this section is a work  
2 project appropriation, and any unencumbered or unallotted funds are  
3 carried forward into the following fiscal year. The following is in  
4 compliance with section 451a(1) of the management and budget act,  
5 1984 PA 431, MCL 18.1451a:

6           (a) The purpose of the project is to provide technical and  
7 administrative support for the department of treasury to implement  
8 this act. Costs related to this project include, but are not  
9 limited to, all of the following:

10           (i) Staffing-related costs.

11           (ii) Costs to promote public awareness.

12           (iii) Any other costs related to implementation and dissolution  
13 of the program, including the resolution of accounts.

14           (b) The work project will be accomplished through the use of  
15 interagency agreements, grants, state employees, and contracts.

16           (c) The total estimated completion cost of the project is  
17 \$5,000,000.00.

18           (d) The expected completion date is September 30, 2016.

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

21           Enacting section 2. It is the intent of the legislature that  
22 this act function and be interpreted as a successor statute to  
23 former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and  
24 that whenever possible a reference to former 1988 PA 101, former  
25 1990 PA 72, or former 2011 PA 4, under other laws of this state or  
26 to a function or responsibility of an emergency financial manager  
27 or emergency manager under former 1988 PA 101, former 1990 PA 72,

1 or former 2011 PA 4, under other laws of this state shall function  
2 and be interpreted to reference to this act, with the other laws of  
3 this state referencing former 1988 PA 101, former 1990 PA 72, or  
4 former 2011 PA 4, including, but not limited to, all of the  
5 following:

6 (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

7 (b) 1966 PA 293, MCL 45.501 to 45.521.

8 (c) 1851 PA 156, MCL 46.1 to 46.32.

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

10 (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

11 (f) The fourth class city act, 1895 PA 215, MCL 81.1 to  
12 113.20.

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

14 (h) The metropolitan transportation authorities act of 1967,  
15 1967 PA 204, MCL 124.401 to 124.426.

16 (i) 1947 PA 336, MCL 423.201 to 423.217.