

HOUSE BILL No. 4861

August 16, 2017, Introduced by Rep. Lucido and referred to the Committee on Local Government.

A bill to amend 2012 PA 436, entitled
"Local financial stability and choice act,"
by amending section 20 (MCL 141.1560) and by adding section 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 9A. AN EMERGENCY MANAGER APPOINTED BY THE GOVERNOR UNDER
2 SECTION 9 SHALL POST A SUITABLE BOND OF NOT LESS THAN
3 \$5,000,000.00, ISSUED BY A RESPONSIBLE BONDING ENTITY, FOR THE
4 FAITHFUL PERFORMANCE OF THE DUTIES OF THE OFFICE. AN EMERGENCY
5 MANAGER FORFEITS THE BOND IF HIS OR HER CONDUCT AS AN EMERGENCY
6 MANAGER AMOUNTS TO GROSS NEGLIGENCE OR IS WILLFUL AND WANTON
7 MISCONDUCT, AND THE EMERGENCY MANAGER IS RESPONSIBLE FOR ALL
8 DAMAGES, EXPENSES, AND COSTS ASSOCIATED WITH THAT GROSS NEGLIGENCE
9 OR WILLFUL AND WANTON MISCONDUCT.

1 Sec. 20. (1) An emergency manager is ~~immune from liability as~~
2 ~~provided in section 7(5) of 1964 PA 170, MCL 691.1407.~~ **NOT**
3 **PROTECTED BY THE IMMUNITY CONFERRED BY 1964 PA 170, MCL 691.1401 TO**
4 **691.1419.**

5 (2) A person employed by an emergency manager is immune from
6 liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

7 (3) ~~(2)~~ The attorney general shall defend any civil claim,
8 demand, or lawsuit ~~which~~ **THAT** challenges any of the following:

9 (a) The validity of this act.

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

12 (c) The authority of an emergency manager if the emergency
13 manager is or was acting within the scope of authority for an
14 emergency manager under this act.

15 (4) ~~(3)~~ With respect to any aspect of a receivership under
16 this act, the costs incurred by the attorney general in carrying
17 out the responsibilities of subsection ~~(2)~~ **(3)** for attorneys,
18 experts, court filing fees, and other reasonable and necessary
19 expenses ~~shall be~~ **ARE** at the expense of the local government that
20 is subject to that receivership and ~~shall~~ **MUST** be reimbursed to the
21 attorney general by the local government. The failure of a
22 municipal government that is or was in receivership to remit to the
23 attorney general the costs incurred by the attorney general within
24 30 days after written notice to the municipal government from the
25 attorney general of the costs is a debt owed to this state and
26 ~~shall~~ **MUST** be recovered by the state treasurer as provided in
27 section 17a(5) of the Glenn Steil state revenue sharing act of

1 1971, 1971 PA 140, MCL 141.917a. The failure of a school district
2 that is or was in receivership to remit to the attorney general the
3 costs incurred by the attorney general within 30 days after written
4 notice to the school district from the attorney general of the
5 costs is a debt owed to this state and ~~shall~~**MUST** be recovered by
6 the state treasurer as provided in the state school aid act of
7 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

8 (5) ~~(4)~~—An emergency manager may procure and maintain, at the
9 expense of the local government for which the emergency manager is
10 appointed, worker's compensation, general liability, professional
11 liability, and motor vehicle insurance for the emergency manager
12 and any employee, agent, appointee, or contractor of the emergency
13 manager as may be provided to elected officials, appointed
14 officials, or employees of the local government. The insurance
15 procured and maintained by an emergency manager may extend to any
16 claim, demand, or lawsuit asserted or costs recovered against the
17 emergency manager and any employee, agent, appointee, or contractor
18 of the emergency manager from the date of appointment of the
19 emergency manager to the expiration of the applicable statute of
20 limitation if the claim, demand, or lawsuit asserted or costs
21 recovered against the emergency manager or any employee, agent,
22 appointee, or contractor of the emergency manager resulted from
23 conduct of the emergency manager or any employee, agent, appointee,
24 or contractor of the emergency manager taken in accordance with
25 this act during the emergency manager's term of service.

26 (6) ~~(5)~~—If, after the date that the service of an emergency
27 manager is concluded, the emergency manager or any employee, agent,

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

17 (a) The scope of authority of the person or entity seeking the
18 payment.

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

21 **(7)** ~~(6)~~—The failure of a municipal government to honor and
22 remit the legal expenses of a former emergency manager or any
23 employee, agent, appointee, or contractor of the emergency manager
24 as required by this section is a debt owed to this state and ~~shall~~
25 **MUST** be recovered by the state treasurer as provided in section
26 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971
27 PA 140, MCL 141.917a. The failure of a school district to honor and

1 remit the legal expenses of a former emergency manager or any
2 employee, agent, appointee, or contractor of the emergency manager
3 as required by this section is a debt owed to this state and ~~shall~~
4 **MUST** be recovered by the state treasurer as provided in the state
5 school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

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

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. _____ or House Bill No. 4862 (request no.
10 03704'17 a) of the 99th Legislature is enacted into law.