

**SUMMARY OF POWERS OF AN EMERGENCY MANAGER**  
**UNDER MICHIGAN PUBLIC ACT 436**

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**Introduction:**

- Under Section 7 of Public Act 436 (the “Act”), upon the confirmation of a finding of a financial emergency of the local government under Section 6 of the Act, the governing body shall, by resolution, within 7 days after the confirmation of such finding, select 1 of the following options to address the financial emergency:
  - Consent agreement pursuant to Section 8 of the Act;
  - Emergency manager option pursuant to Section 9 of the Act;
  - Neutral Evaluation option pursuant to Section 25 of the Act; or
  - Chapter 9 bankruptcy option pursuant to Section 26 of the Act.
- Subject to Sections 9(6)(c) and 9(11) of the Act, unless authorized by the governor, Section 7(4) provides that a local government shall not utilize 1 of the options listed above more than 1 time.

**Appointment and Removal of an Emergency Manager:**

- If an emergency manager is selected then:
  - The emergency manager serves at the pleasure of the governor under Section 9(3)(d) and is subject to impeachment and conviction by the legislature as a civil officer under Section 7 of Article XI of the State Constitution of 1963.

- Once appointed, the emergency manager serves (i) until removed by the governor or the legislature (Section 9(6)(a)), (ii) until the financial emergency is rectified (Section 9(6)(b)), or (iii) is removed after serving 18 months (Section 9(6)(c)).
- If an emergency manager is removed, the governor shall within 30 days of the removal appoint a new emergency manager under Section 9(6)(a).
- Section 9(6)(c) provides that if an emergency manager has served for at least 18 months after his/her appointment under this Act, the emergency manager may, by resolution be removed by a 2/3 vote of the governing body of the local government (with strong mayor approval, if the local government has a strong mayor). If the emergency manager is removed and the local government has not previously breached a consent agreement under this Act, the local government may within 10 days negotiate a consent agreement with the state treasurer. If the consent agreement is not agreed upon within 10 days, the local government may proceed with neutral evaluation.
- Section 9(11) provides that if an emergency manager has served for less than 18 months after his/her appointment under this Act, the governing body of the local government (with strong mayor approval if the local government has a strong mayor) may pass a resolution petitioning the governor to remove the emergency manager and allow the local government to proceed under the neutral evaluation process. If the governor accepts the resolution, the local government shall proceed under neutral evaluation. If not and, a financial emergency is deemed still to exist, the statute is unclear as to what happens. Ultimately, the governor must approve of the emergency manager's removal.
- Section 9(7) provides that a local government shall be removed from receivership when the financial conditions are corrected, or may be removed from receivership if an emergency manager is removed under Section 9(6)(c); however, if a local government is removed from receivership while a financial emergency continues to exist, as determined by the governor, it shall proceed under neutral evaluation.
- Section 22(1) provides that if an emergency manager determines that the financial emergency has been rectified, he shall inform the governor and the state treasurer. If the governor disagrees, Section 22(2) requires the governor to inform the emergency manager and the term of the emergency manager shall continue or the governor shall appoint a new emergency manager.

- Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated under Section 23(a).
- Under Section 24, the governor may, upon his/her own initiative or after receiving a recommendation for a receivership transition advisory board, determine that the financial conditions of a local government have not been corrected in a sustainable fashion as required under Section 9(7) and appoint a new emergency manager.

**Powers of an Emergency Manager:**

- Sections 10 through 17 of the Act generally delineate the duties and responsibilities of an emergency manager and, include the following:
  - Section 10(1) provides that the emergency manager shall issue such orders to the local elected and appointed officials and employees that he/she considers necessary to accomplish the purposes under the Act. These orders may include (i) orders for timely and satisfactory implementation of a financial and operating plan, or (ii) orders to take or to refrain from taking actions to enable the orderly accomplishment of the financial and operating plan. Such orders are binding on the local elected and appointed officials and employees, agents and contractors of the local government. Section 10(2) provides that, in addition to other remedies provided in the Act, if a person subject to an order fails to comply with it, the person may be denied access to the local government’s office facilities, electronic mail and internal operation systems.
  - Section 11(1) requires the emergency manager to develop a financial and operating plan for the local government. The emergency manager may also amend such plan from time to time under Section 11(2) with notice to the state treasurer. The Act further requires that the plan have the objectives of assuring (i) the local government is able to provide or cause to be provided governmental services essential to the public health, safety and welfare, and (ii) the financial accountability of the local government. Subsections (a) through (f) delineate what must be provided in the plan and includes:
    - (a) conducting all aspects of the operations of the local government with resources available according to the emergency manager’s revenue estimate;

- (b) the payment in full of the scheduled debt service requirements on all bonds, notes and municipal securities, contract obligations in anticipation of the issued bonds, notes and securities and all other uncontested legal obligations;
  - (c) the modification, termination and renegotiation of contracts pursuant to Section 12 of the Act;
  - (d) the timely deposit of required payments to the pension fund;
  - (e) an educational plan if the local government is a school district; and
  - (f) any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.
- Section 11(2) requires the emergency manager to submit the financial and operating plan within 45 days after his/her appointment to the state treasurer, the chief administrative officer and the governing body of the local government. If the local government is a school district, the plan must also be submitted to the superintendent of public instruction.
  - Section 11(3) provides that the plan, which may serve as a deficit elimination plan if otherwise required by law and approved by the state financial authority, must be in the form provided by the state treasurer and contain the information for each year that the plan is in effect.
  - Section 11(4) requires the emergency manager to conduct a public informational meeting on the plan and any modifications to the plan within 30 days of submitting the plan to the state financial authority. No public approval of the plan or any modification is required before it is implemented.
  - Section 11(5) makes clear the enforceability and effectiveness of a plan adopted under former Public Act 72.
  - Section 12(1) delineates what an emergency manager may do even if the charter of the local government provides otherwise and, includes:

- Analyze factors leading to financial emergency and correct them (Section 12(1)(a));
- Amend, revise, approve or disapprove the budget of the local government and limit the total amount appropriated or expended (Section 12(1)(b));
- Receive and disburse all federal, state and local funds earmarked for the local government (Section 12(1)(c));
- Require, approve, disapprove, amend or revise a plan for paying all outstanding obligations of the local government (Section 12(1)(d));
- Require or prescribe the form of specific reports to be made by the financial officer of the local government to its governing body, the creditors, the emergency manager or the public (Section 12(1)(e));
- Examine all books and records, cause the attendance of witnesses and production of documents relevant to the analysis of the financial condition of the local government (Section 12(1)(f));
- Make, approve or disapprove any appropriation, contract, expenditure or loan, the creation of any new position or the filling of any vacancy in a position by any appointing authority (Section 12(1)(g));
- Review payrolls or other claims against local government before payment (Section 12(1)(h));
- Implement staffing levels for the local government (Section 12(1)(i));
- Reject, modify or terminate 1 or more terms and conditions of an existing contract (Section 12(1)(j));
- Subject to Section 19 of the Act and other required determinations by the emergency manager and the state treasurer, the emergency manager may reject, modify or terminate an existing collective bargaining agreement if the emergency manager determines in his/her sole discretion that a prompt and satisfactory resolution is unlikely to be obtained (Section 12(1)(k));
- The emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency

manager as the sole trustee, replace all the serving trustees, if it is determined that the municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent government accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due (Section 12(1)(m));

- Consolidate or eliminate departments or transfer functions within 1 department to another and appoint, supervise and remove administrators/heads of departments (Section 12(1)(n));
- Employ or contract, at the expense of the local government and with the approval of the state financial authority, auditors or technical personnel considered necessary to implement the Act (Section 12(1)(o));
- Retain 1 or more persons or firms from the list approved by the state treasurer to perform duties of a local inspector or local auditor (with such duties specified in the Act) (Section 12(1)(p));
- May initiate court proceedings in the Michigan court of claims or in the circuit county in which the local government is located to enforce compliance or restrain violations (Section 12(1)(q));
- Subject to Section 19, if provided in the financial and operating plan or with prior written approval of the governor or his/her designee, sell, lease, assign or otherwise use or transfer assets, liabilities, functions or responsibilities of the local government, provided that such proposed action does not endanger the health, safety or welfare of the residents or unconstitutionally impair a bond, note, security or uncontested legal obligation of the local government (Section 12(1)(r));
- Apply for a loan from the state on behalf of the local government, subject to the conditions of the emergency municipal loan act (Section 12(1)(s));
- Subject to Section 19, authorize the borrowing of money by the local government as provided by law (Section 12(1)(u));
- Approve/disapprove of the issuance of obligations of the local government, with any such election to approve/disapprove of such

issuance to be held only at the general November election (Section 12(1)(v));

- Enter into agreements with creditors or other persons regarding payment and settlement of debts (Section 12(1)(w));
- Enter into agreements with creditors or other persons to restructure debts on terms, at rates of interest and with security as shall be agreed among the parties, subject to approval of the state treasurer (Section 12(1)(x));
- Enter into agreements with other local governments, public bodies or entities for the provision of services, joint exercise of powers or transfers of functions and responsibilities (Section 12(1)(y));
- Enter into agreements with other units of municipal government to transfer property of the municipal government, subject to approval of the state treasurer (Section 12(1)(z));
- Enter into agreements with 1 or more local governments or public bodies to consolidate services (Section 12(1)(aa));
- If the receivership involves a city, village or township, recommend to state boundary commission consolidation if the emergency manager determines such action would materially alleviate the financial emergency and not materially and adversely affect the local government consolidated with, with such action to proceed as provided by law (Section 12(1)(bb));
- Disincorporate or dissolve or assign assets, debts and liabilities, with the consent of the governor and subject to vote of electors of the local government, if required by law (Section 12(1)(cc));
- Exercise all other authority and responsibilities of chief administrative officer and governing body with respect to adoption, amendment and enforcement of ordinances and resolutions of the local government with respect to various acts defined in the Act (Section 12(1)(dd));
- Take any other action or exercise any other power or authority of any officer, employee, department, board, commission or other similar entity of the local government (Section 12(1)(ee)); and

- Remove, replace, appoint or confirm appointments to any office, board, commission, authority or other entity within or part of the local government (Section 12(1)(ff)).
- Section 12(2) confirms that the power of the chief administrative officer of the local government is suspended during the receivership and vested in the emergency manager.
- Section 12(3) makes any contract involving a cumulative value of \$50,000 or more subject to competitive bidding; but the emergency manager may submit it to the state treasurer for review and approval without competitive bidding.
- Section 12(4) prohibits an emergency manager for a city or village from selling or transferring a public utility furnishing light, heat or power without the majority approval of the electors voting on it, unless a greater number is provided by the charter of the city/village. In addition, the emergency manager may not utilize such assets associated with the utility, the finances of which are separately maintained and accounted for to satisfy the general obligations of the local government.
- Section 13 authorizes the emergency manager upon his appointment and during the pendency of the receivership, the salary, wages and other compensation of the chief administrative officer and members of the governing body of the local government are eliminated; except vested pension benefits cannot be impaired. The emergency manager may restore such compensation during the receivership if he/she considers it appropriate and such restoration is consistent with the financial and operating plan.
- Section 14 delineates the additional powers of an emergency manager of a school district.
- Section 15 limits the authority of an emergency manager to sell an asset of the local government whose value is more than \$50,000. The sale must be part of the financial and operating report and subject to the approval of the state treasurer.
- Section 16 gives the emergency manager the authority to determine on his/her own or with the advice of the local inspector (if retained) whether possible criminal conduct contributed to the financial emergency and, if so, to refer the matter to the attorney general and the local prosecutor for investigation.

- Section 17 sets forth various periodic reporting requirements for the emergency manager beginning 6 months after his appointment and then every 3 months thereafter.
- Section 18 permits an emergency manager to seek authority from the governor and the state treasurer to file a chapter 9 case based on his/her judgment that no reasonable alternative to rectify the financial emergency of the local government that is in receivership exists and, thus, recommends that a filing be authorized.
- Section 18 does not say what happens if the governor and the state treasurer decline to accept the recommendation of the emergency manager, but presumably, the emergency manager continues to move forward to rectify the financial emergency.
- Section 19 sets forth the requirements and actions that an emergency manager must take prior to attempting to terminate a collective bargaining agreement.
- Section 20 provides that an emergency manager is immune from liability and how actions are defended and by whom. This section also addresses insurance coverage that may be procured by an emergency manager.
- Section 21 requires the emergency manager to adopt and implement a 2-year budget for the local government commencing with the termination of the receivership either before the termination of the receivership and completion of the emergency manager's term or before a transition advisory board is appointed. This budget may not be amended by the local government without the approval of the state treasurer. The local government is also prohibited from revising any order or ordinance implemented by the emergency manager prior to 1 year after termination of the receivership.
- Section 22 directs an emergency manager to inform the governor and the state treasurer if he/she determines that the financial emergency has been rectified. If the governor disagrees, the emergency manager is informed and either continues his/her term or the governor appoints a new emergency manager. If the governor agrees, Section 22(3) sets forth what action the governor may then take.
- Section 23 permits the governor to appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated, who serves on that board, and what powers the board has.

- Section 24 authorizes the governor on his/her own or upon the recommendation of the receivership transition advisory board to determine that the financial conditions have been corrected in a sustainable fashion or to appoint a new emergency manager.
- The Act does not provide the emergency manager with the right to select neutral evaluation or delineate that as one of his powers/rights under the Act.

***These materials provide general information only and do not constitute legal advice for any particular situation.***