

**SCHOOL DISTRICT OF THE CITY OF HIGHLAND PARK
BOARD OF EDUCATION WORKSHOP**

Highland Park Renaissance Academy
15900 Woodward Avenue, Third Floor
Highland Park, Michigan 48203
Tuesday, February 11, 2014
8:00 p.m.

MINUTES

- I. Present Board Members: Debra Humphrey, Glenda McDonald, Kurt Griggs-Swanson and Soyini Williams

Absent Board Members: Robert Davis, Jamille Edwards and John Holloway

Also present were: Mr. Gregory Weatherspoon, Emergency Manager, Mr. Jack Bauman, Director of Human Resources, Ms. Barbara Oliver, Charter School Manager/Administrator, Staff and Citizens.

- II. Mr. Weatherspoon introduced Mr. Brad Banasik and Ms. Karen Cross, representatives from the Michigan Association of School Boards (MASB). Mr. Banasik reviewed The Local Fiscal Stability and Choice Act (Public Act 436 of 2012) and answered questions from an audience which included Board Members and community members. No Board of Education business was conducted. Attached is information provided by Mr. Banasik for the workshop.
- III. The workshop started at approximately 7:45 p.m. and concluded at approximately 9:00 p.m.



Ms. Soyini Williams, Secretary
Board of Education

Minutes Adopted: 3/11/14

Highland Park Schools
Board of Education Workshop
February 11, 2014

The Local Fiscal Stability and Choice Act (Public Act 436 of 2012)

*Brad A. Banasik, Legal Counsel
Michigan Association of School Boards
(517) 327-5900, ext. 232
bbanasik@masb.org*

I. Overview

- A. Replaces Public Act 4, known as the Local Government and School District Fiscal Accountability, and repeals Public Act 72
- B. Significant new provisions:
 - 1. Gives school boards four options for addressing a fiscal emergency: a consent agreement, bankruptcy, mediation, and the appointment of an emergency manager.
 - 2. If the emergency manager option is chosen, school boards can approve certain decisions made by the emergency manager.
 - 3. Creates a new option for resolving a financial emergency called a neutral evaluation process.
 - 4. Modifies the procedures by which an emergency manager is appointed and creates procedures for the emergency manager's removal by the school board.

II. Requirements

- A. Conditions triggering a financial review:
 - 1. School board or the superintendent requests a preliminary review.
 - 2. Creditor request.
 - 3. Missed payroll or bond payments.
 - 4. Resolution by either the senate or the house or representatives requesting a preliminary review.

5. Petition signed by registered electors in the school district (5% of the total vote cast for all candidates for governor within the school district).
6. School district ended its most recently completed fiscal year with a deficit in one or more of its funds and has not submitted a deficit elimination plan.
7. Failure to comply with a state-ordered deficit elimination plan.
8. Violation of local government debt or budgeting rules.
9. School district fails to provide an annual financial report or audit in accordance with requirements.
10. Imposition of a court-ordered tax levy.
11. A very low credit rating.
12. Other facts or circumstances that, in the superintendent of public instruction's sole discretion, are indicative of probable financial distress.

B. The Preliminary Review Process.

1. State Financial Authority notifies school district of intent to commence preliminary review.
2. School district provides assistance and information.
3. Must be completed within 30 days.
4. School district receives interim report within 20 days and then has five days to provide comments (May 8, 2013 Report from Mike Flanagan, State Superintendent).
5. Final report incorporating the district's comments is provided to the district, the state senator and state representative who represent the district, and the local emergency financial assistance loan board within 20 days.
6. The local emergency financial assistance loan board will determine if probable financial stress exists for the district, which results in the governor appointing a financial review team.

- C. Financial Review Team.**
- 1. Members**
 - a. State treasurer or designee.
 - b. Superintendent of public instruction or designee.
 - b. The director of the Michigan department of technology, management and budget or designee.
 - c. Three representatives nominated (one each) by the governor, the speaker of the House and the Senate majority leader.
 - 2. Powers**
 - a. Examines the books and records of the school district.
 - b. Utilizes the services of other state agencies and employees.
 - 3. Meetings**
 - a. The review team meets with the school district to receive, discuss, and consider information provided by the district concerning its financial condition.
 - b. The review team shall also hold at least one public information meeting within the school district at which the public may provide comment.
 - 4. The review team uses a fact-finding process to identify conditions that may result in the declaration of a financial emergency, including:**
 - a. Potential for missed bond payments or missed payrolls
 - b. Excessive amounts of money owed to vendors
 - c. Large general fund deficits
 - d. Loans between government funds
 - e. Existence of a structural operating deficit
 - f. Inappropriate use of government funds
 - g. Failure to comply with an approved deficit elimination plan
 - 5. Report**

- a. The review team must submit a written report of its findings to the governor within 60 days following its appointment (school board receives copy).
 - Governor may grant one 30 day extension.
- b. The review team shall include one of the following conclusions in its report:
 - (1) A financial emergency does not exist within the school district.
 - (2) A financial emergency exists within the school district.

D. Determination by the Governor

1. If a financial emergency exists, the superintendent will receive written notification of the determination and will be provided the opportunity to request a hearing conducted by the state financial authority or its designee.
2. After the hearing (or if no hearing is requested), the governor must either confirm or revoke the determination of a financial emergency.
3. The school board may appeal the determination within 10 business days to the Michigan court of claims by resolution adopted by a vote of 2/3 of the members serving on the board.

E. Options

1. Upon the confirmation of a finding of a financial emergency, a school board must, by resolution within 7 days after the confirmation, select one of the following options to address the financial emergency:
 - a. Entering into a consent agreement
 - b. Accepting the appointment of an emergency manager
 - c. Agreeing to the neutral evaluation process
 - d. Filing for Chapter 9 bankruptcy
2. If no selection is made by the school board, it shall proceed under the neutral evaluation process.

F. Consent Agreement

1. Provisions

- a. Shall provide for remedial measures considered necessary to address the financial emergency.
 - b. May utilize state financial management and technical assistance as necessary in order to alleviate the financial emergency.
 - c. Shall provide for periodic financial status reports to the state treasurer (with copies to the state senators and representatives representing the school district).
 - d. May provide for a board appointed by the governor to monitor the school district's compliance with the consent agreement.
 - e. Shall provide that in the event of a material uncured breach of the consent agreement, the governor may place the school district in receivership or in the neutral evaluation process.
 - d. May include a grant to the school board or superintendent by the state treasurer of one or more of the powers prescribed for emergency managers for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient to achieve the goals and objectives of the consent agreement (excludes rejecting, modifying or terminating provisions of a collective bargaining agreement).
2. Unless otherwise determined by the state treasurer, the school board is relieved of its duty to bargain under the Public Employment Relations Act beginning 30 days after the effective date of the consent agreement.
 3. If no consent agreement is reached within 30 days (or sooner, in the discretion of the state treasurer), the treasurer shall require the school board to proceed under another option.

G. Emergency Manager

1. Role
 - a. Acts for and in the place and stead of the school board and superintendent.
 - b. Following the appointment of an emergency manager and during the pendency of receivership, the school board and superintendent shall not exercise any of their powers except as may be specifically authorized in writing by the emergency manager.
 - c. Compensation paid by the state.

- d. If the emergency manager has served for at least 18 months after his or her appointment, the emergency manager may, by resolution, be removed by a 2/3 vote of the school board.
 - (1) A school board may enter into a consent agreement within 10 days after terminating the emergency manager.
 - (2) If a consent agreement is not agreed upon, the school board shall proceed with the neutral evaluation process.
 - (3) The school district may be removed from receivership if the school board approves a follow-up resolution by a 2/3 vote.
 - (4) If a financial emergency remains, the school district must proceed under the neutral evaluation process.

2. The powers of an emergency manager include the authority to:

- a. Request and review all records of the school district.
- b. ~~Request~~ ^{reject} modify and terminate existing contracts under certain conditions.*
- c. Approve and disapprove appropriations, payments and budgets.
- d. Require special financial reporting.
- e. Fill vacant positions.
- f. Consolidate or eliminate departments.
- g. Engage in intergovernmental contracting.
- h. Retain consultants.
- I. Initiate court proceedings to enforce orders.
- J. Sell debt.
- k. Sell or transfer assets (with written approval of the state).

** The rejection, modification, or termination of one or more conditions of an existing collective bargaining agreement must be based on the following conditions:*

- (1) *The financial emergency in the school district has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.*

- (2) *Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.*
- (3) *Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.*
- (4) *Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.*

3. Additional actions for school districts.

- a. Close schools or other school buildings in the school district.
- b. Negotiate, renegotiate, approve and enter into contracts on behalf of the school district.
- c. Receive and disburse on behalf of the school district all federal, state and local funds earmarked for the school district.
- d. Seek approval from the superintendent of public instruction for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.
- e. Sell, assign, transfer, or otherwise use the assets of the school district to meet past or current obligations, or assure the fiscal accountability of the school district, provided the use, assignment, or transfer of assets does not impair the education of the pupils of the school district.
- f. Approve or disapprove of the issuance of obligations of the school district.

H. Neutral Evaluation Process

1. Purpose

- a. A process in which the school district meets with its creditors to negotiate a settlement about who can be paid and how much.
- b. It is designed to try to avoid bankruptcy filing or minimize the negative impact and cost of a bankruptcy by getting agreement and consent to reductions.

2. Procedure

- a. The parties meet with a neutral mediator who facilitates the process.
- b. Parties involved must provide a representative with settlement authority to attend all sessions of the evaluation process.
- c. The process may not last longer than 60 days after the neutral evaluator is selected unless extended for not more than 30 days.
- d. If the state treasurer determines that a settlement agreement does not provide sufficient savings to the school district, the district must proceed under one of the other three options.
- e. If a settlement agreement is reached by the participating parties and approved by the treasurer, the parties may seek to implement the settlement by incorporating it into a proposed Chapter 9 plan of adjustment and seeking approval of the plan from a bankruptcy court in a Chapter 9 case.
- f. If the neutral evaluation process fails to adequately resolve the issues facing the school district, the district is then required to ask authority from the governor to file a Chapter 9 bankruptcy petition.

I. Chapter 9 Bankruptcy.

1. Process

- a. With the written approval of the governor, a school board may file a petition under Chapter 9 and exercise powers pursuant to federal bankruptcy law if the school board adopts a resolution by a majority vote that declares a financial emergency in the school district.
- b. If the governor approves a school district to proceed under Chapter 9, the governor may place contingencies on the district, including, but not limited to, appointing a person to act exclusively on behalf of the school district in the Chapter 9 bankruptcy proceedings.

J. Receivership Transition Advisory Board

1. Purpose

- a. Established by the governor at the successful conclusion of a financial emergency.
- b. It is designed to ensure that financial problems do not reoccur.

2. Powers

- a. Convene a revenue forecasting conference
- b. Require cash flow and budgeting reporting
- c. Review and approve proposed budgets
- d. Review and approve debt issuance
- e. Review and approve collective bargaining agreements
- f. Perform other duties

III. Conclusion

A Summary of the Local Fiscal Stability and Choice Act Process Public Act 436 of 2012

Step One: If one or more conditions indicative of probable financial stress in a local government exist, the State Financial Authority (State Treasurer or Superintendent of Public Instruction) may conduct a preliminary review, after providing the local government with specific written notification of the review.

Step Two: The State Financial Authority must within 20 days of commencing a preliminary review provide an interim report to the local government and to the State Senators and Representatives representing the local government. The local government may provide comments within 5 days of receipt. The State Financial Authority must within 30 days of commencing a preliminary review provide a final report to the Local Emergency Financial Assistance Loan Board (ELB) and to the State Senators and Representatives representing the local government. The ELB must within 20 days determine whether probable financial stress exists.

Step Three: The Governor must appoint a review team if the ELB determines that probable financial stress exists.

A review team consists of the State Treasurer (or his or her designee), the Director of the Department Technology, Management, and Budget (or his or her designee), a nominee of the Senate Majority Leader, a nominee of the Speaker of the House of Representatives, and any other State officials, or other persons with relevant professional experience selected by the Governor. The Superintendent of Public Instruction (or his or her designee) also is a member if a school district is involved.

Step Four: Unless the Governor specifies an earlier date, or grants a 30-day extension, a review team must report to the Governor within 60 days of its appointment whether specific statutory conditions exist or are likely to occur and must reach one of the following conclusions:

1. A financial emergency does not exist in the local government.
2. A financial emergency exists in the local government.

A review team report must also be forwarded to the State Treasurer, the chief administrative officer and governing body of the local government, the Speaker of the House of Representatives, the Senate Majority Leader, and to the State Senators and Representatives representing the local government.

Step Five: Within 10 days after receipt of the review team report, the Governor must make one of the following determinations:

1. A financial emergency does not exist in the local government.
2. A financial emergency exists in the local government.

Step Six: If the Governor determines that a financial emergency exists, he or she must provide written notification to the chief administrative officer of the unit of local government who may request within 7 days after receiving notice a hearing conducted by the

State Financial Authority or his or her designee.

Step Seven: After the hearing or, if no hearing was requested, after expiration of the opportunity for a hearing, the Governor must either confirm or revoke the determination of a financial emergency.

Step Eight: A local government by a two-thirds vote of its governing body may appeal the Governor's determination within 10 business days to the Court of Claims (Ingham County Circuit Court). The determination may be set aside only if found to be either:

1. Not supported by competent, material, and substantial evidence on the whole record.
2. Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Step Nine: Within 7 days after confirmation of a financial emergency, the governing body of the local government must select one of the following:

1. Consent Agreement option.
2. Emergency Manager option.
3. Neutral Evaluation Process option.
4. Chapter 9 Bankruptcy option.

Except as otherwise provided in the Act, a local government may not utilize any of the foregoing options more than once. A local government that does not select one of the above options is required to proceed under the Neutral Evaluation Process option.

Step Ten: A local government that selects the Emergency Manager option is placed in receivership. Upon appointment of the Emergency Manager, the chief administrative officer and governing body of the local government are prohibited from exercising any powers of offices without written approval of the Emergency Manager and their compensation and benefits are eliminated, but may be restored by the Emergency Manager. A local government is removed from receivership upon one of the following:

1. When the financial conditions that were the basis for the financial emergency are corrected in a sustainable fashion.
2. If, at least 18 months after an Emergency Manager is appointed, a local governing body by a two-thirds vote removes the Emergency Manager and removes the local government from receivership.

Step Eleven: If, at least 18 months after an Emergency Manager is appointed, a local government removes the Emergency Manager and itself from receivership, but the financial emergency continues to exist, the local government is required to proceed under the Neutral Evaluation Process option.

If, at least 18 months after an Emergency Manager is appointed, a local government removes the Emergency Manager, but does not remove itself from receivership, the local government may within 10 days negotiate a consent agreement with the State Treasurer, provided the local government has not previously breached a consent agreement under the Act. If a consent agreement is not reached, the local government is required to proceed under the Neutral Evaluation Process option.

Step Twelve: If a local government selects the Chapter 9 Bankruptcy option, the Governor may place contingencies upon a local government, including the selection of an individual to act exclusively on behalf of the local government in any Chapter 9 proceedings.