

Proposal 1 of 2012: The Referendum on Public Act 4

By James M. Hohman

Executive Summary*

On the Nov. 6 state ballot, voters will be asked to decide Proposal 1, which would either approve or nullify Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act. This law, passed last year by the Michigan Legislature, provided expanded powers to state-appointed emergency managers of local governments and school districts that are in a state of serious “fiscal stress or fiscal emergency.”

Emergency managers with these additional powers were subsequently appointed in seven local government entities. The state has more than 2,000 counties, cities, villages, townships, school districts and other units of local government.

The law has been temporarily suspended pending the outcome of Proposal 1. Voting “yes” on Proposal 1 would reinstate Public Act 4, while voting “no” would nullify it. Nullifying the law would re-establish the state’s previous local government emergency manager law — Public Act 72 of 1990, which was repealed by Public Act 4. Public Act 72 still allowed the state to appoint managers — called “emergency financial managers” — but they lacked several of the powers included in Public Act 4.

Thus, while supporters of nullifying Public Act 4 often argue that the state should not appoint a manager to assume control of a local government unit from its elected officials, state law would still allow this under Public Act 72 if Public Act 4 were nullified. And even without Public Act 4 and Public Act 72, Michigan governments facing insolvency may be subject to court-appointed receivers, as the city of Ecorse was in 1986. A court-

appointed receiver assumes control of local government and is entrusted with considerable powers. In fact, the powers later provided to emergency financial managers were similar to those exercised by the receiver in Ecorse.

The state has placed emergency managers in local governments only after those governments have fallen through other state safety nets meant to prevent insolvency. First, the state requires all governments to balance their budgets. The state requires those that fail at this to submit a plan to resolve any fund deficits that arise. The state also assists governments in raising cash through extra borrowing when deficits arise.

These rules, coupled with responsible fiscal management by local officials, help government units in Michigan avoid reaching the point where they can’t pay their bills. A small percentage of governments still develop financial problems, however.

Both Public Act 4 of 2011 and Public Act 72 of 1990 are the last step in helping Michigan’s local governments and school districts remain solvent prior to declaring bankruptcy. Both acts set up a review team to certify that the government is in fact at serious financial risk, and they both allow the state administration to appoint a manager to control the government unit if the situation is dire.

There were numerous clarifications to the powers and duties of a state-appointed manager in Public Act 4. There were also new powers extended to state-appointed managers in Public Act 4. Perhaps the most material was the ability of a manager to amend the government’s collective bargaining agreements with its employee unions in certain situations. This is a significant tool because local government personnel costs tend to represent the majority of expenses in local governments, and Michigan’s government workforce is highly unionized.

Emergency managers have exercised this power in only three places — the Detroit Public Schools and the cities

* Citations are provided in the main text.

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of Flint and Pontiac. The amendments to government-employee union contracts in these government units are expected to save a total of \$100 million annually — a substantial sum.

Rejecting this power, as well as the additional powers and clarifications of powers offered to state-appointed emergency managers in Public Act 4, will increase the likelihood that local governments nearing insolvency will end up in court-appointed receivership or in federal bankruptcy proceedings.

Introduction

In November, state voters will get to decide whether to approve Proposal 1, which would allow them to accept or reject the Local Government and School District Fiscal Accountability Act.¹ This act, Public Act 4 of 2011, created a new early warning system for local governments and school districts that approach “a condition of financial stress or financial emergency.”² Public Act 4 also prescribed a process to identify and resolve the financial difficulties, possibly culminating in the appointment of an “emergency manager” with special powers to resolve the government’s fiscal problems.

As a description of legislative intent, the act states:

The legislature hereby determines that the health, safety, and welfare of the citizens of this state would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local governments is vitally necessary to the interests of the citizens of this state to assure the provision of necessary governmental services essential to public health, safety, and welfare. The legislature further determines that it is vitally necessary to protect the credit of this state and its political subdivisions and that it is necessary for the public good and it is a valid public purpose for this state to take action and to assist a local government in a condition of financial stress or financial emergency so as to remedy the stress or emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers. The legislature, therefore, determines that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.³

The idea is to ensure that local governments honor commitments to employees, retirees, bondholders, creditors, contractors and other stakeholders. This would keep local governments away from local government bankruptcy, known as “Chapter 9,” or from court-appointed receivership, in which a judge attempts to resolve financial commitments and has the power to cancel a monetary claim on a government.

The state has long had the ability to authorize a manager to take charge of a troubled local government or local school district. In 1988, with the approval of Public Act 101, the Michigan Legislature enabled the appointment of emergency financial managers for struggling municipal governments — that is, cities, villages, townships and counties. In 1990, the Legislature passed Public Act 72, which allowed similar appointments for school districts.

If Public Act 4 is nullified by voters in November, the state would return to the legal situation prior to the passage of that act — in other words, to the provisions of Public Act 72 of 1990.*⁴ Indeed, as soon as the state referendum on Public Act 4 was certified for the ballot, the law was put on hold and Public Act 72 took effect.

A discussion of the history of court-appointed receivers and state-appointed emergency financial managers in Michigan illustrates the problems Public Act 4 attempts to resolve. This history also clarifies the role of the state in averting local government fiscal crises and in identifying emergency financial management weaknesses that Public Act 4 is meant to resolve.

Proposal 1’s petition language lists Public Act 4 provisions that the petition’s drafters believe are problematic:

[Public Act 4 of 2011] allows the governor to declare a local government or school district in receivership and appoint an emergency manager to take control with the following powers, among

* A lawsuit has been filed arguing that a nullification of Public Act 4 by state voters in November would not restore Public Act 72. (See *Watkins et al v Dillon et al*, Ingham Circuit Court Case No. 12-1056C2.) The plaintiffs rely, however, on a statute that applies to acts of the Legislature, not to voter referenda (see MCL § 8.4). While there may be significant litigation over this issue if voters nullify Public Act 4, the better legal argument is that Public Act 72 would be restored by Public Act 4’s nullification.

It should also be noted that if Proposal 1 is defeated and the courts rule Public Act 72 is not restored, it may be that the only two statutes authorizing a municipality or school district to file for Chapter 9 bankruptcy would no longer be in force. If so, municipal and school district bankruptcy would not be an option in Michigan until the Legislature created another enabling statute.

others: to assume the powers of local elected officials; to take control of revenue and spending; to terminate, modify and renegotiate contracts; to refuse to bargain with employee representatives; to take control of employee pension funds under certain circumstances; and with the governor's approval, to sell public assets or dissolve a city, township or county.⁵

Some of these powers preceded the passage of Public Act 4. For instance, the ability to place a financial manager in control of local government was part of both Public Act 101 of 1988 and Public Act 72 of 1990. Public Act 4 tweaked the emergency manager law in a handful of areas, but the most substantial difference was granting an emergency manager the ability to adjust the government unit's* contracts and its collective bargaining agreements with its employees.†

Proponents of repealing Public Act 4 argue that the state should never strip local, democratically elected school boards, city councils, mayors, townships or county commissioners of their power.⁶

But the history of the emergency manager law suggests that its authors intended to prevent control from being taken from local elected officials and to ensure that problems are solved before a crisis. While this view may seem contradicted by the legislation's provision for the appointment of an unelected official, Michigan's experience showed that local government elected officials control can be subverted without state assistance as well.

The Genesis of Michigan's Emergency Management Laws

The state's first emergency manager law, Public Act 101 of 1988, was passed following the court-ordered receivership of a Michigan city — a story that garnered national attention. That receivership, in turn, had followed years of increasing financial difficulties and mismanagement in the city.

* Throughout this study, the phrases "a local unit of government" or "a government unit" will be used to refer to cities, villages, townships, counties or school districts. The phrases are also interchangeable with "a municipal government or school district."

† For instance, Public Act 4 also lowered one threshold for triggering some of the act's provisions by requiring a letter signed by only 5 percent of voters, instead of 10 percent. For a full list of the emergency manager powers and Public Act 4's alterations, see "Appendix A: The Effect of Michigan's Public Act 4 on Municipal and School District Emergency Manager Powers."

The City of Ecorse Receivership: 1986-1990

In 1984, the city of Ecorse, a small city south of Detroit, was sued by its electricity provider and its police and fire pension board for being delinquent in payments.‡ The missed payments were the culmination of a long history of fiscal problems, ranging from improper accounting, a falling tax base, and fringe-benefit and other auto-pilot expenses that increased steadily. The city's expenses in its general fund — the city's key operating fund — rose from \$7.6 million in 1980 to \$8.2 million in 1986.⁷

Judge Richard Dunn, who initially presided over the case, asked for a review of the city's finances and commanded the city to issue bonds in order to raise the cash necessary to pay the bills. The judge also ordered the city to pass a balanced budget, as required by state statutes.⁸

City officials, however, did not comply with the judge's orders. While they did use the bond proceeds to pay some of their debts to the plaintiffs in the case, they again failed to pay new bills from the city's electric, water and sewer utilities.⁹

In fiscal 1986, the city did not receive as much tax revenue as officials had expected, and the city again operated at a deficit. They also failed to pass a budget for the general fund for fiscal 1987.¹⁰

At this point, the city of Ecorse's accumulated deficits were unknown. The city was also paying general expenses by borrowing from funds earmarked for restricted purposes, such as the water and sewer fund, from which the city borrowed \$1.86 million. Other inappropriate borrowing occurred from the major streets fund, the local streets fund, the debt service fund and others.¹¹

In addition, Ecorse, like other cities, collected property taxes for other governments entities, such as school districts and counties. Instead of passing the revenues from these other millages to their respective governments, the city kept this tax revenue and spent it on the city's own general operating expenses.¹² There were also other fiscal problems with the city's insurance, infrastructure, unions and the city-financed municipal court.[§]

‡ Robert Daddow, "Ecorse: The Fall and Rise of a Michigan City," (Mackinac Center for Public Policy, Dec. 1, 1992), <http://www.mackinac.org/5596> (accessed Oct. 15, 2012). The Detroit Water and Sewer department and Wayne County later joined the suit to receive payment for the city's purchase of water and use of the county sewer system.

§ For a detailed assessment of the problems precipitating the receivership and the actions taken to correct the city's finances, see Robert Daddow, "Ecorse: The Fall and Rise of a Michigan City," (Mackinac Center for Public Policy, 1992), <http://www.mackinac.org/5596>

The final straw for Judge Dunn appears to have come when the Ecorse City Council approved travel expenses for some council members to attend a conference in San Antonio.¹³ Shortly thereafter, the judge appointed a receiver for the city.

Court-ordered receivership for local governments is rare. Ecorse was not the first example in Michigan, however: A receiver had been ordered by a court in the Taylor School District in 1979. While this receivership was later overturned by an appeals court, that court nevertheless affirmed that a judge may appoint a receiver as a permissible remedy in extreme cases “when other approaches have failed to bring about compliance with court orders, whether through intransigence or incompetence.”¹⁴

In Ecorse, the receiver was Louis Schimmel, then the executive director of the nonprofit Municipal Advisory Council of Michigan. (Schimmel is formerly an adjunct scholar, Board of Scholars member and director of municipal finance at the Mackinac Center for Public Policy, publisher of this Policy Brief). As receiver, Schimmel was given broad authority over the city. He was empowered to set budgets, control finances, sell assets, hire workers, close positions and negotiate contracts and collective bargaining agreements. Although the city’s elected officials were still in office, he eliminated their annual salaries and their benefits package, including the mayor’s city-paid leased vehicle. The receiver, however, was not allowed to alter the city’s union collective bargaining agreements or other contracts.*

Schimmel made a number of changes to city operations over the 45 months of his tenure. He eliminated nonessential services, such as the ice arena and the community center. He also corrected city accounting, contracted out city services, closed libraries and parks, eliminated the city’s water bill delinquencies, ended interfund borrowing, renegotiated vendor contracts, won major concessions from the city’s unions and contracted with a private firm to perform the major functions of the city’s department of public works. This privatization of the department of public works alone saved the city a minimum of \$509,451 annually¹⁵ — substantial savings in an \$8 million to \$9 million budget.

www.mackinac.org/252 (accessed Oct. 18, 2012).

* Robert Daddow, “Ecorse: The Fall and Rise of a Michigan City,” (Mackinac Center for Public Policy, 1992), <http://www.mackinac.org/5611> (accessed Oct. 15, 2012). Judge Dunn retired shortly after ordering the city into receivership. The scope of the receiver’s powers was largely decided by Judge James Rashid, who took over the case.

He also resolved ongoing litigation — usually with the litigant dropping interest (and sometimes claims) in order to obtain the original amounts the city owed.¹⁶ Overall, the city’s net general fund deficit — the amount that the city owes but does not have equity to cover — reversed from \$2.0 million in 1986 to a \$95,707 general fund surplus in 1990. More importantly, the city was on firmer fiscal ground, with an accounting system in place and payments to vendors and the pension fund made on time.

The judge ended the receivership on Aug. 31, 1990, and control of the city returned to the mayor and city council.

As the actions in Ecorse show, and as the state court of appeals affirmed, local governments were subject to being operated by unelected managers before the passage of Public Act 4 and earlier state legislation in this area.

Public Act 101 and Public Act 72

Indeed, Public Act 101 of 1988, the original emergency manager act, was geared toward preventing a court intervention like that in Ecorse. The state would review local governments to identify fiscal stress, and in extreme cases, the state might itself appoint an emergency financial manager† with powers similar to those granted to the receiver in Ecorse.

When Public Act 101 was passed, the ability of the state to replace local elected officials was not apparently considered a major issue. The original bill was part of a larger legislative package meant to provide assistance to Wayne County government, which was struggling to make ends meet at the time. Indeed, a report from Gongwer News Service, a Lansing insider newsletter, remarked that the “controversial part of the package” was not whether elected representatives could be displaced by the state, but instead whether to increase the state’s cigarette tax by 4 cents per pack.¹⁷

Public Act 101 was largely replaced in 1990 with Public Act 72, which covered school districts as well. This legislation passed with unanimous bipartisan support.¹⁸ Gongwer News Service reported that at a committee hearing, the bill was “endorsed by both school administrators and teacher groups, who welcome new provisions to help districts deal with problems before they reach a crisis stage.”¹⁹

† These managers were called “emergency financial managers” in Public Act 72 of 1990. They were renamed “emergency managers” in Public Act 4 of 2011.

Local Government Bankruptcy

Court-appointed receivership is not a typical remedy for local government financial emergencies. More common in the rest of the country — though prohibited in many states — are Chapter 9 federal bankruptcy proceedings. Still, governments entering bankruptcy are fairly rare, and there have been none in Michigan.

Under Chapter 9, a federal bankruptcy judge has the power to alter or negate the government's debts to vendors and bondholders. In addition, the bankruptcy judge has the power to alter collective bargaining agreements with the government's union workers, as well as the power to modify retiree insurance coverage and accrued pension benefits payable to retired city employees.²⁰

The power to amend workers' and retirees' accrued pension benefits is prohibited to Michigan governments and state courts by the Michigan Constitution.²¹ This power is thus outside the domain of a state-appointed emergency manager or emergency financial manager. In contrast, it is clearly within the purview of federal bankruptcy judges, one of whom recently made substantial cuts to the pension benefits of municipal retirees in the bankrupt city of Central Falls, R.I.²²

A state can refuse to allow its local governments to participate in Chapter 9.²³ Alternatively, a state can stipulate how a local government can enter bankruptcy and otherwise regulate the municipal bankruptcy process. This is to protect a state's authority to manage its internal affairs free from federal involvement.²⁴

In Michigan, Public Act 4 was, as a last resort, the official avenue to a local government bankruptcy. The act states, "If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency ... exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under [federal bankruptcy law]. ..." ²⁵ With the suspension of Public Act 4 pending the outcome of Proposal 1, Public Act 72 (Public Act 4's predecessor) is now the avenue to bankruptcy.^{*,26} Note that the legal costs to a government unit of filing and proceeding through federal bankruptcy can be substantial.

While governmental bankruptcy gives a federal judge important powers to limit the government's debt,

the court does not assume full control of the local government's affairs. Chapter 9 protects the local government's powers for constitutional reasons, and the law allows the local government to continue to manage its operations during the bankruptcy.²⁷ Chapter 9 also prevents federal bankruptcy courts from selling the local government's assets.²⁸

In contrast, an emergency manager under Public Act 4 or an emergency financial manager under Public Act 72 would expressly be allowed to manage the city's operations and sell assets.²⁹ If an emergency manager under Public Act 4 were to file for bankruptcy, however, he or she would be empowered by state law to "act exclusively on the local government's behalf."³⁰ Thus, under Public Act 4, filing for bankruptcy would not return the management of the bankrupt local government back to its elected officials. Under Public Act 72, it is unclear whether the emergency financial manager would be appointed to act on behalf of the local government during Chapter 9 proceedings.[†]

Graphic 1 shows the major unilateral powers available to emergency managers, emergency financial managers, court-appointed receivers and bankruptcy judges. The unilateral powers available to emergency financial managers under Public Act 72 are similar to those of receivers under a court-appointed receivership (assuming powers like those granted in Ecorse). This is not surprising, since the powers of Public Act 72 and its predecessor, Public Act 101, were fashioned after the powers available to the court-appointed receiver in Ecorse.

As noted above, a bankruptcy judge's powers under Chapter 9 are substantially different from those of court-appointed receivers and those of the managers appointed under state legislation. Also as noted above, the major difference between managers in Public Act 4 and Public Act 72 — the two alternatives available under Proposal 1 — is the power under Public Act 4 to unilaterally modify the terms of a municipality's or school district's collective bargaining agreements with its employee unions. (See Appendix A for an extended list of the differences between the powers available under these two public acts.)

* While some local governments have asked the state for permission to enter federal bankruptcy proceedings without invoking Public Act 4 or Public Act 72, not one of these requests has been granted.

† The relevant provisions, MCL § 141.1222(1) and MCL § 141.1241(3), empower the emergency financial manager to recommend bankruptcy, but say nothing about the government's representative in bankruptcy.

Graphic 1: Major Unilateral Powers Available to Receivers, Bankruptcy Judges and State-Appointed Managers Under Various Authorities

| Unilateral Powers | State Court-Appointed Receivers (Based on Ecorse) | Chapter 9 Bankruptcy Judges | Public Act 72 Emergency Financial Managers | Public Act 4 Emergency Managers |
|---|---|-----------------------------|--|---------------------------------|
| Debt adjustment | No | Yes | No | No |
| Modify collective bargaining agreements | No | Yes | No | Yes |
| Modify pension payments | No | Yes | No | No |
| Modify retiree health payments | Yes | Yes | Yes | Yes |
| Control ongoing operations | Yes | No | Yes | Yes |
| Sell assets | Yes | No | Yes | Yes |

Sources: Robert Daddow, “Ecorse: The Fall and Rise of a Michigan City,” (Mackinac Center for Public Policy, 1992) <http://goo.gl/OMkET>; Michael W. McConnell and Randal C. Picker, “When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy,” University of Chicago Law Review, Spring 1993; Public Act 72 of 1990; Public Act 4 of 2011.

Local units of government in Michigan have in the past petitioned the state for permission to file for bankruptcy under Chapter 9 on their own, outside of Public Act 72 or Public Act 4. None of these has been approved. The most recent example came in 2010, when Hamtramck’s request for permission to file for bankruptcy without entering emergency financial management was rejected.³¹

Readier access to bankruptcy has been argued as a possible way to remedy local government fiscal stress in Michigan while avoiding the loss of local control that would occur when the state appointed an emergency manager. Bankruptcy is viewed as a wild card in Michigan policy, however, especially for the government’s creditors. There is a belief that allowing a local government bankruptcy would spill over into the rest of Michigan’s municipal finance, making it more difficult for governments to borrow at low interest rates or even to borrow at all. Moody’s — one of the major bond rating agencies — issued a report stating that the removal of the emergency manager law “would be credit negative for distressed local governments.”³²

The overall impact of bankruptcy on local government’s ability to borrow from the private market is somewhat

theoretical, though. No government in Michigan has ever filed for bankruptcy.

In any event, altering the rules for entering bankruptcy is not part of Proposal 1.* The only possible difference is whether the manager will act on behalf of the local government when it enters bankruptcy — the emergency manager clearly would under Public Act 4, while the emergency financial manager’s role is unclear under Public Act 72.

The State’s Role in Ensuring Stable Local Government Units

Bankruptcy would represent the failure of a long train of state policies. Michigan government has implemented many measures to help local governments and school districts avoid insolvency.

Ultimately, the state has the ability to set the rules of local government operation. All local governments in Michigan are creatures of the Michigan Constitution³³ and state government statutes.³⁴ State laws govern how local governments record their finances, how they raise funds, what services they provide, what they cannot do and a host of other policies.

State Laws Requiring Balanced Budgets

State laws that trigger financial reviews and emergency managers are another manifestation of this power. Essentially, these triggers are based on one criteria: that each local government be able to pay its bills on time — in other words, that the government be solvent.

Indeed, Public Act 4 can be viewed as an enforcement mechanism for two other existing state laws: Section 21 of the Glenn Steil State Revenue Sharing Act of 1971³⁵ and Section 102 of the School Aid Act.³⁶ These sections require local governments and school districts to balance their budgets and operate their various funds without deficits. Should a deficit arise, a local government or school district is required to file a deficit elimination plan with the state treasury or the department of education, respectively.³⁷ The treasury or the department of education reviews and certifies the plan, and each department has the power to withhold some state support if the plan is not instituted.³⁸

* Note that while the defeat of Proposal 1 would appear to reinstate Public Act 72 of 1990, there has been a legal challenge to this argument. If this challenge succeeds and Public Act 72 is not reinstated, then government units in Michigan would appear to no longer have an avenue to bankruptcy, since that avenue has been provided in the past by Public Act 4 of 2011 and Public Act 72 of 1990.

These two laws are meant to ensure proper fiscal management of local government entities. The state treasurer has 143 deficit elimination plans on file for the deficits in fiscal 2011, and only two of these units have had their revenue sharing withheld.*,³⁹

These figures indicate the extent to which this process has prevented most local units from triggering fiscal stress reviews under Public Act 4 or Public Act 72. In areas where local units do trip the triggers, the deficit elimination plans mandated by the state revenue-sharing and school aid acts have proven either inadequate or were not properly implemented.

For instance, the deficit elimination plan for the City of Allen Park called for a new property tax millage to fund its bond payments.[†],⁴⁰ The millage was later rejected by voters.⁴¹ The state is expected to appoint an emergency financial manager in Allen Park.

State Financial Aid to Distressed Municipalities and School Districts

The state can also help local governments raise cash when they are facing financial problems.

Under the emergency municipal loan act, a local government or school district in deficit and with weak growth in tax revenue can (with some exceptions) borrow up to \$15 million from the state during a 10-year period, in amounts of up to \$3 million in any one year.⁴²

In return for the loan, the local unit must do the following: submit a plan to “balance future expenditures with anticipated revenues”;⁴³ employ “a full-time professional administrator to direct or participate directly in the management of the municipality’s operations until otherwise ordered by the [state emergency loan] board”;⁴⁴ file quarterly reports to the board about its finances;⁴⁵ and certify that it is meeting its plan and abiding by state accounting rules.⁴⁶

Only the cities of Ecorse, Highland Park and Inkster have outstanding emergency loans.⁴⁷

* There are more than 2,000 local governments in Michigan. See “Census of Michigan Governments,” (U.S. Census Bureau, 2007), 1, <http://www2.census.gov/govs/cog/2007/mi.pdf>.

† The city of Allen Park borrowed \$40 million to purchase an automotive manufacturing facility in hopes a private movie studio would use the site. After the city borrowed the money and made some improvements to the property, the studio chose not to lease the facility, and the city was left with the bond payments and no lessors to help pay for them. See Anne Schieber, “The Problem with Allen Park,” (Michigan Capitol Confidential, 2012), <http://goo.gl/DkgFg> (accessed Oct. 8, 2012).

If a city or county has a deficit that it cannot cover through emergency municipal loans or by selling bonds against future tax revenues, the state can invoke the Fiscal Stabilization Act to authorize the municipality to issue fiscal stabilization bonds.⁴⁸ The municipality can raise up to 3 percent of the value of the real and personal property that exists in its boundaries in order to address the deficit.[‡]

Essentially, a local municipality or school district faced with the possibility of an emergency manager has already had a number of opportunities to correct its fiscal trajectory. That government unit has also had a number of ways to raise short-term cash to avoid a financial emergency. These alternatives frequently gave the government unit time to make any reforms necessary to eliminate its deficit.

These preliminary options explain one motive behind the emergency manager law. If state requirements of local fiscal discipline and other safeguards have not proved enough to avert a fiscal emergency, the state arguably has little choice but to take a more active approach if it is to avert a local government bankruptcy. In other words, if the local government does not implement a plan to bring its finances into alignment, the state may exercise its authority to appoint someone who can.

Labor Costs and Collective Bargaining Agreements

The powers of the emergency manager under Public Act 4 of 2011 are materially different from those of the emergency financial manager under Public Act 72 of 1990. As stated above, however, the most material alterations were allowing the emergency manager to modify, reject or terminate the terms and conditions of contracts and — under certain conditions — collective bargaining agreements.

Providing a power to alter collective bargaining agreements has a practical basis. The primary expenses of most local units of government are not in materials, utilities or vendor contracts. They are in the cost of personnel. In Michigan, most local government personnel are unionized, and their compensation is determined by collective bargaining agreements.

‡ The limit is the state equalized value, a governmental measure of property values partially used in property tax millage allocations. The amount that the local unit can raise is also capped at \$125 million, though an exception was carved out for Detroit in 2010. See 2010 Public Act 4, Section 4(8).

There are several conditions that must be met before an emergency manager can unilaterally alter collective bargaining agreements under Public Act 4. The emergency manager needs to first meet and confer with union representatives. He or she then needs to determine that “a prompt and satisfactory resolution is unlikely to be obtained”⁴⁹ regarding alterations to a union collective bargaining agreement.

While these may seem like subjective determinations, a collective bargaining agreement can be amended only if the state treasurer and emergency manager make a series of determinations: that the intervention is “reasonable and necessary” in achieving a “significant and legitimate public purpose” and addressing “a broad, generalized economic problem”; that the amendments are “directly related to and designed to address the financial emergency for the benefit of the public as a whole”; and that the amendments are temporary and do not “target specific classes of employees.”⁵⁰

These conditions are reflective of constitutional requirements that grant states a limited ability to amend contracts.* They also prevent an arbitrary abrogation of the agreements made by elected officials. The treasurer and emergency manager’s conclusions can be challenged in court if the union believes that they have not been met.

The use of this power has been relatively light. Only three of the seven governments with emergency managers — Detroit Public Schools, Pontiac and Flint — have utilized this section of the law, amending at least 26 collective bargaining agreements.^{†,51} A number of these amendments were designed to get the contracts under uniform terms. These amendments provided substantial savings to the local units.

For instance, Pontiac’s emergency manager was able to negotiate changes and consolidate most of the city’s 70 different health insurance offerings into a single plan. He was not able, however, to negotiate changes to retiree health insurance.⁵² He requested permission to change this benefit unilaterally from the state treasurer, who approved his plan to consolidate retiree health care, cap

* The state’s ability to amend a contract was set out in the New Deal era in the case *Home Building & Loan Assn v Blaisdell*, 290 US 398 (1934).

† Two of the governments with emergency managers — Highland Park City Schools and Muskegon Heights School District — may not have needed to exercise this power because of their move to “charterize” the districts — essentially turning the existing schools into charter schools that contract out the management of their operations. When charterizing the district, the current collective bargaining agreements do not cover employees working for the new charter firm. See Public Act 277 of 2011.

the city’s costs and provide the government flexibility in choosing plans and providers. The city is expected to save nearly \$3.4 million annually, thereby eliminating more than 45 percent of the city’s projected operating deficit.⁵³

Likewise, Flint had negotiated 20 different insurance plans for current employees and retirees.⁵⁴ Consolidating these plans into just three was expected to save nearly \$7.9 million annually for the city — 44 percent of its projected operating deficit.⁵⁵ The savings from emergency managers’ modifications to contracts in Pontiac and Flint are summarized in Graphic 2.

Note that offering health insurance coverage to retirees is a rare benefit in Michigan’s private-sector. In a 2010 AonHewitt survey of 24 major private-sector Michigan employers, only three offered some form of employer-subsidized retiree health insurance coverage.⁵⁶

Graphic 2: Estimated Savings From Modifications to Government-Employee Union Contracts in Flint and Pontiac Under Public Act 4, 2011-2012

| City | Unions | Approval date(s) | Modification(s) | Estimated Annual Savings |
|--------------|---|---------------------|---|--------------------------|
| Pontiac | Pontiac Police and Fire Dispatchers Association | 6/6/2011 | Eliminate subcontracting clause | \$2,200,000 |
| Pontiac | Multiple | 4/24/2012-4/25/2012 | Retiree health consolidation and cost caps | \$3,365,000 |
| Flint | Multiple | 4/24/2012 | Health insurance consolidation | \$7,874,152 |
| Flint | Police Officer’s Association | 4/20/2012 | Various police officer contract adjustments | \$1,328,905 |
| Total | — | — | — | \$14,768,057 |

Source: Various Michigan Treasury Department letters of determination to Pontiac and Flint Emergency Managers, 2011 and 2012.

The emergency manager for Detroit Public Schools abrogated a number of collective bargaining agreements for noninstructional personnel, instituting pay cuts, suspension of terminal sick leave,[‡] suspension of longevity bonuses,[§] suspension of step increases[¶] and a requirement that employees pay 20 percent of their health insurance

‡ Terminal sick leave is a cash payment to an employee for unused paid sick leave when he or she retires.

§ Longevity payments are bonuses employees receive when they have served a specified number of years. The bonuses are in addition to the step increases in the uniform union salary schedule (see next footnote).

¶ Step increases are automatic additions to an employee’s annual salary based on his or her length of employment. These increases are governed by a uniform union schedule.

premium. These changes led to an estimated annual savings of \$15.4 million to the district.⁵⁷

Modifications to the DPS collective bargaining agreement for the district's 6,000 teachers included ending special bonuses for each of the following: teaching an oversized class, losing a preparation period, receiving advanced certification and teaching special education. Extra payments if the teacher was assaulted were also ended.⁵⁸

Notably, the emergency manager sought approval from the Department of Treasury to alter the terms of the teacher collective bargaining agreement only after 11 meetings with union leaders. The changes to the teachers' contract are estimated to save the district \$70.1 million annually,⁵⁹ leading to a total estimated annual savings of \$85.5 million from DPS union contract modifications. A summary of the savings achieved by the DPS emergency manager using modifications to the collective bargaining agreements appears in Graphic 3.

Graphic 3: Estimated Savings From Modifications to Government-Employee Union Contracts in the Detroit Public Schools Under Public Act 4, 2011-2012

| Unit / Year | Areas Modified | Estimated Annual Savings |
|---|--|--------------------------|
| Police Officers Labor Council 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of step increases Suspension of longevity bonus | \$75,316.18 |
| Operating Engineers – noninstructional supervisory personnel 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of sick leave payout | \$238,895.90 |
| Police Officers Association of Michigan 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of longevity bonus Suspension of step increases Suspension of severance payout | \$849,169.90 |
| Educational Office Employees 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of sick leave payout | \$2,841,557.11 |
| AFSCME 345 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of sick leave payout Suspension of longevity bonus | \$4,107,237.02 |
| Paraprofessionals – school service assistants 2011 | 20 percent health insurance employee contribution Suspension of step increases Suspension of sick leave payout Suspension of longevity bonus | \$802,201.86 |

| Unit / Year | Areas Modified | Estimated Annual Savings |
|---|--|--------------------------|
| Detroit Federation of Teachers 2011 | 10 percent wage concession 20 percent health insurance employee contribution Suspension of sick leave payout Suspension of step increases Suspension of oversize class compensation Suspension of longevity bonus Suspension of lost preparation periods compensation Suspension of certification bonus Suspension of special education bonus Suspension of assault pay | \$70,083,648.55 |
| Operating Engineers – noninstructional supervisory personnel 2012 | 0.20 percent wage concession | \$3,294.44 |
| Organization of School Administrators and Supervisors 2012 | 2 percent wage concession Suspension of sick leave payout Suspension of longevity bonus | \$834,007.89 |
| Educational Office Employees 2012 | 10 percent wage concession Suspension of sick leave payout | \$1,929,575.20 |
| Paraprofessionals 2012 | 10 percent wage concession Suspension of step increases Suspension of longevity bonus | \$1,388,288.37 |
| AFSCME 345 2012 | 10 percent wage concession Suspension of sick leave payout Suspension of longevity bonus | \$2,318,549.13 |
| Total | – | \$85,471,741.55 |

Sources: Detroit Public Schools Emergency Manager Roy Roberts, 13 letters to State Treasurer Andy Dillon, June 23, 2011 and June 26, 2012.

The modifications discussed above are structural reforms dealing with the costs of providing services. They affect the terms of employment, but do not directly affect service quality or quantity. In short, they are efficiency gains.

It is true, of course, that reductions in compensation can affect employee service quality indirectly. Emergency managers would presumably try to account for this in the modifications they make, but inevitably, they could make decisions that ultimately reduce service quality. Nevertheless, it is not clear that court-supervised receivership or bankruptcy would lead to better decisions.

The emergency manager's power to change union contracts may not need to be used to be useful. It may affect union negotiations, tipping the bargaining table more towards the emergency manager and his or her mandate to address the city's finances.

The November 2012 ballot presents an interesting wrinkle. If Proposal 2 passes, union contracts would gain the power to supersede most state laws governing wages, hours and other terms and conditions of employment.⁶⁰ Municipal- and school-employee unions would, under Proposal 2, be empowered to negotiate clauses in their collective bargaining agreements that prevented emergency managers from altering union contracts, unilaterally or otherwise. The major material difference between Public Act 4 and Public Act 72 would thereby be nullified independent of voters' preferences on Proposal 1.

Conclusion

When local government units begin to experience fiscal stress, they can raise money and reform their operations without direct state assistance. In the vast majority of cases, this is precisely what happens.

In some cases, local officials may fail, however — and this is not just hypothetical. The question in Michigan has not been whether state-appointed managers or court-appointed receivers may replace local elected officials in running a local unit of government; they have been able to do so for decades. The only question is whether state government will participate in the effort to avoid local fiscal insolvency and how it will do so.

As pointed out by Louis Schimmel, currently Pontiac's emergency financial manager, the state ultimately has four options for addressing potential local government unit insolvency:

- The state can do nothing and let the local units work out their fiscal problems by themselves. Some local units may not address these problems and may face court-ordered receivership, as Ecorse did.
- The state can allow governments to file for bankruptcy more readily. This may have secondary consequences for the rest of the state by raising the cost of municipal borrowing, but it would avoid having state government imposing an emergency manager or emergency financial manager on local government. A bankruptcy judge is entrusted with some powers similar to an emergency manager's, though.
- The state can provide money or allow more borrowing. The state is already doing this to a limited extent under the Fiscal Stabilization Act and the Emergency Municipal Loan Act. However, the local government may wind up facing bankruptcy

or receivership regardless if it does not repay the borrowing or fails to address core spending issues.

- The state can mandate and provide fiscal reforms directly through state-appointed managers. This is the state's current policy under Public Act 72 of 1990, and it will be regardless of whether Proposal 1 (Public Act 4) is accepted or rejected.

Public Act 4 is concerned with preventing insolvency — that is, with avoiding a situation where a judge has to cut back a government's financial obligations, with all the potential ramifications for the city's (and perhaps the state's) future financial relationship with creditors and contractors.

To that effect, both the emergency financial managers of Public Act 72 and the emergency managers of Public Act 4 are a next-to-last resort. The state already has basic rules meant to keep the government solvent. The state requires its local governments to keep balanced budgets and to plan to eliminate deficits where they arise. There are punishments for disregarding these rules. There are opportunities to receive emergency cash directly from the state when an emergency arises. There are also opportunities to float bonds to cover immediate expenses. And with any opportunity for local governments to receive cash, the state can attach — and has attached — “strings” to ensure better fiscal management.

But if all these fail to address spending problems and revenue gaps, then the state government has provided for cost reductions through Public Act 72 and through Public Act 4.

Michigan voters are not being asked to judge the entirety of the state's policy in preventing local government insolvency. Moreover, voters are not being asked whether their local elected officials should remain in control in a financial emergency. If local government units become insolvent, their local officials will lose control to state judges, if to no one else.

Instead, Michigan voters are being asked to judge whether Public Act 72 is superior to Public Act 4. Public Act 4 contains numerous clarifications to the powers of the emergency financial managers in Public Act 72. Public Act 4 also allows an emergency manager to request permission from the state to amend existing collective bargaining agreements. This power is not trivial, but it is not easily exercised, either, and it has already saved a total of approximately \$100 million annually in Flint, Pontiac and the Detroit Public Schools.

These expanded powers and clarifications strengthen the ability of an emergency manager to resolve the local government’s financial crisis. Rejecting them raises the likelihood of insolvency, court-appointed receivership and even bankruptcy.

Appendix A: The Effect of Michigan’s Public Act 4 on Municipal and School District Emergency Manager Powers

Public Act 4 includes various minor changes and clarifications to Public Act 72. For instance, Sec. 19(1)(g) allowed the emergency manager to “make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy by any appointing authority,” eliminating the qualification that the vacancy must be “in a permanent position,” as it was stated in Act 72.

Graphic 4 lists the sections of Public Act 4 that give new powers to a receiver — under the act, an “emergency manager.” The graphic also lists powers explicitly granted in Public Act 4 that were only implicitly granted in Public Act 72.

Graphic 4: New Powers Available Under Public Act 4

| Emergency Manager Powers Under Public Act 4 of 2011 | Section of Public Act 4 of 2011 | Implied in Public Act 72 of 1990 |
|--|---------------------------------|----------------------------------|
| Avoid local government charters or contract staffing limitations | 19(1)(i) | No |
| Reject, modify or terminate one or more terms and conditions of an existing contract | 19(1)(j) | No |
| Reject, modify or terminate one or more terms of an existing collective bargaining agreement (in certain situations) | 19(1)(k) | No |
| Remove pension board trustees if the fund is less than 80 percent funded | 19(1)(m) | No |
| Consolidate or eliminate departments | 19(1)(n) | Yes |
| Hire someone to inspect and audit the local unit | 19(1)(p) | Yes |
| Make new agreements with creditors to settle debt | 19(1)(w) | Yes |
| Make new agreements with creditors to restructure debt | 19(1)(x) | Yes |

| | | |
|---|-----------|--------------|
| Transfer property to other governments | 19(1)(z) | Yes |
| Consolidate services with other governments | 19(1)(aa) | Yes |
| Consolidate government boundaries with another government | 19(1)(bb) | Unclear |
| Disincorporate or dissolve government | 19(1)(cc) | No |
| Exercise any power extended to local elected officials, board members and commissions | 19(1)(ee) | Largely Yes* |
| Remove and replace members of government boards and commissions | 19(1)(ff) | Unclear |

Sources: Public Act 4 of 2011 and Public Act 72 of 1990.

*See MCL § 141.1221(p).

Appendix B: Ballot Description and Language of Proposal 1

The Ballot Description

The following description of Proposal 1 will appear on the November 2012 ballot:

PROPOSAL 12-1

A REFERENDUM ON PUBLIC ACT 4 OF 2011 – THE EMERGENCY MANAGER LAW

Public Act 4 of 2011 would:

- Establish criteria to assess the financial condition of local government units, including school districts.
- Authorize Governor to appoint an emergency manager (EM) upon state finding of a financial emergency, and allow the EM to act in place of local government officials.
- Require EM to develop financial and operating plans, which may include modification or termination of contracts, reorganization of government, and determination of expenditures, services, and use of assets until the emergency is resolved.
- Alternatively, authorize state-appointed review team to enter into a local government approved consent decree.

Should this law be approved?

YES _____

NO _____

The Complete Language of Proposal 1

Referendum of Legislation Proposed by Initiative Petition

Public Act 4 of 2011

AN ACT to safeguard and assure the fiscal accountability of units of local government, including school districts; to preserve the capacity of units of local government 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 units of local government and the provision of services by units of local government, including school districts; to provide criteria to be used in determining the financial condition of units of local government, including school districts; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state departments, boards, agencies, officials, and employees, and officials and employees of units of local government, including school districts; to provide for placing units of local government, including school districts, into receivership; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager; to require the development of financial and operational plans to regulate expenditures, investments, and the provision of services by units of local government, including school districts, in a state of financial stress or financial emergency; to provide for the modification or termination of contracts under certain circumstances; to set forth the conditions for termination of a local government financial emergency; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “local government and school district fiscal accountability act”.

Sec. 3. The legislature hereby determines that the health, safety, and welfare of the citizens of this state would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local governments is vitally necessary to the interests of the citizens of this state to assure the provision of necessary governmental services essential to public health, safety, and welfare. The legislature further determines that it is vitally necessary to protect the credit of this state and its political subdivisions and that it is necessary for the public good and it is a valid public purpose for this state to take action and to assist a local government in a condition of financial stress or financial emergency so as to remedy the stress or emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers. The legislature, therefore, determines that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Sec. 5. As used in this act:

(a) “Chief administrative officer” means any of the following:

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

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

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

(iv) The elected county executive or appointed county manager of a county; or if the county has not adopted the provisions of either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL 45.501 to 45.521, the county’s chairperson of the county board of commissioners.

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

(vi) The superintendent of a school district.

(b) “Emergency manager” or “manager” means the emergency manager appointed under section 15. An emergency manager includes an emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72.

(c) “Entity” means a partnership, nonprofit or business corporation, limited liability company, labor organization, or any other association, corporation, trust, or other legal entity.

(d) “Financial and operating plan” means a written financial and operating plan for a local government under section 18, including an academic and educational plan for a school district.

(e) “Local government” means a municipal government or a school district.

(f) “Local inspector” means a certified forensic accountant, certified public accountant, attorney, or similarly credentialed person whose responsibility it is to determine the existence of proper internal and management controls, fraud, criminal activity, or any other accounting or management deficiencies.

(g) “Municipal government” means a city, a village, a township, a charter township, a county, an authority

established by law, or a public utility owned by a city, village, township, or county.

(h) “Review team” means a review team designated under section 12.

(i) “School board” means the governing body of a school district.

(j) “School district” means a school district as that term is defined in section 6 of the revised school code, 1976 PA 451, MCL 380.6, or an intermediate school district as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(k) “State financial authority” means the following:

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

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

Sec. 12. (1) The state financial authority of a local government may conduct a preliminary review to determine the existence of a local government financial problem if 1 or more of the following occur:

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

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

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

(d) The state financial authority receives written notification that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.

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

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

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

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

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

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

(k) The local government fails to timely file an annual financial report or audit that conforms with the minimum procedures and standards of the state financial authority and is required for local governments under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55. In addition, if the local government is a school district, the school district fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the superintendent of public instruction and is required under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and 1979 PA 94, MCL 388.1601 to 388.1772.

(l) A municipal government is delinquent in the distribution of tax revenues, as required by law, that it has

collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

(m) A local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

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

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

(p) A school district ended its most recently completed fiscal year with a deficit in 1 or more of its funds and the school district has not submitted a deficit elimination plan to the state financial authority within 30 days after the district's deadline for submission of its annual financial statement.

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

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

(2) If the state financial authority determines that a preliminary review is appropriate under this section, before commencing the preliminary review the state financial authority shall give the local government specific written notification of the review. The preliminary review shall be completed within 30 days following its commencement. Elected and appointed officials of a local government shall promptly and fully provide the assistance and information requested by the state financial authority for that local government in conducting the preliminary review.

(3) If a finding of probable financial stress is made for a municipal government under subsection (2), the governor shall appoint a review team for that municipal government consisting of the state treasurer or his or her designee, the director of the department of technology,

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

(4) If a finding of probable financial stress is made for a school district under subsection (2), the governor shall appoint a review team for that school district consisting of the state treasurer or his or her designee, the superintendent of public instruction or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a school district financial management review.

(5) The department of treasury shall provide staff support to each review team.

(6) A review team appointed under former 1988 PA 101 or former 1990 PA 72 and serving on the effective date of this act shall continue under this act to fulfill their powers and duties. All proceedings and actions taken by the governor, the state treasurer, or a review team under former 1988 PA 101 or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 1988 PA 101 or former 1990 PA 72 is ratified and is binding and enforceable under this act.

Sec. 13. (1) The review team shall have full power in its review to perform all of the following functions:

- (a) Examine the books and records of the local government.
- (b) Utilize the services of other state agencies and employees.
- (c) Negotiate and sign a consent agreement with the chief administrative officer of the local government. The consent agreement may provide for remedial measures considered necessary to address the local financial problem and provide for the financial stability of the local government and may include either a continuing operations plan or recovery plan as described in section 14a. The consent agreement may utilize state financial

management and technical assistance as necessary in order to alleviate the local financial problem. The consent agreement shall also provide for periodic financial status reports to the state financial authority. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state financial authority. A consent agreement shall provide that in the event of a material uncured breach of the consent agreement, the state treasurer is authorized to place the local government in receivership as provided under section 15.

(2) The review team shall meet with the local government as part of its review. At this meeting, the review team shall receive, discuss, and consider information provided by the local government concerning the financial condition of the local government.

(3) The review team shall report its findings to the governor, with a copy to the state financial authority, within 60 days following the appointment of the review team under section 12 or earlier if required by the governor. Upon request, the governor may grant one 30-day extension of this 60-day time limit. A copy of the report shall be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, the senate majority leader, and the superintendent of public instruction if the local government is a school district. The report shall include the existence, or an indication of the likely occurrence, of any of the following:

- (a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.
- (b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:
 - (i) Taxes withheld on the income of employees.
 - (ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.
 - (iii) Any contribution required by a pension, retirement, or benefit plan.
- (c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or

other compensation owed to employees or benefits owed to retirees.

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

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

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

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

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

(i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.

(j) Existence of a structural operating deficit.

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

(l) Any other facts and circumstances indicative of local government financial stress or financial emergency.

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

(a) The local government is not in financial stress or is in a condition of mild financial stress as provided in section 14.

(b) The local government is in a condition of severe financial stress as provided in section 14, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to subsection (1)(c).

(c) The local government is in a condition of severe financial stress as provided in section 14, and a consent agreement has not been adopted pursuant to subsection (1)(c).

(d) A financial emergency exists as provided in section 14 and no satisfactory plan exists to resolve the emergency.

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

Sec. 14. (1) For purposes of this act, a local government is considered to be in a condition of no financial stress or mild financial stress if the report required in section 13 concludes that none of the factors in section 13(3) exist or are likely to occur within the current or next succeeding fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

(2) For purposes of this act, a local government is considered to be in a condition of severe financial stress if either of the following occurs:

(a) The report required in section 13 concludes that 1 or more of the factors in section 13(3) exist or are likely to occur within the current or next succeeding fiscal year and, if left unaddressed, may threaten the local government's future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(b) The chief administrative officer of the local government recommends that the local government be considered in severe financial stress.

(3) For purposes of this act, a local government is considered to be in a condition of financial emergency if any of the following occur:

(a) The report required in section 13 concludes that 2 or more of the factors in section 13(3) exist or are likely to occur within the current fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(b) The local government has failed to provide timely and accurate information enabling the review team to complete its report under section 13.

(c) The local government has failed to comply in all material respects with a continuing operations plan or recovery plan, as provided in section 14a, or with the terms of an

approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(d) The local government is in material breach of a consent agreement entered into under section 13(1)(c).

(e) The local government is in a condition of severe financial stress as provided in subsection (2), and a consent agreement has not been adopted pursuant to section 13(1)(c).

(f) The chief administrative officer of the local government, based upon the existence or likely occurrence of 1 or more of the factors in section 13(3), recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.

Sec. 14a. (1) A consent agreement as provided in section 13(1)(c) may require a continuing operations plan or a recovery plan if required by the state financial authority.

(2) If the state treasurer requires that a consent agreement include a continuing operations plan, the local government shall prepare and file the continuing operations plan with the state treasurer as provided for in the consent agreement. The state financial authority shall approve or reject the initial continuing operations plan within 14 days of receiving it from the local government. If a plan is rejected, the local government shall refile an amended plan within 30 days of the rejection addressing any concerns raised by the state financial authority. If the amended plan is rejected, then the local government is considered to be in material breach of the consent agreement. The local government is required to file annual updates to its continuing operations plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the continuing operations plan remains in effect.

(3) The continuing operations plan shall be in a form prescribed by the state financial authority, but shall, at a minimum, include all of the following:

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

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

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

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

(e) An evaluation of the costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed within the budget period.

(f) A provision for submitting quarterly compliance reports to the state financial authority demonstrating compliance with the continuing operations plan.

(4) If a continuing operations plan is approved for a municipal government, the municipal government shall amend the budget and general appropriations ordinance adopted by the municipal government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. If a continuing operations plan is approved for a school district, the school district shall amend the budget adopted by the school district under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. The chief administrative officer, the chief financial officer, the governing body, and other officials of the local government shall take and direct such actions as may be necessary or advisable to maintain the local government's operations in compliance with the continuing operations plan.

(5) If the state financial authority requires that a consent agreement include a recovery plan, the state financial authority shall develop and adopt, in consultation with the review team if desired by the state financial authority, a recovery plan. If a recovery plan is developed and adopted for the local government, the local government thereafter is required to file annual updates to its recovery plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the recovery plan remains in effect.

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

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

-
- (b) A cash flow projection for the budget period.
 - (c) An operating plan for the budget period that assures fiscal accountability for the local government.
 - (d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.
 - (e) An evaluation of costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.
 - (f) Procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash, and may include the designation of appropriate fiduciaries.
 - (g) A provision for submitting quarterly compliance reports to the state financial authority and the chief administrative officer of the local government that demonstrates compliance with the recovery plan.
 - (7) The recovery plan may include the appointment of a local auditor or local inspector, or both, in accordance with section 19(1)(p).
 - (8) If a recovery plan is developed and adopted by the state financial authority for a local government, the recovery plan shall supersede the budget and general appropriations ordinance adopted by the local government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general appropriations ordinance is considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency between the recovery plan and the budget or general appropriations ordinance, the recovery plan shall control. The chief administrative officer, the chief financial officer, the governing body, and other officers of the local government shall take and direct actions as may be necessary or advisable to bring and maintain the local government's operations in compliance with the recovery plan.
 - (9) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers in section 19 for such

periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 19(1)(k).

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

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

(12) A local government is released from the requirements under this section upon compliance with the consent agreement as determined by the state financial authority.

Sec. 15. (1) Within 10 days after receipt of the report provided for in section 13, the governor shall make 1 of the following determinations:

(a) The local government is not in a condition of severe financial stress.

(b) The local government is in a condition of severe financial stress as provided in section 14, but a consent agreement containing a plan to resolve the financial stress has been adopted under this act.

(c) A local government financial emergency exists as provided in section 14 and no satisfactory plan exists to resolve the emergency.

(d) The local government entered into a consent agreement containing a continuing operations plan or recovery plan to resolve a financial problem, but materially breached that consent agreement.

(2) If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the

factual findings, and notice that the chief administrative officer or the governing body of the local government has 7 days after the date of the notification to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor, in his or her sole discretion based upon the record, shall either confirm or revoke, in writing, the determination of the existence of a financial emergency. If confirmed, the governor shall provide a written report to the governing body and chief administrative officer of the local government of the findings of fact of the continuing or newly developed conditions or events providing a basis for the confirmation of a financial emergency, and a concise and explicit statement of the underlying facts supporting these factual findings.

(3) A local government for which a financial emergency determination under this section has been confirmed to exist may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, appeal this determination within 10 business days to the Ingham county circuit court. The court shall not set aside a determination of financial emergency by the governor unless it finds that the determination is either of the following:

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

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

(4) Upon the confirmation of a finding of a financial emergency, the governor shall declare the local government in receivership and shall appoint an emergency manager to act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Upon the declaration of receivership and during the pendency of receivership, the governing body and the chief administrative officer of the local government may not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager and are subject to any conditions required by the emergency manager.

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

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

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

(c) The emergency manager shall be an individual.

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

(e) The emergency manager's compensation and reimbursement for actual and necessary expenses shall be paid by the local government and shall be set forth in a contract approved by the state treasurer. The contract shall be posted on the department of treasury's website within 7 days after the contract is approved by the state treasurer.

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

(7) The emergency manager shall make quarterly reports to the state treasurer with respect to the financial condition of the local government in receivership, with a copy to the superintendent of public instruction if the local government is a school district.

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

(a) Until removed by the governor or the legislature as provided in subsection (5)(d). If an emergency manager is removed pursuant to this subdivision, the governor shall within 30 days of the removal appoint a new emergency manager.

(b) Until the financial emergency is rectified.

(9) A local government shall be removed from receivership when the financial conditions are corrected in a sustainable fashion as determined by the state treasurer in accordance with this act.

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

Sec. 15a. Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, an emergency manager appointed under this act or former 1988 PA 101 or former 1990 PA 72 is subject to all of the following:

- (a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.
- (b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.
- (c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

Sec. 16. An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving on the effective date of this act, shall continue under this act to fulfill his or her powers and duties.

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

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

Sec. 18. (1) The emergency manager shall develop and may amend a written financial and operating plan for the local government. The plan shall have the objectives of assuring that the local government is able to provide necessary or cause to be provided governmental services

essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government. The financial and operating plan shall provide for all of the following:

- (a) Conducting all aspects of the operations of the local government within the 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 of the local government and all other uncontested legal obligations.
 - (c) The modification, rejection, termination, and renegotiation of contracts pursuant to section 19.
 - (d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates.
 - (e) For school districts, an academic and educational plan.
 - (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.
- (2) Within 45 days after the emergency manager's appointment, the emergency manager shall submit the financial and operating plan to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district, and to the chief administrative officer and governing body of the local government. The plan shall be regularly reexamined by the emergency manager and the state treasurer and may be modified from time to time by the emergency manager with notice to the state treasurer. If the emergency manager reduces his or her revenue estimates, the emergency manager shall modify the plan to conform to the revised revenue estimates.
- (3) The financial and operating plan shall be in a form as provided by the state treasurer and shall contain that information for each year during which year the plan is in effect that the emergency manager, in consultation with the state financial authority, specifies. The financial and operating plan may serve as a deficit elimination plan otherwise required by law if so approved by the state financial authority.
- (4) The emergency manager, within 30 days of submitting the financial and operating plan to the state financial

authority, shall conduct a public informational meeting on the plan and any modifications to the plan. This subsection does not mean that the emergency manager must receive public approval before he or she implements the plan or any modification of the plan.

Sec. 19. (1) An emergency manager may take 1 or more of the following additional actions with respect to a local government which is in receivership, notwithstanding any charter provision to the contrary:

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

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

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

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

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

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

(g) 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.

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

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

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

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

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

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

(iii) Any plan involving the rejection, modification, or termination of 1 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.

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

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

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental 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, 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 of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the

municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

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

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

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

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

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

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

(p) Retain 1 or more persons or firms, which may be an individual or firm selected from a list approved by the

state treasurer, to perform the duties of a local inspector or a local auditor as described in this subdivision. The duties of a local inspector are to assure integrity, economy, efficiency, and effectiveness in the operations of the local government by conducting meaningful and accurate investigations and forensic audits, and to detect and deter waste, fraud, and abuse. At least annually, a report of the local inspector shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district. The duties of a local auditor are to assure that internal controls over local government operations are designed and operating effectively to mitigate risks that hamper the achievement of the emergency manager's financial plan, assure that local government operations are effective and efficient, assure that financial information is accurate, reliable, and timely, comply with policies, regulations, and applicable laws, and assure assets are properly managed. At least annually, a report of the local auditor shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district.

(q) An emergency manager may initiate court proceedings in Ingham county circuit court in the name of the local government to enforce compliance with any of his or her orders or any constitutional or legislative mandates, or to restrain violations of any constitutional or legislative power of his or her orders.

(r) If provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

(s) Apply for a loan from the state on behalf of the local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, in a sufficient amount to pay the expenses of the emergency manager and for other lawful purposes.

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

election ordered for a local government pursuant to this subdivision shall only be held at the general November election.

(u) Authorize the borrowing of money by the local government as provided by law.

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

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

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

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

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

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

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

(cc) For municipal governments, with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law.

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

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

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

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

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

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

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

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

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

(ix) 1979 PA 94, MCL 388.1601 to 388.1772.

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

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

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

(3) Except as otherwise provided in this subsection, any contract involving a cumulative value of \$50,000.00 or more is subject to competitive bidding by an emergency manager. However, if a potential contract involves a cumulative value

of \$50,000.00 or more, the emergency manager may submit the potential contract to the state treasurer for review and the state treasurer may authorize that the potential contract is not subject to competitive bidding.

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

Sec. 19a. Immediately upon the local government being placed in receivership under section 15 and during the pendency of the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government shall be eliminated. This section does not authorize the impairment of vested pension benefits. If an emergency manager has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and members of the governing body of a local government before the effective date of this act, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of this act. The emergency manager may restore, in whole or in part, any of the salary, wages, other compensation, or benefits of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.

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

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

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

(c) 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.

(d) 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 for this purpose does not impair the education of the pupils of the school district. The power under this subdivision includes the closing of schools or other school buildings in the school district.

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

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

(g) Employ or contract for, at the expense of the school district, school administrators considered necessary to implement this act.

Sec. 20a. Unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan prepared under section 18, the emergency manager shall not sell an asset of the local government valued at more than \$50,000.00 without the state treasurer's approval.

Sec. 20b. A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty shall not be impaired and is not subject to any provision of this act authorizing an emergency manager to reject, modify, or terminate 1 or more terms of an existing collective bargaining agreement.

Sec. 21. The emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.

Sec. 22. (1) An emergency manager appointed under this act shall file with the governor, the senate majority

leader, the speaker of the house of representatives, and the clerk of the local government that is in receivership, and shall post on the internet on the website of the local government, a report that contains all of the following:

- (a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the source of the funds.
- (b) A list of each contract that the emergency manager awarded or approved with a cumulative value of \$5,000.00 or more, the purpose of the contract, and the identity of the contractor.
- (c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the proposed use of the funds.
- (d) A description of any new position created or any vacancy in a position filled by the appointing authority.
- (e) A description of any position that has been eliminated or from which an employee has been laid off.
- (f) A copy of the contract with the emergency manager as provided in section 15(5)(e).
- (g) The salary and benefits of the emergency manager.
- (h) The financial and operating plan as required under section 18.

(2) The report required under this section shall be submitted every 3 months, beginning 6 months after the emergency manager's appointment.

Sec. 23. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under title 11 of the United States Code, 11 USC 101 to 1532. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. Upon receipt of the written approval, the emergency manager is authorized to proceed under title 11 of the United States Code, 11 USC 101 to 1532. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United

States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under title 11 of the United States Code, 11 USC 101 to 1532.

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

- (a) A determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.
- (b) A determination by the emergency manager that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.
- (3) The emergency manager shall provide a copy of the recommendation as provided under subsection (1) to the superintendent of public instruction if the local government is a school district.

Sec. 24. A local government that is in receivership is considered to be in a condition of financial emergency until the emergency manager declares the financial emergency to be rectified in his or her quarterly report to the state treasurer required under section 15, and is subject to the written concurrence of the state treasurer, and the concurrence of the superintendent of public instruction if the local government is a school district. The declaration shall not be made until the financial conditions have been addressed and rectified.

Sec. 25. (1) An emergency manager is immune from liability as provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person employed by an emergency manager is immune from liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

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

- (a) The validity of this act.
- (b) The authority of a state official or officer acting under this act.
- (c) The authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under this act.

(3) With respect to any aspect of a receivership under this act, the costs incurred by the attorney general in carrying out the responsibilities of subsection (2) for attorneys, experts, court filing fees, and other reasonable and necessary expenses shall be at the expense of the local government that is subject to that receivership and shall be reimbursed to the attorney general by the local government. The failure of a municipal government that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the municipal government from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the school district from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

(4) An emergency manager may procure and maintain, at the expense of the local government for which the emergency manager is appointed, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor of the emergency manager as may be provided to elected officials, appointed officials, or employees of the local government. The insurance procured and maintained by an emergency manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the emergency manager and any employee, agent, appointee, or contractor of the emergency manager from the date of appointment of the emergency manager to the expiration of the applicable statute of limitation if the claim, demand, or lawsuit asserted or costs recovered against the emergency manager or any employee, agent, appointee, or contractor of the emergency manager resulted from conduct of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager taken in accordance with this act during the emergency manager's term of service.

(5) If, after the date that the service of an emergency manager is concluded, the emergency manager or any employee, agent, appointee, or contractor of the emergency manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of that emergency manager, and not covered by a procured worker's compensation, general liability, professional

liability, or motor vehicle insurance, litigation expenses of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager, including attorney fees for civil and criminal proceedings and preparation for reasonably anticipated proceedings, and payments made in settlement of civil proceedings both filed and anticipated, shall be paid out of the funds of the local government that is or was subject to the receivership administered by that emergency manager, provided that the litigation expenses are approved by the state treasurer and that the state treasurer determines that the conduct resulting in actual or threatened legal proceedings that is the basis for the payment is based upon both of the following:

- (a) The scope of authority of the person or entity seeking the payment.
 - (b) The conduct occurred on behalf of a local government while it was in receivership under this act.
- (6) The failure of a municipal government to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

Sec. 26. (1) The local elected and appointed officials and employees, agents, and contractors of a local government shall promptly and fully provide the assistance and information necessary and properly requested by the state financial authority, a review team, or the emergency manager in the effectuation of their duties and powers and of the purposes of this act. If the review team or emergency manager believes that a local elected or appointed official or employee, agent, or contractor of the local government is not answering questions accurately or completely or is not furnishing information requested, the review team or emergency manager may issue subpoenas and administer oaths to the local elected or appointed official or employee, agent, or contractor to furnish answers to questions or to furnish documents or records, or both. If the local elected or appointed official

or employee, agent, or contractor refuses, the review team or emergency manager may bring an action in the circuit court in which the local government is located or Ingham county circuit court, as determined by the emergency manager, to compel testimony and furnish records and documents. An action in mandamus may be used to enforce this section.

(2) Failure of a local government official to abide by this act shall be considered gross neglect of duty, which the review team or emergency manager may report to the state financial authority and the attorney general. Following review and a hearing with a local government elected official, the state financial authority may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

(3) Subject to section 30(2), a local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Sec. 27. (1) Before the termination of receivership and the completion of the emergency manager's term, the manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership.

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

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

Sec. 29. The state financial authority is authorized and directed to issue bulletins or adopt rules as necessary to carry out the purposes of this act. A rule adopted under this section shall be adopted in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 30. (1) An emergency financial manager appointed and serving under state law prior to the effective date of this act shall continue under this act as an emergency manager for the local government and shall fulfill his or her duties and responsibilities and exercise all of the powers granted under former 1988 PA 101 or former 1990 PA 72. Except as provided in subsection (2), the provisions of this act shall apply to any local government for which an emergency financial manager is appointed and serving as of the effective date of this act.

(2) For a local government for which an emergency financial manager is serving as of the effective date of this act, the provisions of section 26(3) shall not become applicable until 60 days after the effective date of this act.

Sec. 31. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application. The provisions of this act are severable.

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

Enacting section 2. This act does not take effect unless Senate Bill No. 158 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Endnotes

1 "A petition for a referendum election to repeal Public Act 4 of 2011," (Michigan Secretary of State, 2012), <http://goo.gl/eFXzh> (accessed Oct. 17, 2012); Public Act 4 of 2011.

2 Public Act 4, Section 3.

3 Ibid.

4 See, for instance, Bill Schuette, "Opinion #7267," (Michigan Attorney General, Aug. 6, 2012), <http://goo.gl/JiET5> (accessed Oct. 9, 2012).

5 "A petition for a referendum election to repeal Public Act 4 of 2011," (Michigan Secretary of State, 2012), <http://goo.gl/eFXzh> (accessed Oct. 17, 2012).

6 David Sands, "Brandon Jessup Says Public Act 4 Must Be Repealed For Michigan To Truly Focus On Urban Policy," (The Huffington Post, 2012), <http://goo.gl/DVhnR> (accessed July 23, 2012).

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- 7 Robert Daddow, "Ecorse: The Fall and Rise of a Michigan City," (Mackinac Center for Public Policy, Dec. 1, 1992), <http://www.mackinac.org/5594> (accessed Oct. 15, 2012).
- 8 Robert Daddow, "Ecorse: The Fall and Rise of a Michigan City," (Mackinac Center for Public Policy, Dec. 1, 1992), <http://www.mackinac.org/5596> (accessed Oct. 15, 2012).
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- 17 "Senate Committee Reports Part of Wayne County Package," *Gongwer News Service*, Dec. 15, 1987.
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- 19 *Gongwer News Service*, "Committee Approves Financially-Troubled School Measure," 1989).
- 20 Michael W. McConnell and Randal C. Picker, "When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy," *University of Chicago Law Review*, Spring 1993, 17.
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- 34 See especially MCL chapters 41, 42, 45, 46, 47, 48, 49, 50, 51, 52, 53, 61-75, 78, 79, 81-113, 115, 117, 119, 120, 123, 124, 125, 131-139, 141, 380, 388, and 397.
- 35 MCL § 141.921.
- 36 MCL § 388.1701.
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- 38 MCL § 141.921(2); MCL § 388.1701(1).
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