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**THE LOCAL GOVERNMENT AND SCHOOL DISTRICT
FISCAL ACCOUNTABILITY ACT
PUBLIC ACT 4 OF 2011**

APRIL 2011

REPORT 368

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THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT PUBLIC ACT 4 OF 2011

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CRC REPORT

THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT

PUBLIC ACT 4 OF 2011

Summary

The Local Government and School District Fiscal Accountability Act (PA 4 of 2011) is the third iteration of statutes that authorize the state to intervene directly in the financial affairs of local governments. By providing for earlier state intervention and the takeover of a local government or school district by a state appointed emergency manager who would assume all of the authority and responsibility of local officials, as well as have power to terminate collective bargaining agreements and contracts, and even to dissolve the unit of government, the state hopes to encourage local officials to resolve financial problems promptly. PA 4 retains the essential process established in earlier statutes (trigger events and preliminary review; appointment of a review team authorized to negotiate a consent agreement and with a limited set of possible recommendations; local government right of review and appeal; state appointment of a financial manager with specified powers and duties) but this act provides much greater powers to the state and to the emergency manager.

PA 4 lowers the threshold for state intervention by expanding the list of initiating events and allowing for a preliminary review at the discretion of the state treasurer. The preliminary investigation may lead to appointment of a review team, which conducts a more thorough review to determine whether any of the events specified in the act, or any other facts or circumstances indicative of financial stress or of a financial emergency, exist. The review team is required to meet with the local government and is empowered to examine the books and records of the local government and to utilize the services of other state agencies and employees. The state department of treasury is to provide staff support to the review team. If the state financial authority approves, the review team may appoint an individual or firm to perform the review and submit a report. The review team must complete the review within 60 days, unless a 30 day extension is granted, and must make one of four possible recommendations.

- The local government is not in financial stress or is in a condition of mild financial stress.
- The local government is in a condition of severe financial stress, but a consent agreement containing a plan to resolve the problem has been adopted.
- The local government is in a condition of severe financial stress and a consent agreement has not been adopted.
- A financial emergency exists and there is no satisfactory plan to resolve the emergency.

The new act provides greater direction and specificity in the development of consent agreements, which may grant one or more powers of an emergency manager to one or more local officials (only the power to reject, modify, or terminate a collective bargaining agreement cannot be granted to a local official under a consent agreement). The consent agreement may contain either a continuing operations plan developed by the local government, or a more demanding recovery plan developed by the state financial authority. Beginning 30 days after the consent agreement is approved, the local government is exempted from collective bargaining requirements for the term of the agreement, unless the state treasurer determines otherwise. A companion statute, PA 9, amends the public employment relations act and provides that a local unit that enters into a consent agreement is exempt from the requirement to collectively bargain and to enter collective bargaining agreements for the duration of the consent agreement.

The state financial authority (the state treasurer, or the superintendent of public instruction for school districts) determines when the conditions of the consent agreement have been met.

The governor is required to make a determination within ten days of receiving the review team's recommendation. If a consent agreement is not adopted or is materially breached, the governor may declare that a financial emergency exists. The unit may request a hearing, and if, after the hearing, the gover-

nor confirms the emergency, the unit may appeal the decision to the Ingham County circuit court. If the determination is not set aside, or if the determination is not appealed, the governor declares the unit to be in receivership and appoints an individual to serve as emergency manager. That individual, who serves at the pleasure of the governor, may or may not be an official or employee of the local government and may or may not be a resident of the local government, but must have at least five years experience and demonstrable expertise in business, financial, or local or state budgetary matters. The governor may delegate his or her duties under the act, including the appointment of an emergency manager, to the state treasurer.

PA 4 expands the authority of emergency managers in school districts, general purpose local governments, special authorities, and publicly owned utilities. The emergency manager is paid by the local government, according to a contract that must be approved by the state treasurer and posted on the state Department of Treasury's website. At the time an emergency manager is appointed, the powers and duties of the chief administrative officer and governing body are transferred to the emergency manager.

The emergency manager must develop a financial and operating plan for the local government. The plan must provide for the following:

- (a) Conducting the operations of the local government within the resources available.
- (b) The payment in full of scheduled debt service and all other uncontested legal obligations.
- (c) The modification, rejection, termination, and renegotiation of contracts (a new provision).
- (d) Timely deposit of required payments to the pension fund.
- (e) For school districts, an academic and educational plan (a new provision).
- (f) Any other actions considered necessary by the emergency manager to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

The object of the financial and operating plan is to assure that governmental services essential to the

public health, safety, and welfare will be provided and to assure the fiscal accountability of the local government. The emergency manager must submit the plan to the state treasurer, to the superintendent of public instruction if the unit is a school district, and to the local CAO and governing body, within 45 days after the emergency manager's appointment. The plan must be in the form required by the state treasurer, and may be modified as necessary by the emergency manager with notice to the state treasurer. The financial and operating plan may serve as a deficit elimination plan. Within 30 days of submitting the financial and operating plan to the state financial authority, the emergency manager is required to conduct a public informational meeting on the plan, but no local or public approval of the plan is required. The emergency manager is authorized to issue orders necessary to implement the financial and operating plan and those orders are binding on local elected and appointed officials, employees, agents, and contractors.

The emergency manager may hire staff and secure professional assistance as he or she considers necessary. Emergency managers for school districts are granted unequivocal authority over academic and operational matters. An emergency manager may enter into contracts, but any contract with a cumulative value of \$50,000 or more is subject to competitive bidding. However, the emergency manager may submit the issue to the state treasurer, who may exempt that potential contract from competitive bidding.

Although the financial and operating plan must include provision for payment in full of scheduled debt service on all bonds, notes, municipal securities and all other uncontested legal obligations, emergency managers have the ability to reject, modify, or terminate non-labor contracts, such as service or purchasing contracts. This is a power that has been available only under federal bankruptcy provisions.

The emergency manager acts as sole agent of the local government in collective bargaining with employees or representatives and approves any contract or agreement. PA 4 authorizes an emergency manager to overrule minimum staffing requirements in charters and contracts. Furthermore, emergency

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managers are authorized to reject, modify, and terminate collective bargaining agreements after meeting and conferring with the bargaining unit and determining (in the emergency manager's sole discretion) that no satisfactory agreement can be obtained. One exemption is provided: an emergency manager cannot change a collective bargaining provision for the payment of a benefit on the death of a police officer or firefighter in the line of duty.

Emergency managers may be empowered to assume control of pension funds that are not at least 80 percent actuarially funded

The emergency manager may recommend consolidation with another municipal corporation, or may, with the governor's approval, dissolve the municipal corporation. The emergency manager may request that the local unit be allowed to file under federal bankruptcy provisions, and the governor makes that decision.

The act provides more explicit protections for emergency managers and those hired by emergency managers and makes local governments responsible for the costs associated with lawsuits and claims against the emergency manager and his or her

agents. Also, under this act, an emergency manager can be removed by a two-thirds vote of the legislature.

PA 4 contains a severability clause, which would protect other provisions of the act even if some sections are rejected by the courts.

A local government remains in receivership until the emergency manager declares the financial emergency to be rectified and the state treasurer (and the superintendent of public instruction if the local government is a school district) concurs. Before the termination of receivership, the emergency manager must adopt and implement a two-year budget, including all contractual and employment agreements, to start at the end of the receivership. The local government is prohibited from amending that budget without the approval of the state treasurer, and from revising any order or ordinance implemented by the emergency manager for a period of one year.

These changes are intended to address problems and frustrations encountered by emergency financial managers and state officials under PA 72, and to provide the governor with more options to empower local elected officials with extraordinary powers.

THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT PUBLIC ACT 4 OF 2011

Introduction

With declining revenues, unsustainable cost structures, unfunded liabilities, and increasing demands for services, Michigan's local governments and school districts are struggling to provide essential services. Reductions in state funding and constitutional limits on property taxes portend extended problems for counties, cities, villages, townships, school districts, and special authorities.

One state response to the increasing number of local governments and school districts facing deficits has been a series of new statutes that dramatically increase the powers of state-appointed emergency managers and reduce or eliminate local control. These managers were defined as "emergency financial managers" under the repealed Public Act 72; the new nomenclature, "emergency manager," reflects the unequivocal expansion of authority to operations. The increased powers are intended to provide additional incentives for local governments to avoid a state takeover. According to the State Treasurer¹, the goal of the legislation is "to give local executives and their partners the tools and incentives they need to avoid financial emergencies and maintain local control." By providing for the takeover of a local government or school district by a state appointed emergency manager who is empowered to assume the authority and responsibility of local officials, to reject, modify, or terminate collective bargaining agreements as well as other contracts, and to dissolve the unit of government, the state hopes to encourage unions to compromise the benefits they have negotiated or hope to obtain.

In preparation for those takeovers, training sessions have been organized for aspiring emergency managers: a February training session attracted 65 participants and 300 are scheduled to attend a training session in April.

¹ Andy Dillon, letter to The Detroit Free Press, *Emergency financial manager would be put in place only if necessary*, March 20, 2011.

Public Act 4 of 2011 (PA 4) strengthens the provisions of earlier statutes to allow state intervention in financially distressed local governments including school districts. The act increases accountability by lowering the threshold for intervention and eliminating the role of the Local Emergency Financial Assistance Loan Board, placing greater responsibility directly on the governor, treasurer, and state superintendent of public instruction. It provides greater direction and specificity in the development of consent agreements, which may grant one or more powers of an emergency manager to one or more local officials. Beginning 30 days after the consent agreement is approved, the local government is exempted from collective bargaining requirements for the term of the agreement, unless the state treasurer determines otherwise.

PA 4 expands the authority of emergency managers in school districts, general purpose local governments, special authorities, and publicly owned utilities: emergency managers for school districts are granted unequivocal authority over academic matters; emergency managers are authorized to terminate contracts and collective bargaining agreements; emergency managers are empowered to assume control of pension funds. This expanded authority comes at the expense of local charters, local ordinances, local elected officials, contracts, unions and collective bargaining agreements. Emergency managers are given the power to reject, modify, and terminate contracts, and this power may be in conflict with provisions in both the state and federal constitutions. The act provides more explicit protections for emergency managers and those hired by emergency managers and makes local governments responsible for the costs associated with lawsuits and claims against the emergency manager and his or her agents.

This report will compare the new act to the statute it replaced, describe the process for state intervention, and analyze the role and responsibilities of key actors in the intervention process.

History

First introduced as House Bill 4214 on February 9, 2011 and signed into law by Governor Rick Snyder on March 16, 2011, the Local Government and School District Fiscal Accountability Act (PA 4 of 2011) is the third iteration of statutes that authorize the state to intervene in the financial affairs of local governments in a financial emergency. This iteration expands the authority of a state appointed emergency manager to all operations, including the academic component of a school district. HB 4214 was tie barred to SB 158, which became PA 9 of 2011, and which amends the Public Employment Relations Act (PA 336 of 1947).

The first of the laws allowing state intervention, Public Act 101 of 1988 (PA 101), which was adopted in response to court appointment of a receiver for the City of Ecorse, established a defined statewide approach to the challenge of extreme local financial distress in general purpose local governments. PA 101 was revised by PA 72 of 1990, the Local Government Fiscal Responsibility Act, (PA 72) which extended essential provisions to school districts. PA 72, which was itself amended in 1992, 2002, 2003, and 2009, was used to appoint emergency financial managers in the following governments:

- City of Hamtramck, 2000
- City of Highland Park, 2001
- City of Flint, 2002
- Inkster Public Schools 2002
- Village of Three Oaks, 2008
- City of Ecorse, 2009
- City of Pontiac, 2009
- City of Benton Harbor, 2010
- Detroit Public Schools, 2009

At the time PA 72 was replaced, there were emergency financial managers in Ecorse, Pontiac, Benton Harbor, and Detroit Public Schools, and a financial emergency remained in place in Highland Park and Three Oaks. The City of River Rouge is currently operating under a consent agreement approved under PA 72. CRC has described the repealed PA 72 in several reports, the most recent being *Financial Emergencies in Michigan Local Governments*, Report 362, published in April, 2010.

PA 4 retains the essential process established in the earlier statutes: trigger events and preliminary review; appointment of a review team authorized to negotiate a consent agreement and with a limited set of possible recommendations; local government right of review and appeal; state appointment of a financial manager with specified powers and duties.

The act increases the number of trigger events to allow state intervention earlier in the process of local financial deterioration, presumably when less severe corrective measures may be effective, and further allows the state financial authority (SFA) (the superintendent of public instruction for school districts; the state treasurer for all other units) complete discretion in initiating a preliminary review if there are facts or circumstances, other than the trigger events described, that are indicative of financial stress. The Michigan Department of Treasury scores and ranks local governments based on criteria designed to indicate the financial condition of the government, and these fiscal indicator scores may also be considered in initiating preliminary reviews.

PA 4 provides much greater direction for the development and implementation of consent agreements, which may include granting extraordinary power to a local official. Consent agreements will contain either a continuing operations plan developed by the local government or a recovery plan developed by the state financial authority.

PA 4 also expands the powers of the appointed emergency manager to include modifying or terminating contracts and, with the approval of the governor, dissolving the municipal corporation or recommending consolidation with another municipal corporation. If the local pension fund is not at least 80 percent actuarially funded (80 percent is the minimum standard of adequacy for public pension funds), net of pension bonds or other indebtedness, the emergency manager may be appointed sole trustee. In that case, the emergency manager has authority to set actuarial assumptions and to transfer funds to the statewide Municipal Employees Retirement System. Also, under this act, an emergency manager could be removed by a two-thirds vote of the legislature.

These changes are designed to make the implications of state intervention so significant that local elected officials and employee bargaining units are more motivated to address financial problems before those problems become an emergency. Furthermore,

the changes are intended to address problems and frustrations encountered by emergency financial managers and state officials under PA 72, and to provide the governor with more options to empower local elected officials with extraordinary powers.

Fiscal Indicator Scores

The Michigan Department of Treasury reviews fiscal indicators for 1,856 units of local government and assigns a numerical rating to each city, village, township, and county. Ratings are based on key factors from nine categories:

- Population growth
- Real taxable valuation growth
- Large real taxable value decrease
- General fund expenditure as a percent of taxable valuation
- General fund operating deficits
- Prior general fund operating deficits
- Size of general fund balance
- Fund deficits in current or previous years
- General long term debt as a percent of taxable value

According to the Department of Treasury website, other considerations in making an evaluation of the financial condition of a local government include dependence on a major taxpayer, pending litigation, ability to fund long term commitments such as retiree health care, deferred capital outlay or maintenance, millage capacity, and percent developed.

In the state ranking, a score of zero through four indicates that the unit is managing its finances appropriately. A score of five through seven indicates a cause for concern, and the unit is placed on "fiscal watch." A score of eight through ten indicates fiscal stress: "Assistance and potentially intervention by the Department of Treasury is expected for local units scoring in this category."

In the most recent ranking, the City of Jackson and Genesee Township received a score of nine; the Village of Elberta and the cities of Flint, St. Ignace, and Standish received a score of eight. Fifteen units received a score of seven, including Ecorse, Highland Park, Benton Harbor, and Detroit. Pontiac, which has an emergency manager appointed under PA 72, received a score of six; the Village of Three Oaks received a score of four.

Although the correlation between fiscal indicator scores and intervention under the previous local government fiscal accountability act was weak, the state may use the existing scores, or some modified version of the scores that anticipates the trigger events in PA 4, to provide the closer monitoring and earlier intervention that proponents of the act support.

The Process

Preliminary Review

Whereas the previous law required the state treasurer to conduct a preliminary review if one of 14 events occurred, the new law provides that a preliminary review may be initiated in one of two ways. The state financial authority may, but is not required to, conduct a preliminary review of the financial condition of a local unit of government if one or more of 17 specific events described in the act occur. Even if none of those events occur, the state financial authority may initiate a preliminary review if there are other facts or circumstances that, in the sole discretion of the state treasurer or superintendent of public education, indicate financial stress. The specific conditions are as follows:

- (a) A written request by the local governing body or the local chief administrative officer (CAO). (same as PA 72)
- (b) A written request from a creditor with an undisputed claim that remains unpaid six months after its due date and that exceeds the greater of \$10,000.00 or one percent of the annual general fund budget of the local government. (same as PA 72)
- (c) A petition containing specific allegations of local government financial distress signed by a specified number of registered voters. (The number of voters required to sign the petition is reduced from ten percent in PA 72 to five percent of the total vote cast for all candidate for governor in the last election.)
- (d) Written notification that a local government has not made its minimum required payment to its pension fund as required by law. (same as PA 72)
- (e) Written notification that the local government has failed to pay wages, salaries, or other compensation owed to employees or benefits owed to retirees for at least seven days after the due date (the inclusion of benefits paid to retirees is new in PA 4).
- (f) Written notification from a trustee, paying agent, bondholder, or auditor of a default in a bond or note payment or a violation of one or more bond or note covenants. (same as PA 72)
- (g) A request from either the senate or the house of representatives. (same as PA 72)
- (h) Violation of specified state laws by the local government. (same as PA 72)
- (i) Violation of the conditions of an order issued by the local emergency financial assistance loan board pursuant to the emergency municipal loan act. (same as PA 72)
- (j) Violation of the uniform budgeting and accounting act. (same as PA 72)
- (k) Failure to timely file an annual financial report or audit. (same as PA 72)
- (l) A request by a taxing unit for which a municipal government has collected, but has failed to distribute, tax revenues. (same as PA 72)
- (m) Breach of obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan (this is a new condition).
- (n) A court orders an additional tax levy without the prior approval of the governing body of the local government. (same as PA 72)
- (o) A municipal government ends a fiscal year in a deficit condition or fails to comply with requirements for filing or instituting a financial plan to correct the deficit condition. (same as PA 72)
- (p) A school district with a deficit fails to submit a deficit elimination plan within 30 days after the district's deadline for submission of its annual financial statement. (the deadline is shortened from three months in PA 72)
- (q) A local government is assigned a long-term debt rating at or below the BBB category or its equivalent (a new provision).
- (r) The existence of other facts or circumstances that, in the state financial authority's sole discretion, are indicative of financial stress (a new provision with potentially far reaching consequences).

The written notification provision in several criteria is important in that the transgression event itself may not trigger a preliminary review if the local government is able to resolve the issue. For example, a default is generally cured by refinancing or renegotiating the debt, in which case the creditor may decide not to notify the state.

The state financial authority must notify the local unit that it will perform a preliminary review, and local officials are required to provide any information and assistance requested. The preliminary review must be completed within 30 days.

Credit Ratings

Private and public sector entities, including local governments, issue debt in the form of bonds and certificates which contain a promise by the issuer to repay the principle and interest at specific rates and times. Credit ratings are estimates issued by rating agencies such as Standard and Poor's, Moody's, and Fitch, that are based on established criteria and methodologies that attempt to assess the probability of repayment of debt. "BBB" is a rating used by Standard and Poor's and Fitch, and is equivalent to the rating of Baa2 used by Moody's. BBB is the lowest investment grade rating that may be assigned to an issuer or obligor (the highest rating is AAA).

According to the Bankers Almanac, "An obligor rated 'BBB' has adequate capacity to meet its financial commitments. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitments.

Obligors rated 'BB', 'B', 'CCC' and 'C' are regarded as having significant speculative characteristics. 'BB' indicates the least degree of speculation and 'CC' the highest. While such obligors will likely have some quality and protective characteristics, these may be outweighed by large uncertainties or major exposures to adverse conditions."*

Detroit is among the Michigan cities that have below investment grade credit ratings.

* Bankers Almanac at www.bankersalmanac.com/addcon/onfobank/credit_ratings/standardand_poors.aspx.

Review Team

If the preliminary review finds probable financial stress, the governor is required to appoint a review team.

Members

The review team for a municipal government consists of the following members:

- 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;
- A nominee of the speaker of the house of representatives; and
- Other state officials or other persons with relevant professional experience as the governor may determine.
- The superintendent of public instruction or his or her designee serves on a review team for a school district, in addition to the members listed above.

Under PA 72, the review team for a general government consisted of the state treasurer, auditor general, a nominee of the senate majority leader; a nominee of the speaker of the house of representatives; and other state officials or other persons with relevant professional experience. Under PA 72, the review team for a school district consisted of the superintendent of public instruction, state treasurer, director of the Department of Management and Budget, a nominee of the senate majority leader; and a nominee of the speaker of the house of representatives.

The review team is required to meet with the local government and is empowered to examine the books and records of the local government and to utilize the services of other state agencies and employees. The state department of treasury is to provide staff support to the review team. If the state financial authority approves, the review team may appoint an individual or firm to perform the review and submit a report (a new provision).

Report

The review team must deliver its report within 60 days, or earlier if required by the governor. (The governor may grant one 30-day extension of this 60-day time limit.) The report must include the existence, or an indication of the likely occurrence, of any of the following:

- (a) A default in the payment of bonds, 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 employee income taxes; taxes collected for another taxing unit; or a required payment to a pension, retirement, or benefit plan fund, to the appropriate agency.
- (c) Failure to pay wages and salaries or other compensation owed to employees, or benefits owed to retirees, for a period of 7 days or more (the time period is shortened from 30 day in PA 72).
- (d) The total amount of accounts payable for the current fiscal year is more than 10% of the total expenditures of the local government.
- (e) Failure to eliminate an existing deficit in any fund within the immediately preceding two-year period.
- (f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of five percent of the budgeted revenues for the general fund (the amount is reduced from ten percent in PA 72).

- (g) Failure to comply with the terms of an approved deficit elimination plan (a new provision).
- (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 (a new provision)
- (i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds (a new provision).
- (j) Existence of a structural operating deficit (a new provision).
- (k) Use of restricted revenues for purposes not authorized by law (a new provision).
- (l) Any other facts and circumstances indicative of local government financial stress or financial emergency (a new provision).

Although the conditions indicative of financial stress have been expanded from those listed in PA 72, it should be noted that violation of the more limited “conditions indicative of a serious financial problem” in the previous act did not uniformly result in state intervention. For example, the City of Detroit general fund has been in deficit every year since 2003, but neither a review team nor an emergency financial manager was appointed. It remains to be seen how the very general language in the last item, “any other facts and circumstances indicative of local government financial stress or financial emergency,” may be interpreted.

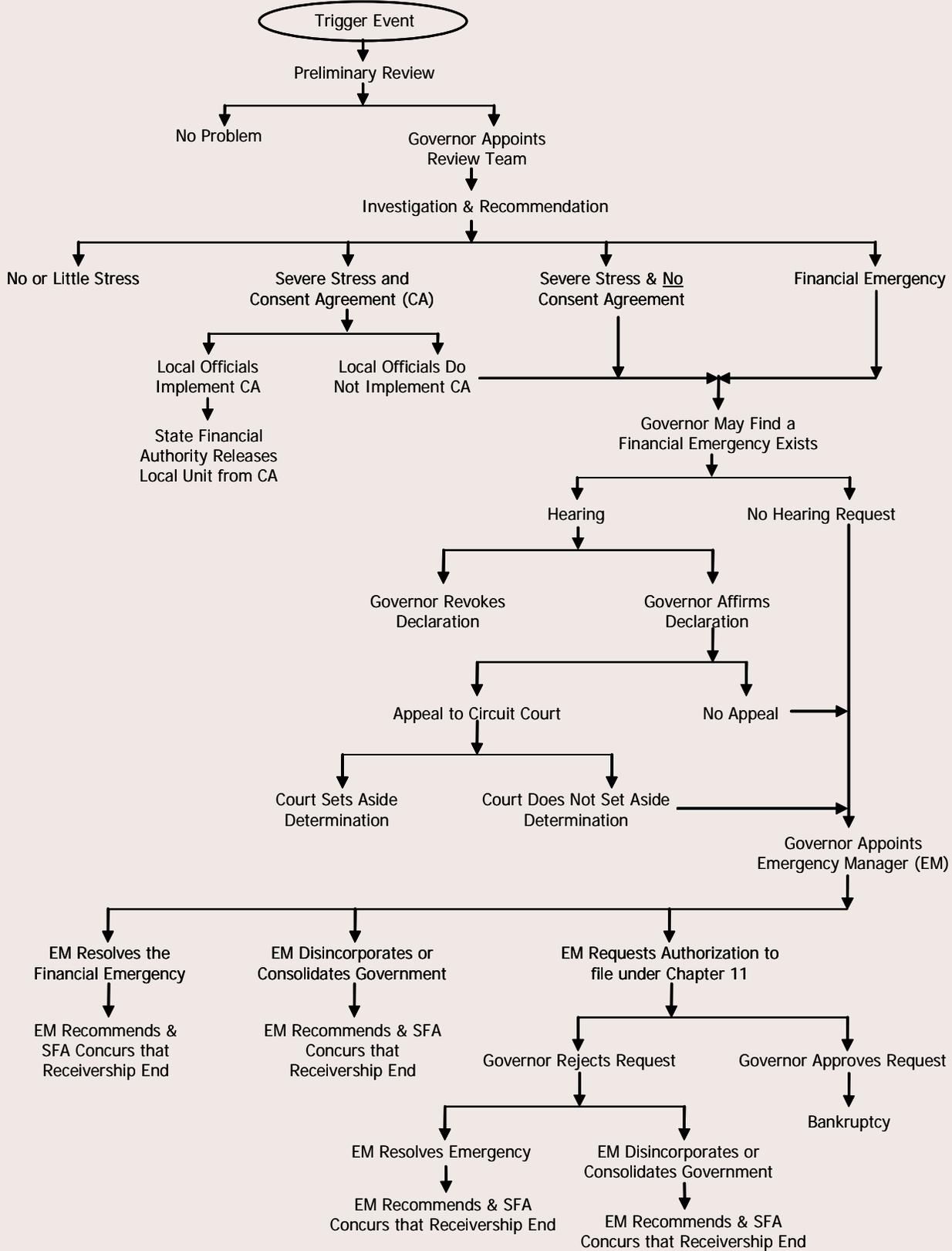
Structural Deficit

A structural deficit is one in which revenues grow more slowly than spending pressures, even when the economy is growing.

It could be argued that state constitutional provisions (Proposal A and Headlee), combined with the implosion of property values, have placed many if not most of the general purpose local governments in Michigan that provide pensions and health care to employees in a structural operating deficit, or very close to a structural deficit. Growth in the taxable value of each parcel is limited to the lesser of five percent or inflation, until the sale of that property, and increases in the value of the total tax base greater than inflation (excluding new construction, but including that caused by the sale of property) results in tax rate rollbacks. Of course, expenses for pensions, health care, and other necessities purchased by local government are not constitutionally limited, and in the case of pensions are constitutionally protected.

School districts are also facing spending pressures that outpace revenues, as pension and health care costs increase at greater than the rate of inflation, per pupil funding is reduced, and the school aid fund is stretched to support community colleges and universities.

Diagram 1
The Public Act 4 Process



Conclusions

The review team is limited to four conclusions (there were only three in PA 72, and those three lacked the detailed descriptions in PA 4):

1. The local government is not in financial stress or is in a condition of mild financial stress (none of the factors listed above are threats to the government's capacity).
2. The local government is in a condition of severe financial stress (one or more of the factors exist or are likely and may threaten the government's capacity, or the local CAO recommends the finding), but a consent agreement containing a plan to resolve the problem has been adopted.
3. The local government is in a condition of severe financial stress (same definition as in 2), and a consent agreement has not been adopted.
4. A financial emergency exists and there is no satisfactory plan to resolve the emergency. A financial emergency occurs when two or more of the factors occur or are likely and threaten the government's capacity; the local government has not provided timely and accurate information to the review team; the local government has not complied with a consent agreement or deficit elimination plan; the local government is in a condition of severe financial stress and a consent agreement has not been adopted; or the local CAO recommends the finding and the state treasurer concurs.

Consent Agreement

As in the replaced PA 72, the review team may negotiate a consent agreement with the CAO of the local government, and that consent agreement must be approved by resolution of the local governing body. Under a consent agreement, the CAO and governing body remain in control, and that control may even be enhanced. PA 4 provides much more detail about the consent agreement, and provides that the state treasurer determines whether the consent agreement will include either a continuing operations plan or a recovery plan, either of which must be approved by resolution of the local governing body and by the state financial authority. The consent agreement may require that the local government hire a consultant to assist it in achieving the goals and objectives of the consent agreement.

Continuing Operations Plan

A continuing operations plan is prepared by the local government, and must include the following:

1. A detailed projected budget of revenues and expenditures over at least three fiscal years which demonstrates that expenditures will not exceed revenues and that any existing deficits will be eliminated.
2. A cash flow projection for the three year budget period.
3. An operating plan that assures fiscal accountability.
4. A plan for reasonable and necessary maintenance and capital expenditures.
5. An evaluation of the costs associated with pension and postemployment health care obligations and a plan for how those costs will be addressed within the budget period.
6. A provision for submitting quarterly compliance reports to the state financial authority demonstrating compliance with the continuing operations plan.

The local government must amend its budget and appropriations authorization to reflect the continuing operations plan, must maintain operations consistent with the plan, and must file annual updates with the state.

It will be a very demanding task for a distressed local government to prepare the required components of the continuing operations plan, especially a credible three-year budget and cash flow projection. If a local government is unable to produce a continuing operations plan that the state financial authority can approve, in the form and within the timeframe allowed, the local government is in violation of the consent agreement. A material breach of a consent agreement may result in a declaration of a financial emergency.

Recovery Plan

The state financial authority may require that the consent agreement contain a recovery plan, which is developed by the state financial authority rather than by the local government. The state treasurer may require specific provisions, including, but not limited to, any of the provisions required for a continuing operations plan, procedures for cash control and cash management, and quarterly compliance

reports, and/or the appointment of a local auditor or local inspector or both. The recovery plan replaces the budget and general appropriations ordinance adopted by the local government, and local officials are required to maintain the local government's operations in compliance with the recovery plan.

Other New Provisions

An important change in PA 4 is the provision that the consent agreement may grant extraordinary powers to the CAO, the chief financial officer, the governing body, or other officers of the local government. These powers include "one or more of the powers prescribed for emergency managers for such periods and upon such terms and conditions as the state treasurer con-

siders necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement" with one exception. According to the statute, the power to reject, modify, or terminate an existing collective bargaining contract cannot be granted to a local official under a consent agreement, but can only be granted to an emergency manager in a declared financial emergency.

Another important change is the provision that, for a period starting 30 days after a local government enters a consent agreement and lasting for duration of the consent agreement, a local government is not subject to Section 15(1) of the Public Employment Relations Act, PA 336 of 1947 (the requirement to bargain collectively with representatives of its em-

Michigan's Public Employment Relations Act (PERA)

PERA establishes the rights and responsibilities involved in public sector collective bargaining and provides the framework for resolving labor disputes. Courts have consistently ruled that PERA prevails over local charters and conflicting legislation. Section 15(1) states:

"A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising under the agreement, and the execution of a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or require the making of a concession."

PERA was amended by Public Act 9 of 2011, which added sections 15(7) through 15(9):

(7) Each collective bargaining agreement entered into between a public employer and public employees under this act after the effective date of the amendatory act that added this subsection shall include a provision that allows an emergency manager appointed under the local government and school district fiscal accountability act to reject, modify, or terminate the collective bargaining agreement as provided in the local government and school district fiscal accountability act. Provisions required by this subsection are prohibited subjects of bargaining under this act.

(8) Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local government and school district fiscal accountability act. This act does not confer a right to bargain that would infringe on the exercise of powers under the local government and school district fiscal accountability act.

(9) A unit of local government that enters into a consent agreement under the local government and school district fiscal accountability act is not subject to subsection (1) for the term of the consent agreement, as provided in the local government and school district fiscal accountability act.

ployees and the provision that allows the employer to enter collective bargaining agreements), unless the state treasurer determines otherwise. PA 9 (which began as SB 158, tie barred to the bill that became PA 4) amends the public employment relations act and provides that a local unit that enters into a consent agreement is exempt from the requirement to collectively bargain and to enter collective bargaining agreements for the duration of the consent agreement.

The state financial authority determines when the conditions of the consent agreement have been met. If the consent agreement is violated, the state treasurer is authorized to place the local government in receivership.

Determination

The governor is required to make a determination within ten days of receiving the review team's recommendation. That determination is limited to one of four choices:

1. The local government is not in a condition of severe financial stress.
2. The local government is in a condition of severe financial stress, but no consent agreement containing a plan to resolve the financial stress has been adopted.
3. A local government financial emergency exists and there is no satisfactory plan to resolve the emergency.
4. The local government entered into a consent agreement, but materially breached that agreement.

If the governor determines that a financial emergency exists, he or she must provide the governing body and CAO of the local government with a written notification of the determination, findings of fact that the determination was based on, a concise statement of the facts supporting the findings, and notice that the chief administrative officer or the governing body of the local government has seven days to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing or the deadline for requesting a hearing, the governor, in his or her sole discretion based upon the record, either confirms or revokes the determination. If he or she confirms the determination, the governor must provide a written

report to the governing body and chief administrative officer of the local government stating the facts, conditions, or events on which the confirmation is based.

A local government has ten business days to appeal a determination of a financial emergency; the appeal must be adopted by a two-thirds vote of the local governing body. The appeal is made to the Ingham County circuit court, which cannot set aside the determination unless it finds that the determination is either of the following:

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

The governor may delegate his or her duties under this section, as well as the appointment of an emergency manager, to the state treasurer.

Emergency Manager

If the governor confirms a financial emergency, the governor (not the Local Emergency Financial Assistance Loan Board, as under PA 72) declares that the local government is in receivership and appoints an emergency manager (EM), and that individual (it must be an individual) may or may not be a current or former official, appointee, or employee of the local government. The person appointed must have at least five years experience and demonstrable expertise in business, financial, local or state budgetary matters. The appointee may or may not be a resident of the local unit of government. (PA 72 specified that an emergency financial manager be chosen solely on the basis of competency and that he or she could not have been an elected or appointed official or employee of the local government for five years before the appointment. Critics of PA 72 thought that the prohibition on appointing anyone who had worked for the unit for the past five years may have prohibited appointment of experts with specific and very useful knowledge.)

The emergency manager is paid by the local government, according to a contract that must be approved by the state treasurer and posted on

treasury's website. The emergency manager may hire staff and secure professional assistance as he or she considers necessary. The EM serves at the pleasure of the governor, though subject to impeachment and removal by a two-thirds vote of the state legislature (a new provision in PA 4).

Critics of PA 72 referred to emergency financial managers as a "czars" or "dictators." Under PA 4, emergency managers have even broader powers "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."

During of the receivership, the authority and responsibility of the CAO and governing body is suspended and that authority and responsibility is vested in the emergency manager. The governing body and the CAO may not exercise any of the powers of those offices except as specifically authorized in writing by the emergency manager; they are subject to any conditions required by the emergency manager. 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 are eliminated, although vested pension benefits are not impaired. The emergency manager may restore any of the salary, wages, other compensation, or benefits of the CAO and members of the governing body at his or her discretion.

The emergency manager is authorized to issue orders necessary to implement the financial and operating plan and those orders are binding on local elected and appointed officials, employees, agents, and contractors. If the failure of a local official, employee, agent, or contractor to implement an order is disrupting the emergency manager's ability to manage, the emergency manager may deny that person access to facilities, electronic mail, and internal information systems. The emergency manager (and the review team) can issue subpoenas and administer oaths to obtain answers to questions, documents, and records. The emergency manager may also initiate court proceedings to enforce compliance with his or her orders. Failure of a local

official to abide by the requirements in PA 4 is considered gross neglect of duty, which a review team or emergency manager may report to the state financial authority and the state attorney general. After a review and hearing, the state financial authority may recommend to the governor that the local official be removed from office, and the governor may remove that local official.

Financial and Operating Plan

The emergency manager must develop a financial and operating plan for the local government. The object of the financial and operating plan is to assure that governmental services essential to the public health, safety, and welfare will be provided and to assure the fiscal accountability of the local government. The plan must provide for the following:

- (a) Conducting the operations of the local government within the resources available.
- (b) The payment in full of scheduled debt service and all other uncontested legal obligations.
- (c) The modification, rejection, termination, and renegotiation of contracts (a new provision).
- (d) Timely deposit of required payments to the pension fund.
- (e) For school districts, an academic and educational plan (a new provision).
- (f) Any other actions considered necessary by the emergency manager to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

The emergency manager must submit the plan to the state treasurer, to the superintendent of public instruction if the unit is a school district, and to the local CAO and governing body, within 45 days after the emergency manager's appointment. The plan must be in the form required by the state treasurer, and may be modified as necessary by the emergency manager with notice to the state treasurer. The financial and operating plan may serve as a deficit elimination plan. Within 30 days of submitting the financial and operating plan to the state financial authority, the emergency manager is required to conduct a public informational meeting on the plan, but no local or public approval of the plan is required.

The United States and Michigan Constitutions

Article I, Section 10 of the United States Constitution places limits on states and includes a prohibition on states passing any "Law impairing the Obligation of Contracts."

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility..."*

Article I, Section 10 of the 1963 Michigan Constitutions reflects the federal Constitution in prohibiting the enactment of a law that impairs the obligation of contracts:

"No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be enacted."

In anticipation of legal challenges, PA 4 does contain a severability clause: "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."

* U.S. Government, Constitution of the United States, www.senate.gov/civics/constitution_item/constitution.htm.

The EM is vested with all of the powers of the CAO and governing body and is empowered to take actions specified in the statute regardless of local charter provisions. In addition to powers granted under the replaced PA 72, the new statute grants a number of specific new powers. These powers are coordinated with provisions of other state legislative and budgetary initiatives that reflect a coordinated vision.

Staffing Levels. Over the years, petition drives have resulted in amendment of several Michigan cities' charters to include minimum staffing levels. PA 4 authorizes an emergency manager to overrule minimum staffing requirements in charters and contracts. The Governor has proposed amendments to various acts to prohibit such requirements in new charters or as new amendments to existing charters.

Contracts and Collective Bargaining. Possibly the most contentious changes are those that grant emergency managers the ability to modify or terminate existing contracts and collective bargaining agreements. Article 1, Section 10 of the Michigan Constitution of 1963 states: "No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted." This has long been inter-

preted to protect contracts that are in force, although it was understood that future contract terms could be restricted.

Contracts An emergency manager may enter into contracts, but any contract with a cumulative value of \$50,000 or more is subject to competitive bidding. However, the emergency manager may submit the issue to the state treasurer for review and the state treasurer may exempt that potential contract from competitive bidding.

Although the financial and operating plan must include provision for payment in full of scheduled debt service on all bonds, notes, municipal securities and all other uncontested legal obligations, emergency managers would be granted the ability to reject, modify, or terminate non-labor contracts, such as service or purchasing contracts. This is a power that is available under federal bankruptcy provisions.

The enforceability of contracts is one of the essential bases of the modern economy. A contract is defined as "an agreement creating obligations enforceable by law. The basic elements of a contract are mutual assent, consideration, capacity, and le-

gality. Possible remedies for breach of contract include general damages, consequential damages, reliance damages, and specific performance.”²

As a practical matter, if any contract for goods or services could be broken by a state appointed financial manager, the vendor’s risks associated with that agreement would be dramatically increased, potentially raising the cost of doing business for every municipality and school district in the state.

PA 4 contains a severability clause, which would protect other provisions of the act even if sections allowing the rejection, modification, or termination of contracts is rejected by the courts.

Collective Bargaining PA 4 (Section 19(1)(l)) provides that the emergency manager acts as sole agent of the local government in collective bargaining with employees or representatives and approves any contract or agreement (as did PA 72).

A companion statute, PA 9 of 2011, addresses the issue of collective bargaining in two new ways, by requiring that all new public collective bargaining agreements include a provision allowing an emergency manager to reject, modify, or terminate the agreement, and by providing that existing collective bargaining agreements may be rejected, modified, or terminated under PA 4.

The grant of power to reject, modify, or terminate a collective bargaining agreement occurs only in the event of a declared financial emergency and receivership, and this power cannot be granted in a consent agreement. PA 4 provides that an emergency manager could reject, modify, or terminate a collective bargaining agreement only after meeting and conferring with the bargaining unit and determining (in the emergency manager’s sole discretion) that no satisfactory agreement could be obtained. One exemption is provided: an emergency manager would not be able to change a collective bargaining provision for the payment of a benefit on the death of a police officer or firefighter in the line of duty.

² Cornell University Law School, Legal Information Institute, *Contract*, <http://topics.law.cornell.edu/wex/contract>.

Seemingly acknowledging the potential for a court challenge, language in the act attempts to set conditions for abrogating collective bargaining contracts that justify the “legitimate exercise of the state’s sovereign powers.” While the language of Sec. 19.(1) (k) (i) through (iii) is vague (“reasonable and necessary” “for the benefit of the public as a whole”), the language of Sec. 19.(1) (k) (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) imposes more restraints, especially where the collective bargaining contract covers specific classes of employees, such as police officers or firefighters (although the definition of “temporary” may be problematical).

The act also exempts the designated local government from collective bargaining requirements for five years or until the receivership is terminated, so if a contract is terminated, there is no requirement that a new contract be negotiated by the emergency manager and the union.

These provisions are consistent with other recent state efforts to reduce the compensation costs of public employees. The Governor proposed changes to the state revenue sharing distribution that would reward communities that require employees to pay 20 percent of insurance costs and that limit pension benefits.

Pension Fund. The repealed PA 72 was silent on the emergency manager’s role with respect to the local government’s pension fund, but recent criminal investigations and convictions have highlighted problems in local pension administration.

The reduction in pension fund assets resulting from stock market and real estate market losses, the failure of governments to make required annual contributions, the disconnect between assumed rates of investment earnings and real rates of earnings have raised questions about the sustainability of defined benefit pension plans. The requirement to report the value of other postemployment benefits has exacerbated concerns about the future effects of bargained benefits. Extensive private sector transition from defined benefit to defined contribution plans has also increased pressure on public sector admin-

Pension Plans

In 2008, there were 138 state and local public retirement systems in Michigan (only Pennsylvania, Illinois, and Florida had more). These systems had 426,804 members, (393,847 active and 32,957 inactive) and 300,268 beneficiaries receiving payments.*

The state operates five systems, including the Michigan Public School Employee's Retirement System for all public school employees.

The Municipal Employees' Retirement System (MERS) is a statewide retirement plan that municipalities may adopt for their employees. MERS was operated by the state government from its creation in 1945 until 1996, when it became an independent nonprofit organization. The 750 members include cities, townships, villages, and counties, as well as hospitals, libraries, medical care facilities, and road commissions. These members represent more than 83,000 individual members and retirees.

MERS offers nine retirement and benefit products including a defined benefit plan, defined contribution plan, hybrid plan, health care savings program, retiree health care funding vehicle, group life and disability, and MERS Premier Advantage. Each municipality has a separate trust account in MERS and each member municipality is responsible for funding the pensions earned by its own employees.

There are 132 locally administered public pension plans in Michigan. Many general purpose local governments that maintain their own pension systems have separate plans for police and fire employees and for civilian employees.

* U.S. Census Bureau, Table 5a, Number and Membership of State and Local Public Retirement Systems by State: Fiscal Year 2008.

istrators to adopt plans that shift risk to employees. (The State of Michigan and Oakland County are among the governments that offer only defined contribution plans to new employees.)

For public defined benefit plans, an 80 percent funding level is generally considered adequate. PA 4 excludes the net value of outstanding pension bonds or pension obligation certificates, such as those issued by the City of Detroit in 2005 and 2006, from the valuation to determine whether the 80 percent threshold is achieved. PA 4 allows an emergency manager of a municipality with a pension fund that is actuarially funded at less than 80 percent to remove one or more of the appointed or elected trustees of the pension board. Or, the state treasurer may appoint the emergency manager as the sole trustee of the pension board. In that case, the emergency manager could place the pension system in the statewide, voluntary Municipal Employee's Retirement System (MERS).

Local pension provisions have received special attention from the Governor, who proposed a \$200 million Economic Vitality Incentive Program to replace the \$300 million statutory state revenue sharing program in the fiscal year 2012 state budget. According to the March 21, 2011 Special Message from the Governor, the proposed program would reward units of government that place new hires on defined contribution or hybrid plans that limit public contributions to ten percent of payroll. The Governor's plan specifies that, where applicable, a 1.5 percent multiplier is to be used for calculating pensions; a two percent multiplier is to be used for employees who are not eligible for social security benefits. Local governments are also to be rewarded with a smaller loss of revenue sharing for implementing controls to avoid pension spiking.³

³ Rick Snyder, letter addressed to the Michigan Legislature, *A Special Message from Governor Rick Snyder: Community Development and Local Government Reforms*, March 21, 2011.

The Governor's proposal would ban anyone who contributes to an elected official who sits on a pension board from doing business with that pension board for two years and that would restrict political financing activities by financial advisors to pension boards. The Governor has also proposed a number of other accountability and transparency rules for pension boards, including a standard reporting format and disclosure requirements for board members.

An emergency manager who is appointed sole trustee of a pension board is specifically authorized to change actuarial assumptions. If the emergency manager can also modify collective bargaining contracts, he or she could unilaterally implement the governor's recommendations for pension plans.

Article IX, Section 24 of the 1963 Michigan Constitution states "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." Pension benefits that have been earned are protected by the state constitution, and PA 4 affirms that protection. The constitutional language has been interpreted to allow changes to be made to pension benefits that have not yet been earned and to other postemployment benefits, and an emergency manager could make changes to those prospective benefits.

Inspector and Auditor. PA 4 specifically authorizes a financial manager assigned to a local government to hire an expert individual or firm to ensure that internal systems controls are adequate and to provide other technical assistance. An auditor would be responsible 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." An inspector would be assigned "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."

The state treasurer is to provide a list of approved individuals and firms from which the emergency manager must select an auditor or inspector.

PA 4 provides that an emergency manager must decide whether possible criminal conduct contributed to the financial emergency, and if so, must refer the matter to the attorney general and local prosecuting attorney. If a local inspector has been retained, that person would be expected to identify possible criminal conduct.

PA 72 required that the determination of whether possible criminal conduct contributed to the financial emergency be made within 180 days of the emergency financial manager being appointed; PA 4 includes no such time constraint.

Millage Elections. An emergency manager cannot increase tax rates or impose new taxes without a vote of the people, but he or she may place a proposal for a tax increase on the ballot at the November election. Under PA 72, emergency financial managers in school districts were authorized to order school millage elections.

Incur, Restructure, or Retire Debt. The emergency manager may borrow money (as was allowed under PA 72), settle claims against the unit, and subject to the approval of the state treasurer, restructure payment of existing debt.

Transfer of Assets, Functions and Property. The emergency manager is authorized to sell, lease, or transfer assets, liabilities, functions, or responsibilities if that action was included in the plan approved by the state financial authority or with the written approval of the governor or the governor's designee, and only if the action does not endanger residents or impair a legal financial obligation. This grant of power could conflict with local charter requirements for votes on the sale of major assets.

As noted, the Governor is proposing a number of initiatives to encourage the merger and consolidation of public services and of local governments. PA 4 contains specific grants of authority to the emergency manager to further this goal, including entering into agreements with other units of government or other entities for the provision of services, the

joint exercise of powers, or the transfer of assets, functions, and responsibilities.

Public utilities are a special case. According to Article VII, Section 25 of the Michigan Constitution, no city or village may sell any 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. PA 4 similarly limits the power of an emergency manager to sell or transfer a public utility without a vote of the people. In a further restriction, an emergency manager is prohibited from using 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.

A public utility owned by a city, village, township, or county is a “municipality” according to the definition in PA 4, and is subject to the appointment of an emergency manager under the same process and conditions that are established for cities, villages, townships, counties, and other authorities established by law.

Consolidation and Disincorporation. The Governor’s March 21, 2011 special message to the legislature included changes to state revenue sharing that are intended to create incentives for local governments to collaborate and consolidate, including a \$5 million fund to help local governments that decide to merge or consolidate. A number of statutory changes are designed to remove impediments to service sharing and consolidation and to allow metropolitan government.

Under PA 4, the emergency manager would have authority to enter into contracts with other local governments or public bodies for the consolidation of services. An emergency manager for a city, village or township may recommend to the state boundary commission that the unit consolidate with one or more municipal governments if that “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.”

Under PA 191 of 1968, consolidation is initiated by the filing of a citizen petition with the state boundary commission, and if the boundary commission finds that the petition meets the legal requirement, the matter is put to a vote of the people in each municipality proposed for consolidation.

A city or village may be disincorporated (a valid petition initiates a process that leads to a vote of the people) and become a township; a general law township cannot be disincorporated. PA 4 provides that an emergency manager, with the approval of the governor, may disincorporate or dissolve a municipality and assign its assets, debts, and liabilities as provided by law. Citizens of an area that has been disincorporated presumably would be allowed to reincorporate.

General Powers. PA 4 is specific in giving emergency managers complete authority over all of the operations of the local government, including assigning to the emergency manager all of the power and authority of elected or appointed boards, commissions, authorities, and other entities that are components of the local government. An EM for a school district has new and expanded powers to exercise all authority and responsibility that would otherwise belong to the school board and superintendent of the school district, to hire school administrators, and to close schools and other buildings. The emergency manager is authorized to remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity that is part of the local government.

Reports

Under PA 4, reporting requirements are expanded: beginning six months after the emergency manager’s appointment, reports must be filed with specified state and local officials and posted on the local unit’s website every three months (the old standard was every six months); reporting thresholds are reduced from \$10,000 to \$5,000; and three new reports are required (a copy of the emergency manager’s contract; the salary and benefits of the emergency manager; and the financial and operating plan). (A controversy and lawsuit arising from the compensation received by the emergency financial manager appointed to the City of Highland Park may have con-

tributed to the expansion of reporting requirements.)

The following information must be reported:

- (a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of \$5,000 or more and the source of the funds (previous limit was \$10,000).
- (b) A list of each contract that the emergency manager awarded or approved with a cumulative value of \$5,000 or more, the purpose of the contract, and the identity of the contractor (previous limit was \$10,000).
- (c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of \$5,000 or more and the proposed use of the funds (previous limit was \$10,000).
- (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) (new requirement).
- (g) The salary and benefits of the emergency manager (new requirement).
- (h) The financial and operating plan (new requirement).

Liability

The statute provides broad protection from liability to an EM and a person employed by an EM. The EM is authorized to obtain insurances for himself or herself and for any employees, agents, appointees, or contractors. The attorney general is required to defend any civil claim, demand, or lawsuit that challenges the validity of the act, the authority of a state official or officer acting under the act, or the authority of an emergency manager who was acting within the scope of authority under the act. Costs incurred by the attorney general are to be reimbursed by the local government. Other defense and legal settlement costs may also be charged to the local government, under specified conditions.

Bankruptcy

If the emergency manager believes that there is no reasonable solution to the financial emergency, he or she may recommend to the governor and the state treasurer, and to the superintendent of public instruction if the local government is a school district, that the local government be authorized to proceed under federal bankruptcy laws. If the governor approves in writing, the emergency manager is authorized to proceed and empowered to act on the local

government's behalf in the bankruptcy case.

Michigan is one of 19 states that allow local governments to file under Chapter 9, Title 11 of the United States Code, under specified circumstances, but no local government in Michigan has ever been allowed to file for bankruptcy. In municipal bankruptcy, the local government develops a plan of adjustment which may include restructuring and reorganizing assets and debts, and abrogating contracts, but no receiver is appointed by the court. The municipality is not required to liquidate assets to pay creditors, and the court may not increase tax rates. Under PA 4, the emergency manager has the authority to reject, modify, or terminate contracts and collective bargaining agreements. If, however, the courts do not allow contracts and collective bargaining agreements to be abrogated under PA 4, the severability clause would provide that the emergency manager still has the authority to request that the local government be allowed to file under the federal municipal bankruptcy provision.

Under the replaced PA 72, the emergency financial manager was authorized to file for bankruptcy if the local emergency financial assistance loan board did not disapprove the action. It was not clear, however, if the emergency financial manager would continue to be involved after the local government filed. PA 4 makes clear that the emergency manager would continue to act exclusively on the local government's behalf in bankruptcy.

Termination of Receivership

A local government remains in receivership until the emergency manager declares the financial emergency to be rectified in his or her quarterly report to the state treasurer, and the state treasurer (and the superintendent of public instruction if the local government is a school district) concurs. Before the termination of receivership, the emergency manager must adopt and implement a two-year budget, including all contractual and employment agreements, to start at the end of the receivership. The local government is prohibited from amending that budget without the approval of the state treasurer, and from revising any order or ordinance implemented by the emergency manager for a period of one year.

Changing Roles

Under Public Act 4 of 2011, the authority, duties, and responsibilities of various state and local officials could change dramatically. While the role of the emergency manager has been described in detail in the preceding section, this section explores some of the potential changes affecting other state and local officials.

Governor

PA 4 eliminates the role of the local government financial review board and places responsibility directly with the governor, state treasurer, and state superintendent of education. The governor may delegate his or her duties to the state treasurer.

Under PA 4, the governor appoints a review team if the preliminary review conducted by the state financial authority (which is the state treasurer unless the local government is a school district, in which case the state financial authority is the state superintendent of public instruction) finds probable financial stress. While some members of the review team are specified in the act, the governor may also appoint other state officials or other persons with relevant professional experience to serve on the team. The governor may grant one 30-day extension to the normal grant of 60 days that the review team has to make its investigation.

The review team reports its conclusion to the governor, and if the governor determines that a financial emergency exists, he or she must provide the local government with a written notification and explanation and notice that the local government has seven days to request a hearing. After the hearing, which is conducted by the state financial authority, the governor confirms or revokes the existence of a financial emergency, and if he or she does confirm the emergency, he or she must notify the local government and provide an explanation. The governor, upon confirming the financial emergency, appoints the emergency manager, who serves until removed by the governor or legislature. If an emergency manager is removed by the governor or legislature before the financial emergency is corrected, the gov-

ernor must appoint a new emergency manager within 30 days.

Unless provided in the financial and operating plan approved by the state treasurer, an emergency manager must obtain written approval from the governor or his or her designee to transfer assets, liabilities, functions, or responsibilities of the unit of government.

The governor would have to approve an emergency manager's disincorporation or dissolution of a municipal government.

The emergency manager files required reports with the governor, among others. If a local government official fails to abide by requirements established in PA 4, following a review and hearing, the state financial authority may recommend to the governor that the governor remove the elected official from office. If the governor does remove the elected official, the vacancy is filled as prescribed by law.

If the emergency manager believes that no reasonable alternative exists, he or she may recommend to the governor and state treasurer that the local unit be authorized to file for bankruptcy under federal laws. If the governor approves that request, the governor must so inform the emergency manager and state treasurer, and the superintendent of public instruction if the unit is a school district, in writing.

State Legislature

Under PA 4, as under the previous PA 72, either the state House or Senate may by resolution request the state financial authority to conduct a preliminary review of a local unit of government. The senate majority leader and speaker of the house each continue to appoint a member to review teams.

Unlike PA 72, the state legislature may now impeach an emergency manager and remove him or her from office.

The State Financial Authority: State Treasurer and Superintendent of Public Instruction

The state treasurer, in particular, has enormous authority under PA 4. The state treasurer is the state financial authority for a municipal government, as the superintendent of public instruction is for school districts. The governor may delegate his or her responsibilities to the state treasurer, who is appointed by the governor.

The state financial authority may initiate a preliminary review upon receipt of specified petitions or notification of specified events, or if there are other facts or circumstances that in the treasurer's or superintendent's sole discretion indicate financial distress. The state financial authority must notify the local government before starting the preliminary review. The state treasurer or his or her designee serve on the review team for a municipality; both the state treasurer and the superintendent of public instruction or their designees serve on the review team for a school district.

If the state financial authority approves, the review team may appoint an individual or firm to carry out the review and write the report. The review team presents a copy of its report to the governor and to the state financial authority: the treasurer further distributes the report to specified local and state officers.

The state treasurer determines whether a consent agreement is to include a continuing operations plan or a recovery plan. The state financial authority determines the form of a continuing operations plan; the state financial authority develops the recovery plan.

The state treasurer determines whether a consent agreement will include a grant to a local official of one or more of the powers prescribed for emergency managers. The state treasurer determines whether a local government under a consent agreement will be subject to collective bargaining.

The state treasurer continues to have an active role after appointment of an emergency manager. An emergency manager must submit the continuing

operations plan, in the form provided by the state treasurer, to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district. The emergency manager and the treasurer are to regularly reexamine the plan, and the emergency manager may modify the plan with notice to the state treasurer. The state treasurer must approve certain actions of the emergency manager:

- Rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining contract, if specific conditions are met.
- Changes to a local pension fund.
- Agreements to restructure debt.
- Agreements to transfer property to other municipalities.
- Exemption of a contract over \$50,000 from competitive bidding.
- Sale of an asset worth more than \$50,000 unless included in the financial and operating plan.

Local officials are required to provide all information and assistance requested by the state financial authority, and failure to do so is considered gross neglect of duty. After a review and hearing, the state financial authority may recommend that the governor remove a local official who has failed to comply with the law.

The state treasurer must provide a list of approved individuals and firms from which emergency managers may retain local inspectors or local auditors.

The superintendent of public instruction must approve a request for a reduced class schedule.

A request by the emergency manager to file for bankruptcy is made to the governor and the state treasurer, and if the unit is a school district to the superintendent of public instruction. If the governor approves, he or she informs the state treasurer in writing, with a copy to the superintendent of public instruction if the unit is a school district.

If the emergency manager declares the financial emergency to be rectified in the quarterly report, the state treasurer, and the superintendent of public

instruction if the unit is a school district, must concur in writing that the emergency is over. After the emergency is over, the local government may not amend the two year budget without the approval of the state treasurer.

The state financial authority may issue bulletins and adopt rules to carry out the purposes of PA 4.

Attorney General

The attorney general is required to defend any civil claim, demand, or lawsuit challenging PA 4, the authority of a state official acting under PA 4, or the authority of a financial manager acting within the scope of authority of PA 4. The costs of that defense are to be borne by the local government, and the state treasurer may withhold state payments to the local government to ensure repayment of the debt.

Local Chief Administrative Officer

The chief administrative officer of a local unit of government may be the manager of a village or, if there is no manager, the village president; a city manager or, if the city does not employ a manager, the mayor; the manager or superintendent of a township or, if the township does not employ a manager or superintendent, the township supervisor; an elected county manager or appointed county manager, or, if the county does not have an elected executive or appointed manager, the chairperson of the county board of commissioners; the chief operating officer of an authority or publicly owned utility; or the superintendent of a school district.

Under PA 4, the chief administrative officer may, but does not necessarily, play a central role in the initiation and resolution of state intervention. The CAO may:

- Request a preliminary review.
- Recommend that the local government be considered in severe financial distress.
- Negotiate a consent agreement (which must be approved by the local legislative body) under which the chief administrative officer (or another

officer of body) may be granted all but one of the powers of an emergency manager.

- Recommend that a financial emergency be declared, resulting in appointment of an emergency manager, which may be the chief administrative officer.

Under PA 4, the chief administrative officer or the governing body of a local government may request a preliminary review of the financial condition of the local government. A local government is considered to be in severe financial stress if the review team finds one of 12 specified conditions exists or is likely to occur within the current or next year (in addition to 11 specific criteria, the act provides a catch-all: “any other facts and circumstances indicative of local government financial stress or financial emergency”) or if the chief administrative officer of the local government recommends that the local government be considered in severe financial distress.

If the local unit is declared to be in severe financial stress, a consent agreement may be negotiated. That 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, of one or more of the powers prescribed for emergency managers, except the authority to reject, modify, or terminate one of more terms and conditions of a collective bargaining agreement. However, as noted previously, 30 days after a consent agreement is negotiated, the local government becomes exempt from Section 15(1) of the Public Employment Relations Act (PA 336 of 1947), which requires a public employer to bargain collectively with representatives of its employees and allows that employer to enter collective bargaining agreements. PA 9 of 2011 amends the Public Employment Relations Act and provides that a local unit that enters into a consent agreement is exempt from the requirement to collectively bargain and to enter collective bargaining agreements for the duration of the consent agreement. Thus a local government functioning under a consent agreement would be required to abide by the terms of collective bargaining agreements until those agreements expired, but would not be required to negotiate new agreements, as long as the consent agreement was in place.

Under a consent agreement, the state treasurer may grant to a chief administrative officer or other local official, notwithstanding any local charter provisions to the contrary, all but one of the powers of an emergency manager. The sole power that may not be granted to a local official is the power to reject, modify, or terminate a collective bargaining agreement under conditions specified in the act. This grant of extraordinary powers is for the period of time and on the terms that the state treasurer considers necessary to achieve the goals of the consent agreement. The powers that are granted to an emergency manager, and that may be granted to a local official under a consent agreement, are listed in the Appendix.

A local government may be declared to be in a financial emergency if one of five specific criteria are met, or if the chief administrative officer of the local government, based on the existence or likely occurrence of one or more of the 12 factors that define financial stress, recommends that a financial emergency be declared and the state treasurer concurs with the recommendation. At that point, an emergency manager is appointed. That individual may be an official of, or someone who is currently employed by, the local government, including the CAO.

Local Government Officials and Employees

Under a Review Team

Local officials, employees, agents, and contractors are required to provide the review team with requested assistance and information. Failure to provide timely and accurate information may result in a recommendation of a financial emergency and appointment of an emergency manager.

The review team is empowered to issue subpoenas and administer oaths to compel answers to questions and provision of documents. The review team may bring action in the local circuit court or in Ingham County circuit court to obtain information and cooperation. Failure to abide by the law is defined a gross neglect of duty and could result in the state financial authority recommending that the governor remove an elected official.

Failure of local officials to develop an acceptable continuing operations plan will result in a declaration of financial emergency and appointment of an emergency manager.

Under a Consent Agreement

The consent agreement may include a grant by the state treasurer to the CAO, the chief financial officer, the governing body, or other officers of the local government of one or more of the powers of an emergency manager. The extraordinary powers cannot include the power to reject, modify, or terminate one or more conditions of a collective bargaining contract (all of the powers that can be granted in a consent agreement are listed in the appendix).

Under either a continuing operations plan developed by the local government or a recovery plan developed by the state financial authority, local officials are required to take those actions necessary to bring the local government's operations in compliance with the plan. Failure to implement an approved consent agreement will result in a declaration of financial emergency and appointment of an emergency manager.

Under an Emergency Manager

When notified by the governor that a financial emergency exists, the CAO or the governing body has seven days to request a hearing. If the determination is confirmed, the local governing body may, by a two-thirds vote of the members elected and serving, appeal the determination. The appeal must be made within ten business days.

When an emergency manager is appointed, the authority of the CAO and governing body are suspended and transferred to the emergency manager. An emergency manager exercises the authority and responsibilities of the CAO and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government. When a unit is placed in receivership, the salary, wages, and other compensation of the CAO and governing body are eliminated (vested pension benefits are not impaired), but may be restored by the emergency manager for such time and on such terms as the emergency manager considers appropriate.

An emergency manager for a school district exercises all authority and responsibility that are prescribed by law for the school board and the superintendent of the district, including control over academic matters.

The emergency manager may exercise the power or authority of any elected or appointed officer, employee, department, board, commission or similar entity of the local government relating to the operation of the government. The power of the emergency manager is superior to and supersedes the power of those entities. Orders issued by the emergency manager are binding on officials, employees, agents, and contractors. The emergency manager may 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 govern-

ment. The emergency manager may prohibit an official, employee, agent, or contractor for access to facilities, email and internal information systems. The emergency manager may appoint, supervise, and remove administrators including department heads other than elected officials.

Local officials, employees, agents, and contractors are required to provide the emergency manager with requested assistance and information. The emergency manager is empowered to issue subpoenas and administer oaths to compel answers to questions and provision of documents. The emergency manager may bring action in the local circuit court or in Ingham County circuit court. Failure to abide by the law is defined as a gross neglect of duty and could result in the state financial authority recommending that the governor remove an elected official.

Conclusion

Michigan has had statutory authority for the state to intervene in the affairs of fiscally distressed local governments since 1988. The experiences and frustrations of emergency managers appointed under PA 72 of 1990, the extraordinary financial pressures threatening the state and local governments, national trends, and the concentration of political power across the branches of state government, have contributed to adoption of a much stronger, more intrusive law.

The Local Government and School District Fiscal Accountability Act allows the state to initiate a preliminary review of a local governments on the basis of additional criteria, or at the discretion of the state treasurer or state superintendent of public instruction. The act provides much greater specificity relative to consent agreements reached between the state and the local government.

PA 4 provides extraordinary powers to individuals appointed by the governor to manage local governments including school districts. Several provisions of the bill provide relief from court rulings that restrict the power of emergency financial managers appointed under PA 72 of 1990, such as specific authority granted to emergency managers of school districts to control the academic agenda, a response to efforts by the Detroit School Board to challenge Emergency Manager Robert Bobb. (In *Adams v Bobb*, the Wayne County Circuit Court held that the emergency financial manager appointed under PA 72 had financial control and the elected school board retained academic control. Under PA 4, an emergency manager appointed for a school district specifically has both financial and operating/academic control.)

Other provisions allow the state to grant extraordinary powers to a local official, such as a mayor, under a consent agreement monitored by the state treasurer.

As state and local governments with declining revenues seek to maintain services, reducing employee compensation costs is a strategic alternative to reducing the number of employees. Reducing com-

pensation costs to the employer can be accomplished either through collective bargaining where there are unions, or unilaterally where there are no collective bargaining agreements. Unions may be reluctant, or refuse, to grant concessions. In Wisconsin, Ohio, Indiana, Iowa, Tennessee, Maine, Missouri, and other states, legislative bills to restrict or eliminate collective bargaining by public sector unions are in various stages. While PA 4 does not go as far as some of those bills, it does allow emergency managers to reject, modify, or terminate collective bargaining agreements and does provide for the exemption of financially distressed local governments from collective bargaining under specific circumstances.

Under PA 4, upon the confirmation of a financial emergency, the governor declares the local government to be in receivership, and appoints an emergency manager who has powers that include terminating contracts and dissolving the unit of government. While there are conditions attached to rejecting, modifying, or terminating a collective bargaining agreement, there are no such conditions attached to the authority to “reject, modify, or terminate one or more terms and conditions of an existing contract.” Abrogation of contracts was the key additional step that could be obtained by filing for bankruptcy under federal law. It has long been believed by many that municipal bankruptcy should be avoided in large part because the associated potential default on debt obligations would have serious implications for other local governments that seek access to credit markets. If PA 4 prevents a municipal default, the stigma and collateral damage associated with this process could be less than that associated with bankruptcy.

It is to be expected that provisions allowing the abrogation of contracts and the rejection of collective bargaining agreements will be challenged in court. PA 4 seeks to discourage legal actions and protect emergency managers and their agents by ensuring that the local government that brings suit will bear the financial responsibility for that action. A severability clause will protect constitutional provisions even if other sections are rejected by a court.

PA 4 also seeks to extend the reforms instituted by an emergency manager by requiring that before the termination of receivership and completion of the EM's term, the manager will adopt and implement a two-year budget, including all contractual and employment agreements. This two-year budget cannot be amended by the local governing body without the approval of the state treasurer, nor can any order or ordinance implemented by the EM be revised for one year after termination of the receivership. One issue that is not addressed is the reinstatement of dysfunctional charter provisions, such as minimum staffing requirements, after the termination of receivership. While the EM is authorized to ignore local charter provisions, those provisions continue to be a part of the local foundational document and will be reestablished on the departure of the state-appointed manager.

PA 4 of 2011 is the third, and most intrusive, iteration of statutes that permit state intervention in the affairs of financially distressed local governments. It is also part of a new, integrated state effort to increase accountability, encourage local government consolidation and service sharing, and reduce the cost of government. In an attempt to aggressively address local government fiscal distress, the act broadly expands the powers that state officials have to intervene in the affairs of local governments. While these powers provides for a more robust response to fiscal difficulties, the expanded powers potentially come at the expense of local democracy and the ability of public sector unions to collectively bargain with government officials. If the act works as intended, concerns by local officials, unions, and contractors about the application of Public Act 4 to their unit of government will encourage them to address fiscal matters before issues reach the crisis stage.

Appendix

The powers that are granted to an emergency manager and that may also be granted to a local official under a consent agreement, are as follows:

- (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, or the public.
- (f) Examine all records and books of account, and require 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.
- (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, remove one or more of the serving trustees of the local pension board or, if appointed by the state treasurer as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. If appointed as sole trustee of the local pension board, all of the following apply:
 - (i) 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) Shall fully comply with the public employee retirement system investment act and the state constitution, and any actions taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code.
 - (iii) 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.
 - (iv) The 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 the act.
- (p) Retain one 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 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.

- (q) 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 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 for 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 as 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 power to recommend to the state boundary commission that the municipal government consolidate with one or more other municipal governments, if 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 would 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 all applicable acts:
- (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. This power is superior to and supersedes 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.