



**Congress of the United States
House of Representatives**

March 22, 2012

The Honorable Rick Snyder
Governor of the State of Michigan
P.O. Box 30013
Lansing, MI 48109

Dear Governor Snyder:

We have become increasingly concerned that implementation of the controversial Emergency Manager Law, both in general and with respect to Detroit in particular, is leading us into a legal quagmire that may irreparably harm our citizens, our cities, and our State. We are particularly concerned that your Administration may unilaterally appoint an Emergency Manger for Detroit or use the threat of such an appointment to coerce the city into entering a consent agreement along the lines of the draft your Administration circulated on March 12, 2012.¹ While we are willing to support developing a fair and balanced agreement between the State and the City to help resolve the City's financial problems, we strongly believe such agreement must be fair, balanced, financially realistic, and consistent with our laws and our values. Given the myriad of legal, political and logistical issues surrounding such actions, we would respectfully ask that your Administration respond to the following questions prior to taking any further legal actions concerning these matters:

1. Failure of State to Provide Any Financial Assistance Other major jurisdictions in financial distress have been able to restructure their finances through a bipartisan and cooperative approach involving a combination of state financial assistance and increased state oversight. Given the fact that Michigan has previously reneged on more than \$200 million in revenue sharing commitments to Detroit, please explain why your Administration will not consider the same types of financial partnership approaches utilized for cities such as New York, Cleveland, and Philadelphia.
2. Unconstitutional Limitation on Collective Bargaining At the legal forum Representative

¹Financial Stability Agreement Between the City of Detroit, the City of Detroit Financial Review Team and the Treasurer for the State of Michigan, March 12, 2012 (Discussion Draft), available at <http://www.freep.com/assets/freep/pdf/C4186488313.PDF> [hereinafter Detroit Proposed Consent Agreement]

Conyers held last month,² Kenneth Klee, the Nation's leading expert on constitutional issues relating to bankruptcy, testified that "as currently drafted, the [Michigan EM Law] is violative of the Contracts Clause No prior legislature had the audacity to legislate the unilateral termination, rejection, or modification of a collective bargaining agreement."³ Although your proposed consent agreement is somewhat ambiguous, it appears to grant the Financial Advisory Board those same unconstitutional legal authorities.⁴ Please explain if it was your intent to grant the Financial Advisory Board the authority to unilaterally terminate or modify a collective bargaining agreement; and how the exercise of such authority is consistent with the Contracts Clause.⁵

3. Preventing Outside Parties from Protecting their Legal Rights in Court If the

²Legal Forum on Implications of PA 4 hosted by U.S. Representative John Conyers in Highland Park, MI on February 21, 2012, *information found on* <http://democrats.judiciary.house.gov/node/227>

³U.S. House Judiciary Committee's Democratic Staff Minority Report, "Democracy for Sale: Subverting Voting Rights, Collective Bargaining and Accountability under Michigan's Emergency Manager Law" at pg. 10-11 (Testimony of Kenneth Klee, Professor of Law, UCLA Law) *available at* http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/EM_Report120221F.pdf. (February 2012).

⁴The powers of the Financial Advisory Board mirrors the unfettered powers of an emergency manager. The Board can: hire, employ, and/or supervise professional staff; enter into contracts; sue and be sued; oversee the restructuring and implementation of the Recovery Plan; review and approve the City's operating and capital budgets; review and approve various transactions, including consolidating of services, proposed sale of City assets, and "any proposed amendment or modification to any material contracts to which the City is a party," "*including collective bargaining agreements, pension agreements and any other contracts requiring the payment of retiree benefits.*" Proposed Consent Agreement §1.4. (emphasis added).

⁵In contrast to the Snyder Administration's proposed consent agreement for Detroit (*see* Proposed Consent Agreement §5.1), Inkster's Mayor does not have the authority to negotiate, renegotiate, execute, amend, modify, reject or terminate collective bargaining agreements. The Inkster Agreement also does not have a "Shared Sacrifice" section (*see* Proposed Consent Agreement §5.4). Inkster is only restricted from signing, entering into, or executing collective bargaining agreements without the prior consent of the Department of Treasury (See Inkster Consent Agreement §6.1), and is not under an agreement that would create conflicts between unions; nor does it have to fear abrogation of existing collective bargaining agreements.

petitions seeking to overturn Public Act 4 (2011) are certified by the Secretary of State under the Michigan Constitution, the law is stayed until the upcoming November election.⁶ It is our understanding the prior Emergency Manger Law, Public Act 72 (1990), was repealed by Public Act 4⁷ and that Michigan law prevents any such repealed law from being "revived."⁸ Given this context, and the importance of the voters being able to express themselves through the referendum process, we were concerned to learn that your proposed consent agreement seeks to prevent entities that would not be actual parties to the agreement from being able to enforce their rights in court.⁹ Please explain: (1) the legal rationale your Administration has for reinstating Public Act 72 if the referendum signatures are certified; and (2) why you believe it necessary to prevent outside parties from being able to protect their legal rights in court concerning these matters.

⁶On February 29, 2012, 226,637 petition signatures were submitted to place Michigan's Emergency Manager Law before a vote of the people on November 6th, 2012. If a sufficient number of signatures are certified, Public Act 4 will cease to be in effect (suspended) "unless approved by a majority of the electors voting thereon at the next general election." Michigan Const., Art. II, § 9. If a majority of voters vote against Public Act 4, the law is rejected and repealed.

⁷The language of Public Act 4 expressly repealed Public Act 72 by stating "[t]he local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, is repealed." 2011 PA 4, Enacting Section 1.

⁸In addition to being expressly repealed by 2011 PA 4, Mich. Com. Law § 8.4 states that "[w]henver a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute."

⁹The "failure to adhere" provision states that "*Any (a) action by the City or the City Council ... or its unions to contest, through legal proceedings or otherwise, the constitutionality, validity or enforceability of Public Act 4, this Agreement or the powers and/or jurisdiction of the Financial Advisory Board*" could result in the appointment of an Emergency Manager, the commencement of bankruptcy proceedings, or the end discretionary state revenue sharing initiatives and agreements between the State and the City." Detroit Proposed Consent Agreement §7.2 (emphasis added). The term "*or otherwise*" would appear to cover any action by the unions questioning the authority of the State could be deemed "uncooperative," thus triggering the implementation of an emergency manager at the sole discretion of the State Treasurer.

4. Excessive State Control We are sure you can appreciate the sensitivity of the State insisting on a state takeover of the City of Detroit. However, under your proposed consent agreement: the State would dominate the selection process for the Financial Advisory Board;¹⁰ the Board would have powers nearly identical to that of an Emergency Manager;¹¹ the Treasurer would retain full veto authority;¹² and the Board could operate indefinitely at your Administration's discretion.¹³ Given the checkered history and the inconsistent success of Emergency Managers and consent decrees in other jurisdictions in Michigan,¹⁴ we would ask if you have considered allowing the Mayor and the City Council to have a more robust role, and whether a more reasoned process for termination of the consent decrees could be developed.
5. Compliance with Open Meetings Act The Open Meetings Act is designed to insure that

¹⁰Of the nine members that make up the Board, the State is given the power to select six of those members, while the Mayor and the City Council select the remaining three. Further, the Governor has the "sole discretion ... [to] select the Chairman of the Financial Advisory Board (the "Board Chairman") from its then-current membership. The Board Chairman shall serve at the will of the Governor. Detroit Proposed Consent Agreement §1.2.

¹¹See fn. 4, *supra*.

¹²Detroit Proposed Consent Agreement §1.5 (The Treasurer may "*exercise veto over any matter with respect to which specific authority is granted to the Treasurer of the Treasury Department pursuant to Public Act 4, a successor statute, or any applicable State law*") (emphasis added).

¹³The Proposed Agreement does not stipulate a projected term for operation of the Financial Advisory Board. Under §11.1 of the Proposed Agreement, the Treasurer is still the authority-figure that determines whether the decree is lifted, even if conditions are satisfied within the agreement. Further, the same section explicitly states, "*the Financial Advisory Board shall have the right to extend the term of this Agreement in its sole discretion (subject only to the approval of the Governor).*"

¹⁴There have been numerous instances where the Emergency Manager law has not served to enhance or strengthen the finances of local jurisdictions. Examples include: Benton Harbor, which has been under the control of an Emergency Manager for two years and yet continues to have financial problems, including overspending its receipts by more than \$650,000 in the current fiscal year; and Pontiac, which has been under the control of an EM since March 2009 and seen its credit rating reputedly drop from B to triple-C during that time. See U.S. House Judiciary Committee's Democratic Staff Minority Report, *supra* fn. 3, at 13-14.

government boards and entities meet "in the sunshine" so their activities may be publicly scrutinized.¹⁵ This issue has taken on increased importance given that Judge William Collette of the Ingham County Circuit Court has repeatedly found your Administration's process for considering the appointment of Emergency Managers to be in violation of that Act.¹⁶ Although the proposed consent decree specifies that the Financial Advisory Board shall be subject to the Open Meetings Act,¹⁷ there is no provision specifying that subcommittee meetings would be subject to the Act. Please explain whether your Administration is opposed to insuring full accountability of the proposed Financial Advisory Board's actions or those by any other entity by insuring that subcommittee meetings occur in public as well.

6. Voting Rights Act Implementation of the Emergency Manager Law may violate the Voting Rights Act with respect to its impact on minority voting rights, particularly given the fact that some 50% of African American voters in the State have already lost some form of their ability to elect leaders of their choice because of Emergency Manager appointments. The executive summary of your proposed consent agreement acknowledges that as of last year, 372 out of 638 Michigan municipalities and school districts did not satisfy S&P ratings requirements. Given the foregoing, please provide us with: (1) a description of all jurisdictions for which Emergency Managers and/or consent decrees have been considered over the last ten years; (2) an explanation as to why some jurisdictions were ultimately selected and others were not; and (3) any and all relevant internal or public memos, emails, correspondence, analyses, and notes

¹⁵ Public Act 267 of 1976, the Open Meetings Act (the "Open Meetings Act").

¹⁶See *Detroit financial review team members ordered to appear before judge*, HUFFINGTON POST DETROIT, March 1, 2012, available at http://www.huffingtonpost.com/2012/03/01/detroit-financial-review-team-private-meetings-judge-collette_n_1314231.html; see also *Detroit's financial review team work null and void, judge rules*, HUFFINGTON POST DETROIT, Feb. 15, 2012, available at http://www.huffingtonpost.com/2012/02/15/detroit-financial-review-null-void-judge-william-collette-lawsuit_n_1279111.html?ref=detroit-emergency-manager; also *Judge rules emergency manager process, financial review teams subject to open meetings act*, HUFFINGTON POST DETROIT, Feb. 2, 2012, available at http://www.huffingtonpost.com/2012/02/02/emergency-manager-financial-review-team-open-meetings-act_n_1249685.html, published Feb. 2, 2012.

¹⁷The agreement proposed by the Governor states that "*The Financial Advisory Board shall be subject to Public Act 267 of 1976, the Open Meetings Act (the "Open Meetings Act").*" Detroit Proposed Consent Agreement §1.6 (emphasis added).

(collectively, "Documents") relating to the same.

7. Controls Regarding Abuse, Mismanagement and Conflict of Interest Numerous examples of abuse, mismanagement and conflict of interest by Emergency Managers have previously been identified, including termination of the Highland Park Emergency Manager for unauthorized payments to himself and a Pontiac Emergency Manager who incurred a potential loss of \$1.4 million in HUD funds. Please provide us with: (1) an itemization of any controls you have in place to protect against abuse, mismanagement and conflict of interest by Emergency Managers; and (2) any and all financial and other reports the State has received over the last ten years, and any and all Documents relating to the same.

We recognize that your Financial Review Board has declared there to be a "severe financial emergency" in Detroit. Nevertheless, the Ingham County Circuit Court has ordered the State to not take any additional action until March 29, 2012, which should give you ample time to fully respond to the above questions.

We have spent considerable time and attention to the problems facing Michigan cities. This is why we wrote to you on December 15, 2011, requesting a meeting to discuss implementation of the EM law; why we participated in a forum concerning the EM law in Highland Park on February 21, 2012; and why your Administration was invited to testify at that forum. The House Judiciary Committee Democratic Staff also issued a Report on February 21, 2012, recommending that a more workable and reasonable statutory model for financial review be developed, comparable to those used in other states. The Report also recommended greater oversight and that the cities, state and federal government act cooperatively to respond to the problems caused by massive job loss and other urban problems.

We continue to believe that it is not only possible, but desirable, to develop a rational, reasoned, and bipartisan response to the budget crisis facing Detroit and other jurisdictions in the State if all stakeholders are willing to place partisanship aside and work together.

Please provide your response to this letter to Representative Conyers' Judiciary Committee at 2142 Rayburn House Office Building, Washington, D.C. 20515, tel. 202-225-6504. Thank you for your time and attention to this matter.

Letter to Governor Snyder
March 22, 2012
Page 7

Sincerely,

John Conyers

Hansen Clarke

B. C. Peter

cc: The Honorable Dave Bing, Mayor, City of Detroit
The Honorable Charles Pugh, Council President, City of Detroit
The Honorable Gary Brown, Council President Pro Tem, City of Detroit