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Congressman John Conyers, Jr.
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Conyers,

Pursuant to your request, I have prepared this paper for the Democratic Judiciary Committee Forum in which you have invited me to participate. I have noted that the purpose of the Forum is to examine the legal implications of Michigan's Emergency Manager Law, Public Act 4 of 2011 (PA 4). It is, therefore, important that I advise you that, since I am not an attorney and since I have no formal legal background, this paper does not purport to provide a comprehensive response to the various questions and concerns regarding PA 4 from a legal perspective.

The purpose of this paper is to provide the reader with an emergency manager's perspective regarding PA 4 as it relates to Michigan cities in general, and to the City of Benton Harbor specifically. My intent is to provide both a legal, historical, and practical background of the facts and circumstances from which PA 4 evolved. In addition to including legal and historical aspects of the issue in this paper, which were assembled from a variety of sources, I have included an experiential perspective based on my nearly two-years as an emergency financial manager and emergency manager in the City of Benton Harbor.

I am hopeful that, when this collection of facts and circumstances is considered holistically, it will provide the reader with a quintessential summary of the issues.

Sincerely,

Joseph L. Harris
Emergency Manager

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State Oversight Programs

Are states legally obligated to intervene when a financially troubled community or school district that fails to resolve its financial difficulties, threatens to materially affect the public health, safety, and welfare of its citizens and that of others by their inability to assure the provision of essential governmental services due to financial stress?

Are states constitutionally, statutorily, or otherwise obligated to protect the credit of the state and its political subdivisions?

Is it necessary for the public good and a valid public purpose for states to take action and to assist units of local government in a condition of financial stress or financial emergency so as to remedy the stress or emergency by requiring prudent fiscal management and efficient provision of services?

Obligations of the state to its citizens, as enumerated in the state constitution, are not abdicated by transferring those obligations to local governments. Constitutional obligations of the state are inviolate and are not suspended by the transfer of authority to local communities and school districts. It is, therefore, critical that states monitor the financial performance of local governments and school districts to ensure that the states' obligations to its constituents are not threatened by a community's financial stresses.

State oversight programs offer good support to help troubled communities slog through their difficulties without debt adjustment. As poor as finances have been among some Michigan cities, counties and school districts, Michigan's oversight programs have kept municipalities out of Chapter 9 bankruptcy thus far.

The states know their municipalities and their problems. Many states require municipalities to regularly submit audit reports and budgets to a state division of local government, and oversight programs allow intervention when budgets are out of balance—well ahead of bankruptcy. Some states may also offer temporary assistance through loans or emergency grants, a solution that is not available to the federal courts. Plus, the focus of the state oversight programs is to maintain or improve fiscal and managerial functionality. In some cases, such as the new Michigan act and one proposed for Indiana, an emergency financial manager may impose his authority over the local unit to effect change. There may also be rights to dissolve or to consolidate a municipality with other local units. In contrast, the role of the bankruptcy court is restricted by the U.S. Constitution to mainly administer and shepherd a plan that comes from the local unit. Federal bankruptcy courts have little control over the local government's spending. Where state programs include involvement before a municipality becomes insolvent is an entry criterion for Chapter 9.

Several states require state approval before local governments are allowed to file for bankruptcy. Typically, those that first require state approval have an oversight program. One approach is "distressed municipality" legislation, which provides a pathway for oversight and intervention for any local unit that meets the criteria. Alternatively, states may create a "financial control board" through customized legislation specific to the local unit that is in trouble. Customized legislation spells out the scope of each specific board's authority. For example, New York State established control boards for Nassau County, Buffalo and Erie County as well as New York City in the 1970s, and each board was created through separate legislation with unique scope of power.

Financial Emergencies in Other States

State governments have taken control of troubled cities in the past, as exemplified by the following:

New York City 1975 Fiscal Crisis

The most famous local government fiscal crisis remains New York City's in 1975, which led to major changes in the law. In the middle of the 1970s, New York City had borrowed more than \$2.0 billion, much of it short-term debt, and was running a half-billion-dollar deficit. In 1975, financial institutions were unwilling to lend any further funds to the city thus predicating a potential debt default crisis. President Ford refused initially to provide loans from the Federal government to New York City. At that time, New York City municipal debt was the "toxic asset" of the period.

According to reports of the time, 20.0% of the equity of many of Wall Street's biggest banks was held as New York City municipal debt. New York City was arguably too big to go into municipal bankruptcy given the law that existed at the time.

The equivalent of a "cram down" was performed instead of bankruptcy through negotiations. The banks agreed to a moratorium on principal payments on short-term debt (\$2.3 billion). Some 60,000 workers saw layoffs and wages were frozen for three years. Further, city employees had to pay in the equivalent of \$3.0 billion to the pension system. The city also raised city college tuition. The Federal government ultimately agreed to a \$1.5 billion loan guarantee. Municipal workers agreed to lend \$2.5 billion to the city from pension funds. Banks agreed to refinance both short- and long-term debt. The city was forced to raise taxes, resulting in a 25.0% increase in the city income tax. Finally, an emergency control board, somewhat similar to Michigan's former system, was imposed on the city and has been in place ever since. All of these actions were very similar to what might occur in bankruptcy and were ultimately successful as the city's bond rating was very high by the late 1990s and early 2000s.

This type of oversight calmed municipal credit markets and allowed the city to gain access to credit.

After 1986 and the end of the financial emergency, the Financial Control Board has remained in place but has not exercised any authority, just an oversight function.

In 2005, New York City voters approved major changes to the city charter. These changes included institutionalizing many of the changes that were first undertaken through the Financial Control Board. These provisions included a requirement that the city not end the year with an operating deficit, requirements for a four-year financial plan, a required annual audit, and restrictions on issuance of short-term debt. These provisions were all anticipated to prevent anything like the 1975 financial crisis from occurring again.

Connecticut

The city of Bridgeport's tussle with the state eventually led to the change in federal bankruptcy law requiring specific state authorization for a municipality to file.

The following states require specific state authorization for filing: Alabama, Arizona, Arkansas, California, Florida, Idaho, Kentucky, Minnesota, Missouri, Montana, Nebraska, New York, Oklahoma, South Carolina, Texas, Washington, Connecticut, Louisiana, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island.

Connecticut legislation now outlines that a bankruptcy filing requires written consent by the governor. More recently, the city of Waterbury ran into fiscal trouble, and the state created the Waterbury Financial Planning and Assistance Board to manage the city's finances and balance its budgets.

Louisiana

There are two statutes that outline provisions for filing for bankruptcy and both entail approval from the state in some form. Prior to filing, approval is needed from the governor, the attorney general and the State Bond Commission. The Louisiana State Bond Commission approves any issuance of debt by a subdivision. This also includes any debt adjustment plan. The commission is chaired by the state treasurer. Past policy suggests willingness by the state to intervene and prevent bankruptcy of a locality. For example, when Hurricane Katrina hit Louisiana and there was concern about the finances of New Orleans, Treasurer John Kennedy made it clear early on that bankruptcy for New Orleans was not an option.

New Jersey

New Jersey has not had any Chapter 9 filings (since the Great Depression) and maintains careful oversight of its municipalities. Local units, whether troubled or not, submit audits and budgets to the Department of Community Affairs. Before a local unit may file bankruptcy, it must seek the approval of the state's municipal finance commission. This function is presently handled by the Local Finance Board. The board monitors municipal spending and approves the local budgets and bond issuances. Among its powers is the ability to provide aid to distressed cities and appoint a state fiscal monitor to manage community finances.

The New Jersey statute covers school districts as well as municipalities and counties "or any other political subdivision."

The city of Hoboken was placed under the management of a state fiscal monitor in 2008, after the City Council failed to adopt a budget. All fiscal actions went through the monitor, restricting the actions of the City Council and the mayor. Last May, with a new mayor and City Council demonstrating a greater focus on fiscal affairs, the Local Finance Board approved the removal of the fiscal monitor.

North Carolina

The North Carolina Local Government Commission is well-known for its oversight of municipal government. The commission approves all local government bonds and sales within the state. The commission is chaired by the state treasurer and is made up of nine members. The commission has statutory authority to assume full control of financial affairs of a locality when a locality defaults, may default on debt service payment or if the unit does not comply with the Local Government Budget and Fiscal Control Act or the Local Government Bond Act. As a result, ratings on North Carolina municipalities have generally taken the state oversight into consideration (as a positive). Under its authority, the commission can adopt budgets, levy taxes and determine expenditures on behalf of the local government. Bankruptcy would require the approval of the Local Government Commission and the consent of debt holders.

Ohio

Ohio's fiscal emergency law was originally enacted in response to a financial crisis in Cleveland in 1979. According to the state auditor, since that time there have been more than 50 local governments in fiscal emergency aided by the state's program. The Ohio Revised Code outlines actions the state may take when local government is experiencing financial trouble. The program has "fiscal watch" status, which allows for an early-warning system and intervention by the state. The state auditor has the authority to declare a government to be on fiscal watch. If "emergency" status is called for, a commission is appointed to oversee financial activity of the government. A Financial Planning and Supervision Commission is formed to prepare a financial plan and address the fiscal emergency.

Under Ohio Revised Code, bankruptcy filing requires the approval of the tax commissioner.

Currently, there are 24 local governments under fiscal emergency and three under fiscal watch.

Last August, the state put the city of Mansfield into emergency status following findings of deficit fund balances.

Pennsylvania

The City of Philadelphia, Pennsylvania, is another high-profile city that faced a severe fiscal crisis at the beginning of the 1990s. As the 1991 recession took hold, Philadelphia faced a cash shortage.

As the 1991 fiscal year approached, the city faced a \$206.0 million deficit against a \$2.1 billion general fund. Philadelphia had been issuing short-term tax anticipation notes to finance its deficit.

In September 1990, the city came forward to issue \$400.0 million in short-term notes. No investor would bid for the debt and essentially credit access was shut down for the city. This event triggered a three-year fiscal crisis leading to service reductions, layoffs, and higher taxes. The city also borrowed from its pension funds. The Philadelphia pension trustees were able to extract a very high price; the city repaid the pension loans at an annualized interest rate of over 27.0%.

Besides Philadelphia, other municipalities in the State of Pennsylvania have generally fallen under a law known as Act 47. This law guides the process for state receivership of a financially distressed municipality. Since the mid-1980s, when it passed, 25 municipalities have fallen under this system, including Pittsburgh. Eleven of those municipalities remained under Act 47 for over a decade.

A local government can petition the state to be classified as distressed under Act 47 of 1987, or the Financially Distressed Municipalities Act. The local unit prepares a recovery plan (not unlike a Chapter 9 plan) and may be able to receive loans or grants from the state. There is a state fiscal coordinator appointed to work with the distressed government. While the local government cannot "void" a collective bargaining agreement, a new labor contract coming due while the plan is in effect must be compliant with the recovery plan. The firefighters in Scranton litigated this issue, but the city prevailed. One view is that some local governments remain under the act for a long time to manage collective bargaining agreements. For example, Scranton has been under the state's Act 47 since 1992, and six cities have been under state supervision for 20 years or more. The Pennsylvania Act also allows for merger or consolidation with other jurisdictions.

The City of Harrisburg entered Act 47 in December 2010. Harrisburg is the 20th municipality in Pennsylvania that is currently under Act 47. In October, 2011, the Pennsylvania legislature approved legislation to takeover of Harrisburg.

Pittsburgh, which fell under Act 47 in 2004, remains under state oversight at this time. Under Act 47, the state appoints a coordinator to oversee a municipality's financial affairs. This coordinator may be a firm, which is different from the EM process used in Michigan. The coordinator may present a financial plan to city council, which can approve or disapprove. If disapproved, the council itself may present a plan to the state for approval. In this sense, the coordinator system in Pennsylvania has less authority than the EM system in Michigan. Unlike an EM, the coordinator can include in its plan options such as raising taxes without voter approval. A financial coordinator can declare an end to the emergency but must undertake an "exit study" before final approval from the state.

Rhode Island

Rhode Island passed oversight legislation in the summer of 2010. The state's program follows a "receivership" model and essentially takes over the powers of the elected officials, who are reduced to advisors. The receiver is given the power to "exercise any function or power of any municipal officer or employee, board, authority or commission..." Conditions for receivership (the

local unit must meet two of the following) include the failure to present a balanced budget, a financial crisis that poses an imminent danger to citizens of the locality, the inability to achieve fiscal stability without assistance, the failure to submit an audit for two consecutive years, a rating downgrade and the inability to access capital markets.

The overseer may recommend the establishment of a budget commission, which would consist of five members from the state and locality. Its authority includes adoption of a budget, suspensions or rules, levy of taxes and approval of collective bargaining agreements. The receiver also has the power to petition the federal court under Chapter 9 on behalf of the locality.

CENTRAL FALLS, R.I. —

Mayor Charles D. Moreau, a Democrat serving his fourth term, has not set foot in City Hall since July 19, the day that a state-appointed receiver took control. The state police knocked on his door that morning, he said, demanded his city-owned car and cell phone and keys to City Hall and handed him a letter announcing that his salary of \$71,736 was being cut to \$26,000. His role was now advisory, he was informed.

"I was told they'd call if they needed me," Mr. Moreau said recently in a rare interview. "They haven't called since."

Mr. Moreau's administration took the state by surprise by declaring fiscal insolvency last May. The city became the first in Rhode Island history to seek state bankruptcy protection, citing a deficit and retiree benefit obligations so profound as to seem insurmountable.

That alarmed the state, which feared that other beleaguered cities would follow suit, and bond rating agencies, which downgraded [Central Falls's](#) debt to junk status. So the legislature swiftly enacted a law allowing indefinite state oversight.

The receiver, Mark A. Pfeiffer, a retired state judge, said he saw no choice but to demote Mr. Moreau to advisory status.

"You couldn't have somebody come in and perform the duties of the mayor and have somebody else being the mayor," he said. "It doesn't work very well, and particularly it doesn't work well in a distressed community."

Despite challenges to the state by the mayor and city council members, the state receivership was upheld by the Superior Court in October 2010 and by the Rhode Island Supreme Court in March 2011. The city's financial condition, unfunded pension and retiree health benefits are so dire (police and fire is only funded 16.2%) that the receiver suggested merger with neighboring Pawtucket or possibly a Chapter 9 filing.

A number of local governments are so financially distressed that states have assumed an oversight role. In New York, a state board seized control of Nassau County's finances last year.

Chelsea, Massachusetts

Receivership, as it happened in Chelsea, is when a state "receiver" steps in and assists the city with balancing the budget and addressing immediate short-term needs. This receiver also works with the city to develop a long-term plan for financial health and economic development, reducing city debt, and [addressing structural and governmental issues](#).

In the case of Chelsea, the city was granted receivership in September of 1991 after several years of "failed financial intervention by the state", "a political stalemate over the city's budget", and "deepening economic decline and a spiraling fiscal crisis"

In 1995, the city's charter was also revised to provide for a more efficient leadership model which has proven to be highly successful. Emphasis on economic development and capital improvement brought about a wave of new business and homeowners in Chelsea.

By 1998, the city saw a drastic turnaround, winning the "All-American City Award"; an award given by the National Civic League which "recognizes communities whose citizens work together

to identify and tackle community-wide challenges and achieve uncommon results”

Vallejo, California

Vallejo California filed for bankruptcy protection in 2008. In Vallejo, the four unions representing city employees claimed that California law protected their contracts, but the bankruptcy court ultimately ruled that the city could cancel its collective bargaining agreements. That, in turn, forced the unions to agree to deals that they would not have accepted otherwise. Assuming the bankruptcy plan is approved, the city will have saved some money and shed some long-term obligations. As a result of the Vallejo bankruptcy, the biggest U.S. municipality bankruptcy, the city doesn't expect to have access to the credit market for five years, according to a city official. Also, when you consider the \$8 million and counting in legal fees, three years of angry litigation and uncertainty, the millions that contractors, city employees and retirees will lose (they stand to collect only 5 to 20 cents on the dollar for their claims), and the hit to the city's reputation that will likely impair business growth (and tax collections) for years, it hardly looks like a victory.

The city has suffered both crime and fiscal problems since the declaration. Police operations were cut from nearly 160 officers to 100 officers with a sharp rise in crime during the same period. In a significant ruling, a Federal judge ruled that the city could break its union contracts.

City employee groups sued to block access to Chapter 9. They argued that the City had not met the bankruptcy eligibility test including the insolvency test. Their argument rested on the fact that the City had many millions of dollars in different reserve accounts that it could access to pay its bills. They also argued that city government had flexibility in changing operating conditions that would reduce costs and prevent insolvency.

The court ultimately rejected these arguments and the Appeals Court upheld the ruling on appeal. More importantly perhaps, the entire eligibility question took enormous resources and time. This part of the bankruptcy process, just getting into Chapter 9, took over a year and required the expenditure of many resources. This type of challenge is not an issue in a private bankruptcy. The time required is one of the reasons that municipal bankruptcy is often not a favored solution.

A judge recently approved a plan for the City of Vallejo, allowing it to emerge from a three-year bankruptcy.

- Three years since filing, the police and fire departments are nearly 50 percent smaller, there are new, leaner, public employee contracts — some forced on workers by the court
- After years of making no bond payments out of the general fund, the bankruptcy plan called for reduced payments to start up again this year.
- In some cases, bondholders will only end up with about half of what they were originally owed. In other cases, the principal will be paid but the interest will be lowered and deferred.
- Retirees and city workers who sought reimbursement for reduced pay and benefits will get about 30 cents on the dollar.

Municipal Bankruptcies

There are several advantages to a municipal bankruptcy filing. One of the most important advantages is the automatic stay that prevents creditors from taking action without approval of the bankruptcy court. This protection applies to the elected officials, managers, and employees of the municipality as well as the citizens of the jurisdiction. This process allows the municipality to take its time and work with expert advisers to assess the best course forward. The most significant benefit is the ability of the municipality to restructure, extend, or reduce its debt burden in conjunction with creditors. A municipality may be able to withhold all payments of bond interest and principal during the process. One potential benefit, such as the outcome of the City of Vallejo case, would be the nullification and restructuring of union contracts. Downside is the potential impact of a bankruptcy filing on a municipality's credit rating and access to credit markets. There is extensive and growing literature regarding the impact of municipal bankruptcies on municipal bond issuers in the affected state. One of the concerns facing state government and its oversight of local governments is that if one municipal bond issuer defaults, it could have an impact on the availability and cost of credit to other issuers. The academic municipal bond literature supports the notion that, if a bankruptcy filing occurs, there is at least a short- and medium-term impact on credit cost and access for both the individual government and other local governments in the state.

A related issue is whether even the very public discussion of municipal bankruptcy may result in a downgrading of credit rating. A related question is whether this potential downgrading could affect similar municipalities across the state. According to a 2009 report by Standard and Poor's, a discussion of bankruptcy is part of a general strategy of establishing the benefits and consequences of any set of actions. They do not perceive that such discussions will lead to a downgrading of credit. Contrary to Standards and Poor's report, Fitch also has issued a 2010 report with a more negative view. Fitch has stated that public discussion of bankruptcy will potentially trigger a credit review and possible downgrading.

The repudiation and unilateral restructuring of union contracts remains an important issue in municipal bankruptcy filings. In 1978, Congress amended the bankruptcy law in such a way that it allowed municipalities to reject "executory contracts." Executory contracts are those that remain unfilled, such as a labor contract or an unexpired lease. This provision may be of significance to local governments facing fiscal crisis. In most cases, labor expenses are 60.0% to 70.0% of a municipality's expenses.

A strategic public policy decision confronting many states is whether to allow a local unit of government to file for Chapter 9 municipal bankruptcy. This is especially problematic when the pending insolvency is the result of years of structural operating deficits. Alternative strategies rely on equally undesirable public policy decisions. These range from management intervention to simply plugging the financial hole in the short-term rather than solving long-term imbalances.

It is instructive to assess the near bankruptcy experiences of some of the municipalities that have been threatened with such a situation, as highlighted in the cases in New York and Pennsylvania, and the actual case of Vallejo California

The scope of the bankruptcy court's involvement in a Chapter 9 case is severely limited by the Tenth Amendment's preservation of state sovereignty. Section 903 preserves the political and governmental power over a municipality to the respective state, including decisions related to expenditures. Section 904 prohibits the court (unless the debtor consents or the plan so provides) from interfering with (1) the political or governmental powers of the debtor; (2) the debtor's revenues; or (3) the debtor's use of any income-producing property.

The United States trustee is similarly constrained from extensive involvement in Chapter 9. This limited role is consistent with Chapter 9's explicit avoidance of interference with state sovereignty.

Only municipalities, defined as a "political subdivision or public agency or instrumentality of a state", are eligible for Chapter 9. A municipality must satisfy four threshold requirements in order to obtain Chapter 9 relief:

1) have specific state authorization to be a debtor under Chapter 9; 2) be insolvent; 3) desire to effect a plan to adjust its debts; and 4) satisfy one of four alternatives:

a) Has obtained the consent of at least a majority in amount of impaired claimholders under the proposed plan; or b) has negotiated in good faith but has failed to reach any agreement with a majority of the impaired claimholders under the proposed plan; or c) negotiation with such claimholders is impractical; or d) has a reasonable belief that a creditor may attempt to obtain a preference.

Chapter 9 of title 11 of the Federal Bankruptcy Code allows municipalities to file for relief if they have specific state authorization to be a debtor under Chapter 9.

Before any sort of municipal bankruptcy filing, a Michigan local government must go through a process specified by PA 4 of 2011. The law sets forth the conditions and process for a financial emergency pertaining to local governments and school districts.

The first part of the process involves an investigation of a possible financial emergency. The process may be started when any one of several conditions occur, including: a written request is filed with the State Treasurer from a local government governing body, a local government chief administrative officer, a creditor owed \$10,000 or more.

A financial emergency may also be initiated when a municipality defaults in bond payment or violates a bond covenant condition, fails to comply with a deficit elimination plan, fails to provide an annual audit, is delinquent in the distribution of property tax revenue to other governments.

No major decision is complete without weighing the obvious advantages with underlying long-term consequences. Lastly, no city exists in a vacuum. The outcomes of financial challenges of local units of government have potential implications for the State of Michigan and other Michigan local units of government.

The road to bankruptcy is anything but a straight line but warning signs are often evident for years. There are several observations for cities that face ongoing structural deficits that may elevate to the level of insolvency. First, early action to right the course when signs of fiscal stress are detected is essential. Second, local officials in Michigan, through updated and amended deficit elimination plans are traditionally given years to resolve their financial crises years before a PA 4 review commences. Given that the deficit elimination plans are adopted by resolution of the local governing body, local officials are active participants in the evolving fiscal crisis. Third, even if the municipality is unable or unwilling to cure the deficit situation, a reaction such as a preliminary review under PA 4 often occurs after years of fiscal stress. Fourth, the path to considering bankruptcy is an extensive process with multiple levels of review. At that point it is not a secret to the bond community, citizens, businesses and other stakeholders that grave financial challenges exist. By then, budget reductions have occurred which impact public health, safety, and welfare in order to fund other financial commitments. Out of necessity, managing the crisis takes priority over addressing long-term solutions.

In crafting Chapter 9, Congress recognized that it faced a difficult tradeoff. Traditionally, bankruptcy was a process that allowed a Federal judge to work with a debtor to restructure its financial situation to address the financial imbalances. This is the power expressly provided to Congress and the Federal courts via the Contract Clause of the U.S. Constitution. However, unlike a private corporation or an individual, Congress and the Federal courts have limited control over local governments. This is because, unlike private corporations and individuals, local governments are "creatures or instrumentalities" of state government and the state has sovereign power over these governments

In practice, this means that the Federal government cannot impinge on the powers or responsibilities of local governments due to the 10th amendment of the U.S. Constitution. This also means in practice that it cannot force local governments to raise taxes or cut spending to pay off their debt. Thus, the Chapter 9 bankruptcy process is fairly weak compared with traditional bankruptcy proceedings.

In summary, municipal bankruptcy is not a perfect solution for municipal insolvency. Given the limitations placed on the Federal bankruptcy court in such situations, this strategy may be useful for a municipality with a significant amount of debt. Overall, the Michigan approach to use an EM and the use of consent agreements may, in fact, be a better solution depending on the nature of the fiscal imbalances and the debt load. Even more importantly, where debt burden is not a major issue, an EM may be able to make difficult choices in terms of government services, structure, and policy absent the assistance of the Federal court.

Unlike the intervention of an EM, Chapter 9 does not appear to provide a means to get to an economically viable end for municipalities. Debt may be reduced, but the structural factors that contributed to failure remain in place.

Financial Emergencies in Michigan

The current economic conditions that have significantly impaired Michigan's economy have led to serious fiscal problems for local government. These problems first began to affect local government through State revenue sharing reductions beginning in 2001. Fiscal stress was greatly exacerbated when revenue sharing cuts were combined with losses in property tax revenue as the national financial crisis began to unfold in 2007 and 2008. This stress has manifested itself in the form of service reductions, employee layoffs, the extensive draw down of fund balance and rainy day reserve funds, and, the use of deficit-elimination bonds.

Seven cities and one school district (Detroit Public Schools, DPS) have been under state supervision since PA 72 was crafted: Benton Harbor, Flint, Ecorse, Hamtramck, Highland Park, Pontiac and the Village of Three Oaks. On top of these current problems, unfunded health care and pension liabilities and property tax-secured municipal bonds loom as potential major sources of fiscal stress in the near future. It is certainly possible that other financial emergencies may exist in the future.

The Michigan Legislature, through Public Act (PA) 72 of 1990, declared that the fiscal health and solvency of local governments is of State concern. The Act gave two reasons for these concerns. First, it states that the insolvency of a local government could affect the health and welfare of citizens. This could be tied to the loss of certain public services, for example. Second, it states that the insolvency of one local government could impair the creditworthiness of the State and other local governments. For these reason, the Act specified a process by which the State will monitor and, if necessary, assume responsibility for the fiscal health of local governments.

PA 4 of 2011, known as the Local Government and School District Fiscal Accountability Act expands the authority of the managers appointed to address a financial emergency. For example, PA 4 provides for the modification or termination of clauses within union contracts, a power that emergency financial managers did not have under PA 72.

States' Rights

There is no constitutional right to local self-government in the United States. In 1907, the Supreme Court decided, in *Hunter v. Pittsburgh*, that under the Constitution local governments are nothing more than "convenient agencies of exercising ... such powers as may be entrusted to them" by the state. As a result, "the state may modify or withdraw all such power, may take without compensation such property, hold it for itself, or vest it with other agencies, expand or contract the territorial area, unite the whole or part of it with another municipality, repeal the charter and destroy the corporation ... with or without the consent of the citizens, or even against their protest."

How local government is organized is up to state law, and the remedy to amend these laws is the political process. As William Rehnquist wrote in the 1978 case *Holt Civic Club v. Tuscaloosa*, "authority to make those judgments resides in the state legislature." Citizens who dislike the existing arrangement, he wrote, "are free to urge their proposals to that body." As far as the Constitution is concerned, a state could dissolve all of its local governments and run everything from the state capital. Whether there is local democracy at all is entirely a matter of state law.

So there's nothing in the Constitution that stops state-level takeovers of cities and school districts. Indeed, state governments have taken control of troubled cities in the past. In 1991, Massachusetts placed the Boston suburb of Chelsea into receivership, reducing its elected government to an advisory capacity and vesting power in an appointed receiver. In 2000, New Jersey placed the city of Camden into receivership. July 19, 2010, Rhode Island seized control of the City Hall in Central Falls, a city of 19,000, when the state police knocked on the mayor's door, demanded his city-owned car and cell phone and keys to City Hall and handed him a letter announcing that his salary of \$71,736 was being cut to \$26,000.

Many American cities have been annexed by other cities against the protest of their residents. In fact most of the nation's largest cities have grown through such forcible annexations of neighboring territory and smaller cities. Not only can existing towns and cities be absorbed into larger governments, but states can also decree that an unincorporated community simply be governed by a neighboring city without being formally annexed—and without its residents having a vote in the election of that city's government. Thirty-five states allow local governments to exercise such "extraterritorial jurisdiction" over people and property *outside* city limits. As a result, citizens can be regulated, fined, and taxed by local governments they did not elect.

Under Michigan's "[Local Government and School District Fiscal Accountability Act](#)," an emergency manager appointed by the governor could renegotiate contracts, terminate collective bargaining agreements, close buildings and schools, and even reorganize or dissolve local governments and school districts.

Yet in 2002—nine years before this proposal was being considered—Michigan declared a fiscal emergency and appointed an emergency manager in the city of Flint, divesting the elected government of control over the city's finances. In fact Michigan has declared seven local financial emergencies since 1990, when the state first acquired the authority to put unelected emergency managers in charge of troubled cities.

So the new law isn't a radically new or unprecedented affront to local democracy. It is a relatively modest expansion of a power Michigan already has.

Benton Harbor's Financial Emergency

In August 2009, following a written request from the Benton Harbor City Manager, the State conducted a preliminary review of the City's finances in which it found that a serious financial problem existed in the city.

The Michigan Department of Treasury commenced a preliminary review of the finances of the City of Benton Harbor to determine whether or not a serious financial problem existed. The preliminary review of the City resulted from a condition enumerated in PA72 of 1990, which provides for the State to conduct such a review if requested by the governing body or the chief administrative officer of a local government.

State Preliminary Review Team Findings

- Significant General Fund operating deficits
- Delinquent in timely distributing property taxes for other units of government
- Delinquent remittance of Federal income taxes withheld from City employee wages
- Interfund borrowing to compensate for cash shortages
- Bank reconciliations were not being performed routinely
- Based upon the preliminary review, the State Treasurer concluded and reported to the Governor that a serious financial problem existed, and recommended the appointment of a financial review team.

Financial Review Team Findings

- The City's 2009 fiscal year audit revealed that General Fund expenditures exceeded General Fund revenues by \$1.3 million.
- Total cash decreased from \$1.7 million in 2006 to \$300 thousand in 2009, a \$1.4 million difference in three years, despite large cash receipts from asset sales.
- As of June 30, 2009, the amount owed to the Internal Revenue Service for taxes withheld from employee wages was \$678 thousand.
- The City was delinquent in property tax distributions by \$626 thousand.
- The City owed the General Employee's Retirement System \$3.1 million and the Police and Fire Pension System \$840 thousand.
- The City was paying \$80 thousand to \$100 thousand in bank overdraft charges.
- General Fund (GF) expenditures exceeded GF revenues by \$1.3 million in FYE 2009
- There was no satisfactory plan to resolve the financial problem.

Based upon the meetings with management and commissioners and findings from the review, the Review Team confirmed the findings of the preliminary review, and concluded that a local government financial emergency existed within the City, and that there was no satisfactory plan to resolve the financial problem. Governor Granholm confirmed the Review Team's findings, and directed that an emergency financial manager be appointed, pursuant to the Local Government Fiscal Responsibility Act (PA 72 of 1990).

Emergency Manager Findings

- The City had no accountants and, therefore, was unable to generate financial statements, or even prepare bank reconciliations. Nor did any employees have academic or job related accounting or financial expertise.
- The City manager’s deficit elimination plan included unattainable revenues and no cost reductions (Appendix C)
- Over \$1 million of a HUD Section 108 grant was squandered due to loan approvals by the City Commission, which the City is repaying to HUD at \$150,000 per year.
- The City was paying in excess of \$100,000 more than required per year for rubbish collection due to its refusal to accept the low bidder for rubbish collection services
- Budgeted appropriations exceeded budgeted revenues each year from 2000 to 2010
- Actual expenditures exceeded budgeted appropriations each year
- Budgeted revenues exceeded actual revenues each year
- Actual expenditures exceeded actual revenues each year for over ten years

**City of Benton Harbor
General Fund Revenues and Expenditures
from the year 2000 to 2010
(dollars expressed in thousands)**

Year	Revenues	Expenditures	(Excess) Expenditures Over Revenues
2000	\$10,845.4	\$11,514.7	(\$669.3)
2001	6,516.3	6,824.2	(307.9)
2002	6,403.5	6,602.1	(198.6)
2003	6,140.0	6,839.7	(699.7)
2004	6,298.3	7,176.0	(877.7)
2005	6,353.9	8,442.2	(2,088.3)
2006	6,418.4	8,441.9	(2,023.5)
2007	6,422.3	8,223.6	(1,801.3)
2008	7,776.9	9,300.6	(1,523.7)
2009	7,549.6	8,846.7	(1,297.1)
2010	5,939.7	6,719.9	(780.2)
Totals	\$76,664.3	88,931.6	(\$12,267.3)

The City offset a portion of the \$12 million losses shown above by:

Selling Assets	\$4.8 million
Borrowing	2.4 million
Transfers from Other Funds	1.2 million

Totalling \$8.4 million

... thereby, reducing the accumulated deficit to just under \$4 million.

EFM/EM Achievements

- a. Developed a balanced budget for the 2013 and 2014 fiscal years, following ten consecutive years of net operating losses.
- b. Condemned over two hundred structures including the Riverview Motel, an eyesore that has annoyed the community for decades
- c. Completed Improvements for three City parks and playgrounds,.
- d. Provided Fire Fighter I and II training for six police officers, who are now certified firefighters, thereby allowing the City to reduce the cadre of full-time firefighters.
- e. Negotiated a Collective Bargaining Agreement (CBA) with the Police and Fire unions for the years 2011 to 2016, allowing the City to utilize cross-trained police officers (public safety officers) and part-time/on-call firefighters to supplement the City's full-time firefighters
- f. Purchased accounting software to allow the City's Water, Finance, Assessors, and Inspections to be compatible with each other, and to provide for online access to the County Treasurer's Office.
- g. Reduced staffing levels by forty percent, saving the City over \$1 million annually.
- h. Revised the health care benefits to provide Health Savings Accounts to City employees
- i. Reduced liabilities by \$1 million during the past year including payment of over \$600 thousand owed to the IRS, and liquidation of \$100 thousand owed to the City's accountant

Public Safety Staffing

By hiring and utilizing paid on-call Firefighters and part-time Police Officers, labor costs have been reduced significantly. The ability to utilize Reserve Officers for various details has aided in additional savings.

In the month of May 2010, eighteen new Reserve Police Officers were sworn in to the Department. The reserve police officers are certified officers who volunteer their time to augment the City's public safety program.

Collective bargaining agreement resulted in cost savings in excess of \$1 million for public safety in a \$6 million per year general fund, by allowing the City to utilize cross-trained police officers for fire suppression. Previously, part-time patrolmen and firefighters were not allowed.

- Merge Police & Fire by cross training police as firefighters.
- Reduced full time fire staff by seven (7) and police by nine (9).
- Increased fire staff with eleven (11) part-time firefighters.
- Implemented a Reserve Program for police officers.

Security

- Cameras provide 24-hour security surveillance in safe-guarding City buildings, premises, property and personnel including the water plant and a City park
- Key fobs provide security and accountability for personnel given access to City buildings and offices by recording the name and time of the individuals' entry to City Hall, Payment Center, and the Water Plant.

Technology

- State of the art computers put in all squad cars.

(Creating a more efficient way of utilizing Officers time by allowing Officers the ability to write police reports in their vehicles instead of in the police station, as well as, Officers having more time on the road to be visible in the community)

- Computer upgrades throughout the City
- Software upgrades throughout the City
- Switched from phone lines to cable for faster response time for computers

Parks and Recreation

- New Basketball Courts
- Playground Equipment
- Park Repairs and Landscaping

Equipment

- Printer Upgrades
- Copier Upgrades
- Computer Upgrades
- Security enhancements
- Telephone system upgrades
(Telephones provide a more efficient customer service base for the City, by allowing all City buildings to be connected between one another without having to dial an outside line, thereby eliminating excessive billings from the former telephony provider.)
- Quick Response Vehicles (QRVs) with Class A foam for fire suppression
(Giving an added ability to fire suppression, while allowing the smaller apparatus to respond without having the use of the larger engine. It's also utilized during regular patrol for police function.)

Facilities

- Heating and Air Conditioning Replacement
- Roof replacement

Public Works

- Reduced staffing by forty-five percent
- Hired part-time crew for snow removal along downtown sidewalks, safe routes to school, and bridges
- Hired part-time tall-grass abatement crew to mow tall grass throughout the City
- Improved rubbish collection system and service

Human Resources

The City has replaced its human resources coordinator and its payroll technician with an outside firm. Besides the cost savings, the firm provides a level of expertise and reliability that was previously unavailable within the organization. Among the duties of the firm are: payroll administration; workers' disability compensation coverage; benefit administration; administration of workplace policies; assistance in compliance with State and Federal laws including the Fair Labor Standards Act, COBRA, I-9 requirements, FMLA, Title VII of the Civil Rights Act, ADA, Age Discrimination in Employment Act, OSHA, and the National Labor Relations ACT; and other labor matters.

As a result of the recommendations made in the public safety study (Appendix A), the City combined the police and fire divisions into a combined Public Safety Department, saving the City over \$1 million.

In addition to the approximately \$1.7 million in savings from employee compensation,. Also, the City will save another \$200,000 over the next two years resulting from additional efficiencies currently being implemented in the Assessor's Office, the Fire Division, and rubbish collection.

These changes will, collectively, reduce the City’s structural budget to less than \$6 million annually, which is the minimum amount of revenue the City anticipates receiving on an annual basis.

<u>Description</u>	<u>2009 – 2010 General Fund</u>	<u>2012 - 2013 General Fund</u>	<u>Savings</u>
Salaries and Wages	\$3,848,494	\$2,467,753	\$1,380,741
Employee Benefits	1,073,090	758,186	314,904
	-----	-----	-----
Total Employee Compensation	\$4,921,584	\$3,225,939	\$1,695,645
	=====	=====	=====
Full-time Employees	85	48	37

Conclusion

The Emergency Manager brings much more to insolvent cities than the authority behind PA4. In the case of Benton Harbor, the emergency manager's immunity from the political consequences of necessary decisions, an absence of preexisting relationships, and the addition of a level of expertise that had not existed previously, have enabled the City to undergo a financial and operational turnaround within two years, and experience dramatic changes rather than incremental changes.

Moreover, it must be understood that State intervention is a temporary condition that can lead to permanent solutions. Although not "out of the woods yet", the structural deficit in Benton Harbor has been eliminated; the operations have been streamlined and vastly improved; and this long-beleaguered city is off life support and on its way to full recovery.

What really matters is that we develop a financially sound government comprised of the people, the processes, and the technology required to continue the City's successes after the financial emergency has been resolved. Sustainable real change is not just about getting the finances right. It's about righting structures and systems. If our focus is only on the financial issues we've only addressed the symptoms, not the causes.

As reflected in an April 29, 2011 survey (Appendix B), public opposition to the State's intervention appear to be in the minority; and the plans, the efforts, and the accomplishments the emergency manager has brought to bear are more and more appreciated by the masses.

Public Safety Department Study

Commissioned a **study of the City's Public Safety Department**, which revealed the following:

- In 2010, the agency was busy responding to ALL calls for service 394 hours, or an average of one hour and five minutes each 24 hour day.
- Of this workload, only 119 hours were spent responding to calls involving any type of fire. In most instances, the fires were very minimal, non-structure fires, or extinguished prior to the arrival of the fire unit
- In 92.8% of the 8,760 hours in a year, the agency had no calls.
- The agency provides little prevention or community service activities
- The amount of time that firefighters are required to perform any work is severely restricted by contract. For example, by contract, Monday through Friday, 8 AM to 11 AM is restricted for equipment checking and maintenance and fire station maintenance. Training and paperwork can only be performed between 1 PM and 5 PM, Monday through Friday. From 5 PM and 8 AM the following day (13 hours), all day Saturdays, all day on Sundays and all day on holidays (13 per year), firefighters are required to perform no duties other than to respond to calls for service. Thus, of the 8,760 hours in a year, the Benton Harbor firefighters, by contract, cannot be required to perform any work other than responding to calls 74.5% of the time they are on duty.
- Because of the size of the fire division even prior to recent personnel reductions, the agency could not attack a fire of any meaningful severity. In any instance of a serious fire, the agency had to rely on mutual aid from surrounding communities. Thus the Fire Division is more accurately described as a "first responder only" fire agency, and not a full service fire organization.
- Given the rarity of a serious fire, it is simply not cost effective to add additional, paid, full-time fire suppression personnel to increase the size of the department.

In effect, the City is purchasing very minimal fire suppression capabilities at a very high cost (\$1.2 million last year). Simply put, the City neither needs, nor can afford, a full-time fire department.

**TWIN CITIES SURVEY
400 SAMPLE REGISTERED VOTER SURVEY
APRIL 29, 2011**

METHODOLOGY

The Glengariff Group, Inc. conducted a 400-sample survey of registered voters in the municipalities of Benton Harbor, Benton Township, St Joseph and St. Joseph Township. The survey has a margin of error of +/-4.9% with a 95% level of confidence.

The live operator telephone survey was conducted on April 27-29, 2011. The survey was stratified by population and by gender, age, and ethnicity within each community.

The survey is an un-commissioned survey conducted by the Glengariff Group, Inc. as part of its public policy polling program and was not sponsored or paid for by any organization, interest group, or entity other than the Glengariff Group, Inc.

KEY FINDINGS

59.8% of survey respondents across all four municipalities believe the Emergency Financial Manager would better balance Benton Harbor's budget deficit as compared to only 14.0% who believe Benton Harbor's Mayor and City Council would do a better job of balancing the city's deficit. By a wide margin of 50.4%-27.2%, Benton Harbor residents believe the Emergency Financial Manager would do a better job of balancing the city's deficit than the Mayor and City Council.

When asked the best way to balance Benton Harbor's budget deficit:

- 35.8% of survey respondents support cutting city spending.
- 2.0% of survey respondents support increasing taxes on Benton Harbor residents.
- 48.8% of survey respondents support a combination of cutting spending and increasing taxes.

When Benton Harbor residents were asked the best way to balance the city's budget:

- 38.9% of BH residents support cutting city spending.
- 3.2% of BH residents support increasing taxes on Benton Harbor residents.
- 45.3% of BH residents support a combination of cutting spending and increasing taxes.

Respondents were asked if they would support using Michigan's new Emergency Financial Manager Law to nullify Benton Harbor's existing labor contracts so that they could be renegotiated to help balance the city's budget deficit.

- By a margin of 54.3%-26.3% survey respondents across all communities support the nullification of Benton Harbor's labor agreements.
- By a margin of 51.6%-27.4% Benton Harbor residents support the nullification of Benton Harbor's labor agreements.

Survey respondents were asked if Whirlpool Corporation has been a good corporate partner or a bad corporate partner for the community. By a margin of 76.0%-10.5%, community residents believe Whirlpool has been a good corporate partner for the Twin Cities.

Survey respondents were asked if they support or oppose the development of the Harbor Shores resort. By a margin of 67.0%-21.5%, community residents support the development of the Harbor Shores resort. 50.5% of community residents STRONGLY support the Harbor Shores

development. Support for Harbor Shores among Benton Harbor residents was 51.6%-38.9%. Support for Harbor Shores among St Joseph residents was 79.9%- 10.0%.

Survey respondents were asked if they could choose any city to live in, would they stay in their current city or move elsewhere. By a margin of 68.3%-27.8%, residents would stay in their own city. But there was a dramatic difference by age:

- 54.8% of residents under the age of 30 would choose to move elsewhere.
- 39.7% of residents between 30-39 would choose to move elsewhere.
- But among residents over 40 years of age only 22% would choose to move elsewhere if they could.

The greatest desire to move to another location was among residents in Benton Township.

	<u>Stay</u>	<u>Move</u>
▪Benton Harbor	65.3%	30.5%
▪Benton Township	58.7%	36.2%
▪Saint Joseph	76.2%	18.8%
▪Saint Joseph Township	79.3%	19.5%

SURVEY QUESTIONS

Hello, my name is _____. I'm not selling anything. I'm doing a quick survey of residents in our community. The survey will take less than five minutes.

A.Are you registered to vote at the address I am calling?

- | | |
|-------------------|--------|
| 1.Yes....CONTINUE | 100.0% |
| 2.No....TERMINATE | 0.0% |

I am going to ask you several questions about things going on in our community.

2. Who do you believe would do a better job of balancing the City of Benton Harbor's existing budget deficit? The mayor and city council or the state appointed Emergency Financial Manager? IF DON'T KNOW, ASK: WHICH WAY DO YOU LEAN?

1.Mayor and city council	14.0%
2.Emergency Financial Manager	59.8%
3.Neither....DO NOT OFFER	6.8%
4.Don't Know....DO NOT OFFER	19.5%
5.Refused....DO NOT OFFER	0.0%

3. What do you believe is the best way to balance the city of Benton Harbor's budget deficit? Would you say [ROTATE: cut the city's spending, increase taxes on Benton Harbor residents], or a combination of increasing taxes and cutting spending?

1.Cut city spending	35.8%
2.Increase taxes on Benton Harbor residents	2.0%
3.Combination of cutting spending and increasing taxes	48.8%
4.Don't Know...DO NOT OFFER	13.3%
5.Refused....DO NOT OFFER	0.3%

4. Under new legislation passed by the Michigan legislature and signed by the Governor, the state appointed Emergency Financial Manager would have several new tools available to him to balance Benton Harbor's budget deficit. One final tool the Emergency Financial

Manager could use would be to nullify the city's existing labor contracts and renegotiate them to help balance the city's deficit. Do you support or oppose allowing the Emergency Financial Manager to nullify the city's labor contracts to help reduce Benton Harbor's deficit? ASK: WOULD THAT BE STRONGLY SUPPORT/OPOSE OR JUST SOMEWHAT SUPPORT/OPOSE?

1.Strongly support	34.3%
2.Somewhat support	20.0%
3.Somewhat oppose	6.8%
4.Strongly oppose	19.5%
5.Don't Know....DO NOT OFFER	19.3%
6.Refused....DO NOT OFFER	0.3%

5. Changing topics, do you think Whirlpool Corporation has been a good corporate partner for our community or a bad corporate partner for our community?

1.Good partner	76.0%
2.Bad partner	10.5%
3.Neither good, nor bad....DO NOT OFFER	8.0%
4.Don't Know....DO NOT OFFER	5.5%
5.Refused...DO NOT OFFER	0.0%

6. Do you support or oppose the development of the Harbor Shores resort area? ASK: WOULD THAT BE STRONGLY SUPPORT/OPOSE OR JUST SOMEWHAT SUPPORT/OPOSE?

1.Strongly support	50.5%
2.Somewhat support	16.5%
3.Somewhat oppose	4.5%
4.Strongly oppose	17.0%
5.Don't Know....DO NOT OFFER	11.0%
6.Refused....DO NOT OFFER	0.5%

7. If you could choose any city to live in, would you stay in your current city or would you move elsewhere?

1.Stay in current city	68.3%
2.Move elsewhere	27.8%
3.Don't Know....DO NOT OFFER	3.5%
4.Refused....DO NOT OFFER	0.5%

Now just a couple of questions for statistical purposes.

8. Could you please tell me in what year you were born?

1.1982-1993	(18-29)	7.8%
2.1972-1981	(30-39)	15.8%
3.1962-1971	(40-49)	26.3%
4.1947-1961	(50-64)	30.0%
5.1946 and earlier	(65+)	19.0%
6.Refused...DO NOT OFFER		1.3%

9. And what is your race or ethnic background?

1.African American	42.3%
2.Caucasian/White	50.0%
3.Hispanic	0.3%
4.Other _____	0.0%
5.Mixed Race	0.8%
6.Don't Know/ Refused....DO NOT OFFER	1.8%

10. GENDER

1.Male	46.8%
2.Female	53.5%

THANK YOU. THAT COMPLETES OUR SURVEY.

2. Who do you believe would do a better job of balancing the City of Benton Harbor's existing budget deficit? The mayor and city council or the state appointed Emergency Financial Manager? IF DON'T KNOW, ASK: WHICH WAY DO YOU LEAN?

	Mayor/Council	DFM	Neither	Don't Know
Benton Harbor	27.2%	50.4%	7.4%	14.8%
Benton Township	11.6%	57.2%	8.7%	22.5%
St Joseph	8.7%	71.2%	3.8%	16.2%
St Joseph Township	8.0%	65.5%	5.7%	20.7%
18-29	16.1%	58.1%	3.2%	22.6%
30-39	14.3%	61.9%	1.6%	22.2%
40-49	19.0%	61.0%	7.6%	12.4%
50-64	13.3%	59.2%	7.5%	20.0%
65+	7.9%	60.5%	9.2%	22.4%
African Amer	21.9%	44.4%	8.9%	24.9%
Caucasian	7.7%	71.4%	5.5%	15.5%
Male	9.1%	67.4%	8.0%	15.5%
Female	18.3%	53.1%	5.6%	23.0%

3. What do you believe is the best way to balance the city of Benton Harbor's budget deficit? Would you say [ROTATE] cut the city's spending, increase taxes on Benton Harbor residents, or a combination of increasing taxes and cutting spending?

	Cut	Raise Taxes	Do Both	Don't Know
Benton Harbor	38.9%	3.2%	45.3%	11.6%
Benton Township	37.0%	2.2%	49.3%	11.6%
St Joseph	37.5%	1.3%	46.3%	15.0%
St Joseph Township	28.7%	1.1%	54.0%	16.1%
18-29	19.4%	3.2%	74.2%	3.2%
30-39	50.8%	0.0%	47.6%	1.6%

40-49	41.0%	3.8%	44.8%	10.5%
50-64	29.2%	0.8%	49.2%	20.0%
65+	34.2%	2.6%	42.1%	21.1%
African Amer	35.5%	1.8%	50.3%	11.8%
Caucasian	36.4%	2.3%	46.8%	14.5%
Male	34.8%	2.1%	50.8%	11.8%
Female	36.6%	1.9%	46.9%	14.6%

4. Under new legislation passed by the Michigan legislature and signed by the Governor, the state appointed Emergency Financial Manager would have several new tools available to him to balance Benton Harbor's budget deficit. One final tool the Emergency Financial Manager could use would be to nullify the city's existing labor contracts and renegotiate them to help balance the city's deficit. Do you support or oppose allowing the Emergency Financial Manager to nullify the city's labor contracts to help reduce Benton Harbor's deficit? ASK: WOULD THAT BE STRONGLY SUPPORT/OPPOSE OR JUST SOMEWHAT SUPPORT/OPPOSE?

	Strongly Support	Somewhat Support	Somewhat Oppose	Strongly Oppose
Benton Harbor	28.4%	23.2%	7.4%	20.0%
Benton Township	31.9%	19.6%	5.8%	18.8%
St Joseph	38.7%	25.0%	7.5%	16.2%
St Joseph Township	40.2%	12.6%	6.9%	23.0%
18-29	38.7%	19.4%	6.5%	16.1%
30-39	42.9%	19.0%	7.9%	15.9%
40-49	37.1%	19.0%	9.5%	21.0%
50-64	25.8%	23.3%	6.7%	26.7%
65+	31.6%	18.4%	2.6%	11.8%
African Amer	30.2%	22.5%	6.5%	20.1%
Caucasian	37.7%	17.7%	7.3%	19.1%
Male	42.8%	15.5%	5.9%	24.1%
Female	26.8%	23.9%	7.5%	15.5%

5. Changing topics, do you think Whirlpool Corporation has been a good corporate partner for our community or a bad corporate partner for our community?

	Good Partner	Bad Partner	Neither Good/Bad
Benton Harbor	50.4%	25.3%	13.8%
Benton Township	75.4%	10.1%	8.7%
St Joseph	95.0%	1.3%	1.3%
St Joseph Township	89.7%	3.4%	4.6%
18-29	71.0%	12.9%	6.5%
30-39	81.0%	6.3%	7.9%
40-49	72.4%	13.3%	7.6%
50-64	70.8%	13.3%	10.0%
65+	86.8%	5.3%	6.6%

African Amer	58.6%	17.8%	13.6%
Caucasian	89.5%	4.5%	3.6%
Male	76.5%	12.3%	5.3%
Female	745.6%	8.9%	10.3%

6. Do you support or oppose the development of the Harbor Shores resort area? ASK: WOULD THAT BE STRONGLY SUPPORT/OPOSE OR JUST SOMEWHAT SUPPORT/OPOSE?

	Strongly Support	Somewhat Support	Somewhat Oppose	Strongly Oppose
Benton Harbor	35.8%	15.8%	10.5%	28.4%
Benton Township	48.6%	17.4%	2.9%	16.7%
St Joseph	63.7%	16.2%	1.3%	8.7%
St Joseph Township	57.5%	16.1%	3.4%	12.6%
18-29	48.4%	12.9%	3.2%	19.4%
30-39	58.7%	15.9%	0.0%	14.3%
40-49	44.8%	18.1%	8.6%	17.1%
50-64	50.8%	16.7%	5.0%	20.8%
65+	50.0%	17.1%	2.6%	11.8%
African Amer	38.5%	18.3%	7.1%	23.7%
Caucasian	59.5%	15.9%	2.3%	11.8%
Male	57.2%	14.4%	3.2%	17.1%
Female	44.6%	18.3%	5.6%	16.9%

7. If you could choose any city to live in, would you stay in your current city or would you move elsewhere?

	Stay	Move
Benton Harbor	65.3%	30.5%
Benton Township	58.7%	36.2%
St Joseph	76.2%	18.8%
St Joseph Township	79.3%	19.5%
18-29	41.9%	54.8%
30-39	55.6%	39.7%
40-49	75.2%	22.9%
50-64	64.2%	28.3%
65+	85.5%	14.5%
African Amer	64.5%	31.4%
Caucasian	70.9%	25.5%
Male	72.2%	24.6%
Female	64.8%	30.5%

Benton Harbor 62 Point Plan to Eliminate the City's Deficit

Neighborhood Stabilization Program II Grants (NSP II)
Michigan Energy Efficiency Grant (Green Technology)
Federal Department of Transportation Grants (Train Depot)
Homeland Security & Department of Justice Grants (Police & Fire)
Community Services Block Grant (CSBG)
Community Development Block Grant (CDBG)
Browns Fields Grants
Coastal Management Program Grants
Emergency Operational Center (EOC) Dispatch
Youthbuild Grants
Weed & Seed Grants
Traffic & Security Camera procurement and installation
Event & Program Management
The Benton Harbor Beach Festival
Chicago Land All-Star Classic Golf @ Harbor Shores
Lunch With A Leader
Safe Summer
Summer Youth Employment Initiative (Employ America & MI Works)
Southwest Regional Airport (Payment In Lieu of Taxes -PILOT)
Policy & Procedural Improvements
1% Per Annum increase in trash collection admin fees
25% Per Annum reinstatement of the Renaissance Zone Tax
Leasing of the Bo Bo Brazil Armory
Leasing of the Don P. Mitchell Building
Leasing of the 711 Britain
Leasing of Carl L. Brown
Sale of 10 Grand Blvd. Lots (appraised at \$112,500 each)
Sale of other City owned lots
Riverview Park Whirlpool grant
Water Delinquency Payment Plans and/or Tax Assessment Benton Township
Water , Sewer, Trash Delinquency Payment Plans and/or Tax Assessment BHM
Pay-Ease Automated Commerce Machines (ACM) & Merchant Account Revenue
Pay-Ease Interactive Voice Response (IVR) and City of BHM Website E-Commerce
Benton Harbor Beach Parking Collections
Quarterly monitoring and reporting on the City Budget & Deficit Elimination Plan
Bulk fuel purchasing for all fuel used by city vehicles
Acquisition of a single comprehensive and centralized telephone & internet system
Development of an emergency data recovery plan
Development and implementation of a system wide property assessment strategy
Implementation of Plant & Moran accounting system upgrades
Partner with Downtown Development Authority (DDA) to develop a Tax Increment Finance (TIF)
Propose fire and police dispatch upgrade and ongoing operation
Conduct energy audits for all city owned buildings and/or properties

Collective bargaining discussions with Police, Fire & AFSCME
Complete comprehensive analysis of city owned vehicles with 5 year replacement strategy
Negotiate the purchase of the All Phase Electric Building as the new city hall
Coordinate the relocation and centralization of all city departments to All Phase Electric
Develop, manage and provide TA in the creation of a new comprehensive Annual and/or 5 year plan
Provide TA, management and leadership in the 2011 annual budgeting process
Section 3 Policy development and implementation
Public Procurements
Request for proposal for a Certified Public Account (CPA) and annual auditor
Request for proposal for a Licensed Real-Estate Broker to market city properties for lease and/or sale
Request for proposal for Trash Collection
Request for proposal for Healthcare insurance for city employees
Request for proposal for Legal Services
Request for proposal for Renaissance Zone Tax Reinstatement
Request for proposal Video Surveillance and/or Alarm and Security Services
Request for proposal for Property and General Liability Auto Insurance
Request for proposal for Copy and/or printing services
Request for proposal for Elevator Maintenance and/or upgrades service contracts
Revenue Stabilization Bond Application
Request for proposal for Uniforms and Rugs cleaning services
Building Inspectors Audit of Water Meters and Service Lines
Solicitation of Financial Institution Services

Excerpts from PA 4 OF 2011

In March 2011, Governor Snyder signed into law the Local Government and School District fiscal Accountability Act (PA 4 of 2011), which replaced the Local Government Fiscal Responsibility Act (PA 72 of 1990).

PA 4 provides for the appointment of emergency managers to financially distressed local governments and school districts who are required to develop or amend a written financial and operating plan that has the objectives of assuring that the local government is able to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government.

Currently, P.A. 72 allows an EFM to control a city's budget, change the way departments operate, renegotiate union contracts, auction off certain city assets, and contract out for professional assistance, if needed. The EFM may even increase taxes, with voter approval. Unfortunately, the EFM may not set aside union contracts in order to outsource for needed services with other government units or with private vendors. This puts them in a bind, since the cost of union contracts is often a major factor in a municipality's bankruptcy. The EFM must either continue to run up deficits and debts, or shut down virtually all services.

When dealing with the private sector, judges have the authority under the federal bankruptcy law to reject collective bargaining agreements (union contracts) "if rejection is necessary to permit the reorganization of the debtor," among other stipulations. While cities like Flint are not yet close to formal bankruptcy, the purpose of changing P.A. 72 to allow contract set asides would be to ensure that the city never arrives at such an outcome.

Among the 18 separate conditions that may trigger the act are the following:

- The governing body or the chief administrative officer of a unit of local government requests a preliminary review under the Act, the request is in writing, and identifies the existing or anticipated financial conditions or events that make the request necessary.
- The State Financial Authority receives a written request from a creditor with an undisputed claim that remains unpaid six months after its due date against the unit of local government that exceeds the greater of \$10,000 or one percent of the annual general fund budget of the unit of local government.
- The State Financial Authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the unit of local government equal to at least five percent of the total vote cast for all candidates for governor within the unit of local government at the last preceding election at which a governor was elected.
- The State Financial Authority receives written notification that a unit of local government has not timely deposited its minimum obligation payment to the unit of local government pension fund as required by law.
- The State Financial Authority receives written notification that the unit of local government has failed for a period of seven days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.
- The State Financial Authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the unit of local government of a default in a bond or note payment or a violation of one or more bond or note covenants.

- The State Financial Authority receives a resolution from either the State Senate or the House of Representatives requesting a preliminary review.
- A unit of municipal government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.
- A unit of local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.
- A court has ordered an additional tax levy without the prior approval of the governing body of the unit of local government.
- A unit of local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by one or more nationally recognized credit rating agencies.

A unit of local government is considered to be in a condition of financial emergency if any of the following occur:

- The unit of local government failed to comply in all material respects with a continuing operations plan, a recovery plan, the terms of an approved deficit elimination plan, or an agreement entered into pursuant to a deficit elimination plan.
- The unit of local government materially breached the terms of a consent agreement.
- The unit of local government is in a condition of severe financial stress and a consent agreement was not adopted.
- The chief administrative officer of the unit of local government, based upon the existence or likely occurrence of one or more of the conditions, recommends that a financial emergency be declared and the State Treasurer concurs with the recommendation.

A unit of local government is considered to be in a condition of severe financial stress if either of the following occurs:

- A Review Team report concludes that one or more of the conditions (listed in Question 12) exist, or are likely to occur within the current or next succeeding fiscal year of the unit of local government, and if left unaddressed may threaten the future capability of the unit of local government to provide necessary governmental services essential to public health, safety, and welfare.
- The chief administrative officer of the unit of local government recommends that the unit of local government be considered in severe financial stress.

If, after statutory due process has been accorded to local officials, the Governor confirms the existence of a financial emergency, the Governor then is required to declare the unit of local government to be in receivership and to appoint an emergency manager. However, receivership under the Act is not synonymous with judicial receivership.

An Emergency Manager has broad statutory authority in receivership to rectify a financial emergency and to assure the fiscal accountability of the unit of local government and the capacity of the unit of local government to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. An Emergency Manager "acts for and in the place and stead of the governing body and the office of chief administrative officer of the unit of local government."

After meeting and conferring with bargaining representatives, if in the sole discretion of an Emergency Manager, a prompt and satisfactory resolution is unlikely to be obtained, the Emergency Manager may reject, modify, or terminate one or more terms or conditions of an

existing collective bargaining agreement.

An Emergency Manager and the State Treasurer, upon determining that all of the following conditions are satisfied, may reject, modify, or terminate one or more terms or conditions of an existing collective bargaining agreement:

-- The financial emergency in the unit of local government has created a circumstance in which it is reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.

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

-- Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

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

An Emergency Manager may amend, revise, approve, or disapprove the budget of the unit of local government, and limit the total amount appropriated or expended during the balance of the financial emergency.

An Emergency Manager may consolidate departments of a unit of local government, or transfer functions from one department to another department, and may appoint, supervise, and, at his or her discretion, remove heads of departments other than elected officials of the unit of local government.

Section 19a of the Act provides that the salaries, wages, and other compensation, including the accrual of post-employment benefits of the chief administrative officer and governing body of a unit of local government are eliminated immediately after the unit of local government is placed in receivership and during the duration of the receivership.

However, an Emergency Manager may restore in whole or in part any of the salaries, wages, or other compensation or benefits "of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan."

If provided in a financial and operating plan, or if with the written approval of the Governor or his or her designee, an Emergency Manager may sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of a unit of local government, provided that the use of the assets, liabilities, functions, or responsibilities for this purpose does not endanger the public health, safety, or welfare of residents of the unit of local government, or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the unit of local government.

An Emergency Manager cannot impose taxes, over and above those already authorized, without the approval at an election of a majority of the qualified electors voting on the question. However, an Emergency Manager is authorized to order one, or more, millage elections for the unit of local government.

Pursuant to Section 15 of the Act, a unit of local government is removed from receivership when the financial conditions are corrected in a sustainable fashion as determined by the State Treasurer in accordance with the Act. This occurs essentially after the underlying financial emergency has been addressed.

Furthermore, as provided by Section 24 of the Act, a unit of local government that is in receivership is considered to be in a condition of financial emergency until the Emergency Manager declares the financial emergency to be rectified in his or her quarterly report to the State Treasurer, and is subject to the written concurrence of the State Treasurer, and the concurrence of the Superintendent of Public Instruction if the unit of local government is a school district. The declaration cannot be made until the financial conditions have been addressed and rectified.

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

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

- (a) The governing body or the chief administrative officer of a local government requests a preliminary review under this act. The request shall be in writing and shall identify the existing or anticipated financial conditions or events that make the request necessary.
- (b) The state financial authority receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of \$10,000.00 or 1% of the annual general fund budget of the local government, provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state financial authority of his or her intention to submit a written request under this subdivision.
- (c) The state financial authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the local government's jurisdiction equal to not less than 5% of the total vote cast for all candidates for governor within the local government's jurisdiction at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.
- (d) The state financial authority receives written notification that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.
- (e) The state financial authority receives written notification that the local government has failed for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.
- (f) The state financial authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the local government of a default in a bond or note payment or a violation of 1 or more bond or note covenants.
- (g) The state financial authority of a local government receives a resolution from either the senate or the house of representatives requesting a preliminary review under this section.

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

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

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

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

(l) A municipal government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

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

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

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

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

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

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

(2) If the state financial authority determines that a preliminary review is appropriate under this section, before commencing the preliminary review the state financial authority shall give the local government specific written notification of the review. The preliminary review shall be completed within 30 days following its commencement.

Elected and appointed officials of a local government shall promptly and fully provide the assistance and information requested by the state financial authority for that local government in conducting the preliminary review.

(3) If a finding of probable financial stress is made for a municipal government, the governor shall appoint a review team for that municipal government consisting of the state treasurer or his

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

- (a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.
 - (b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:
 - (i) Taxes withheld on the income of employees.
 - (ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.
 - (iii) Any contribution required by a pension, retirement, or benefit plan.
 - (c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.
 - (d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.
 - (e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.
 - (f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.
 - (g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.
 - (h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.
 - (i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.
 - (j) Existence of a structural operating deficit.
 - (k) Use of restricted revenues for purposes not authorized by law.
 - (l) Any other facts and circumstances indicative of local government financial stress or financial emergency.
- (4) The review team shall include 1 of the following conclusions in its report:
- (a) The local government is not in financial stress or is in a condition of mild financial stress as provided in section 14.
 - (b) The local government is in a condition of severe financial stress as provided in section 14, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to subsection (1)(c).
 - (c) The local government is in a condition of severe financial stress as provided in section 14, and a consent agreement has not been adopted pursuant to subsection (1)(c).

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

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

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

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

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

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

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

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

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

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

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

(g) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a position by any appointing authority.

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

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

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

(k) After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's

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

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

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

(iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

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

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

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

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

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

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

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

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

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

(p) Retain 1 or more persons or firms, which may be an individual or firm selected from a list approved by the state treasurer, to perform the duties of a local inspector or a local auditor as described in this subdivision. The duties of a local inspector are to assure integrity, economy, efficiency, and effectiveness in the operations of the local government by conducting meaningful and accurate investigations and forensic audits, and to detect and deter waste, fraud, and abuse. At least annually, a report of the local inspector shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district. The duties of a local auditor are to assure that internal controls over local government operations are designed and operating effectively to mitigate risks that hamper the achievement of the emergency manager's financial plan, assure that local government operations are effective and efficient, assure that financial information is accurate, reliable, and timely, comply with policies, regulations, and applicable laws, and assure assets are properly managed. At least annually, a report of the local auditor shall be submitted to the emergency manager, the state treasurer, and the superintendent of public instruction if the local government is a school district.

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

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

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

(t) Order, as necessary, 1 or more millage elections for the local government consistent with the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article IX of the state constitution of 1963, and any other applicable state law. A millage election ordered for a local government pursuant to this subdivision shall only be held at the general November election.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Except as otherwise provided in this subsection, any contract involving a cumulative value of \$50,000.00 or more is subject to competitive bidding by an emergency manager. However, if a potential contract involves a cumulative value of \$50,000.00 or more, the emergency manager may submit the potential contract to the state treasurer for review and the state treasurer may authorize that the potential contract is not subject to competitive bidding.

(4) An emergency manager appointed for a city or village shall not sell or transfer a public utility furnishing light, heat, or power without the approval of a majority of the electors of the city or village voting thereon, or a greater number if the city or village charter provides, as required by section 25 of article VII of the state constitution of 1963.

In addition, an emergency manager appointed for a city or village shall not utilize the assets of a public utility furnishing heat, light, or power, the finances of which are separately maintained and accounted for by the city or village, to satisfy the general obligations of the city or village.