UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Russ Bellant, Detroit Library Commissioner; Tawanna Simpson, Lamar Lemmons, Detroit Public Schools Board Member; Elena Herrada; Kermit Williams, Pontiac City Council Member; Donald Watkins; Duane Seats, Juanita Henry, and Mary Alice Adams, Benton Harbor Commissioners; William "Scott" Kincaid, Flint City Council President; Bishop Bernadel Jefferson; Paul Jordan; Rev. Jim Holley, National Board Member Rainbow Push Coalition; Rev. Charles E. Williams II, Michigan Chairman, National Action Network; Rev. Dr. Michael A. Owens, Rev. Lawrence Glass, Rev. Dr. Deedee Coleman, Executive Board, Council of Baptist Pastors of Detroit and Vicinity,

Plaintiffs,

v

RICHARD D. SNYDER, as Governor of the State of Michigan; ANDREW DILLON, as the former Treasurer of the State of Michigan, R. KEVIN CLINTON as former Treasurer of the State of Michigan, and NICK KHOURI, as Treasurer of the State of Michigan, acting in their individual and/or official capacities,

Defendants.

No. 2:17-cv-13887

HON. GEORGE CARAM STEEH

MAGISTRATE JUDGE R. STEVEN WHALEN

DEFENDANTS' MOTION TO DISMISS

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DEFENDANTS' MOTION TO DISMISS

Defendants Richard D. Snyder, Governor of the State of Michigan, Nick Khouri, Treasurer for the State of Michigan, and Andrew Dillon and R. Kevin Clinton, former Treasurers for the State of Michigan[1], move to dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief for the following reasons:

1. Plaintiffs' facial challenge is moot.

[1] Andrew Dillon resigned on October 11, 2013. His replacement, Kevin Clinton, then assumed office and resigned on April 18, 2015. Nick Khouri assumed office on April 19, 2015. Pursuant to Fed. R. Civ. P. 25(d), Mr. Khouri is automatically substituted as a party to this action in Mr. Clinton's place.

2. Some Plaintiffs lack standing to bring their as-applied claims, and all Plaintiffs lack standing to bring claims against Defendants Dillon and Clinton.

3. This Court should decline to exercise jurisdiction over Plaintiffs' request for a declaratory judgment.

4. Plaintiffs' official-capacity claims against the former State Treasurers are barred by the Eleventh Amendment.

5. Public Act 436 does not violate the Equal Protection Clause, either facially or as-applied; therefore, that claim fails to state a claim upon which relief may be granted and should be dismissed as a matter of law.

6. Under Fed. R. Civ. P. 12(b)(6), a complaint may be dismissed if no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. *Ludwig v. Bd of Trustees*, 123 F.3d 404, 408 (6th Cir. 1997). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not facially plausible. *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

7. Fed. R. Civ. P. 12(b)(1) allows dismissal for lack of subject-matter jurisdiction. It is a plaintiff's burden to prove jurisdiction. *Moir v. Greater Cleveland Reg'l. Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990).

8. Applying the standard of review set out in paragraphs 5 and 6 to each argument in the brief, and for the reasons stated in this motion, Plaintiffs' First Amended Complaint fails as a matter of law.

9. Defense counsel contacted Plaintiffs' counsel by email on March 8, 2018 to determine if Plaintiffs concurred in all or part of this motion. After emails were exchanged, concurrence was denied.

Defendants respectfully request that this Court dismiss Plaintiffs' First Amended Complaint in its entirety and with prejudice for the reasons set forth above and more fully developed in the accompanying Brief in support.

Respectfully submitted,

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Dated: March 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2018, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such. I also mailed the foregoing paper via US Mail to all non-ECF participants.

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Dated: March 12, 2018

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CONCISE STATEMENT OF ISSUES PRESENTED

1. The claims of those Plaintiffs whose local government positions either no longer exist or whose local governments are no longer under emergency management or subject to a consent agreement or other supervision under P.A. 436 should be dismissed as moot.

2. Plaintiffs whose local government positions either no longer exist or whose local governments are no longer under emergency management or subject to a consent agreement or other supervision under P.A. 436 should be dismissed because they lack standing to bring their as-applied claim. All Plaintiffs lack standing to bring facial or as-applied claims against Defendants Dillon and Clinton.

3. The Court should decline to exercise jurisdiction over Plaintiffs' request for declaratory judgment because it does not meet factors established by the Sixth Circuit Court of Appeals in *Grand Trunk R.R. Co. v. Consol. Rail Co.,* 746 F.2d 323, 326 (6th Cir. 1984).

4. Plaintiffs' official-capacity claims against Michigan's former State Treasurers are barred by the Eleventh Amendment.

5. Plaintiffs' Equal Protection Claim fails on both facial and as-applied grounds because it fails to state a claim upon which relief may be granted and should be dismissed as a matter of law.

INTRODUCTION

Federal courts have long recognized that States have "extraordinarily wide latitude" in "creating various types of political subdivisions and conferring authority on them." *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978). This authority to decide how to structure local governments includes deciding whether local officials are locally elected or state appointed. *Moore v. Detroit School Reform Bd,* 293 F.3d 352, 370 (6th Cir. 2002). And because local fiscal distress can affect the whole State (take Detroit's bankruptcy, for example), States sometimes must exercise that authority. Here, Michigan created mechanisms (including temporarily appointing an emergency manager, based on objective financial criteria) to attempt to rescue those localities from financial emergencies. That mechanism has indeed been temporary: of the 18 local units of government placed under emergency management, only one unit still is; the other 17 have come out of financial distress and are now under, or moving toward, local control.

This equal protection claim is otherwise fatally flawed because P.A. 436 does not contain any racial classification and Plaintiffs have not alleged any facts supporting the conclusion this legislation was motivated by a racial purpose or object. Without more, the fact P.A. 436 may have a disparate impact on majority African American communities is insufficient to establish an equal protection violation, and Plaintiffs' claim fails as a matter of law.

STATEMENT OF FACTS

This case challenges Michigan's latest in a series of financial stability laws designed to address financial crises in its local units of government.[2] P.A. 436, which took effect March 28, 2013, offers local units a range of options to resolve their financial crises, although Plaintiffs have focused on two of the available options: the temporary appointment of an emergency manager and the negotiated consent agreement (which does not result in the removal of the local elected officials, but requires them to comply with the agreed terms for resolving the financial emergency). Mich. Comp. Laws §§ 141.1549(1)-(11) (emergency manager); 141.1548(1) (consent agreement). An emergency financial manager appointed under former 1988 P.A. 101 or 1990 P.A. 72 and serving immediately prior to the effective date of P.A. 436 was considered an emergency manager under P.A. 436 and "continue[d] to fulfill his or her powers and duties." Section 1549(10). This is an important distinction because under 1990 P.A. 72, the emergency financial manager was appointed by the State's Local Emergency

[2] This claim was originally asserted in an earlier action brought by these Plaintiffs—*Phillips v, Snyder*, USDC ED no. 13-cv-11370. The parties stipulated to the dismissal of that claim without prejudice to allow Plaintiffs' appeal of this Court's dismissal of their other claims. *See Phillips, et al v Snyder,* 836 F.3d 707, 713 (6th Cir. 2017). The Sixth Circuit affirmed the dismissal and the U.S. Supreme Court denied Plaintiffs' certiorari petition. *Bellant v. Snyder*, 138 S. Ct. 66 (2017).

Financial Assistance Loan Board, not the Governor or State Treasurer. Mich. Comp. Laws § 141.1218(1).[3]

A. Michigan's fiscal-responsibility statutes

For the past 29 years, Michigan has enacted various fiscal-responsibility statutes to aid local communities in financial stress. Michigan passed the first, P.A. 101, in 1988 with bipartisan support. Under that Act, any one of 14 conditions triggered an initial financial review of a local governmental unit. If, on review, the state treasurer determined that serious problems existed, an emergency financial manager, with state oversight, would be appointed to oversee the financial operations of the local unit.

Two years later, in 1990, the Legislature passed (again with bipartisan support) P.A. 72, which superseded P.A. 101, used the same 14 triggers as P.A. 101, but added a process for the financial review of school districts. It also broadened the actions an emergency financial manager could take and reappointed emergency financial managers who had been appointed under P.A. 101.

In 2011, when the national financial situation exacerbated the financial stress of local units of government, including school districts, the Michigan Legislature

[3] Exhibit 1 is a table compiled from the Department of Treasury's public web site summarizing the Emergency Financial Manager/Emergency Manger appointments under each of Michigan's fiscal-responsibility statutes. The link is provided at the end of this Statement of Facts.

passed P.A. 4 to replace P.A. 72. That Act added four additional triggering conditions, created an emergency manager (EM) position to replace the emergency financial manager position, and continued the alternative consent agreement process (basically a negotiated agreement between the State and local unit of government with specific terms and obligations designed to resolve the local financial emergency). P.A. 4 of 2011 § §5, 13(1)(c). The new EM position had expanded powers, including the ability to unilaterally modify union contracts, subject to the approval of the State Treasurer. Emergency financial managers previously appointed under P.A. 72 were reappointed as emergency managers. P.A. 4 of 2011 § 16. In 2012, the voters rejected P.A. 4 by referendum, reviving P.A. 72.

B. P.A. 436, the challenged law

The Michigan Legislature enacted P.A. 436, the Local Financial Stability and Choice Act, Mich. Comp. Laws § 141.1541 *et. seq.*, which took effect March 28, 2013. The Legislature stated that local fiscal stability is necessary for the State's health, welfare, and safety and that the Act was necessary to protect those interests and the credit ratings of the State and its political subdivisions. § 1543.

Because the Legislature intended the Act to be a successor statute to former Acts 101, 72, and 4, the statute converted emergency financial managers who had been operating under P.A. 72 into emergency managers under P.A. 436. Mich.

Comp. Laws § 141.1549(10); and 2013 P.A. 436, enacting § 2. As to identifying new local governments in financial crisis, P.A. 436 contains nineteen triggers (Section 1544 (a)-(s)) that initiate State review.

Before any actions are taken under the Act, various reviews are required, and these can either be requested by the local government or initiated by the State. If initiated by the State, the local unit is notified and has an opportunity to provide comments to the state financial authority. Section 1544(3). And once the local unit is under review, the local unit has an opportunity to provide information concerning its financial condition. Section 1544(3).

After a review team recommends that a financial emergency should be declared, § 1545(6)(b)(*iv*), and the Governor determines that a financial emergency exists, § 1546(1)(b), the local unit of government can request an administrative hearing before the state financial authority to contest the Governor's initial determination that a financial emergency exists, § 1546(1)(b)(2). If after the administrative hearing, the Governor confirms the existence of a financial emergency, then, by a two-thirds vote, the unit may appeal the Governor's confirmation of a financial emergency to the Court of Claims. Section 1546(3).

The criteria for evaluating a local unit's financial status are objective and neutral. The criteria focus on the overall financial condition and prognosis of a

local unit of government that subjects it to review; they make no mention of race. *See* §§ 1544(1), 1545(1), 1546(1), 1547(1).

Under P.A. 436, local governments that are in distress but are not already under emergency management have options. They choose for themselves one of four avenues for addressing their financial emergency: a consent agreement, appointment of an emergency manager, neutral evaluation (a form of alternative dispute resolution or mediation), or Chapter 9 federal bankruptcy, § 1547(1)(a)-(d). The City of Hamtramck, for example, requested the appointment of an emergency manager in 2013. While local governments that were already under emergency management when P.A. 436 took effect did not have these options because they were already in a financial emergency, going forward a local unit could end up under emergency management or another option without having chosen that avenue *only* in two specific circumstances: if the local unit chooses the consent-agreement avenue but does not actually enter the agreement, or if it has committed a material, uncured breach of a consent agreement or had previously been subject to a consent agreement. Section 1548(1).

Once an emergency manager is in place, the Act allows that manager to "act for and in the place and stead of the governing body and the office of the chief administrative officer of the local government" during receivership. Section 1549(2). Whereas previous acts tended to separate fiscal management and

government restructuring, P.A. 436 merges the two, giving emergency managers greater flexibility to solve local problems.

Under the Act, local officials retain their elected positions. Local elections and voter registration are not suspended or altered, local-government election boundaries are not redrawn, and elected offices are not altered or eliminated. And although the salary, wages, and other compensation of the chief administrative officer and members of the local governing body are eliminated, those—along with the duties and responsibilities of office—can be restored by the emergency manager. Section 1553.

The Act also carves out a role for locally elected officials as a check on the decision-making of the emergency manager in some crucial areas. Before the emergency manager can make any changes to collective bargaining agreements, sell local-government assets, or issue debt, those proposals must be submitted to the governing body of the local government. Sections 1559(1); 1552(k), (r), & (u); 1554(d). If the local governing body disapproves the proposed change, the body shall, within seven days of its disapproval, submit an alternative that would yield substantially the same financial result as the emergency manager's proposal to the Local Emergency Financial Assistance Loan Board, and if the board adopts the local unit's proposal, the emergency manager must implement it. Section 1559(2). There are other checks on the emergency manager's authority,

too: an emergency manager cannot sell or transfer public utilities, without voter approval, § 1552(4), and cannot sell assets of more than $50,000 in value without the state treasurer's approval. Section 1555(1).

The Act's options are temporary by design. The Act sets forth the outer limit of a financial manager's appointment (18 months from the time of appointment under this Act). Section 1549. Local units can petition the governor for removal before the 18-month period, § 1549(11), or, after 18 months, can, by a two-thirds vote, remove the emergency manager, § 1549(6)(c). And the emergency manager continues only until the financial emergency is rectified, § 1549(7) and the local unit is then removed from emergency management. Before removing a local government from receivership, the Governor may appoint a receivership transition advisory board to monitor local government affairs until receivership is terminated. Section 1563.

The Governor, on his or her own initiative or on recommendation from a receivership transition advisory board, may determine that the financial conditions of a local government have not been corrected "in a sustainable fashion" and appoint a new emergency manager. Section 1564. The Governor may also remove, or the Legislature may impeach or convict, an emergency manager. Section 1549(3)(d).

C. P.A. 436's effects

Since the Act took effect, 13 local units of government and five school districts have been under emergency management. But currently, with the exception of one school district (Highland Park Schools), no local governments in Michigan are subject to emergency management.[4] Six local units formerly subject to some remedial option under the Act have returned to complete self-governance (Detroit, Benton Harbor, River Rouge, Allen Park, Highland Park, and Inkster), and Wayne County has resumed partial local control. Six municipalities (Flint, Lincoln Park, Ecorse, Hamtramck, Pontiac, and Muskegon Heights School District) are under the monitoring of receivership transition advisory boards. And three (Royal Oak Township, Benton Harbor Area Schools, and Pontiac Public Schools) are subject to consent agreements.[5]

Further, the City of Detroit, which proceeded through bankruptcy under an EM, is no longer subject to the Act. Rather, the City is subject to both the

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[4] Highland Park School District is scheduled to begin transition into a form of local control soon after the emergency manager's term ends in April. Gongwer News Service, *Highland Park schools set to exit emergency management*, Crain's Detroit Business, (March 2, 2018, 10:37 AM), http://www.crainsdetroit.com/article/20180302/news/654296/highland-park-schools-set-to-exit-emergency-management (last accessed March 11, 2018). Defendants request that this Court take judicial notice of this information. *Bible Believers v. Wayne Cty. Mich.*, 805 F.3d 228, 273 n.4 (6th Cir. 2015) (citing cases to note that courts may take judicial notice of newspaper articles).

[5]This information is publicly available on the Department of Treasury's website. Http://www.michigan.gov/treasury/0,4679,7-121-1751_51556_64472---,00.html.

confirmed bankruptcy plan and a legislatively created financial review commission created as part of what was referred to as the "Grand Bargain." §§ 1631-1638; *In re City of Detroit,* 524 BR 147, 244 (2014). The Bankruptcy Court found that this "Grand Bargain Legislation" enhanced the feasibility of the City's plan by providing for a wide-ranging oversight of the City's finances and compliance with the plan. *In re City of Detroit*, 524 BR at 244. Also, the Detroit Public Schools (DPS) and its School Board are no longer subject to the Act. They have been replaced by the new Community Schools District and exist only for the limited purpose of paying off DPS debt. Mich. Comp. Laws § 380.12b (1)-(15); 380.383; 380.384. Neither the DPS nor the new Community District is currently subject to the Act.

ARGUMENT

I. Plaintiffs' facial challenge to P.A. 436 is moot.

The mootness inquiry must be made at every stage of a case. *McPherson v. Michigan High School Athletic Ass'n, Inc.*, 119 F.3d 453, 458 (6th Cir.1997) (en banc). "A federal court has no authority to render a decision upon moot questions or to declare rules of law that cannot affect the matter at issue." *Cleveland Branch, N.A.A.C.P. v. City of Parma,* 263 F.3d 513, 530 (6th Cir. 2001) (citing *Church of Scientology v. United States,* 506 U.S. 9, 12 (1992)). Mootness generally depends

on "whether the relief sought would, if granted, make a difference to the legal interests of the parties...." *McPherson*, 119 F.3d at 458.

At this stage of the litigation, Plaintiffs' facial challenge for declaratory relief (R. 1, Compl. ¶¶ 3, 75, 76, Pg ID # 4, 19) is moot. As the basis for their facial challenge, Plaintiffs assert that "Michigan's emergency manager laws have disproportionately impacted communities composed of African-descended populations." (R. 1, Compl. ¶ 75, Pg ID # 19.) They also assert that "the terms of PA 436 and the suspension of elected local governance" is "overwhelmingly likely to be imposed on low-income communities composed of residence with high service needs"—communities that are "disproportionately composed of African-descended citizens." (R. 1, Compl. ¶ 76, Pg Id # 19.) Thus, although Plaintiffs ask that the entire Act be declared unconstitutional (R. 1, Compl., Prayer for Relief (a), Pg ID # 29), their complaint repeatedly makes clear that the basis for that request is PA 436's emergency manager option, as none of the other options for resolving a financial emergency outlined in PA 436 involve emergency managers (R 1, Compl. ¶ 75, Pg ID # 19) or "suspending of local governance," (R. 1, Comp. ¶ 76, Pg ID j; *see also* **Error! Bookmark not defined.**¶¶ 27, 67-74, 76, Pg ID ## 8, 17-19.)

Plaintiffs no longer have a cognizable interest in the outcome of their facial challenge. Of the 13 local units of government and 5 school districts that have been under emergency management since the Act took effect, only one—Highland

Park Schools—is currently subject to emergency management. As outlined in the Statement of Facts, seven local units formerly subject to some remedial option under the Act have returned to complete self-governance and one has resumed partial local control; one local government and one school district are under the monitoring of receivership transition advisory boards; the City of Detroit is subject to a financial review commission created by separate legislation arising out of the bankruptcy litigation; three are subject to consent agreements; and Detroit Public Schools exist only in a reduced, limited format for the purpose of paying the former school districts debt having been replaced by the Community Schools District. See various Emergency Manager and RTAB Orders at http://www.michigan.gov/treasury/0,4679,7-121-1751_51556_64472---,00.html.

Only the two units currently under the supervision of a receivership transition advisory board could ever directly return to emergency management (assuming their financial condition worsens). *See* § 1564. And that scenario will not reoccur under P.A. 436. Going forward, a new local unit subject to the Act chooses its remedy and, thus, if under emergency management, would have chosen that as its desired option for resolving its financial distress. For example, on July 1, 2013, the financial review team, and ultimately the Governor, determined that the City of Hamtramck was in a financial emergency and an emergency manager was appointed at the City's request. (The emergency manager departed on

December 18, 2014.) Consequently, going forward, only a City that chose the emergency manager option would ever be subject to an RTAB. Sections 1549, 1564.

The only other scenarios that could trigger the involuntary appointment of an emergency manager under the Act are where the local unit selected the consent agreement option and failed to agree on the terms within the specified time frame or has materially breached a consent agreement and that breach remains uncured. § 1548(1). But in those scenarios, the local governing body understands that by failing to actually enter into the agreement or by choosing not to abide by its consent agreement, it might find itself under emergency management.

As to the as-applied challenge, Flint is the only local unit of government at issue because it is the only represented community that can be the subject of the as-applied challenge. (As explained in Argument II below, the Detroit parties have no standing). As to Flint, there still is a narrow, but unlikely, possibility it could return to emergency management— if the Governor (either on his own initiative or upon recommendation of the RTAB) determines that Flint's financial condition has not been corrected "in sustainable fashion" he could appoint a new emergency manager. *See* § 1564. While that is unlikely given the direction the RTAB is

moving,[6] nevertheless, because of that narrow possibility, Defendants concede that the as-applied challenge is not moot but is otherwise subject to dismissal for the reasons argued below.

II. All but the City of Flint residents lack standing to bring an as-applied challenge, and all Plaintiffs lack standing to bring claims against Dillon or Clinton.

This Court should dismiss some individual Plaintiffs for lack of standing. The *only* claimed injury in the complaint is that Defendants "exercis[ed] the authority granted [to them] under P.A. 436 by terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than 56% of the State's population of citizens who are African-descended." (R. 1, Compl. ¶ 100, Page ID # 28.) According to Plaintiffs, the claimed injury exists in "the communities where an EM, consent agreement, or transition advisory board is in place." (R. 1, Compl. ¶ 90, Page ID ## 24-25.) *See Phillips v. Snyder*, 836 F.3d 707, 714 (6th Cir. 2016) (finding standing where "[a]ll but one of the plaintiffs is a resident or an elected official . . . cities and schools [that] were under emergency managers when the plaintiffs filed their amended complaint"), *cert. denied sub nom. Bellant v. Snyder*, 138 S. Ct. 66 (2017).

[6] See RTAB Orders at http://www.michigan.gov/treasury/0,4679,7-121-1751_51556_64472---,00.html.

To invoke the subject matter jurisdiction of an Article III federal court, individual plaintiffs must establish, among other things, an injury-in-fact that is concrete and particularized, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Because declaratory relief is sought, these Plaintiffs also have the heightened burden of showing a substantial likelihood they will be injured in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983). Here, the only Plaintiffs that have standing to bring as-applied claims are those who are residents of the City of Flint.[7]

A. Individual, non-elected Plaintiffs Bellant, Simpson, Herrada, Holley, Rev. Charles Williams, Owens, Coleman, Glass, and Watkins lack standing to bring as-applied claims.

This group of Plaintiffs is comprised of residents of localities[8] that are not currently covered or substantially likely to be covered under the EM, consent agreement, or transition advisory board (TAB) provisions of P.A. 436. They are also not currently elected to any entity[9] that is covered or substantially likely to be

[7] The City of Flint is currently in receivership, under the oversight of a transition advisory board pursuant to P.A. 436.

[8] Again, the City of Detroit is currently under the oversight of the Detroit Financial Review Commission, which was established pursuant to the Michigan Financial Review Commission Act, 2014 P.A. 181, and approved by the bankruptcy court. The County of Wayne exited a Consent Agreement on October 18, 2016. The City of Pontiac exited receivership on July 27, 2017. The City of Benton Harbor exited receivership on July 1, 2016.

[9] Bellant is a current member of the Detroit Library Commission, an entity whose members are appointed and not elected, and he does not allege that the Detroit Library Commission is substantially likely to be subject to the EM provisions of

covered by the EM, consent agreement, or transition advisory board provisions of P.A. 436. The only injury claimed in the complaint is that the enforcement of the contested provisions of P.A. 436 deprived elected officials of their authority. (R. 1, Compl. ¶ 100, Page ID # 28.) There are no claims that any individual Plaintiffs sustained an individualized injury. (*Id.*) Moreover, there are no claims that Defendants' actions have injured them, because, as of the filing of the amended complaint they are situated the same as any resident of a locality not currently covered under the contested provisions of P.A. 436.

Rather, these Plaintiffs raise only general grievances regarding Defendants' policy choices related to fiscally distressed local governments. The Plaintiffs' claims are strikingly similar to those considered and easily rejected by the Supreme Court, the Sixth Circuit, and this Court. *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 441 (2007) ("[S]tanding to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share." (quotation omitted)); *Moore v. Detroit School Reform Bd.*, 293 F.3d 352 (6th Cir. 2000), *cert. denied* 533 U.S. 1226 (2003) (citing *Sailors v. Kent Bd. of Educ.*, 387 U.S. 105, 108

P.A. 436. Simpson and Herrada were former members of the former Detroit Public School Board, which was dissolved upon the formation of the Detroit Public School Community District pursuant to 2016 P.A. 192. Mich. Comp. Laws § 380.12(b)(11).

(1967) ("[C]itizens do not have a fundamental right to elect nonlegislative, administrative officers such as school board members.")); *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 126–28 (6th Cir. 1995) (no standing for resident challenging city charter amendment when she had "suffered no harm, nor will she suffer any greater harm than that of any other voter in the City of Cincinnati"); *Anthony v. Michigan*, 35 F. Supp. 2d 989, 1003 (E.D. Mich. 1999) (no standing for Detroit citizens challenging consolidation of Detroit Recorder's Court because plaintiffs did not "articulate how they [were] *particularly* harmed as a result of the merger") (emphasis in original). Thus, this Court should dismiss Plaintiffs Bellant, Simpson, Herrada, Holley, Williams, Owens, Coleman, Glass, and Watkins for lack of standing.

B. Individual Plaintiffs Lemmons, Kermit Williams, Seats, Henry, and Adams lack standing to bring as-applied claims.

This group of Plaintiffs bring these claims in their individual capacities, not on behalf of their official positions in certain organizations or government units. (R. 1, Compl. ¶¶ 8, 11-14, Page ID ## 4-7.) They too lack standing in the same manner as the Plaintiffs discussed in Section A. The entities[10] to which they are

[10] Lemmons is a member of the Detroit Public School Community District Board, which was established pursuant to 2016 P.A. 192 and Mich. Comp. Laws § 380.12(b)(11); Lemmons does not allege that this Board is substantially likely to be subject to the EM provisions of P.A. 436. Neither Pontiac nor Benton Harbor is currently covered or substantially likely to be covered by the EM provisions of P.A. 436.

elected are not currently covered or substantially likely to be covered by P.A. 436's EM, consent agreement or advisory board provisions. Accordingly, they have met neither the irreducible constitutional requirement of a concrete and particularized injury nor the applicable, heightened standard requiring a substantial likelihood that they, as individuals, will be the unique target of future harm. *See Lujan*, 504 U.S. at 560–61. Because they are not public officials for units of local government that are subject to the contested provisions of P.A. 436, they receive no special status and certainly no greater claim to standing than any of the other named Plaintiffs in Section A. To the extent they may purport to bring this action in their official capacities as members of various local boards, commissions, or councils, the Complaint does not indicate that these local bodies have authorized any of them to act for or on their behalf. Accordingly, this Court should dismiss Plaintiffs Lemmons, Williams, Seats, Henry, and Adams from this suit for lack of standing.

C. No Plaintiff can bring claims against Dillon or Clinton.

One of the elements of standing is that the relief requested can redress the injury alleged. *Lujan*, 504 U.S. at 560-61. Plaintiffs do not have standing to bring a declaratory judgment action against former treasurers Dillon and Clinton because declaring that these former officials must apply the law constitutionally would not redress their past violations or ensure future compliance with federal law. The

appropriate path for such redress (assuming other elements of standing were met) would be to automatically substitute the current treasurer, who is already a party.

III. This Court should decline to exercise its discretion to grant the requested declaratory relief.

Simply because a federal court may have subject matter jurisdiction does not mean that it must be exercised in every instance. *Adrian Energy Assocs v. Mich PSC*, 481 F.3d 414, 421 (6th Cir., 2007). District courts have substantial latitude and a "unique breadth of discretion" in deciding whether to stay or to dismiss an action for declaratory relief. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286-287 (1995) (citing *Brillhart v Excess Ins Co of America*, 316 U.S. 491 (1942)).

The Sixth Circuit has adopted a five-factor test to determine when a district court should decline to exercise jurisdiction to issue declaratory relief: (1) whether the judgment would settle the controversy; (2) whether the declaratory judgment action would serve a useful purpose in clarifying the legal relations at issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for res judicata;" (4) whether the use of a declaratory action would increase the friction between our federal and state courts and improperly encroach on state jurisdiction; and (5) whether there is an alternative remedy that is better or more effective. *Grand Trunk W. R.R. Co. v. Consol. Rail Co.,* 746 F.2d 323, 326 (6th Cir.1984).

Four of the five factors counsel against this Court exercising its jurisdiction here. With respect to the *first factor*, declaratory judgment would not settle the controversy as to the facial challenge—whether the State intended to discriminate against African-Americans when it enacted P.A. 436—for two reasons. First, the movement of local units of Michigan government out of emergency management underscores that P.A. 436 is temporary. As discussed above, only one local entity, a school district, is currently under emergency management. Second, the statute on its face is racially neutral, and thus cannot demonstrate an intent to discriminate. Further, Plaintiffs present no facts establishing an intent to discriminate within the legislative process. The nineteen potential "triggers" for bringing a local entity under the Act, § 1544(1)(a)-(r), are all racially neutral, as are the subsequent multiple levels of financial review provided for in the Act, §§ 1542(u)(i)-(ii); 141.932; 1544(4), (5); 1545(3)(4); 1546(1).

Yet Plaintiffs attempt to link financial condition to racial discrimination, alleging that "a reference to a community in severe financial distress is functionally a racial reference." (R. 1, Compl. ¶¶78, 79, Pg ID # 20.) But as this Court recognized in the earlier action brought by these Plaintiffs, "[I]t is the overall financial condition and prognosis of a local unit of government that will subject it to review and the possible appointment of an emergency manager, Mich. Comp. Laws § 141.1547(1), not its relative wealth or racial makeup." *Phillips v. Snyder*,

2014 WL 6474344 (2014). And as the Sixth Circuit stated in its subsequent opinion, it was the elected officials of those localities who most often—through the exercise of their powers—"led the localities into their difficult situations." *Phillips*, 836 F.3d at 718. Too, the Michigan Civil Rights Commission acknowledged in its amicus brief to the U.S. Supreme Court in this case, "[W]e are not suggesting that P.A. 436] was designed with racial animus . . . ."). Michigan Civil Rights Commission Amicus Curiae Brief at 13)(No. 16-1207).[11]

Plaintiffs allege that state officials would not have adopted P.A. 436 had it been likely to apply equally to majority white communities. (R. 1, Compl., ¶ 77, Pg ID # 20.) Notably, predominantly white communities have been subject to the Act, just as have predominantly black communities. In fact, four of the 14 jurisdictions under emergency management when the first lawsuit was filed were more than 50% white, with two overwhelmingly so: Allen Park (92.9% white and only 2.1% black); Lincoln Park (84.2% white and only 5.9% black); Hamtramck (53.6% white), and Wayne County (52.3% white). See 2010 US Census Figures, https://www.census.gov/2010census/popmap/ipmtext.php?fl=26. (The Village of Three Oaks, which was subject to emergency management under P.A. 436's

[11]https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/16-1207.html (last accessed on March 11, 2018).

predecessor statute, P.A. 72, was also overwhelmingly white (93.2% white and only 1.1% black). *See id.*

Additionally, an overwhelming number of Michigan's African-American population who were affected by the Act, reside in just two of Michigan's cities—Flint and Detroit. And both Detroit and Flint had objective financial difficulties.

As to the as-applied challenge, declaratory judgment is unlikely to settle the controversy because emergency management is unlikely to reoccur. Flint is no longer under emergency management and can be brought back under emergency management only in the unlikely event the Governor determines that Flint's financial condition has not been corrected "in sustainable fashion." See § 1564.

Relatedly, a declaratory judgment that Plaintiffs Dillon and Clinton violated federal law in the past is not an appropriate exercise of federal jurisdiction because, as explained below in Argument IV, it creates an "end run" around the Eleventh Amendment and would not resolve the remaining dispute between the parties.

As to the *second factor*, declaratory judgment would not serve a useful purpose in clarifying the legal relations at issue. The essence of the complaint allegations that the State is using this law to come in and take over majority-minority communities for the purpose of stripping them of their political rights. But again, the criteria of the Act are racially neutral, with the Act looking at the overall financial condition and the prognosis of a local unit of government.

Phillips, 2014 WL 6474344 at 12. "Any community whose financial books are not in order is subject to review under the Act," and "[h]ow a community's resources are managed will be reviewed in making the determination whether to appoint an EM." *Id*. (citing Mich. Comp. Laws Ann. § 141.1547(1)). *Id*. Again, predominantly white communities have been subject to the Act just as have predominantly black communities.[12]

IV. Plaintiffs' claims against the former State Treasurers are barred by the Eleventh Amendment.

As to the facial challenge against Dillon and Clinton, Plaintiffs argue that they "adopted" a discriminatory law. (R. 1, Compl., ¶ 77, Pg ID # 20.) This fails for two reasons. First, it was the Legislature—not these officials—who adopted the law as the law of Michigan. Second, Plaintiffs escape an Eleventh Bar under the *Ex Parte Young* exception *only* if they can show that the violation of federal law is ongoing. *Verizon Md. Inc. v. Public Serv. Comm'n of Md*., 535 U.S. 635, 645 (2002) (citing *Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 296 (1997) (to avoid an Eleventh Amendment bar to suit, the complaint must seek relief that is "properly characterized as prospective.")) Dillon and Clinton are no longer in office, so no alleged violation could be ongoing. Accordingly, the

[12] https://www.census.gov/2010census/popmap/ipmtext.php?fl=26.

allegations against Dillon and Clinton do not satisfy the straightforward Eleventh Amendment inquiry.

For similar reasons and others, the as-applied challenge against former treasurers Dillon and Clinton should also be dismissed. Because these Defendants are no longer employed by the State, they no longer have any authority to implement P.A. 436. *Will v Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989), did not abrogate the doctrine of *Ex Parte Young*. *Gean v. Hattaway*, 330 F.3d 758, 766 (6th Cir. 2003) (citing *Will,* 491 U.S. at 71 n. 10). But the suit must properly fall under the exception. S*ee Banas v. Dempse*y, 742 F.2d 277, 286 (6th Cir. 1984) (explaining that the fiction of *Ex Parte Young* that creates an exception to the Eleventh Amendment bar also limits the remedies that can be awarded). And the *Young* exception applies *only* to prospective declaratory or injunctive relief against state officials who *continue* to violate federal law, *Green v. Mansour*, 474 U.S. 64, 68 (1985) (emphasis added); see also *Verizon Md. Inc. v. Public Serv. Comm'n of Md*., 535 U.S. 635, 645 (2002) (citing *Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 296 (1997) (in order to avoid an Eleventh Amendment bar to suit, the complaint must seek relief that is "properly characterized as prospective."); *Doe v. DeWinde*, 99 F. Supp. 3d 809 (S.D. Ohio, 2015) (citing *Ex Parte Young,* 209 U.S.123, 155-156 (1908) ("[T]he state officer being sued must

have an actual connection to the allegedly unconstitutional statute's enforcement and be 'about to commence proceedings; under the challenged statute.").

Applying this framework, Plaintiffs' claims for declaratory relief against Dillon and Clinton would have to be prospective in nature in order not to be barred by Eleventh Amendment. But the allegation that at some point while they were in office they applied PA 436 with a discriminatory motive is *not and cannot be* an ongoing violation of federal law since there is no realistic possibility that these former state officials will take any ongoing actions against Plaintiffs' interests. And a declaration that while they were in office they applied the law to intentionally target minority communities, is backward-looking, not prospective, relief. Thus, the official-capacity, as-applied claims against Dillon and Clinton do not fall within *the Ex Parte Young* exception.

The only potential alternative to keeping those claims alive is that the current Treasurer would be automatically substituted as to the official-capacity claims. The whole point of the automatic substitution provision in Fed. R. App. P. 25(d)(1) is to substitute the official who *would be* applying P.A. 436. Here, that individual—Nick Khouri—has already been named as a defendant. (Alternatively, the official-capacity, as-applied challenges against them could be dismissed as being duplicative of the claims against Khouri).

V. Plaintiffs' equal-protection challenge (facial and as-applied) fails.

A. Plaintiffs' facial challenge is subject to a heightened burden of proof and fails under the applicable five-factor test.

Plaintiffs assert that P.A. 436 "is facially in violation of the equal protection clause because the legislation targets communities that, because of their economic condition are believed to be, and are in fact populated by African-descended residents." (R. 1, Compl. ¶ 79, Pg ID # 20.) But Plaintiffs are unable to meet their burden of proof here because the Sixth Circuit has already concluded that P.A. 436 is "facially entirely neutral with respect to race." *Phillips,* 836 F.3d at 722.

To succeed in a facial challenge, Plaintiffs must establish that no set of circumstances exist under which the statute would be valid. *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193-94 (6th Cir. 1997). The "challenge must fail where the statute has a plainly legitimate sweep." *Wash. State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (quotation omitted). Under this heightened standard, Plaintiffs' facial challenge must fail.

At the outset, whether a community is subject to financial review and possible appointment of an emergency manager is determined by objective and neutral factors—not impermissible, race-based ones. These objective and neutral criteria focus on the overall financial condition and prognosis of a local unit of government that subjects it to review and make no mention of race. §§ 1544(1), 1545(1), 1546(1), 1547(1). And the Sixth Circuit has already upheld P.A. 436 as a

legitimate tool to address and resolve "the financial situation of a distressed locality…." *Phillips*, 836 F.3d at 718. The Court's reasoning bears repeating:

> An entity in a distressed financial state can cause harm to its citizenry and the state in general. Improving the financial situation of a distressed locality undoubtedly is a legitimate legislative purpose, and PA 436, while perhaps not the perfect remedy, is one that is rationally related to that purpose. The emergency manager's powers may be vast, but so are the problems in financially distressed localities, and the elected officials of those localities are most often the ones who—through the exercise of their powers—led the localities into their difficult situations.

Id.

Plaintiffs assert that P.A. 436 has a discriminatory purpose and violates equal protection guarantees because this law "reduced residents of predominantly black municipalities to powerless political placeholders for those who maintained for their benefit the fiction of local democracy in places where emergency managers are in charge." (R. 1, Compl. ¶ 87, Pg ID # 23). But the Sixth Circuit has already rejected this theory. *Phillips*, 836 F.3d at 718. ("Improving the financial situation of a distressed locality undoubtedly is a legitimate legislative purpose, and P.A. 436, while perhaps not the perfect remedy, is one that is rationally related to that purpose.")

By way of background, the U.S. Supreme Court and the Sixth Circuit have identified several factors to determine whether the Act was motivated by a discriminatory purpose or is unexplainable on grounds other than an intent to

discriminate against predominantly black municipalities: (1) the impact on particular racial groups, (2) the historical background of the challenged decision, especially if it reveals numerous actions being taken for discriminatory purposes, (3) the sequence of events that preceded the action, (4) procedural or substantive departures from the government's normal procedural process, and (5) the legislative or administrative history. *Village of Arlington Heights*, 429 U.S. at 266-68; *Moore v. Detroit Sch. Reform Bd.*, 293 F.3d 352, 369-70 (6th Cir. 2002) (addressing these factors in a challenge against Michigan School Reform Act and finding no equal protection violation). Here, none of the allegations reveal a racially discriminatory purpose when P.A. 436 was duly enacted.

1. The Act does not exclusively impact residents of predominantly black communities.

Because P.A. 436 impacts financially troubled communities, all citizens residing in those Michigan communities are impacted by the fiscal emergency. While an overwhelming number of Michigan's African-American population who were affected by the Act reside in just two of Michigan's cities—Flint and Detroit—both Detroit and Flint had objective financial difficulties. And predominantly white communities have also been subject to the Act, just as have predominantly black communities. In fact, four of the 14 jurisdictions under emergency management when this lawsuit was filed were more than 50% white, with two overwhelmingly so: Allen Park (92.9% white and only 2.1% black);

Lincoln Park (84.2% white and only 5.9% black); Hamtramck (53.6% white), and Wayne County (52.3% white). See 2010 US Census Figures, https://www.census.gov/2010census/popmap/ipmtext.php?fl=26. (The Village of Three Oaks, which was subject to emergency management under P.A. 436's predecessor statute, P.A. 72, was also overwhelmingly white (93.2% white and only 1.1% black). *See id.*

Accordingly, P.A. 436 does not exclusively impact residents of predominantly black communities.

2. The Act's historical background does not reveal numerous discriminatory acts.

This factor does not advance Plaintiffs' argument. The historical background behind the enactment of P.A. 436 is chronicled in the Statement of Facts section of this brief.

In December 2012, the Michigan Legislature enacted P.A. 436 to address the scope of problems presented by the growing fiscal instability among the State's local governments—problems that P.A. 72 was not effectively resolving. As detailed above, these problems occurred in both predominantly black and white communities. The Legislature reasonably determined that local fiscal stability is necessary for the State's health, welfare, and safety, and thus, P.A. 436 was necessary to protect those interests as well as the credit ratings of the State and its political subdivisions. Section 141.1543.

3. The event leading to passage of P.A. 436 and its legislative history do not reveal that it was motivated by a discriminatory purpose.

This factor also does not advance Plaintiffs' interests. The Sixth Circuit accurately described the passage of P.A. 436 as a state law "that allows for the temporary appointment of an emergency manager to right the ship" "when the finances of a Michigan municipality or public system are in jeopardy." *Phillips*, 836 F.3d at 710. And the legislative history demonstrates clearly that addressing problems presented by the growing fiscal instability among the State's local governments were the main concerns of the Legislature:

- First, according to the enacting clause, P.A. 436 is intended to "safeguard and assure the financial accountability of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to prescribe remedial measures to address a financial emergency within a local unit of government or school district; (Exhibit 1, Enrolled Senate Bill No. 865).

- Second, the legislative history highlights the four additional options included in P.A. 436 to enhance the choices available to distressed communities. These options include offering a consent agreement, emergency manager, neutral evaluation (a form of alternative dispute resolution or mediation), or Chapter 9 federal bankruptcy. § 1547(1)(a)–(d)— (Exhibit 2, Legislative Analysis, House Fiscal Agency, dated December 10, 2012 at p.1).

- Third, the legislative history refers to the argument in favor of supporting PA 436, which is to "provide a soft landing" for a local unit that has been in financial trouble. (Exhibit 3, Legislative Analysis, Senate Fiscal Agency, dated January 6, 2012 at p. 2).

4. The Legislature did not depart from its normal procedural or substantive procedures in enacting P.A. 297.

Finally, this factor does not weigh in Plaintiffs' favor. Plaintiffs' complaint uses phrases "lame duck session" and "incensed legislators" to describe events surrounding the passage of P.A. 436—after P.A. 4 was the subject of a successful referendum measure. (R. 1, Compl. ¶¶ 67, 68, Pg ID 17). But the Sixth Circuit already rejected Plaintiffs' theory. *See Phillips*, 836 F.3d at 721. ("Michigan would have been allowed to pass P.A. 436 even if it were identical to P.A. 4. See *Michigan Farm Bureau v. Hare*, 151 N.W.2d 797, 802 (Mich. 1967).")

Furthermore, whether a legislative measure is passed during a "lame duck session" cannot be viewed as a procedural departure from the Legislature's normal procedural process.) In fact, it is a normal part of the democratic process at work. At most, it can be viewed as a complaint about Plaintiffs' general dissatisfaction with this aspect of the democratic process. *See Moore*, 293 F.3d at 370 (complaints about the haste in which legislature "might be a legitimate and valid critique of its behavior, but it does not lead to an inference of [] discrimination.")

5. P.A. 436's legislative or administrative history does not establish a discriminatory intent.

The legislative history is already discussed above and does not support Plaintiffs' claim that P.A. 436 was adopted with a discriminatory purpose.

Accordingly, like the other factors, Plaintiffs fail to demonstrate that the Legislature had a racially discriminatory intent when it passed P.A. 436.

a. Plaintiffs' as-applied challenge fails.

Importantly, the Sixth Circuit already rejected Plaintiffs' disparate impact claim. In their Sixth Circuit brief, Plaintiffs "challenge[d] the annihilation of any and all governing authority of elected leaders in predominantly African-American communities." (Pls.' Br., p 64 R. 29.) In their newly filed complaint, they allege that Defendants caused injury by "terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than 56% of the State's population of citizens who are African-descended." (R. 1, Compl, ¶ 100, Pg ID # 28.) In other words, both here and in the Sixth Circuit, Plaintiffs complained about the effects of P.A. 436 on "predominantly African-American communities."

But the Sixth Circuit has already concluded that the State's remedy for financially endangered communities is far removed from being a 'badge of the extraordinary evil of slavery." *Phillips*, 293 F.3d at 722. ("The state's remedy for financially endangered communities—passed by state-elected bodies for which African-Americans have a constitutionally protected equal right to vote, and facially entirely neutral with respect to race—are far removed from being a "badge" of the extraordinary evil of slavery."). In the previous appeal in this case,

the Sixth Circuit rejected the fundamental premise of Plaintiffs' complaint—that P.A. 436's remedies, when applied to a financially endangered community, are racially discriminatory.

The Sixth Circuit's result is also consistent with recent case law governing disparate impact claims. *Texas Dep't of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* sets forth the standard to be applied: "[d]isparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies. 135 S. Ct. 2507, 2512 (2015) (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)). As the Sixth Circuit recognized, P.A. 436 is a valid governmental policy and should not be displaced. *Phillips*, 293 F.3d at 718 ("Improving the financial situation of a distressed locality undoubtedly is a legitimate legislative purpose, and PA 436, while perhaps not the perfect remedy, is one that is rationally related to that purpose….).

In sum, Plaintiffs' as-applied challenge also fails.

CONCLUSION AND RELIEF REQUESTED

Defendants ask this Court to grant this motion and enter its order dismissing this complaint for the reasons set forth in their motion and this supporting brief.

Respectfully submitted,

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Dated: March 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2018, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such. I also mailed the foregoing paper via US Mail to all non-ECF participants.

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EXHIBIT 1

Act No. 436
Public Acts of 2012
Approved by the Governor
December 26, 2012
Filed with the Secretary of State
December 27, 2012
EFFECTIVE DATE: March 28, 2013

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senator Pavlov

ENROLLED SENATE BILL No. 865

AN ACT to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to provide criteria to be used in determining the financial condition of local units of government and school districts; to authorize a declaration of the existence of a financial emergency within a local unit of government or school district; to prescribe remedial measures to address a financial emergency within a local unit of government or school district; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager for a local unit of government or school district; to provide for the modification or termination of contracts under certain circumstances; to provide for the termination of a financial emergency within a local unit of government or school district; to provide a process by which a local unit of government or school district may file for bankruptcy; to prescribe the powers and duties of certain state agencies and officials and officials within local units of government and school districts; to provide for appropriations; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "local financial stability and choice act".

Sec. 2. As used in this act:

(a) "Chapter 9" means chapter 9 of title 11 of the United States Code, 11 USC 901 to 946.

(b) "Chief administrative officer" means any of the following:

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

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

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

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

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

(*vi*) The superintendent of a school district.

(c) "Creditor" means either of the following:

(*i*) An entity that has a noncontingent claim against a local government that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least $5,000,000.00 or comprises more than 5% of the local government's debt or obligations, whichever is less.

(*ii*) An entity that would have a noncontingent claim against the local government upon the rejection of an executory contract or unexpired lease in a chapter 9 case and whose claim would represent at least $5,000,000.00 or would comprise more than 5% of the local government's debt or obligations, whichever is less.

(d) "Debtor" means a local government that is authorized to proceed under chapter 9 by this act and that meets the requirements of chapter 9.

(e) "Emergency manager" means an emergency manager appointed under section 9. An emergency manager includes an emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72 who was acting in that capacity on the effective date of this act.

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

(g) "Financial and operating plan" means a written financial and operating plan for a local government under section 11, including an educational plan for a school district.

(h) "Good faith" means participation by an interested party or a local government representative in the neutral evaluation process with the intent to negotiate a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant participants through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the local government's debt.

(i) "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that under its collective bargaining agreements has standing to initiate contract negotiations with the local government, or a representative selected by an association of retired employees of the public entity who receive income or benefits from the public entity. A local government may invite holders of contingent claims to participate as interested parties in the neutral evaluation process if the local government determines that the contingency is likely to occur and the claim may represent at least $5,000,000.00 or comprise more than 5% of the local government's debt or obligations, whichever is less.

(j) "Local emergency financial assistance loan board" means the local emergency financial assistance loan board created under section 2 of the emergency municipal loan act, 1980 PA 243, MCL 141.932.

(k) "Local government" means a municipal government or a school district.

(*l*) "Local government representative" means the person or persons designated by the governing body of the local government with authority to make recommendations and to attend the neutral evaluation process on behalf of the governing body of the local government.

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

(n) "Municipal government" means a city, a village, a township, a charter township, a county, a department of county government if the county has an elected county executive under 1966 PA 293, MCL 45.501 to 45.521, an authority established by law, or a public utility owned by a city, village, township, or county.

(o) "Neutral evaluation process" means a form of alternative dispute resolution or mediation between a local government and interested parties as provided for in section 25.

(p) "Neutral evaluator" means an impartial, unbiased person or entity, commonly known as a mediator, who assists local governments and interested parties in reaching their own settlement of issues under this act, who is not aligned with any party, and who has no authoritative decision-making power.

(q) "Receivership" means the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include chapter 9 or any provision under federal bankruptcy law.

(r) "Review team" means a review team appointed under section 4.

(s) "School board" means the governing body of a school district.

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

(u) "State financial authority" means the following:

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

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

(v) "Strong mayor" means a mayor who has been granted veto power for any purpose under the charter of that local government.

(w) "Strong mayor approval" means approval of a resolution under 1 of the following conditions:

(*i*) The strong mayor approves the resolution.

(*ii*) The resolution is approved by the governing body with sufficient votes to override a veto by the strong mayor.

(*iii*) The strong mayor vetoes the resolution and the governing body overrides the veto.

Sec. 3. The legislature finds and declares all of the following:

(a) 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.

(b) 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 financial emergency so as to remedy the financial 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.

(c) That the fiscal stability of local governments is necessary to the health, safety, and welfare of the citizens of this state and it is a valid public purpose for this state to assist a local government in a condition of financial emergency by providing for procedures of alternative dispute resolution between a local government and its creditors to resolve disputes, to determine criteria for establishing the existence of a financial emergency, and to set forth the conditions for a local government to exercise powers under federal bankruptcy law.

(d) That the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Sec. 4. (1) The state financial authority may conduct a preliminary review to determine the existence of probable financial stress within a local government 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. 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.

(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) The 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.

(*l*) 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 the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(m) The 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.

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

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

(p) The 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.

(q) The 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.

(r) The 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.

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

(2) Before commencing the preliminary review under subsection (1), the state financial authority shall provide the local government specific written notification that it intends to conduct a preliminary review. 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. The state financial authority shall provide an interim report of its findings to the local government within 20 days following the commencement of the preliminary review. In addition, a copy of the interim report shall be provided to each state senator and state representative who represents that local government. The local government may provide comments to the state financial authority concerning the interim report within 5 days after the interim report is provided to the local government. The state financial authority shall prepare and provide a final report detailing its preliminary review to the local emergency financial assistance loan board. In addition, a copy of the final report shall be provided to each state senator and state representative who represents that local government. The final report shall be posted on the department of treasury's website within 7 days after the final report is provided to the local emergency financial assistance loan board. The preliminary review and final report by the state financial authority shall be completed within 30 days following commencement of the preliminary review. Within 20 days after receiving the final report from the state financial authority, the local emergency financial assistance loan board shall determine if probable financial stress exists for the local government.

(3) If a finding of probable financial stress is made for a municipal government by the local emergency financial assistance loan board under subsection (2), the governor shall appoint a review team for that municipal government consisting of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a municipal financial management review.

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

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

(6) A review team appointed under former 1988 PA 101 or former 1990 PA 72 and serving immediately prior to the effective date of this act shall continue under this act to fulfill its powers and duties. All proceedings and actions taken

by the governor, the state treasurer, the superintendent of public instruction, the local emergency financial assistance loan board, or a review team under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 that was in effect immediately prior to the effective date of this act is ratified and is binding and enforceable under this act.

Sec. 5. (1) In conducting its review, the review team may do either or both of the following:

(a) Examine the books and records of the local government.

(b) Utilize the services of other state agencies and employees.

(2) The review team shall meet with the local government as part of its review. At this meeting, the review team shall receive, discuss, and consider information provided by the local government concerning the financial condition of the local government. In addition, the review team shall hold at least 1 public information meeting in the jurisdiction of the local government at which the public may provide comment.

(3) The review team shall submit a written report of its findings to the governor within 60 days following its appointment or earlier if required by the governor. Upon request, the governor may grant one 30-day extension of this 60-day time limit. A copy of the report shall be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, the senate majority leader, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is submitted to the governor. The report shall include the existence, or an indication of the likely occurrence, of any of the following:

(a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.

(b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:

(*i*) Taxes withheld on the income of employees.

(*ii*) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.

(*iii*) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

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

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

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

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

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

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

(j) Existence of a structural operating deficit.

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

(*l*) The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.

(m) Any other facts and circumstances indicative of local government financial emergency.

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

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

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

(6) For purposes of this section:

(a) A financial emergency does not exist within a local government if the report under subsection (3) concludes that none of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

(b) A financial emergency exists within a local government if any of the following occur:

(*i*) The report under subsection (3) concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(*ii*) The local government has failed to provide timely and accurate information enabling the review team to complete its report under subsection (3).

(*iii*) The local government has failed 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.

(*iv*) The chief administrative officer of the local government concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare, and the chief administrative officer recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.

Sec. 6. (1) Within 10 days after receipt of the report under section 5, the governor shall make 1 of the following determinations:

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

(2) Before making a determination under subsection (1), the governor, in his or her sole discretion, may provide officials of the local government an opportunity to submit a written statement concerning their agreement or disagreement with the findings and conclusion of the review team report under section 5. If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the factual findings, and notice that the chief administrative officer or the governing body of the local government has 7 days after the date of the notification to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor, in his or her sole discretion based upon the record, shall either confirm or revoke, in writing, the determination of the existence of a financial emergency. If confirmed, the governor shall provide a written report to the governing body and chief administrative officer of the local government of the findings of fact of the continuing or newly developed conditions or events providing a basis for the confirmation of a financial emergency and a concise and explicit statement of the underlying facts supporting these factual findings. In addition, a copy of the report shall be provided to each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is provided to the governing body and chief executive officer of the local government.

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

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

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

Sec. 7. (1) Notwithstanding section 6(3), upon the confirmation of a finding of a financial emergency under section 6, the governing body of the local government shall, by resolution within 7 days after the confirmation of a finding of a financial emergency, select 1 of the following local government options to address the financial emergency:

(a) The consent agreement option pursuant to section 8.

(b) The emergency manager option pursuant to section 9.

(c) The neutral evaluation process option pursuant to section 25.

(d) The chapter 9 bankruptcy option pursuant to section 26.

(2) Subject to subsection (3), if the local government has a strong mayor, the resolution under subsection (1) requires strong mayor approval. If the local government is a school district, the resolution shall be approved by the school board. The resolution shall be filed with the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district.

(3) If the governing body of the local government does not pass a resolution as required under subsection (1), the local government shall proceed under the neutral evaluation process pursuant to section 25.

(4) Subject to section 9(6)(c) and (11), unless authorized by the governor, a local government shall not utilize 1 of the local options listed in subsection (1)(a) to (d) more than 1 time.

Sec. 8. (1) The chief administrative officer of a local government may negotiate and sign a consent agreement with the state treasurer as provided for in this act. If the local government is a school district and the consent agreement contains an educational plan, the consent agreement shall also be signed by the superintendent of public instruction. The consent agreement shall provide for remedial measures considered necessary to address the financial emergency within the local government and provide for the financial stability of the local government. The consent agreement may utilize state financial management and technical assistance as necessary in order to alleviate the financial emergency. The consent agreement shall also provide for periodic financial status reports to the state treasurer, with a copy of each report to each state senator and state representative who represents that local government. The consent agreement may provide for a board appointed by the governor to monitor the local government's compliance with the consent agreement. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state treasurer. Nothing in the consent agreement shall limit the ability of the state treasurer in his or her sole discretion to declare a material breach of the consent agreement. A consent agreement shall provide that in the event of a material uncured breach of the consent agreement, the governor may place the local government in receivership or in the neutral evaluation process. If within 30 days after a local government selects the consent agreement option under section 7(1)(a) or sooner in the discretion of the state treasurer, a consent agreement cannot be agreed upon, the state treasurer shall require the local government to proceed under 1 of the other local options provided for in section 7.

(2) A consent agreement as provided in subsection (1) may require a continuing operations plan or a recovery plan if required by the state treasurer.

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

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

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

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

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

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

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

(f) A provision for submitting quarterly compliance reports to the state treasurer demonstrating compliance with the continuing operations plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(5) If a continuing operations plan is approved for a municipal government, the municipal government shall amend the budget and general appropriations ordinance adopted by the municipal government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. If a continuing operations plan is approved for a school district, the school district shall amend the budget adopted by the school district under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. The chief

administrative officer, the chief financial officer, the governing body, and other officials of the local government shall take and direct such actions as may be necessary or advisable to maintain the local government's operations in compliance with the continuing operations plan.

(6) If the state treasurer requires that a consent agreement include a recovery plan, the state treasurer, with input from the local government, shall develop and adopt a recovery plan. If a recovery plan is developed and adopted for the local government, the local government shall file annual updates to its recovery plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the recovery plan remains in effect.

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

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

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

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

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

(e) An evaluation of costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.

(f) Procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash. Procedures for cash control and cash management may include the designation of appropriate fiduciaries.

(g) A provision for submitting quarterly compliance reports to the state treasurer and the chief administrative officer of the local government that demonstrate compliance with the recovery plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(8) The recovery plan may include the appointment of a local auditor or local inspector, or both, in accordance with section 12(1)(p).

(9) If a recovery plan is developed and adopted by the state treasurer for a local government, the recovery plan shall supersede the budget and general appropriations ordinance adopted by the local government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general appropriations ordinance is considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency between the recovery plan and the budget or general appropriations ordinance, the recovery plan shall control. The chief administrative officer, the chief financial officer, the governing body, and other officers of the local government shall take and direct actions as may be necessary or advisable to bring and maintain the local government's operations in compliance with the recovery plan.

(10) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers as otherwise provided in this act for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 12(1)(k).

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

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

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

Sec. 9. (1) The governor may appoint an emergency manager to address a financial emergency within that local government as provided for in this act.

(2) Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in

receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

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

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

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

(c) The emergency manager shall be an individual.

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

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

(f) In addition to the salary provided to an emergency manager in a contract approved by the state treasurer under subdivision (e), this state may receive and distribute private funds to an emergency manager. As used in this subdivision, "private funds" means any money the state receives for the purpose of allocating additional salary to an emergency manager. Private funds distributed under this subdivision are subject to section 1 of 1901 PA 145, MCL 21.161, and section 17 of article IX of the state constitution of 1963.

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

(5) The emergency manager shall submit quarterly reports to the state treasurer with respect to the financial condition of the local government in receivership, with a copy to the superintendent of public instruction if the local government is a school district and a copy to each state senator and state representative who represents that local government. In addition, each quarterly report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

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

(a) Until removed by the governor or the legislature as provided in subsection (3)(d). If an emergency manager is removed, the governor shall within 30 days of the removal appoint a new emergency manager.

(b) Until the financial emergency is rectified.

(c) If the emergency manager has served for at least 18 months after his or her appointment under this act, the emergency manager may, by resolution, be removed by a 2/3 vote of the governing body of the local government. If the local government has a strong mayor, the resolution requires strong mayor approval before the emergency manager may be removed. Notwithstanding section 7(4), if the emergency manager is removed under this subsection and the local government has not previously breached a consent agreement under this act, the local government may within 10 days negotiate a consent agreement with the state treasurer. If a consent agreement is not agreed upon within 10 days, the local government shall proceed with the neutral evaluation process pursuant to section 25.

(7) A local government shall be removed from receivership when the financial conditions are corrected in a sustainable fashion as provided in this act. In addition, the local government may be removed from receivership if an emergency manager is removed under subsection (6)(c) and the governing body of the local government by 2/3 vote approves a resolution for the local government to be removed from receivership. If the local government has a strong mayor, the resolution requires strong mayor approval before the local government is removed from receivership. A local government that is removed from receivership while a financial emergency continues to exist as determined by the governor shall proceed under the neutral evaluation process pursuant to section 25.

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

(9) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, an emergency manager is subject to all of the following:

(a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.

(b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.

(c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

(10) An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act and shall

continue under this act to fulfill his or her powers and duties. Notwithstanding any other provision of this act, the governor may appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager under this act.

(11) Notwithstanding section 7(4) and subject to the requirements of this section, if an emergency manager has served for less than 18 months after his or her appointment under this act, the governing body of the local government may pass a resolution petitioning the governor to remove the emergency manager as provided in this section and allow the local government to proceed under the neutral evaluation process as provided in section 25. If the local government has a strong mayor, the resolution requires strong mayor approval. If the governor accepts the resolution, notwithstanding section 7(4), the local government shall proceed under the neutral evaluation process as provided in section 25.

Sec. 10. (1) An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan, including an educational plan for a school district, or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under this section is binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom it is issued. Local elected and appointed officials and employees, agents, and contractors of the local government shall take and direct those actions that are necessary and advisable to maintain compliance with the financial and operating plan.

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

Sec. 11. (1) An emergency manager shall develop and may amend a written financial and operating plan for the local government. The plan shall have the objectives of assuring that the local government is able to provide or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government. The financial and operating plan shall provide for all of the following:

(a) Conducting all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate.

(b) The payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government, contract obligations in anticipation of which bonds, notes, and municipal securities are issued, and all other uncontested legal obligations.

(c) The modification, rejection, termination, and renegotiation of contracts pursuant to section 12.

(d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates.

(e) For school districts, an educational plan.

(f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

(2) Within 45 days after the emergency manager's appointment, the emergency manager shall submit the financial and operating plan, and an educational plan if the local government is a school district, to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district, and to the chief administrative officer and governing body of the local government. The plan shall be regularly reexamined by the emergency manager and the state treasurer and may be modified from time to time by the emergency manager with notice to the state treasurer. If the emergency manager reduces his or her revenue estimates, the emergency manager shall modify the plan to conform to the revised revenue estimates.

(3) The financial and operating plan shall be in a form as provided by the state treasurer and shall contain that information for each year during which year the plan is in effect that the emergency manager, in consultation with the state financial authority, specifies. The financial and operating plan may serve as a deficit elimination plan otherwise required by law if so approved by the state financial authority.

(4) The emergency manager, within 30 days of submitting the financial and operating plan to the state financial authority, shall conduct a public informational meeting on the plan and any modifications to the plan. This subsection does not mean that the emergency manager must receive public approval before he or she implements the plan or any modification of the plan.

(5) For a local government in receivership immediately prior to the effective date of this act, a financial and operating plan for that local government adopted under former 2011 PA 4 or a financial plan for that local government

adopted under former 1990 PA 72 shall be effective and enforceable as a financial and operating plan for the local government under this act until modified or rescinded under this act.

Sec. 12. (1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that 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) Subject to section 19, 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, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual report of the local inspector shall be posted on the local government's website within 7 days after the report is submitted. 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, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual report of the local auditor shall be posted on the local government's website within 7 days after the report is submitted.

(q) An emergency manager may initiate court proceedings in the Michigan court of claims or in the circuit court of the county in which the local government is located 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 or his or her orders.

(r) Subject to section 19, 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.

(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.

(u) Subject to section 19, 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. The disincorporation or dissolution of the local government is subject to a vote of the electors of that local government if required by law.

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

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

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

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

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

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

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

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

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

(*ix*) The state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

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

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

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

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

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

Sec. 13. Upon appointment of an emergency manager and during the pendency of the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government shall be eliminated. This section does not authorize the impairment of vested pension benefits. If an emergency manager has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and members of the governing body of a local government before the effective date of this act, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of this act. The emergency manager may restore, in whole or in part, any of the salary, wages, other compensation, or benefits of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the emergency manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.

Sec. 14. In addition to the actions otherwise authorized in this act, an emergency manager for a school district may take 1 or more of the following additional actions with respect to a school district that is in receivership:

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

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

(c) Seek approval from the superintendent of public instruction for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.

(d) Subject to section 19, sell, assign, transfer, or otherwise use the assets of the school district to meet past or current obligations or assure the fiscal accountability of the school district, provided the use, assignment, or transfer of assets for this purpose does not impair the education of the pupils of the school district. The power under this subdivision includes the closing of schools or other school buildings in the school district.

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

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

(g) With the approval of the state treasurer, employ or contract for, at the expense of the school district, school administrators considered necessary to implement this act.

Sec. 15. (1) Unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan, the emergency manager shall not sell an asset of the local government valued at more than $50,000.00 without the state treasurer's approval.

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

Sec. 16. An emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.

Sec. 17. Beginning 6 months after an emergency manager's appointment, and every 3 months thereafter, an emergency manager shall submit to the governor, the state treasurer, the senate majority leader, the speaker of the house of representatives, each state senator and state representative who represents the local government that is in receivership, and the clerk of the local government that is in receivership, and shall post on the internet on the website of the local government, a report that contains all of the following:

(a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of $5,000.00 or more and the source of the funds.

(b) A list of each contract that the emergency manager awarded or approved with a cumulative value of $5,000.00 or more, including the purpose of the contract and the identity of the contractor.

(c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of $5,000.00 or more and the proposed use of the funds.

(d) A description of any new position created or any vacancy in a position filled by the appointing authority.

(e) A description of any position that has been eliminated or from which an employee has been laid off.

(f) A copy of the contract with the emergency manager as provided in section 9(3)(e).

(g) The salary and benefits of the emergency manager.

(h) The financial and operating plan.

Sec. 18. (1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States

Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

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

(a) A determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.

(b) A determination by the emergency manager that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.

(3) The emergency manager shall provide a copy of the recommendation as provided under subsection (1) to the superintendent of public instruction if the local government is a school district.

Sec. 19. (1) Except as otherwise provided in this subsection, before an emergency manager executes an action under section 12(1)(k), (r), or (u) or section 14(d), he or she shall submit his or her proposed action to the governing body of the local government. The governing body of the local government shall have 10 days from the date of submission to approve or disapprove the action proposed by the emergency manager. If the governing body of the local government does not act within 10 days, the proposed action is considered approved by the governing body of the local government and the emergency manager may then execute the proposed action. For an action under section 12(1)(r) or section 14(d), this subsection only applies if the asset, liability, function, or responsibility involves an amount of $50,000.00 or more.

(2) If the governing body of the local government disapproves the proposed action within 10 days, the governing body of the local government shall, within 7 days of its disapproval of the action proposed by the emergency manager, submit to the local emergency financial assistance loan board an alternative proposal that would yield substantially the same financial result as the action proposed by the emergency manager. The local emergency financial assistance loan board shall have 30 days to review both the alternative proposal submitted by the governing body of the local government and the action proposed by the emergency manager and to approve either the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager. The local emergency financial assistance loan board shall approve the proposal that best serves the interest of the public in that local government. The emergency manager shall implement the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager, whichever is approved by the local emergency financial assistance loan board.

Sec. 20. (1) An emergency manager is immune from liability as provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person employed by an emergency manager is immune from liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

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

(a) The validity of this act.

(b) The authority of a state official or officer acting under this act.

(c) The authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under this act.

(3) With respect to any aspect of a receivership under this act, the costs incurred by the attorney general in carrying out the responsibilities of subsection (2) for attorneys, experts, court filing fees, and other reasonable and necessary expenses shall be at the expense of the local government that is subject to that receivership and shall be reimbursed to the attorney general by the local government. The failure of a municipal government that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the municipal government from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the school district from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

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

appointee, or contractor of the emergency manager taken in accordance with this act during the emergency manager's term of service.

(5) If, after the date that the service of an emergency manager is concluded, the emergency manager or any employee, agent, appointee, or contractor of the emergency manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of that emergency manager, and not covered by a procured worker's compensation, general liability, professional liability, or motor vehicle insurance, litigation expenses of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager, including attorney fees for civil and criminal proceedings and preparation for reasonably anticipated proceedings, and payments made in settlement of civil proceedings both filed and anticipated, shall be paid out of the funds of the local government that is or was subject to the receivership administered by that emergency manager, provided that the litigation expenses are approved by the state treasurer and that the state treasurer determines that the conduct resulting in actual or threatened legal proceedings that is the basis for the payment is based upon both of the following:

(a) The scope of authority of the person or entity seeking the payment.

(b) The conduct occurred on behalf of a local government while it was in receivership under this act.

(6) The failure of a municipal government to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

Sec. 21. (1) Before the termination of receivership and the completion of the emergency manager's term, or if a transition advisory board is appointed under section 23, then before the transition advisory board is appointed, the emergency manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership.

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

Sec. 22. (1) If an emergency manager determines that the financial emergency that he or she was appointed to manage has been rectified, the emergency manager shall inform the governor and the state treasurer.

(2) If the governor disagrees with the emergency manager's determination that the financial emergency has been rectified, the governor shall inform the emergency manager and the term of the emergency manager shall continue or the governor shall appoint a new emergency manager.

(3) Subject to subsection (4), if the governor agrees that the financial emergency has been rectified, the emergency manager has adopted a 2-year budget as required under section 21, and the financial conditions of the local government have been corrected in a sustainable fashion as required under section 9(7), the governor may do either of the following:

(a) Remove the local government from receivership.

(b) Appoint a receivership transition advisory board as provided in section 23.

(4) Before removing a local government from receivership, the governor may impose 1 or more of the following conditions on the local government:

(a) The implementation of financial best practices within the local government.

(b) The adoption of a model charter or model charter provisions.

(c) Pursue financial or managerial training to ensure that official responsibilities are properly discharged.

Sec. 23. (1) Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated.

(2) A receivership transition advisory board shall consist of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, and, if the local government is a school district, the superintendent of public instruction or his or her designee. The governor also may appoint to a receivership transition advisory board 1 or more other individuals with relevant professional experience, including 1 or more residents of the local government.

(3) A receivership transition advisory board serves at the pleasure of the governor.

(4) At its first meeting, a receivership transition advisory board shall adopt rules of procedure to govern its conduct, meetings, and periodic reporting to the governor. Procedural rules required by this section are not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A receivership transition advisory board may do all of the following:

(a) Require the local government to annually convene a consensus revenue estimating conference for the purpose of arriving at a consensus estimate of revenues to be available for the ensuing fiscal year of the local government.

(b) Require the local government to provide monthly cash flow projections and a comparison of budgeted revenues and expenditures to actual revenues and expenditures.

(c) Review proposed and amended budgets of the local government. A proposed budget or budget amendment shall not take effect unless approved by the receivership transition advisory board.

(d) Review requests by the local government to issue debt under 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.

(e) Review proposed collective bargaining agreements negotiated under section 15(1) of 1947 PA 336, MCL 423.215. A proposed collective bargaining agreement shall not take effect unless approved by the receivership transition advisory board.

(f) Review compliance by the local government with a deficit elimination plan submitted under section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

(g) Review proposed judgment levies before submission to a court under section 6093 or 6094 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6093 and 600.6094.

(h) Perform any other duties assigned by the governor at the time the receivership transition advisory board is appointed.

(6) A receivership transition advisory board is a public body as that term is defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262, and meetings of a receivership transition advisory board are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A receivership transition advisory board is also a public body as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232, and a public record in the possession of a receivership transition advisory board is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 24. The governor may, upon his or her own initiative or after receiving a recommendation from a receivership transition advisory board, determine that the financial conditions of a local government have not been corrected in a sustainable fashion as required under section 9(7) and appoint a new emergency manager.

Sec. 25. (1) A neutral evaluation process may be utilized as provided for in this act. The state treasurer may, in his or her own discretion, determine that the state monitor the neutral evaluation process initiated by a local government under this section and may identify 1 or more individuals who may attend and observe the neutral evaluation process. A local government shall initiate the neutral evaluation process by providing notice by certified mail of a request for neutral evaluation process to all interested parties. If the local government does not provide notice under this subsection to all interested parties within 7 days after selecting the neutral evaluation process option, the treasurer may require the local government to go into receivership and proceed under section 9.

(2) An interested party shall respond within 10 business days of receipt of notice of the local government's request for neutral evaluation process.

(3) The local government and the interested parties agreeing to participate in the neutral evaluation process shall, through a mutually agreed-upon process, select a neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

(4) If the local government and interested parties fail to agree on a neutral evaluator within 7 days after the interested parties have responded to the notification sent by the local government, the local government shall, within 7 days, select 5 qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties. Within 3 business days, a majority of participating interested parties may disqualify up to 4 names from the list. If a majority of participating interested parties disqualify 4 names from the list, the remaining candidate shall be the neutral evaluator. If the majority of participating parties disqualify fewer than 4 names, the local government shall choose which of the remaining candidates shall be the neutral evaluator.

(5) If an interested party objects to the qualifications of the neutral evaluator after the process for selection in subsection (4) is complete, the interested party may appeal to the state treasurer to determine if the neutral evaluator meets the qualifications under subsection (6). If the state treasurer determines that the qualifications have been met, the neutral evaluation process shall continue. If the state treasurer determines that the qualifications have not been met, the state treasurer shall select the neutral evaluator.

(6) A neutral evaluator shall have experience and training in conflict resolution and alternative dispute resolution and have at least 1 of the following qualifications:

(a) At least 10 years of high-level business or legal experience involving bankruptcy or service as a United States bankruptcy judge.

(b) At least 10 years of combined professional experience or training in municipal finance in 1 or more of the following areas:

(*i*) Municipal organization.

(*ii*) Municipal debt restructuring.

(*iii*) Municipal finance dispute resolution.

(*iv*) Chapter 9 bankruptcy.

(*v*) Public finance.

(*vi*) Taxation.

(*vii*) Michigan constitutional law.

(*viii*) Michigan labor law.

(*ix*) Federal labor law.

(7) The neutral evaluator's performance shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values, or beliefs, or performance during the neutral evaluation process.

(8) The neutral evaluator shall avoid a conflict of interest and the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subsection (16), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local government and all interested parties involved in the neutral evaluation process. If any participating interested party to the neutral evaluation process objects to the neutral evaluator, that interested party shall notify the local government and all other participating interested parties to the neutral evaluation process, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator. The neutral evaluator shall withdraw, and a new neutral evaluator shall be selected as provided in subsections (3) and (4).

(9) Before commencing a neutral evaluation process, the neutral evaluator shall not establish another fiscal or fiduciary relationship with any of the interested parties or the local government in a manner that would raise questions about the integrity of the neutral evaluation process, except that the neutral evaluator may conduct further neutral evaluation processes regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

(10) The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decision making in which each participant makes free and informed choices regarding the neutral evaluation process and outcome.

(11) The neutral evaluator shall not impose a settlement on the participants. The neutral evaluator shall use his or her best efforts to assist the participants to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or written recommendations for a settlement or plan of readjustment to a participant privately or to all participants jointly.

(12) The neutral evaluator shall inform the local government and all participants of the provisions of chapter 9 relative to other chapters of title 11 of the United States Code, 11 USC 101 to 1532. This instruction shall highlight the limited authority of United States bankruptcy judges in chapter 9, including, but not limited to, the restriction on federal bankruptcy judges' authority to interfere with or force liquidation of a local government's property and the lack of flexibility available to federal bankruptcy judges to reduce or cram down debt repayments and similar efforts not available to reorganize the operations of the local government that may be available to a corporate entity.

(13) The neutral evaluator may request from the participants documentation and other information that the neutral evaluator believes may be helpful in assisting the participants to address the obligations between them. This documentation may include the status of funds of the local government that clearly distinguishes between general funds and special funds and the proposed plan of readjustment prepared by the local government. The participants shall respond to a request from the neutral evaluator in a timely manner.

(14) The neutral evaluator shall provide counsel and guidance to all participants, shall not be a legal representative of any participant, and shall not have a fiduciary duty to any participant.

(15) If a settlement with all interested parties and the local government occurs, the neutral evaluator may assist the participants in negotiating a pre-petitioned, pre-agreed-upon plan of readjustment in connection with a potential chapter 9 filing.

(16) If at any time during the neutral evaluation process the local government and a majority of the representatives of the interested parties participating in the neutral evaluation process wish to remove the neutral evaluator, the local government or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local government and a majority of the interested parties agree that the neutral evaluator should be removed and agree on who should replace the neutral evaluator, the local government and the interested parties shall select a new neutral evaluator.

(17) The local government and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

(18) The local government and each interested party shall provide a representative to attend all sessions of a neutral evaluation process. Each representative shall have the authority to settle and resolve disputes or shall be in a position to present any proposed settlement or plan of readjustment to the participants in the neutral evaluation process.

(19) The local government and the participating interested parties shall maintain the confidentiality of the neutral evaluation process and shall not at the conclusion of the neutral evaluation process or during any bankruptcy proceeding disclose statements made, information disclosed, or documents prepared or produced unless a judge in a chapter 9 bankruptcy proceeding orders that the information be disclosed to determine the eligibility of a local government to proceed with a bankruptcy proceeding under chapter 9, or as otherwise required by law.

(20) A neutral evaluation process authorized by this act shall not last for more than 60 days following the date the neutral evaluator is initially selected, unless the local government or a majority of participating interested parties elect to extend the neutral evaluation process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the neutral evaluator is initially selected.

(21) The local government shall pay 50% of the costs of a neutral evaluation process, including, but not limited to, the fees of the neutral evaluator, and the interested parties shall pay the balance of the costs of the neutral evaluation process, unless otherwise agreed to by the local government and a majority of the interested parties.

(22) The neutral evaluation process shall end if any of the following occur:

(a) The local government and the participating interested parties execute a settlement agreement. However, if the state treasurer determines that the settlement agreement does not provide sufficient savings to the local government, the state treasurer shall provide notice to the local government that the settlement agreement does not provide sufficient savings to the local government and the local government shall proceed under 1 of the other local government options as provided in section 7.

(b) The local government and the participating interested parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

(c) The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the local government and the participating interested parties have not reached an agreement, and neither the local government nor a majority of the interested parties elect to extend the neutral evaluation process past the initial 60-day time period.

(d) The local government initiated the neutral evaluation process under subsection (1) and did not receive a response from any interested party within the time specified in subsection (2).

(e) The fiscal condition of the local government deteriorates to the point that necessitates the need to proceed under the chapter 9 bankruptcy option pursuant to section 26.

(23) If the 60-day time period for a neutral evaluation process expires, including any extension of the neutral evaluation process past the initial 60-day time period under subsection (20), and the neutral evaluation process is complete with differences resolved, the neutral evaluation process shall be concluded. If the neutral evaluation process does not resolve all pending disputes with the local government and the interested parties, or if subsection (22)(b), (c), or (d) applies, the governing body of the local government shall adopt a resolution recommending that the local government proceed under chapter 9 and submit the resolution to the governor and the state treasurer. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval before the local government proceeds under chapter 9. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9. If the governor approves the resolution for the local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governing body of the local government fails to adopt a resolution within 7 days after the neutral evaluation process is concluded as provided in this subsection, the governor may appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receiving written approval from the governor under section 26, the local government may file a petition under chapter 9 and exercise powers under federal bankruptcy law.

Sec. 26. (1) With the written approval of the governor, a local government may file a petition under chapter 9 and exercise powers pursuant to federal bankruptcy law if the local government adopts a resolution, by a majority vote of the governing body of the local government, that declares a financial emergency in the local government. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9 and that the local government is or will be unable to pay its obligations within 60 days following the adoption of the resolution.

(2) If the governor approves a local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receipt of the written approval and subject to this subsection, the local government may proceed under chapter 9 and exercise powers under federal bankruptcy law.

(3) If the governor does not approve a local government to proceed under chapter 9, the local government shall within 7 days select 1 of the other local options as provided in section 7.

Sec. 27. (1) The local elected and appointed officials and employees, agents, and contractors of a local government shall promptly and fully provide the assistance and information necessary and properly requested by the state financial authority, a review team, or the emergency manager in the effectuation of their duties and powers and of the purposes of this act. If the review team or emergency manager believes that a local elected or appointed official or employee, agent, or contractor of the local government is not answering questions accurately or completely or is not furnishing information requested, the review team or emergency manager may issue subpoenas and administer oaths to the local elected or appointed official or employee, agent, or contractor to furnish answers to questions or to furnish documents or records, or both. If the local elected or appointed official or employee, agent, or contractor refuses, the review team or emergency manager may bring an action in the circuit court in which the local government is located or the Michigan court of claims, as determined by the review team or emergency manager, to compel testimony and furnish records and documents. An action in mandamus may be used to enforce this section.

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

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

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

Sec. 29. The state financial authority shall issue bulletins or promulgate rules as necessary to carry out the purposes of this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 30. (1) All of the following actions that occurred under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before the effective date of this act are effective under this act:

(a) A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.

(b) The appointment of a review team.

(c) The findings and conclusion contained in a review team report submitted to the governor.

(d) A determination by the governor of a financial emergency in a local government.

(e) A confirmation by the governor of a financial emergency in a local government.

(2) An action contained in subsection (1) need not be reenacted or reaffirmed in any manner to be effective under this act.

Sec. 31. An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

Sec. 32. This act does not impose any liability or responsibility in law or equity upon this state, any department, agency, or other entity of this state, or any officer or employee of this state, or any member of a receivership transition advisory board, for any action taken by any local government under this act, for any violation of the provisions of this act by any local government, or for any failure to comply with the provisions of this act by any local government. A cause of action against this state or any department, agency, or entity of this state, or any officer or employee of this state acting in his or her official capacity, or any membership of a receivership transition advisory board acting in his or her official capacity, may not be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9, including any proceeding following a local government's filing.

Sec. 33. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of this act which can be given effect without the invalid portion or application. The provisions of this act are severable.

Sec. 34. For the fiscal year ending September 30, 2013, $780,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act and to pay the salaries of emergency managers. The appropriation made and the expenditures authorized to be made by the department of treasury are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 35. (1) For the fiscal year ending September 30, 2013, $5,000,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act, to secure the services of financial consultants, lawyers, work-out experts, and other professionals to assist in the implementation of this act, and to assist local governments in proceeding under chapter 9.

(2) The appropriation authorized in this section is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide technical and administrative support for the department of treasury to implement this act. Costs related to this project include, but are not limited to, all of the following:

(*i*) Staffing-related costs.

(*ii*) Costs to promote public awareness.

(*iii*) Any other costs related to implementation and dissolution of the program, including the resolution of accounts.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.

(c) The total estimated completion cost of the project is $5,000,000.00.

(d) The expected completion date is September 30, 2016.

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

Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following:

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

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

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

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

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

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

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

(h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426.

(i) 1947 PA 336, MCL 423.201 to 423.217.

Carol Morey Viventi

Secretary of the Senate

Gary E Randall

Clerk of the House of Representatives

Approved .....

.....

Governor

EXHIBIT 2

Legislative Analysis

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

EMERGENCY MANAGER LAW

Senate Bill 865 (Substitute H-5)
Sponsor: Sen. Phil Pavlov
House Committee: Local, Intergovernmental, and Regional Affairs
Senate Committee: Government Operations

Complete to 12-10-12

A SUMMARY OF SENATE BILL 865 AS REPORTED FROM HOUSE COMMITTEE

BRIEF SUMMARY:

Senate Bill 865 (H-5) would create a new law to be known as the "Local Government and School District Fiscal Responsibility Act," more commonly referred to as the Emergency Manager Law.

The proposed law would replace Public Act 4 of 2011, which was repealed by the voters by referendum at the November 6, 2012, General Election. For information on Public Act 4, see the analyses of House Bill 4214 of the current session, and of the ballot proposal, on the Michigan Legislative Website at http://www.legislature.mi.gov. Public Act 4 had repealed Public Act 72 of 1990. The state's official legal position is that with the effective repeal of Public Act 4 at referendum, Public Act 72 is back in force.

The title and provisions of Senate Bill 865 are similar to Public Act 4 of 2011 with some exceptions. The changes in Senate Bill 865 from Public Act 4 include:

- Additional remedial measures to address a financial emergency, including both a form of mediation (called a neutral evaluation process) and bankruptcy under Chapter 9 of the US Code. Specifically, the bill offers a local unit of government, upon the confirmation of a financial emergency, four options to choose from:
  - A consent agreement (Section 8), described beginning on page 11 of this summary.
  - An emergency manager (Section 9), described beginning on page 13.
  - A neutral evaluation process, involving a form of alternative dispute resolution or mediation (Section 25), described beginning on page 23.
  - Chapter 9 federal bankruptcy (Section 26), described beginning on page 25.
- An appropriation of $780,000 from the General Fund to the Department of Treasury to administer the provision of this act and to pay the salaries of emergency manager; and an appropriation of $5 million from the General Fund to the Department of Treasury to administer the act's provisions; secure the services

of financial consultants, lawyers "work-out experts," and other professionals; and to assist local governments in proceeding under Chapter 9.

- The creation, at the discretion of the governor (or state treasurer acting for the governor) of a Receivership Transition Advisory Board at the point when a financial emergency had been rectified in a local unit. This board would monitor the affairs of a local government until receivership was terminated and it could require the local unit to convene an annual consensus revenue estimating conference and to provide monthly cash flow projections, among other things. Negotiated collective bargaining agreements could not take effect unless approved by this board.

- A provision that allows a local unit, if an emergency manager had served for at least one year, to remove the emergency manager and proceed with a neutral evaluation process. Removal would require a two-thirds vote of the local governing body and approval of the mayor (if elected).

The proposed new act would specify that all of the following actions that occurred under former 2011 Public Act 4, former 1988 Public Act 101, or former 1990 Public Act 72, before the effective date of this legislation would be effective under this proposed act:

- A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probably financial stress or a serious financial problem in a local government.
- The appointment of a review team.
- The findings and conclusion contained in a review team report submitted to the governor.
- A determination by the governor of a financial emergency in a local government.
- A confirmation by the governor of a financial emergency in a local government.

Also, the proposed new act would specify that (1) an emergency financial manager appointed under PA 101 of 1988 or PA 72 of 1990 and serving on the effective date of this legislation would continue to serve under this new act; and (2) the governor could appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager under this legislation.

Senate Bill 865(H-5) would repeal Public Act 72 of 1990—the Local Government Fiscal Responsibility Act. The bill would create a new "Local Government and School District Fiscal Responsibility Act" to govern both the selection and the work of emergency managers appointed as part of an effort to safeguard and assure the financial accountability of local unit of government and school districts and to preserve their capacity to provide necessary services essential to the public health, safety and welfare.

The new act would increase the power and authority of the appointed emergency financial manager from that provided in PA 72, changing the appointee's title to *emergency manager* to indicate the expansion of that authority beyond financial matters.

Among the proposed legislation's provisions that differ from PA 72, the new act would:

- List 18 explicit events that would trigger a financial review by the state (four of these are new, seven are in PA 72 but would be significantly changed, and four are in PA 72 but would be slightly modified).

- Include the director of the Department of Technology, Management, and Budget on the four-member review team (replacing the auditor general), and allow the governor to appoint more members to the team.

- Make explicit the differences between the municipal government and the school district review and intervention processes.

- Make explicit the parameters of the review team's evaluation (including 12 review criteria, six of which are new, and one that is in PA 72 but would be significantly changed).

- Allow the review team's evaluation report to be compiled by a firm (rather than an individual).

- Explicitly define the terms "Chapter 9," "creditor," "debtor," "emergency manager," "financial and operating plan, "interested party," "local government representative," "local inspector," "neutral evaluation process," neutral evaluator," "receivership," and "review team."

- Allow for appointment of emergency managers by the governor after a financial emergency is declared by the governor (under PA 72, the emergency manager is appointed by a local emergency financial assistance loan board).

- Require the governor to declare that a local government is in receivership if a financial emergency is declared. (Note: the bill defines "receivership" to mean "the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include Chapter 9 or any provision under federal bankruptcy law.")

- Specify that an emergency manager have at least five years' experience in business, financial, or local or state budgetary matters; need not be a resident of the local government; be an individual (not a firm); and serve at the pleasure of the governor.

- Explicitly identify an emergency manager's extensive power and authority by listing 30 actions a manager may take, 16 of which are new, two of which are in

PA 72 but would be significantly modified, and seven of which are in PA 72 but would be slightly modified.

- Grant an appointed emergency manager the authority to abrogate existing labor contracts (currently the emergency financial manager may renegotiate contracts or enter into binding arbitration), allowing collectively bargained agreements to be rejected, modified, or terminated.

- Provide governmental immunity for emergency managers and others.

- Provide an explicit exit strategy to enable formerly struggling local governments to emerge from financial emergency status during which time local officials are prohibited from revising the emergency manager's two-year budget, labor contracts, or ordinances.

- After receivership is terminated, suspend collective bargaining for up to five years.

DETAILED SUMMARY OF SENATE BILL 865 (H-5)

The bill would create a new act to be entitled the "Local Government and School District Fiscal Responsibility Act," and repeal the Local Government Fiscal Responsibility Act, Public Act 72 of 1990.

The bill contains a special enacting section stating that it is the intent of the Legislature that the new act function and be interpreted as a successor statue to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to these former acts under other laws of this state, or to a function or responsibility of an emergency financial manager or emergency manager under those laws, would function and be interpreted as a reference to this new act.

The bill lists nine statutes for which this would be true (although the provision would apply to other acts as well): the Charter Township Act, the General Law Village Act, the Home Rule Village Act, the Fourth Class City Act, the Home Rule City Act, the Metropolitan Transportation Authorities Act, the Public Employment Relations Act, and acts governing charter counties and county boards of commissioners.

Statement of Legislative Intent

The bill contains a section of legislative findings and declarations such that the authority and powers conferred by this legislation would constitute a necessary program and serve a valid public purpose. The findings and declarations include that the Legislature determines that the health, safety, and welfare of the citizens of Michigan would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local government is vitally necessary to the interests of the citizens. The section also says that it is vitally necessary to protect the credit of the state and its political subdivisions, and that it is a valid public purpose for the state to take action and to assist a unit of local government in a financial emergency so as to remedy

the financial 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 section also says it is a valid public purpose to assist a local government in a condition of financial emergency by providing for procedures of alternative dispute resolution between a local government and its creditors to resolve disputes, and to set forth the conditions for a local government to exercise powers under the federal bankruptcy law. Consequently, the Legislature determines that the authority and powers conferred by this legislation would constitute a necessary program and serve a valid public purpose.

Definitions

Under the bill, the term *"municipal government"* is defined to mean a city, village, township, charter township, county, an authority established by law, or a public utility owned by a city, village, township or county. The term *"school district"* is defined to mean a school district or an intermediate school district. (The definition does not include charter schools.) *"State financial authority"* means for a municipal government the state treasurer, and for a school district, the superintendent of public instruction. The term *"local inspector"* is defined to mean a certified forensic accountant, certified public accountant, attorney, or similarly credentialed person whose responsibility it is to determine the existence of proper internal and management controls, fraud, criminal activity, or any other accounting or management deficiencies. *"Financial and operating plan"* means a written financial and operating plan for a local government under Section 11, including an academic and educational plan for a school district.

Preliminary Review to Determine Financial Problem

Under the bill the state treasurer (for municipal governments) or the state school superintendent (for school districts) could conduct a preliminary review to determine the existence of a local government financial problem, if one or more of the following 18 events occurred:

- A preliminary review was requested, in writing, by the governing body or the chief administrative officer, identifying the existing or anticipated financial conditions or events that made the request necessary.
- A preliminary review was requested, in writing, by a creditor having an undisputed claim that remained unpaid six months after its due date that exceeded the greater of $10,000 or one percent of the annual general fund budget, provided the creditor notified the local government, in writing, at least 30 days before requesting the preliminary review (slightly modified).
- A petition was received containing specific allegations of financial distress, signed by a number of registered electors equal to at least five percent of the total votes cast for all candidates for governor within the local jurisdiction at the last preceding gubernatorial election (significantly modified from PA 72 where the petitions must contain 10 percent of the registered electors).

- Written notification was received that a local government had not deposited its minimum obligation payment to the local pension fund in a timely manner, as required by law (significantly modified from PA 72 which requires that 10 percent of pension beneficiaries notify the treasurer in writing).
- Written notification was received that the local government had failed for a period of at least seven days after the scheduled date of payment to pay wages and salaries or other compensation owed to employees, or benefits owed to retirees (significantly modified from PA 72 by adding "other compensation").
- Written notification was received 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 one or more bond or note covenants (significantly modified from PA 72 by adding "auditor engaged by the local government" and "notes").
- A resolution was received from either the Senate or the House of Representatives requesting a preliminary review.
- The local government had violated a requirement of the Revenue Bond Act, the Revised Municipal Finance Act, or any other law governing the issuance of bonds or notes.
- A municipal government had violated the conditions of an order issued by the Local Emergency Financial Assistance Loan Board under the Emergency Municipal Loan Act (slightly modified by changing "local government" to "municipal government").
- A local government had violated a requirement of Sections 17 to 20 of the Uniform Budgeting and Accounting Act (significantly modified to remove the requirement that the state treasurer forward a report of this violation to the attorney general).
- A local government failed to file an annual financial report or audit in a timely manner that conformed with the minimum procedures and standards of the State Financial Authority as required under the Uniform Budgeting and Accounting Act, or if a school district, had failed to provide an annual financial report or audit that conformed with the minimum procedures and standards of the state school superintendent, as required under the Revised School Code and the State School Aid Act (significantly modified to include school districts).
- A municipal government was delinquent in the distribution of tax revenues that it collected for another taxing jurisdiction, and that taxing jurisdiction requested a preliminary review.
- A local government was in breach of its obligations under a deficit elimination plan (new).
- A court had ordered an additional tax levy without the prior approval of the governing body of the local government.
- A municipal government had ended a fiscal year in a deficit condition as defined in Section 21 of the Glenn Steil State Revenue Sharing Act, or had failed to comply with the requirements of that section for filing or instituting a financial plan to correct the deficit condition (significantly modified to include the requirements for filing a financial plan).
- A school district ended its most recently completed fiscal year with a deficit in one or more of its funds, and the school district had 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 (new).

- A local government had 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 (new).
- The existence of other facts or circumstances indicative of probable financial stress, as determined by the state treasurer (for a municipal government) or by the state school superintendent (for a school district) (new).

Under the bill, if the state treasurer or state school superintendent determined that a preliminary review was appropriate, before beginning the preliminary review they would be required to give the local government specific written notification. An interim report of the state authority's findings would have to be provided to the local government within 20 days following the start of the preliminary review. The local government could then provide comments within five days. The preliminary review would have to be completed within 30 days. Within 20 days after receiving the final report from the state authority, the local emergency financial assistance loan board would be required to determine if probably financial stress existed for the local government.

Review Teams if Probable Financial Stress

If a finding of probable financial stress were made for a *municipal government*, the governor would appoint a review team consisting of the state treasurer (or a designee), the director of the Department of Technology, Management and Budget (or a designee), a nominee of the Senate Majority Leader, and a nominee of the Speaker of the House of Representatives. The governor could also appoint other state officials or other people with relevant professional experience to serve on a review team to undertake a municipal financial management review.

If a finding of probable financial stress were made for a *school district*, then the governor would appoint a review team for that school district consisting of the state treasurer (or a designee), the state school superintendent (or a designee), the director of the Department of Technology, Management, and Budget (or a designee), a nominee of the Senate Majority Leader, and a nominee of the Speaker of the House of Representatives. The governor also could appoint other state officials or other people with relevant professional experience to serve on a review team to undertake a school district financial management review.

Staff Assistance

The bill specifies that staff from the Department of Treasury would provide support to each review team.

Continuity

Any review team already appointed under the existing laws and serving on the effective date of this proposed new law would continue to fulfill its powers and duties under the new act. Further, all proceedings and actions taken by the governor, the state treasurer, the superintendent for public instruction, the local emergency financial assistance loan

board, or a review team under the former Public Act 4 of 2011, former Public Act 101 of 1988 or Public Act 72 of 1990 would be ratified and enforceable, as if they were taken under this act, and a consent agreement entered into under former Public Act 4, Public Act 101, or Public Act 72 would be ratified, binding, and enforceable under the new act.

Powers of Review Team

The review team could do either or both of the following:

- Examine the books and records of the local government.
- Utilize the services of other state agencies and employees.

The bill requires the review team to meet with the local government as part of its review, and they would have to receive, discuss, and consider information provided by the local government. In addition, the review team would be required to hold at least one public information meeting in the jurisdiction of the local government.

Factors Considered in Review Team's Report

The review team would be required to report its findings to the governor, with a copy to the state treasurer (for municipal governments) or the state school superintendent (for school districts) within 60 days following its appointment, or earlier if required by the governor. (The governor could grant one 30-day extension of the time limit.) A copy of the report would be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the Speaker of the House of Representatives, the Senate Majority Leader, and the state school superintendent if the local government were a school district.

The report would have to indicate the likely occurrence of any of the following:

- A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds were on hand, and if required, segregated in a special trust fund.
- Failure for a period of 30 days or more beyond the due date to transfer one or more of the following to the appropriate agency: (1) taxes withheld on the income of employees; (2) for a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority; (3) any contribution required by a pension, retirement, or benefit plan.
- Failure for a period of seven days or more after the scheduled date of payment to pay the wages and salaries or other compensation owed to employees or benefits owed to retirees (modified from PA 72 which says a failure for a period of 30 days).
- 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 percent of the total expenditures of the local government in that fiscal year.

- Failure to eliminate an existing deficit in any fund of the local government within the two-year period preceding the end of the local government's fiscal year during which the review team report was received.
- Projection of a deficit in the general fund of the local government for the current fiscal years in excess of five percent of the budgeted revenues for the general fund.
- 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 (new).
- 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 (new).
- 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 (new).
- Existence of a structural operating deficit (new).
- Use of restricted revenues for purposes not authorized by law (new).
- The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.
- Any other facts and circumstances indicative of local government financial emergency (new).

Report Conclusions

The review team would have to include one of the following conclusions about the local government in its report:

- A financial emergency did not exist within the local government, or
- A financial emergency existed within the local government.

Individual or Firm to Prepare Report

The bill specifies that the review team could, with the approval of the state financial authority, appoint an individual or a firm to carry out the review and submit a report to the review team for approval. The Department of Treasury could enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

Financial Emergency does not exist

Senate Bill 865 (H-5) specifies that a financial emergency does *not* exist if the report concludes that none of the factors (above) exist or are likely to occur within the current or next fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

Financial Emergency does exist

The bill specifies that a financial emergency does exist if any of the following occur: (1) the report concluded that one or more of the factors (noted above) existed or were likely to occur within the current or next succeeding fiscal years and, if left unaddressed, could

threaten the local government's future capability to provide necessary governmental services essential to the public health, safety, and welfare; or (2) the local government had failed to provide timely and accurate information enabling the review team to complete its report; (3) the local government had failed 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; or (4) the chief administrative officer of the local government, based upon the existence or likely occurrence of one or more of the factors (see above) recommended that a financial emergency be declared and the state treasurer concurred with the recommendation.

Governor's Determination; Discretionary Appeal Hearing

Within 10 days after receiving the report, the governor would be required to make one of the following determinations: (a) the financial emergency did not exist; or (2) a financial emergency did exist within the local government.

Before making a determination, the governor, in his or her sole discretion, could provide officials of the local government an opportunity to submit a written statement concerning their agreement or disagreement with the findings and conclusion of the review team report.

If a financial emergency existed, then the governor must provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact, a concise and explicit statement of the underlying facts supporting the factual findings, as well as notice that the chief administrative officer of the governing body has seven days to request a hearing conducted by the state treasurer or the state school superintendent (or a designee).

Following the hearing (if there is one), the existence of a financial emergency would be either revoked or confirmed, in writing, by the governor. A local government could then, by resolution adopted by a vote of two-thirds of the members elected and serving, appeal this determination to the Michigan Court of Claims (the Ingham County Circuit Court) within 10 business days. A local government could, by resolution adopted by two-thirds of the members elected and serving could also waive its right to appeal.

The Court of Claims could not set aside a determination of financial emergency by the governor unless the judge found that the determination was not supported by competent, material, and substantial evidence on the whole record; or the judge found that the determination was arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Governmental Body's Confirmation of Financial Emergency & Local Options

Under Senate Bill 865 (H-5), and upon the confirmation of a financial emergency, the local unit of government would be required, by resolution within seven days, to select one of the following local government options to address the financial emergency:

- The consent agreement option (under Section 8 of the bill)

- The emergency manager option (under Section 9 of the bill)
- The neutral evaluation process option (under Section 25 of the bill)
- The Chapter 9 bankruptcy option (under Section 26 of the bill).

If the local government has an elected mayor, the mayor would also have to approve the resolution, or if a school district, then the school board would have to approve the resolution. The resolution would be filed with the state treasurer, with a copy to the state school superintendent if the local government was a school district.

If the governing body of the local government did not pass a resolution, or if the mayor did not approve it, then the local government would be required to proceed under the neutral evaluation process (under Section 25 of the bill).

Consent Agreement: Continuing Operations Plan

The chief administrative officer of a local government could negotiate and sign a consent agreement with the state treasurer. If the local government were a school district, then that consent agreement would contain an academic plan, and also be signed by the state school superintendent.

Under Senate Bill 865 (H-5), the consent agreement would have to provide for remedial measures considered necessary to address the financial emergency and provide for the financial stability of the local government. The consent agreement could utilize state financial management and technical assistance, and would provide for periodic financial status reports to the state financial authority. The consent agreement could provide a board appointed by the governor to monitor the local government's compliance. In order for the consent agreement to go into effect, it would have to be approved, by resolution, by the governing body of the local government, and approved and executed by the state financial authority.

Nothing in the consent agreement could limit the ability of the state treasurer in his or her sole discretion to declare a material breach of the consent agreement. Further, the consent agreement would have to provide that in the event of a material uncured breach of the agreement, the state treasurer could place the local government in receivership, or in the neutral evaluation process. If within 30 days after the local government selected the consent agreement option, or sooner if in the discretion of the state treasurer, a consent agreement cannot be agreed upon, then the state treasurer would require the local government to proceed under one of the other local options.

A consent agreement could require a continuing operations plan or a recovery plan, if required by the state treasurer. If the state treasurer required that a consent agreement include a continuing operations plan, then it must be filed and then approved or rejected within 14 days. The local government could refile the plan within 30 days if it were rejected. Under the bill, the continuing operations plan would be in a form prescribed by the state treasurer, and would have to include, at a minimum, all of the following:

- A detailed projected budget of revenues and expenditures over not less than three fiscal years which demonstrates that the expenditures will not exceed revenues, and that any existing deficits will be eliminated.
- A cash flow projection for the budget period.
- An operating plan for the budget period that assures fiscal accountability.
- A plan showing reasonable and necessary maintenance and capital expenditures in order to assure the local government's fiscal accountability.
- An evaluation of the costs associated with pension and health care for which the local government is responsible and a plan for how those costs will be addressed within the budget period.
- A provision for submitting quarterly compliance reports to the state financial authority demonstrating compliance with the continuing operations plan.

The bill also specifies that a municipal government must amend its budget and general appropriations ordinance to give full effect to the continuing operations plan. And, if a continuing operations plan is approved for a school district, then district officials must amend the district budget to the extent necessary to give full effect to the plan.

Consent Agreement: Recovery Plan

If the state treasurer required that a consent agreement include a recovery plan, then the state treasurer would develop and adopt one. If a recovery plan were adopted for the local government, that local government would be required to file annual updates to its recovery plan with the state.

The recovery plan could include the appointment of a local auditor or local inspector, or both, and its provisions would be approved by the state treasurer, including the elements listed above, as well as procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash; an evaluation of costs associated with pension and post-employment health care obligations for which the local government is responsible; and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations. The plan may also include the designation of appropriate fiduciaries.

If a recovery plan were adopted, then it would supersede the budget and general appropriations ordinance adopted by the local government under the Uniform Budgeting and Accounting Act, and the budget and general appropriation ordinance would be considered amended, in order to give full effect to the recovery plan.

Under the bill, the consent agreement could grant some of powers of an emergency manager to some or all local officials at the discretion of the state treasurer. However, that grant of authority could not include the powers prescribed for the emergency manager under Section 12(1)(k) of the act—that is, the section allowing the emergency manager to abrogate collective bargaining agreements. Further, the consent agreement could provide for the required retention of a consultant to help the local government achieve the goals and objectives of the consent agreement.

Under the bill, a local government would be released from the requirements listed above upon compliance with the consent agreement as determined by the state treasurer.

Consent Agreement: Collective Bargaining Suspended

Unless the state treasurer determined otherwise, beginning 30 days after the date a local government entered into a consent agreement, the local government would not be subject to the collective bargaining provisions of the Public Employment Relations Act (Section 15(1), of 1947 PA 336, MCL 423.215) for the remaining term of the consent agreement.

Governor Appoints Emergency Manager

When a finding of a financial emergency is confirmed, the governor could (but would not be required to) appoint an emergency manager to address the financial emergency.

The emergency manager would have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide (or cause to be provided) necessary governmental services essential to the public health, safety, and welfare.

Emergency Manager Determines Powers of Elected Officials

Upon the declaration of receivership and during the period in which it is in effect, the governing body and the chief administrative officer of the local government would be prohibited from exercising any of the powers of those offices except as may be specifically authorized in writing by the emergency manager. Further, the powers granted to the community's elected and appointed officials would be subject to any conditions required by the emergency manager.

Emergency Manager's Qualifications/Compensation/Staff

The bill specifies that all of the following would apply to the emergency manager:

- An emergency manager would have to have at least five years' experience and demonstrable expertise in business, financial, or local or state budgetary matters.
- An emergency manager could but would not be required to be a resident of the local government.
- An emergency manager would have to be an individual (and not a firm).
- An emergency manager would serve at the pleasure of the governor, and would be subject to impeachment and conviction by the Legislature, as if he or she were a civil officer under Section 7 of Article XI of the state constitution of 1963. A vacancy in the office of emergency manager would be filled in the same manner as the original appointment.
- An emergency manager's compensation would be paid by the State of Michigan, and be set forth in a contract approved by the state treasurer, and the contract would be posted on the Department of Treasury's website within seven days after it was approved by the state treasurer.

Under Senate Bill 865 (H-5), in addition to the salary provided to an emergency manager in a contract approved by the state treasurer, the state could also receive and distribute private funds to an emergency manager.

Under the bill, and in addition to staff otherwise authorized by law, an emergency manager would be required to appoint additional staff and secure professional assistance as considered necessary to fulfill the appointment.

The emergency manager would be required to make quarterly reports to the state treasurer (with a copy to the state school superintendent where appropriate).

The emergency manager would continue in the position (a) until removed or replaced by the governor or the Legislature, or (b) until the financial emergency was rectified. If an emergency manager were removed, the governor would appoint a new emergency manager within 30 days.

Removal of Emergency Manager by Local Officials/Neutral Evaluation Process

Under Senate Bill 865 (H-5), if the emergency manager had served for at least one year, he or she could, by resolution, be removed by a two-thirds vote of the governing body of the local government. If the local government had an elected mayor, then the mayor would also have to approve the resolution. If the emergency manager were removed under this subsection of the bill, then the local government would proceed with the neutral evaluation process (under Section 25 of the bill).

Removal of Local Unit from Receivership

Under the bill, a local government would be removed from receivership when the financial conditions were corrected in a sustainable fashion, as provided by this legislation. In addition, the local government could be removed from receivership if an emergency manager was removed, as described above, and the governing body of the local government by a two-thirds vote approved a resolution for the local government to be removed from receivership. If the local government had an elected major, then he or she, too, would have to approve the resolution. A local government that was removed from receivership while a financial emergency continued to exist would have to proceed under the neutral evaluation process (under Section 25 of the bill).

Emergency Manager's Responsibilities

Appointed emergency managers would be subject to all of the following: (a) Public Act 317 of 1968 (which concerns the contracts of public servants with public entities), as a public servant; (b) Public Act 196 of 1973 (which concerns ethical standards of conduct for public officers and employees), as a public officer; and (c) Public Act 318 of 1968 (which concerns conflicts of interest), as if he or she were a state officer.

Governor's Delegation of Duties

The bill specifies that the governor could delegate his or her duties under this section to the state treasurer.

Previously Appointed Emergency Financial Manager

The bill specifies that an emergency financial manager appointed under PA 101 of 1988 or PA 72 of 1990 and serving on the effective date of this legislation if it were enacted into law would continue under this new act to fulfill his or her powers and duties.

Further, Senate Bill 865 (H-5) specifies that notwithstanding any other provision of this act, the governor may appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager under this legislation.

Under the bill, and subject to the requirements of this section, if an emergency manager has served for less than one year after his or her appointment under this legislation, then the governing body of the local government could petition the state treasurer or the governor to remove the emergency manager.

Orders for Local Officials

Under the bill, the emergency manager would issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government, the orders the manager considered necessary to accomplish the purposes of this legislation, including orders for a timely implementation of a financial and operating plan, including an academic and educational plan for a school district. Then, all officials and employees would be required to act in ways that maintained compliance with the plan. If an order were not reasonably carried out and that lack of cooperation was disrupting the emergency manager's ability to manage the local government, then the emergency manager could prohibit local elected or appointed officials or employees, agents, or contractors from access to the local government's office facilities, electronic mail, and internal information systems.

Emergency Manager's Financial and Operating Plan

The emergency manager would develop and could amend a written financial and operating plan, which would provide for conducting all aspects of the opertions of the local government within the resources available according to the emergency manager's revenue estimate. The plan would also provide for the payment in full of the scheduled debt service requirements; the modification, rejection, termination, and renegotiation of contracts; the timely deposit of required payments to any pension funds (if applicable); an academic and educational plan (for school districts); and any other actions considered necessary in the emergency manager's discretion to achieve the objectives of the plan, alleviate the financial emergency, and remove the local government from receivership.

The emergency manager would be required to submit the financial and operating plan to the state treasurer (and if applicable, the state school superintendent) within 45 days, as well as to the chief administrative officer and the governing body of the local government. The plan would be regularly re-examined and modified to conform to revised revenue estimates, with notice to the state treasurer. Within 30 days of submitting the plan, the emergency manager would be required to conduct a public informational

meeting on the plan. The bill specifies that this does not mean that the emergency manager would have to receive public approval before implementing the plan.

Emergency Manager's Authority

During the receivership, the authority of the chief administrative officer and the elected governing body to exercise power for and on behalf of the local government would be suspended. Instead, in Section 12, the bill specifies 30 actions that an emergency manager may take while the local government is in receivership, notwithstanding any charter provision to the contrary. Thirteen (13) of these actions are new (noted below), one of them is in PA 72 but significantly modified, and seven are in PA 72 but slightly modified. These actions can be found on pages 32-41 of the bill, and they include (but are not limited to) the following:

- Analyze factors and circumstances contributing to the financial emergency and initiate steps to correct the condition.
- Amend, revise, approve, or disapprove the budget of the local government and limit the total amount appropriated or expended.
- Receive and disburse on behalf of the local government all federal, state, and local funds earmarked for the local government.
- Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a permanent position by any appointing authority.
- Establish staffing levels, notwithstanding any minimum staffing levels established by charter or contract.
- Reject, modify, or terminate one or more terms and conditions of an existing contract.
- Reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement (new). This could be accomplished after meeting and conferring with the appropriate bargaining representative, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution was unlikely to be obtained.

[Here the bill specifies that the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement would be a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determined that all of the following conditions were satisfied: (1) the financial emergency in the local government had created a circumstance in which it was reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose; (2) any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement was reasonable and necessary to deal with a broad, generalized economic problem; (3) any plan was directly related to and designed to address the financial emergency for the benefit of the public as a whole; and (4) any plan was temporary and did not target specific classes of employees.]

- Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement (new).
- If a municipal pension fund is not actuarially funded at a level of 80 percent or more, remove one or more of the serving trustees of the local pension board, or, if the state treasurer appointed the emergency manager as the sole trustee of the local pension board, replace all the serving trustees. Here, the bill describes the protocol and various methods of calculation that would be used to determine the level of funding (new).
- If the emergency manager serves as sole trustee of the local pension board, then he or she would, among other things, assume and exercise the authority and fiduciary responsibilities of the local pension board until the termination of receivership; set and approve all actuarial assumptions; fully comply with the Public Employee Retirement System Investment Act, and Section 24 of Article IX of the State Constitution; and make no changes to the local pension fund without receiving the state treasurer's approval (new).
- Consolidate or eliminate departments of the local government or transfer functions from one department to another and appoint, supervise, and remove administrators, including heads of departments other than elected officials (new).
- Employ at the expense of the local government and with approval of the state treasurer or state school superintendent, auditors and other technical personnel.
- Retain one or more people or firms, selected from a list approved by the state treasurer, to perform the duties of a local inspector or a local auditor. These inspectors and auditors would conduct forensic audits to detect waste, fraud, and abuse, and would submit reports to the emergency manager, the state treasurer, and the state school superintendent (new).
- Require compliance with his or her orders by court action if necessary, in the Michigan Court of Claims (the Ingham County Circuit Court) (new)
- Sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government provided it 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.
- Apply for a loan from the state subject to the conditions of the Emergency Municipal Loan Act, in an amount sufficient to pay the expenses of the emergency manager and for other lawful purposes.
- Order one or more millage elections for the local government consistent with the Michigan Election Law and Sections 6 through 25 of Article IX of the State Constitution of 1963, and other applicable state law.
- Authorize the borrowing of money.
- Approve or disapprove of the issuance of obligations of the local government on behalf of the local government.
- Enter into agreements with creditors or other persons or entities to restructure debt (new).
- Enter into agreements with other local governments, public bodies or entities for the provision of services, the joint exercise of powers, or the transfer property to other units of government (new); consolidate services (new); consolidate with

other governmental entities, or dis-incorporate or dissolve the municipal government, with the approval of the governor (new).

- Exercise solely all authority concerning the adoption, amendment, and enforcement of ordinances and resolutions.
- Supersede the power or authority of any officer, employee, department, board, commission, or other entity of the local government, whether elected or appointed.
- 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 (new).

Competitive Bidding

The bill specifies that, except as otherwise provided in this subsection, any contract involving a cumulative value of $50,000 or more would be subject to competitive bidding by an emergency manager. However, if a potential contract involved a cumulative value of $50,000 or more, the emergency manager could submit the potential contract to the state treasurer for review, and the state treasurer could authorize that the potential contract was not subject to competitive bidding.

Power, Heat, and Light Public Utilities

Under the bill, an emergency manager could not sell or transfer a public utility furnishing light, heat, or power without the approval of the voters. Additionally, the emergency manager would be prohibited from using the assets of these public utilities if the finances of the utilities were separately maintained and accounted for.

Salaries of Officials Eliminated During Receivership

Upon appointment of an emergency manager and during the receivership, the salary, wages, or other compensation, including the accrual of post-employment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government would be eliminated. This action is allowed under Public Act 72, and the bill specifies that if an emergency manager had taken this action before this legislation goes into effect, then that action would be valid. Under the bill, the emergency manager could restore, in whole or in part, any compensation or benefits during the receivership, if that action was consistent with the financial operating plan.

Authority of a School District Emergency Manager

Section 20 applies to school district emergency managers. In addition to the actions noted above, an emergency manager for a school district could take one or more of the following additional steps for a school district in receivership:

- Negotiate, re-negotiate, approve, and enter into contracts on behalf of the school district.
- Receive and disburse all federal, state, and local funds earmarked for the district.
- Seek approval from the state superintendent for a reduced class schedule.
- Sell, assign, or transfer the assets of the school district to meet past or current obligations, or assure the fiscal accountability of the district, provided the use of

assets did not impair the education of the students in the district. The bill specifies that this power would include the closing of schools or other school buildings in the school district.

- Approve or disapprove the issuance of obligations of the school district.
- Exercise solely, for and on behalf of the school district, all other authority and responsibilities affecting the school district that are prescribed by law to the school board and superintendent.
- With the approval of the state treasurer, employ or contract for, at the expense of the school district, the school administrators considered necessary to implement this act.

Sale of Local Assets

Under the bill, unless the potential sale and value of an asset is included in the emergency manager's financial and operation plan, the emergency manager would be prohibited from selling an asset of the local government valued at more than $50,000 without the state treasurer's approval.

Collectively Bargained Death Benefits for Police and Firefighters

The bill specifies that any provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty could not be impaired, and would not be subject to any provision of this act authorizing an emergency manager to reject, modify, or terminate one or more terms of an existing collective bargaining agreement.

Criminal Conduct

The bill requires the emergency manager to make a determination as to whether criminal conduct contributed to the financial situation that resulted in the local government's receivership status. If so, the emergency manager would refer the matter to the attorney general and the local prosecuting attorney for investigation.

Posted Reports Every Three Months

The bill would require an emergency manager to file a report every three months (beginning six months after the appointment) with the governor, the Senate Majority Leader, the Speaker of the House of Representatives, and the clerk of the local government that is in receivership, and also to post the report on the internet on the website of the local government. The report would have to contain all of the following:

- A description of each expenditure made, approved, or disapproved during the reporting period that had a cumulative value of $5,000 or more, and the source of funds.
- A list of each contract that the emergency manager awarded or approved with a cumulative value of $5,000 or more, the purpose of the contract, and the identity of the contractor.
- A description of each loan sought, approved, or disapproved during the reporting period that had a cumulative value of $5,000 or more, and the proposed use of the funds.

- A description of any new position created or any vacancy in a permanent position filled by the appointing authority.
- A description of any position that had been eliminated or from which an employee had been laid off.
- A copy of the contract with the emergency manager noting compensation and expense reimbursement.
- The salary and benefits of the emergency manager.
- The financial and operating plan.

Emergency Manager Could Recommend Chapter 9 Bankruptcy

If, in his or her judgment, no reasonable alternative existed, then the emergency manager could recommend to the governor and the state treasurer that the local government be authorized to proceed under Chapter 9. Under Senate Bill 865 (H-5), the governor could place contingencies on a local government in order to proceed under Chapter 9. If approved by the governor and state treasurer, the emergency manager would be authorized to proceed under Chapter 9. This section empowers the local government to become a debtor under title 11 of the United States Code, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under Chapter 9.

Under the bill, the recommendation to the governor and the state treasurer (and to the state school superintendent, if the local government is a school district) must include one of the following: (1) a determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner, or (2) a determination that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.

Local Approval of Labor Agreement Termination, Borrowing, & Asset Sales

Senate Bill 865 (H-5) specifies that before an emergency manager executes an action under Section 12(1)(k) [which concerns the termination of collectively bargained agreements], 12(1)(r) [which concerns municipal asset transfer], 12(1)(u) [which concerns borrowing money], or Section 14(d) [which concerns the transfer of school district assets], the emergency manager must submit the proposed action to the governing body of the local government. The governing body then has seven days to approve or disapprove the action. If the governing body does not act within seven days, then the proposed action is considered to be approved. For an action concerning asset transfer [Sections 12(1)(r) and 14(d)], this requirement only applies if the asset, liability, function or responsibility involves an amount of $50,000 or more.

Under the bill, if the governing body disapproves within seven days, the governing body must, within 10 days of its disapproval, submit to the local emergency financial assistance loan board an alternative proposal that would yield substantially the same financial result as the action proposed by the emergency manager. The local assistance loan board would then have 30 days to review both the alternative proposal and the action proposed by the emergency manager and to approve either one. The emergency manager

would be required to implement the proposal selected by the emergency financial assistance loan board.

Liability Protection

At Section 20, the bill describes the protection from liability that would be in place for the emergency manager, and any employee of the emergency manager, as provided in Sections 7(5) and 7(2) of Public Act 170 of 1964, respectively. The bill specifies that the state attorney general would defend them against any civil claim, demand, or lawsuit which challenged the validity of the act, the authority of a state official or officer acting under the act, and the authority of an emergency manager, if the emergency manager is or was acting within the scope of authority under the act.

With respect to any aspect of a receivership, the costs incurred by the attorney general with respect to the authority of a state official or officer acting under the act, and the authority of an emergency manger acting within the scope of authority under the act, would be an expense borne by the municipal government or school district, and would be reimbursed to the attorney general within 30 days. The costs of the debt could be recovered under the Revenue Sharing Act for municipal governments, or the State School Aid Act for school districts.

An emergency manager could procure and maintain, at the expense of the local government, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor. If after the date that the service of an emergency manager was concluded, the emergency manager or any employee, agent, appointee, or contractor was subject to a claim, demand, or lawsuit, and that claim was not covered by an insurance policy, then the civil and criminal litigation costs and fees to defend against such claims would be paid out of the funds of the municipal government of the school district that was the subject of the receivership, subject to the approval of the state treasurer. If unpaid, the expenses would be recovered under the State Revenue Sharing Act, or the State School Aid Act.

Termination of Receivership; Prohibit Changes to Manager's Budget, Contracts, and Ordinances

The bill requires that before the termination of receivership and the completion of the emergency manager's term, the manager adopt and implement a two-year budget, including all contractual and employment agreements. After the completion of the emergency manager's term and the end of the receivership, the governing body of the local government would be prohibited from amending the two-year budget, without the approval of the state treasurer, and also would be prohibited from revising any order or ordinance implemented by the emergency manager during his or her term prior to one-year after the termination of the receivership.

Financial Emergency Rectified

Senate Bill 865 (H-5) specifies that if an emergency manager determines that the financial emergency is rectified, he or she must inform the governor and state treasurer.

If the governor disagreed, the emergency manager's term would continue or the governor would appoint a new emergency manager. If the governor agreed, the governor would either remove the local government from receivership or appoint a receivership transition advisory board.

Before removing a local government from receivership, the governor could impose one or more of the following conditions on the local government: (a) the implementation of financial best practices within the local government; (b) the adoption of a model charter or model charter provisions; and (c) required financial or managerial training to ensure that official responsibilities are properly discharged.

Receivership Transition Board to Advise Governor

Senate Bill 865 (H-5) allows the governor to appoint a Receivership Transition Advisory Board to monitor the affairs of the local government until the receivership is terminated. The board would consist of the state treasurer (or designee); the director of the Department of Technology, Management, and Budget (or designee); the state school superintendent, if a school district (or designee); and other individuals with relevant professional experience, including residents of the local government. The Receivership Transition Advisory Board would serve at the pleasure of the governor. At its first meeting, it would adopt rules of procedure. Its procedural rules would not be subject to the Administrative Procedures Act.

The Receivership Transition Advisory Board could do all of the following: (1) require the local government to annually convene a consensus revenue estimating conference to arrive at an estimate of revenues for the ensuing fiscal year; (2) provide monthly cash flow projections and a comparison of budgeted revenues and expenditures to actual revenues and expenditures; (3) review proposed and amended budgets (with the stipulation that proposed budgets or budget amendments would not take effect unless approved by the receivership transition advisory board); (4) review requests by the local government to issue debt; (5) review proposed collective bargaining agreements (with the stipulation that collective bargaining agreements would not take effect unless approved by the advisory board); (6) review compliance with a deficit elimination plan submitted under Section 21 of the State Revenue Sharing Act; (7) review proposed judgment levies before submission to a court; and (8) perform any other duties assigned by the governor at the time the board is appointed.

Under the bill, the Receivership Transition Advisory Board would be a public body as defined in the Open Meetings Act, and its meetings would be subject to that act. The board would also be a public body as defined in the Freedom of Information Act, and a public record in its possession would be subject to that act.

New Emergency Manager

The governor could, upon his or her own initiative or after receiving a recommendation from a receivership transition advisory board, determine that the financial conditions of a local government had not been corrected in a sustainable fashion, and appoint a new emergency manager.

Neutral Evaluation Process

A neutral evaluation process may be utilized under the legislation, and the state treasurer can appoint one or more people to monitor it. A local government would initiative the process by providing notice (by certified mail) to all interested parties (as defined in the act). If the local government did not provide notice within seven days, the treasurer could require that the local government go into receivership.

Under Senate Bill 865 (H-5), an interested party would have to respond in 10 days. Then the local government and the interested parties would, through a mutually agreed-upon process, select a neutral evaluator to oversee the process, and facilitate discussions in an effort to resolve their disputes. If they failed to agree to a neutral evaluator within seven days, the local government would have to, within seven days, select five qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties.

Within three business days, a majority of participating interested parties could disqualify up to four names. If a majority disqualified fewer than four names, the local government would choose which of the remaining candidates would be the neutral evaluator. If an interested party objected to the qualifications of the neutral evaluator after the process for selection was complete, the interested party could appeal to the state treasurer to determine if the neutral evaluator met the qualifications. If they had not been met, the state treasurer would select the neutral evaluator.

Neutral Evaluator's Qualifications

Senate Bill 865 (H-5) requires that a neutral evaluator have experience and training in conflict resolution and alternative dispute resolution, and have at least one of the following qualifications: (1) at least 10 years of high-level business or legal experience involving bankruptcy or service as a U.S. bankruptcy judge; or (2) at least 10 years of combined professional experience or training in municipal finance in one or more of the following areas: municipal organization; municipal debt restructuring; municipal finance dispute resolution; Chapter 9 bankruptcy; public finance; taxation; Michigan constitutional law; Michigan labor law; or federal labor law.

The bill requires that the neutral evaluator's performance be impartial, objective, independent, and free from prejudice. It also requires that the evaluator avoid a conflict of interest during the process. The neutral evaluator would make a reasonable inquiry to determine whether there were any facts that a reasonable person would consider likely to create a potential or actual conflict of interest. If the evaluator was informed of any, he or she would disclose them in writing to the local government, and all interested parties involved in the process. If any participating interested party objected, that interested party would notify all others, including the evaluator within 15 days. The neutral evaluator would then withdraw, and a new neutral evaluator would be selected, in the manner described above.

The neutral evaluator would be required to conduct the evaluation process in a manner that promoted voluntary, uncoerced decision-making in which each participant made free and informed choices regarding the process and outcome. The neutral evaluator would be

prohibited from imposing a settlement on the participants, but rather would use his or her best efforts to assist the participants to resolve their disputes.

The bill requires that the neutral evaluator inform all participants of the provisions of Chapter 9 relative to other Chapters of title 11 of the United States Code. This instruction would highlight the limited authority of U.S. bankruptcy judges in Chapter 9, including but not limited to, the restriction on their authority to interfere with or force liquidation of a local government's property and the lack of flexibility available to the federal bankruptcy judges to reduce or "cram down" debt repayments and similar efforts not available to reorganize the operations of the local government that may be available to a corporate entity.

The Neutral Evaluation Process

The neutral evaluator could request from the participants documentation and other information that the evaluator believed could be helpful in assisting the participants to address the obligations between them. This documentation could include the status of funds, and participants would be required to respond in a timely manner.

The neutral evaluator would provide counsel and guidance to all participants, would not be a legal representative of any participant, and would not have a fiduciary duty to any participant.

If a settlement with all interested parties and the local government occurred, the evaluator could assist the participants in negotiating a pre-petitioned, pre-agreed-upon plan of readjustment in connection with a potential Chapter 9 filing.

If, at any time, a majority of the interested parties together with the local government wished to remove the neutral evaluator, and agreed on who should replace the evaluator, the parties could select a new neutral evaluator.

The local government and all interested parties would be required to negotiate in good faith. The local government and interested parties could provide a representative to attend all sessions of a neutral evaluation process. Each representative would have the authority to settle and resolve disputes or be in a position to present any proposed settlement or plan of readjustment to the participants in the neutral evaluation process.

Senate Bill 865 (H-5) requires that the local government and the participating interest parties maintain the confidentiality of the process, and prohibits them disclosing statements made, information disclosed, or documents prepared or produced, unless a judge in a Chapter 9 bankruptcy proceeding orders the disclosure to determine the eligibility of a local government to proceed with a bankruptcy proceeding under Chapter 9.

A neutral evaluation process could not last more than 60 days, but the parties could extend the process for up to 30 additional days. The maximum length of the process would be 90 days.

The local government would pay 50 percent of the costs of the process, including the fees of the neutral evaluator, and the interested parties would pay the balance (unless otherwise agreed to).

Conditions Resulting in End of Neutral Evaluation Process

The bill specifies the conditions under which the neutral evaluation process would end. The conditions include: the parties execute a settlement agreement; the parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge; the process has exceeded 60 days, no agreement has been reached, and the parties do not wish to extend the process; the local government initiated the process but did not receive a response from any interested party within the time specified; or the fiscal condition of the local government deteriorated to the point that necessitated proceeding under the Chapter 9 bankruptcy option (under Section 26).

If the time for the neutral evaluation process expired, and differences were not resolved, or if subsections (22)(b), (c), or (d) [described above] applied, the governing body of the local government would be required to adopt a resolution recommending that the local government proceed under Chapter 9, and submit that resolution to the governor and state treasurer. If the local unit had a mayor, the mayor, too, would have to approve the resolution. The resolution would have to include a statement determining that the financial condition of the local government jeopardized the health, safety, and welfare of the residents who reside there, absent the protections of Chapter 9. If the governor approved the resolution, he or she would inform the local government, in writing.

The governor could place contingencies on a local government in order to proceed under Chapter 9, including, but not limited to, appointing a person to act exclusively on behalf of the local government in the Chapter 9 proceedings. If the governing body or the mayor failed to adopt a resolution within seven days after the neutral evaluation process was concluded, the governor could appoint a person to act exclusively on behalf of the local government in Chapter 9 bankruptcy proceedings. Upon receiving written approval from the governor, the local government could file a petition under Chapter 9 and exercise powers under federal bankruptcy law.

Chapter 9 Bankruptcy

Senate Bill 865 (H-5) specifies that with written approval of the governor, a local government may file a petition under Chapter 9, and exercise powers under the federal bankruptcy law, if the local government, by a majority vote, and the mayor adopted a resolution that declared a financial emergency. The resolution would have to include a statement determining that the financial condition jeopardized the health, safety, and welfare of the residents, absent the protections of Chapter 9, and that the local government was, or would be, unable to pay its obligations within 60 days following the adoption of the resolution.

The local government would be required to hold a public hearing before adopting the resolution, and notice of the hearing's time and place would have to be published in a local newspaper not less than 7 days before the hearing date. The notice would have to

include a description of the findings on which the local government proposed to make its declaration of a financial emergency.

If the governor approved a local government to proceed under Chapter 9, the governor would inform the local government, in writing, of the decision. The governor could place contingencies on a local government, in order to proceed under Chapter 9, including, but not limited to, appointing a person to act exclusively on behalf of the local government in the Chapter 9 proceedings. Upon receiving written approval from the governor, the local government could file a petition under Chapter 9 and exercise powers under federal bankruptcy law.

If the governor did not approve a local government to proceed under Chapter 9, then the local government would be required, within seven days, to select one of the other local options [that is, the consent agreement (under Section 8), the emergency manager option (under Section 9), or the neutral evaluation process option (under Section 25)].

Removing Local Officials from Office

The bill requires all elected and appointed officials, and employees, agents, and contractors of a local government, to promptly and fully provide assistance and information requested by the state treasurer, state school superintendent, a review team, or the emergency manager. If the review team or the emergency manager believed that a local elected or appointed official or employee, agent, or contractor was not answering questions accurately, then the emergency manager could issue subpoenas and administer oaths. If the officials or employees refused cooperation, then action could be brought in the circuit court in which the local government was located or in the Michigan Court of Claims (the Ingham County Circuit Court), as determined by the emergency manager, to compel testimony and furnish records and documents.

Failure of a local government official to abide by the new act would be considered a gross neglect of duty, and could result in the governor removing the elected official from office.

Collective Bargaining Suspended up to Five Years

The bill specifies that a local government placed in receivership would not be subject to Section 15 of Public Act 336 of 1947 (MCL 423.215) for a period of five years from the date the local government was placed in receivership, or until the receivership was terminated, whichever occurred first. Section 15 is the section of the Public Employment Relations Act which (1) describes the collective bargaining duties of public employer and public employee representatives, (2) sets out the prohibited subjects during collective bargaining between public school employer and employee bargaining representatives, and (3) describes the role of the chief executive officer of a state school reform/redesign school district in the collective bargaining process.

Taxes
The bill specifies that this legislation does not give the emergency manager or the state treasurer or state school superintendent the power to impose taxes without the approval at an election of a majority of the qualified electors voting on the question.

Rules
The state treasurer and state school superintendent would have the authority to issue bulletins and adopt rules as necessary to carry out the legislation, and all rules would be adopted in accordance with the Administrative Procedures Act.

Previous Acts under Public Act 4 of 2011& Similar Laws
Senate Bill 865 (H-5) specifies that all of the following actions that occurred under former 2011 Public Act 4, former 1988 Public Act 101, or former 1990 Public Act 72, before the effective date of this legislation would be effective under this proposed act:

- A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probably financial stress or a serious financial problem in a local government.
- The appointment of a review team.
- The findings and conclusion contained in a review team report submitted to the governor.
- A determination by the governor of a financial emergency in a local government.
- A confirmation by the governor of a financial emergency in a local government.

House Bill 865 (H-5) also specifies that such an action need not be reenacted or reaffirmed in any manner to be effective under this proposed act.

Finally, the bill specifies that an emergency manager or emergency financial manager appointed and serving under state law before the effective date of this proposed act shall continue under this act as an emergency manager for local government.

No State or Local Liability
Senate Bill 865 (H-5) states that the act would not impose any liability or responsibility in law or equity upon the state, any department, agency, or other entity of the state, or any officer or employee of the state, or any member of a receivership transition advisory board, for any action taken by any local government under the act, for any violation of the provisions of the act by any local government, or for any failure to comply with the provisions of the act by any local government. A cause of action against the state or any department, agency, or entity of the state, or any officer or employee of the state acting in an official capacity, or any membership of a receivership transition advisory board acting in an official capacity, could not be maintained for any activity authorized by the act, or for the act of a local government filing under Chapter 9, including any proceeding following a local government's filing.

Severability

Under the bill, the provisions of this legislation are severable. If any portion were found to be invalid by a court, that invalidity would not affect the remaining portions or applications of the act.

Appropriation

Senate Bill 865 (H-5) specifies that for the fiscal year ending September 30, 2013, $780,000 is appropriated from the General Fund to the Department of Treasury to administer the provision of this act and to pay the salaries of emergency manager. The appropriation made and the expenditures authorized to be made by the Department of Treasury are subject to the Management and Budget Act.

Further, for the fiscal year ending September 30, 2013, $5 million is appropriated from the General Fund to the Department of Treasury to administer the provision of this act, to secure the service of financial consultants, lawyers, work-out experts, and other professionals to assist in the implementation of this act, and to assist local governments in proceeding under Chapter 9. The bill specifies that the appropriation authorized is a work project appropriation, and any unencumbered or unallotted funds are to be carried forward into the following fiscal year. Further, the following is in compliance with Section 451a(1) of the Management and Budget Act:

- The purpose of the project is to provide technical and administrative support for the Department of Treasury to implement this act. Costs related to this project include, but are not limited to, all of the following: (1) staffing-related costs; (2) costs to promote public awareness; and (3) any other costs related to implementation and dissolution of the program, including the resolution of accounts.
- The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.
- The total estimated completion cost of the project is $5 million.
- The expected completion date is September 30, 2016.

FISCAL IMPACT:

The bill would increase state costs and have an indeterminate fiscal impact on local units of government.

Under the bill, $780,000 GF/GP would be appropriated to the Department of Treasury to pay the salaries of emergency managers. Additionally, $5.0 million GF/GP would be appropriated to the Department of Treasury to administer the provisions of the bill, including securing the services of financial consultants, lawyers, work-out experts, and other necessary professionals and to assist municipal governments and school districts in proceeding under Chapter 9 bankruptcy. These funds would be in addition to the $10.0 million appropriated in FY 2011-12 and the $4.5 million appropriated in FY 2012-13 to the Office of Fiscal Responsibility for providing assistance to local units of government

facing financial emergencies. Specifically, these funds support legal, accounting, and auditing services.

There would be an indeterminate fiscal impact on the revenues and expenditures of municipal governments and school districts affected by the provisions of this bill. The fiscal impact to each individual local unit of government would depend on the decisions made as a result of the declaration of a financial emergency.

Legislative Analyst: J. Hunault
Fiscal Analyst: Ben Gielczyk
Bethany Wicksall
Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

EXHIBIT 3

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BILL ANALYSIS

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Senate Bill 865 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Phil Pavlov
Committee: Government Operations

Date Completed: 1-6-12

RATIONALE

Public Act 4 of 2011 repealed the Local Government Fiscal Responsibility Act and replaced it with the Local Government and School District Fiscal Accountability Act, effective March 16, 2011. Like the earlier law, the new Act provides for an appointed manager to control the financial operations of a municipality or school district that, after a review process, is found to be in a financial emergency. Under the 2011 Act, the authority of an emergency manager is considerably expanded and is not limited to financial operations, and the statute overall is more comprehensive. At present, an emergency manager has been appointed under the new law for one municipality, Flint, and the review process is under way for the City of Detroit. In addition, emergency managers appointed under the former law remain in place for the Detroit Public Schools and the Cities of Benton Harbor, Ecorse, and Pontiac. As some of these cities emerge from receivership and the new law is being implemented, it has been suggested that the State should take measures to ensure that a local unit does not revert to a financial crisis when the tenure of an emergency manager ends.

CONTENT

The bill would create a new act to do the following, with respect to a local government (a municipal government or a school district) for which an emergency manager had been appointed under the Local Government and School District Fiscal Accountability Act:

-- **Authorize the Governor to remove the local government from receivership or appoint a receivership transition advisory board, if the local government's financial emergency had been rectified.**
-- **Allow the Governor to appoint a receivership transition advisory board before removing a local government from receivership.**
-- **Specify the powers of a receivership transition advisory board.**
-- **Authorize the Governor to appoint a new emergency manager if the local government's financial conditions had not been corrected in a sustainable fashion.**

Specifically, an emergency manager would have to inform the Governor and the State Treasurer if the emergency manager determined that the financial emergency that he or she had been appointed to manage had been rectified. If the Governor disagreed with that determination, he or she would have to inform the emergency manager, and the emergency manager's term would continue or the Governor would have to appoint a new emergency manager.

If the Governor agreed that the financial emergency had been rectified, the emergency manager had adopted a two-year budget as required under the Local Government and School District Fiscal Accountability Act, and the financial conditions of the local government had been corrected in a sustainable fashion as required under that Act, the Governor could either remove the local government from

receivership or appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership was terminated.

A receivership transition advisory board would have to consist of the following individuals or their designees: the State Treasurer, the Director of the Department of Technology, Management, and Budget, and, if the local government were a school district, the Superintendent of Public Instruction. The Governor also could appoint one or more additional individuals with relevant professional experience, including residents of the local government. The board would serve at the pleasure of the Governor.

A receivership transition advisory board could do all of the following:

-- Require the local government annually to convene a consensus revenue estimating conference for the purpose of arriving at a consensus estimate of revenue available for the local government's ensuring fiscal year.
-- Require the local government to provide monthly cash flow projections and a comparison of budgeted revenue and expenditures to actual revenue and expenditures.
-- Review proposed and amended budgets of the local government.
-- Review requests by the local government to issue debt under the Revised Municipal Finance Act or any other law governing the issuance of bonds or notes.
-- Review proposed collective bargaining agreements negotiated under the Local Government and School District Fiscal Accountability Act.
-- Review the local government's compliance with a deficit elimination plan submitted under the State Revenue Sharing Act.
-- Review proposed judgment levies before submission to a court under the Revised Judicature Act.
-- Perform any other duties assigned by the Governor at the time the board was appointed.

A proposed budget or budget amendment and proposed collective bargaining agreements could not take effect without the board's approval.

Upon his or her own initiative or after receiving a recommendation from a receivership transition advisory board, the Governor could determine that the financial conditions of a local government had not been corrected in a sustainable fashion, and could appoint a new emergency manager.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Department of Treasury, after the Local Government Fiscal Responsibility Act was enacted in 1990, emergency financial managers were appointed for seven local units, including the three that still had an emergency manager when the Act was replaced in 2011. While some of these local units successfully emerged from receivership and others are making progress, the State can do more to provide a "soft landing" for a local unit that has been in financial trouble. As proposed in the bill, an advisory board would help ensure that a local unit continued to make positive strides during the transition from receivership to self-governance. If an advisory board were appointed, the local unit would continue to be guided by individuals with financial expertise, and could have a better change of maintaining fiscal integrity.

Opposing Argument

The bill simply would continue the overreach of State government into local affairs. The 2011 Act gave emergency managers vastly expanded powers, virtually authorizing them to oust local elected officials and overtake local governments with no accountability to the community. Appointed managers' powers include the authority to break negotiated contracts and collective bargaining agreements, sell assets, replace a municipality's entire pension board under certain circumstances, and even dissolve a municipal government with the Governor's approval. The Act usurps the will of local electors, and a petition drive to place the law on the ballot for repeal is well under way.

Furthermore, the bill is unnecessary. Under the existing statute, a local government can enter into a consent agreement that includes

a continuing operations plan or a recovery plan. The Governor also can appoint another emergency manager if necessary.

Response: A consent agreement may prevent the need for an emergency manager in the first place, if an agreement can be reached and the local government abides by it. The activities proposed by the bill, on the other hand, would take place *after* an emergency manager had been in place.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on local unit revenue and expenditures, depending on the decisions of the Governor and a receivership transition advisory board. To the extent that the Governor did not appoint a board or an appointed board did not make different decisions than those that would be made absent the bill, the bill would have no impact. To the extent that the decisions did differ, revenue and/or expenditures for the affected local unit could be more or less than those absent the bill, depending on the substance of those decisions.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.