

Legislative Analysis



LOCAL GOVERNMENT & SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT

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**House Bill 4214 as enrolled
Public Act 4 of 2011**

**House Bills 4216, 4217, & 4218 as enrolled
Public Acts 5, 6 & 7 of 2011**

Sponsor: Rep. Al Pscholka

House Committee: Local, Intergovernmental, and Regional Affairs

Senate Committee: Education

Senate Bills 157 & 158 as enrolled

Public Acts 8 & 9 of 2011

Sponsor: Sen. Phil Pavlov (SB 157 & 158)

Senate Committee: Education

House Committee: None (Placed directly on House Floor)

Third Analysis (4-6-11)

BRIEF SUMMARY: The bills would create a new "Local Government and School District Accountability Act" and amend five additional acts, to govern both the selection and the work of emergency financial managers who are appointed to assist struggling municipal governments and public school districts. The new act, which would repeal the existing Local Government Fiscal Responsibility Act (Public Act 72 of 1990), would have similar provisions to PA 72 enabling a state review and intervention, but it would increase the power and authority of the appointed emergency manager. Under the new law, the emergency manager (appointed by the governor) would be able to revoke labor contracts, suspend collective bargaining for up to five years, become the sole trustee of an underfunded pension system, and suspend the power and authority of city managers and local elected officials.

FISCAL IMPACT: The Department of Treasury has testified that the proposed legislation will not significantly increase its costs. Other potential fiscal impacts are under review and this analysis will be updated as information becomes available.

THE APPARENT PROBLEM:

In November 2010 Governor-elect Rick Snyder appointed a Government Work Group to make recommendations to the new administration concerning the financial condition of local units of government in Michigan. Following its review, the 10-member group, headed by the executive director of the Southeastern Council of Governments (SEMCOG), issued a report that notes: "The State of Michigan and many of its local governments, even those best fiscally managed, are experiencing severe economic stress."

How many local governments are there in Michigan? There are 83 counties in the state. The counties are further divided into 1,242 townships (of which 127 are charter-townships), 274 cities, and 259 villages. In addition there are 533 school districts, 243 charter schools (which under the law are treated as individual school districts), and 57 intermediate school districts. The total number of municipally-owned utilities is unknown; however, according to the Michigan Municipal Electric Association there are 41 municipally owned electrical utilities.

The members of the governor's Government Work Group report that the property tax is the primary revenue source for most local governments, and they note that the property tax "revenue stream has dropped precipitously, with taxable values projected to decline 32 percent between 2007 and 2013 in the seven-county Southeast Michigan region." The workgroup members report a loss of about half that rate--that is, a 16 percent decline in taxable value--elsewhere in Michigan. Further, the governor's workgroup reports "another significant source of local revenue, State Revenue Sharing, has dropped 31 percent since 2000, resulting in a reduction of \$4 billion" to local units of government in the past decade.

On February 17, 2011, Governor Snyder submitted his Fiscal Year 2012 Budget to the Michigan legislature, and among his recommendations was an additional reduction in State Revenue Sharing--indeed, an elimination of statutory revenue sharing (about one-third of the total)--for a savings to the state of about \$307 million. Although a new \$200 million fund would award grants to local governments if they demonstrate efficiency and effectiveness (for example, setting-up performance measures), the leaders of dozens of struggling counties, cities, towns, villages, and townships are expected to face a financial crisis, since this loss of statutory revenue sharing constitutes 40- to 50- percent of some local governments' general fund budgets.

In addition, the proposed Fiscal Year 2012 Executive Budget also cuts spending for public schools by about four percent, or an estimated \$470 per student, for a savings of about \$425.5 million to the state. And, under the proposed budget the intermediate school districts would be cut five percent. So, in addition to struggling counties, towns, townships, and villages, it is expected that as many as 40 school districts will also face financial emergencies in the coming year.

Historically, the state has intervened to assist local units of government and school districts when their leaders face a financial emergency.

In April 2010, the Citizens Research Council of Michigan published Report 362 entitled "Financial Emergencies in Michigan Local Governments." That 28-page report is available at <http://www.crc.org>. The CRC report notes that the State of Michigan has adopted a number of statutes designed to prevent local governments from falling into a financial crisis, including the Uniform Budgeting and Accounting Act, the Emergency Municipal Loan Act, the Fiscal Stabilization Act, the Revised Municipal Finance Act, and the Home Rule Cities Act. Further, the state constitution provides for the removal or suspension of local officials.

The Michigan Department of Treasury has developed fiscal indicator scores for all local general-purpose governments in the state. Based on a review of each local government's annual audit, each community is scored: 0-4 points represents a fiscally neutral position requiring no state action; 5-7 points designates a "fiscal watch" condition; and 8-10 points denotes fiscal stress. Local governments that score 8-10 are notified, placed on a watch list for the current and following years, and they receive consideration for state review. Each community's score is published on the Michigan Department of Treasury website at www.michigan.gov/treasury.

If, despite these preventive measures, local governments, including school districts, fall into a financial crisis, they are then governed by the provisions of the Local Government Fiscal Responsibility Act, commonly known as Public Act 72 of 1990 (including its four amendments: Public Act 265 of 1992, Public Act 408 of 2002, Public Act 282 of 2003, and Public Act 181 of 2009). The PA 72 intervention process is overseen by the Michigan Department of Treasury, Bureau of Local Government Services, and technical assistance is provided to communities by the Treasury Rapid Response Team (TRRT) for Fiscally Distressed Local Units.

The April 2010 CRC report notes that the current statutory PA 72 process includes three strategies the state can employ if a fiscal emergency is declared in a local government: (1) local officials can develop and implement a plan to resolve the crisis under a consent agreement negotiated with a state-appointed review team; (2) a state-appointed emergency financial manager can develop and implement a plan to resolve the financial crisis; or (3) if the emergency financial manager recommends and the state approves such action, a local government can file under Chapter 9 of the federal bankruptcy code.

Seven Michigan communities have had emergency financial managers appointed under Public Act 72 of 1990: Hamtramck (in 2000); Highland Park (in 2001); Flint (in 2002); the Village of Three Oaks (in 2008); Ecorse (in 2009); Pontiac (in 2009); and Benton Harbor (in 2010). Additionally, a financial manager was appointed for the Detroit Public School District in 2009. For a brief description of the PA 72 intervention and assistance process, see *Background Information*.

Several organizations including the Michigan Chamber of Commerce, the Mackinac Center for Public Policy, and the Citizens Research Council have recommended that changes be made to Public Act 72 so that financial managers will have greater authority to act unilaterally in a fiscal emergency. Although the recommendations vary, generally those who advocate change do so in order to ensure communities will avoid bankruptcy and its many possible adverse effects, including higher borrowing costs for adjacent communities, as well as for the State of Michigan.

Early in the current legislative session, six bills were introduced to repeal Public Act 72 of 1990, and to replace it with a new law that would allow for state intervention to avert financial emergencies in school districts, counties, cities, villages, townships, and public utilities. Under the new laws, the governor would have the authority to place a local government or school district into receivership, and appoint an emergency manager. That

emergency manager would then have the authority to revoke labor contracts, suspend collective bargaining for up to five years, and, in some circumstances, act as the sole trustee of an underfunded pension system, as well as to suspend the power and authority of city managers and local elected officials.

THE CONTENT OF THE BILLS:

The bills would create a new "Local Government and School District Accountability Act" and amend five additional acts, to govern both the selection and the work of emergency managers who are appointed to assist struggling municipal governments and public school districts, in order to safeguard the units' continued financial viability and avoid insolvency.

House Bill 4214 would repeal Public Act 72 of 1990--the existing Local Government Fiscal Responsibility Act. The new act would have similar provisions to PA 72, enabling a state review and intervention, but it would increase the power and authority of the appointed emergency financial manager, 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 the existing law, 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 "financial stress" and "financial emergency."
- Allow for appointment of emergency managers by the governor after a financial emergency is declared by the governor (currently 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 does not define "receivership"; according to the CRC report, under federal law "receivership" is a form of corporate bankruptcy in which the court appoints a receiver to run the company....under municipal bankruptcy, no receiver is appointed. Instead the local government develops a plan for adjusting its debts and the court approves or disapproves that plan.)
- 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).
- 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.
- Suspend collective bargaining for up to five years in local governments placed in receivership.
- Allow (in Senate Bill 158) collective bargaining agreements to be rejected, modified, or terminated under the Local Government and School District Fiscal Accountability Act.

The main bill of the six-bill package, House Bill 4214, is tie-barred to Senate Bill 158, and the reverse, so that neither bill could go into effect unless the other is also enacted into law. Further, House Bills 4216, 4217, 4218 and Senate Bill 157 are tie-barred to House Bill 4214. Consequently, none of these bills could go into effect unless House Bill 4214 is also enacted into law.

A detailed summary of the six bills follows.

House Bill 4214 (as enrolled)

The bill would create a new act to be entitled the "Local Government and School District Fiscal Accountability Act," and repeal the existing Local Government Fiscal Responsibility Act, Public Act 72 of 1990. The bill specifies that any emergency financial manager already appointed and serving when this proposed act goes into effect would continue to fulfill his or her powers and duties under the new act.

Statement of Legislative Intent. The bill specifies, among other things, 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 these governments is vitally necessary. The legislature further determines that it is vitally necessary to protect the credit of the state and its political subdivisions, and to take action to assist a unit of local government in a condition of financial stress or financial emergency. 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.) The term "*state financial authority*" is defined to mean (1) for a municipal government, the state treasurer, and (2) 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 18, 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 (slightly modified adding events).
- 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 general fund, 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 (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 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. A preliminary review would have to be completed within 30 days, and elected and appointed officials would be required to promptly and fully provide the assistance and information requested.

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, or a review team under the 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 101 of 1988 or Public Act 72 of 1990 would be ratified, binding, and enforceable under this act.

Powers of Review Team. The review team would have full power to perform, among other things, all of the following functions:

- Examine the books and records of the local government.
- Utilize the services of other state agencies and employees.
- Negotiate and sign a consent agreement providing for remedial measures needed to address the financial problem with the chief administrative officer of the local government. The consent agreement could provide for periodic financial status reports to the state financial authority. 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 be approved and executed by the state financial authority. A consent agreement could provide that in the event of a material uncured breach of the consent agreement, the state treasurer would be authorized to place the local government in receivership as provided under this act.

The bill requires the review team to meet with the local government as part of its review, and they must receive, discuss, and consider information provided by 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 is 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).
- Any other facts and circumstances indicative of local government financial stress or financial emergency (new).

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

- No financial stress, or a condition of mild financial stress. (This conclusion would be rendered if the report concluded that none of the factors noted above--as described in Section 13(3) of the bill--exist or are likely to occur in the current or next succeeding fiscal year or, if they occur, they do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.)
- A condition of severe financial stress, with an adopted consent agreement containing a plan to resolve the problem.
- A condition of severe financial stress, without an adopted consent agreement.
- An existing financial emergency with no satisfactory plan to resolve the emergency.

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 (but would not be required to) enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

Condition of Severe Financial Stress - defined. The bill specifies that a local government would be considered to be in severe financial stress if either of the following occurred: (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 chief

administrative officer of the local government recommended that the local government be considered in severe financial distress.

Condition of Financial Emergency - defined. A local government would be considered to be in a condition of financial emergency if any of the following occurred:

- The report concluded that two or more of the factors (noted above) existed or were likely to occur within the current fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.
- The local government failed to provide timely and accurate information enabling the review team to complete its report.
- The local government failed to comply in all material respects with a continuing operations plan or recovery plan, or with the terms of an approved deficit elimination plan or an agreement entered into under the deficit elimination plan.
- The local government was in material breach of a consent agreement.
- The local government was in a condition of severe financial stress, and a consent agreement had not been adopted.
- The chief administrative officer of the local government, based on the existence or likely occurrence of one or more of the factors (noted above), recommended that a financial emergency be declared, and the state treasurer concurred with that recommendation.

Consent Agreement; Continuing Operations Plan. 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 refine 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 financial authority, 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.

Recovery Plan. If the state financial authority required that a consent agreement include a recovery plan, then either the state treasurer or the state superintendent would develop one in consultation with the review team. 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 authority 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 19(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.

Collective Bargaining Suspended for Duration of Consent Agreement. 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's Determination; Appeal. Within 10 days after receiving the report of the review team, the governor would make one of the following determinations: the local government is not in a condition of severe financial stress; the local government is in a condition of severe financial stress, but a consent agreement containing a plan to resolve the stress has been adopted; a local government financial emergency exists, and no satisfactory plan exists to resolve the emergency; or, the local government entered into a consent agreement containing a continuing operations plan or recovery plan to resolve a financial problem, but materially breached the consent agreement.

If a financial emergency exists, 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 appeal this determination to the Ingham County Circuit Court within 10 business days, if two-thirds of the members of its governing board adopted a resolution to do so.

The Ingham County Circuit Court 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.

Governor Declares Receivership. When a finding of a financial emergency is confirmed, the governor would be required to declare the local government in receivership, and appoint an emergency manager.

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.

A local government would be removed from receivership when financial conditions were corrected in a sustainable fashion.

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 could not exercise 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. 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 and reimbursement for actual and necessary expenses would be paid by the local government 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 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 the emergency manager 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 was removed, the governor would appoint a new emergency manager within 30 days.

Further, all 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 a state officer.

Removed from Receivership. A local government would be removed from receivership when the financial conditions were corrected in a sustainable fashion as determined by the state treasurer.

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 Managers. 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.

Orders for Local Officials. Under the bill, the emergency manager would be required to 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, in particular 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 a written financial and operating plan, and the bill specifies some of that plan's components, including but not limited to 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 subsection would not mean that the emergency manager would have to receive public approval before he or she implemented 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 19, 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 27-35 of the bill, and they include (but are not limited to) the following:

- Amend, revise, approve, or disapprove the budget of the local government and limit the total amount appropriated or expended.
- 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 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 millage elections that could only be held at the general November election in even-numbered years (new).
- 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 cannot sell or transfer a public utility furnishing light, heat, or power without the approval of the voters. Additionally, the emergency manager is prohibited from using the assets of these public utilities if the finances of the utilities are separately maintained and accounted for.

Salaries of Officials Eliminated During Receivership. The bill specifies that immediately upon the local government being placed in receivership, the salary 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.
- Employ or contract for, at the expense of the school district, the school administrators considered necessary to implement this act.

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 cannot 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.

Selling Assets. The bill specifies that unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan, the emergency manager must not sell an asset of the local government valued at more than \$50,000 without the state treasurer's approval.

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.

Title 11, Section 109 Reorganization. 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 Title 11 of the United States Code. If approved by the governor and state treasurer, the emergency manager would be authorized to proceed under Title 11, as required by Section 109, which would empower the local government to become a debtor, and the emergency manager to act exclusively on the local government's behalf.

Liability Protection. At Section 25, 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 manager 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 buy 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.

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 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 follow this legislation 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.

The bill specifies that for a local government for which an emergency manager is already serving as of the effective date of this legislation, this provision would not become applicable until 60 days after the effective date of the legislation.

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.

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 accord with the Administrative Procedures Act.

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

Senate Bill 157

The bill would amend the Revised School Code (MCL 380.1280c) to specify that no school would be included on the state superintendent's annual list of underachieving schools if it is operated by a school district in which an emergency manager is in place under the Local Government and School District Fiscal Accountability Act.

Currently under the law, beginning in September 2010, the superintendent of public instruction publishes a list identifying the public schools in the state that are among the lowest achieving five percent of all schools. The state superintendent then issues an order placing those schools under the supervision of a state school reform/redesign officer. Within 90 days of that date, the school board, or school board of directors if a charter school, submits a redesign plan to the reform/redesign officer. After the redesign plan is submitted, the state reform/redesign officer has 30 days to approve, disapprove or make changes to it. If it is changed, the school board or board of directors has 30 days to incorporate those changes into the plan and resubmit it. If a resubmitted design plan is disapproved, a school board or board of directors may appeal that decision to the state superintendent of public instruction. Once a redesign plan is approved, a school board or charter school board of directors must implement that plan beginning the next school year, and they also must submit regular monitoring reports to the state school reform/redesign officer on the implementation and results of the plan.

Senate Bill 157 would retain all of these provisions. However, the bill specifies that if a school included on the underachieving school list is operated by a school district in which an emergency manager has been appointed under the Local Government and School District Fiscal Accountability Act, then the superintendent of public instruction would be prohibited from issuing an order to place that school under the supervision of the state school reform/redesign officer.

House Bill 4216

The bill would amend the Revised Municipal Finance Act (MCL 141.2303) to eliminate that act's reference to the Local Government Fiscal Responsibility Act, which would be repealed if House Bill 4214 is enacted into law. The bill would replace that reference with a reference to the new and proposed "Local Government and School District Fiscal Accountability Act."

House Bill 4217

The bill would amend the Michigan Election Law (MCL 168.971) to eliminate that act's reference to the Local Government Fiscal Responsibility Act, which would be repealed if House Bill 4214 is enacted into law. The bill would replace that reference with a reference to the new and proposed "Local Government and School District Fiscal Accountability Act."

House Bill 4218

The bill would amend the Home Rule City Act (MCL 117.36a) to eliminate that act's reference to the Local Government Fiscal Responsibility Act, which would be repealed if House Bill 4214 is enacted into law. The bill would replace that reference with a reference to the new and proposed "Local Government and School District Fiscal Accountability Act."

Senate Bill 158

The bill would amend Public Act 336 of 1947, the Public Employment Relations Act (MCL 423.215), to specify that collective bargaining agreements under the act may be rejected, modified, or terminated under the Local Government and School District Fiscal Accountability Act (the act that would be created when House Bill 4214 is enacted into law), and to suspend collectively bargaining under certain circumstances.

More specifically under the bill, each collective bargaining agreement entered into between a public employer and public employees under the act after the effective date of this legislation would be required to include a provision that allowed an emergency manager appointed under the Local Government and School District Fiscal Accountability Act (created by House Bill 4214) to reject, modify, or terminate the collective bargaining agreement as provided in that act. Further, the bill specifies that provisions required by this subsection would be prohibited subjects of bargaining.

In addition, Senate Bill 158 specifies that collective bargaining agreements under the act may be rejected, modified, or terminated under the Local Government and School District Fiscal Accountability Act. The bill also specifies that Public Employment Relations Act does not confer a right to bargain that would infringe on the exercise of powers under the Local Government and School District Fiscal Accountability Act.

Finally, Senate Bill 158 specifies that a unit of local government that entered into a consent agreement under the Local Government and School District Fiscal Accountability Act would not be subject to the Public Employment Relations Act's requirement to collectively bargain, throughout the term of the consent agreement.

BACKGROUND INFORMATION:

Public Act 72 of 1990 Financial Assistance Process. Generally speaking, the current PA 72 process unfolds in ten steps. It (1) starts with a preliminary review by the state treasurer to determine if a financial problem exists, and (2) a report of that review must be made to the governor within 30 days.

The governor then (3) appoints a review team (composed of four people including the treasurer, the auditor general, and two members appointed, one each, by the Senate Majority Leader and House Speaker). The review team (4) reports its findings to the governor within 60 days.

If there is a financial emergency, (5) the governor assigns the responsibility for managing the local government to the local emergency financial assistance loan board, which (6) appoints an emergency financial manager.

The emergency financial manager, in consultation with the local government, (7) develops and implements a financial plan that balances expenditures with revenue, and pays debt service. To do so, an emergency financial manager (8) may assume the power and duties of the chief administrative officer and legislative body, and may renegotiate contracts, but may not abrogate contracts.

If successful, (9) the emergency financial manager notifies the local emergency financial assistance loan board, and the governor revokes the declaration of a financial emergency. If unsuccessful, (10) the emergency financial manager may request approval from the Local Emergency Financial Assistance Board to authorize the local government to proceed under Chapter 9 of Title 11 of the United States Code, 11 U.S.C. 101 to 1330.

For further information about the fiscal health of Michigan communities, visit the website of the Bureau of Local Government Services at the Michigan Department of Treasury, found at http://www.michigan.gov/treasury/0,1607,7-121-1751_51556---,00.html

For further information about the fiscal health of Michigan school districts, visit the website of the Michigan Department of Education Office of School Finance and Law, found at http://www.michigan.gov/mde/0,1607,7-140-6530_6564---,00.html

ARGUMENTS:

For:

Proponents of this legislation make five arguments. First, they note that there is a trend toward financial crisis in local governmental units throughout Michigan because of the state's economic downturn. During the last decade, the state has lost over 800,000 jobs and the automotive industry has been reduced in size by two-thirds. Further, the housing crisis in Michigan has been profound: the state has the sixth highest mortgage foreclosure rate in the nation; and the taxable value of houses has dropped an estimated 32 percent in the state's seven southeastern counties, and about 16 percent elsewhere in Michigan. Consequently, property taxes--which are based on a home's value and which serve as the main revenue stream for local units of government--have plummeted. As a result, even customarily well-managed counties, cities, towns, villages, and townships are facing financial crisis as their budgets have dropped precipitously.

In addition to the loss in property tax revenue, local units of government have lost \$4 billion in promised state-shared revenue during the past decade, leading some to call the State Revenue Sharing Program the State Revenue "Stealing" Program, instead.

As the economy rebounds, the recovery for local units of government will be slowed by the provisions of Proposal A and the Headlee Amendment to the State Constitution, since both limit the growth in local revenue, holding the increase in a parcel's property taxes to an amount equal to five percent or the rate of inflation, whichever is less. Consequently, some analysts argue that local government expenditures must be permanently recalibrated--that is, all local government costs including personnel costs must be reduced overall by 20- to 25-percent--requiring many politically unpopular decisions.

For these reasons, many local government officials may need the technical assistance available in the Department of Treasury's local government rapid response intervention team. And, the state may well need the ability to intervene in order to avoid bankruptcies in counties, townships, cities, towns, villages, and school districts. These bills would enable the state to place local governments into receivership, and appoint an emergency manager who will have the power and authority to make sweeping but necessary change.

Second, proponents of these six bills argue that in some instances some local governments have *not* been well-managed. Instead, local elected leaders have overlooked alarming levels of fraud and abuse. Then, when the state has appointed an emergency financial manager under Public Act 72 of 1990, those local officials have interfered to make the emergency manager's reform efforts extraordinarily difficult, and sometimes impossible. These bills would enable the emergency managers appointed by the state to suspend the power of locally elected and appointed officials, if those officials are not cooperative.

Third, proponents of these six bills note that between 60- and 75-percent of the cost of local government is attributed to the cost of the wages paid to people who provide service: primarily firefighters, police officers, and public works employees in municipalities, and schoolteachers, bus drivers, food service workers, and custodians in school districts. Many--but not all--of these workers are represented by trade unions, and their wages and benefits are collectively bargained. These bills would allow an emergency manager appointed by the state to abrogate collectively bargained contracts, and in the event of a receivership to suspend collective bargaining for up to five years, thereby enabling the emergency manager to reduce personnel costs unilaterally and quickly, returning the local government or school district to financial health.

Fourth, proponents of these six bills note that the legislation, once enacted, will give extraordinary powers to state-appointed emergency managers. Consequently, they argue, local government and school officials, and local government and school employees will do their utmost to avoid state intervention. Instead of relinquishing their local control to the state, local labor leaders and elected officials will more willingly come to the bargaining table to renegotiate contracts and voluntarily offer concessions that can save

local governments money, allow them to avoid bankruptcy and regain their financial health.

Fifth, proponents of the legislation argue that the bankruptcy of school districts and local governments must be prevented at all cost. They note that the likely adverse effects of government bankruptcies would introduce unacceptable uncertainty in financial markets, and significantly increase the cost of borrowing for state and local governments by raising the interest rates on debt. These borrowing costs will be avoided if emergency managers can intervene. Unlike the locally elected and appointed leaders, the emergency manager will have powers to abrogate all contracts including those that are collectively bargained, investigate fraud and abuse, become the sole trustee of underfunded pension systems, and assume unilateral decision-making authority, overseen by the state treasurer or the state superintendent of public instruction, and ultimately the governor.

Against:

Opponents of these bills offer five main arguments. First, opponents of this legislation note that any emergency crisis that local governments now experience has been made worse by extremely ill-advised state policies spanning decades. The result has been the slow strangulation of local units of government and their ability to offer services to citizens.

In particular, the state has withheld \$4 billion in state-shared revenue from local governmental units in the past decade, and now proposes to eliminate an additional third of the Revenue Sharing Program--yet another \$307 million. When asked by the state to do so, local governments relinquished their authority to levy business taxes 35 years ago (when the State of Michigan created its Single Business Tax) in exchange for the promise that the state would collect and then return that revenue to local governments. Although the state collected the business taxes, state officials did not return the portion of the revenue to local governments as promised.

To make matters worse, over the past 31 years, the state has passed along unfunded mandates to local governments estimated by the Legislative Commission on Statutory Mandates to cost \$2.2 billion, according to its final report issued on December 9, 2009. See <http://www.council.legislature.mi.gov/lcsn.html>

Second, opponents of the bills argue that the new emergency manager laws may well be found unconstitutional because they allow an emergency manager to abrogate contracts--a violation of Article 1 Section 10 of the U. S. Constitution, which prohibits states from passing laws that would impair lawful contracts.

Further, among the contracts an emergency manager could abrogate would be labor contracts that are collectively bargained by public employers and public employee unions. And, the emergency manager could suspend collective bargaining for up to five years. Opponents of the bills argue that collectively bargained contracts are protected by the U.S. Constitution, and also by the state Public Employee Labor Relations Act, and that these bills would violate the protections set forth there. According to committee

testimony by union leaders, creative solutions to local government and school district budget problems have relied on good faith bargaining. Indeed, public employee unions have renegotiated their labor contracts many times over the past decade, granting concessions in order that local governments could balance their books. In some instances, the concessions volunteered have far surpassed any concessions gained by emergency financial managers.

Third, opponents of the bills argue that they grant far too much unilateral power and authority to the emergency managers who will be appointed by the state treasurer and state school superintendent. The bills describe more than 30 separate actions the emergency managers can take, including the authority to revoke labor contracts, suspend collective bargaining for up to five years, act as the sole trustee of an underfunded pension system, set staffing rates, consolidate services and units of government, assume all the roles and responsibilities of city managers and local elected officials, and many more. The sweeping powers of an emergency manager would disrupt and impair all efforts at representative and participatory democracy, and as such they violate two principles that constitute the bedrock of democracy: voting rights and local control. Further, with no local oversight required in these proposed laws, the likelihood of cronyism in hiring and excessive spending on contracts for outsiders is great, if not certain. As written, the bills impose few if any checks and balances on an appointed emergency manager's behavior, and consequently taxpayers will be unable to deter fraud and abuse.

Fourth, opponents note that the definition of "*municipal government*" in House Bill 4214 is problematic. That term 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. This definition is problematic for at least two reasons. First, it is unclear how many local authorities and public utilities owned by cities, villages, townships, and counties there are in Michigan. According to the Michigan Municipal Electric Association there are 41 municipally owned electric utilities--a number confirmed by the Michigan Municipal League. [Note: The enrolled bill exempts utilities that provide heat, light, or power.] However, the existence of all other authorities and public utilities--such as those providing water or natural gas or communication options or recreation--is simply unknown. Second, opponents to the bill note that no case has been made that any local authority or publicly owned utility is in financial distress and requires state intervention and an emergency manager. Consequently, opponents of the bills argue this definition is overly broad and goes beyond what is necessary.

Fifth, some opponents of the legislation argue that emergency managers should not, under any circumstances, have the unilateral authority to suspend a public pension system's board of trustees, re-set the pension fund's actuarial assumptions to determine a new level of funding, or appoint themselves as the sole trustee of a public pension system. Under the bills, however, an emergency manager has the authority to take all of these actions. Opponents of the bills argue that giving an emergency manager the responsibility for a public pension fund invites financial mischief. It would allow the emergency manager to lower the level of annual contributions to the retirement plan, as

well as to use the plan's assets in order to balance the books of the local government. Then retirees will be short-changed, and their pensions will be jeopardized.

Response:

In response to the concerns of the retirees and active members of the pension fund for the City of Pontiac, House Bill 4212 was amended to prohibit an emergency financial manager from taking control of a public pension fund unless the pension system was funded at less than 80 percent. Further, the Senate amended the bill to require that any sale of assets be approved by the state treasurer.

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■ 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.