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BILL ANALYSIS

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Senate Bill 865 (as enacted)
Sponsor: Senator Phil Pavlov
Senate Committee: Government Operations
House Committee: Local, Intergovernmental, and Regional Affairs

PUBLIC ACT 436 of 2012

Date Completed: 4-17-14

CONTENT

The bill repeals the Local Government Fiscal Responsibility Act (Public Act 72 of 1990) and creates the "Local Financial Stability and Choice Act", to provide for the review, management, and control of the financial and other operations of a local government (a municipal government or a school district). In particular, the bill does the following:

- Allows the State financial authority (the State Treasurer or the Superintendent of Public Instruction) to conduct a preliminary review to determine the existence of probable financial stress within a local government, if certain events occur.
- Requires the State financial authority to report to the Local Emergency Financial Assistance Loan Board, and requires the Board to determine whether probable financial stress exists.
- Requires the Governor to appoint a review team if a finding of probable financial stress is made.
- Requires the review team to conclude that a financial emergency does or does not exist.
- Requires the Governor to determine that a financial emergency exists or not, and to confirm or revoke that determination after an opportunity for a hearing.
- If a financial emergency exists, requires the local government to choose one of four options: consent agreement, emergency manager (receivership), neutral evaluation process, or Chapter 9 bankruptcy.

The following apply with respect to the emergency manager (EM) option:

- The EM must act in place of the governing body and chief administrative officer of the local government.
- The EM must develop a financial and operating plan for the local government.
- The plan must provide for, among other things, the modification, termination, or renegotiation of contracts, and, for school districts, an educational plan.
- The EM is authorized to reject, modify, or terminate the terms of an existing contract or a collective bargaining agreement (CBA).
- The EM may take other specified actions, such as ordering millage elections; selling assets; dissolving a municipal government with the Governor's approval; recommending consolidation with another municipal government; and removing the trustees of a pension board under certain circumstances.
- The EM must submit certain proposed actions to the local governing body for approval, and the governing body may submit an alternative proposal.
- The EM must comply with various reporting requirements.
- The salary and benefits of the chief administrative officer and governing body members will be eliminated during the receivership, except as restored by the EM.
- The local government will be exempt from collective bargaining

requirements for five years or until the receivership is terminated, whichever occurs first.

- The local government may remove the EM and then negotiate a consent agreement; and the local government must proceed to the neutral evaluation process if a consent agreement is not reached.
- The EM may recommend to the Governor and the State Treasurer that the local government be allowed to proceed under Chapter 9.
- The EM must adopt a two-year budget for the local government before the receivership terminates.
- The Governor may appoint a receivership transition advisory board before removing the local government from receivership.
- The Governor may appoint a new EM if the local government's financial conditions have not been corrected in a sustainable fashion.

Regarding the consent agreement option, the following apply:

- The chief administrative officer of the local government may negotiate and sign a consent agreement with the State Treasurer, and with the State Superintendent in the case of a school district.
- The consent agreement must provide for necessary remedial measures.
- The consent agreement may require a continuing operations plan or a recovery plan.
- The consent agreement may grant to local officials the powers prescribed for an EM, except the power to reject, modify, or terminate CBAs.
- The local government will not be subject to collective bargaining requirements during the term of the agreement, unless the State Treasurer determines otherwise.
- The Governor may place the local government in receivership or in the neutral evaluation process if the consent agreement is materially breached.

The following apply to the neutral evaluation process:

- The local government must initiate the process by sending notice of the request to all interested parties.
- The local government and the participating interested parties must select a neutral evaluator according to a prescribed process.
- The neutral evaluator must have the qualifications prescribed in the bill and avoid a conflict of interest.
- The neutral evaluator may not impose a settlement on the participants but must assist them to resolve their disputes.
- The evaluator may make recommendations for a settlement or plan of readjustment.
- The evaluator must inform the local government and all participants of the provisions of Chapter 9 and highlight the limited authority of a U.S. bankruptcy judge.
- The local government and a majority of the interested parties may remove and replace the neutral evaluator.
- The neutral evaluation process may not exceed 60 days, plus a 30-day extension.
- The process must end under specified circumstances.
- If the process does not resolve all pending disputes, the local governing body must recommend that the local government proceed under Chapter 9.

The following apply to the Chapter 9 option:

- A local government may file a Chapter 9 bankruptcy petition, with the Governor's approval, if the local governing body declares a financial emergency.
- The Governor may place contingencies on the local government.
- If the Governor does not approve the local government to proceed under Chapter 9, it must select one of the other local options.

In addition, if a local government has a "strong mayor" (a mayor granted veto power under the local government's charter), the bill requires strong mayor approval for any of the following:

- **The selection of a local government option.**
- **The removal of an emergency manager.**
- **The removal of the local government from receivership, after the EM has served at least 18 months.**
- **The recommendation to proceed under Chapter 9, after the neutral evaluation process has failed to resolve all disputes.**
- **The declaration of a financial emergency, as required to proceed under Chapter 9.**

The bill also makes the following appropriations to the Department of Treasury for fiscal year 2012-13:

- **\$780,000 for the Department to administer the Act and pay emergency manager salaries.**
- **\$5.0 million (which may be carried forward) for the Department to administer the Act, secure professional services, and assist local governments in proceeding under Chapter 9.**

Public Act 436 will take effect on March 28, 2013.

Preliminary Review

The State financial authority may conduct a preliminary review to determine the existence of probable financial stress within a local government under specific circumstances. ("Local government" means a municipal government or a school district. "Municipal government" means a city, village, township, charter township, or county; a department of county government if the county has an elected county executive under Public Act 293 of 1966; an authority established by law; or a public utility owned by a city, village, township, or county. "School district" means a local school district or an intermediate school district.)

The circumstances that may trigger a preliminary review include the following, among others:

- The governing body or the chief administrative officer of the local government requests a preliminary review.

- The State financial authority receives a written request from a creditor with an undisputed claim that remains unpaid six months after its due date in excess of \$10,000 or 1% of the local government's annual general fund budget, whichever is greater.
- The State financial authority receives a petition containing specific allegations of local government financial distress signed by a number of local registered electors equal to at least 5% of the total vote cast in that jurisdiction for all candidates for Governor in the last gubernatorial election.
- The State financial authority receives notification that the local government has not timely deposited its minimum obligation payment to the local government pension fund.
- The State financial authority receives notice that the local government has failed for at least seven days after the scheduled date of payment to pay wages and salaries owed to employees or benefits owed to retirees.
- The local government is in breach of its obligations under a deficit elimination plan or an agreement entered into under such a plan.
- The 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.
- The local government has violated the conditions of an order issued by the Local Emergency Financial Assistance Loan Board under the Emergency Municipal Loan Act.
- The local government fails to timely file an annual financial report or standard that conforms with the minimum procedures and standards of the State financial authority and is required under the Uniform Budgeting and Accounting Act or the Revised School Code.
- The local government, if a municipal government, has ended a fiscal year in a deficit condition or failed to comply with statutory requirements for filing or instituting a financial plan to correct the deficit condition.
- The local government, if a school district, ended its most recently completed fiscal year with a deficit in one or more funds and the district has not submitted a deficit elimination plan to the State financial authority within 30

days after the deadline to submit its annual financial statement.

- The State financial authority receives a resolution from the Senate or the House of Representatives requesting a preliminary review.
- A court has ordered an additional tax levy without the prior approval of the local governing body.

The State financial authority also may conduct a preliminary review if there are other facts or circumstances that indicate probable financial stress, in the sole discretion of the State Treasurer or the Superintendent of Public Instruction, as applicable.

Before beginning the preliminary review, the State financial authority must give the local government specific written notification. Elected and appointed officials must provide prompt and full assistance and information requested by the State financial authority.

Within 20 days after beginning the preliminary review, the State financial authority must provide an interim report of its findings to the local government, which then will have five days to provide comments to the State financial authority. The State financial authority must prepare and provide a final report detailing its preliminary review to the Local Emergency Financial Assistance Loan Board, and the report must be posted on the Department of Treasury's website within seven days after it is provided to the Board.

A copy of both the interim report and the final report must be given to each State Senator and Representative who represents the local government.

The preliminary review and final report must be completed within 30 days after the preliminary review begins. Within 20 days after receiving the final report, the Board must determine if probable financial stress exists for the local government.

Review Team

Appointment. If a finding of probable financial stress is made for a local government, the Governor must appoint a review team. The review team for a municipal government must 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, a nominee of the Senate Majority Leader, and a nominee of the Speaker of the House. The review team for a school district must consist of the same members plus the Superintendent of Public Instruction (referred to below as the State Superintendent). In either case, the Governor may appoint other State officials or other individuals with relevant professional experience.

The review team must meet with the local government as part of its review, and must hold at least one public information meeting in the jurisdiction of the local government, at which the public may comment.

The Department of Treasury must provide staff support to each review team.

Report. The review team must submit a written report of its findings to the Governor within 60 days after being appointed or earlier if required by the Governor. Upon request, the Governor may grant one 30-day extension. The State Treasurer must send a copy of the report to the chief administrative officer and the governing body of the local government, the Senate Majority Leader, the Speaker of the House, the State Superintendent if the local government is a school district, and each State Senator and Representative who represents the local government. The report must be posted in the Department of Treasury's website within seven days after it is submitted to the Governor.

The report must include the existence, or an indication of the likely occurrence, of various conditions (referred to below as reportable conditions.) These conditions include the following:

- A default in the payment of principal and interest on bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand.
- Failure for 30 days or more beyond the due date to transfer, as appropriate, employee withholding taxes, taxes collected for another governmental unit, or a contribution to a pension, retirement, or benefit plan.
- Failure for at least seven days after the scheduled date of payment to pay wages

and salaries owed to employees or benefits owed to retirees.

- Accounts payable for the current fiscal year in excess of 10% of the total expenditures of the local government in that year.
- Failure to eliminate an existing deficit in any fund of the local government within the two-year period preceding the end of its fiscal year during which the report is received.
- Projection of a general fund deficit for the current fiscal year in excess of 5% of the budgeted revenue for the general fund.
- Failure to comply in all material respects with the terms of an approved deficit elimination plan.
- The 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.
- The 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.
- The existence of a structural operating deficit.
- The use of restricted revenue for purposes not authorized by law.
- The likelihood that the local government is or will be unable to pay its obligations within 60 days after the review team reports its findings to the Governor.
- Any other facts and circumstances indicative of local government financial emergency.

Conclusion. The review team must include one of the following conclusions in its report:

- A financial emergency does not exist within the local government.
- A financial emergency exists within the local government.

A financial emergency will not exist if the review team's report concludes that none of the reportable conditions exist or are likely to occur within the current or following fiscal year or, if they occur, do not threaten the local government's capability to provide services essential to public health, safety, and welfare.

A financial emergency will exist if any of the following occurs:

- The report concludes that one or more of the reportable conditions exist or are likely to occur within the current or following fiscal year and threaten the local government's current and future capability to provide services essential to the public health, safety, and welfare.
- The chief administrative officer of the local government comes to this conclusion and recommends that a financial emergency be declared, and the State Treasurer concurs with the recommendation.
- 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 under such a plan.
- The local government has failed to provide timely and accurate information enabling the review team to complete its report.

Delegation. With the approval of the State financial authority, the review team may appoint an individual or firm to carry out the review and submit a report to the 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.

Previously Appointed Team. A review team appointed under former Public Act (PA) 72 of 1990 or former PA 101 of 1988 and serving on the bill's effective date must continue to fulfill its powers and duties. Public Act 436 ratifies all proceedings and actions taken before its effective date by the Governor, the State Treasurer, the State Superintendent, the Local Emergency Financial Assistance Loan Board, or a review team under former PA 101 of 1988, former PA 72 of 1990, or former PA 4 of 2011 (the Local Government and School District Fiscal Accountability Act). Public Act 436 states that those proceedings and actions are enforceable as if they were taken under PA 436, and a consent agreement entered into under any of the former Acts that was in effect immediately before the effective date of PA 436 is ratified and is binding and enforceable under the Act.

Determination by Governor; Financial Emergency

Within 10 days after receiving a review team's report, the Governor must determine whether a financial emergency does or does not exist within the local government.

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

If the Governor determines that a financial emergency exists, he or she must give the governing body and chief administrative officer of the local government a written notification of that determination, findings of fact used as the basis for the determination, a concise and explicit statement of the underlying facts supporting the findings, and notice that the chief administrative officer or the governing body has seven days to request a hearing conducted by the State financial authority or his or her designee.

After the hearing, or after the deadline for requesting a hearing if none is requested, the Governor must confirm or revoke the determination of the existence of a financial emergency. If confirmed, the Governor must give a written report to the governing body and chief administrative officer of the findings of fact providing a basis for the confirmation, and a concise and explicit statement of the underlying facts supporting the findings. Within seven days, the report must be posted on the Department of Treasury's website. A copy of the report must be given to each State Senator and Representative who represents the local government.

Within 10 business days, the local government may appeal the determination of a financial emergency to the Michigan Court of Claims, by resolution adopted by a vote of two-thirds of the members of the local governing body. The Court may not set aside the determination unless it finds that the determination is either of the following:

- Not supported by competent, material, and substantial evidence on the whole record.

- Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Local Government Options

Within seven days after the finding of a financial emergency is confirmed, the governing body of the local government must, by resolution, select one of the following local government options to address the financial emergency:

- The consent agreement option.
- The emergency manager option.
- The neutral evaluation process option.
- The Chapter 9 bankruptcy option.

If the local government has a strong mayor, the resolution requires strong mayor approval. If the local government is a school district, the resolution must be approved by the school board. The resolution must be filed with the State Treasurer, with a copy to the State Superintendent if the local government is a school district.

If the local government does not pass a resolution, it must proceed under the neutral evaluation process.

As a rule, a local government may not use one of the local options more than once, unless authorized by the Governor.

("Strong mayor approval" means the approval of a resolution under one of the following circumstances:

- The strong mayor approves the resolution.
- The governing body approves the resolution with enough votes to override a veto by the strong mayor.
- The strong mayor vetoes the resolution and the governing body overrides the veto.)

Consent Agreement

Approval of Agreement; Material Breach. The chief administrative officer of a local government may negotiate and sign a consent agreement with the State Treasurer. If the local government is a school district and the consent agreement contains an educational plan, the agreement also must be signed by the State Superintendent.

The consent agreement must provide for remedial measures considered necessary to address the financial emergency and provide for financial stability of the local government. It also must provide for periodic financial status reports to the State Treasurer, with a copy to each State Senator and Representative who represents the local government.

The consent agreement may use State financial management and technical assistance as necessary, and may provide for a board appointed by the Governor to monitor the local government's compliance.

In order to go into effect, the agreement must be approved, by resolution, by the governing body of the local government, and be approved and executed by the State Treasurer.

Nothing in the consent agreement may limit the State Treasurer's ability to declare a material breach of the agreement. A consent agreement must provide that in the event of a material uncured breach of the agreement, the Governor may place the local government in receivership (subject to an emergency manager) or in the neutral evaluation process.

If a consent agreement cannot be reached within 30 days after the local government selects this option, or sooner in the discretion of the State Treasurer, the Treasurer must require the local government to proceed under one of the other options.

Continuing Operations Plan. If the State Treasurer requires a consent agreement to include a continuing operations plan, the local government must prepare and file that plan with the State Treasurer. The State Treasurer must approve or reject the initial continuing operations plan within 14 days after receiving it. If the plan is rejected, the local government may file an amended plan within 30 days. If the amended plan is rejected, the local government may be considered to be in material breach of the consent agreement.

The local government must file annual updates to its continuing operations plan, which must be included with the annual filing of its audit report with the State financial authority.

The continuing operations plan must include, at a minimum, all of the following:

- A detailed projected budget of revenue and expenditures over at least three fiscal years, demonstrating that the local government's expenditures will not exceed its revenue and that any existing deficit will be eliminated during the projected budget period.
- A cash flow projection for the budget period.
- An operating plan for the budget period that assures fiscal accountability for the local government.
- A plan showing reasonable and necessary maintenance and capital expenditures to assure the local government's fiscal accountability.
- 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.
- A provision for submitting quarterly compliance reports to the State financial authority.

A copy of each quarterly compliance report must be given to each State Senator and Representative who represents the local government, and be posted on the local government's website.

If a continuing operations plan is approved for a municipal government, the municipal government must amend the budget and general appropriations ordinance it adopted under the Uniform Budgeting and Accounting Act to the extent necessary or advisable to give full effect to the plan. If a continuing operations plan is approved for a school district, the district must amend the budget it adopted under that Act, to the same extent.

The chief administrative officer, the chief financial officer, the governing body, and other local officials must take and direct actions necessary or advisable to maintain the local government's operations in compliance with the plan.

Recovery Plan. If the State Treasurer requires a consent agreement to include a recovery plan, the Treasurer develop and adopt the plan, with input from the local government. The local government must

file annual updates to its recovery plan, which must be included with the annual filing of its audit report with the State financial authority.

A recovery plan may contain terms and provisions as approved in the discretion of the State Treasurer, including generally the same provisions that a continuing operations plan must include. A recovery plan also may include procedures for cash control and cash management, and the appointment of a local auditor or local inspector, or both.

A recovery plan will supersede the budget and general appropriations ordinance adopted by the local government under the Uniform Budgeting and Accounting Act, and the budget and general appropriations ordinance will be considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency, the recovery plan will control.

Grant of Authority. Except as provided below, a 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 one or more of the powers prescribed for emergency managers in the bill for the periods and upon the conditions as the State Treasurer considers necessary or convenient to enable the local government to achieve the goals and objectives of the agreement.

The consent agreement may not grant the power to reject, modify, or terminate the terms of a collective bargaining agreement.

Collective Bargaining Exemption. Beginning 30 days after a local government enters into a consent agreement, the local government will not be subject to Section 15(1) of the public employment relations Act (PERA) for the remaining term of the agreement, unless the State Treasurer determines otherwise. (Section 15(1) requires a public employer to bargain collectively with representatives of its employees as provided in PERA, and allows a public employer to enter into collective bargaining agreements with the employee representatives.)

Other Provisions. A consent agreement may require the local government to retain a consultant for the purpose of assisting it to

achieve the goals and objectives of the agreement.

A local government will be released from the bill's requirements concerning a consent agreement upon compliance with the agreement, as determined by the State Treasurer.

Emergency Manager

Appointment. The Governor may appoint an emergency manager to address a financial emergency within a local government as provided in PA 436. Upon appointment, an EM must act for and in the place of the governing body and the office of chief administrative officer of the local government. The EM will have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and its capacity to provide or cause to be provided services essential to the public health, safety, and welfare.

After an emergency manager is appointed and during the receivership, the governing body and chief administrative officer of the local government may not exercise any of the powers of those offices except as specifically authorized in writing by the EM or as otherwise provided in the Act, and they will be subject to any conditions required by the EM.

The emergency manager must be an individual with at least five years' experience and demonstrable expertise in business, financial, or local or State budgetary matters. He or she may but is not required to be a resident of the local government.

The emergency manager's compensation must be paid by the State, and set forth in a contract approved by the State Treasurer. Within seven days after approval, the contract must be posted on the Department's website.

The State may receive and distribute private funds to an EM in addition to the salary provided for in the contract. Private funds distributed under this provision are subject to a statutory requirement that the Governor accept gifts and grants to the State (MCL 21.161) and a constitutional requirement that no money be paid out of the State Treasury except pursuant to

appropriations made by law (Article IX, Section 17).

The emergency manager will serve at the pleasure of the Governor, but will be subject to impeachment and conviction by the Legislature as if he or she were a civil officer under Article XI, Section 7 of the State Constitution (i.e., for criminal activity or corruption in office). A vacancy in office of emergency manager must be filled in the same manner as the original appointment.

The emergency manager will continue in this capacity until removed by the Governor or the Legislature, as provided above; or until the financial emergency is rectified.

An emergency manager is subject to all of the following:

- Public Act 317 of 1968 (which governs contracts of public servants with public entities).
- Public Act 318 of 1968 (which prohibits State officers from having an interest in a contract with the State or a political subdivision that would cause a substantial conflict of interest).
- Public Act 196 of 1973 (which prescribes standards of conduct of public officers and employees).

Removal of EM. If an emergency manager has served for at least 18 months, he or she may be removed, by resolution, by a two-thirds vote of the governing body of the local government. If the EM is removed under this provision and the local government has not previously breached a consent agreement, the local government may negotiate a consent agreement with the State Treasurer within 10 days. If a consent agreement is not agreed upon, the local government must proceed with the neutral evaluation process.

If an emergency manager has served for less than 18 months, the governing body of the local government may pass a resolution petitioning the Governor to remove the EM and allow the local government to proceed under the neutral evaluation process. If the Governor accepts the resolution, the local government must proceed under that process.

In either situation, if the local government has a strong mayor, the resolution requires strong mayor approval.

Removal from Receivership. A local government must be removed from receivership when the financial conditions are corrected in a sustainable fashion as provided in PA 436.

A local government also may be removed from receivership if an EM is removed after serving for at least 18 months, as provided above, and the governing body of the local government by a two-thirds vote approves a resolution for it to be removed from receivership (with strong mayor approval, if there is a strong mayor). A local government removed from receivership while a financial emergency continues to exist must proceed under the neutral evaluation process.

Delegation. The Governor may delegate his or her duties under these provisions to the State Treasurer.

Previously Appointed Manager. An emergency financial manager (EFM) appointed under former PA 101 of 1988 or former PA 72 of 1990 and serving immediately before the effective date Public Act 436 of 2012 must be considered an emergency manager under the Act and continue to fulfill his or her powers and duties. Also, the Governor may appoint a person who was appointed as an EFM under the 1988 or 1990 Act or as an EM under former PA 4 of 2011 to serve as an emergency manager under PA 436.

EM Orders. An emergency manager must issue to the appropriate local and elected officials and employees, agents, and contractors of the local government the orders the EM considers necessary to accomplish the purposes of the Act, including 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 these provisions is binding on the local officials, employees, agents, and contractors to whom it is issued.

If an EM's order is not reasonably carried out and that failure is disrupting the emergency manager's ability to manage the local government, the EM may prohibit the local official, employee, agent, or contractor from access to the local government's office facilities, electronic mail, and internal information systems.

Financial & Operating Plan. An emergency manager must develop and may amend a written financial and operating plan for the local government. The objectives the plan must be to assure that the local government is able to provide or cause to be provided governmental services essential to the public health, safety, and welfare, and assure the fiscal accountability of the local government.

The plan must provide for all of the following:

- Conducting all aspects of the operations of the local government within the resources available according to the EM's revenue estimate.
- Paying in full the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government and all other uncontested legal obligations.
- The modification, rejection, termination, and renegotiation of contracts.
- The timely deposit of required payments to the pension fund for the local government or in which it participates.
- For school districts, an educational plan.
- Any other actions considered necessary by the EM to achieve the objectives of the plan, alleviate the financial emergency, and remove the local government from receivership.

Within 45 days after being appointed, the emergency manager must 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 State Superintendent if applicable, and to the chief administrative officer and governing body of the local government. The EM and State Treasurer must reexamine the plan regularly, and the EM may modify it from time to time with notice to the Treasurer.

The plan may serve as a deficit elimination plan otherwise required by law if so approved by the State financial authority.

Within 30 days of submitting the plan to the State financial authority, the emergency manager must conduct a public informational meeting on the plan and any modifications to it. This provision does not require the EM to receive public approval before implementing the plan or any modification.

For a local government in receivership immediately before the Act's effective date, a financial and operating plan adopted under PA 4 of 2011 or a financial plan adopted under PA 72 of 1990 is effective and enforceable as a financial and operating plan under PA 436 until modified or rescinded.

Additional Actions. An emergency manager may take specified additional actions with respect to a local government in receivership, notwithstanding any charter provision to the contrary. These actions include, for example, requiring a plan for paying all outstanding obligations; revising the local government's budget; reviewing payrolls or other claims against the local government before payment; and approving any appropriation, contract, expenditure, or loan, the creation of a new position, or the filling of a vacancy.

An emergency manager also may 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; enter into agreements with other local governments or public bodies for the consolidation of services; order one or more millage elections for the local government; disburse all Federal, State, and local funds earmarked for the local government; and authorize the local government to borrow money as provided by law.

In addition, an emergency manager may reject, modify, or terminate one or more terms and conditions of an existing contract; and may act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement.

Additional actions that an EM may take are described below.

Collective Bargaining Agreements. After meeting and conferring with the appropriate bargaining representative and, if in the EM's

sole discretion, a prompt and satisfactory resolution is unlikely to be obtained, an emergency manager may reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. The Act states that this action is a legitimate exercise of the State's sovereign powers if the emergency manager and the State Treasurer determine that all of the following conditions are satisfied:

- The financial emergency has created a circumstance in which it is reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.
- Any plan involving the rejection, modification, or termination of any terms and conditions of an existing CBA is reasonable and necessary to deal with a broad, generalized economic problem.
- The plan is directly related to and designed to address the financial emergency for the benefit of the public as a whole.
- The plan is temporary and does not target specific classes of employees.

A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter in the line of duty must not be impaired and is not subject to any provision of the Act authorizing an emergency manager to reject, modify, or terminate the terms of an existing CBA.

Local Inspector or Auditor. An emergency manager may employ or contract for auditors and other technical personnel considered necessary, at the expense of the local government and with the approval of the State financial authority. An EM also may retain one or more individuals or firms to perform the duties of a local inspector or a local auditor. At least annually, a report of the local inspector or auditor must be submitted to the EM, the State Treasurer, the State Superintendent if applicable, and each State Senator and Representative who represents the local government.

Municipal Government. The emergency manager for a municipal government may do the following:

- Enter into agreements with other units of municipal government to transfer

property, subject to approval by the State Treasurer.

- Recommend to the State Boundary Commission that a city, village, or township consolidate with one or more other municipal governments.
- With the approval of the Governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law (subject to local voter approval if required by law).

An EM appointed for a city or village may not sell or transfer a public utility furnishing light, heat, or power without local voter approval. Also, if the finances of such a public utility are separately maintained and accounted for by the city or village, the emergency manager may not use the utility's assets to satisfy the general obligations of the city or village.

Municipal Government Pension Fund. If a municipal government's pension fund was 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 one or more of the serving trustees of the local pension board or, if the State Treasurer appoints the EM as the sole trustee of the board, replace all the serving trustees.

If the emergency manager serves as the sole trustee, he or she must assume and exercise the authority and fiduciary responsibilities of the local pension board including, if applicable, setting and approving actuarial assumptions for pension obligations of the municipal government to the local pension fund. The EM also must comply fully with the Public Employee Retirement System Investment Act and Article IX, Section 24 of the State Constitution (which provides that the accrued financial benefits of each pension plan of the State and its political subdivisions are a contractual obligation that may not be impaired), and any actions taken must be consistent with the pension fund's qualified plan status under the Internal Revenue Code. In addition, the EM may not make changes to a local pension fund without identifying the changes and the

associated costs and benefits and receiving the State Treasurer's approval.

The emergency manager's assumption and exercise of the authority and fiduciary responsibilities of the local pension board must end not later than the termination of the receivership.

School Districts. Additional actions an emergency manager may take with respect to a school district include seeking approval from the State Superintendent for a reduced class schedule in accordance with administrative rules governing the distribution of State school aid. The EM also may sell, assign, transfer, or otherwise use the district's assets to meet past or current obligations or assure the fiscal accountability of the school district, as long as this does not impair pupil education. This power includes the closing of schools or other school buildings in the district.

In addition, the emergency manager may do the following:

- Exercise solely all other authority and responsibilities affecting the school district prescribed by law to the school board and district superintendent.
- Employ or contract for, at the district's expense and with the approval of the State financial authority, school administrators necessary to implement the Act.

Assets, Liabilities, & Responsibilities. If provided in the financial and operating plan, or otherwise with the prior written approval of the Governor or his or her designee, an emergency manager may sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, if the use or transfer does not endanger the health, safety, or welfare of the local residents or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

Unless the potential sale and value of an asset are included in the financial and operating plan prepared for a local government, the EM may not sell an asset of the local government valued at more than \$50,000 without the State Treasurer's approval.

Competitive Bidding on Contract. Any contract involving a cumulative value of \$50,000 or more is subject to competitive bidding by an emergency manager. The emergency manager may, however, submit the potential contract to the State Treasurer for review and the Treasurer may authorize the contract without competitive bidding.

Reporting Requirements. An emergency manager must submit quarterly reports to the State Treasurer concerning the financial condition of the local government, with a copy to the State Superintendent if it is a school, and a copy to each State Senator and Representative who represents the local government. Each quarterly report also must be posted on the local government's website within seven days after the report is submitted to the Treasurer.

Beginning six months after his or her appointment, and then every three months, an emergency manager must submit a report to the Governor, the State Treasurer, the Senate Majority Leader, the Speaker of the House, each State Senator and Representative who represents the local government, and the clerk of the local government in receivership, and post the report on the local government's internet website. The report must contain all of the following:

- A description of each expenditure made, approved, or disapproved during the reporting period with a cumulative value of \$5,000 or more and the source of the funds.
- A list of each contract that the EM awarded or approved with a cumulative value of \$5,000 or more, the purposes of the contract, and the identity of the contractor.
- A description of each loan sought, approved, or disapproved during the reporting period with a cumulative value of \$5,000 or more, and the proposed use of the funds.
- A description of each new position created or any vacancy in a position filled by the appointing authority.
- A description of any position that has been eliminated or from which an employee has been laid off.
- A copy of the contract with the EM, and his or her salary and benefits.
- The financial and operating plan prepared for the local government.

Criminal Conduct. An emergency manager, on his or her own or upon the advice of the local inspector if one has been retained, must determine whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the EM determines that there is reason to believe that criminal conduct has occurred, he or she must refer the matter to the Attorney General and the local prosecuting attorney for investigation.

Elimination of Salary & Benefits. When an EM is appointed and during the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and governing body members will be eliminated.

If an EM has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and governing body members before the Act's effective date, the reduction, suspension, or elimination will be valid to the same extent as if it had occurred after that date.

An emergency manager may restore all or part of the compensation or benefits of the chief administrative officer and governing body members during the receivership, for the time and on the terms the EM considers appropriate, to the extent he or she finds that the restoration is consistent with the financial and operating plan.

These provisions do not authorize the impairment of vested retirement benefits.

Bankruptcy Recommendation. An emergency manager may recommend to the Governor and the State Treasurer that a local government be authorized to proceed under Chapter 9 (of Title 11 of the United States Code) if, in the EM's judgment, no reasonable alternative to rectifying the local government's financial emergency exists. If the Governor approves of the recommendation, he or she must inform the State Treasurer and the emergency manager, as well as the State Superintendent if the local government is a school district. The Governor may place contingencies on the local government in order to proceed under Chapter 9. Upon receiving the Governor's written approval,

the emergency manager will be authorized to proceed under Chapter 9.

These provisions empower the local government to become a debtor under Title 11, and empower the emergency manager to act exclusively on the local government's behalf in any such case under Chapter 9.

The recommendation to the Governor and State Treasurer must include a determination by the emergency manager of one of the following:

- No feasible financial plan that can satisfactorily rectify the financial emergency in a timely manner can be adopted.
- 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 Government Approval Requirement. An emergency manager must submit his or her proposed action to the governing body of the local government before doing any of the following:

- Rejecting, modifying, or terminating the terms or conditions of an existing collective bargaining agreement.
- Selling, leasing, conveying, assigning, or otherwise using or transferring a local government's assets, liabilities, functions, or responsibilities of \$50,000 or more.
- Authorizing the local government to borrow money.
- Selling, assigning, transferring, or otherwise using a school district's assets of \$50,000 or more.

The governing body then will have 10 days to approve or disapprove the action. If the governing body does not act within 10 days, the proposed action will be considered approved and the EM may take the action.

If it disapproves the proposed action within 10 days, the governing body must, within seven days of the disapproval, submit to the Local Emergency Financial Assistance Loan Board an alternative proposal that would yield substantially the same result. The Board will have 30 days to review both the alternative proposal and the EM's proposed action and to approve either of them. The

Board must approve the proposal that best serves the interest of the public in the local government. The EM must implement whichever is approved by the Board.

Removal from Receivership. An emergency manager must notify the Governor if the EM determines that the financial emergency that he or she was appointed to manage has been rectified. If the Governor disagrees with that determination, he or she must inform the emergency manager. Either the EM's term will continue or the Governor must appoint a new emergency manager.

If the Governor agrees that the financial emergency has been rectified, the emergency manager has adopted a two-year budget for the local government, and the financial conditions of the local government have been corrected in a sustainable fashion, the Governor may either remove the local government from receivership or appoint a receivership transition advisory board, as provided below.

Before removing a local government from receivership, the Governor may impose one or more of the following conditions on the local government:

- The implementation of financial best practices within the local government.
- The adoption of a model charter or model charter provisions.
- The pursuit of financial or managerial training to ensure that official responsibilities are properly discharged.

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

Transition Advisory Board. 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.

A receivership transition advisory board must 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 is a school district, the State Superintendent. The Governor also may appoint one or more additional individuals with relevant professional experience, including residents of the local government. The board will serve at the pleasure of the Governor.

A receivership transition advisory board may 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 PERA.
- 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 is appointed.

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

A receivership transition advisory board will be subject to the Open Meetings Act and the Freedom of Information Act.

Collective Bargaining. A local government placed in receivership under PA 436 will not be subject to Section 15(1) of PERA for five years from the date it is placed in receivership or until the time the receivership is terminated, whichever occurs first.

Two-Year Budget. Before the termination of a receivership and the completion of the EM's term, or before the appointment of a transition advisory board if one is appointed, the emergency manager must adopt and implement a two-year budget, including all contractual and employment agreements, for the local government beginning with the termination of the receivership.

The governing body of the local government may not amend the two-year budget without the approval of the State Treasurer, and may not revise any order or ordinance implemented by the EM during his or her term, before one year after the receivership terminates.

Immunity; Defense; Insurance. An emergency manager will be immune from liability as provided in Section 7(5) of the governmental immunity law. A person employed by an EM will be immune from liability as provided in Section 7(2) of that law.

(Under Section 7(5), a judge, a legislator, and the elective or highest appointed executive official of all levels of government are immune from tort liability for personal injury or property damage if the person is acting within the scope of his or her judicial, legislative, or executive authority. Section 7(2) extends tort immunity to a governmental employee for personal injury or property damage caused by the employee in the course of employment if his or her conduct does not amount to gross negligence.)

The Attorney General must defend any civil claim, demand, or lawsuit that challenges the validity of PA 436, the authority of a State official or officer acting under the Act, or the authority of an emergency manager if he or she is acting within the scope of authority for an EM under the Act.

With respect to any aspect of a receivership, the costs incurred by the Attorney General in carrying out these responsibilities will be at the expense of the local government. A local government's failure to remit to the Attorney General the costs he or she incurred within 30 days after written notice will be a debt owed to the State. In the case of a municipal government, the debt must be recovered by the State Treasurer as provided in Section 17a(5) of the Glenn Steil

State Revenue Sharing Act (i.e., the Treasurer may withhold revenue sharing payments). In the case of a school district, the State Treasurer must recover the debt as provided in the State School Aid Act.

An emergency manager may 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 of the EM, as may be provided to elected or appointed officials or local government employees.

If, after an EM's service has ended, the emergency manager or an employee, agent, appointee, or contractor is subject to a claim, demand, or lawsuit arising from an action taken during the EM's service and not covered by insurance, litigation expenses and settlement payments must be paid out of the funds of the local government, if the State Treasurer approves the expenses and determines that the conduct resulting in the proceedings was based upon the scope of authority of the person or entity seeking the payment, and the conduct occurred on behalf of a local government while it was in receivership.

The failure of a municipal government or school district to honor and remit the legal expenses of a former emergency manager or his or her employee, agent, appointee, or contractor will be a debt owed to the State and must be recovered as provided under the State Revenue Sharing Act or the State School Aid Act.

Neutral Evaluation Process

Notice of Process; Selection of Evaluator. To initiate the neutral evaluation process, a local government must provide notice by certified mail of a request for the process to all interested parties. If a local government does not provide this notice within seven days after selecting this option, the State Treasurer may require the local government to go into receivership and proceed under an emergency manager. An interested party must respond within 10 days of receiving notice of the request.

("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 it. 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 \$5.0 million or comprise more than 5.0% of the local government's debt or obligations, whichever is less.)

In his or her discretion, the State Treasurer may determine that the State will monitor the neutral evaluation process, and may identify one or more individuals who may attend and observe it.

The local government and the interested parties agreeing to participate in the process must select a neutral evaluator to oversee it and facilitate all discussions in an effort to resolve their disputes. The Act sets forth the process for selecting a neutral evaluator, and allows an interested party to appeal to the State Treasurer if the party objects to the evaluator who is selected. If the State Treasurer determines that the selected evaluator is not qualified, the Treasurer must select the evaluator.

Evaluator's Qualifications & Neutrality. A neutral evaluator must have experience and training in conflict resolution and alternative dispute resolution, and have at least one of the following qualifications:

- At least 10 years of high-level business or legal experience involving bankruptcy or service as a United States bankruptcy judge.
- At least 10 years of combined professional experience or training in municipal finance in one or more of the following areas: municipal organization, debt restructuring, or finance dispute resolution; Chapter 9 bankruptcy; public finance; taxation; Michigan constitutional law; or Michigan or Federal labor law.

The neutral evaluator must avoid a conflict of interest and the appearance of a conflict of interest during the neutral evaluation process. His or her performance must be

impartial, objective, independent, and free from prejudice.

The neutral evaluator must 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. If he or she is informed of the existence of any such facts, the evaluator must disclose them to the local government and all interested parties involved in the process. If any interested party objects to the neutral evaluator, that party must notify the local government and the other interested parties. The neutral evaluator must withdraw and another one must be selected.

Before beginning a neutral evaluation process, the evaluator must 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 process, although the 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.

Removal of Neutral Evaluator. 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 process wish to remove the neutral evaluator, the local government or any interested party may make request to the others to remove him or her. 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 him or her, the local government and interested parties must select a new neutral evaluator.

Responsibilities of Neutral Evaluator. A neutral evaluator must 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 process and outcome.

The neutral evaluator must not impose a settlement on the participants, but must use his or her best efforts to assist them to reach a satisfactory resolution of their disputes. Subject to his or her discretion, the neutral evaluator may make

recommendations for a settlement or plan of readjustment to a participant privately or to all participants jointly.

The neutral evaluator must inform the local government and all participants of the provisions of Chapter 9 relative to other chapters of Title 11 of the U.S. Code. This instruction must highlight the limited authority of United States bankruptcy judges in Chapter 9, including the restriction on the judges' authority to interfere with or force liquidation of a local government's property and the lack of flexibility available to the 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 evaluator may request from the participants documentation and other information that he or she believes may be helpful in assisting them to address their obligations. The participants must respond to a request in a timely manner.

The neutral evaluator must provide counsel and guidance to all participants. He or she may not be a legal representative of any participant, and may not have a fiduciary duty to any participant.

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

Responsibilities of Local Government & Interested Parties. The local government and all interested parties participating in the neutral evaluation process must negotiate in good faith.

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

The local government and participating interested parties must maintain the confidentiality of the process. At the conclusion of the process or during any

bankruptcy proceeding, they may not 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 the local government to proceed with a Chapter 9 bankruptcy, or as otherwise required by law.

Conclusion of Process. A neutral evaluation process may not last more than 60 days after the date the neutral evaluator is initially selected, unless the local government or a majority of the participating interested parties elects to extend the process for up to an additional 30 days.

The process must end if the local government and the participating interested parties execute a settlement agreement. If the State Treasurer determines, however, that the agreement does not provide sufficient savings to the local government, the Treasurer must notify the local government and it must proceed under one of the other local government options.

The process also must end if it has exceeded 60 days after 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 elects to extend the process.

In addition, the process must end if any of the following occurs:

- The local government and the participating interested parties reach an agreement or a proposed plan of readjustment that requires the approval of a bankruptcy judge.
- The local government initiated the neutral evaluation process and did not receive a response from any interested party within the time specified.
- The fiscal condition of the local government deteriorates to the point that necessitates proceeding under the Chapter 9 bankruptcy option.

If the neutral evaluation process is complete with differences resolved upon the expiration of the 60-day period, including any extension of the 60-day period, the process must be concluded.

Chapter 9 Recommendation. The governing body of the local government must adopt a resolution recommending that it proceed under Chapter 9 if the neutral evaluation process does not resolve all pending disputes with the local government and the interested parties, or if one of the following applies: the local government and the interested parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge; the process has exceeded 60 days and the local government and interested parties have not reached an agreement and have not requested an extension; or the local government initiated the process and no interested party responded.

The local government must submit the resolution to the Governor and the State Treasurer. If the local government has a strong mayor, the resolution requires strong mayor approval before the local government proceeds under Chapter 9.

If the Governor approves the resolution, he or she must inform the local government in writing. The Governor may place contingencies on a local government in order for it to proceed under Chapter 9, including appointing a person to act exclusively on behalf of the local government in Chapter 9 proceedings. If the local government fails to adopt a resolution within seven days after the neutral evaluation process is concluded as provided above, the Governor may appoint a person to act in that capacity. If the Governor does not do so, the chief administrator officer of the local government must act exclusively on its behalf in Chapter 9 proceedings.

Costs. The local government must pay 50% of the costs of the neutral evaluation process, including the evaluator's fees, and the interested parties must pay the balance of the costs, unless otherwise agreed to by the local government and a majority of the interested parties.

Chapter 9 Bankruptcy Option

With the Governor's written approval, 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 its governing body, that declares a financial emergency in the local

government. If the local government has a strong mayor, the resolution requires strong mayor approval.

The resolution must 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 its service area absent the protections of Chapter 9, and that the local government is or will be unable to pay its obligations within 60 days after the resolution is adopted.

If the Governor approves a local government to proceed under Chapter 9, he or she must inform the local government in writing. The Governor may place contingencies on the local government, including appointing a person to act exclusively on its behalf in Chapter 9 proceedings. If the Governor does not appoint such a person, the chief administrator officer of the local government must act in that capacity.

If the Governor does not approve a local government to proceed under Chapter 9, the local government must select one of the other local options within seven days.

Local Assistance

The elected and appointed officials and employees, agents, and contractors of a local government must promptly and fully provide the assistance and information necessary and properly requested by the State financial authority, a review team, or an emergency manager. If a review team or emergency manager believes that an official or employee, agent, or contractor is not answering questions accurately or completely, or is not furnishing information requested, the review team or EM may issue subpoenas and administer oaths to the official, employee, agent, or contractor to answer questions or furnish records, or both. If the individual refuses, the review team or EM may bring an action in the local circuit court or the Michigan Court of Claims, as the team or EM determines, to compel testimony and furnish records.

A local government official's failure to abide by the Act must be considered gross neglect of duty, which the review team or EM may report to the State financial authority and the Attorney General. After review and a hearing with the elected official, the State

financial authority may recommend to the Governor that he or she remove the official from office. If the Governor does so, the resulting vacancy must be filled as prescribed by law.

Continuation of EM or EFM; Prior Actions

An emergency manager or emergency financial manager appointed and serving under State law immediately before the effective date of PA 436 must continue under the Act as an emergency manager for the local government.

All of the following actions that occurred under former PA 4 of 2011, former PA 72 of 1990, or former PA 101 of 1988, before the effective date of PA 436 will be effective under the Act:

- A determination by the State Treasurer or State Superintendent pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.
- The appointment of a review team.
- The findings and conclusions contained in a review team report submitted to the Governor.
- A confirmation by the Governor of a financial emergency in a local government.

Any of these actions need not be reenacted or reaffirmed in any manner to be effective under the Act.

Nonliability

The Act states that it does 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, for any action taken by any local government under the Act, for any violation of the Act by any local government, or for any failure to comply with the Act by any local government. A cause of action against the State or any department, agency, or entity of the State, any officer or employee of the State, or any member of a receivership transition advisory board acting in his or her official capacity, may 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.

Bulletins & Rules

The State financial authority must issue bulletins or promulgate rules as necessary to carry out the purposes of the Act. Rule must be promulgated in accordance with the Administrative Procedures Act.

New Taxes

Public Act 436 states that it does not give an emergency manager or the State financial authority the power to impose taxes, over and above those already authorized by law, without the approval of a majority of the qualified electors voting on the question.

Severability

If any portion of the Act or the application of the Act to any person or circumstances is found to be invalid by a court, the invalidity will not affect the remaining portions or applications of the Act that can be given effect without the invalid portion or application.

Appropriations

For fiscal year 2012-13, the Act appropriates \$5.0 million from the General Fund to the Department of Treasury to administer the Act, secure the services of financial consultants, lawyers, work-out experts, and other professionals to assist in the implementation of the Act, and to assist local governments in proceeding under Chapter 9. This is a work project appropriation, and any unencumbered or unallotted funds will be carried forward into the following fiscal year.

Also for fiscal year 2012-13, the Act appropriates \$780,000 from the General Fund to the Department to administer the Act and pay the salaries of emergency managers. This appropriation and the expenditures authorized to be made by the Department are subject to the Management and Budget Act.

MCL 141.1541-141.1575

BACKGROUND

Since the late 1980s, Michigan has had a statute providing for the appointment of a manager for local units of government that are experiencing fiscal distress. The original

statute was Public Act 101 of 1988, which created the Local Government Fiscal Responsibility Act. That Act allowed the appointment of an emergency financial manager for a city, village, township, or county; a public utility owned by one of those entities; or an authority established by law. The 1988 statute was replaced Public Act 72 of 1990, which contained virtually the same provisions but also applied to school districts.

Due to perceived weaknesses in the law, particularly with respect to the powers of an appointed manager, Public Act 4 of 2011 was enacted. That Act repealed the 1990 law and replaced it with the Local Government and School District Fiscal Accountability Act. While the earlier statutes had provided for the appointment of an "emergency financial manager", whose authority was limited to the control of financial operations, Public Act 4 provided for the appointment of an "emergency manager". In addition to giving an appointed manager significantly broader powers that were not limited to financial operations, Public Act 4 was more comprehensive overall.

Considerable opposition was raised to Public Act 4 and opponents gathered enough petition signatures to invoke the power of referendum under Article II, Section 9 of the State Constitution (which reserves to the people the power to approve or reject a law enacted by the Legislature). On August 8, 2012, the Board of State Canvassers certified the petition for the general election ballot and, as provided in the Constitution, PA 4 was suspended pending the outcome of the vote. At approximately the same time, Attorney General Bill Schuette determined that PA 72 of 1990 was "temporarily revived" until the election, and would be "permanently revived" if the voters disapproved Public Act 4 (an opinion that the courts agreed with, at various levels).

The referendum on Public Act 4 appeared on the November 6, 2012, ballot as Proposal 12-1. The majority of the electors rejected PA 4, and the vote was certified by the Board of State Canvassers on November 26, 2012.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have an indeterminate impact on local unit revenue and expenditures, depending on the decisions of affected local units, various executive branch officers, and other assigned decision-making authority under the bill. To the extent that these entities or individuals do not make different decisions than those that would be made absent the bill, the bill will have no impact. To the extent that the decisions do differ, revenue and/or expenditures for the affected local unit might be more or less than what the revenue and/or expenditures would be absent the bill, depending on the substance of the decisions.

The bill also appropriated \$5,780,000 to the Department of Treasury for FY 2012-13. Of this appropriation, \$780,000 had to be used to administer the Act and pay emergency manager salaries; and \$5.0 million (which may be carried forward) must be used to administer the Act, secure professional services, and assist local governments in proceeding under Chapter 9 bankruptcy.

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.