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BILL ANALYSIS

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Senate Bill 461 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Michael D. Bishop
Committee: Local, Urban and State Affairs

Date Completed: 10-3-05

RATIONALE

Under the Local Government Fiscal Responsibility Act, if the Governor determines that a financial emergency exists in a local government, he or she must assign the responsibility for managing the financial emergency to the Local Emergency Financial Assistance Loan Board. The Board is required to appoint an emergency financial manager, who serves at the Board's pleasure. Recently, the Board appointed an emergency financial manager for the City of Highland Park over the objections of some State and local officials, who found that they had no input during the appointment process. Some people believe that emergency financial managers should be appointed to one-year terms by the Governor with the advice and consent of the Senate.

CONTENT

The bill would amend the Local Government Fiscal Responsibility Act to require the Governor to appoint, with the advice and consent of the Senate, an emergency financial manager from a list of nominees submitted by the Local Emergency Financial Assistance Loan Board to manage a local government during a financial emergency.

The Act provides for the review, management, and control of the financial operation of units of local government; authorizes the Governor to declare a financial emergency; allows the Local Emergency Financial Assistance Loan Board to appoint an emergency financial manager for a local unit; and prescribes the powers of the emergency financial manager. ("Local government" means a city, village, township, or county, an authority established by law, or a public utility owned by a city, village, township, or county.)

Under the bill, the Local Emergency Financial Assistance Loan Board would be required to submit to the Governor the names of at least three nominees who would have to be considered for appointment to serve as the emergency financial manager for a local government. From the list of nominees, the Governor would have to appoint, with the advice and consent of the Senate, an emergency financial manager for the local government. The emergency financial manager would hold the office for a term fixed by the Governor, but not more than one year.

The appointment would have to be by written contract and could be renewed on an annual basis for not more than one year. A contract of an emergency financial manager on the bill's effective date could not be renewed for more than one year.

The Act requires an emergency financial manager to serve at the pleasure of the Local Emergency Financial Assistance Loan Board. Under the bill, an emergency financial manager would serve at the pleasure of the Governor.

Under the bill, an emergency financial manager would have to submit a quarterly report detailing his or her activities to the Board and to the chairpersons of the House and Senate committees with oversight of local government issues.

Under the Act, an emergency financial manager must be chosen solely on the basis of his or her competence and must not have been either an elected or appointed official or employee of the local government for which appointed for at lest five years before the appointment. The emergency financial manager need not be a resident of the local government for which he or she is appointed.

MCL 141.1218

BACKGROUND

The Local Government Fiscal Responsibility Act prescribes a series of events that may lead to the appointment of an emergency financial manager for a local unit of government. In short, the following steps must be taken:

-- The Governor appoints a team to perform a local financial management review if 1) the local unit requests assistance, or 2) the State Treasurer determines, after a preliminary review, that a serious financial problem may exist within the local government. The State Treasurer must conduct a preliminary review if:

  1) The local unit requests the preliminary review; or
  2) A factor listed in the statute (including a Senator or House resolution) triggers the preliminary review.

-- The review team investigates and reports to the Governor.

-- The Governor determines that a financial emergency exists and informs the local unit, which may request a hearing with the Governor or appeal the determination to the circuit court.

-- The Governor assigns responsibility for the financial emergency to the Local Emergency Financial Assistance Loan Board, which appoints an emergency financial manager.

The Emergency Financial Assistance Loan Board was created under the Emergency Municipal Loan Act. (Under that Act, a municipality may apply to the board for a loan if it meets certain criteria, including a projected general fund deficit.) The board is housed in the Department of Treasury and consists of the State Treasurer, the Director of the Department of Labor and Economic Growth, and the Director of the Department of Management and Budget.

ARGUMENTS

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

Supporting Argument

In early 2005, the Local Emergency Financial Assistance Loan Board appointed Arthur Blackwell II to serve as emergency financial manager for Highland Park, replacing the emergency financial manager who had been appointed for the city four years earlier. Reportedly, the recent appointment was made at the request of the Governor. The appointment was controversial and questioned by officials and others at the local and State levels. To avoid this sort of situation in the future, the bill would provide for an emergency financial manager to be selected by the Governor with the advice and consent of the Senate from a list of at least three candidates supplied by the Board. The requirement that the appointment be subject to the advice and consent of the Senate would open the appointment process up to public scrutiny and hold the Governor accountable for his or her nominees.

Currently, when an emergency financial manager is appointed by the Local Emergency Financial Assistance Loan Board, he or she serves a term that ends when either the financial emergency has ended or the Board removes the manager. Reportedly, the open-ended nature of an emergency financial manager's term allows the manager to run a local government indefinitely and with little oversight. The bill's one-year term (which could be extended for additional one-year terms by the Governor) would ensure that a manager's performance was reviewed at least once a year. Additionally, the bill's requirement that the emergency financial manger submit a quarterly progress report detailing his or her activities to the Legislature and the Local Emergency Financial Assistance Loan Board would allow for increased oversight by the Legislature and Board.

Opposing Argument

The bill would inject politics into the appointment of emergency financial managers. Currently, the Board makes appointments based on the qualifications of the candidate and the needs of the local government for which a financial emergency has been declared. The Department of Treasury closely monitors emergency financial managers to ensure that local governments are being well managed. Under the bill, it would be more likely that political considerations would supplant those of the financial health of the local government when it came to the appointment of an emergency financial manager. In addition, an appointee should be required to possess knowledge, expertise, and experience in local government and municipal finance, as well as other managerial skills.

Response: The emergency financial manager of a financially distressed city is a key government appointment. The Senate's advice and consent role is to help ensure that individuals of questionable character or qualifications are not appointed to important positions of authority. It would be appropriate for the Senate to look into the background of someone who would have fiduciary responsibilities for a city. Requiring an individual to meet specific criteria, however, would hamper the appointment process.

Opposing Argument

Under the bill, an emergency financial manager would be subject to annual reappointment by the Governor, which would provide the Governor with the opportunity to replace an existing manager. There is no provision in the bill, however, that would facilitate the transition of a local government from one manager to another. In addition, to avoid unnecessary transitions, an emergency financial manager should be kept in office unless he or she commits gross neglect or is guilty of corruption.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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.