

## EMERGENCY MANAGER LAW

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**Senate Bill 865 (Substitute H-5)**

**Sponsor: Sen. Phil Pavlov**

**House Committee: Local, Intergovernmental, and Regional Affairs**

**Senate Committee: Government Operations**

**Complete to 12-10-12**

## A SUMMARY OF SENATE BILL 865 AS REPORTED FROM HOUSE COMMITTEE

### BRIEF SUMMARY:

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

The proposed law would replace Public Act 4 of 2011, which was repealed by the voters by referendum at the November 6, 2012, General Election.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 Public Act 4 had repealed Public Act 72 of 1990.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

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

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

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

- The creation, at the discretion of the governor (or state treasurer acting for the governor) of a Receivership Transition Advisory Board at the point when a financial emergency had been rectified in a local unit. This board would monitor the affairs of a local government until receivership was terminated and it could require the local unit to convene an annual consensus revenue estimating conference and to provide monthly cash flow projections, among other things. Negotiated collective bargaining agreements could not take effect unless approved by this board.
- A provision that allows a local unit, if an emergency manager had served for at least one year, to remove the emergency manager and proceed with a neutral evaluation process. Removal would require a two-thirds vote of the local governing body and approval of the mayor (if elected).

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

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

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

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

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

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

- List 18 explicit events that would trigger a financial review by the state (four of these are new, seven are in PA 72 but would be significantly changed, and four are in PA 72 but would be slightly modified).
- Include the director of the Department of Technology, Management, and Budget on the four-member review team (replacing the auditor general), and allow the governor to appoint more members to the team.
- Make explicit the differences between the municipal government and the school district review and intervention processes.
- Make explicit the parameters of the review team's evaluation (including 12 review criteria, six of which are new, and one that is in PA 72 but would be significantly changed).
- Allow the review team's evaluation report to be compiled by a firm (rather than an individual).
- Explicitly define the terms "Chapter 9," "creditor," "debtor," "emergency manager," "financial and operating plan," "interested party," "local government representative," "local inspector," "neutral evaluation process," "neutral evaluator," "receivership," and "review team."
- Allow for appointment of emergency managers by the governor after a financial emergency is declared by the governor (under PA 72, the emergency manager is appointed by a local emergency financial assistance loan board).
- Require the governor to declare that a local government is in receivership if a financial emergency is declared. (Note: the bill defines "receivership" to mean "the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include Chapter 9 or any provision under federal bankruptcy law.")
- Specify that an emergency manager have at least five years' experience in business, financial, or local or state budgetary matters; need not be a resident of the local government; be an individual (not a firm); and serve at the pleasure of the governor.
- Explicitly identify an emergency manager's extensive power and authority by listing 30 actions a manager may take, 16 of which are new, two of which are in

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

- Grant an appointed emergency manager the authority to abrogate existing labor contracts (currently the emergency financial manager may renegotiate contracts or enter into binding arbitration), allowing collectively bargained agreements to be rejected, modified, or terminated.
- Provide governmental immunity for emergency managers and others.
- Provide an explicit exit strategy to enable formerly struggling local governments to emerge from financial emergency status during which time local officials are prohibited from revising the emergency manager's two-year budget, labor contracts, or ordinances.
- After receivership is terminated, suspend collective bargaining for up to five years.

#### **DETAILED SUMMARY OF SENATE BILL 865 (H-5)**

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

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

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

#### Statement of Legislative Intent

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

the financial emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers.

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

#### Definitions

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

#### Preliminary Review to Determine Financial Problem

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

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

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

elimination plan to the state financial authority within 30 days after the district's deadline for submission of its annual financial statement (new).

- A local government had been assigned a long-term debt rating within or below the BBB category or its equivalent by one or more nationally recognized credit rating agencies (new).
- The existence of other facts or circumstances indicative of probable financial stress, as determined by the state treasurer (for a municipal government) or by the state school superintendent (for a school district) (new).

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

#### Review Teams if Probable Financial Stress

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

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

#### Staff Assistance

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

#### Continuity

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

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

#### Powers of Review Team

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

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

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

#### Factors Considered in Review Team's Report

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

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

- A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds were on hand, and if required, segregated in a special trust fund.
- Failure for a period of 30 days or more beyond the due date to transfer one or more of the following to the appropriate agency: (1) taxes withheld on the income of employees; (2) for a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority; (3) any contribution required by a pension, retirement, or benefit plan.
- Failure for a period of seven days or more after the scheduled date of payment to pay the wages and salaries or other compensation owed to employees or benefits owed to retirees (modified from PA 72 which says a failure for a period of 30 days).
- The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10 percent of the total expenditures of the local government in that fiscal year.



- Failure to eliminate an existing deficit in any fund of the local government within the two-year period preceding the end of the local government's fiscal year during which the review team report was received.
- Projection of a deficit in the general fund of the local government for the current fiscal years in excess of five percent of the budgeted revenues for the general fund.
- Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan (new).
- Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope (new).
- Existence, after the close of the fiscal year, of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles (new).
- Existence of a structural operating deficit (new).
- Use of restricted revenues for purposes not authorized by law (new).
- The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.
- Any other facts and circumstances indicative of local government financial emergency (new).

#### Report Conclusions

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

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

#### Individual or Firm to Prepare Report

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

#### Financial Emergency does not exist

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

#### Financial Emergency does exist

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

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

#### Governor's Determination; Discretionary Appeal Hearing

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

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

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

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

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

#### Governmental Body's Confirmation of Financial Emergency & Local Options

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

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

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

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

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

#### Consent Agreement: Continuing Operations Plan

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

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

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

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

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

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

#### Consent Agreement: Recovery Plan

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

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

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

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

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

#### Consent Agreement: Collective Bargaining Suspended

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

#### Governor Appoints Emergency Manager

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

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

#### Emergency Manager Determines Powers of Elected Officials

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

#### Emergency Manager's Qualifications/Compensation/Staff

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

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

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

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

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

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

#### Removal of Emergency Manager by Local Officials/Neutral Evaluation Process

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

#### Removal of Local Unit from Receivership

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

#### Emergency Manager's Responsibilities

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

#### Governor's Delegation of Duties

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

### Previously Appointed Emergency Financial Manager

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

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

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

### Orders for Local Officials

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

### Emergency Manager's Financial and Operating Plan

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

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

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

#### Emergency Manager's Authority

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

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

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



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

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

- Exercise solely all authority concerning the adoption, amendment, and enforcement of ordinances and resolutions.
- Supersede the power or authority of any officer, employee, department, board, commission, or other entity of the local government, whether elected or appointed.
- Remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity which is within or is a component unit of the local government (new).

#### Competitive Bidding

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

#### Power, Heat, and Light Public Utilities

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

#### Salaries of Officials Eliminated During Receivership

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

#### Authority of a School District Emergency Manager

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

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

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

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

#### Sale of Local Assets

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

#### Collectively Bargained Death Benefits for Police and Firefighters

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

#### Criminal Conduct

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

#### Posted Reports Every Three Months

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

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

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

#### Emergency Manager Could Recommend Chapter 9 Bankruptcy

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

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

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

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

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

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

#### Liability Protection

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

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

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

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

#### Financial Emergency Rectified

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

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

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

#### Receivership Transition Board to Advise Governor

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

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

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

#### New Emergency Manager

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

### Neutral Evaluation Process

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

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

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

### Neutral Evaluator's Qualifications

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

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

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

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

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

#### The Neutral Evaluation Process

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

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

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

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

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

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

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



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

#### Conditions Resulting in End of Neutral Evaluation Process

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

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

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

#### Chapter 9 Bankruptcy

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

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

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

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

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

#### Removing Local Officials from Office

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

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

#### Collective Bargaining Suspended up to Five Years

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

### Taxes

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

### Rules

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

### Previous Acts under Public Act 4 of 2011 & Similar Laws

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

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

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

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

### No State or Local Liability

Senate Bill 865 (H-5) states that the act would not impose any liability or responsibility in law or equity upon the state, any department, agency, or other entity of the state, or any officer or employee of the state, or any member of a receivership transition advisory board, for any action taken by any local government under the act, for any violation of the provisions of the act by any local government, or for any failure to comply with the provisions of the act by any local government. A cause of action against the state or any department, agency, or entity of the state, or any officer or employee of the state acting in an official capacity, or any membership of a receivership transition advisory board acting in an official capacity, could not be maintained for any activity authorized by the act, or for the act of a local government filing under Chapter 9, including any proceeding following a local government's filing.

### Severability

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

### Appropriation

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

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

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

### **FISCAL IMPACT:**

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

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

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

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

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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.