

Senate Bill 865 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Phil Pavlov

Committee: Government Operations

Date Completed: 1-6-12

RATIONALE

Public Act 4 of 2011 repealed the Local Government Fiscal Responsibility Act and replaced it with the Local Government and School District Fiscal Accountability Act, effective March 16,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

CONTENT

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

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

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

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

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

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

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

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

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

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

ARGUMENTS

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

Supporting Argument

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

Opposing Argument

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

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

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

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

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: David Zin

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