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# A Review of Michigan's Local Financial Emergency Law

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*We wish to thank attendees from two workgroup sessions in Lansing, Michigan, and Trenton, Michigan, as well as participants in one-on-one interviews we carried out with specific individuals involved in the emergency manager law. These sessions were with local and state officials who have been involved in the emergency manager process. Participants were queried regarding their experiences with emergency managers and their perceptions regarding potential changes in the law.*

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# I. Introduction

Michigan has faced a series of local government financial emergencies since the early 2000s due to a number of factors including long-term economic decline, population loss, poor management decisions, state funding cuts and other state policies, as well as the Great Recession of 2008-09. These local financial emergencies caused a particular policy framework to be implemented that turned out to be both innovative and controversial across the nation. Michigan Public Act 4 of 2011, officially known as the Local Government and School District Fiscal Accountability Act (referred to here as the "emergency manager law"), was essentially an updated and strengthened version of a Michigan law that had been in place, but only infrequently used, since the late 1980s. This new version of the law provided the state government with the authority to intervene and, in some cases, completely takeover local decision-making and governance including the complete removal of all authority from locally elected officials and in effect suspending local democracy. Few other states allowed such actions to be taken in the case of a local financial emergency.

Michigan's most notable case of a local government financial emergency occurred in the city of Detroit when it declared bankruptcy in 2013 while under the control of a state-appointed emergency manager. Many see this as an example of a case of the successful application of the emergency manager law and its ability to restore balance to local finances. In 2015 and 2016 however, the city of Flint, while under a state-appointed emergency manager, experienced a catastrophic failure of water infrastructure leading to the introduction of lead poisoning into its drinking water. Opponents hold this up as the most significant failure of the emergency manager law. The Flint water crisis has spurred a discussion on changes to the Michigan emergency manager law. This white paper seeks to explore options to the current emergency manager law.

Four versions of the law have been implemented in Michigan since 1988. The paper first outlines the history and current status of the Michigan emergency manager law and provides a perspective on where each version of the law has been implemented. The paper then discusses the pros and cons of the current Michigan law and the general approach used by state government. Finally, the paper focuses on four major alternatives to change the way Michigan addresses local financial emergencies.

This white paper is based on several research strategies. The first strategy was to review all the relevant written literature including academic writings, newspaper accounts, research white papers, and legal findings and cases. The second strategy was to hold a series of small group meetings in Detroit and Lansing with relevant stakeholders. These stakeholders included experts and practitioners involved in the application of the law and local elected officials of communities where state-appointed emergency managers had been involved.

# II. History of Michigan Intervention Laws

## a. Public Act 101 of 1988

Since its inception, Michigan's local financial emergency law has been closely scrutinized and amended multiple times. The first state-government takeover of a municipality occurred prior to state legislation when a receiver was appointed via court order for the City of Ecorse from 1986 to 1990. When the City of Hamtramck experienced a financial crisis shortly afterward, the State enacted Public Act 101 of 1988 to provide a formal mechanism for state-government oversight.[1]

Public Act 101 established triggers for an initial review of a city's financial status, which included failure to pay debts, failure to pay employee salaries, a request by local residents or officials, or a request by a state legislator or state treasurer.[2] If the review found that a financial emergency existed, the Local Emergency Financial Assistance Loan Board, which included the state treasurer, appointed an emergency financial manager (EFM) for the local government.[3] The ability of the State to displace locally elected officials was not considered as part of Public Act 101. The original bill was part of a larger legislative package meant to provide assistance to Hamtramck, which was struggling to make ends meet. The legislation itself was largely uncontroversial, as a report from Gongwer News Service remarked at the time that the "controversial part of the package" was not whether elected representatives could be displaced by the State, but instead whether to increase Michigan's cigarette tax by 4 cents per pack.[4]

### Jurisdiction(s) Implemented

- Royal Oak Township, 1988–90

## b. Public Act 72 of 1990

A few years later, Public Act 101 was repealed and amended by Public Act (PA) 72 of 1990, which broadened the EFM's powers to handle all matters of the local government's finances. PA 72 also provided a statute for public school districts to be placed under the control of an EFM.[5] Further, the act allowed the governor to give management of a municipality over to a Municipal Loan Board, which could appoint an EFM, help develop a consent agreement or put the municipality through a Chapter 9 bankruptcy proceeding. The act provided no discussion or policy guidance around public sector collective bargaining agreements.[6]

### Jurisdiction(s) Implemented

- Hamtramck, 2000–07
- Highland Park, 2000–09
- Flint, 2002–04
- Inkster Public Schools, 2002–13
- Three Oaks Village, 2008–09
- Detroit Public Schools, 2009–11
- City of Pontiac, 2009–17
- Ecorse, 2009–11
- City of River Rogue, 2009–15
- Benton Harbor, 2010–11
- Highland Park Schools, 2012–17
- Muskegon Heights Schools, 2012–17

## c. Public Act 4 of 2011

Public Act 4 of 2011 repealed and expanded the procedures of reviewing a local government's or public school district's financial situation. PA 4 also renamed the manager's position from emergency financial manager to emergency manager (EM) and vested this EM with additional powers.[7]

The state treasurer was authorized to conduct a preliminary review to determine the existence of a local government financial problem. The governor and other officials would then appoint eight members to serve as a review team to undertake a local financial management review.[8] This team had the full power to examine the books and records of the local government, utilize the services of other state agencies and employees, or sign a consent agreement providing for remedial measures considered necessary to correct the situation. After the review team presented its findings to the governor, the governor would then determine that either a serious financial problem did not exist in the local government; a serious financial problem did exist in the local government, but a consent agreement containing a plan to resolve the problem had been adopted; or a local government financial emergency existed, but there was no satisfactory plan to resolve the financial problem.[9]

Once the review panel presented its findings, the governor then had 10 days to choose an option, at

which time the local government then had 7 days to request a hearing by the governor or his designee to appeal the decision.[10] Public Act 4 of 2011 also created additional powers for the EM to break collective bargaining agreements, but contracts with financial institutions or bonding authorities remained outside the EM's scope of authority.

### Jurisdiction(s) Implemented

- Pontiac, 2010–11
- Detroit Public Schools, 2011–12
- Flint, 2011
- City of Inkster, 2011–17
- City of Detroit, 2012–17
- Highland Park Schools 2012–17
- Muskegon Heights Schools, 2012–17

## d. Common Assumptions of PAs 101, 72 & 4

A common assumption contained in Public Acts 101, 72 and 4 was that difficult changes may be needed to regain financial stability and that these changes cannot or will not be made by locally elected officials absent the real threat of state takeover.[11] Another assumption underlying all three iterations is that a demonstrated financial emergency, as defined by state law, justifies a state takeover.[12] One of the key changes in Public Act 4 "is the granting of powers to emergency managers that are significantly greater than those that may be exercised by locally elected officials and the extension of those powers into every aspect of the local government."[13]

## e. Public Act 436 of 2012

In November 2012, Public Act 4 was repealed by a voter referendum and Public Act 72 went back into effect.[14] However, shortly after voters repealed Public Act 4, the legislature passed Public Act 436 of 2012, also known as the Local Financial Stability and Choice Act. One key difference between Public Act 436 and Public Act 4 is the options afforded to the local governments and school boards for addressing a fiscal emergency. Under PA 436, if a financial emergency is deemed to exist, a local government or school district has four options: (1) a consent agreement, (2) Chapter 9 bankruptcy, (3) neutral evaluation or mediation, or (4) the appointment of an EM.[15]

As with previous laws, various reviews are taken before any actions are made. Either the state treasurer or the superintendent of public instruction provides an interim report within 20 days of creating a preliminary review of the government, and then provides a final report to the Local Emergency Financial Assistance Review Board (ELB) within 30 days. The governor still retains the power to order a financial review and declare on the basis from that review whether a financial emergency exists in the same matter that was presented in PA 4.

If a fiscal emergency is declared, the local government or school system must decide among the four options; doing nothing is not an option. Under this version of the law the state government pays the salary of the EM, and after 18 months he or she can be removed by a 2/3 vote of the local governing body and concurrence of the chief administrative officer (such as the county executive, mayor or superintendent). The EM's term may also end if the financial emergency is solved.[16]

### Jurisdiction(s) Implemented

- Flint, 2012–15
- Highland Park Schools, 2012–16
- Muskegon Heights School District, 2012–16
- City of Detroit, 2013–17
- Hamtramck, 2013–14
- Pontiac Public Schools, 2013–17
- City of Lincoln Park, 2014–17
- Wayne County, 2015–16

## f. Shift in Emphasis Over Time

The major changes made to Michigan's emergency manager law over the past 28 years reflect the State of Michigan's policy stance to place decision-making power in the hands of a limited number of individuals in the event of a financial crisis. The change in title from emergency financial manager to emergency manager, for example, indicates the manager's authority is no longer limited to only financial matters; the most recent version of the EM law grants him or her a much broader scope of power and authority than in the past. Despite its numerous revisions and amendments, not everyone has been in agreement with Michigan's decision to adopt laws that effectively displace local elected government officials. Supporters and critics continue to debate about the proper amount of state oversight necessary for cities and school districts to recover from a financial crisis, but finding the proper balance of oversight – not too little, not too much – is not easy.

# III. Proponents and Opponents of the Emergency Manager Law

Most scholars agree that local fiscal emergencies do not arise in a vacuum – "fiscal distress sufficient to require imposition of a takeover board typically entails systemic and longstanding financial instability rather than a discrete, exogenous shock to the local economy."[17]

There are two broad schools of thought regarding the effectiveness of takeover boards appointed to municipalities in financial distress: on one hand, takeover boards "are frequently accused of representing an anti-democratic form of local government and a denial of local autonomy";[18] on the other hand, "by addressing the political underpinnings of fiscal distress, takeover boards may be more capable of satisfying the interests of local residents for public goods than local elected officials, and may also represent the interests of nonresidents and creditors who are not considered by those officials."[19]

Takeover boards have sometimes been referred to as "dictatorships for democracy," indicating that placing substantial power temporarily in the hands of one individual may be the best way to improve a municipality's financial situation and its responsiveness to residents' desires for an efficient, accountable government. However, others believe that these "dictatorships" overstep their allotted authority, often without even improving the municipality's underlying fiscal condition. The criticism that takeover boards create a democratic deficit assumes "first, that the local officials who are subordinate to or displaced by a takeover board have been faithful representatives of their local constituents; and, second, that state intervention fails to represent the constituents adversely affected by local fiscal distress."[20] In a perfectly functioning world envisioned by the proponents of takeover law, the actions of elected officials would reflect the interests of their constituents, and "the threat of exit by residents would constrain local officials from taking action inconsistent with residents' preferences."[21]

However, the reality may be that elected officials might direct expenditures toward other avenues of political support for various reasons not attributable to residents' sentiments.[22]

To complicate the matter, municipal officials' budgets are often not as transparent as one might hope. Past case studies have revealed that public corruption has sometimes preceded local fiscal distress, and so distinguishing legitimate elected official actions from those that serve only the elected official becomes more difficult. One might make the counterargument that "local officials have been faithfully representing the preferences of their constituents, but that those preferences are themselves inconsistent,"[23] but "if that were the case … then one might still expect less mismanagement and corruption than we see in fiscally distressed localities, and arguably less exit. In addition, officials would still want to signal their fidelity by making expenditures more transparent. Finally, if fiscal distress is a function of inconsistent preferences, that might be an argument for less democracy rather than more, as electorally-driven fidelity to a regime of high services level and low taxes is unsustainable."[24]

Those who support emergency managers or other state intervention argue that determining whether local officials are supplanting residents' preferences for personal gain or the residents' inconsistent preferences are producing inefficient outcomes can be a task better suited for objective third parties than for those individuals who have a vested interest in the municipality.

A justification for retaining local autonomy, regardless of the depth of a crisis, is that the State has no overriding interest, which justifies constraints on local autonomy.[25] This is by no means a new argument; Judge Thomas Cooley of Michigan famously argued in the 19th century that there is an inherent right to local self-government. Local officials are best positioned to understand and respond to on-the-ground circumstances, while state government is

comparatively at an informational disadvantage. In this situation, the state government is simply unable to replicate the information available to local officials, and therefore makes less efficient policy decisions and may be unable to resolve the local fiscal crisis in an adequate manner.

The counterargument to preserving local autonomy revolves around the idea that local governments are not islands unto themselves; decisions made by local governments can affect their neighbors. If a municipality's decisions or fiscal failures begin negatively affecting surrounding communities, there is an argument to be made for the state government to intervene or provide guidance. Nonresidents may be significantly disadvantaged by local conduct, and so the state's interest lies in balancing the autonomy of multiple municipalities. Additionally, there is state interest in using potential loss of local control to prevent municipalities in trouble from positioning for state financial assistance rather than making politically difficult choices to solve the problem locally.[26] Occasionally, the state may be obliged to provide adequate funding for some select services if the municipality cannot provide the service for its residents because of fiscal mismanagement. State concern can also be triggered by fear that local fiscal distress creates substantial risk that other localities or the state itself will bear the costs of insolvency. Thus, the risk of externalities, moral hazard and credit contagion represent an argument for state intervention during and prior to a local fiscal emergency.[27]

"While the claim that takeover boards foster efficient provision of municipal services suggests that they are intended to serve the interests of local residents, the desire to neutralize negative spillovers suggests that takeover boards are intended to serve the interests of the state, and the desire to ensure capital flows implies that takeover boards should attend to the interests of capital markets."[28]

These competing purposes have led some scholars to the conclusion that a takeover board is better suited than local officials at targeting the institutional causes for insolvency rather than trying to only manage the negative effects.

State takeover that displaces policies of elected officials signifies that local decisions are the source of fiscal distress and those who make those decisions are incapable of fixing it, so a restructuring of internal policies and management is crucial to a successful outcome. These policies presume that the natural limits of local boundaries make municipal officials unlikely to care about negative spillover to other communities or weaker voting constituencies and that officials are so concerned about the next election that they ignore the long-term effects of their decisions.[29] Moreover, fiscal distress is commonly attributed to a fragmented local decision-making structure, meaning that for any given expenditure, there are multiple points of access and review before a decision is finalized.[30] This fragmentation can be between branches, for example, inconsistent executive and legislative decisions, or wholly within a branch of local government.[31] The solution would then seem to be a more centralized and defragmented budgetary institution, but "it is not in the interest of agencies or elected representatives of discrete districts to abdicate their authority to more centralized entities; nor is it in the interest of those groups that benefit from having access to a point in the budgetary process to see that point eliminated. The result is that, just as political actors may become entrenched in particular offices, so may the structure of those offices themselves."[32]

Some states use boards to oversee intervention in fiscally distressed municipalities in order to minimize fragmentation.

> "Takeover boards possess two characteristics that diminish fragmentation. First, the appointed nature of takeover boards renders them less vulnerable to the entreaties of multiple interest groups since takeover board membership is not conditioned on the support of politically influential local constituents. Second, to the extent that there is a relationship between logrolling within multi-member bodies or bureaucratic discretion and the size of government, the relatively small size of takeover boards should reduce expenditures."[33]

Takeover boards also reduce the chances of recidivism by restructuring the budgeting process so that changes will remain in place once a control period has expired. This function of takeover boards seeks to alter the underlying causes of fiscal distress rather than ameliorate the symptoms.

> "Because restructuring requires deeper intrusions into the organization of local government, it is likely to occur only through the intervention of a unitary decision maker that has the legal authority to reorganize municipal government and that is not obligated to the interests that have theretofore dominated the allocation of municipal resources."[34]

Ideally, this intrusion into the organization of local government will change the foundation of the local government enough that will create lasting incentives for local officials to pull the municipality back toward financial stability.

One of the strongest academic critics of state takeover of local municipalities has referred to Michigan's emergency manager law as a

> "... 'democratic dissolution' – that is, changes that suspend local democracy, even though the city remains a legal entity ... [i]n other words, local power is absorbed by the state but the local budget is not – the struggling city must continue to sustain the costs of an independent municipal government (including the emergency manager's salary, staffing costs, and administrative expenses) through revenues collected locally. Whereas a true dissolution removes a locality's borders and thus merges its land base and people with a larger county or township government, a democratic dissolution preserves the municipal corporation but suspends its government."[35]

In this view, the main idea of Michigan's EM law – that local government management stands in the way of solvency – is an oversimplification of the underlying causes of fiscal problems.[36] The simple centralization of power by the state does little more than exacerbate financial problems in the long run "by facilitating changes (like the abrupt sale of public assets) that produce quick returns at the cost of permanent sustainability."[37]

In the context of local government, dissolution refers to "the termination or revocation of an incorporated municipality's charter and the reversion of the city's territory to dependence on county or township government."[38] Simply put, dissolution "describes the death of the legal corporate form *and* the associated municipal government."[39] Historically, this process of dissolution was slow and triggered by acute financial crisis, with the goals being to either 1) cut costs associated with running the city and 2) merge the city with a larger land area in order to aggregate a larger revenue base and improve economies of scale in service provision.[40] Part of what makes Michigan's emergency manager law interesting is that the democratic dissolution can take place without the consent of the residents in the locality, which further highlights just how important local autonomy is to cities and their residents. The critique is then that "[t]he economic restructuring goals described above (i.e., changing the taxable land base or population of the local governments that serve a given territory) cannot be achieved by changing *who* governs within fixed municipal borders."[41] This highlights the tension between an internally focused solution and causes that are external in nature, along with the challenges of balancing competing values – e.g., local health, safety and welfare; democratic representation; public integrity; efficiency; and management of negative externalities affecting residents, other cities, and the state – in the process of local governance.[42]

The critique surrounding Michigan's current EM law is that it sacrifices other values and functions of local government in pursuit of efficiency and fiscal health. The statute, like other receivership laws, takes four radical actions to help cities recover from fiscal disarray: consolidate local authority into an unelected official; empower the governor to choose the official and hold him or her accountable to the executive branch of state government; withdraw transparency and make broad, unilateral decisions without the public's input; and not require local consent before any of these decisions are made.[43] All four of these steps present problems of their own, but when combined, they layer a complicated and intersectional problem on top of a city's fiscal distress.

Receiverships operate on a short, intense timeline, as their purpose is to quickly resolve a financial crisis and restore the confidence of residents, bondholders and other financial stakeholders. This timeframe, combined with a lack of public accountability, "makes it more likely that local governments will sell assets under value and enter private contracts for services that fail to protect the public interest over the long

term."[44] The lack of transparency and accountability makes the receivers themselves vulnerable to self-dealing and corruption – a problem that may have led the local government to its predicament in the first place.[45] These concerns loom more prominently under Michigan's law, since the EM has substantial public policy authority not solely limited to fiscal matters. "In particular, [emergency managers'] leadership has been characterized by the privatization of asset management, sales of public assets, and the outsourcing of service provision to the private sector."[46] This defect reflects the law's limited vision of the causes of municipal insolvency.

> "The laws reflect the theory that local governments fail because of: first, the competence and/or integrity limitations of municipal officials; and second, defects in the local political economy, particularly the dominance of a narrow band of special interests in local politics."[47]

This view does not take into account the external causes of fiscal decline such as state and regional job loss, socioeconomic decline or racial discrimination in employment, housing and education.[48] Nor does it consider the state government's own role in creating difficult operating conditions for local governments.[49] Despite these external reasons for financial instability, "[l]egislators seem to believe that rational investors will be reassured by the exaggerated concentration of power with emergency managers … ."[50]

With both defenders and challengers of Michigan's EM law critiquing what has been done in the past, efforts to look toward the future of the law are polarized and difficult. No two cities or school boards experience the same financial crisis; consequently, there is no one-size-fits-all solution to the issues faced by local governments in distress. However, there is a large consensus that

> "future state receivership laws should be designed to address the causes of fiscal distress beyond local leadership failures or the dominance of special interests. Such bills should pursue the amelioration of short-term crises as well as address the need for long-term reform."[51]

# IV. Relevant Case Law

The continued tension and debate over Michigan's various takeover laws has produced several legal challenges to the State's actions. Following is a summary of relevant court decisions that have clarified portions of the law and defined its implementation.

- *City of Pontiac Retired Employees Association v. Schimmel*, 751 F.3d 427 (Mich. Ct. App. 2014).

In June 2012, the City of Pontiac Retired Employees Association and its representatives filed a putative class action against Louis Schimmel (emergency manager of the City of Pontiac), the City of Pontiac, and its director of human resources and labor relations. Among other things, the retirees claimed that the emergency manager's orders changing retiree health benefits were prohibited by the Bankruptcy Code and violated the contract and due process clauses of the U.S. Constitution. At the same time, the retirees moved to enjoin the City of Pontiac from implementing the proposed changes to their health care benefits. The district court denied their request for a temporary restraining order, but it scheduled a hearing to consider their request for a preliminary injunction. The court heard arguments from the parties in July 2012, and it denied preliminary injunctive relief a week later. The retirees appealed, the district court stayed the case and the emergency manager's orders took effect.

The appellate court vacated the district court's order denying a preliminary injunction and remanded for further proceedings to develop a more thorough factual record to support the legal arguments. The district court was also instructed to consider whether injunctive relief was proper in light of equitable considerations concerning the change in law since the beginning of the proceedings and whose receivership the City of Pontiac was ultimately under at certain points in time. This case may have important implications for how the EM law is implemented in the future and what actions emergency managers can take.

- *Phillips v. Snyder*, WL 6473444 (E.D. Mich. 2014).

In this case, plaintiff Phillips et al. challenged the constitutionality of Michigan's emergency manager law, the Local Financial Stability and Choice Act, Act No. 436, Public Acts of 2012. Defendants, the governor and treasurer of Michigan, moved to dismiss all nine of the plaintiffs alleged complaints; the court granted in part and denied in part the defendants' motion to dismiss. The plaintiffs failed to state a claim for relief on all counts except for their allegations that PA 436 violates the Equal Protection Clause by treating similarly situated persons differently in a manner that has a disproportionate impact on a suspect class, that being African American citizens.

Count 4 of the plaintiffs' allegations, Discrimination Based on Race, was found to be the only count with merit.

> "Plaintiffs assert that the disproportionate impact the appointment of emergency managers has had on African Americans establishes an equal protection claim. By plaintiffs' calculations, over 52% of Michigan's African Americans are under emergency manager authority pursuant to the enactment of PA 436, compared to two percent of Michigan's Caucasian citizens. Plaintiffs argue that as applied, PA 436 invidiously discriminates between similarly situated groups in the exercise of their fundamental rights, and should thus be subject to strict scrutiny. Defendants, on the other hand, argue that rational basis is the appropriate standard because the law is facially neutral, and plaintiffs have not alleged facts raising a plausible inference of discriminatory intent. They also argue that PA 436 and its application pass rational basis scrutiny, so plaintiffs have failed to state an equal protection claim for racial discrimination."
>
> (*Phillips v. Snyder*, WL 6473444, E.D. Mich. 2014)

At the motion to dismiss stage, plaintiffs only need to state a plausible claim for relief. Thus, the plaintiffs' claim must plead some facts that show the plausibility that emergency managers have been appointed in an intentionally discriminatory manner, which was done through the use of statistical evidence showing that 52% of Michigan's African American population resides in cities with an EM, a consent agreement or a transition advisory board. At the same time, only about 2% of Michigan's white citizens live in communities governed by an EM, which meets the standard of a plausible claim or relief.

- *NAACP v. Snyder*, 879 F.Supp.2d 662 (E.D. Mich. 2012).

In this case, a coalition of civil rights groups, a union and state residents filed action against state officials contending that a state legislative redistricting plan violated minority voters' rights under the U.S. Constitution and the Voting Rights Act. More specifically, the plaintiffs argue that the plan violates the Voting Rights Act and the U.S. Constitution by splitting Detroit's Latino-American population into two districts and by disproportionately pairing minority incumbents in an effort to dilute the minority vote. The defendants moved to dismiss and for judgment on the pleadings.

A redistricting plan does not violate equal protection simply because it takes racial demographics into account. The consideration of race is only problematic if the state "subordinate[s]" traditional, "legitimate districting principles" in order to serve the goal of racial gerrymandering. "In contrast to an equal protection claim, a Section 2 claim does not require a showing of discriminatory intent and may be proved by an election procedure's discriminatory effects alone." To demonstrate whether the challenged districting map has a disparate impact on minority voters, three of the necessary *Gingles* preconditions (as mentioned in *Thornburg v. Gingles*, 478, U.S. 30, 1986) must be met:

> "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district … Second, the minority group must be able to show that it is politically cohesive … Third, the majority must be able to demonstrate that the [ ] majority votes sufficiently as a bloc to enable it … in the absence of special circumstances … to defeat the minority's preferred candidate."
>
> (*NAACP v. Snyder*, 879 F.Supp.2d 662, E.D. Mich. 2012).

If the *Gingles* preconditions are satisfied, the plaintiff must then demonstrate that the totality of

circumstances shows that the minority group does not possess the same opportunities to participate in the political process as other voters. The court found that, although in the early stages of litigation, the plaintiffs' allegations were facially insufficient to support the legal theories they raise and were otherwise too factually underdeveloped to proceed past the pleading stage. As a result, the defendants' motion to dismiss and motion for judgment on the pleadings were granted and the case was dismissed.

## Implications of Case Law

These cases indicate that many citizens of Michigan think their right to vote has been infringed upon by the various emergency manager laws that have spanned the decades. Proving voting discrimination based on race is challenging absent an outright declaration of the government's intention to disparage or disenfranchise another race. The U.S. Constitution guarantees all states a "republican government," but gives states the authority to grant – or not grant – home rule to municipalities. Thus, it is understandable for citizens to feel stonewalled in the political process when an emergency manager is appointed, because an unelected government official comes to the city or school district and has the autonomy to make broad changes to the structure and operations of the municipal government or school district. If people cannot vote for an official with real local power once an emergency manager is appointed, citizens living under an emergency manager have their votes diluted.

However, another argument counters that the people of Michigan voted for their governor, the governor appoints the emergency manager, so there is electoral accountability when casting a vote for the governor. One U.S. District Court judge noted that "[Public Act 436] does not take away a fundamental right to vote, because such a right has never been recognized by the courts."[52]

In ongoing litigation surrounding these problems, the State of Michigan filled a response brief in which it contends,

> "Plaintiffs are still free to vote in federal and state elections. And [the Plaintiffs] offer no adequate support for the proposition that the right to vote is local elections, once extended, becomes a fundamental right as opposed to simply a right to participate on equal footing… ."[53]

Much of the argument that Michigan's emergency manager law suspends or denies voting rights in local elections is because what Michigan did is unprecedented. "[T]here are plenty of cases of states sending in financial managers for municipal emergencies that courts have upheld. But not on Michigan's scale, which hands all executive and legislative authority to the state-appointed emergency manager."[54]

## Intersection of Race

Peter J. Hammer, professor of law and director of the Damon J. Keith Center for Civil Rights at Wayne State University Law School, believes that the Flint water crisis is a catastrophe that can be best understood as "a morality play about the dangers of structural racism and how conservative notions of knowledge-&-power can drive decisions leading to the poisoning of an entire City."[55] Hammer contends that structural racism need not be intentional, but is the result of unconscious biases, which, over time, produce racially distinct outcomes in areas such as health, education, income, housing and the environment.

Welburn and Seamster in an article that appeared in the *Root* say that,

> "[i]n the past decade, over half of African Americans in Michigan [52 percent] – compared with only 2 percent of whites – have lived under emergency management. EFMs [emergency financial managers] are supposed to take over cities based on a neutral evaluation of financial circumstances, but majority-white municipalities with similar money problems have not been taken over."[56]

Hammer suggests that "[w]e need a deeper awareness of the reality of multiple forms of racism at work in this country and how they interact to make better policy decisions moving forward."[57] Hammer cites the fact that voters repealed Public Act 4 by voter referendum at the November 2012 general election as evidence that "[t]he people of the State of Michigan viscerally understood the dangers of Emergency Management and collectively opposed it."[58] He further reiterates:

"The problem is not a lack of knowledge. The problem is the often willful blindness of people in positions of privilege and authority (Knowledge-&-Power) to the needs, perspectives and interests of others, particularly when the 'other' is from a community that differs from their own in terms of race or class or ethnicity. The problem is that the information and beliefs held by people in authority often reinforce that blindness and permit the unquestioned projection of policies and programs on others, even when it is clear that those policies are inappropriate or have harmful consequences. The problem is that vulnerable populations are often subject to exploitation that strategically manipulates the very vulnerability created by express racism, structural racism and unconscious bias, and yet this exploitation finds ready shelter in the very forces it exploits."[59]

# IV. Findings and Recommendations

With this legal history and understanding of the strong arguments for and against the emergency manager law in mind, we convened two groups of individuals who have experienced or administered a state intervention in a Michigan city or school district. The groups, which met in Lansing and southeastern Michigan, included emergency managers, local elected officials and administrators, academics, and state officials from departments and offices with administrative responsibility under the law. The groups participated in facilitated, semi-structured discussion designed to gather and synthesize input from those with the most direct experience with the law. We asked which parts of the law they considered valuable, what they would change, and how the state and cities could work together to build better long-term outlooks for distressed cities.

Our conversations with participants involved in all parts of the emergency management process indicate that Public Act 436 is not sufficiently addressing the needs of local officials, emergency managers or state officials engaged in managing Michigan cities in fiscal distress. Our findings fit with the conclusions of many of the committees and individuals charged with investigating the Flint water crisis – local officials must have a role in shaping the response to and recovery from distress, and the state government's role must be clarified, so that lines of accountability and responsibility are well-defined. To address these concerns, we have identified four options:

1. Repeal PA 436 with no replacement.
2. Adopt a model similar to California's.
3. Amend the existing law to involve local officials and clarify state administration.
4. Adopt specific legislation and policy on a case-by-case basis.

Ideally, these four options would be accompanied by a fifth option: State investment in front-end monitoring and partnerships with schools and local governments. We understand that this is unlikely to be politically feasible in the near-term. However, we include it due to its importance to the overall health of Michigan's local governments and in the hope that it will be considered as legislators address Michigan's ability to provide sufficient public services and quality-of-life amenities to residents.

## Option 1: Repeal PA 436 with no replacement.

The State of Michigan could simply repeal PA 436 and choose not to intervene in distressed local governments. Twenty-eight states have no intervention policy, so it would not be out of the ordinary for Michigan to step away from the emergency manager system. Were PA 436 repealed and not replaced, the State of Michigan would still have legal options to ensure that cities address deficit and financially troublesome situations. Under the Municipal Borrowing Act, the state treasurer has authority to take over local government in default.

Under this option, Michigan would be required to adopt a separate statute to permit bankruptcy if it wanted to make that option available to local

governments. (See Appendix A: Michigan Municipal Bankruptcy Act on page 19.)

## Option 2: Adopt a model similar to California's.

The State of California is no stranger to municipal fiscal distress, with high-profile bankruptcies in Orange County, the city of Stockton and San Bernardino County. However, California does not intervene in distressed municipalities. Instead, it takes a decidedly hands-off approach, only providing guidelines for how local governments approaching bankruptcy should interact with creditors.

Should Michigan adopt a similar approach, the state government would still retain authority noted above via the Municipal Borrowing Act.

## Option 3: Amend the existing law to involve local officials and clarify state administration.

Individuals at every level of the state intervention process indicated a need for some changes to Public Act 436, particularly in two areas: due process for the governments involved and clarity of roles and relationships to ensure responsibility. We propose the following set of changes to address these concerns.

1. **Change the appeals process to provide a meaningful opportunity for local governments to challenge emergency manager decisions:**

   Under the current PA 436 appeals process, there is little opportunity for a government under state control to receive a fair hearing when it disagrees with an emergency manager's decision. Section 141.1559 of PA 436 provides that a local government may challenge an emergency manager's decision within 10 days of the emergency manager's submission of that decision to the local government's governing body. If the governing body formally opposes the emergency manager's decision, it then has 7 days to appeal the decision to the state's Emergency Financial Assistance Loan Board (ELB) (formerly the Local Emergency Financial Assistance Review Board). The appeal must, however, offer an alternative proposal, which demonstrates "substantially the same financial result" as that proposed by the emergency manager. The ELB then has 30 days to decide between the proposals.

   This process presents multiple problems for accountability and the role of local officials (and residents, via local elected officials) in the process. First, under emergency management, the local governing body has little to no ability to seek information independently on city operations, so the development of alternative proposals that would meet the statutory standard is difficult at best. Even if the governing body had reasonable access to information to develop an alternative, the timeframe to officially oppose the emergency manager's decision and appeal is short, and developing a comparable, complete proposal is unlikely in that timeframe. The ELB is granted 30 days to respond, yet the local governing body is given only a maximum of 17 days to meet, make a decision to oppose the emergency manager's decision, and develop a proposal that meets a specific financial goal. In practice, this is unlikely to provide the ELB with grounds to overturn an emergency manager's decision, nor does it provide the ELB with authority to compel the emergency manager to revise or revisit a decision.

   Three changes would provide a more accountable and reasonable path for appeals:

   a. Remove the requirement that local officials submit a competing proposal and allow local officials to appeal to the ELB with a letter detailing reasons for opposition. Provide the ELB with the option to direct the emergency manager to rescind or revise the decision.

   b. If the requirement to develop an alternative proposal is kept, extend the timeframe for the local government to develop the proposal and set guidelines for access to information and administrative support. Due to the time-sensitive work of emergency managers and the resolving of fiscal distress, it is understandable that appeals should happen quickly. Providing a local governing body with 7 days to notify the emergency manager and ELB of its intention to appeal, and 30 days to formally submit the full appeal would give local officials time to develop a thorough response.

c. Expand the charge of the ELB. The intervention process would benefit from a board more formally charged with monitoring and reviewing the progress of cities at all stages of the process. Renaming the Emergency Financial Assistance Loan Board and expanding its powers to include approval of recovery plans and consent agreements and resolving specific types of disputes between EMs and local governing bodies would help broaden input and accountability around the emergency management process.

**2. Require all local governments in state-designated fiscal distress to begin with consent agreements.**

Under Section 7 of PA 436, local governments presently have options for state intervention. Rather than keeping these as options, the statute could declare a single process that begins with a consent agreement, progressing to an emergency manager if that agreement fails. It would then permit bankruptcy only if the emergency manager and state treasurer agree that the decision is merited in order to resolve the fiscal crisis. It would recommend that the governor authorize a bankruptcy filing. Consent agreements have been effective options for Wayne County and the city of Inkster to resolve issues without naming emergency managers. Consent agreements allow local officials to recognize the crisis and lead the recovery process, building capacity and long-term buy-in to solutions. Should the consent agreement process fail, either due to failure of a local government to adhere to its conditions or to a financial crisis that is too difficult to resolve, an emergency manager would be appointed. Bankruptcy would remain an option, but only after a government has exhausted the solutions available via consent agreement and emergency manager. This change to the statute addresses concerns expressed by many of our interviewees and in reports on the Flint water crisis about the lack of local involvement in the recovery plan and state overreach into local affairs.

**3. Specifically define the lines of accountability in state government.**

The Flint water crisis highlights the importance of having clear lines of reporting and authority for emergency managers. Particularly when local officials are not in control of the city, residents and officials must know who is responsible and accountable for actions taken within the city. Likewise, state officials must be clear on who has control and responsibility for the emergency manager and the decisions made for local governments under intervention. In our group discussions, local and state officials, and emergency managers alike identified problems such as not knowing appropriate contacts for questions and not being aware of who had final authority for decision-making. Based on our research of cities under emergency management and interviews with dozens of individuals involved in the process, we believe the best place for this is in the Office of the Governor. The governor is responsible for the initial declaration of fiscal emergency and is electorally accountable to the residents. Establishing a direct, unambiguous legal relationship between the emergency manager and the governor will help prevent miscommunication and provide direct accountability. The Department of Treasury would still assist emergency managers with financial analysis and evaluation, but the ultimate authority would reside in the Office of the Governor.

**4. Consider changes to who is in control during a fiscal emergency.**

Currently, for cities under fiscal distress, local officials retain control under a consent agreement, and the state government assumes control via an emergency manager once a fiscal emergency is declared. A broader range of options would allow more customization of the solution to an individual local government's particular situation. If the state government prefers to remain in control of localities under fiscal emergency, it could, instead of an emergency manager, appoint a board to supervise and execute the response to the crisis. If the state government would like to engage local officials in the recovery process but feels that a consent agreement is insufficient, it could allow the local officials to remain in control

of the city with the oversight of a control board. Either option would broaden the accountability of those in charge and allow for more public input and transparency.

5. **Appropriate resources to assist cities in distress.**

   If a fiscal emergency is resolved, the aftermath may be a city with few resources to address critical problems or to invest in its future. Currently, a small amount of grant funding is available, along with emergency loans. However, both of these sources are insufficient to meet the need in severely distressed cities. The role of local or state officials under consent agreements or emergency management is simply to cut until the structural imbalance is resolved and to resolve any internal management issues that contributed to the fiscal crisis. The severity of cuts that need to be made, along with a lack of revenue capacity and what one focus group member termed, "the stigma of emergency management," places cities at a disadvantage, even after the fiscal crisis is resolved. These cities are unable to invest in forward-looking economic development or planning. We understand the limited general fund sources for assistance to cities, particularly when aid to all cities seems to be in continual jeopardy, so perhaps these additional resources could be connected to the Michigan Strategic Fund and targeted for cities under a consent agreement, in emergency management, or within 5 years of exiting some form of supervision under PA 436.

## Option 4: Adopt specific legislation and policy on a case-by-case basis.

Michigan does not typically allow legislation that applies only to a single local government; however, one option is available that would permit the state to adopt customized intervention and recovery plans.

Article IV, Section 29 of the Michigan Constitution permits the legislature, under certain circumstances, to adopt statutes applicable to a single city:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

This option primarily addresses the problem of democratic accountability, but it would also allow customized recovery plans for each city, similar to the manner in which Connecticut, Massachusetts and New York handle local fiscal emergencies. A majority of residents of the local government in question would have to approve of the state government's intervention and local recovery plan, while two-thirds of the legislature would be required to move forward. While that is an extraordinarily high bar, it does provide the highest standard of democratic accountability available for state intervention. It would allow the concerns of all affected parties and involved institutions to be heard and preserved in a public forum.

# V. Conclusion and Looking Ahead

This paper has attempted to review the overall setting within which Michigan's emergency manager law operates. Innovative as well as controversial, this law has been applied since the late 1980s, but in particular, since 2011. Over this period, the law has been changed several times. The bulk of these changes has empowered state-appointed emergency managers with more authority and power. At the same time, the current version of the law provides a degree of local control over which options are selected if a local financial emergency is declared. However, local options are constrained by a state veto. The only choice not subject to a state veto is the state-appointed emergency manager.

There are very strong feelings on both sides of this law. Proponents of the law argue that the law is necessary to manage the local mismanagement of fiscal affairs as well as providing assistance in breaking the logjam of local fragmentation. The proponents will often cite the City of Detroit bankruptcy as a successful case of the emergency manager law. Opponents of the law believe it is an unnecessary and perhaps unlawful removal of locally elected officials and that the new law is a false choice. Further, they argue that the law does not work and cannot actually provide long-term solutions to the fiscal problems of these municipalities. Opponents will cite the case of the City of Flint water crisis as the most important failure of the law.

Besides these general findings, our interviews and small group meetings also brought forward some important ideas. One of the clearest findings from our discussions, interviews and research is that cities in distress will fail to reinvent themselves without assistance in addressing problems outside of the balance sheet. Local officials and emergency managers alike noted the difficulty in escaping the stigma of being under emergency management and the challenges of attracting economic development and investment. Recognizing that the political and budgetary climate may not allow for additional investment at this point, we still feel strongly that this must be stated in order to acknowledge that the current system serves no constituency well.

Some of the recommendations we propose are relatively small adjustments to the existing statute, while others are major overhauls to the state's existing process of intervening in local fiscal distress. We believe that the mix of recommendations offered address the concerns of proponents and opponents of the law, and provide multiple paths to a better system for Michigan's struggling cities.

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# Appendix A: Michigan Municipal Bankruptcy Act

## MICHIGAN MUNICIPAL BANKRUPTCY LOCAL GOVERNMENT AUTHORIZATION LEGISLATION

A bill to permit a declaration of the existence of a local government financial emergency, to prescribe the powers and duties of officials, agencies and employees of units of local government and the state, and to authorize local governments to proceed under chapter 9 of title 11 of the United States Code, 11 USC 101 to 1532.

**Sec. 1.**

This act shall be known and may be cited as the "Michigan Municipal Bankruptcy Act".

**Sec. 2.**

The legislature hereby determines that the fiscal accountability of local governments is necessary to the interests health, safety, and welfare of the citizens of this state and it is a valid public purpose for this state to assist a local government in a condition of fiscal stress by providing for procedures of alternative dispute resolution between a local government and its creditors to resolve disputes, to determine criteria for establishing the existence of a fiscal emergency, and to set forth the conditions for a local government to exercise powers pursuant to applicable federal bankruptcy law.

**Sec. 3.**

As used in this act:

**a.** "Chapter 9" means chapter 9, being sections 901 to 946, of title 11 of the United States Code, 11 U.S.C. 101 to 1532.

**b.** "Creditor" means either of the following:

- **i.** An entity that has a noncontingent claim against a local government that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least five million dollars ($5,000,000) or comprises more than 5 percent of the local government's debt or obligations, whichever is less.
- **ii.** An entity that would have a noncontingent claim against the local government upon the rejection of an executory contract or unexpired lease in a chapter 9 case and whose claim would represent at least five million dollars ($5,000,000) or comprises more than 5 percent of the local government's debt or obligations, whichever is less.

**c.** "Debtor" means a local government that is authorized by this act and meets the requirements of chapter 9 to proceed under chapter 9.

**d.** "Good faith" means participation by a party in the neutral evaluation process with the intent to negotiate toward a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant parties through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the local government's debt.

**e.** "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that, under its collective bargaining agreements, has standing to initiate contract or debt restructuring negotiations with the local government, or a representative selected by an association of retired employees of the public entity who receive income from the public entity convening the neutral evaluation. A local government may invite holders of contingent claims to participate as interested parties in the neutral evaluation if the local government determines that the contingency is likely to occur and the claim may represent five million dollars ($5,000,000) or comprise more than 5 percent of the local government's debt or obligations, whichever is less.

f. "Local government" means a county, township, charter township, city, village, metropolitan district, port district, drainage district, district library, other governmental authority established by law, or a public utility owned by a city, village, township, charter township or county, or other entity that is defined as a municipality in Section 101(40) of Title 11 of the United States Code (bankruptcy). For purposes of this article, "local government" does not include a school district.

g. "Local government representative" means the person or persons designated by the governing body of the local government with authority to make recommendations and to attend the neutral evaluation on behalf of the governing body of the local government.

h. "Neutral evaluation" is a form of alternative dispute resolution or mediation between local governments and interested parties under this act.

i. "Neutral evaluator" means an impartial, neutral unbiased person or entity, who may also be referred to as a mediator, who assists local governments and interested parties in reaching their own settlement of issues under this act and who is not aligned with any party and who has no authoritative decision-making power.

**Sec. 4.**

1. A local government may initiate a neutral evaluation process if the local government is or likely will become unable to meet its financial obligations as and when those obligations are due or become due and owing. The local government shall initiate the neutral evaluation process by providing notice by certified mail of a request for neutral evaluation to all interested parties.

2. Interested parties shall respond within 10 business days of receipt of notice of the local government's request for neutral evaluation.

3.
   a. The local government and the interested parties agreeing to participate in the neutral evaluation shall, through a mutually agreed upon process, select the neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.
   b. If the local government and interested parties fail to agree on a neutral evaluator within seven days after the interested parties have responded to the notification sent by the local government, the local government shall 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 may disqualify up to four names from the list. If a majority of participating interested parties disqualify four names, the remaining candidate shall be the neutral evaluator. If the majority of participating parties disqualify fewer than four names, the local government shall choose which of the remaining candidates shall be the neutral evaluator.
   c. If an interested party objects to the qualifications of the neutral evaluator after the process for selection in section 4(3)(b) has been completed, the interested party may appeal to the state treasurer to determine if the neutral evaluator meets the qualifications pursuant to sections 4(3)(b) and (4)(4). If the state treasurer determines that the qualifications have been met, the process shall continue.

4. A qualified neutral evaluator shall mean a neutral evaluator who has experience and training in conflict resolution and alternative dispute resolution and who meets at least one of the following qualifications:
   a. At least 10 years of high-level business or legal practice involving bankruptcy or service as a United States bankruptcy judge.
   b. At least 10 years of combined professional experience or training in municipal finance and in at least one or more of the following issue areas:
      1. Municipal organization.
      2. Municipal debt restructuring.
      3. Municipal finance dispute resolution.
      4. Chapter 9 bankruptcy.

5. Public finance.
6. Taxation.
7. Michigan constitutional law.
8. Michigan labor law.
9. Federal labor law.

5. The neutral evaluator's performance shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values or beliefs, or performance during the neutral evaluation process.

6. The neutral evaluator shall avoid a conflict of interest or the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subsection (14), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local government and all interested parties involved in the neutral evaluation. If any party to the neutral evaluation objects to the neutral evaluator, that party shall notify all other parties to the neutral evaluation, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator, the neutral evaluator shall withdraw and a new neutral evaluator shall be selected pursuant to subsections (1) through and (42).

7. Prior to the neutral evaluation process, the neutral evaluator shall not establish another relationship with any of the parties in a manner that would raise questions about the integrity of the neutral evaluation, except that the neutral evaluator may conduct further neutral evaluations regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

8. The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decisionmaking in which each party makes free and informed choices regarding the process and outcome.

9. The neutral evaluator shall not impose a settlement on the parties. The neutral evaluator shall use his or her best efforts to assist the parties to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or written recommendations for settlement or plan of readjustment to a party privately or to all parties jointly.

10. The neutral evaluator shall inform the local government and all parties of the provisions of chapter 9 relative to other chapters of title 11 of the United States Code, 11 U.S.C. 101 to 1532. This instruction shall highlight the limited authority of United States bankruptcy judges in chapter 9, including, but not limited to, the restriction on federal bankruptcy judges' power to interfere with or force liquidation of a local government's property, and the lack of flexibility available to 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.

11. The neutral evaluator may request from the parties documentation and other information that the neutral evaluator believes may be helpful in assisting the parties to address the obligations between them. This documentation may include the status of funds of the local government that clearly distinguishes between general funds and special funds, and the proposed plan of readjustment prepared by the local government.

12. The neutral evaluator shall provide counsel and guidance to all parties, shall not be a legal representative of any party, and shall not have a fiduciary duty to any party.

13. In the event of a settlement with all interested parties, the neutral evaluator may assist the parties in negotiating a prepetitioned, preagreed plan of readjustment in connection with a potential chapter 9 filing.

14. If at any time during the neutral evaluation process the local government and a majority of the representatives of the interested parties participating in the neutral evaluation wish to remove the neutral evaluator, the local government or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local government and the majority of the interested parties agree that the neutral evaluator should be removed, the parties shall select a new neutral evaluator.

15. The local government and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

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

17. The parties shall maintain the confidentiality of the neutral evaluation process and shall not disclose statements made, information disclosed, or documents prepared or produced, during the neutral evaluation process, at the conclusion of the neutral evaluation process or during any bankruptcy proceeding unless the information is deemed necessary by a judge presiding over a bankruptcy proceeding pursuant to chapter 9 to determine eligibility of a local government to proceed with a bankruptcy proceeding under chapter 9 or as otherwise required by law.

18. The neutral evaluation established by this process shall not last for more than 60 days following the date the neutral evaluator is selected, unless the local government or a majority of participating interested parties elect to extend the process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the neutral evaluator is selected unless the local government and a majority of the interested parties agree to an extension.

19. The local government shall pay 50 percent of the costs of neutral evaluation, including but not limited to the fees of the neutral evaluator, and the interested parties shall pay the balance, unless otherwise agreed to by the local government and a majority of the interested parties.

20. The neutral evaluation process shall end if any of the following occur:

    a. The parties execute a settlement agreement.

    b. The parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

    c. The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the parties have not reached an agreement, and neither the local government or a majority of the interested parties elect to extend the neutral evaluation process past the initial 60-day time period.

    d. The local government initiated the neutral evaluation process pursuant to subsection (1) and received no responses from interested parties within the time specified in subsection (2).

    e. The fiscal condition of the local government deteriorates to the point that a fiscal emergency is declared pursuant to section 5 and necessitates the need to file a petition and exercise powers pursuant to applicable federal bankruptcy law.

21. If the 60-day time period for neutral evaluation has expired, including any extension of the neutral evaluation past the initial 60-day time period pursuant to subsection (18), and the neutral evaluation is complete with differences resolved, the neutral evaluation shall be concluded. If the neutral evaluation process does not resolve all pending disputes with creditors the governing body of the local government may adopt a resolution recommending proceeding under chapter 9 and submit the resolution to the state treasurer. Upon receiving written approval from the state treasurer pursuant to section 6, the local

government may file a petition under chapter 9 and exercise powers pursuant to applicable federal bankruptcy law.

**Sec. 5.**

1. Notwithstanding Section 4, pursuant to section 6, a local government may file a petition under chapter 9 and exercise powers pursuant to applicable federal bankruptcy law if the local government declares a fiscal emergency and adopts a resolution by a majority vote of the governing board. The resolution shall include a statement determining that the financial state of the local government jeopardizes the health, safety, and welfare of the residents of the local government's jurisdiction or service area absent the protections of chapter 9 and that the local government is or will be unable to pay its obligations within the following 60 days.

2. A local government shall hold a public hearing before adoption of a resolution under subsection 1. Notice of the time and place of the hearing shall be given by publication in a newspaper of general circulation designated by the local government, not less than 7 days before the date set for the hearing. Notice of the time and place of hearing on a proposed resolution under this section shall contain a description of the findings on which the local government proposes to make its declaration of fiscal emergency.

**Sec. 6.**

1. A local government is authorized to proceed under Chapter 9, as required by section 109 of title 11 of the United States Code, 11 USC 109, with approval of the state treasurer if either of the following apply:
   a. The governing body of the local government has adopted a resolution recommending that the local government proceed under chapter 9 after the local government has participated in a neutral evaluation process pursuant to section 4 and the neutral evaluation process has failed to resolve all pending disputes with interested parties as provided in section 4.
   b. The governing body of the local government has adopted a resolution declaring a fiscal emergency as provided in section 5 and recommending that the local government proceed under chapter 9.
2. If the state treasurer approves of the recommendation, the state treasurer shall inform the local government in writing of the decision, with a copy to the governor. Upon receipt of the written approval, the local government is authorized to proceed under chapter 9 and exercise powers pursuant to applicable federal bankruptcy law and .the Chief Administrative Officer shall execute the filing of chapter 9 pursuant to applicable federal bankruptcy law.

**Sec. 7.**

This act shall not impose any liability or responsibility, in law or equity, upon the state, any department, agency, or other entity of the state, or any officer or employee of the state, for any action taken by any local government pursuant to this act, for any violation of the provisions of this act by any local government, or for any failure to comply with the provisions of this act by any local government. No cause of action against the state, or any department, agency, entity of the state, or any officer or employee of the state acting in their official capacity may be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9 of title 11 of the United States Code, 11 U.S.C. 101 to 1532, including any proceeding following a local government's filing.

**Sec. 8.**

Appropriation.

1. Five million dollars is appropriated from the general fund to the Department of Treasury for the fiscal year ending September 30, 2013 to implement the requirements of this act and to hire financial consultants, lawyers, work-out experts and other professionals to assist in the implementation of this act. Such funds can be used to assist a local government in carrying out the purposes of this act. The appropriation authorized in this subsection is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of

the management and budget act, 1984 PA 431, MCL 18.1451a:

a. 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 will include, but are not limited to:
   i. Information technology systems changes.
   ii. Staffing-related costs.
   iii. Costs to promote public awareness.
   iv. Any other costs related to implementation and dissolution of the program, including the resolution of accounts.
b. The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.
c. The total estimated completion cost of the project is $5,000,000.00.
d. The expected completion date is September 30, 2016.