AN ANALYSIS OF THE EFFECTIVENESS OF THE LOCAL GOVERNMENT FISCAL RESPONSIBILITY ACT
(Public Act 72 of 1990, formerly Public Act 101 of 1988)

Prepared at the request of the Michigan Commission on Intergovernmental Relations

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Introduction

History Public Act No. 101 of 1988 provided a mechanism for state intervention in the affairs of local units of government other than school districts which incurred a fiscal emergency. Public Act 72 of 1990 repealed Public Act 101 of 1988 and incorporated within itself the provisions of the former act and extended those provisions, with some modifications, to school districts. While other state statutes require balanced budgets, annual financial reports, deficit elimination plans, and other guarantees of fiscal responsibility, those statutes do not provide effective means of enforcement. Although a similar bill was proposed as early as 1982, Act 101 was adopted only after a court-ordered receivership was imposed on the City of Ecorse, and as part of a larger effort to resolve a financial emergency in the County of Wayne. Prior to passage of Act 101, local fiscal emergencies were handled on an ad hoc basis by the state and the courts.

Act 101 was implemented in the City of River Rouge and in the Charter Township of Royal Oak, both of which have long histories of fiscal mismanagement. Act 101 consent agreements were negotiated with local officials of both communities. The River Rouge consent agreement was violated and the review team recommended the appointment of an emergency financial manager for that city. Various sections of Act 72 provide that actions begun under Act 101 will continue under Act 72. No new actions have been initiated under Act 72 as of this date.

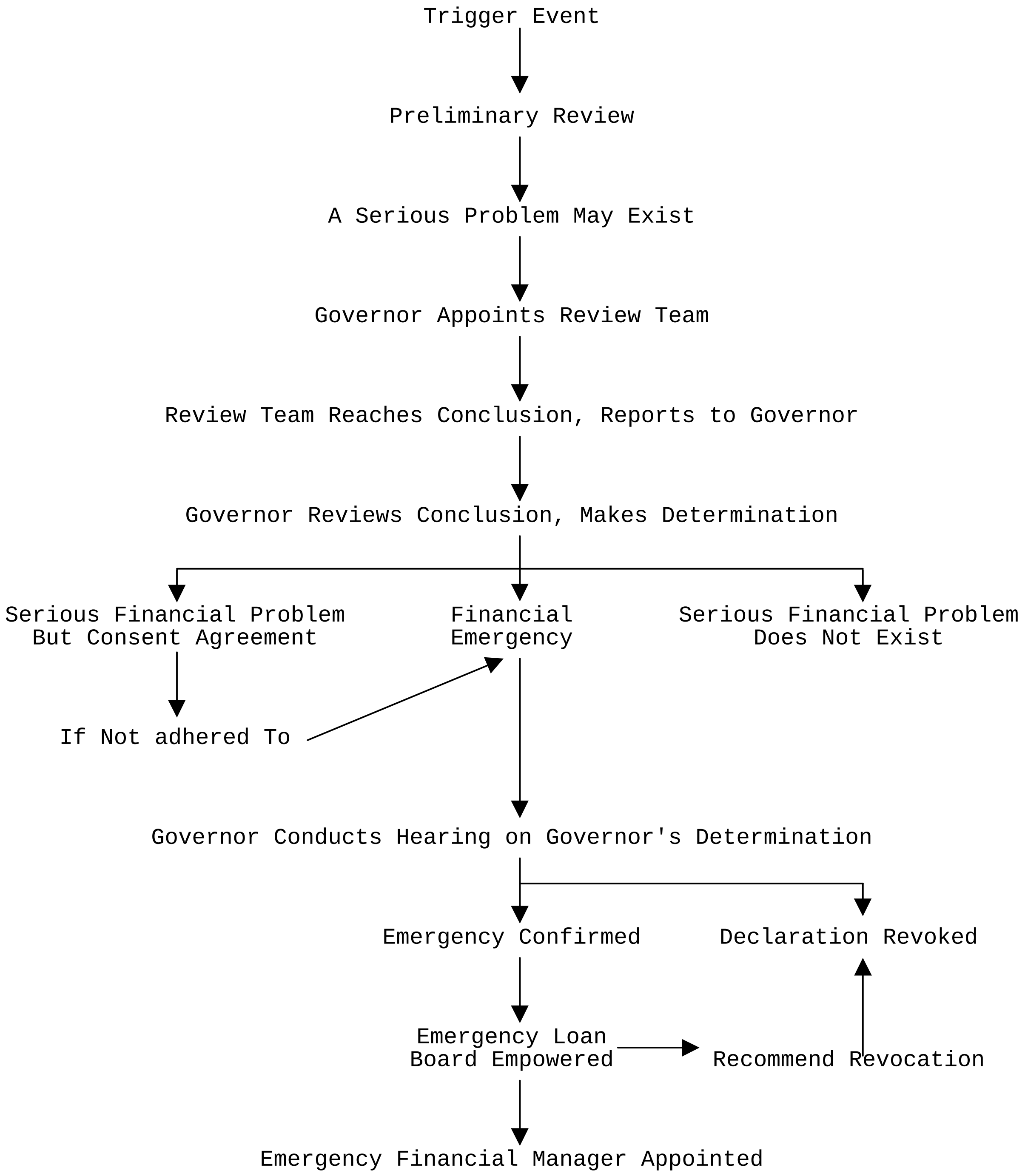
Purpose of this Analysis The Executive Director of the Michigan Commission on Intergovernmental Relations, in response to a legislative request to evaluate Public Act No. 101 of 1988, the local government fiscal responsibility act, asked the Citizens Research Council of Michigan to analyze the effectiveness of the act. Criticisms of the act focused on several areas: the susceptibility of the process to political influence; the length of time required for the appointment of an emergency financial manager; the extent of the authority of the emergency financial manager; and the bankruptcy provision.

The discussion of the act which follows is based on experience with Act 101; discussions with state employees involved in monitoring and assisting local units of government, locally elected officials, review team members, the court-appointed receiver of Ecorse, finance directors hired under consent agreements, attorneys, and others; and a review of literature dealing with the approaches used in other states.

While the local government fiscal responsibility act appears at this time to provide an effective framework for intervention in local units of government, there has not yet been a real test of the statute. It will probably be years before it can be determined whether the act **will** be effective in resolving local financial emergencies.

State Intervention in the Affairs of Local Units of Government

The process established by the act is as follows:


Trigger Event
Preliminary Review
A Serious Problem May Exist
Governor Appoints Review Team
Review Team Reaches Conclusion, Reports to Governor
Governor Reviews Conclusion, Makes Determination
Serious Financial Problem But Consent Agreement
Financial Emergency
Serious Financial Problem Does Not Exist
If Not adhered To
Governor Conducts Hearing on Governor's Determination
Emergency Confirmed
Declaration Revoked
Emergency Loan Board Empowered
Recommend Revocation
Emergency Financial Manager Appointed

Form of Intervention The court-appointed receiver of the City of Ecorse and finance directors hired under Act 101 consent agreements have stated that financial management has been only one component of the task required in insolvent governments. In the local governments that were involved in Act 101, the management problems included organizational structure, municipal operations, personnel administration, building maintenance, economic development, charter and labor contract restrictions, and other problems which locally elected officials had failed to resolve. The role of the imposed manager must therefore be broader than the title “Emergency Financial Manager” would indicate. It may be more appropriate to provide for the appointment and prescribe the powers and duties of an “Emergency Manager.” The title of the act should refer to the “review, management, planning, and control of the financial **and other** operations of units...” and the “development **and implementation** of financial plans....” (Emphasis indicates proposed additions.)

This emphasis of responsibility beyond financial planning to effectuating change in financial and other operations may be included in Article 1, Section 2 “requiring prudent fiscal management **and operational changes necessary to reestablish fiscal solvency.”**

Trigger Events: Definition of an Emergency? Section 12(l) lists 14 triggers which may initiate state intervention under Act 72. These should be reduced to six critical events which distinguish the situations in which uninvited state intervention is appropriate, and which eliminate the preliminary review and lead directly to appointment of a review team. Fewer triggers, signifying more critical events, will address the fear that the Act 72 process will be initiated for political reasons, will reduce the burden on Treasury staff, and will shorten the very time-consuming Act 72 process by a month by eliminating the preliminary review.

The following six critical events indicate a financial emergency.

1. The local unit of government has a fund deficit equal to or greater than 10% of that year's fund revenues.
2. A local unit has not paid employees or retirees for at least seven days past the date when payment was due.
3. A local unit has defaulted on a note or bond payment or violated bond covenants.
4. A local unit has failed to deposit timely its minimum obligation payment to the local government pension fund or to transfer taxes collected for another taxing authority.
5. A local unit has failed to repay an emergency loan obtained under the emergency municipal loan act.
6. A court has ordered a judgment levy or judgment bonds.

The last listed critical event is similar to Section 12(l)(n), which states "A court has ordered an additional tax levy without the prior approval of the governing body of the local government.” Prior approval of the governing body could indicate collusion with a creditor or fund administrators not to pay an amount owed in expectation that the court would impose a special tax to pay that debt.

It would be more appropriate for the penalty for violation of other Acts (Public Act No. 202 of 1948, Public Act No. 243 of 1980, Public Act No. 2 of 1968, Public Act No. 140 of 1971) listed in Section 12(l) to be contained in those acts, rather than in Act 72.

Preliminary Review The state treasurer must inform the governor within 30 days after the beginning of the preliminary review whether or not the investigation has determined that a serious financial problem may exist within the local government. The preliminary review of Section 12(l) would not be necessary if the triggers were limited to the truly serious events proposed above. Staff in the Department of Treasury have repeatedly stated that they have insufficient resources to perform preliminary reviews. Although reviews completed so far have been of very good quality, they were focused on local units of government with which Treasury staff have had long and extensive involvement. Should one or more of the critical events occur, it would be appropriate to go directly to appointment of a review team.

A problem does arise in insuring that Treasury is informed of the occurrence of these events. Some of them, payless paydays and bond, note, and emergency loan defaults, will be immediately visible. Others, such as a fund deficit in excess of 10% of annual fund revenues, may not be reported for an extended period. Local pension officials or retirees must be depended upon to inform Treasury staff of a failure to properly fund a local pension system. The state would learn of a judgment bond when the municipality requested approval to issue the bonds. A judgment levy ordered by a court should appear in the annual financial report prepared by the municipality's auditors, but that report may be received by the state long after the close of the fiscal year in which the levy was ordered. Local units should be required to report the filing and resolution of judgment suits against themselves to the state treasurer.

Governor Appoints Review Team Section 13(l) states that a review team shall be appointed by the governor if (a) the local unit requests assistance or (b) the state treasurer informs the governor that a preliminary review has been conducted and a serious financial problem may exist. The review team process should be initiated if the local unit requests assistance or if the occurrence of one of the critical triggers has been confirmed by Treasury.

The statute provides that review teams for municipalities other than school districts are to be comprised of the state treasurer, the auditor general, a nominee of the senate majority leader, a naninee of the speaker of the house, and other state officials or other persons with relevant professional experience. The River Rouge review team was comprised of the following seven members:

Robert Bowman, State Treasurer, Department of Treasury, Chairman
Shelby Solomon, Director, Department of Management and Budget
Doug Ross, Director, Department of Commerce
Charles S. Jones, Acting Auditor General, Auditor General
John Everhardus, Attorney, Dickinson, Wright, Moon, Van Dusen & Freeman
James Heckman, Deputy Director, House Fiscal Agency
Bettie Buss, Senior Research Associate, Citizens Research Council

The Royal Oak Township review team was comprised of the following eight members:

Robert Bowman, State Treasurer, Department of Treasury, Chairman
Jay B. Rising, Chief Deputy State Treasurer, Department of Treasury
Charles S. Jones, Acting Auditor General, Auditor General
Michelyn Pasteur, Director of Local Development Services, Department of Commerce
Martha Sorenson, Executive Assistant for Local Government Relations, Department of Management and Budget
Conrad Mallet Jr., Attorney
James Heckman, Deputy Director, House Fiscal Agency
Bettie Buss, Senior Research Associate, Citizens Research Council

The experience of the first review team indicated that some ex-officio members and other members at the department head level were unavailable to attend meetings. A state official who is an ex-officio member of the team should be allowed by letter to the governor to name a designee to attend meetings and to vote on behalf of the official. Members of the team who are not specified as ex-officio members in the statute should be those who will participate in the process, rather than department heads who are unable to attend meetings; the second review team was comprised of members who, by and large, were more personally involved in review team activities.

There has been discussion of the potential benefits of a standing review team, the members of which would serve at the pleasure of the appointing authority (as opposed to ad hoc teams). Some continuity in the appointment of review team members would allow members and their designees to develop familiarity with pertinent statutes, with patterns of abuse in local governments, with strategies and promises made by local officials, and with the development and effectiveness of various consent agreements. Review teams should meet at regular intervals during the implementation of consent agreements to obtain information from Treasury staff assigned to monitor compliance, finance directors employed under the terms of the agreements, and local officials.

Review Team Reaches Conclusion, Reports to Governor Section 14(l) defines the powers and duties of the review team. Section 14(2) defines conditions indicative of a serious financial problem - a list that is considerably shorter than the triggers listed in Section 12(l). It would seem reasonable to adopt a single list of events that indicate a local fiscal emergency.

The review team has 60 days (or less if required by the governor), with a possible 30-day extension, to arrive at one of three recommendations:

- there is no serious financial problem in the local government;

- there is a serious financial problem, but a consent agreement containing a plan to resolve the problem has been adopted; or

- a local government financial emergency exists because no satisfactory plan exists to resolve the problem.

It would be unlikely that a review team appointed after a critical event had occurred, as recommended herein, would find no financial emergency; the critical events themselves define an emergency. Thus the review team would either negotiate a consent agreement which theoretically left local officials in control, or would be unable to reach an agreement and would advise the governor to empower the local emergency financial assistance loan board to appoint an emergency manager. Section 15(l)(a), “A serious financial problem does not exist in the local government,” could be deleted.

The Consent Agreement While the term “consent agreement” (an agreement to perform specified acts) may imply that both parties mutually and voluntarily agree to a particular course of action, the reality is that the state has significantly more power than the local government, and that the local government is being coerced to take remedial actions that it would not otherwise take.

Members of both of the review teams appointed under the local government fiscal responsibility act have agreed that a consent agreement which local officials would implement is the preferred approach to resolving the long standing problems that triggered the action. The consent agreements differed in emphasis: the consent agreement negotiated with officials of the City of River Rouge required that the city hire a finance director and contained numerous specific performance criteria, while the consent agreement for Royal Oak Township concentrated on investing the required finance director with as much as possible of the authority the act grants to the emergency financial manager. Neither consent agreement specified required layoffs, service cuts, or other expenditure reductions. In River Rouge, the agreement required local officials to make sufficient expenditure reductions to provide a $1 million annual paydown on the accumulated deficit and to balance current expenditures within the remaining revenues. In Royal Oak Township, the finance director would exercise control and devise a financial plan. Both tactics relieved the review team of the responsibility of imposing specific service cuts (referred to as "micro-managing” in meetings). Neither tactic has been effective, but the inclusion of specific performance criteria did permit the River Rouge review team to immediately identify when non-compliance occurred. The failure to include adequate performance criteria in the Royal Oak Township consent agreement has made enforcement more difficult. Regardless of the existence of performance criteria, however, there must exist the political will to enforce the statute and to take the next step in the process. Review teams have been very critical of local officials who have failed to make politically unpopular decisions to reduce services and close facilities to balance their municipal budgets. At the same time, review teams have avoided making these decisions for the municipalities, and both Treasury and review teams have been reluctant to strictly enforce consent agreements. Of course, it is clear that if other acts regulating the fiscal affairs of local units of government (i.e., the uniform budgeting and accounting act) had been enforced, this action would be unnecessary.

It has been asserted that the consent agreement process merely postpones the inevitable appointment of an emergency manager. There may, however, be cases in which a critical event has occurred, and state intervention is thoroughly justified, but where local officials are themselves able to implement a plan which will resolve the crisis. (Although in such cases, preparing, filing and following a deficit elimination plan required under the state revenue sharing act would serve the same purpose.) Indeed, local officials may need the threat of loss of local control to justify the budget-balancing actions necessary to reestablish fiscal solvency. Moreover, the strong tradition of local control in Michigan argues for assigning local officials the first responsibility to resolve a local fiscal crisis. Only after local officials have been put on notice, have thoroughly investigated the steps necessary to reestablish solvency through negotiation of a consent agreement, have had the opportunity to implement the consent agreement which embodies the requisite actions, and have failed to take the steps that are mutually agreed to be necessary to resolve the crisis, should the state impose an appointed emergency manager. The consent agreement process does lengthen the time required to arrive at the appointment of an emergency manager, but most crises are many years in the making. Further, the consent agreement process serves to legitimatize any subsequent appointment of an emergency manager. Negotiation of a consent agreement sensitizes local officials to the steps which must be taken to resolve the crisis, and gives them the opportunity to take those steps.

In the consent agreements that have been implemented to date, the local governments have been required to hire finance directors to put their accounting records in order, develop financial recovery plans, and assist in implementing those plans. Both of the individuals who have been hired as finance directors under consent agreements have encountered very great difficulties in dealing with locally elected officials. It may be that more state support will be necessary to insure that finance directors and emergency managers are not abandoned to the influence and interference of local officials, and to insure that these managers develop and adhere to a plan which is probable of success.

Governor Reviews Conclusion, Makes Determination One of the principal criticisms of the act has been the charge that “politics” may play a role in the process. This pejorative use of the word "politics,” which is the art of making governmental policy, arises from the fact that some actions in the act are permissive rather than mandatory. In contrast to Section 16, which requires that the governor declare a financial emergency if the governor is informed by the state treasurer or review team that a consent agreement has been broken, Section 15 does not require that the governor's finding of a financial emergency flow automatically from the review team's recommendation. The governor again exercises discretion in confirming or revoking the determination of a financial emergency at the hearing which may be requested by the municipality within ten days of a finding of financial emergency.

Section 16 provides that either the state treasurer or the review team may inform the governor that the local government is not abiding by the terms of the consent agreement. The continuing role of the review team in monitoring compliance with the consent agreement should be clarified. Review team members have no ability to directly monitor compliance; such monitoring is currently performed by Treasury staff and reported to the teams.

It should be noted that Section 16 is as far as the process has progressed as of July 1, 1990. The River Rouge review team moved to advise the governor that the city was not in compliance with the consent agreement. That action prompted the city to challenge the constitutionality of the statute, which

resulted in an injunction and, curiously, a request by the judge for another financial plan. The court's concern with any particular financial plan, which has no relationship to the constitutionality of the statute, seemed to indicate a desire to avoid ruling on the basic issue. After election of three new members to the city council, River Rouge withdrew the court suit, allowing the then Act 101 process to proceed. Appointment of an emergency financial manager for River Rouge is currently pending.

Determination of a Financial Emergency If the governor determines that a financial emergency exists, Section 18(l) provides that the governor assign the management of the emergency to the local emergency financial assistance loan board. That board appoints an emergency financial manager, who has broad authority over the budget, appropriations, personnel, and organization of the local government. Section 18(l) requires that the emergency financial manager "shall not have been either an elected or appointed official or employee of the local government for which appointed for not less than 5 years before the appointment.” Finance directors hired under consent agreements are thereby prevented from being appointed emergency managers of those governments. This has not been thoroughly understood by the finance directors hired under consent agreements to date; there has been a desire on the part of those finance directors to become emergency managers and assume greater powers. There has also been some desire on the part of state Treasury officials to have the ability to appoint finance directors hired under consent agreements as emergency managers. A danger of this change is the possibility that a finance director may manipulate the situation, intentionally or unintentionally, to be appointed emergency manager and so circumvent elected officials and the will of the people unnecessarily. The desire for more power and authority is very common. The situations that finance directors hired under consent agreements have faced have been very stressful - local officials unable or unwilling to control expenditures, lack of financial and management controls, and no financial resources. The pressure on finance directors has been very great. But allowing them to become emergency managers puts too great a temptation on these finance directors at a time when they should be doing everything possible to make the consent agreement work.

Financial Manager Appointed Emergency financial managers under Act 72 will be paid by the municipality, but will serve at the pleasure of the local emergency financial assistance loan board, and thus will report both to local officials and to the state. The statute does not provide for state assistance to the emergency manager, either in the development or the implementation of the financial plan. This may be a fatal flaw. Emergency managers will be placed in one of the most difficult, contentious, hostile environments imaginable. State support should be available. It has been suggested that emergency managers should be state employees. This would relieve the insolvent municipality of the financial burden of paying for a fiscal and operational expert, insure the accountability of the personnel assigned to be emergency managers, provide emergency managers with same job security, and insure better state communication and control. It would also demonstrate the state's commitment to good local financial management.

One of the lessons learned from the experiences in Ecorse, River Rouge, and Royal Oak Township is that the on-site finance director/controller is overwhelmed with operating problems, personnel problems, and procedural problems. It may be that an emergency manager (who might be a state employee) is necessary to maintain perspective and direction, and to develop the long-range financial plan and strategy, and a finance director (an employee selected by the emergency manager but paid by the municipality) is necessary to implement the plan and deal with immediate problems. If this arrangement were used, one emergency manager could be assigned to more than one municipality. A more elaborate team approach could be developed, using experts on labor relations and other specialists on one or more management teams.

Sections 19 through 22 list the powers and duties of the non-school emergency financial manager. This is a stage which has not been reached in implementation of the local government fiscal responsibility act. While finance directors hired under consent agreements have longed for the powers granted by Act 101 (now Act 72), the court-appointed receiver of Ecorse has stated that he believes that these powers are not sufficient to effectuate change. Because this stage has not been reached, it may be, premature to amend the powers of the emergency manager, but it does seem clear from the situations encountered so far, that operations must be impacted to affect finances. The following comments on Sections 19 through 22 therefore are offered in response to the charge that the emergency manager under Act 72 would not have sufficient authority, rather than in response to any proven lack of authority.

Section 19 states that an order issued by the emergency financial manager that he considers necessary to accomplish the purposes of the act, including implementing the financial plan, is binding on the official or employee of that government. Failure of an elected official to implement such an order should be considered nonfeasance in office; failure of an employee to implement such an order should be considered grounds for dismissal by the emergency financial manager.

The Financial Plan The emergency financial manager is responsible for developing and amending a written financial plan "in consultation with the local government" that provides for conducting the operations of the local government within the resources available and the payment in full of scheduled debt service requirements on all bonds and notes and all other uncontested legal obligations. That plan must be made public. Other states require public hearings, rights of creditors to challenge plans, and approval of a state department head for financial plans. Public hearings and state approval of a plan would spread ownership of the plan among more participants, and give it added standing in court if the emergency manager must sue local officials to require compliance.

The financial plan should be approved by the local emergency financial assistance loan board. If there is an existing participation, supervision, or monitoring by the courts, the financial plan might have to receive court approval. If an agency of the state approves, would this create a state mandate that would require state funding under the Headlee amendment?

It may be advisable to amend Section 20(l)(b) to require "The payment in full of the scheduled debt service requirements on all bonds and notes of the local government **when due** and all other uncontested legal obligations" within a time period specified in the act. The review teams have targeted five years as the period within which the accumulated deficit should be paid.

Enhancing the Powers of the Emergency Manager The powers of the emergency manager may be increased in the following ways:

Section 21(a) Make an analysis of factors and circumstances contributing to the financial condition of the local government and recommend, **and where possible, initiate and direct** steps to correct such conditions. Section 21(c)

Require and approve or disapprove, or amend or revise, **and direct the implementation of** a plan for liquidating **the accumulated** outstanding **deficit** of the local government, **including but not limited to the elimination of public services, layoff of public employees, and negotiation with creditors for payment schedules.**

Section 21(f) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in **any** position (as opposed to "a permanent position") by any appointing authority.

Section 21(g) Review **and approve or disapprove** payrolls or other claims against the local government before payment.

Section 21(i) Unless prohibited by law or charter, to consolidate departments or transfer functions from 1 department to another and to appoint, supervise, and, at his or her discretion, remove heads of departments other than elected officials **and to appoint, and at pleasure remove members of board and commission.** In cases where department heads are appointed by boards or commissions, those departments heads enjoy protection that was not intended in the act.

Section 21(k) The emergency manager should have the specific authority to file a complaint in Ingham County Court to force compliance with a financial plan. This authority should not be allowed to provide an excuse for inaction on the part of the emergency loan board or the governor, who may desire to use it to deny the politically unpopular action (removal of a local official) which can occur under Section 24.

Section 21(q) **Place issues on the ballot, including but not limited to questions of annexation, consolidation, boundary changes, new charter adoption, charter amendment, imposition of new taxes, and Increases in existing taxes.**

Bankruptcy in Act 72 Section 22(l) states "After giving written notice to the local emergency financial assistance loan board, the emergency financial manager may authorize the local government to proceed under title 11 of the United States Code, 11 U.S.C. 101 to 1330, unless this authorization is disapproved by the local emergency financial assistance loan board within 60 days after the notice has been received by the board. This section empowers the local government for which an emergency financial manager has been appointed to become a debtor under title 11 of the United States Code as required by section 109 of title 11 of the United States Code, 11 U.S.C. 109."

The authority granted to the emergency manager to file for bankruptcy, after approval by the emergency loan board, has been one of the greatest causes of criticism of the act. It has been asserted by members of the municipal bond community that a filing under title 11 of the United States Code would have serious repercussions for the sale of **all** Michigan municipal and state debt, and that the grant of authority contained in the statute has affected the willingness of major lenders to invest in certain issues. It is also asserted that because a filing would have such severe consequences, the local emergency financial assistance loan board would never grant approval to an emergency

financial manager to apply for bankruptcy and therefore the provision is superfluous and should be deleted.

The most extreme solution offered in Act 72, the authorization of the emergency financial manager to file for bankruptcy, is probably not a reasonable solution to the problem of municipal insolvency. Municipal bankruptcy is a rarely used, voluntary process that is not a bankruptcy in the usual sense. The assets of the petitioner cannot be sold to meet debts, and there is no court interference with the general operations of the municipality. Because of the limits on the jurisdiction and powers of the court in municipal bankruptcy cases, political and governmental problems that led to the insolvent condition could well remain after debt is adjusted.

Revocation of the Emergency Section 25 states that "the governor may determine that the conditions for revoking the declaration of a financial emergency have been met after receiving a recommendation from the local emergency financial assistance loan board.” The statute itself should contain the conditions which terminate the financial emergency. Elimination of all accrued deficits and retirement of all obligations issued to finance all or part of that deficit are minimum requirements. The municipality should also be required to have a current operating positive fund balance for a period of one year, as evidenced by the local unit's audited financial statements presented in accordance with generally accepted accounting principles.

Alternatives to Public Act 72

Enforcement of Other Statutes In the event that the local financial emergency is not resolved under Public Act 72, alternative courses of action should be pursued.

Other statutes provide for state intervention in the affairs of local governments. State laws that require balanced budgets, amendments to appropriations acts, use of a uniform chart of accounts, filing of annual financial reports and deficit elimination plans are designed to prevent local governments from arriving at the state where an emergency financial manager is required. Absence of reasonable sanctions and failure to prosecute under these statutes has made Act 72 necessary.

In addition to the remedies provided in existing statutes, there are other approaches that could be used by the state to address municipal insolvency. The state could do nothing. Municipalities could be allowed to collapse. Inability to meet payrolls would result in layoff or withholding of employee services and the cessation of public services. Failure to pay creditors would mean that goods and services would not be provided. Judgment bonds and levies would eventually raise tax rates to unsupportable levels. Residents who could, would leave, and other residents would be trapped in unsalable homes. Home rule involves not only rights but also responsibilities, and allowing municipalities to collapse should be viewed as a final alternative.

The state could adopt statutes that require municipalities to maintain fiscal solvency. Michigan has done this, but has often failed to include adequate sanctions and, where sanctions do exist, has failed to prosecute local officials who violate those statutes.

The state could provide emergency assistance for municipalities in the form of emergency loans and permission to issue deficit funding bonds. Michigan has done this, too. Whether these emergency infusions of cash have averted or merely postponed insolvency remains to be seen.

Act 72 provides escalating levels of state involvement. The consent agreement process allows authority to remain in the hands of locally elected officials. The appointment of an emergency manager essentially takes significant authority away from locally elected officials and invests it in the state-appointed manager.

The emergency manager should have available a series of progressively more severe choices. The optimum course of action would be temporary financial management resulting in resolution of the crisis and correction of the underlying problems that caused the crisis. The management of the municipality could then be returned to locally elected officials with some confidence. It may be, however, that the optimum solution will occur only infrequently.

Revenues The sale of unlimited tax deficit funding bonds is one way to transfer a deficit into long-term debt, although sale of deficit bonds of an insolvent community may be very expensive. In a situation in which the state has intervened in the affairs of a local government and has appointed an emergency manager, it seems appropriate that the state should provide assistance in the purchase or placement at favorable rates of deficit funding bonds issued as part of the financial plan developed by the state-appointed financial manager. Although it has been suggested that the emergency municipal loan act should be amended to automatically qualify a local unit which has had an emergency financial manager appointed under Act 72 for an emergency loan, those loans are now limited to a maximum of $1 million per year per municipality. That amount would not be sufficient to resolve the accumulated deficit in many, if not most, cases.

There may in sane instances be a need for temporary tax increases to pay creditors and avoid judgment bonds or levies; the emergency manager should be able to place this issue on the ballot as well. Indeed, there may in some cases be a need for a special property tax, above normal limits, to be used solely for deficit reduction. It has been suggested that the emergency manager should have standing to request the court to order such a tax. The question is whether this could be ordered by the courts as judgment bonds and judgment levies are, without a vote of the people?

Voted Charter Changes An emergency manager may find that the tax base is sufficient to support essential services if the manager can reorganize the government and resolve the existing deficit. If the local government's charter contains provisions which require dysfunctional structures or personnel practices, the emergency manager should be able to direct the drafting of charter amendments and to place charter amendments on the ballot, bypassing the local legislative body. If the form of government should be changed, the emergency manager should place a request for approval of a charter revision commission on the ballot. The emergency manager should pursue obtaining voter approval, developing a new, improved charter, and obtaining voter approval of that revised charter. If that fails, the emergency manager could be allowed to request the state legislature to pass a special act to revoke the problem charter or nullify those portions of the charter that prevent resolution of the insolvent condition and impose a new charter or charter provisions. Such a special act would require a confirming vote of the community affected. This opens a number of questions: in the unlikely event that the charter were revoked and no new charter were adopted, would the area became unincorporated? What would be the status of elected officials, tax rates, debt obligations, pension obligations, union contracts, and vendor contracts?

The statute could incorporate a model charter which embodies a strong appointed manager, rational departmental structure, and essential budgeting and personnel procedures. The emergency manager would then have the option of recommending adoption of the state-sanctioned charter (similar to county adoption of the optional unified form of county organization). Local voters would be assured that the proposed model charter contained technically sound concepts. Charter requirement of a professional manager, whose qualifications were established and who could be required to be approved by the state local emergency financial assistance loan board, would help to promote sound management. The charter could assign the new position of manager the duties and responsibilities granted to the emergency manager under Act 72.

Transfer Responsibility for Service Provision It may be that a workable charter acceptable to the voters cannot be developed, that voters will not approve adoption of a statutory charter, and that the local unit is not economically viable. The emergency manager of a city, village, or township could develop a financial plan which transfers the responsibility for essential services to the county government, which should be required to provide services to the community of the same kind and at the same level as are provided to unincorporated areas of the county. All revenues of the local government after payment of debt service, deficit reduction, and required pension contributions would then be transferred to the county. Contractual transfer of all local services to the county would be followed by transfer of any outstanding pension obligation to the state-administered pension system f or local employees and layof f of all local government employees. Locally elected officials of the insolvent government would have no part in county provision of services.

This strategy will not be feasible in those cases in which the county is unable to extend county services into the insolvent community at a level necessary to protect the health, safety and welfare of the citizens.

Can the courts be petitioned to direct the county to provide specific services to the local governments In particular, the ability of the county to provide county sheriff Is services at a cost affordable to the community may be critical to the success of the emergency manager's financial plan. In addition to police service, street and highway maintenance could be assigned to the county. Fire protection could be provided under contract with adjacent communities. This would give the emergency manager authority not just over the insolvent government, but, in conjunction with the courts, sane ability to redirect the resources of the entire county to the distressed government.

Union Contracts In order to make these drastic solutions work, the emergency manager must be able to lay off local government employees. Some union contracts have no layoff provisions, others contain minimum staffing requirements; these contracts may also contain automatic continuation clauses. It has been proposed that union contracts negotiated after the adoption of this amendment be required to allow an emergency manager appointed under Act 72 to lay off any employee covered by the contract. This would encourage union agreement to reopen contracts to renegotiate wage and other clauses, but would not obligate unions to reopen contracts.

It has been also been suggested that the statute could contain a provision which would require reopening of economic issues upon appointment of an emergency financial manager. The receiver of Ecorse was unable to abrogate contracts, although the imminence of payless paydays effectively forced union officials to the bargaining table.

The state Supreme Court has held in a series of cases that the public employee relations act (Public Act 379 of 1965 as amended) is the predominant state statute governing public employee relations in Michigan. When a conflict has arisen between another state statute and a provision of a contract negotiated under PERA, in virtually every instance the contract provision has been held to prevail. Therefore, even if Act 72 contained provisions allowing Act 72 emergency managers to lay off or to unilaterally reopen contracts in violation of an existing contract, those statutory provisions would be overridden by the contractual agreement.

Annexation and Consolidation The emergency manager may, after careful analysis of the property, income, and service needs of the community, determine that the tax base is not capable of supporting essential services, and that the area should be divided up and attached to contiguous municipalities. If the manager reaches this conclusion, the manager should enter into negotiations with contiguous communities to develop a plan for annexation or consolidation, and should be given the authority to submit this plan to the electorate of the financially troubled unit, bypassing elected officials. The manager should also be empowered to petition the state legislature to redraw boundaries. Such a special act would require a 2/3 vote, as well as a confirming vote by the local electorate. Of course, the legislature could make a general law specifying the conditions under which a local unit of government would be dissolved.

Merging an insolvent unit with contiguous units is applicable to smaller units of government, but will not work for relatively large units of government. It is unlikely that large governments could be divided up and the portions assigned to contiguous units of government. It may be that very large units of government should be divided into smaller, more manageable units.

The suggestion that insolvent units of government should be dissolved has been made often. This suggestion that they somehow be made to disappear is a function of the frustration of those who have dealt with these troubled communities over time. Eliminating the insolvent, ineffective government structure does not eliminate the community of people who require services, nor the debts and obligations owed to retirees and creditors. Redrawing boundaries to redistribute portions of an insolvent community into contiguous governments provides for continuity of service to residents, but does not address the question of outstanding debt, contracts, and pension obligations.

If the solution for an insolvent government is for the affected area to be divided among neighboring governments through boundary adjustment, annexation, or consolidation, the territory that was previously part of the insolvent government could become a special district for outstanding debt and deficit reduction and pension liabilities; this would result in differential tax rates in the newly enlarged municipalities. Excess assets of the enlarged municipalities could be sold to offset debt. It would not be unreasonable for the state to contribute to the resolution of the crisis by providing an emergency loan, thereby allowing the enlarged governments to assume their new responsibilities with only interest due for a period during which improved management may resolve the financial crisis. The areas to be attached to other governments by definition do not have the tax base to support the services they require, and will be a burden to the absorbing communities for as long as this condition persists. State assistance in funding all or a portion of outstanding debt may be the deciding factor in obtaining agreement on the part of neighboring communities to help resolve the problem.

State law should allow the transfer of property from a unit of government headed by an Act 72 emergency manager with the approval of the emergency manager and by resolution of the unit of government to which the property will be transferred.

Imposition of a Statutory Charter In extreme cases, which could be defined as those in which a local government has been placed under Act 72 more than once, where the problem is determined to be structural in nature, and where reestablishing boundaries is not feasible, there are two potential solutions. An extreme, but not the most extreme, solution would allow the emergency manager to recommend that the charter of the municipality be revoked, and be replaced by a charter contained in the statute which would incorporate a very strong professional manager who would function as a super executive in the financial area. Professional criteria would be set for these managers, and the municipality would have a limited period of time to appoint one whom the state found acceptable, before the state appointed one directly. Elected officials would be limited by the charter to legislate and administer functions which did not impinge on the solvency of the municipality (designating one way streets, for example). The statutory charter could not be amended by the municipality. This solution would be permanent. One major problem with this approach is the issue of revoking the local charter. If the legislature were empowered, such action would require a special act, which carries a constitutional requirement for a 2/3 legislative vote and a confirming vote of the people in the affected community.

Creation of a Dependency The most extreme solution would permit the emergency manager to recommend that the territory become a dependency of the county or state. The state local emergency financial assistance loan board could be responsible for appointing a permanent manager, paid by the municipality, who would be required to report semiannually to the local emergency financial assistance loan board and the state treasurer. There may or may not be a locally elected mayor, supervisor, clerk, treasurer, council, or board; the state-appointed manager would exercise all powers normally assigned to the chief executive and the legislative body. The state-appointed manager would set tax rates within the constitutional limits, and determine the distribution of appropriations among debt, deficit, and operations. Like the statutory charter solution, this condition could be permanent. Or adoption of the statutory charter referenced above, with its professional super executive, could be made the only way to regain a greater degree of local control.

Both of these concepts establishing special classes of municipalities would have to be carefully constructed in the law to prevent a direct conflict with Article 7, Section 22 of the state constitution:

> Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

The process required to be followed to arrive at the point of establishing such a special municipality would have to be rigorous enough to prove that the action was necessary and reasonable, and not arbitrary and capricious.

Conclusion

Public Act No. 101 of 1988 for the first time allowed direct state intervention in the affairs of local units of government other than school districts. Public Act 72 of 1990 replaced Act 101 and extended its provisions to school districts. The process permitted in the act has not been completed; although two consent agreements have been signed, and violation of one consent agreement has led to a recommendation by the review team that an emergency financial manager be appointed, as of July 1, 1990, that appointment has not occurred. It may therefore be premature to contemplate wholesale changes to the statute. However, there are some issues, such as appropriate triggers, that ought to be reconsidered. Further, the Michigan Commission on Intergovernmental Relations should begin to consider what additional steps might be needed if Act 72 fails to resolve the emergency in a local unit of government.