



CITIZENS RESEARCH COUNCIL OF MICHIGAN

# **The Local Government and School District Fiscal Accountability Act**

**Public Act 4 of 2011**

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## PA 72 of 1990

- Michigan's previous procedure for dealing local government financial emergencies was outlined in PA 72 of 1990.
- PA 72 contained:
  - Trigger events to start a review process
  - Preliminary review followed by review team review
  - Negotiated consent agreement or emergency financial manager (EFM)
- EFM's under PA 72 did not have any power local officials did not already have
- Local officials and employees could not be an EFM (within 5 years of service)
- Dispute over level of authority of EFMs (e.g., DPS)



# Local Government and School District Accountability Act

- Public Act 4 of 2011 replaced PA 72
- Contains stronger medicine than PA 72 – it was hoped that threat of invoking PA 4 would lead local governments to work harder to prevent financial crises
- PA 4 has significant tradeoffs – EM's have significantly enhanced powers to address financial problems but these powers come at the expense of local democracy and collective bargaining rights
- Unlike PA 72, local officials, such as a mayor or city council member, can be appointed as an EM



# Emergency Managers in Michigan

## Units with EMs

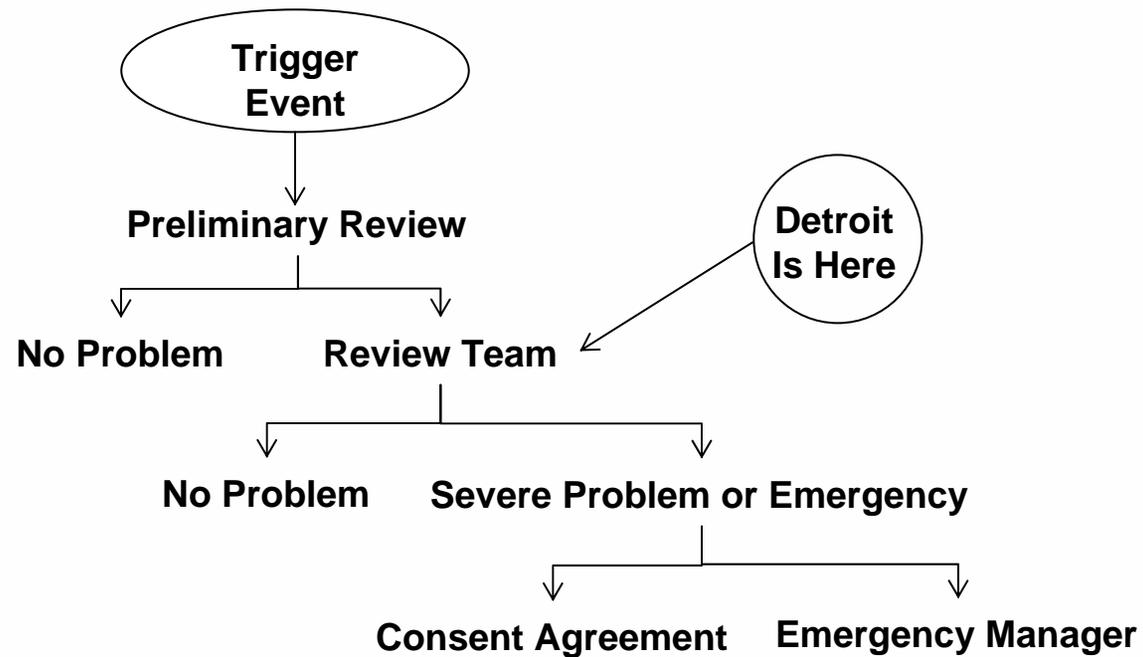
- Flint: Michael Brown, November 2011
- Benton Harbor: Joseph Harris, April 2010
- Ecorse: Joyce Parker, October 2009
- Detroit Public Schools, Roy Roberts, March 2009
- Pontiac, Louis Schimmel, March 2009
- Highland Park Schools, TBD January 2012

## Units with EFMs

- Hamtramck, December 2000
- Highland Park, July 2001
- Inkster Public Schools, 2002
- Flint, July 2002
- <sup>5</sup>• Village of Three Oaks, December 2008



# PA 4 Process



6 For a more complete flowchart see CRC paper: *The Local Government And School District Fiscal Accountability Act*



## Consent Agreement

- Review team may negotiate a consent agreement with local government – must be approved by state treasurer and a resolution of local governing body
- Consent agreement includes:
  - 3 year budget that eliminates deficit
  - 3 year cash flow projections
  - Operating plan
  - Pension and OPEB review and plan to pay
- Consent agreement may grant local government some of the expanded EM powers, but cannot break collectively bargained contracts
- 30 days after consent agreement is reached collective bargaining is suspended for term of agreement



## Enhanced Emergency Manager Powers

- Power to remove virtually all of the powers of elected officials; For example, an EM in a school district controls academics
  - Power to abrogate labor contracts
  - Local government becomes exempt from collective bargaining
  - Not constrained by local charter (although some decisions require approval from state)
  - Can sell, transfer, or lease assets (with approval from state)
  - Collaborate, consolidate, or disincorporate (with approval from state)
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## What About Bankruptcy?

- Local government bankruptcy would occur under Chapter 9 of Federal Bankruptcy Code
  - Different from corporate bankruptcy: local unit cannot be liquidated
  - Bankruptcy can only be reached through the EM process – locals cannot try to file unilaterally
  - EM must recommend bankruptcy to governor and state treasurer; governor must approve in writing for EM to file – EM cannot file unilaterally
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## Questions Surrounding PA 4

- Is the ability to abrogate contracts constitutional
  - New contracts must contain provisions allowing EM's to modify, so issue is temporary
- Does PA 4 violate other provisions in state constitution? (e.g., Home rule provisions)
- How much protection does retiree healthcare have?
- What happens if PA 4 is challenged under the referendum process (signatures currently being gathered)?
  - Law suspended until November once signatures are approved
  - Would PA 72 come back until election?
  - Can you replace PA 4 with alternate legislation?



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