



# 2012 Statewide Ballot Proposals

Proposals 1, 2, & 4

CRC Webinar  
October 8, 2012

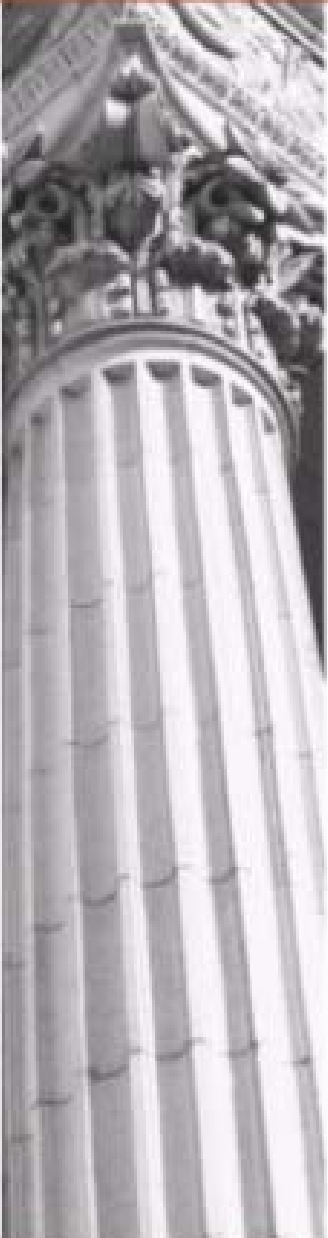
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## 6 Ballot Issues

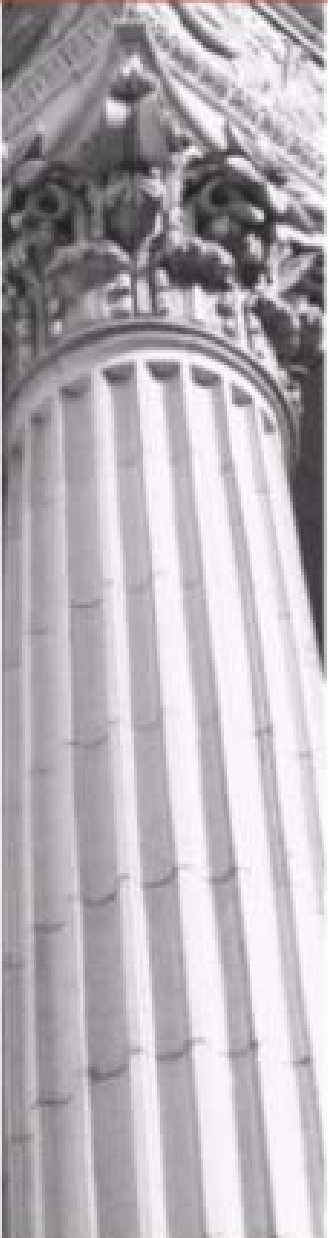
### 1 referendum, 5 constitutional amendments

- 12-1 Referendum on Public Act 4 of 2011
- 12-2 To establish the right to Collective Bargaining
- 12-3 To establish a standard for Renewable Energy
- 12-4 To establish the Michigan Quality Home Care Council and provide Collective Bargaining for In-home Care Workers
- 12-5 To Limit the Enactment of New Taxes by State Government
- 12-6 To require a vote Regarding Construction of International Bridges and Tunnels



# Proposal 1

Referendum on Public Act 4 of 2011





## Public Act 4 (PA 4)

- PA 4 is the state law that establishes the process for dealing with local government financial emergencies.
- There are now EFMs in Benton Harbor, Ecorse, Flint, Pontiac, Detroit Schools, Highland Park Schools, and Muskegon Heights Schools.



## Local control and state intervention

- Intervention in municipal financial emergencies was first authorized in PA 101 of 1988.
- School districts were included in PA 72 of 1990. EFMs under PA 72 generally do not have any powers that local officials did not already have, but EFMs could resolve political problems that prevented budget resolution.
- PA 4 of 2011 grants extraordinary authority either under a consent agreement or to a state-appointed emergency manager. PA 4 is much stronger than PA 72 – it was hoped that the threat of PA 4 would cause local government officials to work harder to resolve problems.
- PA 4 was suspended pending the referendum vote and PA 72 was reinstated.



## PA 72

- EFMs have control of financial matters, not operations. There were disputes over the authority of EFMs (e.g., DPS dispute over whether the EFM could intervene in academics).
- EFMs have no more control than locally elected officials.
- EFMs cannot ignore local charter requirements, break contracts, or abrogate collective bargaining agreements.
- Local officials and employees cannot be appointed EFMs within 5 years of their employment by that government.



## PA 4 replaced PA 72

- The same general process is retained:
  - Trigger events
  - Preliminary review
  - Review team review and recommendation
  - Negotiated consent agreement or
  - Appointment of an emergency financial manager (EFM)
- There are more trigger events for earlier warning of problems.
- Provides more direction for review teams and consent agreements
- Enhances the potential role of the local chief administrative officer and other local officials
- Provides expanded powers to the emergency manager



## Possible Review Team findings

- Not in financial stress or in mild financial stress
- In severe financial stress and a consent agreement has been adopted
- In severe financial stress but no consent agreement has been adopted
- A financial emergency exists



## Consent Agreements under PA 4

- Negotiated by the Review Team with the CAO and approved by the local governing body.
- CAO and governing body remain in place.
- Local officials are required to operate the unit in compliance with the agreement.
- May require hiring a consultant to help achieve the goals and objectives.
- After 30 days, the local unit is exempt from collective bargaining requirements, unless the state treasurer determines otherwise.



## The consent agreement under PA 4

- May grant the CAO, governing body, or other local officers one or more of 31 powers of an emergency manager, including the power to reject, modify, or terminate contracts and take over an underfunded pension fund.
- May not grant the power to reject, modify, or terminate collective bargaining agreements.
- 30 days after a consent agreement is entered, the unit becomes exempt from collective bargaining requirements for the term of the agreement.



## The Governor *must* make a determination within 10 days of receiving the review team's report

- Only four choices
- If an emergency is declared, the unit has 7 days to request a hearing with the governor
- If the governor affirms the emergency, the unit has 10 days to appeal to the Ingham County Circuit Court

## **If the financial emergency is confirmed, the Governor must appoint an emergency manager**

- An individual
- 5 years experience and expertise in business, financial, local or state budgetary matters
- May be an elected official, appointee, or employee of the local government
- Serves at the pleasure of the governor
- Paid by the local government on a contract approved by the state treasurer
- Makes quarterly reports to the state
- May be impeached as a civil officer by the state legislature



## **The EM develops a financial and operating plan to provide essential services and assure accountability**

- Conducting operations within revenues
- Payment of debt service
- Modification, rejection, termination, or renegotiation of contracts
- Required payments to the pension fund
- For a school district, an academic and educational plan
- Any other actions considered necessary by the EM

## Emergency manager powers

- The powers of the CAO and governing body are suspended and vested in the emergency manager; their wages and benefits are eliminated
- All financial and operating authority, including academic and educational authority in a school district
- Enter into contracts. Any contract with a cumulative value over \$50,000 is subject to competitive bidding, unless the state treasurer exempts it.
- Remove or replace appointees.
- Establish staffing levels, regardless of charter or contract requirements.
- Hire staff, including an inspector and/or auditor from an approved list.
- Consolidate or eliminate functions and departments.
- Assume control of a pension system that is less than 80% funded net of pension bonds



## **The EM may reject, modify, or terminate one or more terms and conditions of a contract**

- No restrictions on this power in the act
- May be granted to a local officer under a consent agreement
- Article I, Section 10 of the Michigan Constitution: “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be enacted”
- Article I, Section 10 of the U.S. Constitution: “No state shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...”



## The EM and collective bargaining agreements

- The local government is exempt from collective bargaining requirements in PERA.
- After meeting and conferring with the union, if, in the EM's sole discretion and judgment, a prompt and satisfactory resolution is unlikely, the EM may reject, modify, or terminate a collective bargaining agreement
- This power cannot be granted to a local officer under a consent agreement.

## Other powers

- Schedule a millage election.
- Sell, lease, or transfer assets, with conditions.
- Apply for a state loan.
- Incur, restructure, or retire debt.
- Transfer functions and responsibilities; contract for services; provide for the joint exercise of power or consolidation of services.
- Recommend consolidation with another municipality.
- Disincorporate or dissolve a municipality.
- Request permission to file for bankruptcy.
- Orders issued to local officials, employees, contractors, and agents are binding
- Not constrained by the local charter

## End of receivership

- The EM must declare the emergency resolved, the state treasurer must agree, and the superintendent of public instruction must agree for a school district.
- Before leaving, the EM must adopt a 2-year budget including all contractual and employment agreements, which cannot be amended without the approval of the state treasurer.
- The orders and ordinances adopted by the EM cannot be revised for 1 year after termination of the receivership.



## Issues

- PA 4 has tradeoffs – EMs have enhanced powers to address financial crises, but these powers come at the expense of local democracy and collective bargaining rights.
- If PA 4 is repealed, is PA 72 automatically reinstated? (The AG, Governor, and Treasurer have said yes.)
- If PA 4 is repealed, which part was objectionable? (Important if the legislature considers strengthening PA 72.)
- Is PA 4 constitutional? (Subject to litigation in *Brown et al v. Snyder* and *Detroit Federation of Teachers v. Roy Roberts Jr., et. al.*)

## What are alternatives to PA 4?

- Reaffirm PA 72.
- Adopt some other state intervention model (negotiate a consent agreement, impose a model charter, authorize special fees, etc.).
- If state law were silent, the courts would enforce contracts. This could include judgment levies.
- The state could provide alternative authorization for locals to file under Chapter 9 of the federal bankruptcy code.



## Referendum on PA 4

- **YES** vote affirms and reinstates PA 4
- **NO** vote rejects PA 4

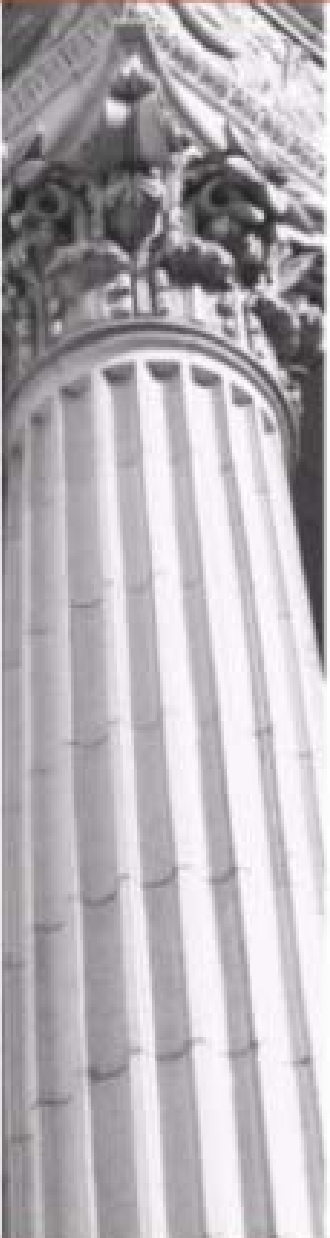
## Constitutional Principles

- A state constitution should:
  - Define and limit the basic structure of government
  - State general principles
  - Declare the rights of the people
- The document should be economical and compact; details should be avoided and matters that should be in statute should not be incorporated in the constitution.
- Amendments require a vote of people, so it is difficult to fix technical problems or make other adjustments.



## **Proposal 2**

To establish the right to Collective Bargaining





## Prop 2 – Collective Bargaining

- Right to public and private sector Collective Bargaining enshrined in Constitution
- No existing or future Michigan laws “shall abridge, impair or limit” the right to collective bargaining
- No existing or future Michigan law shall “impair, restrict or limit the negotiation and enforcement of any collectively bargained agreement”

## Why Proposal 2?

- Great Recession increased financial pressures on local governments
- Indiana adopted “right to work” law
- Wisconsin enacted a number of laws stripping public employees of their collective bargaining rights
- Actions in New Jersey, Ohio, Iowa, and other states
- Michigan laws perceived as affront to public sector employees
  - Teach tenure rules, weaken employee protections, contributions for health care insurance premiums, prohibit public safety minimum staffing requirements

## Union Membership in Michigan

- Total Michigan workers
  - 18.3% are union members
  - 5<sup>th</sup> highest among 50 states
- Private sector Michigan workers
  - 12.4% are union members
  - 3<sup>rd</sup> highest among 50 states
- Public sector Michigan workers
  - 55.0% are union members
  - 13<sup>th</sup> highest among 50 states

## Unionization of Public Work Force

- 27% of local governments have employee unions
  - 98% of largest jurisdictions have employee unions
    - 100% of counties
    - 87% of cities
    - 20% of villages
    - 9% of townships
- School districts, community colleges, universities
- Approximately 71% of state classified employees



## Private Sector Collective Bargaining

- Right to private sector collective bargaining defined in federal laws
- Federal law defers to the states the ability
  - to enact “right to work” laws
  - to authorize ability to include requirements in labor contracts for employers to collect union dues

## U.S. Law Silent on Public Sector Collective Bargaining Rights

- Federal law is silent on regulation of relationships between employees and the government agencies that employ them
- Tenth Amendment to U.S. Constitution
  - “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

## **Prop 2 would seem to affect the following constitutional provisions:**

- Article IV, Section 31
- Article IV, Section 48
- Article IV, Section 49
- Article IV, Section 51
- Article V, Section 2
- Article V, Section 28
- Article VI, Section 4
- Article VII, Section 4
- Article VII, Section 18
- Article VII, Section 21
- Article VII, Section 22
- Article VIII, Section 5
- Article VIII, Section 6
- Article XI, Section 6

## Article IV, Legislative Branch

- **Section 48. Disputes concerning public employees.** "The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service."
- **Section 49. Hours and conditions of employment.** "The legislature may enact laws relative to the hours and conditions of employment."



## Public Sector Collective Bargaining

- PERA (PA 365 of 1965) enacted under these provisions
  - Modeled after federal NLRA
  - Imposes on public employers and public unions the mutual obligation to bargain in good faith on matters “with respect to wages, hours, and other terms and conditions of employment...”
  - Similar to federal statute, many of the terms are not defined

## If Proposal 2 is Adopted

- Private Sector
  - Michigan could not enact a “Right-to-Work” law
- Public Sector
  - Everything is negotiable
  - Potential interaction with at least 15 existing constitutional provisions
  - Could strengthen municipal home rule and university autonomy

## How will we decide which laws are affected if this is adopted?

- All laws would remain in effect on November 7
- Provisions of laws would only become endangered when public sector unions seek to address the issues in collective bargaining
- Resistance from employers (governments) would likely lead to law suits
- Laws (or provisions of laws) may be abrogated incrementally over time
- Abrogation of laws only allows for negotiations
  - Does not automatically place in contracts

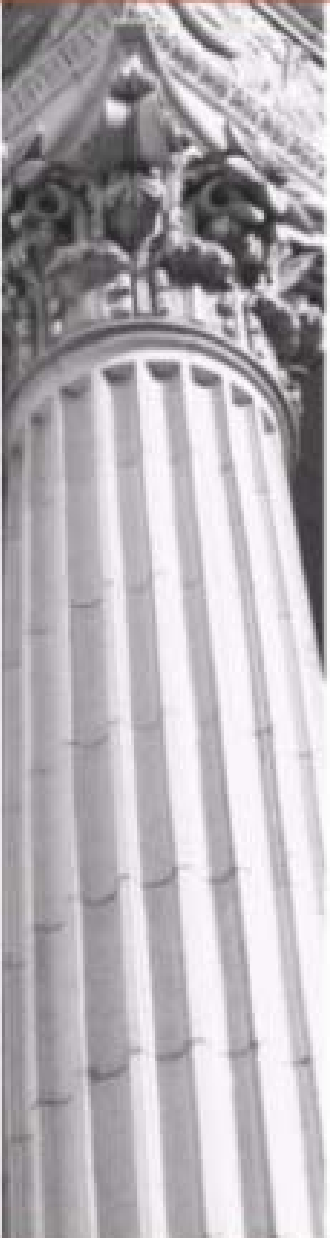
## Who Would be Affected?

- All Private sector union employees – Right to Work
- All Public sector unionized employees (current and future)
  - State civil service
  - State university employees
  - School teachers/employees
  - Employees of all counties
  - Employees of most cities
  - Employees of some villages and townships



## **Proposal 4**

To establish the Michigan Quality Home Care Council and provide Collective Bargaining for In-home Care Workers





## Critical Facts

- The vote on Proposal 4 will not affect funding for the Home Health Care Program.
- The vote on Proposal 4 will not affect funding for Medicare and Medicaid programs.



## Proposal 4

- Proposal 4 would establish the Michigan Quality Home Care Council in the executive branch of state government.
- Proposal 4 would place in the constitution limited collective bargaining rights for home health care aides paid through the Medicaid-funded Home Help Services Program.



## Home Health Care Aides

- Home health care aides provide in-home help (cooking, dressing, laundry, bathing, etc.) to elderly and disabled participants in the program.
- Aides are hired and fired by the elderly or disabled participants in the program. They are often family members, friends, or neighbors.
- Home health care aides are paid by DCH with state and federal funds.
- There were about 43,700 home health care aides in FY2007





## MQCCC and MQHCC

- The new Michigan Quality Home Care Council would assume the duties and obligations of the existing Michigan Quality Community Care Council, which was designated as the “public employer” of home health care aides.



## Michigan Quality Community Care Council

- MQCCC was formed in 2004 by an interlocal agreement between DCH and the Tri-County Aging Consortium (for Clinton, Eaton, and Ingham).
- MQCCC provides a register of potential home health care aides.
  - MQCCC checks the criminal history and references of applicants before placing them on the registry.
  - In FY2010, an average of 918 aides were listed on the registry.
  - In FY2010, 483 aides were hired from the registry (about 1% of total aides).



# Michigan Quality Community Care Council

- MQCCC is tasked with coordinating personal assistance services.
  - Offering training to aides: an average of 520 aides attend a training session each year
  - Offering training to elderly and disabled program beneficiaries



# Michigan Quality Community Care Council

- MQCCC was identified as the public employer in the interlocal agreement, but MQCCC does not hire or fire home health care aides.
- The interlocal agreement said that home health care aides who only received payment from Medicare or Medicaid were public employees, meaning they had the right to organize.
- Public employers are required to bargain with employee representatives.

## SEIU Healthcare Michigan

- In 2005, MQCCC recognized SEIU Healthcare Michigan as the bargaining unit for home health care aides.
- 43,000 ballots to unionize were sent: 6,949 (16%) "yes" and 1,007 (2%) "no" ballots were returned.
- The election was certified and the union was authorized to collect 2.75% of aides' pay as dues; aides can opt out but pay 65% of dues as an agency fee.



## PA 76 of 2012

- State funding for MQCCC was eliminated in 2012 (private funding continued).
- PA 76 of 2012 amended the definition of public employees in the Public Employees Relations Act (PERA) so that home health aides no longer qualified as public employees.
- The AG ruled that based on PA 76 dues could no longer be collected. This has been overturned in federal court, but the AG is appealing.



## Proposal 2012-04

- Would establish the Michigan Quality Home Care Council in the constitution.
- Would give home health care aides the same collective bargaining rights as non-civil service public employees.
- Aides have no right to strike and no right to other public employee benefits.
- MQHCC would provide a registry; provide training opportunities; and set compensation standards for aides subject to state appropriations.



## MQCCC would...

- Be obliged to recognize the SEIU and the collective bargaining agreement.
- Maintain a registry of aides who have had appropriate background checks, but hiring from the registry would be optional: program clients would not be required to hire off the registry.
- Provide optional training opportunities; neither aides nor clients would be required to be trained.
- Set compensation standards, but these are subject to appropriations by the legislature.
- Set terms and conditions of employment, but clients would retain the right to select, supervise, train and direct, and terminate aides.



## What if Proposal 4 is defeated?

- There will be no effect on the Medicaid-funded Home Help Services Program: clients will still be able to select, hire, supervise, train and direct, and fire home health care aides and those aides will be paid by Medicaid for qualifying clients.
- A lawsuit will probably determine whether the current collective bargaining agreement will remain in effect until 2013 and whether union dues will be collected from aides' paychecks.



## Interested in More Information?

- Papers can be found at [election.crcmich.org](http://election.crcmich.org)
- Recorded Webinar on Proposals 3, 5, and 6 from October 5 also available at [election.crcmich.org](http://election.crcmich.org)

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