



# CRC NOTES



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## DIFFERENCES IN PROPOSED CONSENT AGREEMENTS BETWEEN THE CITY OF DETROIT AND THE STATE OF MICHIGAN

The City of Detroit has projected that it may run out of cash in May.

The 30-day extension of the Review Team's allotted time to evaluate the financial condition of Detroit city government neared its end without agreement on a plan that could prevent appointment of an emergency manager. As a result, State Treasurer Andy Dillon delivered a proposed draft consent agreement to the state appointed Review Team and the Mayor on March 12<sup>th</sup>.

Amidst an outpouring of local political opposition to, and general editorial support for, the state proposal, Mayor Bing proposed an alternative consent agreement which differed in crucial ways from the Treasurer's plan. The Mayor's plan would also establish a Financial Advisory Board, but with differently appointed members and different authority.

Under the state proposal, six of the nine members of the Board would be appointed or recommended by the state. The Board would consist of:

- The State Treasurer
- One person appointed by the Governor
- One appointed by the State Treasurer
- Two appointed by the Mayor
- Three appointed by the Mayor and Council from a list of six candidates provided by the Governor
- One appointed by City Council

Other than the state Treasurer, qualifications for Board members would include at least ten years experience with either (a) sophisticated financial transactions, (b) restructuring in high profile and complex turnaround, crisis, bankruptcy, and/or rapid transition environments or (c) labor and/or pension matters; qualifications of prospective members would be confirmed by the Michigan Association of Certified Public Accountants.

The Mayor's proposal shifts the dominant appointment authority to the Mayor: four of the seven members of the Board would be appointed by the Mayor. The Mayor's proposed Board includes:

- The State Treasurer
- One person appointed by the Governor
- Two appointed by the Mayor
- Two appointed by the Mayor and confirmed by the City Council from a list of six candidates provided by the Mayor
- One appointed by City Council

Under the Mayor's plan, required qualifications would be reduced from ten to five years experience and the expertise required would be broadened to include local government management or other relevant professional experience satisfactory to the appointing entity (the last provision opens the criteria to include virtually anyone).

In both proposals, Board members other than the State Treasurer would be paid \$25,000 annually, plus expenses. The state would make these payments to Board members in both scenarios, but only in the Treasurer's proposal would the city be responsible for reimbursing the state for the payments. The Treasurer's proposal would also have the city reimburse the state for the cost of insurance for Board members; the Mayor's proposal has the state paying for this cost as well.

The state proposal would give the Financial Advisory Board responsibility for appointing the city's CEO, COO, and Human Resources Director to serve under the direction of the Board and Mayor. The Mayor's plan would establish an Advisory Board Liaison to be appointed by the Board, be paid by the state, and serve under the direction of the Mayor. The Mayor would appoint the CEO, COO, Human Resources Director, and other executive branch department heads under his own plan.



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The Treasurer's plan authorizes the Board to establish financial and operational metrics for restructuring; the Mayor's plan has the Board recommending metrics.

The state plan includes a Recovery Plan developed by the State; the Mayor's plan includes a Continuing Operations Plan developed by the city. The Treasurer's plan has the Board overseeing implementation of the Recovery Plan; the Mayor's plan has the Board monitoring implementation of the city-developed Continuing Operations Plan.

The state plan authorizes the Board to review and approve the operating and capital budgets; any material capital market transitions; proposed changes in the city's debt structure; proposed modifications to material contracts including collective bargaining agreements and pension agreements; any other action that could have a material impact on the city's financial condition; changes to the organizational structure that involve positions that report to the Mayor, City Council, or the Board; and judgment levies before submission to a court. The Mayor's plan essentially changes the role of the Board to an advisory function: "review and comment on...review and make recommendations."

Under both proposals, the Mayor is granted all of the powers available under a consent agreement (PA 4 does not allow the power to abrogate

union contracts to be granted under a consent agreement). Under PA 4, collective bargaining is suspended 30 days after a consent agreement is enacted. Interestingly, both proposals provide that the State Treasurer may grant the powers allowed under PA 4 and the consent agreement, to one or more other officers of the city.

The actions describing restructuring are the same, with two exceptions. The mayor's proposal includes disposition of the Public Lighting Department; the Treasurer's proposal includes implementation of the 2012-13 operational restructuring plan.

The Mayor's plan retains greater budget responsibility in the Mayor's office (there would be no state developed Recovery Plan to restrain the budget). In the Treasurer's proposal, the Board, in consultation with the Mayor and COO, would have authority to reduce the budget to properly reflect revenues. Both proposals would allow deficits under certain circumstances: under the Treasurer's proposal, the Board would have authority "to approve Operating Deficits proposed in initial Budgets or amendments thereto in its sole discretion." In the Mayor's plan, the City Council has this authority upon recommendation of the Board.

Under the Mayor's proposal, the Mayor has authority to negotiate, renegotiate, execute, amend, modify, reject, or terminate collective bar-

gaining agreements as allowed by law. Under the Treasurer's plan, the Mayor and Board-appointed COO has that authority subject to approval of the Board, and all agreements and amendments must be approved by the Board.

The Mayor's proposal restricts somewhat the Board's access to information, documentation and personnel; provides the city with "a reasonable opportunity to cure" a material breach of the agreement; and limits conditions subject to release or discharge (things such as clerical errors, computer failures, late mailings, failure to comply with reporting dates) to those "within the City's reasonable control."

The duration of the agreement is more limited in the Mayor's proposal: financial stability would require that the general fund (not all funds) avoid a deficit for three consecutive years. In addition, the city's long-term debt would have to be rated in one of the four highest credit rating categories (the city would have to be rated in one of the two highest ratings categories in the Treasurer's proposal). Other conditions are the same in the two proposals.

In summary, the Treasurer's proposal transfers significant financial and operational authority to a state appointed board. The Mayor's proposal expands the power of the Mayor, and reduces the oversight board to essentially an advisory capacity.