

Ballot Proposal 1 of 2012



REFERENDUM ON EMERGENCY MANAGER LAW

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Ballot Proposal 2012-1
November 2012 General Election
Placed on the ballot by Referendum Petition

Complete to 10-16-12

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

**A REFERENDUM ON PUBLIC ACT 4 OF 2011 –
THE EMERGENCY MANAGER LAW**

Public Act 4 of 2011 would:

Establish criteria to assess the financial condition of local government units, including school districts.

Authorize Governor to appoint an emergency manager (EM) upon state finding of a financial emergency, and allow the EM to act in place of local government officials.

Require EM to develop financial and operating plans, which may include modification or termination of contracts, reorganization of government, and determination of expenditures, services, and use of assets until the emergency is resolved.

Alternatively, authorize state-appointed review team to enter into a local government approved consent decree.

Should this proposal be approved?

YES

NO

BRIEF SUMMARY: A "Yes" vote will reinstate Public Act (PA) 4 of 2011, which has been suspended pending the outcome of the referendum. That act is called "the Local Government and School District Accountability Act."

A "No" vote means that PA 4 will not take effect and will essentially be repealed.

Proposal 1 was put on the ballot by opponents of the new emergency manager law, as authorized under Article II, Section 9, of the State Constitution, which gives the people the right to approve or reject laws enacted by the Legislature. To invoke the referendum, petitions must be signed by a number of registered electors equal to five percent of the

total vote cast for all candidates for governor at the last preceding general election for governor. The petitions were submitted by Stand Up For Democracy, a coalition led by AFCSME, the public employees' union. The organization's website is: <http://standup4democracy.com/>.

The final version of the bill creating PA 4 (House Bill 4214) passed the Michigan House of Representatives **62-48** and passed the Senate **26-12**. House Bill 4214 was signed into law by Governor Snyder on March 16, 2011, and took effect immediately. PA 4 was suspended when the referendum was certified to the General Election ballot on August 8, 2012.

The state's official position, which is in dispute, is that the previous law, PA 72 of 1990, Local Government Fiscal Responsibility Act, is now reactivated, pending the outcome of the referendum. PA 4 repealed PA 72.

Documents relating to PA 4, including the official text of the act and detailed descriptions and discussions by the nonpartisan House and Senate Fiscal Agencies, can be found on the Michigan Legislature website at:

[http://www.legislature.mi.gov/\(S\(a4g0mj45xfqnfz45ymxnwgzi\)\)/mileg.aspx?page=getObject&objectName=2011-HB-4214](http://www.legislature.mi.gov/(S(a4g0mj45xfqnfz45ymxnwgzi))/mileg.aspx?page=getObject&objectName=2011-HB-4214).

There is also a lengthy report on PA 4 published by the Citizens Research Council of Michigan at: <http://www.crcmich.org/PUBLICAT/2010s/2011/rpt368.pdf>.

PA 4

While Michigan already had a statute in place that created a process for state intervention into local governmental unit's financial affairs in the event of financial emergency (PA 72), proponents of PA 4 considered that law inadequate to the task at hand and argued for earlier intervention to evaluate financial stress in local units and more drastic intervention when local units face dire financial circumstances that local officials are unable or unwilling to address themselves.

PA 4, generally speaking, greatly strengthens the power of a state-appointed emergency manager to oversee the operations, and not just the finances, of a local unit of government or school district when a financial emergency is declared. It also permits, with exceptions, the powers of an emergency manager to be exercised by local officials under a consent agreement.

Under PA 4, when an emergency manager is appointed, the power and authority of locally elected officials and elected or appointed city administrators is suspended, and the emergency manager can exercise the power and authority of any officer, employee, department, board, commission, or other entity of the local government relating to the local unit's operation. This includes all authority of the local legislative body and chief executive over the adoption, amendment, and enforcement of ordinances and resolutions. The emergency manager must develop a financial and operating plan with the objectives of assuring that the local government can provide services essential to the public health, safety, and welfare; and assuring fiscal accountability.

It is fair to say that the referendum was motivated by opposition to these new extraordinary powers, in particular the ability to abrogate contracts, notably collectively bargained labor agreements; suspend collective bargaining for up to five years; override minimum staffing requirements in charters or contracts; become the sole trustee of an underfunded pension system; take over all operations of a school district, not just financial matters, but also academic decisions; sell assets of a local unit or school district; enter into agreements with other public entities to transfer property or consolidate services; and dis-incorporate or dissolve a municipal government (with the approval of the Governor).

FISCAL IMPACT:

At the time PA 4 was enacted, the Department of Treasury indicated that any additional administrative costs associated with PA 4 would be absorbed under existing appropriation levels associated with the PA 72. Therefore, repeal of PA 4 would have no fiscal impact on the Department of Treasury due to the reinstatement of PA 72.

Fiscal year (FY) 2011-12 appropriations included \$10.0 million and 10.0 FTEs to support the Office of Fiscal Responsibility. The funding provided assistance to local units of government facing financial emergencies, including oversight and guidance through contracted services related to legal, accounting, and auditing services that are available to local units of government. The FY 2012-13 budget included an additional \$4.5 million. It is unclear whether repeal of PA 4 would eliminate any future need for the funding appropriated in FY 2011-12 and FY 2012-13 to the Office of Fiscal Responsibility. It is possible that the Office of Fiscal Responsibility could use the funding to support communities affected by the reinstated PA 72.

PA 4 is intended to eliminate barriers to reducing costs at the local level, so the outcome of the referendum could have a significant local fiscal impact, although the impact cannot be quantified.

A DESCRIPTION OF THE PROPOSAL:

As noted earlier, the proposal asks voters whether PA 4 should be approved and allowed to take effect. PA 4 is a long, complicated act. The following description of the act focuses on just two aspects, (1) the process of determining if a local unit or school district is in financial difficulty and, if so, the methods to rectify those difficulties; and (2) the powers of an emergency manager appointed by the Governor to resolve financial emergencies. Most of the controversy over the new act centers on the powers granted to the emergency manager.

Process under PA 4

In general terms, the following is the process to be followed under PA 4 for the establishment of a consent agreement (when there is a determination of severe financial stress) or the appointment of an emergency manager (when there is a determination of existing financial emergency).

Triggers & Preliminary Review

The act contains a list of 18 events or triggers that are indicators of probable financial stress. When they occur, the State Financial Authority (which is the State Treasurer for municipal governments and the State School Superintendent for school districts) can conduct a preliminary review to determine if a local government financial problem exists.

The triggers include such events as the failure of the local unit to pay employee compensation, a default on a debt payment, the failure to make a payment to a pension fund, the failure to file required state financial reports and audits, violations of the Revenue Bond Act or the Revised Municipal Finance Act, and ending a fiscal year in a deficit. A review can also be triggered by a request from the governing body or chief administrative officer of the local unit, a petition from voters, a resolution from the state House or Senate, a request from creditors, or a request from another local unit when tax revenues collected on their behalf have not been distributed to them.

Appointment of Review Team

If a finding of probable financial stress is made for a municipal government, the Governor appoints a review team consisting of the State Treasurer (or a designee); the Director of the Department of Technology, Management, and Budget (or a designee); a nominee of the Senate Majority Leader; and a nominee of the Speaker of the House of Representatives. The Governor could also appoint other state officials or other people with relevant professional experience. If a finding of probable financial stress is made for a school district, the review team would also include the State School Superintendent (or a designee).

Review Team Report Conclusions

The review team must report its findings to the Governor and make one of the following four conclusions about the local government, in ascending order of seriousness:

- No financial stress or a condition of mild financial stress exists (i.e., there is no threat to the local government's capability to provide necessary governmental services essential to public health, safety, and welfare).
- A condition of severe financial stress exists, with an adopted consent agreement containing a plan to resolve the problem.
- A condition of severe financial stress exists, without an adopted consent agreement.
- An existing financial emergency exists with no satisfactory plan to resolve the emergency.

Consent Agreement

As indicated above, when a review team determines a local unit is in a condition of severe financial stress, it can enter into a consent agreement to resolve the problem. The state financial authority can require that the consent agreement include a continuing operations plan, which would be prepared by the local government and be subject to state approval. Alternatively, the state financial authority could require a consent agreement to include a recovery plan, which would be developed by the state financial authority and would supersede the local budgets and appropriations. Both kinds of plan must include a

projected budget of revenues and expenditures over at least three fiscal years. Unless the State Treasurer determines otherwise, beginning 30 days after the date a local government enters into a consent agreement, the local government would not be subject to the collective bargaining provisions of the Public Employment Relations Act. The State Treasurer could grant one or more powers of an emergency manager to local officials (e.g., the chief administrative officer or financial officer, or the local governing body) while the unit is operating under a consent agreement.

Governor's Determination

Based on the report of the review team, the Governor would, within ten days, make a determination of which of the review team's conclusions he or she agrees with.

Financial Emergency & Appointment of Emergency Manager

If the Governor determines a financial emergency exists, the local unit's governing board and chief administrative office would be informed and provided an opportunity to request a hearing conducted by the state *financial* authority and subsequently could, with a two-thirds vote of the local legislative body, appeal to the Ingham County Circuit Court.

Governor Declares Receivership

If a finding of a financial emergency is confirmed, the Governor would then declare the local government in receivership and appoint an emergency manager to act in the place and stead of its governing body and chief administrative officer. The local governing body and chief administrative officer could only exercise powers as specifically authorized in writing by the emergency manager and subject to any conditions required by the emergency manager.

Removed from Receivership

A local government in receivership is considered to be in a condition of financial emergency until the emergency manager declares the emergency to be rectified, subject to the concurrence of the State Treasurer and the State School Superintendent (if the local unit is a school district). Before receivership is terminated and before the end of an emergency manager's term, the manager must adopt and implement a two-year budget, including all contractual and employment agreements, to begin when receivership terminates.

Bankruptcy

If the emergency manager determines that no feasible plan could satisfactorily rectify the financial emergency, he or she could recommend to the Governor that the local government be authorized to proceed under federal bankruptcy laws (Title 11 of the U.S. Code), and if the Governor approves, then the emergency manager would be empowered to act exclusively on the local government's behalf under Title 11.

Emergency Manager's Authority

The emergency manager is required to develop a written *financial and operating plan* for the local government with the objectives of assuring that the local government can provide services essential to the public health, safety, and welfare; and assuring fiscal accountability. The financial and operating plan must provide for all of the following: the conduct of all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate; the payment in full of

the scheduled debt service requirements and all other uncontested legal obligations; the modification, rejection, termination, and renegotiation of contracts; the timely deposit of required payments to the pension fund; for school districts, an academic and educational plan; and any other actions needed to achieve the objectives of the plan, alleviate the financial emergency, and remove the local government from receivership.

Section 19 of the act provides in considerable detail the actions that an emergency manager may take while the local government is in receivership, notwithstanding any charter provision to the contrary. Some of these actions were available under prior state intervention laws, but many of them are new and others have been significantly modified. The actions include:

- Amend, revise, approve, or disapprove the budget of the local government and limit the total amount appropriated or expended.
- Make, approve, or disapprove any appropriation, contract, expenditure, or loan; the creation of any new position; or the filling of any vacancy in a permanent position by any appointing authority.
- Establish staffing levels, notwithstanding any minimum staffing levels established by charter or contract.
- Reject, modify, or terminate one or more terms and conditions of an existing contract.
- Reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. This could be done if in the emergency manager's sole discretion and judgment, and after conferring with the appropriate bargaining representative, a prompt and satisfactory resolution was unlikely to be obtained.
- Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement.
- If a municipal pension fund is not actuarially funded at a level of at least 80 percent, remove one or more of the serving trustees of the local pension board, or replace all the serving trustees, in the event that the State Treasurer appoints the emergency manager as the sole trustee of the local pension board. The manager would exercise the authority and fiduciary responsibilities of the local pension board until the termination of receivership and set and approve all actuarial assumptions, but could not make changes to the local pension fund without receiving the State Treasurer's approval.
- Consolidate or eliminate departments of the local government; transfer functions from one department to another; and appoint, supervise, and remove administrators.
- Employ, at the expense of the local government and with approval of the State Treasurer or State School Superintendent, auditors and other technical personnel.
- Retain one or more people or firms, selected from a list approved by the State Treasurer, to perform the duties of a local inspector or a local auditor. Such inspectors and auditors would conduct forensic audits to detect waste, fraud, and abuse, and would submit reports to the emergency manager, the State Treasurer, and the State School Superintendent.
- Require compliance when necessary with orders by court action in the Ingham County Circuit Court.

- Sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government provided the action does not endanger the health, safety, or welfare of residents of the local government, or unconstitutionally impair a bond, note, security, or uncontested legal obligation.
- Apply for a loan from the state sufficient to pay the expenses of the emergency manager and for other lawful purposes.
- Order millage elections, which could only be held at the general November election in even-numbered years.
- Approve or disapprove of the issuance of debt on behalf of the local government.
- Enter into agreements with creditors or others to restructure debt.
- Enter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, and the transfer property to other units of government; enter into agreements with other entities to consolidate services; or, with the approval of the Governor, dis-incorporate or dissolve the municipal government.
- Exercise solely all authority concerning the adoption, amendment, and enforcement of ordinances and resolutions.
- Supersede the power or authority of any officer, employee, department, board, commission, or other entity of the local government, whether elected or appointed.
- Remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity which is within or is a component unit of the local government.

Certain additional actions can be taken when the local unit is a school district. These include:

- Negotiate, re-negotiate, approve, and enter into contracts on behalf of the school district.
- Receive and disburse all federal, state, and local funds earmarked for the district.
- Seek approval from the State School Superintendent for a reduced class schedule.
- Sell, assign, or transfer the assets of the school district to meet past or current obligations or to assure the fiscal accountability of the district, as long as the use of assets does not impair the education of the students in the district. This power includes the closing of schools and other school buildings in the school district.
- Approve or disapprove the issuance of obligations of the school district.
- Employ or contract for, at the expense of the school district, the school administrators considered necessary to implement this act.

BACKGROUND INFORMATION:

According to the Department of Treasury there are four local governmental units and three school districts that are in receivership and have an appointed emergency manager. The local units are the cities of Flint, Benton Harbor, Ecorse, and Pontiac. The school districts are Muskegon Heights, Highland Park, and Detroit. Also, three cities are working under a consent agreement with a financial review team: River Rouge, Inkster, and Detroit.

Information on activities in these local units and school districts is available on the Department of Treasury website at: http://www.michigan.gov/treasury/0,1607,7-121-1751_51556-201116--,00.html.

According to the Department of Treasury, under PA 72, there were seven declarations of a financial emergency by the Governor. In those seven local units, a total of nine emergency financial managers were appointed by the Local Emergency Financial Assistance Loan Board. These include the City of Hamtramck (December 2000), City of Highland Park (July 2001), City of Flint (July 2002), Village of Three Oaks (December 2008), City of Pontiac (March 2009), and the City of Benton Harbor (April 2010). Of those seven declarations, three still had a financial manager in place when PA 72 was repealed and replaced by PA 4: Benton Harbor, Ecorse and Pontiac.

ARGUMENTS MADE BY PROPONENTS OF PA 4:

** Supporters of PA 4 say that it was crafted and enacted to address the deficiencies of the previous act that permitted state intervention when local units of government are in a state of financial distress. The appointment of an emergency manager is a drastic action and only will be taken in an extremely limited number of cases. But when it does occur, the emergency manager needs the power and protections afforded by PA 4 to succeed in the job and to help resolve the dire financial emergency that threatens the local unit's ability to function. In the past, there have been disputes over the authority of managers, who have felt frustrated by the recalcitrance of local officials and by legal obstacles in local charters and ordinances, as well as unrealistic collectively bargained labor agreements. The act makes clear the sweeping authority of the emergency manager to fully address and to resolve the operational and financial problems of a troubled local unit.

** Supporters note that some process is always going to be needed to allow state intervention in financially distressed local units of government where, for whatever reasons, local officials have been unable or unwilling to address the fundamental problems. The state has an obligation to see that local units of government avoid financial calamity. The choice is not between an emergency manager law and no law. It is between an effective law and an ineffective one. PA 4 is the right approach for several reasons. It allows for timely, earlier intervention through a preliminary review process when there are financial danger signals, so that problems can be addressed before they reach crisis proportions. It allows for consent agreements between the state and a local unit so that local officials can maintain some measure of control and work collaboratively with state officials. Under these agreements, local officials could themselves have some of the powers of an emergency manager. But when all else fails, the act allows for the appointment of an emergency manager who is granted the authority and tools to carry out the job effectively.

** The fact that a law exists to grant extraordinary powers to a financial manager, say supporters, serves in and of itself as an incentive for local officials to take timely actions to deal responsibly with emerging financial difficulties. The way to avoid the loss of local control is for officials to make the difficult choices themselves.

** Proponents of PA 4 say that it offers, in the most serious of cases, an alternative to municipal bankruptcy, which would have a deleterious effect not only on the local unit involved but on the finances of the state as a whole.

ARGUMENTS MADE BY OPPONENTS OF PA 4:

** Opponents of PA 4 say that it grants too much power to an unelected representative of state government and virtually eliminates representative, democratic government at the local level. The authority of duly elected local officials will be overridden and the will of local voters disregarded. The act allows charters and ordinances that enjoy popular support to be ignored. Enormous authority is granted to an official who is answerable to no one at the local level and who will not have to live with the results once the job is finished. The emergency manager can exercise the full authority of local executives and legislators without regard to local opinion or community values and preferences.

** Critics also oppose provisions in the act that allow the abrogation of contracts, an in particular collectively bargained labor contracts. It also denies public employees' union rights by suspending any obligation to engage in collective bargaining during the appointment of an emergency manager and after the first 30 days of the creation of a consent agreement. In many communities, employee unions have been part of the solution to local problems and have made many concessions to protect the financial health of local government. Employees, through their union representatives, should be a partner in the efforts to restore the health of financially distressed local governments.

** Further, say opponents, the law should not permit the sale of a local government's assets without local input; this could result in short-term budgetary gains but long-term effects on a community's quality of life. Further, the law should not permit the dissolving of a local unit without a popular vote or an act of the Legislature.

** Some opponents express frustration that much of the conversation surrounding PA 4 puts the blame for local fiscal problems solely on the leaders of communities in fiscal distress. They point out that the state government shares responsibility. In addition to the effects of the recent Great Recession, with its devastating impact on property values and local tax revenues, local units have been hamstrung by constitutional and statutory provisions that limit their ability to address fiscal problems. They face a host of mandates imposed by state legislation. They have seen the Legislature reduce revenue sharing by some \$4 billion since 1998, as the state government continues to balance its budget by pushing fiscal problems down to the local level. The state needs policies, particularly urban policies for cities that have seen many years of significant disinvestment, that are geared toward assisting local government and forming partnerships, rather than policies that emphasize blame and state takeover. Critics say state and local government should be allies not enemies.

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■ This analysis was prepared by nonpartisan House staff for use by House members and the general public in their deliberations, and does not constitute an official statement of the intent of the proposal.