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New Law Seeks to Strengthen Local Governments + School Districts

As the State of Michigan and local government units continue to grapple with budgetary challenges, Governor Snyder has pushed a number of proposals to reform and reshape state government.

Of these, one of the most intensely debated and closely scrutinized has been the recently enacted Local Government and School District Fiscal Accountability Act, Public Act 4 of 2011 (Public Act 4).

Public Act 4, signed into law on March 16, 2011, replaces Public Act 72 of 1990, under which emergency financial managers have been appointed to oversee the financial operations of distressed municipalities and school districts. Public Act 4 retains many of the provisions of Public Act 72, while introducing significant new provisions aimed at strengthening the financial and operational viability of municipalities and school districts across the State of Michigan.

While much of the debate and media scrutiny regarding the new law has focused on the power to appoint an emergency manager, Public Act 4 provides tools that local units can use to address fiscal stress before reaching a financial emergency.

CONSENT AGREEMENT

A common approach is to negotiate a consent agreement with the state that can include either a continuing operations plan developed and implemented by the local unit or a recovery plan developed and imposed by the state for implementation by the local unit.

A consent agreement may also empower an officer or the local governing body with one or more powers provided to emergency managers, but may not include the power available to emergency managers to modify, terminate, or renegotiate existing collective bargaining agreements. Unless the state determines otherwise, the local government operating under a consent agreement is exempt from collective bargaining

requirements under the Public Employment Relations Act for the term of the consent agreement. By entering into and complying with the terms of a consent agreement, a local unit experiencing severe financial stress can avoid the appointment of an emergency manager.

EMERGENCY MANAGER

A local unit facing a financial emergency may be placed into receivership under the control of an emergency manager. The emergency manager has broad powers to operate and restructure nearly all aspects of the local unit, including:

- Entering into agreements to consolidate services with other local governments
- Authorizing debt and bond and millage elections
- Developing and implementing an academic plan for a school district
- Modifying, terminating, or renegotiating contracts, including collective bargaining agreements, if certain conditions are met. The local unit is also exempt from collective bargaining requirements for the earlier of five years or the end of the receivership
- If no reasonable alternative exists, with state approval, the emergency manager may proceed under federal bankruptcy laws

As always, Miller Canfield will remain on top of any legal developments related to the provisions of Public Act 4, as well as other issues of interest to our clients. Call us if you'd like more information.



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