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Local Government + School District

FISCAL ACCOUNTABILITY ACT

Governor Snyder recently signed into law a package of bills to address the operations of Michigan's local governments and school districts experiencing financial distress. The reforms are meant to identify and solve fiscal problems early if possible and also contain provisions for the appointment of emergency managers when necessary.

THE MAIN BILL: PUBLIC ACT 4 OF 2011

Act 4 replaces Public Act 72 of 1990, under which emergency financial managers can be appointed to oversee the financial operations of distressed municipalities and school districts.

The act retains many of the provisions of Public Act 72, while introducing consent agreements **prior to** reaching a financial emergency and providing significant new powers for the newly titled "Emergency Manager" once a financial emergency is declared.

Part of the legislation amends the governing public sector union relations law – the Public Employment Relations Act (PERA) – and enhances the authority of Emergency Managers to modify existing collective bargaining agreements.

FOUR STAGES OF FINANCIAL DISTRESS

After review by an appointed team, a public entity would be determined to be in one of four stages of financial distress

- (1) Not in financial distress or in a condition of mild distress
- (2) In a condition of severe financial distress and a consent agreement containing a plan to resolve the problem has been adopted
- (3) In a condition of severe financial distress and a consent agreement has not been adopted
- (4) A financial emergency exists and no satisfactory plan exists to solve it

CONSENT AGREEMENTS

Under the new law, when a municipality or school district is found to be in financial distress, it may enter into a consent agreement with the state that sets forth a plan to resolve the financial stress

before receivership is invoked and an Emergency Manager is appointed.

Unless the state treasurer decides otherwise, the municipality or school district board is exempt from collective bargaining requirements under PERA for the term of the consent agreement.

In cases where the entity is in deep financial distress that rises to the level of a financial emergency, it may be placed into receivership and an Emergency Manager appointed.

EMERGENCY MANAGER COLLECTIVE BARGAINING POWERS

The Emergency Manager will have broad power to operate and restructure all aspects of the municipality or school district; including the power to modify, terminate, or negotiate existing collective bargaining agreements.

The municipality or school district is exempt from collective bargaining requirements under PERA for a period of five years or until the receivership has ended.

CHANGES TO PERA

Another portion of the package includes specific amendments to section 15 of PERA. Every collective bargaining agreement entered into after March 17, 2011, must contain a provision which allows an Emergency Manager to reject, modify, or terminate the collective bargaining

agreement as provided by Act 4. Further, the amendment codifies the provision exempting a municipality or school district from its collective bargaining obligations while under a consent agreement or an Emergency Manager.

The utilization of Act 4 by local municipalities and school districts and its impact on public sector bargaining in Michigan will evolve in the coming months. Miller Canfield will remain on top of any legal developments as well as continue to track companion legislation introduced in Lansing that may also impact public sector labor relations.



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