American College of Bankruptcy
Seventh Circuit Regional Educational Program:
Past is Prologue

Materials for
Municipal Insolvency and the
Impact of the “Great Recession”

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TAB 1
Summary of Recent Chapter 9 Decisions

by

Patrick Darby
Bradley Arant Boult Cummings, LLP
Birmingham, Alabama

* This material was produced for the 2010 Lawrence P. King and Charles Seligson Workshop on Bankruptcy and Business Reorganization. It is used with the author’s permission.

The debtor filed a motion to reject collective bargaining agreements ("CBAs") with police, firefighters and other city workers. Various labor groups, the California Public Employees Retirement System, and the Official Committee of Retirees filed objections. After the hearing on the motion, the debtor reached agreements with the unions representing two groups of employees. The court was left with the proposed rejection of CBAs with the firefighters and the electrical workers, and considered whether chapter 9 permits a municipality to reject CBAs.

The court had to balance the principles of supremacy and reservation of powers. First, the United States Constitution reserves to Congress the right to pass bankruptcy laws. Under the Supremacy Clause, federal laws prevail over contrary state laws. Second, the Tenth Amendment to the United States Constitution reserves to the states (or the people) all powers not expressly granted the federal government. Congress harmonized these competing interests under section 903, which ensures chapter 9 complies with the Tenth Amendment "but does not provide a substantive limit on the application of chapter 9 provisions." City of Vallejo 403 B.R. at 76. The California statute authorizing municipalities to file chapter 9 provides for "the broadest possible state authorization for municipal bankruptcy proceedings." Id. (citing legislative history). This authorization is not subject to any state labor laws. Id. If the statute attempted to superimpose labor laws onto the provisions of the Bankruptcy Code, it would be unconstitutional under the supremacy clause. Id. at 76-77.
Accordingly, upon the debtor’s bankruptcy filing, rejection of unexpired CBAs became subject to section 365 of the Bankruptcy Code pursuant to section 901 and *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513 (1984). Section 1113 of the Bankruptcy Code, which imposes additional procedural and substantive requirements on debtors in chapter 11, is not incorporated into chapter 9. *Id.* at 77-78. Having reached the legal conclusion that section 365, as interpreted by *Bildisco*, applied to the rejection of the CBAs, the court deferred a determination of whether the debtor had met the standards for rejection, pending negotiations and the presentation of additional evidence.

After the ruling, the debtor settled with the firefighters. On August 31, 2009, the bankruptcy court issued findings of fact and conclusions of law that the debtor satisfied the *Bildisco* standard with respect to the electrical workers’ CBA. The International Brotherhood of Electrical Workers (“IBEW”) appealed.

On appeal, the United States District Court for the Eastern District of California found that the legislative history of chapter 9 and of applicable California statutes supported the debtor’s argument that municipalities have authority to reject executory contracts under section 365, as incorporated by section 901. *In re City of Vallejo*, 2010 WL 2465455 at *4. The district court rejected the IBEW’s arguments that the Bankruptcy Code does not pre-empt California labor laws. *Id.* at *4-5. Applying the Bildisco standard, the district court found no clear error in the bankruptcy court’s evidentiary findings that the CBA was burdensome, that the balance of equities favored rejection, and that the debtor’s efforts to negotiate a voluntary modification to the CBA were reasonable and not likely to produce a prompt and satisfactory solution. *Id.* at *8-10. Accordingly, the district court affirmed the bankruptcy court’s memorandum decision and its findings of fact and conclusions of law.

The debtor was a public benefit corporation created by New York statute to operate pari-mutuel betting to raise revenues and fight the influence of organized crime over gambling. The debtor’s statutory business model required payments to the state’s racing industry and to state and local governments as a percentage of the gross “Handle” (the total pool of bets) rather than as a percentage of net revenues. As a result, mandatory distributions often exceeded net earnings. Although the debtor cut costs, a key study concluded the debtor’s fiscal health depended on changing the statutory distributions. When the debtor formulated a plan to cease operations, the New York legislature ratified a take-over by the state. New York City Off-Track Betting Corp. 427 B.R. at 261-63. The governor issued an executive order authorizing bankruptcy. Various racing associations objected to the debtor’s chapter 9 petition, arguing the debtor was not eligible and did not file in good faith.

The court found as follows:

1. As a public benefit corporation created by the state for essentially governmental functions, the debtor was a municipality. Id. at 265.

2. Under section 109(c)(2) the debtor had specific authorization to file by “State law, or by a governmental officer … empowered by State law” to authorize a petition,. The objectors argued specific legislation was required, but the court found the governor’s executive order was sufficient. Because the legislature transferred
control of the debtor to the executive branch, the executive order implemented a valid policy objective of the legislature. *Id.* at 269.

3. The debtor was insolvent, based on undisputed evidence that its payment obligations exceeded revenues, and on an express finding of the legislature. *Id.* at 270-71.

4. The debtor wished to effect a plan to adjust debts, as required by section 109(c)(4), based on its statements and efforts to negotiate and draft a plan. *Id.* at 272.

5. The debtor had negotiated with creditors, but the parties disputed whether negotiations were specific to a plan as required by *In re City of Vallejo*, 408 B.R. 280, 296 (9th Cir. B.A.P. 2009) The court concluded the debtor’s proposal would not impair existing claims and prospective claims could not be impaired without legislation. Accordingly, the debtor satisfied 109(c)(5)(B). *Id.* at 276.

6. The debtor also satisfied 109(c)(5)(C). Negotiations were impracticable because no plan was feasible without legislative action. *Id.* at 277-78.

7. The debtor filed in good faith, not to delay payments or as a litigation tactic. *Id.* at 280. Specifically, the debtor was not required to have a plan when it filed. The need for legislative action did not equate to bad faith. *Id.* at 281. The court also rejected the arguments that the debtor did not, or was required to, exhaust alternatives to chapter 9. *Id.* at 282.

The New York Racing, Pari-Mutuel Wagering and Breeding Law (the "Racing Law") required the debtor to distribute certain percentages of "the Handle" (the pool of total bets the debtor receives) to various state and local governments, horse breeding funds and racing tracks. As a result of its financial difficulties, the debtor deferred payments under the Racing Law. Without limitation, the debtor failed to segregate and pay funds pursuant to a specific direction of the New York State Racing and Wagering Board (the "Board"). Two track operators, Finger Lakes Racing Association and Empire Resorts, Inc. (collectively, the "Tracks") filed motions to compel the debtor to pay post-petition distributions the Tracks claimed under the Racing Law. The debtor argued that payment of these funds would put it out of business. On the other hand, the court acknowledged that payments under the Racing Law were vital to the health of the Tracks and the racing industry in general. See New York City Off-Track Betting, 2010 WL 3037501 at *2-6.

The court opened with a discussion of the limits sections 903 and 904 place on the power of federal courts to compel any action from chapter 9 debtors, including specific payments in violation of the Tenth Amendment to the United States Constitution. Chapter 9 debtor's may consent to an order of the bankruptcy court that would interfere with the use of the debtor's property, but cannot consent to an order that would violate a state law or administrative order. Id. at *7. The debtor consented to have the court determine whether certain payments were administrative expenses, if so a schedule for payment, and whether the Racing Law or applicable non-bankruptcy federal law would require immediate payment. Id. at *8.

The court noted that section 901 provides that section 503 applies to chapter 9 debtors, but section 901 does not incorporate section 541. Because a chapter 9 debtor's property remains the debtor's and does not become part of a bankruptcy estate under section 541, there can be no
administrative expenses for the actual and necessary costs of administering the estate under section 503(b)(1)(A). Accordingly, notwithstanding the application of section 503, administrative expense claims in chapter 9 are limited to the expenses incurred in connection with the case itself and not general operating expenses. Regardless of the debtor's consent, therefore, the constitutional underpinnings of sections 903 and 904 preclude the court from intruding on the debtor's operations to the extent of ordering the debtor to make post-petition payments. *Id.* at *8-9.

The court found no provision of applicable non-bankruptcy law that required payment of the claims on any particular schedule. The Racing Law was unclear. *Id.* at *10-13. Confronted with an ambiguous state statute, important and disputed issues of state law, and profound federalism concerns, the court considered abstention. Reviewing the twelve factors courts in the Second Circuit apply to determine permissive abstention under 28 U.S.C. § 1334 (c)(1), the court found that most weighed heavily in favor of abstention. Abstention would not have an overwhelming adverse effect on the administration of the case, because the Board had the power and recently had showed the will to resolve issues from which the court abstained. The court already had disposed of any issue of bankruptcy law, and the remaining issues purely were a matter of state law. The state law issues were difficult, uncertain and squarely within the jurisdiction of the Board. The court had no federal question or diversity jurisdiction and the dispute was in federal court only as a circumstance of the bankruptcy. The proper payment schedule easily could be determined by the Board and enforced by the court. Finally, the determination would have a significant effect on other entities that received distributions of the Handle under the Racing Law.
The factors militating against abstention—the lack of a pending state court proceeding, the fact that the determination of the timing of payments could affect the debtor's ability to continue operations and therefore was central to the debtor's case—did not outweigh the concerns of federalism and comity that strongly supported abstention. Other factors, such as the burden on the court's docket, the risk of forum shopping, and the right to a jury trial were neutral to the decision. Given that discretionary abstention was proper, the court declined to consider mandatory abstention. The court also found that abstention would be proper under Burford v. Sun Oil Co., 319 U.S. 315 (1943) (abstention to avoid needless conflict with state's administration of its own affairs). In sum, the court abstained because the timing of payments was a difficult issue of state law that required a balance of state policy interests between the debtor and the recipients of distributions, which included numerous parties not before the court. An exercise of jurisdiction would disrupt the state legislature's intent for the Board to create a coherent policy regarding horse racing in New York. The court lifted the automatic stay, directed the parties to pursue administrative proceedings before the Board, and ordered the parties to mediation.

_In re Las Vegas Monorail Co., 429 B.R. 770 (Bankr. D. Nev. 2010)._ 

The debtor was a private non-profit corporation formed under Nevada statute that owned and operated a monorail connecting nine hotels in Las Vegas (but not connecting to the airport, the Strip or downtown). The project was financed through industrial revenue bonds that were sponsored by the Nevada Department of Business and Industry but were non-recourse to the state of Nevada. To obtain tax-exemption, the debtor signed a certificate that stated it was an instrumentality of the state, controlled by the governor. The debtor’s by-laws, which could not be amended without the governor’s consent, allowed the governor various powers over the debtor’s books, budgets, rate schedules, capital expenditures. _Las Vegas Monorail_ at 773-74. As
a result of disappointing ridership, the monorail generated enough revenue to cover expenses, but not debt service. The debtor filed a petition under chapter 11. Ambac Assurance Corp., the insurer of the bonds, moved to dismiss, contending the debtor was a municipality and ineligible to file except under chapter 9. *Id.* at 774. Nevada has no statute allowing municipalities to file chapter 9. *Id.* at 782.

Reading sections 109 and 101, the court quickly concluded that the debtor was not a political subdivision or a public agency and could, at most, be an instrumentality of the state of Nevada. The court could find no controlling definition of “instrumentality” in the case law or in dictionaries of general usage. *Id.* at 777. Reviewing the history of chapter 9 and predecessor statutes, the court noted the development of municipal tax free finance to support private business enterprise. With respect to authorities and non-profit corporations, other courts had focused on control and designation. *Id.* at 778-788. Synthesizing these sources, the court identified three components to a determination of instrumentality. First, courts consider whether an entity has the traditional powers of government, such as eminent domain, taxing authority or sovereign immunity. Second, if the entity’s governmental powers are negligible, courts examine whether the entity has a public purpose and the level of state control, focusing particularly on day to day activities. Third, courts should consider the state’s own designation and treatment of the entity. *Id.* at 788. The court rejected Ambac’s assertion that the debtor’s execution of the tax certificate controlled. The court noted that the definition of “instrumentality” was different under the tax laws and that the debtor did not make the assertion in connection with its eligibility for bankruptcy. *Id.* at 789-90.

The court found that the debtor lacked the traditional powers of a governmental entity and did not directly perform a public function. For example, private companies often provide
public transportation. *Id.* at 795-96. When private companies engage in activities that have a public purpose (such as public transportation or private charter schools), the level of state control drives the analysis. In this regard, the court found that the governor’s control over the debtor was strategic and periodic rather than operational and constant. The debtor operated its day to day business without the direct oversight of the state. The state’s power over the debtor was a matter of regulation rather than control. *Id.* at 797-98. Moreover, the state did not designate the debtor an instrumentality of the state and did not treat non-profit public benefit corporations as municipalities. *Id.* at 799-800. Accordingly, the debtor did not exhibit the characteristics of a municipality to the extent required by the Bankruptcy Code, it was a person eligible for chapter 11 relief, and Ambac’s motion was denied.


Although in chapter 11, the debtor’s debt structure included a net revenue pledge, a significant feature of municipal finance. The debtor financed its project through industrial development bonds. The indenture trustee held a lien on “Net Project Revenues,” not on the project itself. The debt was payable only from Net Project Revenues (gross revenues less operating and maintenance expenses) and otherwise was non-recourse (but for bond insurance). *Las Vegas Monorail, 429 B.R.* at 324. The trustee objected to the debtor’s use of cash collateral and demanded adequate protection.

The court noted the trustee had the burden of proving its interest in cash collateral. *Id.* at 328. The court observed the trustee took “a starkly maximalist view of its rights” in claiming that all the debtor’s money was cash collateral. *Id.* at 329. In fact, the court determined that the trustee’s security interest covered a subset of the general rights the debtor held under its franchise. *Id.* at 336. Parsing the language of the documents, the court found the indenture gave
operating expenses priority over secured debt service, "passing strange" to commercial lawyers accustomed to gross pledges. As a pledge of net revenues, the trustee's security interest attached only to (1) cash in the possession or control of the trustee at the start of the case, and (2) other revenues to the extent not necessary for operating and maintenance costs. *Id.* at 339. The only cash collateral as of the hearing date was approximately $225,000 on deposit with the trustee. As the trustee presented no evidence of operating and maintenance costs paid from the debtor's operating account, it failed to carry its burden of establishing an interest in additional funds.

The court found the trustee's interest in the deposits the trustee held as of the petition date adequately was protected by the deposit and disbursement procedures in the indenture, which required the debtor to turn cash over to the trustee and the trustee to honor operating and maintenance costs. This process, the court concluded, would preserve the revenue flow from the monorail system and preserve the parties' bargain. *Id.* at 341 (citing cases for the proposition that use of cash flows to maintain property generating revenue is sufficient form of adequate protection).

Turning to post-petition cash flows, the court noted that section 552(b) terminated the trustee's enforcement of the after-acquired property clause, but preserved the trustee's interest in proceeds of pre-petition collateral. The court applied revised article 9 of the Uniform Commercial Code to determine whether post-petition net revenues were proceeds of pre-petition collateral. *Id.* at 343. The court noted a difficult conceptual point for the trustee: its collateral, Net Project Revenues, remained with the trustee after payment of operating and maintenance expense. None of that money cycled back into the debtor's operations. Accordingly, future revenues derived not from the trustee's collateral (net revenues), but from the underlying assets (the tracks and trains), which were not the trustee's pre-petition collateral. Thus, the court held
that future Net Project Revenues were not proceeds of prior Net Project Revenues and no adequate protection was required. Nevertheless, the court accepted the debtor's offer to protect any potential interest of the trustee in Net Project Revenues with a replacement lien. Id. at 343-44.

"[A]pplication of contract interpretation principles designed to give the parties' words their most reasonable meaning demonstrates that the Trustee's interests are not particularly robust." Id. at 346. Accordingly, the parties' agreement to handle post-petition cash flows pursuant to the indenture provided adequate protection of the trustee's legitimate and proven interests. The court promised to reconsider if revenues consistently fell below historic levels and threatened the trustee's position. Id. at 345-46.

In re Pierce County Housing Authority, 414 B.R. 702 (Bankr. W.D. Wash. 2009).

The debtor was a non-profit public entity created under Washington statute to provide affordable housing for low income families. The debtor filed a chapter 9 petition in response to mold infestation claims by tenants and their guests. A lawyer for the tort claimants objected to the petition and alleged the debtor was not eligible for chapter 9. Thereafter, the debtor filed a chapter 9 plan and disclosure statement and the court held a two-day hearing to consider the debtor's eligibility and the plan and disclosure statement. The plan provided the debtor would retain its properties and continue operations. The plan divided creditors into five classes. Classes 1, 2, and 3 consisted of the holders of various secured claims that would be paid in full. Class 4 consisted of a tenant that held a large unsecured claim, which also would be paid in full. Class 5 consisted of the holders of all other secured claims, including the mold claimants. The plan provided alternative treatment for class 5. Each holder of a class 5 claim could elect to receive (1) cash equal to the lesser of the allowed claim or $1,000. or (2) a pro rata distribution
up to the amount of the allowed claim from the residual in the distribution fund after payments to claimants electing the first alternative. Payments would be from a distribution fund consisting of avoidance action proceeds, recoveries on insurance claims, and the proceeds of the sale of certain real property. The unsecured creditors committee and the indenture trustee for debtor's bond issue consented to confirmation of an amended plan. The mold claimants objected to confirmation. *Pierce County Housing Auth.*, 414 B.R. at 708-09.

No party disputed that the debtor was a municipality authorized to file chapter 9 under state law. The objectors presented no evidence or authority that the debtor did not desire to effect a plan to adjust debts. The debtor had filed a plan and disclosure statement and had expended significant time and efforts structuring and negotiating a plan. Accordingly, the court found the debtor met the requirements of section 109(c)(1), (2) and (4). *Id.* at 710.

To determine the debtor's insolvency under section 109(c)(3), the court applied a prospective test forward from the filing date, examining the debtor's actual cash flow rather than its budget. *Id.* at 711 (citing *In re City of Bridgeport*, 129 B.R. 332, 337 (Bankr. D. Conn. 1991)). The debtor's expert testified the debtor had a projected cash shortfall of $941,000.00 for the upcoming fiscal year. The objecting creditors pointed out that the debtor had assets consisting of buildings and equipment with a value of approximately $44 million. However, these assets variously were encumbered and subject to federal loan restrictions. The debtor had limited unrestricted cash to pay general unsecured claims or operating expenses and no tangible reserve fund. State law prohibited the debtor from operating at a profit or raising rents higher than necessary to fund current bond payments, reserves and administrative and operating and maintenance of expenses. The objectors also argued that the debtor had failed to tender claims to Pierce County or potential insurers, but the court found no authority that the insolvency analysis
should include potential insurance coverage. Accordingly, the court concluded that the debtor was unable to pay its debts as they came due and therefore was insolvent under section 109(c)(3). *Pierce County Housing Auth.*, 414 B.R. at 711-12.

If the debtor does not have a plan accepted by creditors, section 109(c)(5)(B) and (C) require the debtor to prove either that it has negotiated in good faith with creditors and has failed to obtain the agreement of a majority or that such negotiation is impracticable. As in *In re City of Vallejo*, 408 B.R. 280 (9th Cir. B.A.P. 2009), the debtor could show negotiations, but not with respect to a particular plan. Accordingly, the debtor did not comply with 109(c)(5)(B). *Id.*

*Pierce County Housing Auth.*, at 713. However, as in *City of Vallejo*, the court found impracticability from the sheer number of creditors. Mold claimants, including tenants and guests, totaled in the thousands, including potential unknown claimants. Given the debtor's unsuccessful attempts to negotiate with a known subset of potential claimants, the court found that that negotiating with the entire class would be impracticable if not impossible and, therefore, the debtor satisfied section 109(c)(5)(C).

For similar reasons, the court rejected the objector's argument that the debtor did not file the petition in good faith under section 921(c). The debtor filed only after years of negotiation and mediation. The objectors suggested the debtor's failure to investigate and pursue claims against Pierce County and its insurers evidenced lack of good faith. The court noted the debtor denied the County or its insurers were liable for the claims, but nevertheless included in the plan a mechanism for evaluating such claims. The court declined to find the debtor lacked good faith in refusing to tender claims it believed were invalid. *Id.* at 714-15.

Turning to confirmation, the court found no dispute that the debtor's amended plan satisfied the requirements of sections 943(b)(3) (disclosure of payment for services), 943 (b)(5)
(payment of administrative claims) and 943(b)(6) (regulatory/electoral approval). At issue were the requirements of 943(b)(1) (plan complies with applicable provisions of title 11), 943(b)(2) (plan complies with provisions of chapter 9), 943(b)(4) (plan complies with applicable law) and 943(b)(7) (best interests of creditors). The court considered and rejected arguments that the debtor's had not disclosed adequate information about various plan points, and additional arguments that plan provisions did not comply with particular provisions of the Bankruptcy Code, chapter 9 or other applicable law. *Id.* at 716-18. With respect to the best interest of creditors test under section 943(b)(7), the court noted that the debtor had no taxing authority, and no authority to raise rents to fund the plan. The issue was whether plan provisions limiting the post-confirmation investigation and pursuit of potential sources of recovery could be in the best interest of creditors, or proposed in good faith. The court found that the plan was not confirmable because the plan appointed an examiner to determine whether to pursue claims against Pierce County and its insurers, limited creditor representatives from evaluating and pursuing claims, and limited the creditors from selecting its own counsel. *Id.* at 721.

Accordingly, the court found the debtor was eligible to be in chapter 9, approved the debtor's disclosure statement, but denied confirmation, without prejudice, under sections 943(b)(7) and 1129(a)(3) (applicable pursuant to section 901).
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Municipality Insolvency and the
Impact of the “Great Recession”

Chapter 9 vs. Chapter 11
(PowerPoint Presentation)

by

Marc A. Levinson
Partner
Orrick, Herrington & Sutcliffe LLP
(based on an earlier version prepared by H. Slayton Dabney, Jr.,
King & Spaulding, and Marc A. Levinson*)

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Chicago, Illinois

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Chapter 9 vs. Chapter 11
Chapter 9

- Municipalities cannot be put into chapter 9 involuntarily.
  - Only a municipality can initiate a chapter 9 case. Section 303 of the Bankruptcy Code, which provides for the commencement of involuntary cases, is not applicable in chapter 9.
  - A chapter 9 case cannot be converted to one under another chapter.

- Chapter 9 debtors are not required to file schedules or statement of financial affairs.
  - Pursuant to section 924, a chapter 9 debtor is required to file a list of creditors.
  - Under section 925, any claim listed on the list of creditors is a proof of claim deemed filed under section 501, unless listed as contingent, disputed or unliquidated.
  - No reporting requirements.

Chapter 11

- Involuntary cases permitted.
  - A chapter 11 case can be converted to one under chapter 7

- Debtor required to file schedules and statement of affairs
  - Under section 1111(a), no proof of claim required unless debt is listed in schedules as contingent, disputed or unliquidated.
  - Debtor must submit quarterly statements of disbursements and make other disclosures. (Rule 2015).
### Commencement of the Case (cont)

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
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<tbody>
<tr>
<td>• Publication of the notice of commencement of the case.</td>
<td>• Not required.</td>
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<tr>
<td>- Section 923 requires publication of a Notice of Commencement for three consecutive weeks in a local newspaper and in a newspaper having general circulation among bond dealers and bond holders.</td>
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<td>- The notice must provide a date by which objections to eligibility must be filed.</td>
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<td>• Bankruptcy judge is assigned by the Chief Judge of the Circuit rather than by the clerk of the bankruptcy court. 11 U.S.C. § 921(b).</td>
<td>• Judge selected at random.</td>
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Eligibility Requirements

Chapter 9

- Must be a municipality (political subdivision or public agency or instrumentality of a State). 11 U.S.C. § 109(c)(1).
- Legislative Authority.
  - Municipality must be specifically authorized under state law to be a chapter 9 debtor. 11 U.S.C. § 109(c)(2).
  - Approximately one-half of states currently have legislation providing some form of authorization.
  - Certain of these statutes contain limitations as to the type of entity that may file, and some require further approval from the state or a state official prior to any filing.

Chapter 11

- Sole eligibility requirement relates to nature of the debtor (i.e., railroads and persons eligible to be chapter 7 debtors). 11 U.S.C. §109(d).
Eligibility Requirements (cont)

- **Insolvency.**
  - Debtor bears a burden of proving that it is insolvent as of the petition date. 11 U.S.C. 109(c)(3).
  - A municipality is insolvent if it is (i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (ii) unable to pay its debts as they become due. 11 U.S.C. § 101(32)(C).
    - The “generally not paying its debts as they become due” test requires a factual analysis of what payments have been missed and their relation to the municipality’s overall financial position.
    - In determining whether the municipality is unable to pay its debts as they become due, courts look at the cash flow of the municipality rather than using a balance sheet test.
    - The court will look to the municipality’s fiscal condition in the near future, as opposed to two or more years down the road.

- **Chapter 11**
  - There is no insolvency requirement for chapter 11 debtors.
## Eligibility Requirements (cont)

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
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<tr>
<td>• Must desire to effect a plan to adjust its debts. 11 U.S.C. 109(c)(4).</td>
<td>• No good-faith filing requirement.</td>
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<td>• Good faith requirements.</td>
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<td>- A municipality must show that it either:</td>
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<td>• Has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that the municipality intends to impair under a plan,</td>
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<tr>
<td>• Has negotiated in good faith with creditors but failed to reach an agreement,</td>
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<tr>
<td>• Is unable to negotiate with creditors because negotiations are impracticable, or</td>
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<td>• Reasonably believes that a creditor may attempt to obtain an avoidable preference. 11 U.S.C. § 109(c)(5).</td>
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<tr>
<td>- A bankruptcy judge also may dismiss a chapter 9 petition if the debtor did not file the petition in good faith. 11 U.S.C. 921(c).</td>
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<td>• In the event of an appeal from the entry of an order for relief, the bankruptcy court may not delay any proceeding in the chapter 9 case, nor may any court issue a stay. 11 U.S.C. § 921(e).</td>
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<td>• No chapter 11 equivalent.</td>
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Limitations on the Power of the Court

Chapter 9

- Because of limitations imposed by the Tenth Amendment to the U.S. Constitution on Congress’ power over the states, the Bankruptcy Code provisions with respect to municipality debtors place significant restraints on the powers of a federal bankruptcy court to interfere with the operations of a municipality.

- State maintains its powers to control municipalities, subject to specific Bankruptcy Code provisions (such as the power to reject contracts). 11 U.S.C. § 903.

- Absent consent by the debtor, the court may not interfere with (1) any of the political or governmental powers of the debtor, (ii) any of the property or revenues of the debtor, (iii) the debtor’s use or enjoyment of any income-producing property. 11 U.S.C. § 904.
  - A chapter 9 debtor does not need court approval to use, sell or lease property, including cash collateral (section 363 is not incorporated into chapter 9).
  - The debtor maintains complete control of most of its financial affairs and operations (in bankruptcy, a municipality will still need freedom to operate and provide services to citizens).

- Court cannot appoint an examiner of a trustee (except for certain limited purposes relating to the recovery of avoidable transfers).

Chapter 11

- Chapter 11 debtors subject to §363.

- Trustee of examiner may be appointed.
## Limited Role of U.S. Trustee

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<th>Chapter 9</th>
<th>Chapter 11</th>
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| ● The U.S. Trustee has no general supervisory authority in a chapter 9 case (reason being that it would be an improper interference with the political and financial affairs of the municipality debtor).  
  - Does not examine the debtor at a meeting of creditors -- there is no meeting of creditors.  
  - Does not have the authority to move for appointment of a trustee or examiner or for conversion of the case.  
  - Does not monitor the financial operations of the debtor or review the fees of professionals retained in the case. | ● The U.S. Trustee plays an active role in overseeing the bankruptcy case.  
  ● Conducts first meeting of creditors.  
  ● Appoints members of official committees.  
  ● May move for appointment of a trustee or examiner.  
  ● May move to convert the case.  
  ● Monitors financial operations. |
| ● The U.S. Trustee’s most important role in chapter 9 cases is to appoint a creditors committee or other committee(s). |                                                          |
## Case Administration

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<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Chapter 9 does not create an estate.</td>
<td>● Commencement of the case creates an estate.</td>
</tr>
<tr>
<td>– Section 541 is not incorporated.</td>
<td></td>
</tr>
<tr>
<td>– Section 902(1) defines “property of the estate” to mean “property of the debtor.”</td>
<td></td>
</tr>
<tr>
<td>● Retention of Professionals.</td>
<td>● Section 327 through 331 apply.</td>
</tr>
<tr>
<td>– Sections 327 through 331 of the Bankruptcy Code are not applicable in a chapter 9 case. Therefore, the debtor does not need court approval to retain professionals, and any professionals retained by the debtor need not satisfy the requirements that they be disinterested or not hold or represent an interest adverse to the estate.</td>
<td></td>
</tr>
<tr>
<td>– The debtor does not need court authorization to pay professionals during the course of the bankruptcy case. The only provision of chapter 9 governing the compensation of professionals provides as a confirmation requirement that all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable. 11 U.S.C. § 943(b)(3).</td>
<td></td>
</tr>
</tbody>
</table>
Automatic stay.

- The Bankruptcy Code automatic stay provisions apply in chapter 9.
- Section 922(a) adds automatic stay provisions that prohibit actions against officers and inhabitants of the debtor if the action seeks to enforce a claim against the debtor.
  - Prohibits a creditor from bringing a mandamus action against an officer of a municipality on account of a prepetition debt.
  - Prohibits a creditor from bringing an action against an inhabitant of the debtor to enforce a lien on or arising out of taxes or assessments owed to the debtor.
- Section 922(d) limits the applicability of the stay.
  - Chapter 9 petition does not operate to stay application of pledged special revenues to payment of indebtedness secured by such revenues.
  - An indenture trustee or other paying agent may apply pledged funds to payments coming due or distribute the pledged funds to bondholders without violating the automatic stay.

Automatic stay applies only to the debtor and its property.
Chapter 9

- Committees.
  - Creditors committee has powers and duties similar to those of a committee in a chapter 11 case.
  - Cannot be appointed until after the entry of the order for relief, which may take months in a chapter 9 case in which eligibility is challenged.
  - Debtor cannot be ordered to pay the professionals employed by a committee, but generally, an agreement is reached.

- Right to be heard more expansive in chapter 9.
  - Section 1109 applies
  - Fed. R. Bankr. P. 2018(c) provides that:
    - The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case.
    - Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

Chapter 11

- Order for relief, occurs on the petition date in a voluntary chapter 11.
- Committee’s retained professionals paid *pari passu* with debtors’ professionals.
Case Administration (cont)

**Chapter 9**

- **Dismissal.**
  - Court may dismiss a chapter 9 petition if it concludes the debtor did not file the petition in good faith or if the petition does not meet the requirements of chapter 9.
  - Court also may dismiss the petition for cause, including:
    - Lack of prosecution
    - Unreasonable delay by the debtor that is prejudicial to creditors
    - Failure to propose or confirm a plan within the time fixed by the court
    - Material default by the debtor under a confirmed plan or
    - Termination of a confirmed plan by reason of the occurrence of a condition specified in the plan. 11 U.S.C. § 930.

**Chapter 11**

- Court may convert to chapter 7 or dismiss as specified in 11 U.S.C. §1112.
## Avoidable Transfers

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Bankruptcy Code avoidance powers are applicable.</td>
<td>- No exemption for transfers to or for the benefit of a bondholder.</td>
</tr>
<tr>
<td>- In chapter 9 cases, however, a transfer of property by a municipality to or for the benefit of a bondholder on account of such bond may not be avoided as a preference. 11 U.S.C. § 926(b).</td>
<td></td>
</tr>
</tbody>
</table>
**Assumption or Rejection of Executory Contracts and Unexpired Leases**

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Section 365 applies in chapter 9 cases</td>
<td>- A chapter 11 debtor cannot unilaterally abrogate a CBA.</td>
</tr>
<tr>
<td>- Collective bargaining agreements</td>
<td></td>
</tr>
</tbody>
</table>
  - Section 1113 does not apply in chapter 9 cases.  
    - A municipality debtor thus enjoys greater latitude than a chapter 11 debtor with respect to modification or rejection of labor agreements.  
    - The bankruptcy court should permit rejection if the debtor demonstrates that the CBA burdens the debtor, that, after careful scrutiny, the equities balance in favor of rejection, and that the prospects of reaching a deal in the near future are not good. |  
  - Section 1114 enumerates the stringent ground rules for treatment of retiree benefits. |
|   - Section 1113 does not apply in chapter 9 cases. | |
|   | |
|   | |
Special Revenues

Chapter 9

- Obligations secured by a lien on special revenues retain such lien post-petition in chapter 9. However, the security interest is subject to the necessary operating expenses of the project involved. 11 U.S.C. § 928(b).

- The holder of a claim payable solely from special revenues does not have recourse against the debtor. 11 U.S.C. § 927. This prevents the conversion of revenue bonds into general obligation bonds.

Chapter 11

- A debtor with a nonrecourse claim may, under certain circumstances, be treated as having recourse against the debtor. 11 U.S.C. § 1111(b).
## Plan of Adjustment

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Chapter 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only the debtor may file a plan for adjustment of debts -- creditors may not propose and file competing plans.</td>
<td>Creditors may file a plan after termination of exclusivity.</td>
</tr>
<tr>
<td>The Bankruptcy Code does not fix a specific deadline by which the debtor must file a plan. If a plan is not filed with the petition, the debtor shall file such plan at such later time as the court fixes. 11 U.S.C. § 941.</td>
<td>A trustee may file a plan because such appointment terminates exclusivity.</td>
</tr>
</tbody>
</table>
Plan content and confirmation requirements in chapter 9 cases are similar to those applicable in chapter 11 cases.

- One class of impaired claims must vote to accept the plan.
- A class accepts a plan if the plan is accepted by holders of at least two-thirds in amount and a majority in number of claims within that class actually voting.
- Each class of claims that is impaired under the plan must accept it. However, if all requirements for confirmation are satisfied except that acceptance has not been received by all impaired classes, the court nevertheless shall confirm the plan if it does not discriminate unfairly and is fair and equitable with respect to each impaired class that has not accepted the plan -- i.e., cramdown.
- Plan must be feasible and in the best interests of creditors, and the debtor must have obtained any regulatory or electoral approval necessary under applicable nonbankruptcy law to carry out any provision of the plan. 11 U.S.C. 943(b).
Discharge

A municipality debtor receives a discharge of all debts as of the time when: (1) the plan is confirmed; (2) the debtor deposits any consideration to be distributed under the plan with the disbursing agent appointed by the court; and (3) the court determines that securities deposited with the disbursing agent will constitute valid legal obligations of the debtor and that any provision made to pay or secure payment of such obligations is valid. 11 U.S.C. § 944(b).

A municipality debtor is not discharged from any debt (i) excepted from discharge by the plan or the order confirming the plan, or (ii) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case. 11 U.S.C. § 944(c).

Confirmation of a plan discharges a debtor from any debt that arose before the date of confirmation. 11 U.S.C. § 1141(d). After confirmation, the debtor is required to make plan payments and is bound by the provisions of the plan.
TAB 3
Municipal Insolvency and the Impact of the “Great Recession”

State Laws Governing Chapter 9 Cases: Illinois & Michigan

By

Lewis S. Rosenbloom

and

Mohsin N. Khambati

DEWEY & LEBOEUF LLP
Two Prudential Plaza
180 N. Stetson Avenue, Suite 3700
Chicago, IL 60601
312-794-8000

September 20, 2010
Chicago, Illinois
State Laws Governing Chapter 9 Cases: Illinois & Michigan

Recent press reports are replete with stories on a potential wave of municipal debt defaults and looming threats of chapter 9 bankruptcy filings. There is abundant speculation on which major U.S. city is likely to seek chapter 9 relief or some state law alternative. For example:

- The City of Los Angeles - Former Los Angeles Mayor Richard Riordan has said in Wall Street Journal editorials that the only way out of its financial difficulties is for the City of Los Angeles to file for bankruptcy sometime in the future. Richard Riordan and Alexander Rubalcava, Los Angeles on the Brink of Bankruptcy, The Wall Street Journal (May 5, 2010).

- San Diego, CA – San Diego’s name continues to float in and out of the bankruptcy banter for the past several years.

- Harrisburg, PA – The City of Harrisburg recently notified bond trustees that it cannot make a September payment on its regular general obligation bonds and needed a last-minute infusion of state aid to meet its bond obligation. Notwithstanding the recent state assistance, Harrisburg continues to be the subject of abundant speculation concerning a possible bankruptcy filing. Dunston McNichol, Harrisburg, Pennsylvania, Bond Default Averted With State Aid, Bloomberg (September 12, 2010); Michael A. Fletcher, Bankruptcy On Horizon for Pennsylvania Capital, Washington Post (September 2, 1010); Charles Thompson, Harrisburg Will Miss A New Debt Payment, The Patriot News, (August 31, 2010).

Closer to home, the fiscal crisis at the state level is also acute:

- The state of Michigan faces perpetual budget crises, with significant shortfalls, estimated to be in excess of $2 billion, for the FY 2010 and upcoming FY 2011 budget.

- Illinois entered the recession in worse fiscal condition than most other states because of a failure to deal with its structural deficit. The state has outstanding long-term debt in excess of $25 billion. One of the biggest problems has been Illinois’ historically underfunded retirement systems, which have put increasing pressure on the State’s operating budget. The unfunded liabilities of the State’s five retirement systems stood at $62.4 billion as of June 30, 2009. In addition, Illinois is facing a more immediate fiscal crisis that is expected to result in a deficit of at least $12.8 billion going into fiscal year 2011. Kathy Bergen, Companies Say the Climate for Business in Illinois is Cloudy, Chicago Tribune (September 5, 2010); The Institute for Illinois Fiscal Sustainability at The Civic Federation, A Fiscal Rehabilitation Plan for the State of Illinois, February 22, 2010.
The budgetary crises at the state level in Michigan and Illinois has led to similar speculation over municipal chapter 9 filings in both states. That is because many cities and counties depend on state funding for critical programs. State law in both Michigan and Illinois place restrictions on a municipality’s right to seek bankruptcy relief. Also, in the vast majority of instances to date, local authorities have disavowed the use of bankruptcy as a restructuring tool. Whether that continues as a trend remains to be seen.

Municipalities are eligible to seek protection under chapter 9 of the Bankruptcy Code. See 11 U.S.C. §109(c)(1). Under section 101(40) of the Bankruptcy Code, a municipality is defined as a "political subdivision or public agency or instrumentality of a State." The definition is broad enough to include cities, counties, townships, school districts, and public improvement districts. It also includes revenue-producing bodies that provide services which are paid for by users rather than by general taxes, such as bridge authorities, highway authorities, and gas authorities.\(^1\)

Section 109(c) of the Bankruptcy Code also sets forth certain prerequisites that a municipality must satisfy in order to be eligible to seek protection under chapter 9. As one of the eligibility criteria, the municipality must be specifically authorized by state law to file a bankruptcy case. See 11 U.S.C. §109(c)(2). Further, that “authorization must be ‘exact, plain, and direct with well-defined limits so that nothing is left to inference or implication.’” In re Slocum Lake Drainage District of Lake County, 336 B.R. 387, 390 (Bankr.N.D.Ill. 2006) citing to In re County of Orange, 183 B.R. 594, 604 (Bankr. C.D.Cal. 1995); In re Alleghany-Highlands Econ. Dev. Auth., 270 B.R. 647,649 (Bankr.W.D.Va. 2001).

Approximately, one-half of states currently have legislation providing some form of authorization to municipalities for a chapter 9 filing. Some states, like California, currently allow unrestricted access to bankruptcy. For example, the California code provides: “Any taxing agency or instrumentality of this State, as defined in Section 81 of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended, may file the petition mentioned in Section 83 of the act and prosecute to completion all proceedings permitted by Sections 81, 82, 83, and 84 of the act.” Cal. Gov Code 53760 (1995). Michigan and Illinois, however, have set limitations or required some further approval from the state (a designated state authority) prior to any chapter 9 filing. Below is a brief description of laws affecting a municipality’s filing of a chapter 9 bankruptcy case in Michigan and Illinois. Also, copies of the relevant Illinois and Michigan statues have been appended hereto at Appendix A and B.

**MICHIGAN**

While Michigan allows a municipality to file a chapter 9 case, that comes only after other, statutorily mandated, alternatives have failed.

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\(^1\) Description obtained from website for United States Courts: http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter9.aspx
In Michigan, once the governor determines that a financial emergency exists with respect to a local unit of government, the governor assigns management and oversight of the affected municipality to the local emergency financial assistance loan board (the "Loan Board"). The Loan Board then appoints an emergency financial manager (an independent non-political appointment) to address the financial emergency. Mich. Comp. Laws § 141.1218.

The emergency financial manager is tasked with developing a written financial plan to address and alleviate the financial emergency. Specifically, the financial plan must provide for the following: “(a) conducting the operations of the local government within the resources available according to the emergency financial manager's revenue estimate; and (b) the payment in full of the scheduled debt service requirements on all bonds and notes of the local government and all other uncontested legal obligations.” Id. at § 141.1220(1). The financial plan is to be published, reexamined and modified from time to time by the emergency financial manager, in consultation with the local government and the Loan Board. Id. at § 141.1220(2)-(4).

The emergency financial manager is given enormously broad powers and authority to tackle the problem, including oversight and control over the local officials of the affected municipality. See, e.g., Mich. Comp. Law § 141.1219. More specifically, Michigan law provides that an emergency financial manager may undertake any of the following additional actions “with respect to a unit of local government in which a financial emergency has been determined to exist,” including the following:

- Analyze factors and circumstances contributing to the financial condition of the unit of local government and recommend steps to be taken to correct the condition.
- Amend, revise, approve, or disapprove the budget of the unit of local government.
- Require and approve or disapprove, or amend or revise a plan for paying all outstanding obligations of the unit of local government.
- Require and prescribe the form of special reports to be made by the finance officer of the unit of local government to its governing body, the creditors of the unit of local government, the emergency financial manager, or the public.
- Examine all records and books of account, and require the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the unit of local government.
- 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.
- Exercise all of the authority of the unit of local government to renegotiate existing labor contracts and act as an agent of the unit of local government in
collective bargaining with employees or representatives and approve any contract or agreement.

- Consolidate departments of the unit of local government.
- Except as restricted by charter or otherwise, sell or otherwise use the assets of the unit of local government to meet past or current obligations.
- Apply for a loan from the state on behalf of the unit of local government in a sufficient amount to pay the expenses of the emergency financial manager and for other lawful purposes.
- Approve or disapprove of the issuance of obligations of the unit of local government on behalf of the municipality.
- Exercise the authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions affecting the financial condition of the unit of local government.
- Require compliance with the orders of the emergency financial manager by court action if necessary.


If, notwithstanding the intervention and oversight provided by the emergency financial manager, the affected municipality’s financial situation continues to deteriorate, the municipality may seek to file a petition under chapter 9 of the Bankruptcy Code. Prior to doing so, the affected municipality first needs to provide notice to the Loan Board and seek authorization for a filing from the emergency financial manager. Id. at § 141.1222; see also id. at § 141.1241 (dealing with a chapter 9 filing by a school district debtor for which an emergency financial manager has been appointed).

ILLINOIS

Illinois laws and procedures governing a municipality’s filing of a chapter 9 petition are similar in some respects to that of Michigan. Unlike California, the Illinois legislature has not passed any specific statute authorizing a municipality to file for bankruptcy. Instead, Illinois provides for the establishment of different agencies to guide municipalities through various stages of financial distress up to and including the filing of a chapter 9 petition. For example, Illinois law provides for the creation of the Illinois Finance Authority (“IFA”) in order to assist financially distressed cities through, among other things, the issuance of taxable and tax-exempt bonds, notes or other indebtedness, the proceeds of which are loaned to a “financially distressed city.” Subject to appropriations by the Illinois General Assembly, the IFA has the power to subsidize those loans. See 20 ILCS 3501 et seq.
A. **Fiscal Emergencies affecting Small Towns**

Illinois passed the Local Government Financial Planning and Supervision Act (the "Act") to deal with "fiscal emergencies" affecting "units of local government" which have a population under 25,000. 50 ILCS 320/1 et seq. In the event of a "fiscal emergency"\(^2\) that exists or will exist within 60 days, local government units may petition the governor for the establishment of a financial planning and supervision commission (the "Commission"). *Id.* at 320/4. The petition must include the conditions of a fiscal emergency and a list of all creditors of that unit of local government. *Id.* Prior to making the determination that a "fiscal emergency" exists, the governor must give reasonable notice and opportunity for a hearing to all of the creditors of the petitioning unit of local government. 50 ILCS 320/5. No determination can be made by the governor for at least 60 days from the filing of a petition. *Id.* Once the governor makes a determination of a fiscal emergency, the Commission, consisting of 11 members (consisting of state officials and financial experts), shall convene within 30 days. *Id.* The Commission may retain financial advisors to assist the local government unit and the Commission. *Id.* at 320/6.

Immediately upon the determination of a "fiscal emergency" by the governor, a "stay" goes into effect, preventing certain governmental entity creditors from enforcing rights and remedies against the affected unit. The Act provides, in relevant part, that:

(a) No State agency, board, commission or department, no subdivision of the State, and no unit of local government (including municipalities or counties having a population of 25,000 or more, and all of the foregoing being the "stayed creditors") may enforce any judgment or lien against, or take any other action to collect any indebtedness, obligations or liabilities from, a unit of local government covered by this Act during the period provided in this Section. This prohibition of enforcement or action is hereafter referred to as the "stay". . . . The commission may upon application or upon its own initiative grant exceptions to the stay provisions of this Section as adequate protection of creditors' interests and equity may require . . . The stay does not discharge the unit of local government from its indebtedness, obligations or liabilities.

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\(^2\) "Fiscal emergency" means the existence of any one or more of the following conditions:

(1) The existence of a continuing default in the payment of principal and interest on any debt obligation for more than 180 days.

(2) The failure to make payment of over 20% of all payroll to employees of the unit of local government in the amounts and at the times required by law, ordinances, resolutions, or agreements, which failure of payment has continued for more than 30 days after such time for payment, unless at least 2/3 of the employees affected by such failure to pay, acting individually or by their duly authorized representative, consent in writing to an extension.

(3) The insolvency of the unit of local government, being a financial condition such that the unit is (A) generally not paying its debts as they come due unless they are the subject of a bona fide dispute or (B) unable to pay its debts as they become due.

50 ILCS 320/3.
50 ILCS 320/7(a). Somewhat akin to treatment of post-petition claims, the stay does not affect any liabilities incurred by the affected unit after the initial date of the stay. 50 ILCS 320/7(b).

Within 120 days of the first meeting of the Commission, the Act requires that the affected local unit submit to the Commission a detailed financial plan containing substantial financial and other information, including:

(1) Actions to be taken by the unit of local government to:

(A) Eliminate all fiscal emergency conditions determined to exist pursuant to this Act;
(B) Satisfy any judgments, past due accounts payable, and all past due and payable payroll and fringe benefits;
(C) Eliminate the deficits in all deficit funds;
(D) Restore to construction funds and other special funds moneys from such funds that were used for purposes not within the purposes of such funds, or missing from the construction funds or such special funds and not accounted for;
(E) Balance the budgets, avoid future deficits in any funds, and maintain current payments of payroll, fringe benefits, and all accounts;
(F) Avoid any fiscal emergency condition in the future; and
(G) Restore the ability of the unit of local government to market long-term general obligation bonds under provisions of law applicable to such local governmental units generally.

(2) The legal authorities permitting the unit of local government to take the actions enumerated in paragraph (1).
(3) The approximate dates of the commencement, progress upon, and completion of the actions enumerated in paragraph (1).
(4) The amount and purpose of any issue of debt obligations that will be issued.

Id. at 320/8. After giving notice to creditors and an opportunity for a hearing, the Commission may either approve or reject the financial plan or require certain modifications. Like the emergency financial manager in Michigan, the Commission has broad powers to effect a rehabilitation of the unit of local government. They include authority to:

- review all budgets, tax levy ordinances, bond and note ordinances or resolutions, and appropriation ordinances of the unit of local government in order to determine whether they are consistent with the financial plan.
- order the unit of local government to meet and negotiate with its creditors.
- inspect and secure copies of any document, ordinance, resolution, or instrument pertaining to the effective financial accounting and reporting system, debt obligations, debt limits, financial plan, balanced appropriation ordinances, report of examination or audit, statement or invoice, or other worksheet or record of the municipality.
• inspect and secure copies of any document, instrument, certification, records of proceedings, or other worksheet or records of any official or employee of the unit of local government or any other local governmental unit in the State.
• consult with the creditors of the unit of local government.
• provide assistance in the structuring, terms, placement and sale of debt obligations of the unit of local government.
• perform all other powers, duties and functions as provided under the Act and make and enter into contracts and agreements as necessary.
• consult with officials of the affected unit regarding cost reductions, revenue increases and balanced budgets.

50 ILCS 320/9. In the event that the Commission determines that the proposed budget, tax levy, bond or note issuance or revenue estimates do not comply with the financial plan, the Commission may make revisions to the financial plan or ordinances proposed by the local unit and require that the local unit provide further information. The Commission may also recommend that the local unit “file a petition under Chapter 9 of the United States Bankruptcy Code.” Id. It is then up to the Illinois General Assembly to enact legislation authorizing the local unit to file for bankruptcy. The Illinois statute obviously contemplates a lengthy administrative process before a chapter 9 case can even be filed.

B. Financially Distressed Cities

Illinois has also passed the Financially Distressed City Law (the “City Law”) to deal with “financially distressed cities,” which includes any municipality that is a home rule unit.3 65 ILCS 5/8-12-1 et seq.

In order to receive assistance under the City Law, a home rule municipality must first request (i) that the Illinois Department of Revenue certify that it is in the highest 5% of all home rule municipalities in terms of the aggregate of the rate per cent of all taxes levied pursuant to statute or ordinance upon all taxable property of the municipality and in the lowest 5% of all home rule municipalities in terms of per capita tax yield, and (ii) that the Illinois General Assembly by joint resolution designate it as a financially distressed city. 65 ILCS 8-12-4. Upon designation of a financially distressed city, the state of Illinois is required to establish a “Financial Advisory Authority” (the “Authority”), the purpose of which is to furnish assistance to the financially distressed city, including by requesting that the IFA issue obligations on behalf of the applicable city. Id. at 8-12-5 & 6. Like the emergency financial manager and the Commission, the

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3 Home Rule is the name given to a set of laws that give a city or county some freedom in how it makes laws. The purpose of Home Rule is to give a city or county the ability to address problems as they arise without having to get special permission from the state legislature. In 1970, the State of Illinois added Home Rule to the Constitution stating that any municipality with more that 25,000 residents would automatically have home rule powers. Smaller towns and cities would be allowed home rule authority if approved through a referendum. According to the Constitution of the State of Illinois “a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.”
Authority is granted certain powers in carrying out its duties. However, unlike its two counterparts, the role of the Authority appears to be less intrusive, deferring greater decision-making authority to the financially distressed city. Also, the City Law does not appear to contain some of the protections provided to smaller “units of local government” under the Act such as limited stay relief against governmental entity creditors. For instance, the Authority’s duties include, but are not limited to: (i) executing contracts, leases and other agreements; (ii) approving all loans, grants, or other financial aid from any State agency; (iii) appointing officers, agents and employees; and (iv) engaging consultants and other professionals. 65 ILCS 5/8-12-6. The Authority has the power to oversee, approve or reject financial plans, budgets and contracts for the applicable city. 65 ILCS 5/8-12-13; 65 ILCS 5/8-12-16; 65 ILCS 5/18-12-17.

The financially distressed city is required to submit to the Authority a “Financial Plan” which contains, among other things, (i) a description of revenues and expenditures, provision for debt service, cash resources and uses, and capital improvements; (ii) a description on the means to balance the budget; and (iii) such other matters that the Authority requires. The financially distressed city is then required to periodically report to the Authority concerning compliance with the Financial Plan. The Authority has broad powers to review and/or obtain financial information concerning the city’s compliance with the Financial Plan. 65 ILCS 5/8-12-15.

Unlike express language found in the Act, the City Law does not appear to provide for the Authority to approve or recommend a chapter 9 bankruptcy filing if the financially distressed city’s circumstances continue to deteriorate. The absence of such a provision appears to leave it to the discretion of the governing body of the financially distressed city to request that the Illinois General Assembly enact legislation authorizing the city to file for bankruptcy. Again, the Illinois statute contemplates a lengthy administrative process before a chapter 9 case could be filed.
APPENDIX A

ILLINOIS STATE LAWS CONCERNING
FINANCIALLY DISTRESSED MUNICIPALITIES
Municipal Insolvency and the Impact of the "Great Recession"

Excerpts from the Illinois Compiled Statutes ("ILCS")

William A. Brandt, Jr.
President and CEO, Development Specialists, Inc.
Chairman, Illinois Finance Authority

September 20, 2010
Chicago, Illinois
Illinois Finance Authority Act

(20 ILCS 3501/825-20 to 3501/825-60)
Sec. 825-15. (Repealed).
(Source: P.A. 93-205, eff. 1-1-04. Repealed by P.A. 94-91, eff. 7-1-05.)

(20 ILCS 3501/825-20)

Sec. 825-20. Financially Distressed City Assistance Program; Findings and Declarations of Policy. It is hereby found and declared that there exists an urgent need to reduce involuntary unemployment and economic stagnation within financially distressed cities and to create therein a more favorable economic climate for the development of new and improved employment opportunities for the citizens of such cities; that to address such need it is necessary to promote sound financial management and fiscal integrity within such cities in order to provide a secure financial basis for their continued operation; and that implementation of a financially distressed city assistance program under the provisions of this Act is declared to be in the public interest and for the public benefit.
(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-25)

Sec. 825-25. Definition. As used in Sections 825-20 through 825-60 of this Act, the term "financially distressed city" means a unit of local government which has been certified and designated as a financially distressed city under Section 8-12-4 of the Illinois Municipal Code and to which the provisions of Division 12 of Article 8 of that Code have become applicable as provided by that Section 8-12-4.
(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-30)

Sec. 825-30. Powers and Duties; Financing.

(a) Upon application of the financial advisory authority established for a financially distressed city under Division 12 of Article 8 of the Illinois Municipal Code, the Authority shall have the power to issue its bonds, notes or other evidences of indebtedness, the proceeds of which are to be used to make loans to a financially distressed city for purposes of enabling that city to restructure its current indebtedness and to provide and pay for its essential municipal services as determined in a manner consistent with Division 12 of Article 8 of the Illinois Municipal Code by the financial advisory authority established for that city under that Division 12.

(b) Bonds authorized to be issued by the Authority under Sections 825-20 through 825-60 shall be payable from such
revenues, income, funds and accounts of the financially

distressed city which receives a loan of any proceeds of the
bonds so issued as the Authority shall determine and prescribe
in the loan agreement.

(c) The Authority may prescribe the form and contents of
any application submitted under subsection (a) of this Section
and may, at its discretion, accept or reject such application
or require such additional information as it deems necessary to
aid in its review and determination of whether it will issue
its bonds and loan the proceeds thereof as authorized under
Sections 825-20 through 825-60.

(d) The amount of bonds issued or proceeds thereof loaned
by the Authority with respect to an application which the
Authority has approved shall be determined by the Authority.

(e) The financially distressed city receiving a loan under
Sections 825-20 through 825-60 shall enter into a loan agreement
in the form and manner prescribed by the Authority, and shall
pay back to the Authority the principal amount of the loan,
plus annual interest as determined by the Authority. The
Authority shall have the power, subject to appropriations by
the General Assembly, to subsidize or buy down a portion of the
interest on such loans, up to 4% per annum.

(f) The Authority shall create and establish a debt service
reserve fund to be maintained by a trustee separate and
segregated from all other funds and accounts of the Authority.
This reserve fund shall be initially funded by a contribution
of State monies.

(g) The amount to be accumulated in the debt service
reserve fund shall be determined by the Authority but shall not
exceed the maximum amount of interest, principal and sinking
fund installments due in any succeeding calendar year.
(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-35)

Sec. 825-35. Pledge of Funds. Any financially distressed
city which receives funds from the Department of Revenue,
including without limitation funds received pursuant to Section
8-11-1, 8-11-5 or 8-11-6 of the Illinois Municipal Code or Section
2 or 12 of the State Revenue Sharing Act, or from the
Department of Transportation pursuant to Section 8 of the Motor
Fuel Tax Law, may, by appropriate proceedings, pledge to the
Authority, or any entity acting on behalf of the Authority
(including, without limitation, any trustee), any or all of
such receipts to the extent that such receipts are determined
by the Authority to be necessary to provide revenues to pay or
secure the payment of the principal of, premium, if any, and interest on any of the bonds issued on behalf of, or loans made to, the financially distressed city by the Authority under Sections 825-20 through 825-60. The adoption of such proceedings shall constitute a directive to the State Comptroller and State Treasurer to pay to, or on behalf of, the Authority or such other entity (including, without limitation, any trustee) such portion of the pledged receipts from the Department of Revenue or Department of Transportation, as the case may be, and with the State Comptroller and the State Treasurer. With respect to any bonds issued on behalf of, or loans made to, the financially distressed city by the Authority under Sections 825-20 through 825-60, which are in default in the payment of principal, premium, if any, or interest, to the extent that the State Treasurer, the State Comptroller, the Department of Revenue or the Department of Transportation shall be the custodian at any time of any other available funds or moneys pledged to the payment of such local government securities or such lease rental payments securing such local government securities pursuant to this Section and due or payable to such a unit of local government at any time subsequent to written notice to the State Comptroller and State Treasurer from the Authority or any entity acting on behalf of the Authority (including, without limitation, any trustee) to the effect that such financially distressed city has not paid or is in default as to payment of the principal of, premium, if any, or interest on any bonds issued on behalf of, or loans made to, the financially distressed city by the Authority under Sections 825-20 through 825-60:

(a) The State Comptroller and the State Treasurer shall withhold the payment of such funds or moneys from the financially distressed city until the amount of such principal, premium, if any, and interest then due and unpaid has been paid to the Authority or such entity acting on behalf of the Authority (including, without limitation, any trustee), or the State Comptroller or State Treasurer have been advised that arrangements, satisfactory to the Authority or such entity, have been made for the payment of such principal, premium, if any, and interest; and

(b) Within 10 days after a demand for payment by the Authority or such entity is given to the State Treasurer and the State Comptroller, the State Treasurer shall pay such funds or moneys as are legally available therefor to the Authority or such entity for the payment of principal, premium, if any, and interest on such bonds or loans. The Authority or such entity may carry out this Section and exercise all the rights,
remedies and provisions provided or referred to in this Section.
(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-40)

Sec. 825-40. Additional security. In the event that the Authority determines that funds pledged, intercepted or otherwise received or to be received by the Authority under Section 825-20 of this Act will not be sufficient for the payment of the principal, premium, if any, and interest during the next State fiscal year on any bonds issued by the Authority under Sections 825-20 through 825-60, the Chairman, as soon as is practicable, shall certify to the Governor the amount required by the Authority to enable it to pay the principal, premium, if any, and interest falling due on such bonds. The Governor shall submit the amount so certified to the General Assembly as soon as practicable, but no later than the end of the current State fiscal year. This paragraph shall not apply to any bonds as to which the Authority shall have determined, in the resolution authorizing their issuance, that this paragraph shall not apply. Whenever the Authority makes such a determination, that fact shall be plainly stated on the face of such bonds and that fact shall also be reported to the Governor. In the event of a withdrawal of moneys from a debt service reserve fund established with respect to any issue or issues of bonds of the Authority to pay principal and interest on those bonds, the Chairman, as soon as practicable, shall certify to the Governor the amount required to restore such reserve funds to the level required in the resolution or indenture securing the bonds. The Governor shall submit the amount so certified to the General Assembly as soon as practicable, but not later than the end of the current State fiscal year.
(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-50)

Sec. 825-50. Eligible Investments. Bonds issued by the Authority pursuant to Sections 825-20 through 825-60 shall be permissible investments within the provisions of Section 805-40.
(Source: P.A. 93-205, eff. 1-1-04.)
(20 ILCS 3501/825-55)

Sec. 825-55. Tax Exemption. The exercise of the powers granted in Sections 825-20 through 825-60 are in all respects for the benefit of the people of Illinois, and in consideration thereof shall be free from all taxation by the State or its political subdivisions, except for estate, transfer and inheritance taxes. For the purposes of Section 250 of the Illinois Income Tax Act, the exemption of the income from bonds issued under the aforementioned Sections shall terminate after all of the bonds have been paid. The amount of such income that shall be added and then subtracted on the Illinois income tax return of a taxpayer, pursuant to Section 203 of the Illinois Income Tax Act, from federal adjusted gross income or federal taxable income in computing Illinois base income shall be the interest net of any bond premium amortization.

(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-60)

Sec. 825-60. Financially Distressed City Assistance Program Limitation. In addition to the bonds authorized to be issued under Sections 801-40(w), 825-65(e), 830-25 and 845-5, the Authority may have outstanding at any time, bonds for the purposes enumerated in Sections 825-20 through 825-60 in an aggregate principal amount that shall not exceed $50,000,000. Such bonds shall not constitute an indebtedness or obligation of the State of Illinois, and it shall be plainly stated on the face of each bond that it does not constitute such an indebtedness or obligation but is payable solely from the revenues, income or other assets of the Authority pledged therefor.

(Source: P.A. 93-205, eff. 1-1-04.)

(20 ILCS 3501/825-65)


(a) Findings and declaration of policy.

(i) It is hereby found and declared that Illinois has abundant coal resources and, in some areas of Illinois, the demand for power exceeds the generating capacity. Incentives to encourage the construction of coal-fueled electric generating plants in Illinois to ensure power generating capacity into the future and to advance clean coal technology and the use of Illinois coal are in the best interests of all of the citizens of Illinois.
Local Government Financial Planning and Supervision Act

(50 ILCS 320/1 to 320/14)
Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may
not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they
become law. For information concerning the relationship between statutes and Public Acts, refer to the
Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes
are sometimes included in the statute database before they take effect. If the source note at the end of a
Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is
currently in effect may have already been removed from the database and you should refer to that Public
Act to see the changes made to the current law.

LOCAL GOVERNMENT
(50 ILCS 320/) Local Government Financial Planning and Supervision Act.

(50 ILCS 320/1) (from Ch. 85, par. 7201)
Sec. 1. Short title. This Act may be cited as the Local
Government Financial Planning and Supervision Act.
(Source: P.A. 86-1211.)

(50 ILCS 320/2) (from Ch. 85, par. 7202)
Sec. 2. Policy and purpose.
(a) It is the public policy of this State, in order to
provide for the public health, safety and welfare, to provide
assistance to units of local government in the formulation and
implementation of proper financial accounting procedures,
budgeting and taxing practices.
(b) The purpose of this Act is to assure fiscal integrity
of all units of local government so that they may provide for
the health, safety and welfare of their citizens, pay when due
principal and interest on their debt obligations and meet
financial obligations to their employees, vendors and
suppliers. The failure of a unit of local government to so act
is hereby determined to affect adversely the health and safety
and welfare not only of the people of the unit of local
government, but also of the people of the State of Illinois.
(c) This Act is an Omnibus Bond Act within the meaning of
Section 8 of the Statute on Statutes. No provision of this Act
shall be deemed to apply if such application shall result in
the impairment of a contract made prior to the effective date
of this Act with any person, other than the governmental
entities named in Section 7 of this Act. Any person not such a
governmental entity shall continue to be able to enforce any
rights assigned to or otherwise pledged to or for the benefit

of such person by such entity.
(Source: P.A. 86-1211.)

(50 ILCS 320/3) (from Ch. 85, par. 7203)
Sec. 3. Definitions. As used in this Act, unless the context requires otherwise:
(a) "Commission" means a financial planning and supervision commission created pursuant to this Act.
(b) "Fiscal emergency" means the existence of any one or more of the following conditions:
   (1) The existence of a continuing default in the payment of principal and interest on any debt obligation for more than 180 days.
   (2) The failure to make payment of over 20% of all payroll to employees of the unit of local government in the amounts and at the times required by law, ordinances, resolutions, or agreements, which failure of payment has continued for more than 30 days after such time for payment, unless at least 2/3 of the employees affected by such failure to pay, acting individually or by their duly authorized representative, consent in writing to an extension.
   (3) The insolvency of the unit of local government, being a financial condition such that the unit is (A) generally not paying its debts as they come due unless they are the subject of a bona fide dispute or (B) unable to pay its debts as they become due.
(c) "Governing body" means the board or other body of officers having authority to levy taxes, make appropriations, authorize the expenditure of public funds or approve claims for any unit of local government.
(d) "Unit of local government" shall have the meaning provided as specified in Article VII, Section 1 of the Illinois Constitution, and further means only those units of local government which have a population under 25,000.
(Source: P.A. 86-1211.)
Sec. 4. Petition.

(a) This subsection (a) applies through December 31, 1992. Any unit of local government upon a 2/3 vote of the members of its governing body may petition the Governor for the establishment of a financial planning and supervision commission if the governing body of the unit of local government determines that a fiscal emergency, as defined in Section 3, exists or will exist within 60 days. A copy of the petition shall be filed with the Illinois Finance Authority requesting the assistance of the Authority in conducting an analysis of the financial condition of the unit of local government. A petition shall include the conditions of fiscal emergency, a list of all amounts and types of indebtedness or claims known to the unit of local government, and which creditors are subject to the stay provisions of Section 7 of this Act.

(b) This subsection (b) applies on and after January 1, 1993. Any unit of local government upon a 2/3 vote of the members of its governing body may petition the Governor for the establishment of a financial planning and supervision commission if the governing body of the unit of local government determines that a fiscal emergency, as defined in Section 3, exists or will exist within 60 days. A petition shall include the conditions of fiscal emergency and a list of all creditors of the unit of local government, which list shall indicate the names, addresses, amounts and types of indebtedness or claims of such creditors, and which of such creditors are subject to the stay provisions of Section 7 of this Act.

(Source: P.A. 93-205, eff. 1-1-04.)

Sec. 5. Establishment of commission.

(a) This subsection (a) applies through December 31, 1992.

(1) Upon receipt of a petition for establishment of a financial planning and supervision commission, the Governor may direct the establishment of such a commission if the Governor determines that a fiscal emergency exists.

(2) Prior to making such determination, the Governor
shall give reasonable notice and opportunity for a hearing to all creditors of the petitioning unit of local government who are subject to the stay provisions of Section 7 of this Act. The determination shall be entered not less than 60 days after the filing of the petition. A determination of fiscal emergency by the Governor shall be a final administrative decision subject to the provisions of the Administrative Review Law. The court on such review may grant exceptions to the stay provisions of Section 7 of this Act as adequate protection of creditors' interests or equity may require. The commission shall convene within 30 days of the entry by the Governor of his or her determination of the fiscal emergency.

(3) (A) The Commission shall consist of 7 Directors.
(B) One Director shall be appointed by the chief executive officer of the unit of local government.
(C) One Director shall be appointed by the majority vote of the governing body of the unit of local government.
(D) Five Directors shall be appointed by the Governor, with the advice and consent of the Senate. The Governor shall select one of the Directors to serve as Chairperson during the term of his or her appointment. Of the initial Directors so appointed, 3 shall be appointed to serve for terms expiring 3 years from the date of their appointment, and 2 shall be appointed to serve for terms expiring 2 years from the date of their appointment. Thereafter, each Director appointed by the Governor shall be appointed to hold office for a term of 3 years and until his or her successor has been appointed as provided in Section 8-12-7 of the Illinois Municipal Code. Directors shall be eligible for reappointment. Any vacancy which shall arise shall be filled by appointment by the Governor, with the advice and consent of the Senate, for the unexpired term and until a successor Director has been appointed as provided in Section 8-12-7 of the Illinois Municipal Code. A vacancy shall occur upon resignation, death, conviction of a felony, or removal from office of a Director. A Director may be removed for incompetency, malfeasance, or neglect of duty at the instance of the Governor. If the Senate is not in session or is in recess when appointments subject to its confirmation are made, the Governor shall make temporary appointments which shall be subject to subsequent Senate approval.
(b) This subsection (b) applies on and after January 1, 1993.

(1) Upon receipt of a petition for establishment of a financial planning and supervision commission, the Governor may direct the establishment of such a commission if the Governor determines that a fiscal emergency exists.

(2) Prior to making such determination, the Governor shall give reasonable notice and opportunity for a hearing to all creditors of the petitioning unit of local government. The determination shall be entered not less than 60 days after the filing of the petition. A determination of fiscal emergency by the Governor shall be a final administrative decision subject to the provisions of the Administrative Review Law. The court on such review may grant exceptions to the stay provisions of Section 7 of this Act as adequate protection of creditors' interests or equity may require. The commission shall convene within 30 days of the entry by the Governor of his or her determination of the fiscal emergency.

(3) A commission shall consist of 11 members:

(A) Eight members as follows: the Governor, the State Comptroller, the Director of Revenue, the Director of the Governor's Office of Management and Budget, the State Treasurer, the Executive Director of the Illinois Finance Authority, the Director of the Department of Commerce and Economic Opportunity and the presiding officer of the governing body of the unit of local government, or their respective designees. A designee, when present, shall be counted in determining whether a quorum is present at any meeting of the commission and may vote and participate in all proceedings and actions of the commission. The designations shall be in writing, executed by the member making the designation, and filed with the secretary of the commission. The designations may be changed from time to time in like manner, but due regard shall be given to the need for continuity. The Governor shall appoint a chairman of the commission from among the 8 members described in this subparagraph (A).

(B) Three members nominated and appointed as
follows: the governing body and chief governing officer of the unit of local government shall submit in writing to the chairman of the commission the nomination of 5 persons agreed to by them and meeting the qualifications set forth in this Act. Nominations shall accompany the petition for establishment of the financial planning and supervision commission. If the chairman is not satisfied that at least 3 of the nominees are well qualified, he shall notify the governing body of the unit of local government to submit in writing, within 5 days, additional nominees, not exceeding 3. The chairman shall appoint 3 members from all the nominees so submitted or a lesser number that he considers well qualified. Each of the 3 appointed members shall serve for a term of one year, subject to removal by the chairman for misfeasance, nonfeasance or malfeasance in office. Upon the expiration of the term of an appointed member, or in the event of the death, resignation, incapacity or removal, or other ineligibility to serve of an appointed member, the chairman shall appoint a successor pursuant to the process of original appointment.

Each of the 3 appointed members shall be an individual:

(i) Who has knowledge and experience in financial matters, financial management, or business organization or operations, including experience in the private sector in management of business or financial enterprise, or in management consulting, public accounting, or other professional activity; and

(ii) Who has not at any time during the 2 years preceding the date of appointment held any elected public office.

The governing body and chief governing officer of the unit of local government, to the extent possible, shall nominate members whose residency, office, or principal place of professional or business activity is situated within the unit of local government.

An appointed member of the commission shall not become a candidate for elected public office while serving as a member of the commission.

(4) Immediately after his appointment of the initial
3 appointed members of the commission, the chairman shall call the first meeting of the commission and shall cause written notice of the time, date and place of the first meeting to be given to each member of the commission at least 48 hours in advance of the meeting.

(5) The commission members shall select one of their number to serve as treasurer of the commission.

(Source: P.A. 93-205, eff. 1-1-04; 94-793, eff. 5-19-06.)

(50 ILCS 320/6) (from Ch. 85, par. 7206)
Sec. 6. Action by commission; financial advisor; liability.
(a) The commission may adopt and alter bylaws and rules for the conduct of its affairs, and for the manner, subject to this Act, in which its powers and functions shall be exercised and embodied.

(b) Six members of the commission constitute a quorum of the commission. The affirmative vote of 6 members of the commission is necessary for any action taken by vote of the commission. No vacancy in the membership of the commission shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the commission. Members of the commission, and their designees, are not disqualified from voting by reason of the functions of the other office they hold and are not disqualified from exercising the functions of any other office with respect to the unit of local government, its officers, or the commission.

(c) The commission may retain a financial advisor. As used in this Act, "financial advisor" means a firm of certified public accountants with demonstrated professional competence in matters relating to this Act, engaged by the commission pursuant to a written contract, a copy of which shall be provided to each member of the commission and each member of the governing body of the unit of local government.

(d) The financial advisor, the members of the commission, or any other person authorized to act on behalf of or assist them shall not be personally liable or subject to any action, judgment, or claim for damages resulting from the exercise of or failure to exercise the powers, duties, and functions granted to them in regard to their functioning under this Act, but the commission, the financial advisor, and such other persons shall be subject to mandamus proceedings to compel performance of their duties under this Act.

(e) At the request of the commission the administrative head of any State department or agency shall temporarily assign personnel skilled in procedures relevant to assisting the commission or the financial advisor in its duties.
Each appointed member of the commission shall file with the commission a signed written statement setting forth the general nature of sales of goods, property, or services or of loans to the unit of local government with respect to which that commission is established, in which such member has a pecuniary interest or in which any member of his immediate family, or any corporation, partnership, or enterprise of which he is an officer, director, or partner, or of which he or a member of his immediate family owns more than 7 1/2% interest, has a pecuniary interest, and of which sale, loan and interest such member has knowledge. The statement shall be supplemented from time to time to reflect changes in the general nature of any such sales or loans.

(Source: P.A. 86-1211.)

(50 ILCS 320/7) (from Ch. 85, par. 7207)
Sec. 7. Judgment or lien; indebtedness.
(a) No State agency, board, commission or department, no subdivision of the State, and no unit of local government (including municipalities or counties having a population of 25,000 or more, and all of the foregoing being the "stayed creditors") may enforce any judgment or lien against, or take any other action to collect any indebtedness, obligations or liabilities from, a unit of local government covered by this Act during the period provided in this Section. This prohibition of enforcement or action is hereafter referred to as the "stay". The period of the stay shall begin at the time of the determination of fiscal emergency by the Governor and end at the earlier of (1) the time of reversal of such determination by a court, (2) 2 years after the stay begins, or (3) when the commission dissolves pursuant to Section 12 of this Act. The 2 year stay so provided may be extended for an additional one year by the commission with the consent of the majority (by number and by dollar amounts) of the stayed creditors affected by the stay. The commission may upon application or upon its own initiative grant exceptions to the stay provisions of this Section as adequate protection of creditors' interests and equity may require. Any such decision shall be a final administrative decision subject to the provisions of the Administrative Review Law. The stay does not discharge the unit of local government from its indebtedness, obligations or liabilities.

(b) Notwithstanding subsection (a), any indebtedness, obligation or liability incurred by a unit of local government after the beginning of the period of the stay shall not be subject to that stay.
(Source: P.A. 86-1211.)

(50 ILCS 320/8) (from Ch. 85, par. 7208)
Sec. 8. Financial plan.
(a) Within 120 days after the first meeting of the commission, the presiding officer of the governing body of the unit of local government, in conjunction with the financial advisor provided by the commission, shall submit to the commission a detailed financial plan, as approved or amended by ordinance or resolution of the governing body, containing the following:

(1) Actions to be taken by the unit of local government to:
(A) Eliminate all fiscal emergency conditions determined to exist pursuant to this Act;
(B) Satisfy any judgments, past due accounts payable, and all past due and payable payroll and fringe benefits;
(C) Eliminate the deficits in all deficit funds;
(D) Restore to construction funds and other special funds moneys from such funds that were used for purposes not within the purposes of such funds, or missing from the construction funds or such special funds and not accounted for;
(E) Balance the budgets, avoid future deficits in any funds, and maintain current payments of payroll, fringe benefits, and all accounts;
(F) Avoid any fiscal emergency condition in the future; and
(G) Restore the ability of the unit of local government to market long-term general obligation bonds under provisions of law applicable to such local governmental units generally.

(2) The legal authorities permitting the unit of local government to take the action enumerated pursuant to paragraph (1) of this subsection (a).

(3) The approximate dates of the commencement,
progress upon, and completion of the actions enumerated in paragraph (1) of this subsection (a) and a reasonable period of time expected to be required to implement the plan. The unit of local government, in consultation with the commission and the financial advisor, shall prepare a reasonable time schedule for progress toward and achievement of the requirements for the financial plan, and the financial plan shall be consistent with that time schedule.

(4) The amount and purpose of any issue of debt obligations that will be issued, together with assurances that any such debt obligations that will be issued will not exceed debt limits supported by appropriate certifications by the treasurer of the local governmental unit.

(5) Assurances that the unit of local government will establish monthly levels of expenditures and encumbrances.

(6) Assurances that the municipality will conform to statutes with respect to budgets and appropriation ordinances.

(7) The detail, the form, and the supporting information that the commission may direct.

(b) The financial plan developed pursuant to subsection (a) of this Section shall be filed with the financial advisor and the financial planning and supervision commission. After consultation with the financial advisor, and upon completing the procedures and findings required by subsection (c) of this Section, the commission shall either approve or reject any initial or subsequent financial plan. If the commission rejects the initial or any subsequent financial plan, it shall forthwith inform the governing body of the unit of local government of the reasons for its rejection. Within 30 days after the rejection of any plan, the presiding officer, with the approval of the governing body by the passage of an ordinance or resolution, shall submit another plan meeting the requirements of this Section to the commission and the financial advisor for approval or rejection by the commission.

(c) Prior to the approval of any initial or subsequent financial plan, the commission shall give reasonable notice and opportunity for a hearing to all creditors of the unit of local government. Any initial or subsequent financial plan passed by the unit of local government shall be approved by the commission if it complies with the requirements of this Section, and if the commission finds that (1) the plan is bona fide and can reasonably be expected to be implemented within the period specified in the plan, (2) the plan is a good faith
plan reasonably anticipated to alleviate the fiscal emergency of the unit of local government and (3) the plan is in the best interest of the unit of local government and its creditors.

(d) The determination of the commission under this Section to approve or deny approval of the financial plan shall be a final administrative decision subject to the provisions of the Administrative Review Law.

(e) Any financial plan may be amended subsequent to its adoption in the same manner as the passage and approval of the initial or subsequent plan pursuant to this Section.

(Source: P.A. 86-1211.)

(50 ILCS 320/9) (from Ch. 85, par. 7209)
Sec. 9. Powers of commission and financial advisor.
(a) The financial planning and supervision commission, or when authorized by the commission, the financial advisor, shall have the following powers, duties and functions:

(1) To review all budgets, tax levy ordinances, bond and note ordinances or resolutions, and appropriation ordinances of the unit of local government in order to determine whether they are consistent with the financial plan and, when considered in connection with revenue estimates, whether a balanced budget will result.

(2) To order the unit of local government to meet and negotiate with its creditors.

(3) To inspect and secure copies of any document, ordinance, resolution, or instrument pertaining to the effective financial accounting and reporting system, debt obligations, debt limits, financial plan, balanced appropriation ordinances, report of examination or audit, statement or invoice, or other worksheet or record of the municipality; provided that any attorney-client privilege shall remain inviolate.

(4) To inspect and secure copies of any document, instrument, certification, records of proceedings, or other worksheet or records of any official or employee of the unit of local government or any other local governmental unit in the State.

(5) To consult with the creditors of the unit of
local government. To consult with the officials of the unit of local government regarding any necessary or appropriate steps to bring the books of account, accounting systems, and financial procedures and reports of the unit of local government into compliance with systems of accounting recommended by the State Comptroller pursuant to "An Act concerning accounting systems for units of local government", approved September 3, 1985, and regarding desirable modifications and supplementary systems and procedures pertinent to the unit of local government.

(6) To provide assistance to the unit of local government in the structuring or the terms of, and the placement of sale of, debt obligations of the unit of local government.

(7) To perform all other powers, duties, and functions as provided under this Act.

(8) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the exercise of its powers under this Act.

(9) To consult with officials of the unit of local government and make recommendations for cost reductions or revenue increases to achieve balanced budgets and carry out the financial plan.

(b) In the event that the financial planning and supervision commission determines that the proposed budget, tax levy, bond or note issuance or revenue estimates do not comply with the financial plan of the unit of local government, the financial planning and supervision commission shall be authorized to:

(1) Make any revisions to the financial plan, appropriation ordinances, tax levy ordinance, bond or note ordinance or appropriation ordinance deemed necessary or advisable for submission to the governing body of the unit of local government for approval and implementation;

(2) Review and determine the extent of any deficiency of revenues;

(3) Require the unit of local government to provide documentation to substantiate to the extent and in the manner deemed necessary or advisable any item of revenue or expenditure;

(4) Recommend that the unit of local government file a petition under Chapter 9 of the United States Bankruptcy Code. Not later than 30 days after the conclusion of its investigation, the commission shall make a written report to the unit of local government of all findings, determinations and recommendations.
(c) The governing body of the unit of local government and the officers and employees of any other governmental unit in this State are authorized and directed to diligently and promptly assist the financial planning and supervision commission in the prosecution of its duties, including the furnishing of any and all materials, including justification documents, as may be required.

(d) Annually on or before the first day of April during the fiscal emergency period, the commission shall make reports and recommendations to the General Assembly concerning progress of the unit of local government in eliminating fiscal emergency conditions, failures of the unit of local government to comply with this Act, and recommendations for further actions to attain the objectives of this Act, including legislative action to make provisions of law more effective for their purposes or to enhance revenue raising or financing capabilities of the local governmental unit. The commission may make such interim reports as it may determine to be appropriate for such purposes and shall make such additional reports as may be requested by resolution of either house of the General Assembly.

(Source: P.A. 86-1211.)

(50 ILCS 320/10) (from Ch. 85, par. 7210)
Sec. 10. State aid.
(a) This subsection (a) applies through December 31, 1992.

(1) During the period of time that a unit of local government is covered by this Act, the State shall not be required to distribute to the unit of local government any monies to which the unit of local government might otherwise be entitled except in accordance with the direction of the commission.

(2) Any State assistance in the form of a loan or grant from appropriated funds shall be subject to the expenditure control of the commission.

(3) The commission may request the Illinois Finance Authority to issue bonds, notes, or other evidences of indebtedness, the proceeds of which are to be used to make loans to the unit of local government for purposes of enabling that unit of local government to restructure its current indebtedness and to provide and pay for its essential municipal services. Such request may not precede the adoption of the financial plan required by Section 8 of this Act and shall be in accordance with the provisions of the Illinois Finance Authority Act.
(b) This subsection (b) applies on and after January 1, 1993. During the period of time that a unit of local government is covered by this Act, the State shall not be required to distribute to the unit of local government any monies to which the unit of local government might otherwise be entitled.
(Source: P.A. 93-205, eff. 1-1-04.)

(50 ILCS 320/11) (from Ch. 85, par. 7211)
Sec. 11. Expenses of commission members. The members of the financial planning and supervision commission shall serve without compensation, but shall be paid by the commission their necessary and actual expenses incurred while engaged in the business of the commission.
(Source: P.A. 86-1211.)

(50 ILCS 320/12) (from Ch. 85, par. 7212)
Sec. 12. Expenses incurred by commission. Any expense or obligation incurred by the financial planning and supervision commission under this Act shall be payable solely from appropriations made for that purpose by the General Assembly.

The commission is authorized to maintain monies appropriated for its use in a local account for such purposes to be held outside the State Treasury. Disbursements from this account shall require the approval and signatures of the chairman of the commission and the treasurer of the commission. The commission shall be authorized to request the State Comptroller and State Treasurer to issue State warrants against appropriations made for its use, in anticipation of commission expenses, for deposit into the local account.

The compensation and expenses of a financial advisor retained by the commission shall be paid from monies appropriated to the Department of Commerce and Economic Opportunity for that purpose. Those appropriations shall only be committed, obligated, and expended by the Department of Commerce and Economic Opportunity as the result of an order signed by the chairman of the commission identifying the selected "financial advisor" pursuant to subsection (c) of Section 6 of this Act and stating the maximum compensation awarded to the financial advisor under the contract. A copy of the order shall be filed with the State Comptroller prior to any disbursement of funds.
(Source: P.A. 94-793, eff. 5-19-06.)
Sec. 13. Termination of commission.

(a) A financial planning and supervision commission with respect to a unit of local government, and its functions under this Act, shall continue in existence until such time as a determination is made pursuant to subsection (b) of this Section that each of the following exists:

1. The unit of local government has planned, and is in the process of good faith implementation of, an effective financial accounting and reporting system in accordance with the requirements of this Act, and it is reasonably expected that such implementation will be completed within 2 years;

2. The unit of local government has corrected and eliminated all of the fiscal emergency conditions determined pursuant to this Act and no new fiscal emergency condition has occurred;

3. The unit of local government has met the objectives of the financial plan described in Section 8.

(b) The determination that all of such conditions for the termination of the existence of the commission and its functions exist shall be made by the commission and shall be certified to the General Assembly and the governing body of the unit of local government.

(c) The commission shall prepare and submit with such certification a final report of its activities, in such form as is appropriate for the purpose of providing a record of its activities and assisting other commissions created under this Act in the conduct of their functions. All of the books and records of the commission shall be delivered to the State Comptroller for retention and safekeeping.

(d) Upon termination of the commission, all moneys of the commission still remaining in the possession of the commission shall be paid to the State Treasurer and held in a separate fund for the payment and satisfaction of all remaining obligations of the commission. Any excess shall be paid over to the General Revenue Fund.

(e) If, at the time of termination of the commission, an effective financial accounting and reporting system has not been fully implemented, the Governor shall monitor the progress of implementation and shall exercise his authority to secure full implementation at the earliest time feasible but within 2 years from such termination.

(Source: P.A. 86-1211.)
Sec. 14. Application of Act. A unit of local government may by contract declare that the provisions of this Act shall not apply to any indebtedness, obligation or liability incurred under such contract.

(Source: P.A. 86-1211.)
Financially Distressed City Law

(65 ILCS 5/8-12-1 through 5/8/-12-24)
Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

MUNICIPALITIES
(65 ILCS 5/) Illinois Municipal Code.

(65 ILCS 5/Art. 8 Div. 12 heading)
DIVISION 12. FINANCIALLY DISTRESSED CITY LAW

(65 ILCS 5/8-12-1) (from Ch. 24, par. 8-12-1)
Sec. 8-12-1. This Division 12 may be cited as the Financially Distressed City Law.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-2) (from Ch. 24, par. 8-12-2)
Sec. 8-12-2. (a) Pursuant to the authority of the General Assembly to provide for the public health, safety and welfare, the General Assembly hereby finds and declares that it is the public policy and a public purpose of the State to offer assistance to a financially distressed city so that it may provide for the health, safety and welfare of its citizens, pay when due principal and interest on its debt obligations, meet financial obligations to its employees, vendors and suppliers, and provide for proper financial accounting procedures, budgeting and taxing practices, as well as strengthen the human and economic development of the city.

(b) It is the purpose of this Division to provide a secure financial basis for the continued operation of a financially distressed city. The intention of the General Assembly, in enacting this legislation is to establish sound, efficient and generally accepted accounting, budgeting and taxing procedures and practices within a financially distressed city, to provide powers to a financial advisory authority established for a financially distressed city, and to impose restrictions upon a
financially distressed city in order to assist that city in assuring its financial integrity while leaving municipal services policies to the city, consistent with the requirements for satisfying the public policy and purposes herein set forth.

(c) It also is the purpose of this Division to authorize a city which has been certified and designated as a financially distressed city under the procedure set forth in Section 8-12-4, and which has by ordinance requested that a financial advisory authority be appointed for the city and that the city receive assistance as provided in this Division, and which has filed certified copies of that ordinance in the manner provided by Section 8-12-4, to enter into such agreements as are necessary to receive assistance as provided in this Division and in applicable provisions of the Illinois Finance Authority Act.

(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-3) (from Ch. 24, par. 8-12-3)

Sec. 8-12-3. As used in this Division:

(1) "Authority" means the "(Name of Financially Distressed City) Financial Advisory Authority".

(2) "Financially distressed city" means any municipality which is a home rule unit and which (i) is certified by the Department of Revenue as being in the highest 5% of all home rule municipalities in terms of the aggregate of the rate percent of all taxes levied pursuant to statute or ordinance upon all taxable property of the municipality and as being in the lowest 5% of all home rule municipalities in terms of per capita tax yield, and (ii) is designated by joint resolution of the General Assembly as a financially distressed city.

(3) "Home rule municipality" means a municipality which is a home rule unit as provided in Section 6 of Article VII of the Illinois Constitution.

(4) "Budget" means an annual appropriation ordinance or annual budget as described in Division 2 of Article 8, as from time to time in effect in the financially distressed city.

(5) "Chairperson" means the chairperson of the Authority appointed pursuant to Section 8-12-7.

(6) "Financial Plan" means the financially distressed city's financial plan as developed pursuant to Section 8-12-15, as from time to time in effect.

(7) "Fiscal year" means the fiscal year of the financially distressed city.

(8) "Obligations" means bonds, notes or other evidence of indebtedness issued by the Illinois Finance Authority in connection with the provision of financial aid to a financially
distressed city pursuant to this Division and applicable provisions of the Illinois Finance Authority Act.
(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-4) (from Ch. 24, par. 8-12-4)

Sec. 8-12-4. In order to receive assistance as provided in this Division, a home rule municipality shall first, by ordinance passed by its corporate authorities, request (i) that the Department of Revenue certify that it is in the highest 5% of all home rule municipalities in terms of the aggregate of the rate per cent of all taxes levied pursuant to statute or ordinance upon all taxable property of the municipality and in the lowest 5% of all home rule municipalities in terms of per capita tax yield, and (ii) that the General Assembly by joint resolution designate it as a financially distressed city. A home rule municipality which is so certified and designated as a financially distressed city and which desires to receive assistance as provided in this Division shall, by ordinance passed by its corporate authorities, request that a financial advisory authority be appointed for the city and that the city receive assistance as provided in this Division, and shall file a certified copy of that ordinance with the Governor, with the Clerk of the House of Representatives and with the Secretary of the Senate. Upon the filing of the certified copies of that ordinance as required by this Section this Division and all of its provisions shall then and thereafter be applicable to the financially distressed city, shall govern and control its financial accounting, budgeting and taxing procedures and practices, and, subject to the limitations of subsection (a) of Section 8-12-22, shall remain in full force and effect with respect thereto until such time as the financial advisory authority established under Section 8-12-5 is abolished as provided in subsection (c) of Section 8-12-22.

(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-5) (from Ch. 24, par. 8-12-5)

Sec. 8-12-5. For each financially distressed city to which this Division is applicable as provided in Section 8-12-4, there is established a body both corporate and politic to be known as the "(Name of Financially Distressed City) Financial Advisory Authority" which, in such name, shall exercise all authority vested in such Authority by this Division. The Authority shall constitute an agency of State government, and as such may receive and expend amounts appropriated by the General Assembly to the Authority to enable it to exercise and perform its powers and responsibilities under this Division. The financially distressed city shall not be liable for any costs or expenses incurred by the Authority in the conduct of its powers and responsibilities under this Division.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-6) (from Ch. 24, par. 8-12-6)

Sec. 8-12-6. Purposes and powers.
(a) The purposes of the Authority shall be to provide a secure financial basis for and to furnish assistance to a financially distressed city to which this Division is applicable as provided in Section 8-12-4, and to request the Illinois Finance Authority to issue its Obligations on behalf of and thereby provide financial aid to the city in accordance with applicable provisions of the Illinois Finance Authority Act, so that the city can provide basic municipal services within its jurisdictional limits, while permitting the distressed city to meet its obligations to its creditors and the holders of its notes and bonds.

(b) Except as expressly limited by this Division, the Authority shall have all powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Division, including, but not limited to, the following powers:

(1) To provide for its organization and internal management, and to make rules and regulations governing the use of its property and facilities.

(2) To make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of the powers and functions granted by this Division.

(3) To approve all loans, grants, or other financial aid from any State agency.

(4) To appoint officers, agents, and employees of
the Authority, define their duties and qualifications and fix their compensation and employee benefits.

(5) To engage the services of consultants for rendering professional and technical assistance and advice on matters within the Authority's power.

(6) To pay the expenses of its operations.

(7) To determine, in its discretion but consistent with the requirements of this Division, the terms and conditions of any loans it may make to the financially distressed city.

(c) Any loan repayments received by the Authority from the distressed city may be deposited by the Authority into a revolving fund under the control of the Authority. Money in the revolving fund may be used by the Authority to support activities leading to a restructuring of the distressed city's debt and may be pledged by the Authority as security for any new debt incurred by the distressed city with the approval of the Authority.

(d) From any funds appropriated to the Authority for the purpose of making a loan to a distressed city, the Authority may expend not more than $250,000 for the expenses of its operations in the fiscal year in which the appropriation is made.

(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-7) (from Ch. 24, par. 8-12-7)

Sec. 8-12-7. The governing body of the Authority shall be a board consisting of 5 Directors. Directors shall be appointed by the Governor, with the advice and consent of the Senate. At least 2 Directors must be residents of the financially distressed city. The Governor shall select one of the Directors to serve as Chairperson during the term of his or her appointment.

(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-8) (from Ch. 24, par. 8-12-8)

Sec. 8-12-8. The initial Directors shall be appointed, as provided in Section 8-12-7, within 30 days after this Division first becomes applicable to the financially distressed city as provided in Section 8-12-4. Of the initial Directors so appointed, 3 shall be appointed to serve for terms expiring 3 years from the date of their appointment, and 2 shall be appointed to serve for terms expiring 2 years from the date of their appointment. Thereafter each Director shall be appointed to hold office for a term of 3 years and until his or her successor has been appointed as provided in Section 8-12-7. Directors shall be eligible for reappointment. Any vacancy which shall arise shall be filled by appointment by the Governor, with the advice and consent of the Senate, for the unexpired term and until his or her successor has been appointed as provided in Section 8-12-7. A vacancy shall occur upon resignation, death, conviction of a felony or removal from office of a Director. A Director may be removed for incompetency, malfeasance or neglect of duty at the instance of the Governor. If the Senate is not in session or is in recess when appointments subject to its confirmation are made, the Governor shall make temporary appointments which shall be subject to subsequent Senate approval.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-9) (from Ch. 24, par. 8-12-9)

Sec. 8-12-9. The Chairperson shall preside at meetings of the Directors. The Directors may establish such offices and appoint such officers for the Authority as they may deem appropriate.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-10) (from Ch. 24, par. 8-12-10)

Sec. 8-12-10. Any State agency or unit of local government, within its respective function, may render such services to the Authority as the Authority may request. Upon the Authority's request any such agency or unit of local government may transfer to the Authority such officers and employees as the Authority and any such agency or unit of local government deem necessary to carry out the Authority's functions and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.
(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-11) (from Ch. 24, par. 8-12-11)

Sec. 8-12-11. The Directors shall serve without compensation, but each Director shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties as a Director.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-12) (from Ch. 24, par. 8-12-12)

Sec. 8-12-12. (a) The Governor shall call the first meeting of the Authority. Thereafter, the Directors shall prescribe the times and places for their meetings and the manner in which regular and special meetings may be called. The Directors shall comply in all respects with the Open Meetings Act. The Authority shall be a public body to which The Freedom of Information Act applies.

(b) A majority of the Directors holding office shall constitute a quorum for the conduct of business. The affirmative votes of at least 3 Directors shall be necessary for adopting any rule or regulation, and for any other action required by this Division to be taken by resolution, directive or ordinance.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-13) (from Ch. 24, par. 8-12-13)

Sec. 8-12-13. In carrying out the purposes of this Division, and pursuant to Sections 8-12-14 through 8-12-24, as hereinafter provided, the Authority shall have the power to approve or to reject the Financial Plans, Budgets and contracts which are inconsistent with the Financial Plan and Budget of the financially distressed city; provided, however, that the Authority shall have no authority to impair any existing contract or obligation of the city; and provided further, that with respect to any multi-year employment contract or collective bargaining agreement authorized or entered into by the city in accordance with applicable statutes and ordinances, the Authority's power to approve or reject the same shall be limited to the first year of such contract or agreement as provided in Section 8-12-17.
(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-14) (from Ch. 24, par. 8-12-14)

Sec. 8-12-14. The Budget of the financially distressed city for its first fiscal year commencing after this Division first becomes applicable to the financially distressed city as provided in Section 8-12-4, and for each subsequent fiscal year shall be balanced in accordance with such accounting system and procedures as may be prescribed by the Authority and the requirements of State law, with substantial progress toward balancing the Budget to be achieved during the remaining portion of what is the financially distressed city's current fiscal year at the time this Division first becomes applicable to the city as provided in Section 8-12-4.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-15) (from Ch. 24, par. 8-12-15)

Sec. 8-12-15. The financially distressed city shall develop, adopt and submit to the Authority, within 45 days after this Division first becomes applicable to the city as provided in Section 8-12-4, for approval by the Authority, an initial Financial Plan with respect to the remaining portion of what is the city's current fiscal year at the time this Division first becomes applicable to the city as provided in Section 8-12-4 and for the 2 succeeding fiscal years. The city shall develop and adopt subsequent Financial Plans annually and during interim periods as directed by the Authority. Interim updates shall be directed only when the Authority in its discretion determines that a change in circumstances warrants such an update. The Authority shall require that each Financial Plan cover a period of at least 3 fiscal years. After adoption by the city, the city shall submit each plan to the Authority for its approval not later than 60 days prior to the commencement of the first fiscal year to which the Financial Plan relates. The Authority shall approve or reject the Financial Plan not later than 30 days prior to the commencement of the fiscal year. No Financial Plan shall have force or effect without approval of the Authority. Each Financial Plan shall be developed, submitted, approved and monitored in accordance with the following procedures:

1. The financially distressed city shall determine and submit to the Authority, at a time and in a manner prescribed by the Authority, estimates of revenues available to the city during the period for which the Financial Plan is to be in effect. The Authority shall approve, reject or amend the revenue estimates. In the event the city fails, for any reason, to submit to the Authority estimates of revenue as required by
this paragraph, the Authority may prepare such estimates. The Financial Plan submitted by the city shall be based upon revenue estimates approved or prepared by the Authority. As soon as practicable following the establishment of the Authority, the corporate authorities of the city shall, at the request of the Chairperson of the Authority, make available to such Chairperson copies of the audited financial statements and of the books and records of account of the city for the preceding 3 fiscal years of the city.

(2) Each Financial Plan for each fiscal year or part thereof to which it relates, shall contain: (i) a description of revenues and expenditures, provision for debt service, cash resources and uses, and capital improvements, each in such manner and detail as the Authority shall prescribe; (ii) a description of the means by which the Budget will be brought into balance in accordance with Section 8-12-14; and (iii) such other financial matters that the Authority, in its discretion, requires. The Authority may prescribe any reasonable time, standards, procedures or forms for preparation and submission of the Financial Plan.

(3) The Authority shall approve the initial and each subsequent Financial Plan if, in its judgement, the plan is complete, is reasonably capable of being achieved, and meets the requirement set forth in Section 8-12-14. Otherwise, the Authority shall reject the Financial Plan. The Authority's review of the Financial Plan shall be in accordance with generally accepted accounting principles and standards. No Financial Plan submitted by the financially distressed city shall be arbitrarily or capriciously rejected by the Authority. Any rejection by the Authority of any Financial Plan submitted by the city shall be in writing and shall state the reasons for the rejection. In the event of rejection, the Authority may prescribe a procedure and standards for revision of the Financial Plan by the financially distressed city.

(4) The financially distressed city shall report to the Authority, at such times and in such manner as the Authority may direct, concerning the city's compliance with each Financial Plan. The Authority may review the city's operation, obtain budgetary data and financial statements, require the city to produce reports, and have access to any other information in the possession of the city that it deems relevant to the Financial Plan and the city's compliance with that Plan. The Authority may issue recommendations or directives within its powers to the city to assure compliance with the Financial Plan. The city shall produce such budgetary data, financial statements, reports and other information and
comply with such directives.

(5) After approval of each Financial Plan, the financially distressed city shall regularly reexamine the revenue and expenditure estimates on which it was based and revise them as necessary. The city shall promptly notify the Authority of any material change in the revenue or expenditure estimates in the Financial Plan. The city may submit to the Authority, or the Authority may require the city to submit, modified Financial Plans based upon revised revenue or expenditure estimates or for any other good reason. The Authority shall approve or reject each modified Financial Plan pursuant to paragraph (3) of this Section.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-16) (from Ch. 24, par. 8-12-16)

Sec. 8-12-16. The financially distressed city shall develop, adopt and submit to the Authority, within 30 days after this Division first becomes applicable to the city as provided in Section 8-12-4, a revised Budget for the remaining portion of what is the city's current fiscal year at the time this Division first becomes applicable to the city as provided in Section 8-12-4 and, thereafter, an annual Budget for each subsequent fiscal year. After adoption by the city, the city shall submit each Budget to the Authority for its approval not later than 60 days prior to the commencement of the fiscal year to which the Budget relates. The Authority shall approve or reject the Budget not later than 30 days prior to the commencement of the fiscal year. No Budget shall have force or effect without approval of the Authority. Each Budget shall be developed, submitted, approved and monitored in accordance with the following procedures:

(1) Each Budget submitted by the financially distressed city shall be based upon revenue estimates approved or prepared by the Authority, as provided in paragraph (1) of Section 8-12-15.

(2) Each Budget shall contain such information and detail as may be prescribed by the Authority. Any deficit for a fiscal year or any portion of a fiscal year to which any Budget relates shall be included as a current expense item for the succeeding fiscal year.

(3) The Authority shall approve each Budget if, in its judgment, the Budget is complete with respect to providing a detailed accounting of revenues and expenditures, is reasonably capable of being achieved, will meet the requirement set forth in Section 8-12-14, and will be consistent with the Financial
Plan in effect. Otherwise, the Authority shall reject the Budget. The Authority's review of the Budget shall be in accordance with generally accepted accounting principles and standards. No Budget submitted by the financially distressed city shall be arbitrarily or capriciously rejected by the Authority. Any rejection by the Authority of any Budget submitted by the city shall be in writing and shall state the reasons for the rejection. In the event of rejection, the Authority may prescribe a procedure and standards for revision of the Budget by the city.

(4) The financially distressed city shall report to the Authority at such times and such manner as the Authority may direct, concerning the city's compliance with each Budget. The Authority may review the city's operations, obtain budgetary data and financial statements, require the city to produce reports, and have access to any other information in the possession of the city that the Authority deems relevant. The Authority may issue recommendations or directives within its powers to the city to assure compliance with the Budget. The city shall produce such budgetary data, financial statements, reports and other information and comply with such directives.

(5) After approval of each Budget, the financially distressed city shall promptly notify the Authority of any material change in the revenue or expenditure estimates in the Budget. The city may submit to the Authority, or the Authority may require the city to submit, a supplemental Budget based upon revised revenue or expenditure estimates or for any other good reason. The Authority shall approve or reject each supplemental Budget pursuant to paragraph (3) of this Section.

(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-17) (from Ch. 24, par. 8-12-17)

Sec. 8-12-17. (a) No contract or other obligation shall be entered into by the financially distressed city unless it is consistent with the Financial Plan and Budget in effect. No multi-year employment contract or collective bargaining agreement authorized or entered into by the city in accordance with applicable statutes and ordinances shall, with respect to any terms and provisions thereof which are operative after expiration of the first year of any such contract or agreement, be deemed inconsistent with a Financial Plan and Budget at any time in effect; provided, however, that any terms and provisions of a contract or agreement which would increase expenditures for salaries, benefits or other forms of compensation after the expiration of the first year of such contract or agreement shall be contingent upon the attainment
of sufficient available revenues, considering all necessary expenditures, to support such increases.

(b) The Authority may adopt, and from time to time amend, regulations identifying categories and types of contracts and other obligations that shall be subject to approval by the Authority and the procedure for submitting contracts for approval. Each contract or other obligation that is entered into by the financially distressed city and that requires approval by the Authority shall contain a provision stating (i) that it shall not become legally binding on the city unless and until it has received the approval of the Authority, and (ii) that the Authority shall approve the contract if, in the Authority's judgment, the information required to be submitted is complete with respect to the contract or other obligation being an authorized expenditure within the Financial Plan and Budget and the contract or other obligation is consistent with the Financial Plan and Budget in effect. No contract or other obligation that requires the approval of the Authority shall be legally binding on the city unless and until it has received the approval of the Authority. Subject to the foregoing, the prior approval of the Authority is not required in order for the city to enter into a contract.

(c) The Authority shall approve the contract or obligation if, in its judgement, the information required to be submitted is complete and the contract or other obligation is consistent with the Budget and Financial Plan in effect. Otherwise, the Authority shall reject the contract or other obligation; provided, however, that any multi-year employment contract or collective bargaining agreement authorized or entered into by the city in accordance with applicable statutes and ordinances shall be approved by the Authority if, in its judgement, the terms and provisions operative during the first year of such contract or agreement are consistent with the Budget and Financial Plan in effect for that period, subject to the limitation that any terms and provisions of any such contract or agreement which would increase expenditures for salaries, benefits or other forms of compensation after the expiration of the first year of the contract or agreement shall be contingent upon the attainment of sufficient available revenues, considering all necessary expenditures, to support such increases.

(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-18) (from Ch. 24, par. 8-12-18)
Sec. 8-12-18. The financially distressed city shall meet its
debt service obligations as they become due. No other
expenditure shall be made by the city unless it is consistent
with the Financial Plan and Budget in effect.
(Source: P.A. 86-1211.)

(65 ILCS 5/8-12-19) (from Ch. 24, par. 8-12-19)
Sec. 8-12-19. The Authority shall appoint and shall have the
authority to remove a financial management officer. The
financial management officer shall have the responsibility for
advising on the preparation of the Budget and Financial Plan of
the financially distressed city and for monitoring expenditures
of the city. The financial management officer shall be the
authorized signatory for all expenditures made from the
proceeds of any State loans provided for the benefit of the
City pursuant to this Division or any other law of this State,
and for all expenditures made from financial aid provided for
the benefit of the City from Obligations issued by the Illinois
Finance Authority for such purposes in accordance with
applicable provisions of the Illinois Finance Authority Act.
The financial management officer shall be an employee of and
shall report to the Authority, may be granted authority by the
Authority to hire a specific number of employees to assist in
meeting responsibilities, and shall have access to all
financial data and records of the City which he or she deems
necessary for the proper and efficient exercise of such
responsibilities. Neither the Authority or the financial
management officer shall have any authority to hire, fire or
appoint City employees or to manage the day-to-day operations of
the City.
(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-20) (from Ch. 24, par. 8-12-20)
Sec. 8-12-20. Upon direction of the Authority, the
financially distressed city shall reorganize its financial
accounts and its management and budgetary systems in whatever
manner the Authority deems appropriate to achieve greater
financial responsibility and control. The Authority shall not
have the power to affect the taxing authority or to consolidate
or reduce the restricted debt service funds of the City.
(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-21) (from Ch. 24, par. 8-12-21)

Sec. 8-12-21. The Authority in its sole discretion may intercept any payments that the city from time to time is entitled to receive from any funds then or thereafter held by the State Treasurer to the credit of the city or otherwise in the custody of the State Treasurer to the credit of the city, whether in or outside of the State Treasury, upon the occurrence of any of the following:

(1) The financially distressed city's initial Financial Plan and revised Budget required to be submitted to the Authority with respect to the remaining portion of what is the city's current fiscal year at the time this Division first becomes applicable to the city as provided in Section 8-12-4 are not approved by the Authority within 60 days of their submission, and the Authority has theretofore given written warning notice to the corporate authorities of the city, on the 45th day after such initial Financial Plan and revised Budget were submitted, that the same have not yet been approved by the Authority; or

(2) Any Financial Plan or Budget for any subsequent fiscal year is not approved by the Authority by the commencement of the fiscal year to which such Financial Plan or Budget relates, and the Authority has theretofore given written warning notice to the corporate authorities of the city, on the 15th day prior to the commencement of that fiscal year, that the Financial Plan or Budget for such fiscal year has not yet been approved by the Authority; or

(3) The financially distressed city materially violates the provisions of this Division, and the Authority - at least 15 days prior to initiating any action to intercept any payments pursuant to this Section - has given the corporate authorities of the city written notice of the material violation and of the Authority's intention to intercept payments pursuant to this Section upon the expiration of that 15 day notice period unless the city satisfies the Authority within that 15 day period that the material violation cited by the Authority has been corrected; provided that the Authority shall not be required to give any notice to the city or its corporate authorities prior to initiating action to intercept payments pursuant to this Section if such payments are to be intercepted because of the city's failure to pay when due all amounts then due and owing and required to be paid by the city on Obligations issued by the Illinois Finance Authority in connection with the provision of financial aid.
to the city pursuant to this Division and applicable provisions of the Illinois Finance Authority Act.

The intercept shall be made pursuant to written notice given by the Authority to the State Comptroller and State Treasurer, setting forth the amount of the intercept, which may be an aggregate amount not exceeding the sum of the full amount of any outstanding State loans provided for the benefit of the city pursuant to this Division or any other law of this State, plus the full amount of all outstanding Obligations issued by the Illinois Finance Authority on the financially distressed city's behalf in accordance with applicable provisions of the Illinois Finance Authority Act. The State Comptroller and State Treasurer shall pay to the Authority, from such funds as from time to time are legally available therefor, the aggregate amount of the intercept, unless the Authority sooner notifies the State Comptroller and State Treasurer in writing that no further payments that the city is entitled to receive shall be intercepted under the provisions of this Section.

(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-22) (from Ch. 24, par. 8-12-22)

Sec. 8-12-22. (a) After the Authority has certified to the Governor that the financially distressed city has completed 10 successive years of balanced budgets:

(1) The powers and responsibilities granted or imposed upon the Authority and the financially distressed city under Section 8-12-13 and Sections 8-12-15 through 8-12-21 shall not be exercised, except as otherwise provided under subsection (b) of this Section.

(2) The provisions of Section 8-12-14 shall continue in full force and effect. The financially distressed city shall file with the Authority and with the Illinois Finance Authority, not later than 15 days prior to the commencement of the first fiscal year with respect to which the powers and responsibilities granted or imposed under Section 8-12-13 and Sections 8-12-15 through 8-12-21 are not to be exercised, and not later than 15 days prior to the commencement of each fiscal year thereafter, a balanced Budget as adopted by the financially distressed city for such fiscal year. In addition, for each fiscal year with respect to which the powers and responsibilities granted or imposed under Section 8-12-13 and Sections 8-12-15 through 8-12-21 are not to be exercised, the financially distressed city shall file with the Authority and with the Illinois Finance Authority a certified copy of the same audit report.
and supplemental report which are required to be made and filed for such fiscal year by the city under the Illinois Municipal Auditing Law, the filing with the Authority and the Illinois Finance Authority to be made within the time provided for the filing of such audit report and supplemental report with the State Comptroller under Section 8-8-4.

(b) The Authority and the Illinois Finance Authority shall review each Budget, audit report and supplemental report filed with them as provided in paragraph (2) of subsection (a). In the event the financially distressed city fails to file any Budget or certified copy of an audit report or supplemental report as provided in paragraph (2) of subsection (a), or in the event the Illinois Finance Authority, after consultation with the Authority, determines that the Budget adopted by the financially distressed city and filed as provided in paragraph (2) of subsection (a) is not balanced as required under Section 8-12-14, the Illinois Finance Authority shall certify such failure to file, or failure to adopt a Budget which is balanced as required, to the Governor; and concurrent with that certification, the Authority established under Section 8-12-5 and the financially distressed city shall resume the exercise and performance of their respective powers and responsibilities pursuant to each Section of this Division.

(c) When the Illinois Finance Authority determines that all of its Obligations have been fully paid and discharged or otherwise provided for, it shall certify that fact to the Governor; and the Authority established under Section 8-12-5 shall be abolished 30 days after the date of that certification. Upon abolition of the Authority as provided in this subsection, this Division shall have no further force or effect upon the financially distressed city.

(Source: P.A. 93-205, eff. 1-1-04.)

(65 ILCS 5/8-12-23) (from Ch. 24, par. 8-12-23)

Sec. 8-12-23. A financially distressed city to which this Division applies shall remain subject to all other applicable provisions of this Act, except as limited by this Division; provided, however, that in case of a conflict between the provisions of this Division and any other provision of this Act, the provisions of this Division shall control.

(Source: P.A. 86-1211.)
(65 ILCS 5/8-12-24) (from Ch. 24, par. 8-12-24)

Sec. 8-12-24. A home rule unit which is a financially distressed city to which this Division is applicable as provided in Section 8-12-4 may not employ financial or fiscal accounting or budgetary procedures or systems, nor place into effect any Financial Plan or Budget, nor enter into any contract or make any expenditure, nor otherwise conduct its financial and fiscal affairs or take other action in a manner inconsistent with the provisions of this Division, until such time as the powers and responsibilities of the Authority are terminated as provided in Section 8-12-22. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units which are financially distressed cities to which this Division is applicable as provided in Section 8-12-4 of powers and functions exercised by the State.

(Source: P.A. 86-1211.)
APPENDIX B

MICHIGAN STATE LAWS CONCERNING FINANCIALLY DISTRESSED MUNICIPALITIES
American College of Bankruptcy
Seventh Circuit Regional Educational Program:
Past is Prologue

Municipal Insolvency and the
Impact of the “Great Recession”

Excerpts From the Michigan Compiled Statutes

By

Lewis S. Rosenbloom

and

Mohsin N. Khambati

DEWEY & LEBOEUF LLP
Two Prudential Plaza
180 N. Stetson Avenue, Suite 3700
Chicago, IL 60601
312-794-8000

September 20, 2010
Chicago, Illinois
LOCAL GOVERNMENT FISCAL RESPONSIBILITY ACT (EXCERPT)
Act 72 of 1990

AN ACT to provide for review, management, planning, and control of the financial operation of units of local government, including school districts; to provide criteria to be used in determining the financial condition of a local government; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state boards, agencies, and officials, and officials and employees of units of local government; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency financial manager; to require the development of financial plans to regulate expenditures and investments by a local government in a state of financial emergency; to set forth the conditions for termination of a local government financial emergency; and to repeal certain acts and parts of acts.

Article 1
GENERAL PROVISIONS

Section 141.1201  Short Title.
Section 141.1202  Legislative Determinations.

141.1201  Short title.

Sec. 1.

This act shall be known and may be cited as the "local government fiscal responsibility act".


141.1202  Legislative determinations.

Sec. 2.

The legislature hereby determines that the public health and welfare of the citizens of this state would be adversely affected by the insolvency of units of local government, including certain school districts, and that the survival of units of local government is vitally necessary to the interests of the people of this state to provide necessary governmental services. The legislature further determines that it is vitally necessary to protect the credit of the state and its political subdivisions and that it is a valid public purpose for the state to take action and to assist a unit of local government in a fiscal emergency situation to remedy this emergency situation by requiring prudent fiscal management. The legislature, therefore, determines that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Article 2
GOVERNMENTAL PROVISIONS

Section 141.1211 Definitions.

Section 141.1212 Preliminary review by state treasurer; conditions; notice; meeting with local government; informing governor of serious financial problem.

Section 141.1213 Review team; appointment; conditions to undertaking local financial management review; effect of former law.

Section 141.1214 Review team; functions; report to governor; contents; time; copies of report; conclusion.

Section 141.1215 Determination by governor; notice; findings of fact; statement; hearing; confirmation or revocation of determination; report.

Section 141.1216 Failure to abide by provisions of consent agreement.

Section 141.1217 Appeal; setting aside determination.

Section 141.1218 Assigning responsibility for managing local government financial emergency; appointment, qualifications, and term of emergency financial manager; compensation and expenses; staff and professional assistance.

Section 141.1219 Orders.

Section 141.1220 Written Financial Plan.

Section 141.1221 Additional actions by emergency financial manager.

Section 141.1222 Authorization to proceed under federal law; local government as debtor; notice.

Section 141.1223 Liability.

Section 141.1224 Failure of elected officials to provide assistance and information as gross neglect of duty; report; review and hearing; removal from office; filling vacancy.

Section 141.1225 Revoking declaration of financial emergency; recommendation.

Section 141.1226 Power to impose taxes.
141.1211  Definitions.

Sec. 11.

As used in this article:

(a) "Chief administrative officer" means any of the following:

   (i) The manager of a village or, if a village does not employ a manager, the
       president of the village.

   (ii) The city manager of a city or, if a city does not employ a city manager, the
        mayor of the city.

   (iii) The manager of a township, the superintendent of a charter township, or if the
        township does not employ a manager or superintendent, the supervisor of the township.

   (iv) The elected county executive or appointed county manager of a county; or if
        the county has not adopted the provisions of either Act No. 139 of the Public Acts of
        1973, being sections 45.551 to 45.573 of the Michigan Compiled Laws, or Act No. 293
        of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled
        Laws, the chairperson of the county board of commissioners of the county.

   (v) The chief operating officer of an authority or a public utility owned by a city,
       village, township, or county.

(b) "Emergency financial manager" means the emergency financial manager appointed
    under section 18.

(c) "Local government" means a city, a village, a township, a county, an authority
    established by law, or a public utility owned by a city, village, township, or county.

(d) "Review team" means the review team designated under section 13.


141.1212 Preliminary review by state treasurer; conditions; notice; meeting
with local government; informing governor of serious financial problem.

Sec. 12.

(1) The state treasurer shall conduct a preliminary review to determine the existence of a
local government financial problem if 1 or more of the following occur:
(a) The governing body or the chief administrative officer of a local government requests a preliminary review under this article. The request shall be in writing and shall identify the existing financial conditions that make the request necessary.

(b) The state treasurer receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of $10,000.00 or 1% of the annual general fund budget of the local government, provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state treasurer of his or her intention to invoke this provision.

(c) The state treasurer receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the jurisdiction of the local government equal to not less than 10% of the total vote cast for all candidates for governor within the jurisdiction of the local government at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.

(d) The state treasurer receives written notification from the trustee, actuary, or at least 10% of the beneficiaries of a local government pension fund alleging that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.

(e) The state treasurer receives written notification that employees of the local government have not been paid and it has been at least 7 days after the scheduled date of payment.

(f) The state treasurer receives written notification from a trustee, paying agent, or bondholder of a default in a bond payment or a violation of 1 or more bond covenants.

(g) The state treasurer receives a resolution from either the senate or the house of representatives requesting a preliminary review under this section.

(h) The local government has violated the conditions of an order issued pursuant to, or of a requirement of, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(i) The local government has violated the conditions of an order issued in the effectuation of the purposes of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, by the local emergency financial assistance loan board created by the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(j) The local government has violated the requirements of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440, and the state treasurer has forwarded a report of this violation to the attorney general.
(k) The local government has failed to comply with the requirements of section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, for filing or instituting a deficit recovery plan.

(l) The local government fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the state treasurer and is required under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55.

(m) The local government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

(n) A court has ordered an additional tax levy without the prior approval of the governing body of the local government.

(2) In conducting a preliminary review under this section, the state treasurer shall give the local government specific written notification of the review, and the state treasurer shall meet with the local government. At this meeting, the state treasurer shall receive, discuss, and consider information provided by the local government concerning the existence of and seriousness of financial conditions within the local government.

(3) When the state treasurer conducts a preliminary review under this section, he or she shall inform the governor within 30 days after beginning the preliminary review whether or not his or her investigation has determined that a serious financial problem may exist because 1 or more conditions indicative of a serious financial problem exist within the local government.


### 141.1213 Review team; appointment; conditions to undertaking local financial management review; effect of former law.

Sec. 13.

(1) The governor shall appoint a review team of the state treasurer, the auditor general, a nominee of the senate majority leader, a nominee of the speaker of the house of representatives, and other state officials or other persons with relevant professional experience to serve as a review team to undertake a local financial management review if 1 or more of the following occur:

(a) The governing body of a local government, by resolution, requests assistance under this article in meeting the ordinary needs of government. The resolution shall
identify the existing financial conditions that make the request for assistance necessary. The resolution under this subsection shall be subject to the legislative vote requirement and the executive approval requirement applicable to enactment of an ordinance by the local government.

(b) The governor has been informed by the state treasurer pursuant to section 12 that he or she has conducted a preliminary review of a local government financial situation and has determined that 1 or more conditions indicative of a serious financial problem may exist within the local government.

(2) A review team appointed under the local government fiscal responsibility act, former Act No. 101 of the Public Acts of 1988, and serving on the effective date of this act shall continue under this act to fulfill their powers and duties. All proceedings and actions taken by the governor, the state treasurer, or a review team under former Act No. 101 of the Public Acts of 1988 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former Act No. 101 of the Public Acts of 1988 is ratified and is binding and enforceable under this act.


141.1214 Review team; functions; report to governor; contents; time; copies of report; conclusion.

Sec. 14.

(1) The review team appointed by the governor shall have full power in its review to perform all of the following functions:

(a) Examine the books and records of the local government.

(b) Utilize the services of other state agencies and employees.

(c) Sign a consent agreement with the chief administrative officer of the local government. The agreement may provide for remedial measures considered necessary including a long-range financial recovery plan requiring specific local actions. The agreement may utilize state financial management and technical assistance as necessary in order to alleviate the local financial problem. The agreement may also provide for periodic fiscal status reports to the state treasurer. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government.

(2) In the report to the governor under subsection (3) on the financial conditions of the local government, the review team shall inform the governor if 1 or more of the following
conditions indicative of a serious financial problem exist, or have occurred, or are likely to exist or occur, if remedial action is not taken:

(a) A default in the payment of principal or interest upon bonded obligations or notes for which no funds or insufficient funds are on hand and segregated in a special trust fund.

(b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:

(i) Taxes withheld on the income of employees.

(ii) Taxes collected by the government as agent for another governmental unit, school district, or other entity or taxing authority.

(iii) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 30 days or more to pay wages and salaries or other compensation owed to employees or retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state treasurer's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 10% of the budgeted revenues for the general fund.

(3) The review team shall report its findings to the governor within 60 days after their appointment, or earlier if required by the governor. Upon request, the governor may grant a 30-day extension of this time limit. A copy of the report to the governor shall be sent to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, and the senate majority leader. The review team shall include 1 of the following conclusions in its report:

(a) A serious financial problem does not exist in the local government.

(b) A serious financial problem exists in the local government, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to section 14(1)(c).

(c) A local government financial emergency exists because no satisfactory plan exists to resolve a serious financial problem.
141.1215 Determination by governor; notice; findings of fact; statement; hearing; confirmation or revocation of determination; report.

Sec. 15.

(1) Within 30 days after receipt of the report provided for in section 14, the governor shall make 1 of the following determinations:

   (a) A serious financial problem does not exist in the local government.

   (b) A serious financial problem exists in the local government, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to section 14(1)(c).

   (c) A local government financial emergency exists because no satisfactory plan to resolve a serious financial problem exists.

(2) If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local unit with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the factual findings, and notice that the chief administrative officer or the governing body of the local government has 10 days after the date of this notification to request a hearing conducted by the governor or the governor's designate. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor shall either confirm or revoke, in writing, the determination of the existence of a local financial emergency. If confirmed, the governor shall provide a written report of the findings of fact of the continuing or newly developed conditions or events providing a basis for the confirmation of a local financial emergency, and a concise and explicit statement of the underlying facts supporting these factual findings.


141.1216 Failure to abide by provisions of consent agreement.

Sec. 16.

If, at any time following determination by the governor that a serious financial problem exists under section 15(1)(b), the state treasurer or the review team informs the governor
that the local government is not abiding by the provisions of a consent agreement, the
governor shall determine that a financial emergency exists in the local government, and
section 15(2) and section 18 shall then apply to that local government.


141.1217 Appeal; setting aside determination.

Sec. 17.

A local government for which a financial emergency determination pursuant to section 15
or 16 has been confirmed to exist by the governor may appeal this determination to the
circuit court for the county in which the local government is located or to the circuit court
for the county of Ingham. The court shall not set aside a determination of the governor
unless it finds that the determination is either of the following:

(a) Not supported by competent, material, and substantial evidence on the whole
record.

(b) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of
discretion.


141.1218 Assigning responsibility for managing local government financial
emergency; appointment, qualifications, and term of emergency financial manager;
compensation and expenses; staff and professional assistance.

Sec. 18.

(1) If the governor determines that a financial emergency exists under section 15, the
governor shall assign the responsibility for managing the local government financial
emergency to the local emergency financial assistance loan board created under the
egency municipal loan act, Act No. 243 of the Public Acts of 1980, being sections
141.931 to 141.942 of the Michigan Compiled Laws. The local emergency financial
assistance loan board shall appoint an emergency financial manager. The emergency
financial manager shall be chosen solely on the basis of his or her competence and shall
not have been either an elected or appointed official or employee of the local government
for which appointed for not less than 5 years before the appointment. The emergency
financial manager need not be a resident of the local government for which he or she is
appointed. The emergency financial manager shall serve at the pleasure of the local
egency financial assistance loan board. The emergency financial manager shall be
entitled to compensation and reimbursement for actual and necessary expenses from the local government as approved by the local emergency financial assistance loan board. In addition to staff otherwise authorized by law, with the approval of the local emergency financial assistance loan board, the emergency financial manager may appoint additional staff and secure professional assistance considered necessary to implement this article.

(2) An emergency financial manager appointed under the local government fiscal responsibility act, former Act No. 101 of the Public Acts of 1988, and serving on the effective date of this act, except as provided in subsection (1), shall continue under this act to fulfill his or her powers and duties.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

### 141.1219 Orders.

Sec. 19.

The emergency financial manager shall issue to the appropriate officials or employees of the local government the orders the manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely and satisfactory implementation of a financial plan developed pursuant to section 20. An order issued under this section is binding on the local officials or employees to whom it is issued.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

### 141.1220 Written financial plan.

Sec. 20.

(1) In consultation with the local government, the emergency financial manager shall develop, and may from time to time amend, a written financial plan for the local government. The financial plan shall provide for both of the following:

   a) Conducting the operations of the local government within the resources available according to the emergency financial manager's revenue estimate.

   b) The payment in full of the scheduled debt service requirements on all bonds and notes of the local government and all other uncontested legal obligations.

(2) After the initial development of a financial plan, the plan shall be regularly reexamined by the emergency financial manager in consultation with the local government, and if the emergency financial manager reduces his or her revenue
estimates, the emergency financial manager shall modify the financial plan to conform to revised revenue estimates.

(3) The financial plan shall be in a form and shall contain that information for each year during which year the financial plan is in effect that the local emergency financial manager specifies.

(4) The emergency financial manager shall make public the plan or modified plan. This subsection shall not be construed to mean that the emergency financial manager must receive public approval before he or she implements the financial plan or any modification of the plan.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

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141.1221 **Additional actions by emergency financial manager.**

Sec. 21.

(1) An emergency financial manager may take 1 or more of the following additional actions with respect to a unit of local government in which a financial emergency has been determined to exist:

   (a) Analyze factors and circumstances contributing to the financial condition of the unit of local government and recommend steps to be taken to correct the condition.

   (b) Amend, revise, approve, or disapprove the budget of the unit of local government, and limit the total amount appropriated or expended during the balance of the financial emergency.

   (c) Require and approve or disapprove, or amend or revise a plan for paying all outstanding obligations of the unit of local government.

   (d) Require and prescribe the form of special reports to be made by the finance officer of the unit of local government to its governing body, the creditors of the unit of local government, the emergency financial manager, or the public.

   (e) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the unit of local government.
(f) 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.

(g) Review payrolls or other claims against the unit of local government before payment.

(h) Exercise all of the authority of the unit of local government to renegotiate existing labor contracts and act as an agent of the unit of local government in collective bargaining with employees or representatives and approve any contract or agreement.

(i) Notwithstanding the provisions of any charter to the contrary, consolidate departments of the unit of local government or transfer functions from 1 department to another and to appoint, supervise, and, at his or her discretion, remove heads of departments other than elected officials, the clerk of the unit of local government, and any ombudsman position in the unit of local government.

(j) Employ or contract for, at the expense of the unit of local government and with the approval of the local emergency financial assistance loan board, auditors and other technical personnel considered necessary to implement this article.

(k) Require compliance with the orders of the emergency financial manager by court action if necessary.

(l) Except as restricted by charter or otherwise, sell or otherwise use the assets of the unit of local government to meet past or current obligations, provided the use of assets for this purpose does not endanger the public health, safety, or welfare of residents of the unit of local government.

(m) Apply for a loan from the state on behalf of the unit of local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, in a sufficient amount to pay the expenses of the emergency financial manager and for other lawful purposes.

(n) Approve or disapprove of the issuance of obligations of the unit of local government on behalf of the municipality, subject to the conditions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, and the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(o) Enter into agreements with other units of local government for the provision of services.

(p) Exercise the authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions affecting the financial condition of the unit of local government as provided in the following acts:
(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(iv) 1851 PA 156, MCL 46.1 to 46.32.

(v) 1966 PA 293, MCL 45.501 to 45.521.

(vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

(vii) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

(q) Reduce, suspend, or eliminate the salary, or other compensation of the chief administrative officer and members of the governing body of the unit of local government during the financial emergency. This subdivision does not authorize an emergency financial manager to impair vested retirement benefits. If an emergency financial manager has reduced, suspended, or eliminated the salary or other compensation of the chief administrative officer and members of the governing body of a unit of local government before the effective date of the amendatory act that added this subdivision, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of the amendatory act that added this subdivision.

(2) If a financial emergency exists under the local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, the emergency financial manager shall make a determination as to whether possible criminal conduct contributed to the financial emergency. If the manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation. The determination required under this subsection shall be made by 1 of the following dates, whichever is later:

(a) Within 90 days after the effective date of the amendatory act that added this subsection.

(b) Within 180 days after the date the emergency financial manager is appointed.

(3) Not later than 90 days after the completion of the emergency financial manager's term, the governing body of the unit of local government shall review any ordinance implemented by the emergency financial manager during his or her term, except any ordinance enacted to assure the payment of principal and interest on bonds.

141.1222 Authorization to proceed under federal law; local government as debtor; notice.

Sec. 22.

(1) After giving written notice to the local emergency financial assistance loan board, the emergency financial manager may authorize the local government to proceed under title 11 of the United States Code, 11 U.S.C. 101 to 1330, unless this authorization is disapproved by the local emergency financial assistance loan board within 60 days after the notice has been received by the board. This section empowers the local government for which an emergency financial manager has been appointed to become a debtor under title 11 of the United States Code as required by section 109 of title 11 of the United States Code, 11 U.S.C. 109.

(2) The notice to the local emergency financial assistance loan board under subsection (1) shall include a determination by the emergency financial manager that no feasible financial plan can be adopted that can satisfactorily resolve the financial emergency in a timely manner, or a determination by the emergency financial manager that an adopted financial plan, in effect for at least 180 days, cannot be implemented, as written or as it might be amended, in a manner that can satisfactorily resolve the financial emergency in a timely manner.


141.1223 Liability.

Sec. 23.

The state, the members of the local emergency financial assistance loan board, and the emergency financial manager are not liable for any obligation of or claim against a local government resulting from actions taken in accordance with the terms of this article.


141.1224 Failure of elected officials to provide assistance and information as gross neglect of duty; report; review and hearing; removal from office; filling vacancy.

Sec. 24.

Elected officials of a local government shall provide the assistance and information necessary and properly requested by a review team, the local emergency financial
assistance loan board, or the emergency financial manager in the effectuation of their duties and powers and of the purposes of this article. Failure of an elected official of a local government to abide by this article shall be considered gross neglect of duty, which the emergency financial manager shall report to the local emergency financial assistance loan board. Following review and a hearing with the local government elected official, the local emergency financial assistance loan board may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

141.1225  Revoking declaration of financial emergency; recommendation.

Sec. 25.

The governor may determine that the conditions for revoking the declaration of a financial emergency have been met after receiving a recommendation from the local emergency financial assistance loan board.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

141.1226  Power to impose taxes.

Sec. 26.

This act shall not be construed to give the emergency financial manager or the local financial assistance loan board the power to impose taxes, over and above those already authorized, without the approval at an election of a majority of the qualified electors voting on the question.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990
Article 3
SCHOOL DISTRICT PROVISIONS

Section 141.1231 Definitions

Section 141.1232 Responsibility for monitoring and reviewing financial condition of school districts.

Section 141.1233 Determination of serious financial problem; conditions; notice.

Section 141.1234 Review team; appointment; composition; purpose; conditions; functions; report of findings; time; copies of report; conclusion.

Section 141.1235 Determination by superintendent of public instruction; notice; findings of fact; statement; hearing; confirmation or revocation of determination; report.

Section 141.1236 Failure to abide by consent agreement.

Section 141.1237 Appeal; setting aside determination.

Section 141.1238 Emergency financial manager; nominees; appointment, qualifications, and term; contract; compensation and expenses; staff and professional assistance.

Section 141.1239 Orders.

Section 141.1240 Written financial plan.

Section 141.1241 Control over fiscal matters; fiscal decisions; actions by emergency financial manager; authorization to proceed under federal law; school district as debtor.

Section 141.1242 Revoking declaration of financial emergency; recommendation; resolution.

Section 141.1243 Assistance and information; compliance.

Section 141.1244 Liability.
141.1231  Definitions.

Sec. 31.

As used in this article:

(a) "Emergency financial manager" means the emergency financial manager appointed under section 34.

(b) "Review team" means the review team designated under section 34.

(c) "School board" means the governing body of a school district.

(d) "School district" or "district" means a local school district established under part 2, 3, 4, 5, or 6 of the school code of 1976, being sections 380.71 to 380.485 of the Michigan Compiled Laws, or a local act school district as defined in section 5 of the school code of 1976, being section 380.5 of the Michigan Compiled Laws.

(e) "School fiscal year" means a fiscal year that commences July 1 and continues through June 30.

(f) "State board" means the state board of education.


141.1232  Responsibility for monitoring and reviewing financial condition of school districts.

Sec. 32.

The superintendent of public instruction is responsible for monitoring and periodically reviewing the financial condition of school districts to ensure their compliance with state laws regulating budgetary and accounting practices and their financial soundness.

141.1233 Determination of serious financial problem; conditions; notice.

Sec. 33.

(1) The superintendent of public instruction may determine that a school district has a serious financial problem if he or she finds that 1 or more of the following conditions exist:

(a) The school district ended the most recently completed school fiscal year with a deficit in 1 or more of its funds and the superintendent of public instruction has not approved a deficit elimination plan within 3 months after the district's deadline for submission of its annual financial statement.

(b) The school board of the school district adopts a resolution declaring that the school district is in a financial emergency.

(c) The superintendent of public instruction receives a petition containing specific allegations of school district financial distress signed by a number of registered electors residing within the school district equal to not less than 10% of the total vote cast for all candidates for governor within the school district at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the school district.

(d) The superintendent of public instruction receives a written request, from a creditor of the school district with an undisputed claim against the school district, to find the school district has a serious financial problem. The superintendent of public instruction may honor this request only if the claim remains unpaid 6 months after its due date, the claim exceeds the greater of $10,000.00 or 1% of the annual general fund budget of the school district, and the creditor notifies the school district in writing at least 30 days before he or she requests the superintendent of public instruction to find that the school district has a serious financial problem.

(e) The superintendent of public instruction receives written notification from a trustee, paying agent, note or bondholder, or the state treasurer of a violation of 1 or more of the school district's bond or note covenants.

(f) The superintendent of public instruction receives a resolution from either the senate or the house of representatives requesting a review under this section of the financial condition of the school district.

(g) The school district is in violation of the conditions of an order issued pursuant to, or as a requirement of, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.
(h) The school district is in violation of the requirements of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440.

(i) The school district fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the state board and is required under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1772.

(j) A court has ordered an additional tax levy without the prior approval of the school board of the school district.

(2) Upon determining that a school district has a serious financial problem, the superintendent of public instruction shall notify the governor and the state board of that determination and of the basis for and findings supporting the determination.


### 141.1234 Review team; appointment; composition; purpose; conditions; functions; report of findings; time; copies of report; conclusion.

Sec. 34.

(1) Within 30 days after an occurrence described in this subsection, the governor shall appoint a review team composed of the superintendent of public instruction, the state treasurer, the director of the department of management and budget, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives to review the financial condition of a school district if 1 or more of the following occur:

(a) The governor is informed by the superintendent of public instruction pursuant to section 33(2) that he or she has determined that the school district has a serious financial problem.

(b) The school district is in default in the payment of interest on or principal of any obligation of the school district.

(c) The school district fails to pay its employees within 5 days of any regularly scheduled payday.

(d) The school district fails to make any contribution required by a pension, retirement, or benefit plan in accordance with state law.

(e) The superintendent of public instruction determines that the school district has failed to comply substantively with the terms of an approved deficit elimination plan
required under section 102 of the state school aid act of 1979, Act No. 94 of the Public Acts of 1979, being section 388.1702 of the Michigan Compiled Laws.

(f) The state treasurer notifies the governor that the appointment of a review team is necessary to protect the credit of the school district or the state, or both.

(2) The review team appointed by the governor pursuant to subsection (1) shall have full power in its review to perform all of the following functions:

(a) Examine the books and records of the school district.

(b) Utilize the services of other state agencies and employees and employ professionals necessary to assist in its duties.

(c) Sign a consent agreement with the superintendent of the school district. The agreement may provide for remedial measures considered necessary, including, but not limited to, a long-range financial recovery plan requiring specific actions. The agreement may utilize state financial management and technical assistance as necessary in order to alleviate the financial problem of the school district. The agreement may also provide for periodic fiscal status reports to the superintendent of public instruction. Before the consent agreement becomes effective, the school board of the school district, by a majority vote of the total number of members authorized by law to serve on the board, shall approve the agreement.

(3) The review team shall report its findings to the governor and the state board within 30 days after its appointment, or earlier if required by the governor. Upon request, the governor may grant 1 60-day extension of this time limit. The review team shall send a copy of its report to the superintendent of public instruction, the school board of the school district, the senate majority leader, and the speaker of the house of representatives. The review team shall include 1 of the following conclusions in its report:

(a) The school district does not have a serious financial problem.

(b) The school district does have a serious financial problem, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to subsection (2)(c).

(c) The school district has a financial emergency because a consent agreement containing a plan to resolve a serious financial problem within the school district has not been adopted.

141.1235 Determination by superintendent of public instruction; notice; findings of fact; statement; hearing; confirmation or revocation of determination; report.

Sec. 35.

(1) Within 30 days after the state board receives the review team's report required by section 34(3), the superintendent of public instruction shall make 1 of the following determinations:

(a) The school district does not have a serious financial problem.

(b) The school district does have a serious financial problem, but a consent agreement containing a plan to resolve the problem has been adopted pursuant to section 34(2)(c).

(c) The school district has a financial emergency because a consent agreement containing a plan to resolve a serious financial problem within the school district has not been adopted.

(2) If the superintendent of public instruction determines pursuant to subsection (1) that a financial emergency exists, the superintendent of public instruction shall provide the school board of the school district with written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the findings of fact, and notice that the school board of the school district has 10 days after the date of this notification to request a hearing conducted by the superintendent of public instruction or his or her designee to contest the superintendent's determination. After the hearing, or if no hearing is requested, after the expiration of the deadline by which a hearing may be requested, the superintendent of public instruction shall either confirm or revoke, in writing, the determination that the school district has a financial emergency. If the determination is confirmed, the superintendent of public instruction shall provide a written report to the school board of the school district of the findings of fact of the continuing or newly developed conditions or events that provide the basis for the confirmation of the determination, and a concise and explicit statement of the underlying facts supporting these findings of fact.


141.1236 Failure to abide by consent agreement.

Sec. 36.
If, at any time following a determination by the superintendent of public instruction under section 35(1)(b) that the school district has a financial emergency, the superintendent of public instruction informs the governor and the state board that the school district is not abiding by the consent agreement, section 35(2) and section 38 shall then apply to that school district.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

141.1237 **Appeal; setting aside determination.**

Sec. 37.

The board of a school district that the superintendent of public instruction has determined has a financial emergency may appeal this determination to the circuit court for a county in which the school district is located. The court shall not set aside a determination of the superintendent of public instruction unless it finds that the determination is either 1 of the following:

(a) Not supported by competent, material, and substantial evidence on the whole record.

(b) Arbitrary, capricious, or clearly an abuse of unwarranted exercise of discretion.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

141.1238 **Emergency financial manager; nominees; appointment, qualifications, and term; contract; compensation and expenses; staff and professional assistance.**

Sec. 38.

(1) If the superintendent of public instruction determines under section 35 or 36 that a school district has a financial emergency, the superintendent of public instruction, within 30 days after that determination, shall submit to the state board the names of nominees who shall be considered for appointment to serve as an emergency financial manager for the school district. From the list of nominees submitted to the state board, the state board shall submit to the governor the names of not more than 3 nominees who shall be considered for appointment to serve as an emergency financial manager for the school district. From the list of nominees submitted to the governor, the governor shall appoint, with the advice and consent of the senate, an emergency financial manager for the school district who shall hold office for a term fixed by the governor, but not to exceed 1 year.
The appointment shall be by written contract and may be renewed on an annual basis for not more than 1 year.

(2) An emergency financial manager appointed under this article shall be chosen solely on the basis of his or her competence in fiscal matters and shall not have been either an elected or appointed official or employee of the school district for which he or she is appointed for not less than 5 years before the appointment. The emergency financial manager shall not be the superintendent of public instruction. The emergency financial manager need not be a resident of the school district for which he or she is appointed.

(3) Unless the legislature provides special funding, an emergency financial manager shall receive compensation and reimbursement for actual and necessary expenses from the school district as approved by the superintendent of public instruction. In addition to staff otherwise authorized by law, with the approval of the superintendent of public instruction, the emergency financial manager may appoint additional staff and secure professional assistance considered necessary to implement this article.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

### 141.1239 Orders.

Sec. 39.

The emergency financial manager shall issue to the appropriate officials or employees of the school district the orders that he or she considers necessary to accomplish the purposes of this article, including, but not limited to, orders for the timely and satisfactory implementation of a financial plan developed pursuant to section 40. An order issued under this section is binding on the school district officials or employees to whom it is issued.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

### 141.1240 Written financial plan.

Sec. 40.

(1) In consultation with the school board, the emergency financial manager shall develop, and may from time to time amend, a written financial plan for the school district. The financial plan shall provide for both of the following:

(a) Conducting the operations of the school district within the resources available according to the emergency financial manager's revenue estimate.
(b) The payment in full of the scheduled debt service requirements on all bonds and notes of the school district and all other uncontested legal obligations.

(2) After the initial development of the financial plan required by subsection (1), the emergency financial manager in consultation with the school board shall regularly reexamine the plan, and if the emergency financial manager reduces his or her revenue estimates, he or she shall modify the financial plan to conform to revised revenue estimates.

(3) The financial plan shall be in a form, and shall contain that information for each year the plan is in effect, that the school district's emergency financial manager specifies.

(4) The emergency financial manager shall make public the plan or modified plan. This subsection shall not be construed to mean that the emergency financial manager must receive public approval before he or she implements the financial plan or any modification to the plan.


141.1241 Control over fiscal matters; fiscal decisions; actions by emergency financial manager; authorization to proceed under federal law; school district as debtor.

Sec. 41.

(1) Upon appointment under section 38, an emergency financial manager shall immediately assume control over all fiscal matters of, and make all fiscal decisions for, the school district for which he or she is appointed.

(2) In implementing this article and performing his or her functions under this article, an emergency financial manager may take 1 or more of the following actions:

(a) Examine the books and records of the school district.

(b) Review payrolls or other claims against the school district before payment.

(c) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.

(d) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.
(c) Adopt a final budget for the next school fiscal year and amend any adopted budget of the school district.

(f) Act as an agent of the school district in collective bargaining and, to the extent possible under state labor law, renegotiate existing and negotiate new labor agreements.

(g) Analyze factors contributing to the financial condition of the school district and recommend to the legislature steps that need to be taken to improve the district's financial condition.

(h) Require compliance with his or her orders, by court action if necessary.

(i) Require the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the school district.

(j) Recommend to the governor, the legislature, and the state board that the school district be reorganized with 1 or more contiguous school districts.

(k) Consolidate divisions or transfer functions from 1 division to another division within the school district and appoint, supervise, and, at his or her discretion, remove, within legal limitations, heads of divisions of the school district.

(l) Create a new position or approve or disapprove the creation of any new position or the filling of a vacancy in a permanent position by an appointing authority.

(m) Seek approval from the state board for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.

(n) Employ or contract for, at the expense of the school district and with the approval of the superintendent of public instruction, auditors and other technical personnel considered necessary to implement this article.

(o) Reduce expenditures in the budget of the school district.

(p) Borrow money on behalf of the school district.

(q) Approve or disapprove of the issuance of obligations of the school district.

(r) Order, as necessary, 1 or more school millage elections for the school district consistent with the school code of 1976, the Michigan election law, Act No. 116 of the Public Acts of 1954, being sections 168.1 to 168.992 of the Michigan Compiled Laws, and sections 6 and 25 through 34 of article IX of the state constitution of 1963.
(s) Sell or otherwise use the assets of the school district to meet past or current obligations, provided the use of assets for this purpose does not impair the education of the pupils of the district.

(t) Exercise the authority and responsibilities affecting the financial condition of the school district that are prescribed by law to the school board and superintendent of the school district.

(3) After giving written notice to the superintendent of public instruction, the emergency financial manager may authorize the school district to proceed under chapter 9 of title 11 of the United States Code, 11 U.S.C. 901 to 904, 921 to 932, and 941 to 946. This section empowers the school district for which an emergency financial manager has been appointed to become a debtor under chapter 9 of title 11 of the United States Code.


141.1242 Revoking declaration of financial emergency; recommendation; resolution.

Sec. 42.

The superintendent of public instruction may determine and certify that the conditions for revoking the declaration of a financial emergency have been met after receiving a recommendation from the emergency financial manager. The emergency financial manager may condition his or her recommendation to the superintendent of public instruction upon the school board's adoption of a resolution that will ensure the adoption of a balanced budget, elimination of any remaining accumulated deficit, and the prevention of additional negative fund balances.


141.1243 Assistance and information; compliance.

Sec. 43.

The superintendent of public instruction; the department of education; and the school board, administrators, and employees of a school district that has a financial emergency shall provide the assistance and information considered necessary and requested by the emergency financial manager in the effectuation of his or her powers and duties under this article. The school board shall comply with orders issued by the emergency financial manager and may take those actions necessary to comply with this article and as may be
prescribed by the review team, the superintendent of public instruction, or the emergency financial manager in implementing this article.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990

### 141.1244 Liability.

Sec. 44.

The state, the superintendent of public instruction, and an emergency financial manager are not liable for any obligation of or claim against a school district resulting from actions taken in accordance with this article.

**History:** 1990, Act 72, Imd. Eff. May 15, 1990
Municipal Insolvency and the Impact of the “Great Recession”

California State Assembly Bill 155: the Legislative Response to Vallejo

by

Marc A. Levinson
Partner
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall
Suite 3000
Sacramento, CA 95814-4497
916.329.4910

and

Dean C. Gramlich
Counsel
DEWEY & LEBOEUF
180 N. Stetson Avenue
Suite 3700
Chicago, Illinois 60601
312.794.8000

September 20, 2010
The chapter 9 filing by the City of Vallejo prompted the California Professional Firefighters and other labor organizations to promote legislation limiting the eligibility of California municipalities for bankruptcy relief. The legislation, Assembly Bill 155 (“AB 155”) died on August 31, 2010, the final night of the 2010 legislative session. The opposition of the Governor to the legislation may have played a role in its not having been called for a vote during the waning hours of the session. The bill, or some variation thereof, may well be introduced during the next session, at which time California will have a new Governor. Whether or not the bill will rise from the ashes, though, AB 155 and the various modifications it underwent during the session, provide insight into the politically-charged environment to which formal municipality reorganizations are subject.

* * *

The bill was introduced following the affirmance by the Bankruptcy Appellate Panel of the Ninth Circuit of the bankruptcy court ruling that Vallejo was eligible for chapter 9 relief.1 The pace exacerbated following the bankruptcy court’s decision in *Vallejo* determining that rejection of the City’s collective bargaining agreements (“CBA’s”) would be determined by Bankruptcy Code § 365 and the Supreme Court’s *Bildisco* decision2 rather than by state law, as argued by three of the City’s labor organizations.3

Assembly member Tony Mendoza (D-Artesia) introduced the original version of AB 155 in 2009. In its original iteration, no California municipality could have sought

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1 *In re City of Vallejo*, 408 B.R. 280 (B.A.P. 9th Cir. 2009).
chapter 9 relief without first obtaining the approval of the California Debt and Investment Advisory Commission (“CDIAC”). Later, the bill was amended to permit the local governing body to override CDIAC’s decision. (See Addendum A.) The amended version required municipalities to submit substantial financial and other information to CDIAC. The CDIAC staff would then proceed with an evaluation. At its conclusion, the CDIAC would either approve the municipality’s request or proceed with a further evaluation (including a hearing) and publish a decision. In the event that the CDIAC denied the request, the municipality’s governing body could resubmit a new application (addressing the deficiencies in the old) or override the CDIAC’s denial. However, any override would require yet another hearing at the local government level, as well as findings as to the necessity of overriding the CDIAC’s determination that chapter 9 relief was not warranted. AB 155 did not address what the financially distressed entity was to do during this series of protracted legal proceedings, but it did require the municipality to pay the costs of the CDIAC inquiry and hearing in the event that CDIAC decided that chapter 9 was not justified.

The California League of Cities, the California Chamber of Commerce, countless local governments as well as the Howard Jarvis Taxpayers Organization and the California Public Securities Association opposed AB 155 because it provided labor organizations with too much leverage over financially-strapped cities and counties. In

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4 California currently places no restriction on a municipalities’ right to file a bankruptcy case. Cal. Gov’t Code § 53760. See also 11 U.S.C. § 109(c) (2) (state law must specifically authorize municipalities to file chapter 9 cases before the municipality is eligible for chapter 9 relief). However, even if state law authorizes a filing, the municipality must satisfy several other eligibility criteria before the bankruptcy court may enter an order for relief. See, e.g., 11 U.S.C. §§ 109(c) (3) (proof of insolvency) and 109(c) (5) (good faith).

part due to such opposition, too many editorials that lambasted the bill and to the
Governor’s opposition to the bill, it was placed on the inactive list early in the summer of
2010.

However, on August 23, 2010, a week and a day before the end of the legislative
session, AB 155 was removed from the inactive list and, along with amendments
designed to make AB 155 more acceptable to objectors. However, the new version still
provided for approval of CDIAC, subject to override. The new wrinkle was to allow the
municipality the alternative of requesting that the State Auditor conduct an audit of the
municipality to see if the “last resort” of chapter 9 needed to be invoked. (See Attached
Addendum B.) The amended AB 155 still required the municipality to submit detailed
financial information and options it had considered to chapter 9 relief. The State Auditor
would have been required to make the audit a high priority so as to alleviate concerns
over protracted litigation, but no filing could occur until the Auditor made public findings
of its work.  

The last minute “audit alternative” version also met with criticism. In addition to
politicizing the financial restructuring process by retaining the CDIAC eligibility prong,
and in addition to not setting forth any timetable for the State Auditor’s review, much of
the inquiry by CDIAC or the State Auditor required by AB 155 would have to be re-done
in the bankruptcy court during the course of any objection to eligibility based on solvency
and/or good faith. And, of course, no court has addressed the evidentiary value and/or
preclusive effect, if any, on the bankruptcy court of factual findings made by the CDIAC

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6 A later amendment (introduced on August 31, 2010) alleviated a defect in prior drafts by providing a
source of state funding for the audit.

7 See Bankruptcy Bill Must Die, Woodland Daily Democrat (August 26, 2010), www.daileydemocrat.com/
editorial/ci_15899278; Editorial: Bad Municipal Bankruptcy Bill Still Alive, Contra Costa Times (August
or the State Auditor, leaving the possibility if no probability of a retrial of the same issues.

In short, while AB 155 did not pass prior to the end of the legislative session, it (or some new form of obstacle) may well be re-born in the future.
ASSEMBLY BILL No. 155

Introduced by Assembly Member Mendoza
(Principal coauthor: Assembly Member Torrico)
(Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes, Furutani, Lieu, Ma, Nava, John A. Perez, V. Manuel Perez, Price, and Yamada)
(Coauthors: Senators DeSaulnier, Liu, and Wiggins)

January 26, 2009

An act to amend Section 53760 of, and to add Sections 8860, 8861, 8862, 8863, 8864, and 8865 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.
Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.
This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, except as specified.


The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Constitution and current statutory law provide for a continuity and interdependence between state and local government entities. Seeking financial relief through the provisions of Chapter 9 (commencing with Section 901 of Title 11) of the United States Code imposes costs on a municipality, potentially exceeding $1 million. It can reduce service levels to the taxpayers and residents of a municipality. In some circumstances, it can have major short- and long-term fiscal consequences to the municipality, the surrounding local public entities, and the state. In 2009, bond counsel stated that “filing for bankruptcy protection under Chapter 9 should be considered a last resort, to be effected only after every effort has been made to avoid it.”

(b) The Legislature has an interest in monitoring the conditions under which local entities seek Chapter 9 protection. The relief provided through the federal courts can affect state and municipal government service levels, debt, and contracts. The Legislature also has a strong interest in ensuring adequate disclosure of the conditions under which a municipality may seek Chapter 9 protection.

(c) To the extent financial relief granted through Chapter 9 can affect debt service payments, the state’s investors and bondholders have a direct interest in the Bankruptcy Court’s decisions.

(d) The state has established a statewide system of public employee collective bargaining for state and local government employers and employees intended to protect the state’s interest in promoting peaceful and harmonious labor relations and preventing work stoppages. The validity and enforceability of contracts arrived at through collective bargaining are essential to maintaining labor peace and the uninterrupted delivery of vital public services, and these agreements may be subject to review.
and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

e) The state has established and administers statewide pension systems that provide retirement and health benefits to state and local agency employees, many of whose benefits rely on contracts negotiated between local agencies and the California Public Employees’ Retirement System, and that may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(f) California is one of only 12 states that grants blanket authority for its municipalities to petition for bankruptcy and offers no opportunity for its municipalities to receive state-level, prebankruptcy guidance, oversight, or assistance for those jurisdictions that are truly insolvent and face no other alternative to bankruptcy.

(g) State intervention in local affairs should only occur in exceptional circumstances and not without a compelling interest of statewide concern.

(h) Given the connection between state allocations and local budgets, the state has a role in mitigating possible local bankruptcy.

(i) It is the duty of all state and local elected officials to ensure that governments provide essential services to the communities they are elected to serve.

(j) California’s taxpayers who rely on public safety, senior, park, and library services, as well as those who own and operate businesses in our communities, deserve every effort that state and local government can make to avoid the long-term devastation of bankruptcy.

(k) The California Debt and Investment Advisory Commission is the appropriate body to provide the expert oversight and guidance sought by local public agencies who find themselves in a fiscal crisis, given its current statutory duties to collect municipal finance data, conduct research, administer educational seminars, and provide information and technical assistance on behalf of local public agencies and their finance professionals, and given the commission’s diverse membership that includes state and local government financial experts.

SEC. 2. Section 8860 is added to the Government Code, to read:
8860. (a) The commission shall, upon request of a local public entity, advise and, if deemed appropriate by the commission, grant approval to the entity to exercise its rights pursuant to Section 53760, which may include conditions prescribed by the commission.

(b) Upon request under subdivision (a), the local public entity shall submit all of the following to the commission:

(1) A resolution or ordinance, adopted by that governing body at a public hearing held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), that does both of the following:

(A) Requests authority pursuant to Section 53760 to petition the federal bankruptcy court for financial relief under the provisions of Chapter 9 (commencing with Section 901 of Chapter 11) of the United States Code.

(B) Acknowledges that the state's fiscal and financial responsibilities are not changed by the application or the commission's decision pursuant to Section 8861.

(2) A thorough analysis of the entity's request to petition under Chapter 9 (commencing with Section 901 of Title 11) of the United States Code. In addition to any other information it may provide, the entity shall do all of the following:

(A) Demonstrate that it is or will be unable to pay its undisputed debts.

(B) Demonstrate that it has exhausted all options to avoid seeking relief under Chapter 9.

(C) Detail a specific plan for restoring the soundness of the entity's financial plans.

(3) An itemization of creditors that may be impaired or may seek damages as a result of the proposed plan.

(4) Evidence of irreparable harm that may result during the 30-day evaluation period, pursuant to subdivision (d), and the 15 days allotted for a hearing, pursuant to subdivision (e).

(c) (1) Upon receipt of the information required by subdivision (b), the commission shall evaluate the information presented and within 5 days, notify the local public entity of one of the following results:

(A) Approval of the request.
(B) The commission intends to proceed with a further evaluation based on a finding that the local public entity did not provide sufficient evidence pursuant to paragraph (4) of subdivision (b).

(2) If the commission determines that it will proceed with a further evaluation, pursuant to subparagraph (B) of paragraph (1), the commission shall publish its evaluation within 30 business days. If the commission does not respond to the request within five days of receipt of the request, the request shall be deemed approved.

(d) After noticing the local public agency of the commission’s intent to further evaluate the request, the commission staff shall specifically evaluate the extent to which the local public entity has done the following:

(1) Demonstrated that it has exhausted other remedies.

(2) Demonstrated that it has taken sufficient steps to reduce the negative consequences of its proposed bankruptcy relief.

(3) Anticipated the transfer of service responsibility to other governments or parties and to what extent the entity has documented the consequences for the transfer of municipal and other government services.

(4) Documented the likely effect a successful petition will have on state and local finances, including the impact on credit access and debt service.

(5) Proposed a remedy that is appropriate and proportionate to the entity’s fiscal problems.

(e) After the commission conducts the evaluation, pursuant to paragraph (2) of subdivision (c) and publishes its evaluation, the commission shall conduct a hearing and publish a decision within 15 days of, but not less than 10 days after, the publication of the staff evaluation conducted pursuant to subdivision (d). The hearing shall be conducted according to the provisions of Section 8861. The commission hearing on the application shall be held in convenient proximity of the entity filing the application.

(f) If the local public entity’s request is denied pursuant to Section 8861, the governing board of the local public entity may do either of the following:

(1) The local public entity may reapply. In making the reapplication, the local public entity shall adopt another resolution and submit documentation to address the deficiencies identified by the commission pursuant to Section 8861.
(2) Hold a public hearing to override the decision adopted by
the commission, and adopt a resolution to declare the public
entity's intent to exercise authority pursuant to applicable federal
bankruptcy law under Section 53760. At the public hearing, the
governing body shall make findings regarding the necessity to
override the decision of the commission. If the governing body
votes to exercise its authority pursuant to Section 53760 and makes
findings to that effect, both the commission's findings and the
local public entity's findings shall be submitted with any filing of
a petition for bankruptcy pursuant to Section 53760.

(g) A county that has requested approval to file under
subdivision (a) may require local agencies with funds invested in
the county treasury to provide a five-day notice of withdrawal
before the county is required to comply with a request for
withdrawal of funds by that local agency.

(h) As used in this chapter, "local public entity" means any city,
county, city and county, district public authority, public agency,
or other entity that is a "municipality" within the meaning of
paragraph (40) of Section 101 of Title 11 of the United States
Code, or that qualifies as a debtor under any federal bankruptcy
law applicable to local public entities.

SEC. 3. Section 8861 is added to the Government Code, to
read:

8861. (a) The commission shall hold a public hearing to
consider a request made pursuant to Section 8860. The hearing
shall provide sufficient time for public testimony.

(b) The commission shall, in a recorded vote on the date of the
hearing, approve or deny the request.

(c) If the commission disapproves a request, the commission
shall adopt specific findings that address the deficiencies of the
application.

(d) The hearing shall be subject to the provisions of the
Bagley-Keene Open Meeting Act (Article 9 (commencing with
Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At
the same time that the notice and agenda for the hearing is posted
to comply with the requirements of the Bagley-Keene Open
Meeting Act, the commission shall do all of the following:

(1) Post the notice in a location in the local public entity that is
freely accessible to members of the public.
(2) Deliver the notice personally, by United States mail, or by facsimile transmission, to each local newspaper of general circulation whose circulation area reasonably includes the local public entity.

(3) Deliver the notice by United States mail, or by facsimile transmission, to each radio or television station that has requested notice in writing.

(4) Request publication of the notice in the daily file of each house of the Legislature at least 24 hours prior to the date of the meeting, if the Legislature is in session.

SEC. 4. Section 8862 is added to the Government Code, to read:

8862. (a) After the commission receives a request pursuant to Section 8860, the executive director shall record costs incurred by the commission to make and publish the evaluation pursuant to Section 8860 and conduct the hearing required under Section 8861. The director shall report those costs to the commission at the next regularly scheduled commission hearing.

(b) Upon denial of the request, the executive director or commission may assess the requesting entity a fee to cover some or all the costs associated with making the findings and conducting the hearing. Fee revenue shall be deposited in the California Debt and Investment Advisory Commission Fund.

(c) The commission may propose regulations to govern the request and review process required under Sections 8860 and 8861.

SEC. 5. Section 8863 is added to the Government Code, to read:

8863. In enacting Sections 8860, 8861, 8862, and the changes in Section 53760, the state assumes no new or additional fiscal responsibilities for local entities that may apply to the commission for review pursuant to this chapter.

SEC. 6. Section 8864 is added to the Government Code, to read:

8864. This section and Sections 8860, 8861, 8862, 8863, and 8865 shall only apply to a local public entity on or after the effective date of the act adding this section.

SEC. 7. Section 8865 is added to the Government Code, to read:

8865. If a member of the California Debt and Investment Advisory Commission is also employed as a local government
finance officer by an entity requesting approval pursuant to Section 8860, the Treasurer shall replace that member, for purposes of the application of the local government that also employs the member, with a person employed by a city, county, or city and county, within the state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies, to preside over that application.

SEC. 8. Section 53760 of the Government Code is amended to read:

53760. (a) Except as otherwise provided by statute, a local public entity in this state may, with the approval of the California Debt and Investment Advisory Commission, under the terms and conditions that the commission may impose pursuant to Section 8861, file a petition and exercise powers pursuant to applicable federal bankruptcy law if either of the following apply:

(1) The California Debt and Investment Advisory Commission has approved a request by the local public entity pursuant to Section 8860.

(2) The governing board of the local public entity has adopted a resolution to override the commission’s findings pursuant to Section 8860.

(b) As used in this section, “local public entity” means any county, city, district, public authority, public agency, or other entity, without limitation, that is a “municipality,” as defined in paragraph (40) of Section 101 of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities.
ADDENDUM B
Introduced by Assembly Member Mendoza
(Principal coauthor: Assembly Member Torrico)
(Coauthors: Assembly Members Brownley, Coto, De León, Fuentes,
Furutani, Lieu, Ma, Nava, John A. Pérez, V. Manuel Pérez, Price,
and Yamada)
(Coauthors: Senators DeSaulnier, Liu, and Wiggins)

January 26, 2009

An act to amend Section 53760 of, and to add Sections 8860, 8861,
8862, 8863, 8864, and 8865, and 53760.5 to, the Government
Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy
proceedings.

Under existing law, any taxing agency or instrumentality of the state
may file a petition and prosecute to completion bankruptcy proceedings
permitted under the laws of the United States.
This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, except as specified. The bill would also provide an alternative procedure for a local entity to file under federal bankruptcy law by submitting specific analyses regarding its financial position to the State Auditor who would be required to audit the analyses and financial position of the local entity. The public entity would be authorized to file a petition under federal bankruptcy law after the State Auditor has notified the public entity of completion of its audit work and made public the findings of that audit.


The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Constitution and current statutory law provide for a continuity and interdependence between state and local government entities. Seeking financial relief through the provisions of Chapter 9 (commencing with Section 901 of Title 11) of the United States Code imposes costs on a municipality, potentially exceeding $1 million. It can reduce service levels to the taxpayers and residents of a municipality. In some circumstances, it can have major short- and long-term fiscal consequences to the municipality, the surrounding local public entities, and the state. In 2009, bond counsel stated that “filing for bankruptcy protection under Chapter 9 should be considered a last resort, to be effected only after every effort has been made to avoid it.”

(b) The Legislature has an interest in monitoring the conditions under which local entities seek Chapter 9 protection. The relief provided through the federal courts can affect state and municipal government service levels, debt, and contracts. The Legislature also has a strong interest in ensuring adequate disclosure of the conditions under which a municipality may seek Chapter 9 protection.

(c) To the extent financial relief granted through Chapter 9 can affect debt service payments, the state’s investors and bondholders have a direct interest in the Bankruptcy Court’s decisions.
(d) The state has established a statewide system of public employee collective bargaining for state and local government employers and employees intended to protect the state’s interest in promoting peaceful and harmonious labor relations and preventing work stoppages. The validity and enforceability of contracts arrived at through collective bargaining are essential to maintaining labor peace and the uninterrupted delivery of vital public services, and these agreements may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(e) The state has established and administers statewide pension systems that provide retirement and health benefits to state and local agency employees, many of whose benefits rely on contracts negotiated between local agencies and the California Public Employees’ Retirement System, and that may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(f) California is one of only 12 states that grants blanket authority for its municipalities to petition for bankruptcy and offers no opportunity for its municipalities to receive state-level, prebankruptcy guidance, oversight, or assistance for those jurisdictions that are truly insolvent and face no other alternative to bankruptcy.

(g) State intervention in local affairs should only occur in exceptional circumstances and not without a compelling interest of statewide concern.

(h) Given the connection between state allocations and local budgets, the state has a role in mitigating possible local bankruptcy.

(i) It is the duty of all state and local elected officials to ensure that governments provide essential services to the communities they are elected to serve.

(j) California’s taxpayers who rely on public safety, senior, park, and library services, as well as those who own and operate businesses in our communities, deserve every effort that state and local government can make to avoid the long-term devastation of bankruptcy.

(k) The California Debt and Investment Advisory Commission is the appropriate body to provide the expert oversight and guidance sought by local public agencies who find themselves in a fiscal crisis, given its current statutory duties to collect municipal finance.
data, conduct research, administer educational seminars, and provide information and technical assistance on behalf of local public agencies and their finance professionals, and given the commission’s diverse membership that includes state and local government financial experts.

SEC. 2. Section 8860 is added to the Government Code, to read:

8860. (a) The commission shall, upon request of a local public entity, advise and, if deemed appropriate by the commission, grant approval to the entity to exercise its rights pursuant to Section 53760.

(b) Upon request under subdivision (a), the local public entity shall submit all of the following to the commission:

1. A resolution or ordinance, adopted by that governing body at a public hearing held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), that does both of the following:

   A. Requests authority pursuant to Section 53760 to petition the federal bankruptcy court for financial relief under the provisions of Chapter 9 (commencing with Section 901 of Chapter 11) of the United States Code.
   B. Acknowledges that the state’s fiscal and financial responsibilities are not changed by the application or the commission’s decision pursuant to Section 8861.

2. A thorough analysis of the entity’s request to petition under Chapter 9 (commencing with Section 901 of Title 11) of the United States Code. In addition to any other information it may provide, the entity shall do all of the following:

   A. Demonstrate that it is or will be unable to pay its undisputed debts.
   B. Demonstrate that it has exhausted all options to avoid seeking relief under Chapter 9.
   C. Detail a specific plan for restoring the soundness of the entity’s financial plans.

3. An itemization of creditors that may be impaired or may seek damages as a result of the proposed plan.

4. Evidence of irreparable harm that may result during the 30-day evaluation period, pursuant to subdivision (d), and the 15 days allotted for a hearing, pursuant to subdivision (e).
(c) (1) Upon receipt of the information required by subdivision (b), the commission shall evaluate the information presented and within 5 days, notify the local public entity of one of the following results:

(A) Approval of the request.

(B) The commission intends to proceed with a further evaluation based on a finding that the local public entity did not provide sufficient evidence pursuant to paragraph (4) of subdivision (b).

(2) If the commission determines that it will proceed with a further evaluation, pursuant to subparagraph (B) of paragraph (1), the commission shall publish its evaluation within 30 business days. If the commission does not respond to the request within five days of receipt of the request, the request shall be deemed approved.

(d) After noticing the local public agency of the commission’s intent to further evaluate the request, the commission staff shall specifically evaluate the extent to which the local public entity has done the following:

(1) Demonstrated that it has exhausted other remedies.

(2) Demonstrated that it has taken sufficient steps to reduce the negative consequences of its proposed bankruptcy relief.

(3) Anticipated the transfer of service responsibility to other governments or parties and to what extent the entity has documented the consequences for the transfer of municipal and other government services.

(4) Documented the likely effect a successful petition will have on state and local finances, including the impact on credit access and debt service.

(5) Proposed a remedy that is appropriate and proportionate to the entity’s fiscal problems.

(e) After the commission conducts the evaluation, pursuant to paragraph (2) of subdivision (c) and publishes its evaluation, the commission shall conduct a hearing and publish a decision within 15 days of, but not less than 10 days after, the publication of the staff evaluation conducted pursuant to subdivision (d). The hearing shall be conducted according to the provisions of Section 8861. The commission hearing on the application shall be held in convenient proximity of the entity filing the application.
(f) If the local public entity’s request is denied pursuant to Section 8861, the governing board of the local public entity may do either of the following:

(1) The local public entity may reapply. In making the reapplication, the local public entity shall adopt another resolution and submit documentation to address the deficiencies identified by the commission pursuant to Section 8861.

(2) Hold a public hearing to override the decision adopted by the commission, and adopt a resolution to declare the public entity’s intent to exercise authority pursuant to applicable federal bankruptcy law under Section 53760. At the public hearing, the governing body shall make findings regarding the necessity to override the decision of the commission. If the governing body votes to exercise its authority pursuant to Section 53760 and makes findings to that effect, both the commission’s findings and the local public entity’s findings shall be submitted with any filing of a petition for bankruptcy pursuant to Section 53760.

(g) A county that has requested approval to file under subdivision (a) may require local agencies with funds invested in the county treasury to provide a five-day notice of withdrawal before the county is required to comply with a request for withdrawal of funds by that local agency.

(h) As used in this chapter, “local public entity” means any city, county, city and county, district public authority, public agency, or other entity that is a “municipality” within the meaning of paragraph (40) of Section 101 of Title 11 of the United States Code, or that qualifies as a debtor under any federal bankruptcy law applicable to local public entities.

SEC. 3. Section 8861 is added to the Government Code, to read:

8861. (a) The commission shall hold a public hearing to consider a request made pursuant to Section 8860. The hearing shall provide sufficient time for public testimony.

(b) The commission shall, in a recorded vote on the date of the hearing, approve or deny the request.

(c) If the commission disapproves a request, the commission shall adopt specific findings that address the deficiencies of the application.

(d) The hearing shall be subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with
Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At the same time that the notice and agenda for the hearing is posted to comply with the requirements of the Bagley-Keene Open Meeting Act, the commission shall do all of the following:

(1) Post the notice in a location in the local public entity that is freely accessible to members of the public.

(2) Deliver the notice personally, by United States mail, or by facsimile transmission, to each local newspaper of general circulation whose circulation area reasonably includes the local public entity.

(3) Deliver the notice by United States mail, or by facsimile transmission, to each radio or television station that has requested notice in writing.

(4) Request publication of the notice in the daily file of each house of the Legislature at least 24 hours prior to the date of the meeting, if the Legislature is in session.

SEC. 4. Section 8862 is added to the Government Code, to read:

8862. (a) After the commission receives a request pursuant to Section 8860, the executive director shall record costs incurred by the commission to make and publish the evaluation pursuant to Section 8860 and conduct the hearing required under Section 8861. The director shall report those costs to the commission at the next regularly scheduled commission hearing.

(b) Upon denial of the request, the executive director or commission may assess the requesting entity a fee to cover some or all the costs associated with making the findings and conducting the hearing. Fee revenue shall be deposited in the California Debt and Investment Advisory Commission Fund.

(c) The commission may propose regulations to govern the request and review process required under Sections 8860 and 8861.

SEC. 5. Section 8863 is added to the Government Code, to read:

8863. In enacting Sections 8860, 8861, 8862, and the changes in Section 53760, the state assumes no new or additional fiscal responsibilities for local entities that may apply to the commission for review pursuant to this chapter.

SEC. 6. Section 8864 is added to the Government Code, to read:
8864. This section and Sections 8860, 8861, 8862, 8863, and
8865 shall only apply to a local public entity on or after the
effective date of the act adding this section.
SEC. 7. Section 8865 is added to the Government Code, to
read:
8865. If a member of the California Debt and Investment
Advisory Commission is also employed as a local government
finance officer by an entity requesting approval pursuant to Section
8860, the Treasurer shall replace that member, for purposes of the
application of the local government that also employs the member,
with a person employed by a city, county, or city and county,
within the state, experienced in the issuance and sale of municipal
bonds and nominated by associations affiliated with these agencies,
to preside over that application.
SEC. 8. Section 53760 of the Government Code is amended
to read:
53760. (a) Except as otherwise provided by statute, a local
public entity in this state may, with the approval of the California
Debt and Investment Advisory Commission, file a petition and
exercise powers pursuant to applicable federal bankruptcy law if either of the following apply:
(1) The California Debt and Investment Advisory Commission
has approved a request by the local public entity pursuant to
Section 8860.
(2) The governing board of the local public entity has adopted
a resolution to override the commission’s findings pursuant to
Section 8860.
(b) As used in this section, “local public entity” means any
county, city, district, public authority, public agency, or other
entity, without limitation, that is a “municipality,” as defined in
paragraph (40) of Section 101 of Title 11 of the United States Code
(bankruptcy), or that qualifies as a debtor under any other federal
bankruptcy law applicable to local public entities.
SEC. 9. Section 53760.5 is added to the Government Code, to
read:
53760.5. (a) As an alternative to the procedure specified and
required pursuant to Section 53760, a local public entity may file
a petition and exercise powers pursuant to applicable federal
bankruptcy law if it meets the requirements of this section.
(b) To file a petition and exercise powers pursuant to federal bankruptcy law pursuant to this section, a local public entity shall submit information to the State Auditor describing the public entity’s current financial position. This information shall include analyses of all of the following:

1. The local public entity’s petition to exercise powers pursuant to applicable federal bankruptcy law.
2. The local public entity’s ability to pay its undisputed debts.
3. The options that the local public entity has considered to avoid seeking relief under this section.
4. The local public entity’s plan for restoring the soundness of the local public entity’s financial position.
5. An itemized list of creditors that may be impaired or may seek damages as a result of the proposed plan.

(c) Upon receipt of the analyses described in subdivision (b), the State Auditor shall audit the analyses and financial position of the local public entity. The State Auditor shall work with the local public entity to establish a deadline for the audit work. The local public entity may file a petition to exercise powers pursuant to applicable federal bankruptcy law, only after the State Auditor has notified the local public entity of completion of its audit work and made public the findings of that audit work.

(d) Any audit initiated under this section shall take precedent over any pending audit requested under subdivision (b) of Section 8546.1.

(e) As used in this section, “local public entity” means any county, city, district, public authority, public agency, or other entity, without limitation, that is a municipality, as defined in paragraph (40) of Section 101 of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities.
American College of Bankruptcy
Seventh Circuit Regional Educational Program
Past is Prologue

Municipality Insolvency and the
Impact of the “Great Recession”

Financial and Political Aspects Of The
Municipal Debt Crisis©

by

Lewis S. Rosenbloom

and

Dean C. Gramlich

DEWEY & LEBOEUF LLP
Two Prudential Plaza
180 N. Stetson Avenue
Suite 3700
Chicago, IL 60601
312.794.8000

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Chicago, Illinois

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I. Major Financial Issues Confronting United States Cities, Counties and Other Political Subdivisions

A. The Great Recession has left a substantial number of U.S. counties, cities and smaller political subdivisions in serious financial crisis, affecting their ability to provide fundamental services to the public and their ability to access the market for public debt.

B. Among the major financial problems:

1. Declining revenue sources, particularly property taxes (as commercial real estate and home values continue to either remain at 2008 levels or decrease) and sales taxes (as consumer spending and confidence continue their downward spiral).
   
a. Decreases in tax revenues are not the only culprit. For example, insufficient traffic on a South Carolina toll road recently resulted in a default by a South Carolina agency on some $369 million of the agency’s toll road bonds. The South Carolina Department of Transportation (which holds a subordinate claim against the toll road revenues) recently filed an objection to the agency’s chapter 9 filing, claiming that the agency is ineligible for chapter 9 relief. See P. Temple-West, Chap. 9 Plan in S. C. Hits Pothole, The Bond Buyer, August 16, 2010, at 1, 27.

2. The inability of municipal entities to obtain concessions from public service labor unions representing state and local workers under existing collective bargaining agreements (CBA’s).

3. Strikes and other forms of work stoppages or delays resulting from labor unrest.

4. Unsustainable contributions to municipal employee pension and OPEB plans, often part of CBA’s with politically powerful public service unions.
   
a. The chapter 9 filing by Prichard, Alabama was largely the result of a default in municipal pension fund payments to retirees. At the behest of the retirees, the bankruptcy court on August 31, 2010 dismissed the Pritchard chapter 9 filing on the grounds that Prichard is ineligible under Alabama law. The Prichard retirees have now filed a class action lawsuit against the city seeking pro-rata distributions of the
pension fund. The retirees have received no payments for a year.¹

5. Reduced funding levels from financially-strapped states (some of which are months behind in payments to hospitals, nursing homes, toll road authorities and other entities). In particular, the problems of various states with respect to underfunded pension liabilities are well documented. A recent New York Times blog targets Connecticut, Illinois and New Jersey as having major pension underfunding issues in the near term.²

6. Increasing interest and bond insurance costs as a result of drops in credit ratings, usually a non-issue in state and municipal finance.

7. Corruption in the awarding of government contracts, the creation of “ghost” payrolls and other forms, although by no means a cause of the current crisis, only serves to exacerbate voter unwillingness to approve referenda allowing for new municipal bond issues or increases in taxes, thus further constricting revenue sources

C. Some of these problems (pension and OPEB costs; a city or county’s inability to renegotiate CBA’s) are by no means unique to state and local government. So-called legacy costs have been a major contributing factor in major airline, auto manufacturer and auto parts manufacturer chapter 11 filings.

D. However, state and municipal entities face some unique issues. For example, a business entity’s efforts to increase revenue or decrease expenses are normally decisions reserved for management acting under the oversight of the entity’s board of directors. Such decisions remain subject to the business judgment rule, but, in the context of even a public corporation, would not require shareholder approval. In contrast, increases in local government revenues through the form of increased taxes and assessments or through decreases in the level of local governmental services are often viewed as a political impossibility by mayors, city councils and county and city managers. In some instances, local codes and ordinances would require special referenda before property and other taxes could be increased. A number of such examples exist in the current crisis.


1. Central Falls, Rhode Island is in a state court receivership, with the receiver threatening to raise tax rates and decrease the city’s motor vehicle tax exemption. Fearing the political ramifications of these revenue-enhancing actions, the city council has sought to hire its own attorney to oppose the receiver’s efforts.3

2. San Bernardino, California recently balanced its budget by instituting plans to lay off 27 police officers and seven fire department employees after its bond consultant warned that the city faced bankruptcy. The mayor rejected property transfer tax increases because he did not believe the measure would be approved at a mail-ballot election.4

3. As noted below, Harrisburg’s numerous bond defaults have been blamed on the City Council’s refusal to increase taxes and assessments.

4. In some instances, the politically expedient course of action is simply to find a convenient scapegoat for a city’s financial woes. In East St. Louis, Illinois (a city plagued with financial problems for decades), the mayor recently announced an immediate layoff of 37 city employees, including 19 of its 62 police officers. The culprit: shortfalls in projected revenues from the Casino Queen gambling concession. Local civic and religious leaders and police officers have understandably opposed the layoffs in an area already subject to urban blight.5

II. The Scope of the Problem

A. The recession (and the possibility of the much-feared double dip) have exacerbated existing financial problems throughout the United States. Has the financial press overblown the extent of the state and municipal funding crisis? Is this simply a problem of increased financing costs for state and local government or has the funding crisis risen to the level of a systemic threat (as occurred with respect to the securitization of residential home loans secured by mortgages)?

B. One thing has become clear. Certain significant geographic and urban areas (particularly in California, Illinois, Connecticut, Michigan and Pennsylvania) are currently experiencing unprecedented budgetary crises.

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1. According to the National League of Cities, municipalities will face projected budgetary shortfalls of from $56 to $86 billion between 2010 and 2012.\(^6\)

2. Per Richard Lehmann’s Defaulted Debt Securities Newsletter, defaulted municipal bond issues amount to around $1.7 billion so far this year. The norm is around $1 billion.\(^7\)

3. Former Los Angeles Mayor Richard Riordan recently stated in a Wall Street Journal editorial that bankruptcy stands as the sole solution for the financial woes of his city.\(^8\) A number of Los Angeles suburbs face significant funding problems.

4. Harrisburg, Pennsylvania has defaulted as a guarantor under several series of municipal bonds and notes issued to finance the purchase of a waste-to-energy incinerator project and is close to default as a principal obligor under a series of 1997 general obligation bonds. These defaults have caused considerable concern among the major brokerage houses. A surety will meet the city’s obligation under two series of incinerator bonds (1998A and 2003). Dauphin County, Pennsylvania, a co-guarantor under a different series of 2007 incinerator notes, will likely have to meet a $34.7 million obligation under its guaranty in December 2010. The state of Pennsylvania has agreed to advance funds to meet a scheduled payment on the general obligation bonds (in part to preserve bond ratings for other central Pennsylvania cities). Still, Harrisburg, the capital of Pennsylvania, remains a prime chapter 9 candidate. Mayor Linda Thompson has blamed the city’s budgetary woes on the City Council’s rejection of her proposals to raise property taxes and water rates.\(^9\)

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\(^6\) T. Audi, Cities Rent Police, Janitors to Save Cash, Wall Street Journal (July 19, 2010), online.wsj.com/article/SB10011424052748704334604575339153865582376.html?_r=WSJ_hpp_MIDDLEN exttoWhatsNewsTop.


5. Another major default prospect is the Metropolitan Pier & Exposition Authority of Illinois (which runs Navy Pier in Chicago). Moody’s says McPier (as it is referred to locally) can no longer meet its debt service from operating revenues and must tap sales tax revenues.10

6. As noted above, budgetary crises of the state level generally filter down to the municipal level quickly. Two states in particular (California and Illinois) face major budgetary crises.

a. California currently has no budget due to an impasse between the state legislature and Governor Schwarzenegger. The current budget deficit is $19 billion. The state has $69 billion in general obligation bond debt. Another $41.6 billion in tax-backed bond debt is authorized. Standard & Poor’s has indicated that it may lower the state’s bond rating to below investment grade. The states’ three top financial officers recently announced a delay in payment of approximately $2.9 billion to schools and counties in September 2010, adding to an earlier payment “delay” of $3.2 billion. Governor Schwarzenegger has announced a 3-day a month furlough program for state workers, affecting some 150,000 workers. A state engineers’ union has sued to block the furlough.11

b. In Illinois, Comptroller Dan Hynes recently disclosed that the state owes approximately $5 billion to schools, universities and daycare and rehab centers. Illinois has approximately $29 billion in outstanding bond debt and substantial unfunded liabilities under its five pension plans. As of May 2010, the budget presented by Governor Quinn would create a $4.7 billion deficit in fiscal 2010-11. The state already has a $5.9 billion deficit from prior fiscal years.12

10 Cohen Article.


III. Short Term Solutions

A. The authors are not financial analysts and have no particular acumen at suggesting solutions to the long-term financial issues facing state and local governments. The problem of under-funded pension and OPEB liabilities parallels the demographic and other issues underlying the long-term viability of the social security system. At this point, maintaining existing pension and OPEB benefits at their current levels does not appear feasible at any level of government.

B. Short term solutions are obviously needed in an increasing number of cities and counties.

1. As noted above, the ability to increase revenue through property and other taxes and assessments suffers from significant political obstacles. The recession (now almost two years old) has resulted in an increasingly dissatisfied electorate. Politicians know this and instinctively retract from any measure that will increase tax burdens. Increased taxes (particularly regressive sales taxes) also reduce consumer spending, one of the major causes of the current recession.

2. Privatization

   a. An increasing number of state and local governments have outsourced certain services (some of which are essential) to outside contractors.

   b. A recent Wall Street Journal\textsuperscript{13} article analyzed the trend toward the “privatization” of governmental services and outright asset sales (including the possibility of the sales of airports in Louisiana and Georgia, the sale of Milwaukee’s water supply and sale-leaseback transactions of government office buildings in Arizona).

   c. RBS Global Banking & Markets estimate that some 35 such deals are under consideration with a market value of around $45 billion (ten times the value of such deals two years ago).\textsuperscript{14}

   d. One of the most popular forms of privatization is the transfer of rights to revenues from parking meters and


\textsuperscript{14} Id.
garage parking spaces. In 2008, the City of Chicago sold to a Morgan Stanley-led consortium the right to manage 36,000 metered parking spaces for 75 years. The price was around $1.16 billion. The Illinois inspector general has charged that the city underpriced the deal based on the increase in parking rates resulting from the change. Many Chicago residents have complained about meter malfunctions. The deal led to a Fitch downgrade of Chicago’s bond rating. However, other cities are considering such transactions. Pittsburgh, for example, is considering a 50-year lease of its parking system for a lump sum payment of $300 million.  

In California, the city of San Jose, faced with a $118 million budget deficit, saved $4 million by outsourcing its janitorial staff. The L.A. suburb of Maywood has let go its entire staff and turned over public safety to the Los Angeles County Sheriff.

Public officials have complained about the pricing levels of many of these transactions. However, pricing is largely a function of the market. The limited number of sellers of essential governmental services understands that cities need to plug major budgetary shortfalls in the short-term. That will normally cause a drop in price (as it does in the context of section 363 sales in chapter 11). Also, estimating the present value of future parking and other service revenue streams is extremely difficult.

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15 Id.
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Impact of the “Great Recession”

Panelist Biographies

September 20, 2010
Chicago, Illinois
Lewis S. Rosenbloom
Of Counsel

Lewis S. Rosenbloom is Of Counsel in Dewey & LeBoeuf's Business Solutions and Governance Department. Recognized as one of the nation's leading corporate bankruptcy and restructuring advisors, Lewis has managed the representation of virtually every possible stakeholder or participant in major bankruptcy, corporate restructuring, finance, merger and acquisition, and multidistrict class litigation matters during his 30 years of practice.

As debtor's counsel, he restructured AM International, Axiohm Transaction Solutions, Inc., Gillett Holdings, the Funding Systems companies, North American Car Corporation, Pettibone Corporation and Wisconsin Steel, among many others. He represented the Unsecured Creditors Committee in the Federated Department Stores cases and the Senior Bondholders Committee in the Continental Airlines chapter 11 cases.

He assumed senior restructuring and corporate advisory responsibilities in the landmark public company reorganization and multidistrict mandatory non-opt-out class litigation settlement involving Mercury Finance. He regularly represents the boards of directors of public and non-public companies, and has served as a board member and general counsel of several companies.

He is a Fellow and Director of the American College of Bankruptcy.

Education

DePaul University College of Law, 1977, J.D., summa cum laude
Lake Forest College, 1974, B.A.

Bar Admissions

Illinois

Court Admissions

U.S. District Court, Northern District of Illinois, Trial Bar
U.S. Supreme Court
Numerous other federal district and appellate circuit courts
WILLIAM (BILL) A. BRANDT, JR.

BILL BRANDT has been in the business of workout, turnaround and insolvency consulting for more than thirty years and is widely recognized as one of the foremost practitioners in the field. He is President and CEO of Development Specialists, Inc. (“DSI”), a firm specializing in the provision of management, consulting and turnaround assistance to troubled or reorganizing enterprises. The firm maintains offices in Chicago, New York, Philadelphia, Los Angeles, London, Miami, San Francisco, Cleveland and Columbus.

Mr. Brandt and his firm continue to be involved with some of the more celebrated financial restructuring cases in the nation’s history, including Mercury Finance Company, Southeast Banking Corporation, Malden Mills, the Keck, Mahin & Cate law firm, the Coudert Brothers law firm, the Ohio “Coin Fund” scandal and the Bernie Ebbers Settlement Trust. Recently, and upon the invitation of both business and political leaders in the People’s Republic of China, he has been working with public policy, law and banking leaders in that country on approaches to the reorganization and restructuring of some of China’s state-owned industries.

He has advised Congress on matters of insolvency and bankruptcy policy, and in that capacity was the principal author of the amendment to the Bankruptcy Code permitting the election of trustees in Chapter 11 cases. Mr. Brandt was also involved in drafting several amendments to the bankruptcy code enacted into law in April 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which substantially rewrote the nation’s bankruptcy laws. During the Clinton administration, he served as a member of the President’s National Finance Board as well as serving as a delegate from the State of Florida to the 1996 Democratic National Convention. In 2000, he served as a member of the Democratic Party’s Platform Committee. In 2002, he served on the Illinois Gubernatorial Transition Team as well as on the State of California’s Business Delegation, dispatched to Cuba to discuss politics, business and trade, and in 2008, he served as a delegate from the State of Illinois to the Democratic National Convention.

In 2007, Mr. Brandt was appointed by the Governor of Illinois to the position of Chair of the Illinois Finance Authority. The IFA is one of the nation’s largest self-financed entities principally engaged in issuing taxable and tax-exempt bonds, making loans, and investing capital for businesses, non-profit organizations and local government. Mr. Brandt serves as a member of the National Advisory Council for the Institute of Governmental Studies at the University of California at Berkeley, while also serving as a member of the Board of Trustees of Loyola University Chicago. Additionally, he is a member of the Board of Directors of Future Music, Inc., and was also featured in What Happened, a documentary film humorously chronicling the dot-com “bust,” which premiered at the New York City Film Festival.

He served several terms as a member of the Board of Directors of the American Bankruptcy Institute, as well as also serving several terms on the Advisory Board for that organization’s Law Review. He served for almost 20 years as a member of the private Panel of Trustees for the United States Bankruptcy Court for the Northern District of Illinois and briefly served as a member of the same panel for the Bankruptcy Court in the Southern District of Florida in the late 1980s. He is a member of the Executive Committee of the Bankruptcy Section of the Commercial Law League of America and serves on their National Government Affairs Committee. Mr. Brandt is a member of the Board of Advisors for the American Bankruptcy Institute’s Bankruptcy Battleground West seminar held annually in Los Angeles and is also currently serving a three-year term as a member of the Board of Directors of the San Francisco Bay Area Bankruptcy Forum. In addition to the Commercial Law League of America and the American Bankruptcy Institute, he holds memberships in the National Association of Bankruptcy Trustees, the International Council of Shopping Centers and the Urban Land Institute. Mr. Brandt is a former governing member of the Chicago Symphony Orchestra, a former Governing Member of the Sustaining Fellows of the Art Institute of Chicago and a life trustee of Fenwick High School in Oak Park, Illinois.

His biography appears in a number of reference works including Who’s Who in America, Who’s Who in Finance and Industry and Who’s Who in American Law. For more than a dozen years his firm, Development Specialists, Inc., has been rated as one of the outstanding turnaround firms in the world by the publication Turnarounds & Workouts. Mr. Brandt has also been routinely listed in the K & A Restructuring Register, an annual roster of the country’s top 100 restructuring advisors. He received his B.A. from St. Louis University and his M.A. from the University of Chicago, where he also completed further post-graduate work toward a doctoral degree.
Slate Dabney is a partner in the New York office of King & Spalding, LLP. He graduated from the University of Virginia Law School in 1974. His practice is devoted to commercial bankruptcy, insolvency related litigation and corporate restructuring. He has served as debtor’s counsel in many Chapter 11 cases. He also has served as Chapter 11 committee counsel in numerous cases, and frequently represents clients in the acquisition of assets from companies that are in financial distress. He has represented commercial lenders throughout his career in a variety of circumstances and has practiced and tried cases in courts in a number of states.

Mr. Dabney represents Financial Guaranty Insurance Company and Syncora Guarantee, Inc. in connection with $3.2 billion of credit insurance issued to back fixed, variable and auction rate sewer debt of Jefferson County, AL.

Mr. Dabney is a Fellow in the American College of Bankruptcy, an active participant in the American Bankruptcy Institute (“ABI”) and has been listed in Best Lawyers in America since 1991. He also is a director of ABI and an Executive Editor of the ABI Journal. He has been selected to New York Super Lawyers since 2005.

He is a Co-Author (along with co-panelist Marc Levinson) and Editor of the ABI Handbook Municipalities in Peril: The ABI Guide to Chapter 9. He lectures frequently on the topic of municipal insolvency and Chapter 9.
David Kurtz joined Lazard as a Managing Director in the Restructuring Group in 2002 from the Chicago office of Skadden, Arps, Slate, Meagher & Flom, where he was a senior partner, and became Co-Head of the Global Restructuring Group in 2006. His restructuring assignments at Lazard include the representation of Tribune Corp., Charter Communications, Inc., R.H. Donnelley Corporation, Smurfit Stone Container Corp., Hawaiian Telcom, TOUSA, Inc. (Technical Olympic USA, Inc.), WCI Communities, Inc., Vertis, Inc., Movie Gallery, Inc., New Century Financial Corporation, Adelphia Communications Corp., Northwestern Corporation, Xcel Energy Corporation, Rural Cellular Corp., Oglebay Norton Company, American National Power, Calpine Corporation (Creditors’ Committee), Northwest Airlines (Creditors’ Committee), United States Air Transportation Stabilization Board (in connection with US Airways, ATA Airlines, America West Airlines and Aloha Airlines), and Lufthansa in connection with the United Airlines bankruptcy and LSG Sky Chefs. Additionally, Mr. Kurtz is currently advising Simon Property Group on its potential acquisition of General Growth Properties, as well as a mid-cap industrial REIT with approximately $2.5 billion of indebtedness on potential restructuring alternatives.


Mr. Kurtz has over 30 years of restructuring experience and is a frequent lecturer on bankruptcy and reorganization related topics. In 2009, he was named Global Restructuring Financial Advisor of the Year by Turnaround Atlas Awards.

Mr. Kurtz is a member of the Board of Directors of the American College of Bankruptcy and was named as the Bankruptcy Dealmaker of the Year 2001 by the *American Lawyer* magazine.

**Case Western Reserve University, B.A., J.D.**
MARC A. LEVINSON

Marc Levinson is a partner in Orrick, Herrington & Sutcliffe LLP, resident in its Sacramento office. Since starting his career as an associate in Shutan & Trost in Los Angeles in 1975, his practice has been limited to insolvency planning, bankruptcy cases and workouts and other out-of-court reorganizations. Current and recent clients include the City of Vallejo, a chapter 9 debtor in a case pending in Sacramento; a creditors committee in the chapter 11 case of a real estate developer, also pending in Sacramento (and, since September 1, 2009, the Plan Agent following the effective date of a plan of reorganization); an equity committee in a case in Las Vegas (and now the revested debtor); and several institutional lenders in the workout of substantial loans to real estate developers. He has served as an examiner in cases in Oakland and Sacramento.

Mr. Levinson is a conferee and a member of the Executive Committee of the National Bankruptcy Conference, and is a member of the Board of Directors of the American College of Bankruptcy. He is a past president of both the California Bankruptcy Forum and the Sacramento Valley Bankruptcy Forum. In April 2009, he was named by The American Lawyer as one its Dealmakers of the Year for his role in the Vallejo chapter 9 case, and in October of 2009, he was named by the Daily Journal as one of California’s Top 100 Lawyers. Mr. Levinson received his B.A. in English from UCLA in 1970, and his J.D. from the U.C. Davis School of Law in 1973, where he was the Editor-in-Chief of the Law Review. He served as a law clerk for Chief Justice Donald R. Wright of the California Supreme Court (1973-74) and for Judge William H. Orrick, Jr. of the U.S. District Court for the Northern District of California (1974-75).

Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497
Bus: (916) 329-4910
Fax: (916) 329-4900
email: malevinson@orrick.com