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# Emergency Manager Legislation

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Late on December 13, 2012, on the final day of the "lame-duck" legislative session, the legislature, enacted Senate Bill 865, a replacement for 2011 PA 4, the "Emergency Manager" law, which was rejected by referendum at the November 2012 general election.

SB 865 creates the "Local Government and School District Fiscal Responsibility Act" governing the selection and work of emergency managers appointed to assure the financial accountability and ability for municipal governments to provide necessary services. "Municipal government" under SB 865, means a city, village, township, charter township, county, an authority established by law, or a public utility owned by a city, village township, or county.

SB 865 contains a number of the same provisions as the former PA 4. Specifically, SB 865 provides for a preliminary review of a municipal government's finances to determine whether there is a probability of financial distress. There are 18 statutory triggers that might launch a preliminary review, including, for example, violations of the Uniform Budgeting and Accounting Act; a bond rating of BBB or below; the municipal government's request for review; and, a petition signed by registered electors with specific allegations of financial distress.

The state treasurer is responsible for the preliminary review to determine if there is a probability of financial distress. If the state treasurer determines a probability of financial distress exists, the governor would appoint a review team consisting of the state treasurer (or designee), the director of the Department of Technology, Management and Budget (or designee), a nominee of the Senate Majority Leader, and a nominee of the Speaker of the House.

The review team must meet with municipal officials, hold at least one public meeting in the jurisdiction of the municipal government, and consider information provided by the municipal government. The review team must report its findings to the governor, with a copy to the state treasurer and the state senator and state representative of the municipal government. The report must specify the likely occurrence of particular facts and circumstances indicative of a financial emergency. The review team concludes in its report whether there is or is not, a financial emergency.

If the review team determines there is a financial emergency, the governor must then, within 10 days, determine whether a financial emergency exists or not. The governor has discretion to solicit additional information from the municipal government before making a final determination. The chief administrative officer of the municipal government may, within seven days, request an appeal to be heard by the state treasurer. The state treasurer may then determine whether or not a financial emergency exists, and her or his decision may be appealed to the Ingham County Circuit Court within 10 business days. A determination of a financial emergency may not be set aside by the Ingham County Circuit Court unless the judge finds that the determination was not supported by competent material and substantial evidence, or that the determination was arbitrary, capricious, or a clear abuse of discretion.

One way SB 865 differs from PA 4 is that once the determination of a financial emergency is made, the municipal government is required, by resolution, to select one of the following options to address the financial emergency:

- a consent agreement with the state providing for certain deficit reduction plans;
- the appointment of an emergency manager;
- the local government may request a "neutral evaluation process" similar to mediation;
- with the approval of the governor, file Chapter 9 bankruptcy.

If the governing body of the municipal government did not pass a resolution selecting one of those four options, the neutral evaluation process is automatically selected.

If a consent agreement is selected, such an agreement would have to provide for remedial measures necessary to address the financial emergency and provide for financial stability. A consent agreement could provide for a board appointed by the governor to oversee the municipal government's compliance. A consent agreement must provide that the state treasurer retains the sole discretion to declare a material breach, and accelerate the municipal government into receivership, or into a neutral evaluation process.

A municipal government operating under a consent agreement is required to establish a continuing operations plan to include a three-year budget estimate. Consent agreements must be approved by the governing body of the municipal government.

SB 865 provides that the governor may, but is not required to, appoint an emergency manager. Emergency managers have broad powers to assure financial responsibility and accountability, including the power to prohibit the governing body and chief administrative officer of a municipal government from exercising any power. Some of an emergency manager's powers include the ability to finalize budgets and expenses, make contracts, reduce staffing and transfer assets and liabilities. Additional powers include the controversial authority provided under PA 4 to modify, revise or terminate the terms and conditions of existing collective bargaining agreements. Emergency managers may also recommend entry into Chapter 9 bankruptcy.

If an emergency manager has served for at least one year, the governing body of a municipal government could, by a two-thirds vote, remove the emergency manager. If the emergency manager is removed, the municipal government must move to a "neutral evaluation" process. Emergency

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managers are automatically removed from office once the financial emergency is rectified. At that time, the governor may appoint a "Receivership Transition Advisory Board" to monitor the progress of the municipal government in maintaining fiscal recovery. Additionally, for a period of five years after placement into receivership ( *i.e.* , the appointment of an emergency manager), or after emerging from receivership, whichever occurs first, the municipal government is not subject to section 15(1) of the Public Employment Relations Act, with respect to mandatory collective bargaining.

The neutral evaluation process requires a mutually agreed upon neutral evaluator to mediate financial disputes between a municipal government and "interested parties," *i.e.*, creditors, bondholders, pensioners, unions subject to existing collective bargaining agreements and other similar entities. The legislation provides a number of procedural requirements for a neutral evaluator, including a maximum 90-day limit, during which a settlement agreement may be reached. The settlement agreement may contain provisions for a transition into a managed Chapter 9 bankruptcy.

Finally, if none of the other options are viable, and the financial condition of a municipal government jeopardizes the health, safety, and welfare of its residents, the governor may approve a petition to file Chapter 9 bankruptcy. The municipal government would be required to hold a public hearing before adopting a resolution providing that the local government is, or will be, unable to pay its obligations within 60 days.

The legislation also provides that municipal officials and employees are required to cooperate at all times with the review team and other state officials before, during and after the process provided in SB 865. Failure of a municipal government official to abide by the provisions of SB 865 may result in a finding of gross neglect of duty, and could result in the governor removing the official from office.

Importantly, the legislation also contains an appropriation to provide for the salaries of emergency managers. The appropriation makes the legislation referendum-proof under Article II, section 9 of the Michigan Constitution. SB 865 takes effect immediately once signed by the Governor.

For more information about SB 865, please contact your Clark Hill municipal law attorney.