Legislative Analysis

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EMERGENCY FINANCIAL MANAGER APPOINTMENT

Senate Bill 461 (Substitute H-1)
Sponsor: Sen. Michael D. Bishop
House Committee: Local Government and Urban Policy
Senate Committee: Local, Urban and State Affairs

First Analysis (10-18-05)

BRIEF SUMMARY: The bill would revise the process by which an emergency financial manager is appointed.

FISCAL IMPACT: The bill would have no impact on state or local revenues.

THE APPARENT PROBLEM:

When the Governor determines that a financial emergency exists in a city, village, township, or county under the Local Government Fiscal Responsibility Act, he or she is required to assign the responsibility for managing the emergency to the Local Emergency Financial Assistance Loan Board. The board is required under the act to appoint an emergency financial manager; this person then serves at the pleasure of the board.

Recently, the board appointed an emergency financial manager for the City of Highland Park over the objections of some state and local officials. Finding that the public has no input into the selection of an emergency financial manager, some believe that the appointment process should be changed.

THE CONTENT OF THE BILL:

Senate Bill 461 would amend the Local Government Fiscal Responsibility Act (MCL 141.1218) to require the Local Emergency Financial Assistance Loan Board, within 30 days from the date that a financial emergency is determined, to submit to the Governor the names of not less than three nominees to be considered for appointment to serve as the emergency financial manager for the local government. The Governor would have to appoint one of those nominees with the advice and consent of the Senate. The Governor would also fix the term that the emergency financial manager would serve, but the term could not exceed one year. The appointment would have to be by written contract and could be renewed on an annual basis for not more than one year. A contract of an emergency financial manager on the bill's effective date could not be renewed for a period greater than one year.

In addition, the emergency financial manager would have to submit a quarterly report detailing activities to the Local Emergency Financial Assistance Board and to the chairs of the House and Senate committees with oversight of local government issues. Lastly, a provision stating that the emergency financial manager serves at the board's pleasure would be eliminated and the bill would delete an obsolete provision pertaining to emergency financial managers appointed and serving under provisions of former Public Act 101 of 1988, which was repealed by adoption of the current act in 1990.

HOUSE COMMITTEE ACTION:

The House Committee on Local Government and Urban Policy adopted an amendment to establish a timeframe during which the list of nominees for consideration would be submitted to the Governor and to eliminate the provision that the emergency financial manager serve at the pleasure of the Local Emergency Financial Assistance Loan Board.

BACKGROUND INFORMATION:

The Local Government Fiscal Responsibility Act prescribes a series of events that may lead to the appointment of an emergency financial manager for a local unit of government. In short, the following steps must be taken:

-- The Governor appoints a team to perform a local financial management review if 1) the local unit requests assistance, or 2) the state treasurer determines, after a preliminary review, that a serious financial problem may exist within the local government. The state treasurer must conduct a preliminary review if:

1) The local unit requests the preliminary review; or,

2) A factor listed in the statute triggers the preliminary review.

-- The review team investigates and reports to the governor.

-- The governor determines that a financial emergency exists and informs the local unit, which may request a hearing with the Governor or appeal the determination to the circuit court.

-- The Governor assigns responsibility for the financial emergency to the Local Emergency Financial Assistance Loan Board, which appoints an emergency financial manager.

The Emergency Financial Assistance Loan Board was created under the Emergency Municipal Loan Act. (Under that act, a municipality may apply to the board for a loan if it meets certain criteria, including a projected general fund deficit.) The board is housed in the Department of Treasury and consists of the state treasurer, the director of the Department of Labor and Economic Growth, and the director of the Department of Management and Budget.

The above description is based on information in the Senate Fiscal Agency's analysis of the bill dated 10-3-05.

ARGUMENTS:

For:

Earlier this year, the Local Emergency Financial Assistance Loan Board replaced the emergency financial manager who had been appointed four years earlier for the City of Highland Park. The new appointment was controversial, partly because, reportedly, it was made at the request of the Governor. Some local and state officials questioned the appointment, and criticized the current appointment process as providing no input by the public. The bill would revise the appointment process to be more like the process used for financially troubled school districts. Instead of having the board appoint the emergency financial manager, the bill would revise the process to have the board submit a list of at least three qualified candidates to the Governor, who would then select one. The final appointment would be subject to the advice and consent of the Senate, thus opening the process to public scrutiny and input. To avoid delays, the bill would require the board to submit the list of nominees to the Governor within 30 days from the date that a financial emergency had been determined.

Another issue raised by critics is that appointments of an emergency financial manager are open ended; an appointment either ends when the financial emergency has ended or if the board removes the manager. To some, this allows a manager to run a local government almost indefinitely and with little oversight. Instead, restricting a manager's contract to one year, though it could be renewed, would ensure that his or her performance would be reviewed on an annual basis. In addition, the requirement for submission of a quarterly progress report detailing a manager's activities will increase the manager's accountability to the legislature and therefore, the public.

Against:

The bill is trying to fix a problem that doesn't exist. No complaints have ever been filed about the selection process for emergency financial managers. Though used sparingly (only four cities), the process has served the public well so far and should be left alone. The bill, on the other hand, could prove problematic.

When a city is facing a financial emergency, it is imperative that a capable and qualified emergency financial manager be appointed promptly. Delays in providing support for public services, for example, police and fire departments, can place the public's safety and welfare in jeopardy. Currently, the Local Emergency Financial Assistance Loan Board has the authority to seek out and appoint a qualified person to act as emergency financial manager. The bill, however, would add to the process: the submission of a list of names to the Governor, the Governor deciding who to appoint; and then action by the Senate to confirm or deny the appointment (under the state Constitution, the Senate has up to 60 days to vote on the appointment). During this time, the financial crisis faced by the local government could worsen. If the Governor chose to place one of the nominees in the position of manager before the Senate voted, he or she would run the risk of the appointment not being confirmed. Under such a scenario, the city in distress, meanwhile, would suffer from a lack of continuity of leadership, see progress made by the initial manager disrupted, and then have to wait as the process began all over again.

Currently, the treasury department provides oversight of emergency financial managers to ensure the local governments are being managed well. The bill, however, would bring politics into the process. The Senate could reject countless nominees to force a candidate of their choosing. The person approved by the Senate may be chosen for reasons other than his or her knowledge, expertise, and experience in local government and municipal finance. Officials and residents of the local government could also lobby Senators to confirm their chosen person and deny others.

In addition, requiring one year contracts could work against any manager. Often these managers are unpopular since they are brought in from "outside" and must make hard, and unpopular decisions. City workers and local officials may refuse to work with an appointee in the hope the manager's contract will not be renewed for lack of progress.

POSITIONS:

The Department of Treasury is opposed to the bill. (10-12-05)

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