

# SENATE BILL No. 1239

March 23, 2010, Introduced by Senators SWITALSKI and JELINEK and referred to the Committee on Appropriations.

A bill to provide for the determination of distressed municipal pension systems; to establish certain duties of certain state officials and agencies; to provide a mandatory remedy for municipalities sponsoring distressed pension systems; to establish duties of certain public officers and employees; and to provide remedies and penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "distressed municipal pension system act".

3       Sec. 2. The legislature finds all of the following:

4       (a) The public health and welfare of the citizens and  
5 taxpayers of this state are adversely affected by the fiscal and  
6 economic effects of distressed local government pension systems and

1 the sustainability of local pension systems is vitally necessary to  
2 the provision of crucial governmental services to the people of  
3 this state.

4 (b) The governing boards of trustees of local pension systems  
5 have a fiduciary duty to invest and safeguard trust assets and  
6 ensure the viability of local pension systems for the exclusive  
7 benefit of employees and retirees who have performed service for  
8 the political subdivisions of this state.

9 (c) Prudent and fiscally sound management of local pension  
10 systems is essential to affordable and sustainable local pension  
11 system funding, as well as the long-term financial integrity of the  
12 political subdivisions of this state.

13 (d) Section 24 of article IX of the state constitution of 1963  
14 provides that the accrued financial benefits of each pension plan  
15 and retirement system of the state and its political subdivisions  
16 shall be a contractual obligation thereof which shall not be  
17 diminished or impaired thereby. The section further provides that  
18 financial benefits arising on account of services rendered in each  
19 fiscal year shall be funded during that year and that such funds  
20 are not to be used for financing unfunded accrued liabilities.  
21 Therefore, the funding, management, oversight, and fiscal integrity  
22 of public pension and retirement systems is a matter of paramount  
23 public importance which bears directly upon the fiscal integrity of  
24 the state and its political subdivisions.

25 (e) Section 18 of article IX of the state constitution of 1963  
26 provides for the investment of public funds accumulated to provide  
27 pension benefits for public officials and employees, as implemented

1 by the public employee retirement system investment act, 1965 PA  
2 314, MCL 38.1132 to 38.1140m, and section 13(1) of that act states  
3 that its provisions shall supersede any investment authority  
4 granted to any state or local government pension system.

5 (f) The retirement system created by the municipal employees  
6 retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, is the  
7 sole and exclusive statewide municipal pension pool for local  
8 government employees, and as an instrumentality of its  
9 participating municipalities and participating courts, the  
10 retirement system is vested with the power and duties of investment  
11 fiduciary for the investment of all system assets, and ensures that  
12 pension assets of each participating municipality and court are  
13 separately accounted for and pooled for investment purposes only,  
14 thus providing economies of scale that benefit all participating  
15 municipalities and participating courts.

16 (g) Since its creation, the retirement system has properly  
17 administered retirement plans for municipalities throughout this  
18 state, providing appropriate consideration to the interests of each  
19 participating municipality and its taxpayers, while protecting the  
20 interests of the employees and retirees of each participating  
21 municipality.

22 (h) The legislatively granted self-governance of the  
23 retirement system promotes the state's fundamental interest in  
24 safeguarding and protecting the accrued pension benefits that  
25 retirees and employees of each participating municipality have  
26 earned and ensuring that investments are prudently made so that  
27 trust assets and investment earnings are accumulated for each such

1 municipality to pay the promised benefits for the mutual benefit of  
2 each participating municipality, its retirees and employees, and  
3 the citizens and taxpayers.

4 (i) The legislature finds that the authority and powers  
5 conferred by this act constitute a necessary program and serve a  
6 valid public purpose.

7 Sec. 3. All system assets shall be managed and invested as  
8 provided by the public employee retirement system investment act,  
9 1965 PA 314, MCL 38.1132 to 38.1140m.

10 Sec. 4. As used in this act:

11 (a) "Annual actuarial valuations and summary annual reports"  
12 means those valuations and reports required by section 20h(2) of  
13 the public employee retirement system investment act, 1965 PA 314,  
14 MCL 38.1140h, to actuarially determine employer contributions to  
15 local pension systems, including valuations and reports done every  
16 other year where authorized by law.

17 (b) "Chief executive officer" means 1 of the following  
18 officials:

19 (i) The mayor of a city.

20 (ii) The county executive of a county or, if a county does not  
21 have a county executive, the chairperson of the county board of  
22 commissioners.

23 (iii) The village president of a village.

24 (iv) The township supervisor of a township.

25 (v) For a municipality other than a city, county, village, or  
26 township, the official granted general administrative or executive  
27 control of the municipality as defined in section 2b(2) of the

1 municipal employees retirement act of 1984, 1984 PA 427, MCL  
2 38.1502b.

3 (c) "Determination date" means either of the following:

4 (i) If no hearing has been requested under section 5(2)(a), the  
5 date which is 10 days after the state treasurer initially  
6 determines that a local pension system is a distressed pension  
7 system.

8 (ii) The date on which the state treasurer confirms its  
9 determination of a distressed pension system under section 5(2)(b)  
10 and the appellate process provided in section 5(3) has been  
11 exhausted.

12 (d) "Distressed pension system" means a local pension system  
13 initially determined by the state treasurer to meet the  
14 requirements of section 5(1).

15 (e) "Local pension system" means a pension system of a  
16 municipality originally established by ordinance, charter, or law,  
17 if the system is not a participating municipality in the municipal  
18 employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to  
19 38.1555.

20 (f) "Municipality" means that term as defined in section 2b of  
21 the municipal employees retirement act of 1984, 1984 PA 427, MCL  
22 38.1502b.

23 (g) "Notification date" means the date on which the state  
24 treasurer receives the notification described in section 5(1).

25 (h) "Participating municipality" means that term as defined in  
26 section 2c of the municipal employees retirement act of 1984, 1984  
27 PA 427, MCL 38.1502c.

1 (i) "Payroll" means the dollar amount used by an actuary in  
2 the annual actuarial valuation or summary report to determine an  
3 annual level percentage of payroll contribution rate.

4 (j) "Pension obligations" means any bonds, pension obligation  
5 certificates, or other instruments, obligations, or evidences of  
6 indebtedness issued by a municipality, the proceeds of which have  
7 been allocated, in whole or in part, to and deposited with a local  
8 pension system for the purpose of funding unfunded accrued  
9 liabilities of the local pension system.

10 (k) "Retirement system" means the municipal employees  
11 retirement system established under former 1945 PA 135 and  
12 continued and restated under the municipal employees retirement act  
13 of 1984, 1984 PA 427, MCL 38.1501 to 38.1555.

14 (l) "Transition date" means the date on which a municipality  
15 becomes a participating municipality under this act, which shall  
16 not be longer than 180 days after the determination date.

17 (m) "Transition period" means the period beginning on the  
18 determination date and ending on the transition date.

19 Sec. 5. (1) The state treasurer shall initially determine that  
20 a local pension system is a distressed pension system upon  
21 receiving written notification from a trustee of the system, its  
22 actuary, 10% of the members of the local pension system or an  
23 elected or appointed officer, or the governing body of, or the  
24 emergency financial manager for the municipality sponsoring the  
25 local pension system that 2 or more of the following conditions  
26 exist:

27 (a) The municipality has failed to make its periodic payment

1 toward the employer's annual required contribution to the local  
2 pension system as required by law for a period in excess of 120  
3 days. The failure of the municipality to make a periodic payment  
4 shall be determined by the state treasurer only upon the occurrence  
5 of all of the following:

6 (i) The notification received by the state treasurer states  
7 that the municipality has failed to make its periodic payment  
8 toward the employer's annual required contribution to the local  
9 pension system as required by law for a period in excess of 120  
10 days.

11 (ii) The state treasurer provides by certified or registered  
12 mail written notice to the municipality that the state treasurer  
13 has received the notification described in subparagraph (i) and that  
14 the municipality has 30 days to provide the state treasurer with  
15 written evidence verifying that the municipality has not failed to  
16 make its periodic payment toward the employer's annual required  
17 contribution to the local pension system as required by law for a  
18 period in excess of 120 days.

19 (iii) Either the municipality fails to respond to the state  
20 treasurer's notice under subparagraph (ii) within 30 days of receipt  
21 of the notice or the state treasurer concludes that the evidence  
22 provided in the municipality's response does not verify that the  
23 municipality has not failed to make its periodic payment toward the  
24 employer's annual required contribution to the local pension system  
25 as required by law for a period in excess of 120 days.

26 (b) The sum of the employer's annual required contribution to  
27 the local pension system as shown in the applicable annual

1 actuarial valuation or summary report plus the annual debt service  
2 on that portion of any outstanding pension obligations allocated to  
3 the local pension system has exceeded 30% of payroll for the last 3  
4 consecutive local pension system years. This subdivision does not  
5 apply to a local pension system which is closed to new  
6 participants.

7 (c) The sum of the local pension system's actuarial accrued  
8 liability as shown in its most recent annual actuarial valuation or  
9 summary report, plus that portion of the outstanding principal  
10 amount of any pension obligations the proceeds of which have been  
11 allocated to and deposited with the local pension system, is 125%  
12 or more of the actuarial value of the assets of the local pension  
13 system as shown in its most recent annual actuarial valuation or  
14 summary report.

15 (d) In each of the 3 prior fiscal years, the sum of the  
16 employer's aggregate annual required contributions for all local  
17 pension systems of the municipality plus the aggregate annual debt  
18 service on the municipality's outstanding pension obligations  
19 exceeds 15% or more of the budgeted revenues for the general fund.

20 (e) An investment fiduciary, as defined in section 12c(1) of  
21 the public employee retirement system investment act, 1965 PA 314,  
22 MCL 38.1132c, of the local pension system has been convicted or  
23 entered a nolo contendere plea accepted by a court for a felony  
24 resulting from misuse of pension trust funds belonging to the local  
25 pension system, the receipt of a bribe, or other personal or  
26 financial benefit arising out of or related to his or her service  
27 for the local pension system.



1 (f) The local pension system's average rate of investment  
2 return, gross-of-fees, for the last 10 years is at least 2  
3 percentage points less than the retirement system's rate of return,  
4 gross-of-fees, over the same period.

5 (2) Upon the state treasurer's making an initial determination  
6 that a local pension system is a distressed pension system, the  
7 state treasurer shall promptly provide the chief executive officer  
8 and governing body of the sponsoring municipality with written  
9 notification of the initial determination and notice that the chief  
10 executive officer of the municipality may, within 10 days after the  
11 date of notification, request a hearing conducted by the state  
12 treasurer or the state treasurer's designee. Notice shall be  
13 provided and the hearing shall be conducted in compliance with the  
14 provisions applicable to contested cases in the administrative  
15 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

16 (3) Following the hearing, or if no hearing is requested,  
17 following the expiration of the deadline under which a hearing may  
18 be requested, the state treasurer shall confirm or revoke, in  
19 writing, the determination of a distressed pension system. If  
20 confirmed, the state treasurer shall provide a written report of  
21 the findings of fact providing the basis for the confirmation of a  
22 distressed pension system and a concise and explicit statement of  
23 the underlying facts supporting these factual findings. The state  
24 treasurer's decision shall be final and binding except as set forth  
25 in subsection (4). The state treasurer shall prepare an official  
26 record of the hearing in compliance with section 86 of the  
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.286.

1           (4) The chief executive officer of a municipality for which a  
2 final determination of a distressed pension system has been made by  
3 the state treasurer may appeal the final determination to the court  
4 of appeals within 21 days after its issuance. The court shall  
5 review the appeal in an expedited manner and shall sustain a  
6 determination of the state treasurer upon finding that the  
7 determination is authorized by law and supported by competent,  
8 material, and substantial evidence on the whole record made before  
9 the state treasurer.

10           (5) The use of funds from a pension system to file, commence,  
11 initiate, further, or otherwise support an appeal under this  
12 section is prohibited and punishable as otherwise set forth under  
13 this act.

14           Sec. 6. (1) All of the following shall occur on the transition  
15 date:

16           (a) A municipality for which a distressed pension system  
17 determination has been made and not set aside under section 5 shall  
18 become a participating municipality within the retirement system,  
19 and is subject to this act, the municipal employees retirement act  
20 of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, and the plan document  
21 of the retirement system, notwithstanding any provision of charter,  
22 ordinance, resolution, regulation, rule, collective bargaining  
23 agreement, or contract to the contrary.

24           (b) All powers formerly vested in the distressed pension  
25 system board or other entity having responsibility for  
26 administration of the distressed pension systems that are necessary  
27 to effectuate the transition of the distressed pension system into

1 the retirement system shall on such date be vested in the chief  
2 executive officer or an officer of the municipality designated by  
3 the chief executive officer, and the distressed pension system  
4 board or other entity having responsibility for administration of  
5 the distressed pension system shall cease existence.

6 (c) The chief executive officer or any appropriate and  
7 authorized official of the municipality or any appropriate and  
8 authorized official of the distressed pension system shall execute  
9 any instruments of conveyance, assignment, and transfer or other  
10 documents as may, in the retirement system's reasonable judgment,  
11 or pursuant to the retirement system's plan document as determined  
12 by the retirement system, be necessary or appropriate to recognize,  
13 facilitate, or accomplish the municipality's participation in the  
14 retirement system and the transfer of the local pension system and  
15 its trust assets to the retirement system.

16 (d) Pursuant to a reasonable transition plan established by  
17 the retirement system after consultation with the chief executive  
18 officer of the municipality sponsoring the distressed pension  
19 system, the retirement system shall do both of the following:

20 (i) Assume responsibility for administration of pension  
21 obligations that were previously administered by the distressed  
22 pension system and custody of all related records and data.

23 (ii) Assume custody of the transferred assets of the distressed  
24 pension system.

25 (2) On or after the transition date, the value of the assets  
26 transferred from the custody of the distressed pension system to  
27 the retirement system shall be jointly determined as of a date

1 certain by the custodian of the retirement system, the custodian of  
2 the distressed pension system, and, where applicable, any  
3 transition manager appointed pursuant to the transition plan  
4 provided for in subsection (1)(d), which determination shall be  
5 final and conclusive. The retirement system shall provide the  
6 written determination of the value of the transferred assets to the  
7 chief executive officer of the municipality.

8 (3) Beginning on the notification date, any contract or  
9 agreement entered into, amended, or modified by a distressed  
10 pension system board or other entity having responsibility for the  
11 administration of a distressed pension system or by the  
12 municipality sponsoring a distressed pension system without the  
13 written consent of the retirement system shall be voidable to the  
14 extent that the retirement system would assume, become party to or  
15 transferee of, or otherwise be obligated under or affected by the  
16 contract or agreement. No contract or agreement, or amendment or  
17 modification thereto, is absolutely void under this subsection.  
18 Contracts, agreements, amendments, and modifications described in  
19 this subsection are voidable as pertains to the retirement system  
20 only by decree of a court of proper jurisdiction in an action by  
21 the retirement system.

22 (4) Notwithstanding any contrary provision of charter,  
23 ordinance, resolution, regulation, rule, collective bargaining  
24 agreement, contract, or the plan document of the retirement system,  
25 a municipality that becomes a participating municipality pursuant  
26 to this act shall remain a participating municipality unless such  
27 participation is terminated by amendment of this act.

1       Sec. 7. (1) All current and former officers, employees, and  
2 agents of a municipality for which a distressed pension system  
3 determination has been made and not set aside pursuant to section 5  
4 and all current and former officers, employees, and agents of the  
5 distressed pension system have an affirmative and ongoing duty to  
6 cooperate with the retirement system in accomplishing the  
7 transition described in this act, and shall comply with all of the  
8 following:

9       (a) Refrain from impairing, by action or inaction, the  
10 retirement system's exercise of its duties and powers under this  
11 act, the municipal employees retirement act of 1984, 1984 PA 427,  
12 MCL 38.1501 to 38.1555, or the retirement system's plan document,  
13 or do anything that would impair the efficient management of the  
14 assets of the distressed pension system before or after the  
15 transfer of assets to the retirement system.

16       (b) During the transition period, conduct operations of the  
17 distressed pension system in the ordinary and usual course of  
18 business, and have an affirmative and ongoing duty to fully  
19 cooperate in the transition to the retirement system, including,  
20 but not limited to, timely producing and sharing with the  
21 retirement system all information and documents, providing the  
22 retirement system with ready and sufficient access to all  
23 information on assets, services, records, and any other materials  
24 or documents the retirement system determines are necessary, both  
25 before and after the transition date. During the transition period,  
26 any contract related to the operation of the distressed pension  
27 system which is entered into without written approval of the

1 retirement system is voidable as provided in section 6(3).

2 (2) A municipality and its distressed pension system, and the  
3 officers and employees of each, shall not, directly or indirectly,  
4 impede the exercise of powers or duties under this act by action or  
5 inaction, including, but not limited to, action or inaction  
6 pursuant to charter, ordinance, resolution, regulation, rule,  
7 collective bargaining agreement, or contract.

8 (3) Any officer, employee, or agent of a sponsoring  
9 municipality or that municipality's distressed pension system who  
10 intentionally violates this section is guilty of a misdemeanor and  
11 is subject to a fine of not more than \$2,000.00 or imprisonment for  
12 not more than 1 year, or both.

13 (4) Any officer, employee, or agent of a sponsoring  
14 municipality or that municipality's distressed pension system who  
15 intentionally violates this section is subject to personal  
16 liability in a civil action for actual and exemplary damages.

17 Sec. 8. (1) Financial benefits that have accrued under the  
18 sponsoring municipality's distressed pension system to retirees,  
19 beneficiaries, and deferred vested members, and such benefits that  
20 have accrued or may accrue to active employees under the sponsoring  
21 municipality's distressed pension system and this system, shall not  
22 be diminished or impaired by this act.

23 (2) The retirement system shall pay benefits, investment  
24 management expenses, administrative expenses, or other  
25 disbursements attributable to the distressed pension system  
26 exclusively from the transferred assets of the sponsoring  
27 municipality's distressed pension system or subsequent

1 contributions by the municipality or its employees, together with  
2 earnings or other increments on such funds and contributions, and  
3 from no other source. At all times and on an annual basis, the  
4 investment management expenses and administrative expenses of a  
5 distressed pension system shall be separately determined and  
6 accounted for by the retirement system in the same manner as for  
7 all other participating municipalities and participating courts.

8       Sec. 9. (1) The retirement system shall not be liable for any  
9 debt obligations, liens, or claims against either the participating  
10 municipality or its distressed pension system, or their governing  
11 bodies, members thereof, officers, employees, or others having any  
12 relationship to them, either existing or arising out of actions  
13 taken by them on, prior to, or after the transition date.

14       (2) The retirement system, its officers and employees, and the  
15 members of the retirement board shall be immune from tort liability  
16 arising from the enforcement and implementation of this act.

17       Sec. 10. The governing body of a municipality that becomes a  
18 participating municipality under this act is hereby authorized,  
19 with the consent of the retirement system and in compliance with  
20 the plan document of the retirement system, to appropriate and  
21 grant funds to the retirement system in furtherance of its  
22 purposes.

23       Sec. 11. If any portion of this act or the application of this  
24 act to any person or circumstances is found to be invalid by a  
25 court, that invalidity shall not affect the remaining portions or  
26 applications of this act, which can be given effect without the  
27 invalid portion or application, as long as the remaining portions

1 are not determined by the court to be inoperable; and to this end,  
2 this act is declared to be severable.

3       Sec. 12. Nothing in this act shall be construed to relieve,  
4 transfer, diminish, or otherwise alter or affect the obligations of  
5 a municipality which has been determined to have a distressed  
6 pension system in connection with any bonds, notes, or other  
7 evidences of indebtedness, including, but not limited to, pension  
8 obligations.

9       Sec. 13. No person, entity, or party other than the chief  
10 executive officer of a municipality sponsoring a distressed pension  
11 system shall have standing to initiate a suit under this act.