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BILL ANALYSIS

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House Bill 4214 (Substitute S-4 as passed by the Senate) *(as enacted)*
House Bills 4216, 4217, and 4218 (as passed by the Senate) *(as enacted)*
Senate Bill 157 (as passed by the Senate) *(as enacted)*
Senate Bill 158 (Substitute S-1 as passed by the Senate) *(as enacted)*
Sponsor: Representative Al Pscholka (H.B. 4214 & 4216-4218)
Senator Phil Pavlov (S.B. 157 & 158)
House Committee: Local, Intergovernmental, and Regional Affairs
Senate Committee: Education

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CONTENT

House Bill 4214 (S-4) would repeal the Local Government Fiscal Responsibility Act, and create the "Local Government and School District Fiscal Accountability Act", which similarly would provide for the review, management, and control of the financial and other operations of a local government (a municipal government or a school district). In particular, the bill would do the following:

- Allow the State financial authority (the State Treasurer or Superintendent of Public Instruction) to conduct a preliminary review to determine the existence of a local government financial problem if certain events occurred.
- Require the Governor to appoint a review team if a finding of probable financial stress were made.
- Authorize the review team to sign a consent agreement with the local government's chief administrative officer, and provide that a consent agreement could include a continuing operations plan or a recovery plan.
- Require the review team to report that the local government was not in financial stress, was in mild financial stress, or was in severe financial stress (and a consent agreement had or had not been adopted); or that a financial emergency existed.
- Require the Governor to make a similar determination after receiving the review team's report and, following the opportunity for a hearing, confirm or revoke a determination that a financial emergency existed.
- Require the Governor to declare the local government in receivership and appoint an emergency manager, upon confirmation of a financial emergency.
- Require the emergency manager to develop a financial and operating plan for the local government.
- Require the plan to provide for, among other things, the modification, termination, or renegotiation of contracts, and, for school districts, an academic and educational plan.
- Authorize an emergency manager to reject, modify, or terminate the terms of an existing contract or a collective bargaining agreement (CBA).
- Allow an emergency manager to order millage elections.
- Allow an emergency manager to take certain actions with respect to a municipal government's pension fund and board, if the fund were not actuarially funded at a level of 80% or more.
- Authorize an emergency manager to disincorporate or dissolve a municipal government with the approval of the Governor; or

- recommend consolidation with another municipal government.
- Limit the authority of an emergency manager to sell assets valued at \$50,000 or more, or to sell a public utility.
- Require an emergency manager to submit contracts valued at \$50,000 or more to competitive bidding, except as authorized by the State Treasurer.
- Eliminate the salary and benefits of the chief administrative officer and governing body members during a receivership, except as restored by the emergency manager.
- Provide that the local governing body and chief administrative officer could not exercise any of the powers of those offices during the receivership.
- Allow an emergency manager to recommend to the Governor and the State Treasurer that a local government be allowed to proceed under Federal bankruptcy law.
- Exempt a local government in receivership from collective bargaining requirements for five years or until the receivership was terminated, whichever occurred first.
- Require an emergency manager to adopt a two-year budget for the local government before the receivership terminated.
- Allow the State Treasurer, in a consent agreement, to grant to local officials the powers prescribed for an emergency manager, except the power to reject, modify, or terminate CBAs.
- Provide that a local government that entered into a consent agreement would not be subject to collective bargaining requirements during the remaining term of the agreement, unless the State Treasurer determined otherwise.
- Provide that an emergency manager would serve at the pleasure of the Governor but would be subject to impeachment by the Legislature as provided in the Constitution.

House Bills 4216, 4217, and 4218 would amend the Revised Municipal Finance Act, the Michigan Election Law, and the

Home Rule City Act, respectively, to replace references to the Local Government Fiscal Responsibility Act with references to the proposed Act.

Senate Bill 157 would amend the Revised School Code to provide that if a school included on the list of lowest-achieving 5% of public schools were operated by a district in which an emergency manager was in place under the Local Government and School District Fiscal Accountability Act, the Superintendent of Public Instruction could not place that school under the supervision of the State School Reform/Redesign Officer.

Senate Bill 158 (S-1) would amend the public employment relations Act to do the following:

- Require a new collective bargaining agreement between a public employer and public employees to include a provision allowing an emergency manager to reject, modify, or terminate the agreement.
- State that the provision required by the bill would be a prohibited subject of bargaining.
- Specify that CBAs could be rejected, modified, or terminated pursuant to the Local Government and School District Fiscal Accountability Act.
- Provide that the public employment relations Act would not confer a right to bargain that would infringe on the exercise of powers under the proposed Act.
- Exempt a local government from collective bargaining requirements during the term of a consent agreement entered into under the proposed Act.

House Bills 4216, 4217, and 4218, and Senate Bills 157 and 158 (S-1) are tie-barred to House Bill 4214. House Bill 4214 (S-4) is tie-barred to Senate Bill 158.

A detailed description of House Bill 4214 (S-4) follows.

Preliminary Review

The State financial authority could conduct a preliminary review to determine the

existence of a local government financial problem under generally the same circumstances under which the State Treasurer currently may do so, as well as under additional circumstances. ("Local government" would mean a municipal government or a school district. "Municipal government" would mean a city, village, township, charter township, or county, an authority established by law, or a public utility owned by a city, village, township, or county. "School district" would mean a school district or an intermediate school district.)

The circumstances that would be similar to current law include the following, among others:

- The governing body or the chief administrative officer of the local government requested a preliminary review.
- The State financial authority received a written request from a creditor with an undisputed claim that remained unpaid six months after its due date in excess of \$10,000 or 1% of the local government's annual general fund budget.
- The State financial authority received a petition containing specific allegations of local government financial distress signed by a number of local registered electors equal to at least 5% (rather than the current 10%) of the total vote cast in that jurisdiction for all candidates for Governor in the last gubernatorial election.
- The State financial authority received notification that the local government had not timely deposited its minimum obligation payment to the local government pension fund.
- The State financial authority received notice that the local government had failed for at least seven days after the scheduled date of payment to pay wages and salaries owed to employees or (under the bill) benefits owed to retirees.
- The State financial authority received a resolution from the Senate or the House of Representatives requesting a preliminary review.
- A court had ordered an additional tax levy without the prior approval of the local governing body.

In addition, the State financial authority could conduct a preliminary review if any of the following occurred:

- A local government had been assigned a long-term debt rating within or below the BBB category or its equivalent by one or more nationally recognized credit rating agencies.
- A local government was in breach of its obligations under a deficit elimination plan.
- A school district ended its most recently completed fiscal year with a deficit in one or more funds and the district had not submitted a deficit elimination plan to the State financial authority within 30 days after the deadline to submit its annual financial statement.

The State financial authority also could conduct a preliminary review if there were other facts or circumstances that were indicative of financial stress, in the sole discretion of the State Treasurer or the Superintendent of Public Instruction, as applicable.

Before conducting the preliminary review, the State financial authority would have to give the local government specific written notification. Elected and appointed officials would have to provide prompt and full assistance and information requested by the State financial authority. The review would have to be completed within 30 days.

Review Team

Appointment & Authority. If a finding of probable financial stress were made for a local government, the Governor would have to appoint a review team. The review team for a municipal government would consist of the State Treasurer or his or her designee, the Director of the Department of Technology, Management, and Budget or his or her designee, a nominee of the Senate Majority Leader, and a nominee of the Speaker of the House. The review team for a school district would consist of the same members plus the Superintendent of Public Instruction (referred to below as the State Superintendent). In either case, the Governor could appoint other State officials or individuals with relevant professional experience.

The Department of Treasury would have to provide staff support to each review team.

A review team appointed under the Local Government Fiscal Responsibility Act (or its predecessor) and serving on the bill's effective date would have to continue to fulfill its powers and duties.

A review team appointed under the bill would have generally the same authority as a term appointed under current law, e.g., examining the books and records of the local government, and signing a consent agreement with its chief administrative officer. Under the bill, the consent agreement could provide for remedial measures considered necessary to address the local financial problem and provide for the financial stability of the local government, and could include either a continuing operations plan or a recovery plan. The consent agreement also would have to provide for periodic financial status reports to the State financial authority.

The consent agreement would have to provide that in the event of a material uncured breach of the agreement, the State Treasurer would be authorized to place the local government in receivership, as provided in the bill.

The review team would have to meet with the local government as part of its review.

Report. The review team would have to report its findings to the Governor, with a copy to the State financial authority, within 60 days after being appointed or earlier if required by the Governor. Upon request, the Governor could grant one 30-day extension. The State Treasurer would have to send a copy of the report to the chief administrative officer and the governing body of the local government, the Senate Majority Leader, and the Speaker of the House, as well as the State Superintendent if the local government were a school district.

The report would have to include the existence, or an indication of the likely occurrence, of generally the same conditions that must be reported by a review team under current law, as well as additional conditions. (These conditions are referred to below as reportable factors.) Conditions

that are similar to current law include the following:

- A default in the payment of principal and interest on bonded obligations, notes, or other municipal securities for which no funds or insufficient funds were on hand.
- Failure for 30 days or more beyond the due date to transfer, as appropriate, employee withholding taxes, taxes collected for another governmental unit, or a contribution to a pension, retirement, or benefit plan.
- Failure for at least seven days (rather than the current 30 days) after the scheduled date of payment to pay wages and salaries owed to employees or (under a new provision) benefits owed to retirees.
- Accounts payable for the current fiscal year in excess of 10% of the total expenditures of the local government in that year.
- Failure to eliminate an existing deficit in any fund of the local government within the two-year period preceding the end of its fiscal year during which the report was received.
- Projection of a general fund deficit for the current fiscal year in excess of 5% (rather than the current 10%) of the budgeted revenue for the general fund.

In addition, the report would have to include the existence, or an indication of the likely occurrence, of any of the following:

- Failure to comply in all material respects with the terms of an approved deficit elimination plan.
- The existence of material loans to the general fund from other local government funds that were not regularly settled between the funds or that were increasing in scope.
- The existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under Government Accounting Standards Board principles.
- The existence of a structural operating deficit.
- The use of restricted revenue for purposes not authorized by law.
- Any other facts and circumstances indicative of local government financial stress or financial emergency.

Conclusions; Conditions of Financial Stress.

The review team would have to include one of the following conclusions in its report:

- The local government was not in financial stress or was in a condition of mild financial stress.
- The local government was in a condition of severe financial stress but a consent agreement containing a plan to resolve the problem had been adopted.
- The local government was in a condition of severe financial stress and a consent agreement had not been adopted.
- A financial emergency existed and no satisfactory plan existed to resolve it.

(These conclusions are similar to those required under current law.)

A local government would be considered to be in a condition of no financial stress or mild financial stress if the review term report concluded that none of the reportable factors existed or were likely to occur within the current or following fiscal year or, if they occurred, did not threaten the local government's capability to provide services essential to public health, safety, and welfare.

A local government would be considered to be in a condition of severe financial stress if either of the following occurred:

- The report concluded that one or more of the reportable factors existed or were likely to occur within the current or following year and, if left unaddressed, could threaten the local government's future capability to provide services essential to the public health, safety, and welfare.
- The chief administrative officer of the local government recommended that it be considered in severe financial stress.

A local government would be considered to be in a condition of financial emergency if any of the following occurred:

- The review team report concluded that two or more of the reportable factors existed or were likely to occur within the current fiscal year and threatened the local government's present and future capability to provide services essential to the public health, safety, and welfare.

- The local government had failed to provide timely and accurate information enabling the review team to complete its report.
- The local government had failed to comply in all material respects with a continuing operations plan or recovery plan, or with the terms of an approved deficit elimination plan.
- The local government was in material breach of a consent agreement.
- The local government was in a condition of severe financial stress and a consent agreement had not been adopted.

A local government also would be considered to be in a condition of financial emergency if the chief administrative officer of the local government, based on the existence or likely occurrence of one or more reportable factors, recommended that a financial emergency be declared, and the State Treasurer concurred.

Delegation. With the approval of the State financial authority, the review team could appoint an individual or firm to carry out the review and submit a report to the team for approval. The Department of Treasury could enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

Consent Agreement

Continuing Operations Plan. If the State Treasurer required a consent agreement to include a continuing operations plan, the local government would have to prepare and file that plan with the State Treasurer. The State financial authority would have to approve or reject it within 14 days. If the plan were rejected, the local government could file an amended plan within 30 days. If the amended plan were rejected, the local government would be considered to be in material breach of the consent agreement. The local government would have to file annual updates to its continuing operations plan, which would have to be included with the annual filing of its audit report with the State financial authority.

The continuing operations plan would have to include, at a minimum, all of the following:

- A detailed projected budget of revenue and expenditures over at least three fiscal years, demonstrating that the local government's expenditures would not exceed its revenue and that any existing deficit would be eliminated during the projected budget period.
- A cash flow projection for the budget period.
- An operating plan for the budget period that assured fiscal accountability for the local government.
- A plan showing reasonable and necessary maintenance and capital expenditures to assure the local government's fiscal accountability.
- An evaluation of the costs associated with pension and postemployment health care obligations for which the local government was responsible, and a plan for how those costs would be addressed within the budget period.
- A provision for submitting quarterly compliance reports to the State financial authority.

If a continuing operations plan were approved for a municipal government, the municipal government would have to amend the budget and general appropriations ordinance it adopted under the Uniform Budgeting and Accounting Act to the extent necessary or advisable to give full effect to the plan. If a continuing operations plan were approved for a school district, the district would have to amend the budget it adopted under that Act, to the same extent.

The chief administrative officer, the chief financial officer, the governing body, and other local officials would have to take and direct actions necessary or advisable to maintain the local government's operations in compliance with the plan.

Recovery Plan. If the State financial authority required that a consent agreement include a recovery plan, the financial authority would have to develop and adopt the plan, in consultation with the review team if the authority desired. The local government would be required to file annual updates to its recovery plan, which would have to be included with the annual filing of its audit report with the State financial authority.

A recovery plan could contain terms and conditions as approved in the discretion of the State Treasurer, including generally the same provisions that a continuing operations plan would have to include. A recovery plan also could include the appointment of a local auditor or local inspector, or both.

A recovery plan would supersede the budget and general appropriations ordinance adopted by the local government under the Uniform Budgeting and Accounting Act, and the budget and general appropriations ordinance would be considered amended to the extent necessary or advisable to give full effect to the recovery plan.

Grant of Authority. Except as provided below, a consent agreement could include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government, by the State Treasurer, of one or more of the powers prescribed for emergency managers in the bill for the periods and upon the conditions as the State Treasurer considered necessary or convenient to enable the local government to achieve the goals and objectives of the agreement.

The consent agreement could not grant the power to reject, modify, or terminate the terms of a collective bargaining agreement.

Collective Bargaining Exemption. Beginning 30 days after a local government entered into a consent agreement, the local government would not be subject to Section 15(1) of the public employment relations Act for the remaining term of the agreement, unless the State Treasurer determined otherwise. (Section 15(1) requires a public employer to bargain collectively with representatives of its employees as provided in that Act, and allows a public employer to enter into CBAs with the employer representatives.)

Other Provisions. A consent agreement could require the local government to retain a consultant for the purpose of assisting it to achieve the goals and objectives of the agreement.

A local government would be released from the requirements concerning a consent agreement upon compliance with the

agreement, as determined by the State financial authority.

Determination by Governor; Financial Emergency

Within 10 days after receiving a review team's report, the Governor would have to make one of the following determinations:

- The local government was not in a condition of severe financial stress.
- The local government was in a condition of severe financial stress but a consent agreement containing a plan to resolve the financial stress had been adopted.
- A local government financial emergency existed and no satisfactory plan to resolve it existed.
- The local government entered into a consent agreement containing a continuing operations plan or recovery plan to resolve the financial problem, but materially breached the agreement.

(Currently, the Governor must make a similar determination, except regarding breach of a consent agreement, within 30 days after receiving a review team's report.)

If the Governor determined that a financial emergency existed, he or she would have to give the governing body and chief administrative officer of the local government a written notification of that determination, findings of fact used as the basis for the determination, a concise and explicit statement of the underlying facts, and notice that the chief administrative officer or the governing body had seven days to request a hearing conducted by the State financial authority or his or her designee. (Currently, a local government has 10 days to request a hearing conducted by the Governor.)

After the hearing, or by the deadline for requesting a hearing, the Governor would have to confirm or revoke the determination of the existence of a financial emergency. If confirmed, the Governor would have to give a written report to the governing body and chief administrative officer.

Within 10 days, the local government could appeal the determination of a financial emergency to the Ingham County Circuit Court, by resolution adopted by a vote of

two-thirds of the members of the local government's governing body. (Current law similarly allows an appeal but does not require a two-thirds vote.)

When a finding of a financial emergency was confirmed, the Governor would have to declare the local government in receivership and would have to appoint an emergency manager to act for and in the place of the governing body and office of chief administrative officer of the local government. (Under current law, if the Governor determines that a financial emergency exists, he or she must assign the responsibility for managing it to the Local Emergency Financial Assistance Loan Board, which is required to appoint an emergency financial manager.)

The emergency manager would have to be an individual with at least five years' experience and demonstrable expertise in business, financial, or local or State budgetary matters. He or she could but would not have to be a resident of the local government.

The emergency manager's compensation and reimbursement for actual and necessary expenses would have to be paid by the local government, and would have to be set forth in a contract approved by the State Treasurer. The contract would have to be posted on the Department of Treasury's website within seven days after it was approved.

The emergency manager would serve at the pleasure of the Governor, but would be subject to impeachment and conviction by the Legislature as if he or she were a civil officer under Article IX, Section 7 of the State Constitution (i.e., for criminal activity or corruption in office). A vacancy in office of emergency manager would have to be filled in the same manner as the original appointment.

The emergency manager would continue in this capacity until removed by the Governor or the Legislature, as provided above; or until the financial emergency was rectified.

The local government would be removed from receivership when the financial conditions were corrected in a sustainable fashion as determined by the State

Treasurer. (Currently, 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.)

Except as otherwise provided in the bill, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law and charter would be suspended during a receivership.

The Governor could delegate his or her duties under the above provisions to the State Treasurer.

An emergency manager appointed under the bill or under the current Act (or its predecessor) would be subject to all of the following:

- Public Act 317 of 1968 (which governs contracts of public servants with public entities).
- Public Act 318 of 1968 (which prohibits State officers from having an interest in a contract with the State or a political subdivision that would cause a substantial conflict of interest).
- Public Act 196 of 1973 (which prescribes standards of conduct of public officers and employees).

An emergency financial manager (EFM) appointed under current law and serving on the bill's effective date would have to continue to fulfill his or her powers and duties.

Emergency Manager Orders

An emergency manager would have to issue to the appropriate local and elected officials and employees, agents, and contractors of the local government the orders the manager considered necessary to accomplish the purposes of the proposed Act, including orders for the timely and satisfactory implementation of a financial and operating plan, as well as an academic and educational plan for a school district, or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under these provisions would be binding on the local

officials, employees, agents, and contractors to whom it was issued.

If an order were not reasonably carried out and that failure were disrupting the emergency manager's ability to manage the local government, the emergency manager could prohibit the local official, employee, agent, or contractor from access to the local government's office facilities, electronic mail, and internal information systems.

Financial & Operating Plan

The objectives of a financial and operating plan would be ensuring that the local government was able to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government.

The plan would have to provide for all of the following:

- Conducting all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate.
- Paying in full the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government and all other uncontested legal obligations.
- The modification, rejection, termination, and renegotiation of contracts.
- The timely deposit of required payments to the pension fund for the local government or in which it participated.
- For school districts, an academic plan and education plan.
- Any other actions considered necessary by the emergency manager to achieve the objectives of the plan, alleviate the financial emergency, and remove the local government from receivership.

(Under current law, an EFM must develop a financial plan in consultation with the local government, and the plan must provide for the first two items listed above.)

Within 45 days after being appointed, the emergency manager would have to submit the plan to the State Treasurer, with a copy to the State Superintendent if applicable, and to the chief administrative officer and governing body of the local government.

The emergency manager and State Treasurer would have to reexamine the plan regularly, and it could be modified from time to time by the emergency manager with notice to the State Treasurer.

The plan could serve as a deficit elimination plan otherwise required by law if so approved by the State financial authority.

Within 30 days of submitting the plan to the State financial authority, the emergency manager would have to conduct a public informational meeting on the plan and any modifications to it. This provision would not require the emergency manager to receive public approval before implementing the plan or any modification.

Additional Actions; CBA Modification

General. The bill lists additional actions an emergency manager could take with respect to a local government in receivership, notwithstanding any provisions of law or charter to the contrary. A number of these actions are similar to what an EFM may do under current law, such as requiring a plan for all outstanding obligations; revising the local government's budget; reviewing payrolls or other claims against the local government before payment; approving any appropriation, contract, expenditure, or loan, the creation of a new position, or the filling of a vacancy; and applying for a loan from the State on behalf of the local government.

An emergency manager also could enter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, or the transfer of functions and responsibilities. (Currently, an EFM may enter into agreements with other local governments for the provision of services.)

In addition, an emergency manager could order one or more millage elections for the local government, and could disburse all Federal, State, and local funds earmarked for the local government, including funds for specific programs and debt retirement (as currently allowed for the EFM of a school district). A millage election ordered for a local government could be held only at the general November election.

Contracts & Collective Bargaining Agreements. The bill would authorize the emergency manager to reject, modify, or terminate one or more terms and conditions of an existing contract.

After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion, a prompt and satisfactory resolution were unlikely to be obtained, the emergency manager could reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. The bill states that this action would be a legitimate exercise of the State's sovereign powers if the emergency manager and the State Treasurer determined that all of the following conditions were satisfied:

- The financial emergency had created a circumstance in which it was reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.
- Any plan involving the rejection, modification, or termination of any terms and conditions of an existing CBA was reasonable and necessary to deal with a broad, generalized economic problem.
- The plan was directly related to and designed to address the financial emergency for the benefit of the public as a whole.
- The plan was temporary and did not target specific classes of employees.

A provision of an existing collective bargaining agreement that authorized the payment of a benefit upon the death of a police officer or firefighter in the line of duty could not be impaired and would not be subject to any provision of the bill authorizing an emergency manager to reject, modify, or terminate the terms of an existing CBA.

Local Inspector or Auditor. In addition to employing or contracting for, at the expense of the local government, auditors and other technical personnel considered necessary (as currently allowed for an EFM), an emergency manager could retain one or more individuals or firms to perform the duties of a local inspector or a local auditor. The duties of a local inspector or auditor would be as specified in the bill. At least annually, a report of the local inspector or

auditor would have to be submitted to the emergency manager, the State Treasurer, and the State Superintendent if applicable.

Municipal Government. For a municipal government, the emergency manager also could do the following:

- Enter into agreements with other units of municipal government to transfer property, subject to approval by the State Treasurer.
- Recommend to the State Boundary Commission that a city, village, or township consolidate with one or more other municipal governments.
- With the approval of the Governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law.

In addition, if a municipal government's pension fund were not actuarially funded at a level of 80% or more, according to the most recent Governmental Accounting Standards Board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager could remove one or more of the serving trustees of the local pension board or, if the State Treasurer appointed the emergency manager as the sole trustee of the board, replace all the serving trustees.

If the emergency manager served as the sole trustee, he or she would have to assume and exercise the authority and fiduciary responsibilities of the local pension board including, if applicable, setting and approving actuarial assumptions for pension obligations of the municipal government to the local pension fund. The emergency manager also would have to comply fully with the Public Employee Retirement System Investment Act and Article IX, Section 24 of the State Constitution (which provides that the accrued financial benefits of each pension plan of the State and its political subdivisions are a contractual obligation that may not be impaired), and any actions taken would have to be consistent with the pension fund's qualified plan status under the Internal Revenue Code. In addition, the emergency manager could not make changes to a local pension fund without identifying the changes and the associated

costs and benefits and receiving the State Treasurer's approval.

The emergency manager's assumption and exercise of the authority and fiduciary responsibilities of the local pension board could not end later than the termination of the receivership.

School Districts. The bill lists additional actions an emergency manager could take with respect to a school district. These include actions an EFM currently may take, such as seeking approval from the State Superintendent for a reduced class schedule in accordance with administrative rules governing the distribution of State school aid. The emergency manager also could sell, assign, transfer, or otherwise use the district's assets to meet past or current obligations or assure the fiscal accountability of the school district, as long as this did not impair pupil education. The bill specifies that this power would include the closing of schools or other school buildings in the district.

In addition, the emergency manager could do the following:

- Exercise solely all other authority and responsibilities affecting the school district prescribed by law to the school board and district superintendent.
- Employ or contract for, at the district's expense and with the approval of the State financial authority, school administrators necessary to implement the proposed Act.

Assets, Liabilities, & Responsibilities. If provided in the financial and operating plan, or otherwise with the prior written approval of the Governor or his or her designee, the emergency manager could sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, if the use or transfer did not endanger the health, safety, or welfare of the local residents or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

Unless the potential sale and value of an asset were included in the financial and operating plan prepared for a local government, the emergency manager could

not sell an asset of the local government valued at more than \$50,000 without the State Treasurer's approval.

Competitive Bidding on Contract. Any contract involving a cumulative value of \$50,000 or more would be subject to competitive bidding by an emergency manager. The emergency manager could, however, submit the potential contract to the State Treasurer for review and the Treasurer could authorize the contract without competitive bidding.

Sale of Public Utility. An emergency manager for a city or village could not sell or transfer a public utility furnishing light, heat, or power without local voter approval. Also, if the finances of such a public utility were separately maintained and accounted for by the city or village, the emergency manager could not use the utility's assets to satisfy the general obligations of the city or village.

Emergency Manager Reporting Requirements

The bill would require an emergency manager to file a report with the Governor, the Senate Majority Leader, the Speaker of the House, and the clerk of the local government in receivership, and post the report on the local government's internet website. The report would have to include all of the following:

- A description of each expenditure made, approved, or disapproved during the reporting period with a cumulative value of \$5,000 or more and the source of the funds.
- A list of each contract that the emergency manager awarded or approved with a cumulative value of \$5,000 or more, the purposes of the contract, and the identity of the contractor.
- A description of each loan sought, approved, or disapproved during the reporting period with a cumulative value of \$5,000 or more, and the proposed use of the funds.
- A description of each new position created or any vacancy in a position filled by the appointing authority.
- A description of any position that had been eliminated or from which an employee was laid off.

- A copy of the contract with the emergency manager.
- The financial and operating plan prepared for the local government.
- The salary and benefits of the emergency manager.

The report would have to be submitted every three months, beginning six months after the emergency manager's appointment.

(The current law contains similar reporting requirements regarding positions, expenditures, contracts, and loans, although the reporting threshold is \$10,000.)

An emergency manager also would have to make quarterly reports to the State Treasurer with respect to the local government's financial condition, with a copy to the State Superintendent if applicable.

Criminal Conduct

The bill would require an emergency manager, on his or her own or upon the advice of the local inspector if one had been retained, to determine whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determined that there was reason to believe that criminal conduct occurred, he or she would have to refer the matter to the Attorney General and the local prosecuting attorney for investigation. (This would be similar to a current requirement for EFM's.)

Elimination of Salary & Benefits

When a local government was placed in receivership and during the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and governing body members would be eliminated.

If an emergency manager had reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and governing body members before the bill's effective date, the reduction, suspension, or elimination would be valid to the same extent as if it had occurred after that date.

An emergency manager could restore all or part of the compensation or benefits of the chief administrative officer and governing body members during the receivership, for the time and on the terms the emergency manager considered appropriate, to the extent he or she found that the restoration was consistent with the financial and operating plan.

These provisions would not authorize the impairment of vested retirement benefits.

Bankruptcy

An emergency manager could recommend to the Governor and the State Treasurer that a local government be authorized to proceed under Title 11 of the United States Code if, in the emergency manager's judgment, no reasonable alternative to rectifying the local government's financial emergency existed. If the Governor approved of the recommendation, he or she would have to inform the State Treasurer and the emergency manager, as well as the State Superintendent if the local government were a school district. The emergency manager then would be authorized to proceed under Title 11.

These provisions would empower the local government to become a debtor under Title 11, and empower the emergency manager to act exclusively on the local government's behalf in any such case under Title 11.

The recommendation to the Governor and State Treasurer would have to include a determination by the emergency manager of one of the following:

- No feasible financial plan that could satisfactorily rectify the financial emergency in a timely manner could be adopted.
- A plan in effect for at least 180 days could not be implemented as written or as it could be amended in a manner that could satisfactorily rectify the emergency in a timely manner.

(Currently, an EFM may authorize a local government to proceed under Title 11 unless the authorization is disapproved by the Local Emergency Financial Assistance Loan Board, if the EFM makes one of the same determinations.)

Termination of Receivership

A local government in receivership would be considered to be in a condition of financial emergency until the emergency manager declared the financial emergency to be rectified in his or her quarterly report to the State Treasurer, subject to the concurrence of the State Treasurer, as well as the State Superintendent in the case of a school district.

(Currently, the Governor may declare that the conditions for revoking a declaration of a financial emergency have been met after receiving a recommendation from the Local Emergency Financial Assistance Loan Board.)

Immunity; Defense; Insurance

An emergency manager would be immune from liability as provided in Section 7(5) of the governmental immunity law. A person employed by an emergency manager would be immune from liability as provided in Section 7(2) of that law.

(Under Section 7(5), a judge, a legislator, and the elective or highest appointed executive official of all levels of government are immune from tort liability for personal injury or property damage if the person is acting within the scope of his or her judicial, legislative, or executive authority. Section 7(2) extends tort immunity to a governmental employee for personal injury or property damage caused by the employee in the course of employment if his or her conduct does not amount to gross negligence.)

The Attorney General would have to defend any civil claim, demand, or lawsuit that challenged the validity of the proposed Act, the authority of a State official or officer acting under the Act, or the authority of an emergency manager if he or she were acting within the scope of authority for an emergency manager under the Act.

With respect to any aspect of a receivership, the costs incurred by the Attorney General in carrying out these responsibilities would be at the expense of the local government. A local government's failure to remit to the Attorney General the costs he or she incurred within 30 days after written notice

would be a debt owed to the State. In the case of a municipal government, the debt would have to be recovered by the State Treasurer as provided in Section 17a(5) of the Glenn Steil State Revenue Sharing Act (i.e., the Treasurer could withhold revenue sharing payments). In the case of a school district, the State Treasurer would have to recover the debt as provided in the State School Aid Act.

An emergency manager could procure and maintain, at the expense of the local government, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor of the emergency manager, as may be provided to elected or appointed officials or local government employees.

If, after an emergency manager's service ended, the emergency manager or an employee, agent, appointee, or contractor were subject to a claim, demand, or lawsuit arising from an action taken during the emergency manager's service and not covered by insurance, litigation expenses and settlement payments would have to be paid out of the funds of the local government, if the State Treasurer approved the expenses and determined that the conduct resulting in the proceedings was based upon the scope of authority of the person or entity seeking the payment, and the conduct occurred on behalf of a local government while it was in receivership.

The failure of a municipal government or school district to honor and remit the legal expenses of a former emergency manager or his or her employee, agent, appointee, or contractor would be a debt owed to the State and would have to be recovered as provided under the Glenn Steil State Revenue Sharing Act or the State School Aid Act.

Local Assistance

The elected and appointed officials and employees, agents, and contractors of a local government would be required to promptly and fully provide the assistance and information necessary and property requested by the State financial authority, a review team, or an emergency manager. If

a review team or emergency manager believed that an official or employee, agent, or contractor was not answering questions accurately or completely, or was not furnishing information requested, the review team or emergency manager could issue subpoenas and administer oaths to the official, employee, agent, or contractor to answer questions or furnish records. If the individual refused, the team or manager could bring an action in the circuit court to compel testimony and furnish records.

A local government official's failure to abide by the proposed Act would be considered gross neglect of duty, which the review team or emergency manager could report to the State financial authority and the Attorney General. After review and a hearing with the elected official, the State financial authority could recommend to the Governor that he or she remove the official from office.

(These provisions are similar to current law, with the exception of the provisions for issuing subpoenas and bringing a circuit court action.)

Collective Bargaining; Two-Year Budget

A local government placed in receivership under the proposed Act would not be subject to Section 15(1) of the public employment relations Act for five years from the date it was placed in receivership or until the time the receivership was terminated, whichever occurred first.

For a local government for which an emergency manager was serving on the bill's effective date, this provision would not become applicable until 60 days after that date.

Before the termination of a receivership and the completion of his or her term, an emergency manager would have to adopt and implement a two-year budget, including all contractual and employment agreements, for the local government beginning with the termination of the receivership.

The governing body of the local government could not amend the two-year budget without the approval of the State Treasurer, and could not revise any order or ordinance implemented by the emergency manager

during his or her term before one year after the receivership terminated.

Bulletins & Rules

The State financial authority would be directed to issue bulletins or adopt rules as necessary to carry out the purposes of the proposed Act. A rule would have to be adopted in accordance with the Administrative Procedures Act.

Continuation of EFM

An emergency financial manager appointed and serving under State law before the effective date of the proposed Act would continue under the Act as an emergency manager for the local government, and would have to fulfill his or her duties and responsibilities and exercise all of the powers granted under the Local Government Fiscal Responsibility Act or its predecessor.

Except as provided above (regarding the exemption from Section 15(1) of the public employment relations Act), the provisions of the proposed Act would apply to any local government for which an EFM was appointed and serving on the Act's effective date.

New Taxes

The proposed Act could not be construed to give an emergency manager or the State financial authority the power to impose taxes, over and above those already authorized by law, without the approval of a majority of the qualified electors voting on the question. (Current law includes the same provision.)

MCL 141.2303 (H.B. 4216)
168.971 (H.B. 4217)
117.36a (H.B. 4218)
380.1280c (S.B. 157)
423.215 (S.B. 158)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4214 (S-4)

State: The bill would add more circumstances under which the State could undertake a preliminary review of a local government's finances. As a result, it is

likely that more preliminary reviews would be required and pursued, thereby adding State costs to the Department of Treasury and/or the Department of Education. However, the extent of the additional cost is unknown, and would depend upon the additional reviews of finances that occurred due to the legislation. If the additional reviews resulted in determinations of financial distress that required additional State action, higher State costs in monitoring any corrective plans would result.

Local: Several local fiscal impacts could occur due to this legislation. They are discussed below, but not necessarily in order of magnitude.

First, the bill would suspend the authority of a chief administrative officer or governing body to exercise power on behalf of the local government, during the pendency of a receivership. This means that the emergency manager would have significant control over all aspects of governing a unit in receivership (not just financial), and could result in local financial impacts, positive or negative.

Second, the financial and operating plan could include a modification or renegotiation of contracts, the timely deposit of required payments to the pension fund, the sale or transfer of assets or liabilities, an academic plan, or other necessary actions. A change by the emergency manager in any of these items likely would have fiscal impacts on the affected government unit. Also, collective bargaining requirements would not be in effect for a local government entering into a consent agreement, for the duration of the agreement.

Third, under certain conditions, the manager could enter into agreements with other governments for consolidation of services, recommend consolidation, or dissolve the municipal government. Again, these actions would have fiscal impacts on the unit of government(s) affected.

Fourth, salaries of the chief administrative officer and governing body members of a local government in receivership would be eliminated; however, they could be restored by the emergency manager if found consistent with the financial and operating

plan. An emergency manager could employ or contract for other school administrators necessary to implement this Act.

Finally, costs to a local government from being represented by the Attorney General would have to be paid out of the local government's operating budget. If payments were not made, revenue sharing or School Aid payments could be withheld.

House Bills 4216-4218

The bills would have no fiscal impact on State or local government.

Senate Bill 157

The bill would have no fiscal impact on State or local government.

Senate Bill 158 (S-1)

The bill could result in local impacts if, in situations where an emergency manager was appointed, collective bargaining agreements were rejected, modified, or terminated and replaced with wage and/or benefit structures that provided a different compensation than contained in the original collective bargaining agreements.

Also, the suspension of the collective bargaining process itself during the period of a consent agreement could result in some administrative savings. Those would result from the elimination of resources devoted to the bargaining process, for the duration of the consent agreement.

Fiscal Analyst: Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.