

Executive Summary

As a result of the ongoing legal controversies and the numerous, serious concerns raised regarding the Michigan Emergency Manager law, Ranking Member Conyers has asked the Democratic staff of the House Judiciary Committee to review the law and its application to various jurisdictions in the State and its pending application to other jurisdictions, including the City of Detroit. This Interim Report includes the development of a factual record, along with findings and recommendations. Among other things, the review includes analysis of relevant legislation, court documents, legal decisions, media reports and other public documents as well as the statements prepared in conjunction with the Democratic Judiciary Forum being held on February 21, 2012 in Highland Park, Michigan.

In terms of factual findings, first, we find that the EM Law is clearly unconstitutional by virtue of the fact that it violates the Contracts Clause of the U.S. Constitution. It does so because it fails the test set forth by the Supreme Court in 1934 in *Home Building & Loan Assn. v. Blaisdell* that a state may only “substantially” impair a contract, such as a collective bargaining agreement where, the law serves a demonstrated and legitimate public purpose, and the means chosen to impair the contract are “reasonable and necessary.” In the case of the EM Law, the mere fact of the state-declared “financial emergency” does not justify the unfettered power to reject contracts, particularly when other far more reasonable options are available. As UCLA Law Professor Kenneth Klee has written, “as currently drafted, the [Michigan EM Law] is violative of the Contracts Clause ... No prior legislature has had the audacity to legislate the unilateral termination, rejection, or modification of a collective bargaining agreement.”

Second, we find that other provisions of the EM Law impacting minority voting rights and representative form of government; provisions in possible violation of the state constitution; implementation in violation of the Michigan Open Meetings Act; and consideration of a possible “stop-gap” legislative fix designed to thwart the voter initiative process are all controversial and largely untested in the courts due to the extreme and unprecedented nature of the EM Law. Resolution of these legal disputes could take years to resolve, potentially leading to financial disarray and gridlock. The Report finds that, among other things:

- The Michigan Department of Treasury’s own internal analysis flagged these concerns: “[t]his bill allows emergency managers too much power and control over local units of government. Emergency managers can’t be trusted to act in the interests of the local unit and will use the enhanced powers granted under this bill for their own gain. Stripping local officials of the powers is anti-democratic.”

- The Voting Rights Act concerns are also apparent, given that if Detroit and Inkster become subject to an EM, more than 50% of African American voters in the state would be denied a vote for local government.
- The concerns about the lawfulness of the EM Law are not theoretical -- last week the Ingham County Circuit Court found the Michigan financial review teams were operating in violation of the Michigan Open Meetings Act, invalidating the Highland Park School District EM and calling into question the process being used to review Detroit's finances.

Third, we find that experience under the Michigan EM Law reveals that it has not been used consistently over the long term to meaningfully strengthen the finances of local jurisdictions; and that there have been a significant number of cases of abuse, mismanagement, and conflict of interest, including the following:

- Numerous jurisdictions have had multiple appointments, including Ecorse and Flint. Other jurisdictions have continued to realize financial problems, even after multi-year operation by EMs, including Hamtramck (seeking to file for bankruptcy); Highland Park (unable to pay electricity bills); Pontiac (credit rating declined under EM); and Benton Harbor (budget remains unbalanced and financial controls weak).
- Numerous examples of abuse, including termination of Highland Park EM for unauthorized payments to himself; Pontiac EM faced potential loss of \$1.4 million in HUD funds and found to have outsourced water treatment to company charged with numerous Clean Water Act violations; and unlawful usurpation of academic authority by the EM for Detroit Public Schools.

In terms of recommendations, first, it is recommended that the EM Law be repealed/modified and that the relevant stakeholders work on a bipartisan basis to develop a more workable and reasonable statutory model for financial review, intervention, and support. Such vehicles have been used successfully in the past to rescue cities such as New York City, Cleveland, and Philadelphia.

Second, we recommend that the cities, state, and federal government all act cooperatively to respond to the problems caused by massive job loss and other urban problems. While it is important for local jurisdictions to reach budget accords with unions and other stakeholders, it is also vital that Michigan step forward to make good on its promises to share revenue with Detroit and other cities. If Michigan repaid Detroit the \$220 million in revenue sharing funds it was promised, that would eliminate the city's shortfall in the current year as well as its overall structural deficit. The federal government also has an important role in supporting job creation as well as health care, education, and public safety.

Third, we recommend that the federal government and the U.S. Congress become involved in overseeing the EM Law. Given the controversy the law has generated and the abuses that have been identified under it, the Department of Justice needs to review the law and its application, and Members of Congress need to become more directly involved in oversight.

Our Nation was built upon the fundamental building blocks of voting rights and guarantees of contract and collective bargaining. Unfortunately, the State of Michigan has chosen to abandon these precious rights in a futile effort to balance our cities' books. These efforts have not worked, and before they go any further, it is incumbent on all the local, state and federal elected officials to work together to craft a more sensible and lawful solution.