STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

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STATE TREASURER

DATE: July 21, 2015

TO: Governor Snyder

FROM: Wayne County Financial Review Team:
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SUBJECT: Report of the Wayne County Financial Review Team

On July 7th, 9th, 10th and 17th, 2015, Wayne County Financial Review Team members met and reviewed information relevant to the financial condition of Wayne County. Based upon those reviews, the Review Team concludes, in accordance with Section 5(4)(b) of Public Act 436 of 2012, the Local Financial Stability and Choice Act, that a financial emergency exists within Wayne County.

I. Background

A. Preliminary Review

On June 19th through June 30th, 2015, the Department of Treasury conducted a preliminary review of the finances of Wayne County to determine the existence of probable financial stress. The preliminary review of Wayne County resulted from the conditions enumerated in subdivisions (a), (p), (r), and (s) of Section 4(1) having occurred within the County.[1] The preliminary review found, or confirmed, the following:

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[1] Subdivision (a) provides that "[t]he governing body or the chief administrative officer of a local government requests a preliminary review. The request shall be in writing and shall identify the existing or anticipated financial conditions or events that make the request necessary." Subdivision (p) provides that "[t]he municipal government has ended a fiscal year in a deficit condition as defined in section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has failed to comply with the requirements of that section for filing or instituting a financial plan to correct the deficit condition." Subdivision (r) provides that "[t]he local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by 1 or more nationally recognized credit rating agencies." Subdivision (s) provides "[t]he existence of other facts or circumstances that, in the state treasurer's sole discretion for a municipal government, are indicative of probable financial stress or that, in the state treasurer's or superintendent of public instruction's sole discretion for a school district, are indicative of probable financial stress.

The preliminary review also was predicated upon the assertion in the County Executive's June 17, 2015, request that the condition in subdivision (o) ["A court has ordered an additional tax levy without the prior approval of the governing body of the local government."] had occurred. As explained on Page Thirteen, that assertion was incorrect.

- County officials violated requirements of Section 17 of Public Act 2 of 1968, the Uniform Budgeting and Accounting Act.[2] Section 17 of the Act provides, in part, that "the legislative body of the local unit shall amend the general appropriations act as soon as it becomes apparent that a deviation from the original general appropriations act is necessary and the amount of the deviation can be determined."

  For example, for the County's 2014 fiscal year, General Fund expenditures in the "County Jail," "Prosecuting Attorney's Office," and "Sheriff's Department" activity lines exceeded budgeted revenues by $14.8 million, $2.7 million, and $1.0 million, respectively. In addition, several revenue line items including "Transfers In" did not meet expectations, falling short by over $42.0 million. Consequently, the net budgeted change in fund balance was a negative $18.9 million.[3]

- For the last several fiscal years, County officials failed to file with the Michigan Department of Treasury a financial audit that conformed to the minimum procedures and standards required of local governments by the Uniform Budgeting and Accounting Act. Local governments are expected to adopt annual budgets on an activity level or lower (for example, "Prosecuting Attorney" or "Sheriff"). The County's recent financial audit did not comply with this requirement by reporting budgets on the higher, function level (for example, "Public Safety").[4]

- The County ended a fiscal year in a deficit condition and was in breach of its obligations under a deficit elimination plan. For the County's 2014 fiscal year, deficits existed in the entity-wide governmental activities of $373.0 million in unrestricted net assets. Unrestricted General Fund deficits peaked at $156.4 million in 2013 and were reduced to $82.8 million in 2014. The recent reduction in the deficit was primarily due to a transfer of $91.6 million from the Delinquent Tax Revolving Fund, which will increase borrowing costs to the County when collecting delinquent taxes on behalf of local governments within the County. (According to County officials, $153.4 million more was to be transferred in 2015.) Unrestricted deficits in the General Fund began in the 2008 fiscal year, with an unrestricted deficit of $10.6 million. Without taking remedial measures, County officials projected a $171.4 million deficit by fiscal year 2019.

  Other funds that had deficits in 2014 were the Health Fund ($5.0 million), the Nutrition Fund ($3.2 million), the Community and Economic Development Fund ($2.3 million), the Wetlands Mitigation Fund ($1,000), and the Regional Jobs and Economic Growth Fund ($1,000).

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[2] Those provisions, in the main, require local officials annually to adopt a balanced budget which sets forth a statement of estimated revenues, by source, in each fund maintained by the local government for the ensuing fiscal year; to monitor actual revenues and expenditures during the course of a fiscal year; to amend an adopted budget as necessary to ensure that expenditures do not exceed available revenues; and to refrain from incurring expenditures in excess of amounts appropriated by the local legislative body.

[3] The fiscal year of the County is October 1 through September 30.

[4] County officials, and their audit firm, disagreed with this finding asserting that the level of budget detail was proper.

- County officials had not filed an adequate or approved deficit elimination plan with the Department of Treasury for fiscal years 2010, 2011, and 2012. For fiscal year 2013, County officials proposed to transfer $81.0 million from the Delinquent Tax Revolving Fund ($91.6 million actually was transferred) and to create a Waste Water Authority to realize a one-time payment of $121.0 million from participating communities. However, the proposed deficit elimination plan was not certified by the Department of Treasury because the plan did not qualify. No deficit elimination plan had been submitted for the County's 2014 fiscal year; it was due when the County's most recent audit report was submitted at the end of March 2015.

- On May 29, 2015, the Wayne County Circuit Court entered a $49.3 million judgment against the County in the case of *Wayne County Employees Retirement System* v *the Charter County of Wayne*. Subsequently, on June 4, 2015, the County Commission voted to remit the judgment amount by transferring money from the Delinquent Tax Revolving Fund. However, the County Executive vetoed the action and the veto was not overridden. Because the County lacked the financial ability to remit the judgment from existing resources, County officials acceded to having a judgment placed upon the County's summer property tax rolls.

- The County's primary pension plan was 45.1 percent funded and had a liability of $910.5 million based upon the last actuarial valuation dated September 30, 2013, in contrast to a 94.8 percent funding ratio and a total liability of $49.6 million in 2004. Over the past 10 years, the pension funding ratio decreased by 52.4 percent, while the unfunded liability increased to more than 18 times its 2004 level. The decreased funding ratio was caused by reopening plans to new members in 2002 and 2008, underperforming investments, increasing payrolls, and generous incentives including for early retirement that waived age requirements and enabled eligible persons to purchase years of service at discounted rates.

- Recently, the County's credit rating was downgraded by the three major credit rating services. Moody's rating is now at Ba3, Fitch's rating is at B, and Standard and Poor's rating is at BB+. The ratings by Fitch's and Standard and Poor's are classified as non-investment grade, speculative, or junk, while Moody's rating is only slightly better.

- Total long-term obligations of the County, including component units but not pension obligations, were $3.3 billion as of the 2014 fiscal year. Total obligations compared to total Net Position (i.e., debt to equity ratio) were 2.2 (i.e., long-term obligations were 2.2 times the size of the County's Net Position).

- Over the past several years, taxable valuation of real and tangible personal property within the County declined approximately 24 percent, reducing the amount of property taxes received by the County and underlying units of local government. Since 2007, the property tax revenues in the County's General Fund decreased by over $155.7 million, as total General Fund expenditures increased by over $50.0 million.

- For the last several years, County officials had issued tax anticipation notes to meet cash-flow shortages. The amounts borrowed for these purposes were $60.0 million in 2009, $100.0 million in each of the years of 2010 through 2012, $90.0 million in 2013, and $75.0 million in 2014. The prolonged use of short-term borrowing evidenced a declining cash position. County officials projected significant cash shortages of over $100.0 million in its General Fund until September 2015 when the summer property tax levy is collected.

- Total interfund borrowing in fiscal year 2012 was $110.9 million, an increase of $95.5 million from the prior year. The majority of the interfund borrowing, $87.4 million, went to the General Fund. In 2013, total interfund borrowing increased to $148.8 million. Approximately $106.0 million of this amount was owed to other funds by the General Fund, while another $21.4 million was owed by the Juvenile Justice Fund. In fiscal year 2014, total interfund borrowing decreased to $64.7 million. The General Fund owed roughly $39.5 million of that amount to the Delinquent Tax Revolving Fund.

- County officials made significant recurring interfund transfers. For the past five years, County officials transferred from the General Fund to other funds an average of $109.5 million annually. Sixty-seven percent ($73.9 million) of those transfers were to the Juvenile Justice Fund and 13 percent ($14.5 million) were to Non-major Governmental Funds. Over the same period, the average annual transfer out of the Delinquent Tax Revolving Fund was $35.7 million; the majority of those transfers were to the General Fund, ranging from $4.0 million in 2010 to $91.6 million in 2014.

- In September 2011, construction began on a $300.0 million jail to replace and consolidate three aging jail facilities. In June 2013, construction was halted when estimates put the cost of completion at $391.0 million. From May 1, 2014 to April 30, 2015, County officials spent roughly $14.3 million on construction-related debt service and an additional $725,000 for site preservation. It was unclear whether County officials would sell the site or complete the construction.

On June 30, 2015, the State Treasurer submitted the foregoing preliminary review to the Local Emergency Financial Assistance Loan Board. On July 1, 2015, the Local Emergency Financial Assistance Loan Board determined that probable financial stress existed for Wayne County.[5]

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[5] Under the prior emergency management statutes (Public Act 101 of 1988; Public Act 72 of 1990, the Local Government Fiscal Responsibility Act; and Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act), a preliminary review reached a conclusion regarding whether a serious financial problem or probable financial stress existed in the unit of local government that was subject to the review. However, under the current Act, a preliminary review reaches no such conclusion. Instead, pursuant to Section 4(2) of the Act, "[t]he state financial authority [the State Treasurer or Superintendent of Public Instruction] shall prepare and provide a final report detailing its preliminary review to the local emergency financial assistance loan board…Within 20 days after receiving the final report from the state financial authority, the local emergency financial assistance loan board shall determine if probable financial stress exists for the local government."

B. Review Team Findings

On July 2, 2015, the Governor appointed a five-member Financial Review Team. The Review Team convened on July 7th, 9th, 10th and 17th, 2015.

1. Conditions Indicative of a Financial Emergency

The Review Team found, or confirmed, the existence of the following conditions based upon information provided by County officials or other relevant sources:

- As summarized in **Table 1**, the County's last four annual financial audits reveal notable variances between General Fund revenues and expenditures as initially budgeted, as amended, and as actually realized. For example, in two fiscal years, 2012 and 2013, revenues were overestimated by $12.5 million and $26.5 million, respectively. In addition, County officials underestimated actual expenditures in three of the fiscal years by amounts ranging from $16.7 million to $23.7 million. In general, the amended budgets reflected increased revenues that never materialized, and increased expenditures, but not to the extent of amounts actually expended.

Table 1

General Fund Revenues and Expenditures as Initially Budgeted, Amended, and Actual (In Thousands)

	2011	%	2012	%	2013	%	2014	%
Revenues								
Budgeted	$570,015		$542,227		$643,036		$624,323	
Amended	$563,590		$545,395		$653,445		$542,109	
Actual	$566,811		$532,919		$626,906		$565,086	
Variance	$3,221	0.57	($12,476)	(2.29)	($26,539)	(4.06)	$22,977	4.24
Expenditures								
Budgeted	$461,817		$434,297		$551,215		$579,283	
Amended	$462,884		$436,060		$561,864		$489,452	
Actual	$461,836		$459,761		$578,523		$506,676	
Variance	$1,048	0.23	($23,701)	(5.44)	($16,659)	(2.96)	($17,224)	(3.52)

Source: Annual Financial Audits, 2011 through 2014

- Similarly, as shown in **Table 2**, variances also existed between interfund transfers to and from the General Fund as initially budgeted, as amended, and as actually realized. On the plus side, transfers out of the General Fund were generally less than finally budgeted. In contrast, County officials amended the budgets for three of the years in question to increase the level of transfers in. However, those increased amounts were not realized. For example, in 2014, County officials originally budgeted $73.8 million in transfers into the General Fund. Subsequently, the budget was amended to increase that amount to $138.8 million. Ultimately, only $96.0 million in incoming transfers were realized, leaving the budget $42.7 million short of expectations.

Table 2

General Fund Transfers In and Transfers as Initially Budgeted, Amended, and Actual (In Thousands)

	2011	%	2012	%	2013	%	2014	%
Transfers In								
Budgeted	$1,103		$1,122		$39,245		$73,781	
Amended	$16,979		$130		$69,559		$138,752	
Actual	$16,987		$17,281		$49,045		$96,051	
Variance	$8	0.05	$17,151	131.93	($20,514)	(29.49)	($42,701)	(30.77)
Transfers Out								
Budgeted	$120,194		$109,066		$129,310		$102,377	
Amended	$117,036		$109,479		$129,321		$100,725	
Actual	$115,571		$113,158		$107,756		$82,763	
Variance	$1,465	1.25	($3,679)	(3.36)	$21,565	16.68	$17,962	17.83

Source: Annual Financial Audits, 2011 through 2014

- The structural General Fund deficit cited in the County Executive’s June 17, 2015, preliminary review request was not based upon information contained in the County’s financial audits. For example, the preliminary review request noted accumulated General Fund deficits of $157.5 million and $88.4 million for fiscal years 2013 and 2014, respectively. In fact, the ending balances in the General Fund in those years were a negative $145.6 million and a negative $73.8 million, respectively ($156.4 million and $82.8 million, respectively on an unrestricted basis).

  Furthermore, the preliminary review request appears to have utilized the terms *accumulated* deficit and *operating* deficit as interchangeable terms, which they are not. A standard definition of an operating deficit is that expenditures exceed revenues. However, as depicted in **Table 3**, the County's General Fund actually realized operating surpluses during each of the last four fiscal years (i.e., revenues exceeded expenditures). This fact was noted in a July 8, 2015 analysis of the County Commission's Office of Fiscal Agency which stated that "[t]he County ended FY 13-14 (September 30, 2014) with a $58 million [General Fund General Purpose] operating surplus of revenues over expenditures (before transfers)."

Table 3

Statement of General Fund
Revenues, Expenditures, and Change in Fund Balance
(In Thousands)

	2011	2012	2013 [6]	2014
Revenues	$566,811	$532,919	$536,624	$565,086
Expenditures	$461,836	$459,761	$488,241	$506,676
Operating Surplus (Deficit)	$104,975	$73,158	$48,383	$58,410
Other Financing Sources (Uses):				
Transfers In	$16,987	$17,281	$49,045	$96,051
Transfers Out	($115,571)	($113,158)	($107,756)	($82,763)
Other	$2,719	$11	--	$75
Total Other Financing Sources (Uses)	($95,865)	($95,866)	($58,711)	$13,363
Special Item	($43,057)	($30,444)	--	--
Net Change in Fund Balance	($33,947)	($53,152)	($10,328)	$71,773
Beginning Fund Balance [7]	($47,934)	($81,881)	($135,238)	($145,566)
Ending Fund Balance	($81,881)	($135,033)	($145,566)	($73,793)

Source: Annual Financial Audits, 2011 through 2014

[6] It should be noted that the County's 2013 financial audit contained different General Fund revenues and expenditures on Page 36 ("Statement of Revenues, Expenditures, and Change in Fund Balances") than on Page 121 ("Budgetary Comparison Schedules"). As a result, fiscal year 2013 General Fund revenues and expenditures in **Table 3** do not match those in **Table 1**.

[7] The beginning Fund Balance for 2013 was restated from a negative $135,033 to a negative $135,238.

However, the Office of Fiscal Agency's qualification "before transfers" is a significant one for two reasons. First, in each of the four fiscal years depicted in **Table 3**, General Fund operating surpluses were more than offset by transfers out of the General Fund to other funds. Second, with the exception of fiscal year 2014, transfers out of the General Fund also exceeded transfers into that fund. Indeed, over the course of the four-year period, transfers out of the General Fund exceeded transfers in by an aggregate of $239.9 million. In short, interfund transfers, and the manner in which County officials amended annual budgets in estimation of them, had a discernible and significant impact upon the County's General Fund year-end balances.

- As depicted in **Table 4**, County officials engaged in unbudgeted expenditures in violation of Sections 17 through 20 of Public Act 2 of 1968, the Uniform Budgeting and Accounting Act.

Table 4

Major Governmental Funds Expenditures
In Excess of Budgeted Appropriations

Program Area	Amount of Unbudgeted Expenditure
County Jail	$14,754,000
County Prosecutor	$2,698,000
Stadium and Land Development	$1,302,000
County Sheriff	$1,028,000
County Executive	$729,000
Heath Programs (Other)	$547,000
Economic Development Corporation	$437,000
Corporation Counsel	$267,000
Medical Examiner	$194,000
Personnel (General Government)	$181,000
Health and Training Programs	$47,000
Sheriff Drug Enforcement	$46,000
Veterans Affairs	$30,000
County Jail (Medical)	$12,000
Community and Economic Development	$2,000
Total Unbudgeted Expenditures	$22,274,000

Source: Annual Financial Audit, 2014

This finding regarding expenditures in excess of budgeted appropriations mirrors one from the preliminary review which, as here, was based upon information contained in the County's 2014 financial audit. In its June 30, 2015, reply to an interim version of the preliminary review, the County Commission took exception to that finding. Having cited a provision of the Uniform Budgeting and Accounting Act, the County Commission's replied thusly:

> The commission, and presumably the CEO's administration, does not interpret this statutory provision to require amendment of the appropriations act based upon precise amounts of financial information disclosed [through the County's financial audit] nearly six months after the end of the fiscal year covered by the appropriations act. However, if authoritative interpretation of this statutory exists to the contrary, the County Commission, and presumably the CEO's administration, stands ready to review and consider it going forward.

The reply of the County Commission misapprehended the point of the preliminary review finding, as well as the relevant requirements of Act 2. As indicated earlier, those provisions of Act 2 require, among other things, that local officials amend an adopted budget to the extent necessary to prevent budgeted expenditures from exceeding available revenues. The requirement is intended to lessen the likelihood of deficit spending.

The preliminary review did not suggest that County officials should have amended the 2014 fiscal year budget based upon subsequent financial audit findings. To the contrary, Section 17 of the Act requires an amendment to occur contemporaneously, "as soon as it becomes apparent that a deviation from the original general appropriations act is necessary and the amount of the deviation can be determined." The preliminary review did no more than what this Review Team report does in regards to the unbudgeted expenditures in question: to confirm their occurrence and the fact that their occurrence violated Act 2.

2. Review Team Meetings

On July 7, 2015, Review Team members Jeffrey S. Bankowski, Thomas M. Davis, Frederick Headen, Sharon L. Madison, and Clarence L. Stone, Jr., met Cary Vaughn, Audit Manager, Local Audit and Finance Division, Bureau of Local Government Services; and with Mark Kettner, of the certified public accounting firm Rehmann Robson, LLC.

On July 9, 2015, Review Team members Jeffrey S. Bankowski, Thomas M. Davis, Frederick Headen, Sharon L. Madison, and Clarence L. Stone, Jr., met with Warren C. Evans, County Executive; Richard Kaufman, Deputy County Executive; Richard Hathaway, Chief Assistant Prosecuting Attorney; Donn Fresard, Chief of Staff; Rosalyn Gibson, Chief of Finance & Administration; Jerome Crawford, Chief of Legislation; Benny N. Napoleon, County Sheriff; Daniel Pfannes, Undersheriff; Robert Dunlap, Director of Jail Classification; Tony Saunders, Management and Budget Director; Mathieu Dube, Deputy Chief Financial Officer; Kevin Haney, Budget Director; Jerome

Pokorski, Assistant Budget Director; Gary Woronchak, County Commission Chairperson; Alisha Bell, County Commission Vice Chairperson; Jewel Ware, County Commission Vice Chairperson; Ray Basham, Tim Killeen, Richard LeBlanc, Martha G. Scott, and Ilona Varga, County Commissioners; Cathy M. Garrett, County Clerk; Patricia Ways, County Clerk's Office; Barbara Johnson, Chief Deputy Register of Deeds; Soumaya A. Harb, Deputy Register of Deeds; David Szymanski, Chief Deputy County Treasurer; Christa McLellan, Deputy County Treasurer; Albert Garrett, President, AFSCME Council 25; Edward McNeil, Special Assistant to the President, AFSCME Council 25; Richard Johnson, Staff Representative, AFSCME Council 25; Wendy Lukianoff, President, AFSCME Local 25; Thomas Richards, President, AFSCME Local 101; Charles Lindenmuth, Vice President, AFSCME Local 101; Levy White, President, AFSCME Local 409; Kimberly Dotch-Heard, Negotiation Team, AFSCME Local 409; Joyce Ivory, President, AFSCME Local 1659; Lenore Davis, Vice President, AFSCME Local 1659; Tina Turner, Negotiation Team, AFSCME Local 1659; Denis Martin, President, AFSCME Local 1862; Christopher Roggero, President, AFSCME Local 2057; Edward Bagdasarian, AFSCME Local 2057; Arash Roshanrouz, President, AFSCME Local 2926; and Eric Lentz, Vice-President, AFSCME Local 2926.

On July 10, 2015, Review Team members Jeffrey S. Bankowski, Thomas M. Davis, Frederick Headen, Sharon L. Madison, and Clarence L. Stone, Jr., met with Zenell Brown, Court Administrator, Third Circuit Court; Violet Leonard, Finance, Third Circuit Court; Tish King, Director, Personnel and Human Resources; Livia Calderoni, Director, Benefits and Disability Administration Division; Teri Dennings, Chief Labor Relations Analyst; Robbin Rivers, Analyst, Labor Relations Division; Brian Manning, Director, Children and Family Services; Thomas Kochis, Director, Health and Human Services, Department of Health, Veterans and Community Wellness; Mouhanad Hammami, Chief of Health Operations; Department of Health, Veterans and Community Wellness; Brian Earle, President, Police Officers Association of Michigan; David LaMontaine, Business Agent, Police Officers Association of Michigan; Zenna Faraj Elhasan, Corporation Counsel; LaToya McBean, Deputy Corporation Counsel; June Lee, Assistant County Executive; Terry Spryszak, Director, Public Services Department; Beverly Watts, Deputy Director, Public Services Department; Rosalind F. Downer, Finance, Public Services Department; Ken Kucel, Director, Public Services Department and Wayne County Drain Commissioner; Lawrence Verbiest, Association Executive, Government Administrators Association; Lorenzo Blount, Government Administrators Association; Amy Miller Vandawalker, President, Government Administrators Association (Professional Engineers Chapter); Daniela Frederick, President, Dietitians & Nutritionists Association; Tom Scott, Eastern Director, International Union of Operating Engineers, Local 324; Elizabeth Patterson, President, Government Administrators Association (Wayne County Professional Nurses Association); Cassandra A. McDonald, President, Government Administrators Association (General Fund); Margaret Reyes-Howard, Government Administrators Association; and Patricia Pena, Government Administrators Association.

Also, on July 10, 2015, Review Team members Jeffrey S. Bankowski, Thomas M. Davis, Frederick Headen, Sharon L. Madison, and Clarence L. Stone, Jr., conducted a public information meeting in Wayne County pursuant to Section 5(2) of the Local Financial Stability and Choice Act. Review

Team members discussed with approximately 45 County residents in attendance the statutory process, indicated that Review Team members had met with various County and union officials, and received comments from approximately 12 County residents.[8]

3. Other Considerations

In addition to the foregoing findings, the Review Team offers the following in support of its conclusion that a financial emergency exists within Wayne County:

a. County Government.

The application of Public Act 436 of 2012, the Local Financial Stability and Choice Act, to Wayne County poses issues of first impression. While Act 436 is the fourth financial emergency management statute enacted since 1988, none of them have been applied to county government until now. Therefore, insights gained from prior statutory applications to other categories of local government offers few, if any, reliable guideposts here.

County government is, in certain respects, unique among local governments in this State. Counties originated, in part, as an administrative extension of State government. Furthermore, several departments of county government are headed by separately elected officials whose offices are enumerated in the State Constitution. These are: a Clerk, Prosecutor, Register of Deeds, Sheriff, and Treasurer. It should be noted that the State Constitution merely established these offices; it did not enumerate their respective duties and powers, leaving that to the Legislature to provide by law.[9] However, some of the case law construing Section 4 of Article 7 of the State Constitution has, in respect to County Prosecutors and Sheriffs, rendered ambiguous what was plain constitutional text.

The Michigan Court of Appeals has held that "[w]hen officers are named in the Constitution they have a known legal character. The Legislature may vary the duties of a constitutional office, but it may not change the duties so as to destroy the power to perform the duties of the office." *Brownstown Township* v *Wayne County*, (68 Mich App 244, 248; 1976), citing *Allor* v *Board of County of Wayne*, (43 Mich App 76; 1880). Likewise, Michigan courts have held that the powers and duties of county prosecutors include not just those set out in statute, but also those functions that may be necessarily implied from those specifically mentioned. *Bloss* v *Williams*, (15 Mich App 228, 233; 1968).

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[8] The Review Team also gave consideration to correspondence submitted to State officials by an official of the Detroit Wayne Mental Health Authority.

[9] Section 4 of Article 7 of the Michigan Constitution provides that "[t]here shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law. The board of supervisors in any county may combine the offices of county clerk and register of deeds in one office or separate the same at pleasure."

The fact that certain county offices are constitutionally based can pose administrative and operational challenges not found in other local governments. Consider annual budget formulation, adoption, and monitoring, for example. Separately elected county officials may have views regarding how much funding is necessary to discharge their legally required responsibilities, views that may differ from those of the county's chief administrative officer who proposes a budget, or the board of commissioners which enacts it, or both. In turn, separate election and constitutional antecedents may imbue such an official with a degree of independence regarding his or her budget once enacted that renders centralized monitoring and enforcement of budgetary constraints more difficult. In the case of the Wayne County Sheriff and Prosecutor, budgetary differences with the County Executive and County Commission often have been resolved through litigation.

b. Retirement System Judgment Levy.

On May 29, 2015, the Wayne County Circuit Court entered a $49.3 million judgment against the County in the case of *Wayne County Employees Retirement System* v *the Charter County of Wayne*.

The litigation resulted when County officials removed $32.2 million from an Inflation Equity Fund and applied that amount as an offset against the annual required contribution by the County to its defined benefit pension system. The Inflation Equity Fund was the source from which the so-called thirteenth checks were remitted to County retirees and other beneficiaries.

Background. The County Commission established the Inflation Equity Fund by ordinance effective on July 24, 1986. The purpose of the fund was "to address the impact of inflation on the buying power of pension income." Therefore, the board of trustees of the County's Retirement Commission were authorized not more often than once a year to "distribute to retired members and survivor beneficiaries a percentage of the balance in the [fund]."

The amount credited to the fund at the end of a fiscal year was based upon investment earnings in the County's defined benefit pension system in excess of a threshold rate of return, multiplied by the actuarial present value of defined benefit pension system assets.[10] For example, between 1986 and 2009, $293.2 million was credited to the fund, and this despite the fact that the County's defined benefit pension system was underfunded.

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[10] In *Wayne County Employees Retirement System and Wayne County Retirement Commission* v *Charter County of Wayne and Wayne County Board of Commissioners*, decided on May 9, 2013, the Michigan Court of Appeals described the process as follows:

> The actuarial present value of the [County's] pensions was $611,233,276 in 1998. The actual rate of investment return on the actuarial value of retirement system defined benefit assets was 10.09 percent. The threshold rate of investment return set by the Retirement Commission was 8 percent. The excess rate of return therefore 2.09 percent, which is multiplied by the actuarial present value of the pensions (was $611,233,276). The product is $12,774,775, which was the amount credited to the [Inflation Equity Fund] in 1998.

However, by the end of the County's 2010 fiscal year, due to financial difficulties within the County, the County Commission adopted an ordinance that modified the Inflation Equity Fund in two material respects. First, the amount of fund proceeds that the County's Retirement Commission could distribute to retirees and beneficiaries was limited to no more than $5.0 million per year. Second, the balance in the fund was limited to a maximum of $12.0 million. The balance in the fund at the time was approximately $44.0 million. Therefore, one effect of the ordinance was to authorize the transfer of the $32.2 million "excess" to the County's defined benefit pension system and to credit the amount against the County's annual required contribution.

In May 2013, the Michigan Court of Appeals concluded, among other things, that the $32.2 million transfer from the Inflation Equity Fund to the County's defined benefit pension system violated State law. On appeal, the Michigan Supreme Court, in December 2014, reached the same conclusion, but upon the more nuanced basis that the transfer violated the "exclusive benefit rule" of Public Act 314 of 1965, the Public Employee Retirement System Investment Act.

The Supreme Court returned the matter to the Wayne County Circuit Court for entry of monetary judgment. The requirement that the $32.2 million be returned to the Inflation Equity Fund, together with interest lost to the fund due to the transfer, resulted in an aggregate judgment of $49.3 million.

Since the County lacked the financial ability to remit the judgment from existing resources, County officials acceded to having an amount placed upon the tax rolls of the County pursuant to Section 6093 of Public Act 236 of 1961, the Revised Judicature Act of 1961. As a result, the judgment is being collected from County property taxpayers during the summer 2015 property tax levy.[11]

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[11] Among the conditions in Section 4(1) of the Local Financial Stability and Choice Act that the County Executive's June 17, 2015, request for preliminary review asserted had occurred, was that of subdivision (o) which states that "[a] court has ordered an additional tax levy without the prior approval of the governing body of the local government." In its June 30, 2015, written reply to the interim version of the preliminary review, the County Commission asserted that the condition in subdivision (o) had *not*, in fact, occurred because an additional tax levy had not been ordered by a court.

The assertion of the County Commission is correct. The Wayne County Circuit Court entered a $49.3 million judgment against the County, but did not order that the judgment be paid by means of a judgment levy. However, the fact that the judgment was placed upon the County's tax roll by County officials rather than by a court misses the larger point: due to financial mismanagement by County officials, County residents are paying millions of dollars more in property taxes this summer than otherwise would have been the case.

It is noteworthy that one County official stated to the Review Team that "[w]hat's more, the levy, when collected, will satisfy and pay the judgment with this new revenue stream and therefore will not constitute any burden on county finances." The statement reflects no recognition of the fact that repayment of the amount in question will not be a burden on *county* finances only because County officials transferred that burden to County *taxpayers'* finances.

c. Wayne County Jail.

The Jail Division of the Wayne County Sheriff's Department presently operates three detention facilities: the Andrew C. Baird Detention Facility, the Old Wayne County Jail, and the William Dickerson Detention Facility. According to information from the Sheriff's Department, the three facilities in the aggregate house an average daily population of approximately 2,200 individuals. This is despite the fact that existing court orders or consent orders limit the daily population to less than 1,800 individuals.

State law requires that each county provide a suitable and sufficient jail and places custody of the jail in the County Sheriff. [12] In 2011, Wayne County officials appear to have arrived at a consensus that the County's jail was neither suitable nor sufficient. Therefore, County officials approved the construction of a new jail facility, together with the issuance of $300.0 million in bonds to finance its construction. Approximately $200.0 million in bonds were issued (authorization for the remaining $100.0 million lapsed) and roughly $150.0 million was expended.

However, on August 15, 2013, the Wayne County Building Authority voted to discontinue further work on the partially constructed new jail facility due to approximately $47.0 million in cost overruns. County officials initiated litigation, which is ongoing, against the contractor and project manager. The status of the partially constructed jail remains an ongoing financial concern for several reasons. First, annual debt service upon the bonds that were issued is approximately $14.3 million. Second, there seems to be agreement among County officials that the existing detention facilities are inadequate in certain respects.

Therefore, County officials continue to be confronted by a Hobson's choice: either expend funds to complete the partially constructed jail or renovate the existing detention facilities. Some County officials estimated that the cost of the former option would be several hundred million dollars due, in part, to the fact that the partially constructed jail has deteriorated from exposure to the elements over the two years since construction was halted. Furthermore, there is general agreement that the partially constructed jail as designed would not provide the Sheriff's Department with the capacity required to house even the existing jail population. Of manifest concern to the Review Team was the fact that there appeared to be no consensus among County officials about how to proceed regarding this issue.

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[12] Section 16 of the Revised Statutes of 1846 provides, in part, as follows:

> Each organized county shall, at its own cost and expense, provide at the county seat thereof a suitable courthouse, and *a suitable and sufficient jail* and fireproof offices and all other necessary public buildings, and keep the same in good repair. Emphasis supplied.

Section 75 of the Revised Statutes of 1846 provides that "[t]he sheriff shall have the charge and custody of the jails of his county, and of the prisoners in the same; and shall keep them himself, or by his deputy or jailer."

d. Jail Operations Overtime.

The decision making process utilized by County officials has proven problematic. For example, for several years staff of the Sheriff's Department has logged considerable overtime in regards to jail operations. Some estimates provided to the Review Team presently place the amount of overtime at nearly 1,000 hours per day.

The reasons for the amount of overtime appear to be several: too few officers; inadequate compensation and insufficient opportunities for advancement, making it difficult to recruit and retain high quality employees; unsavory working conditions within the existing detention facilities; the fact that individuals are hired as police officers, but essentially perform the duties of corrections officers; and, candidly, the impact upon final average compensation, and therefore pension benefits, of those who work overtime.

The Review Team discussed this issue with a number of County and union officials. Not one of them disagreed that it would be more prudent to hire additional officers than to continue to pay exorbitant overtime. Indeed, some of those officials indicated having done, or reviewed, analyses of how many new officers could be retained (even at increased rates of pay) without a net increase in costs because of offsetting savings that would be realized from decreased overtime. Furthermore, several officials noted that hiring additional officers might improve the quality of services provided in the existing detention facilities by reducing the amount of fatigue and burnout resulting from long hours in stressful working conditions.

Nevertheless, despite recognition of the problem of overtime, and despite general agreement among County officials in regards to possible solutions, the problem remains. County officials have been unable to convert recognition and agreement into an effective course of action to resolve the problem.

e. Retirement System.

As noted in the preliminary review, the County's retirement system was significantly underfunded, at approximately 45 percent as of September 30, 2013. (According to County officials, the funding level increased to 47 percent as of September 30, 2014.) However, as recently as 2004, the funding level was at more than 90 percent. A number of events led to present circumstances, including underperforming investments, a lack of effective oversight, increased payrolls, a multiplicity of different plans, and generous incentives for early retirement that waived age requirements and enabled eligible persons to purchase years of service at discounted rates.

The Review Team was informed that one of the unions with which the County bargains has proposed that County officials transfer administrative, managerial, and investment responsibilities for the retirement system to the Municipal Employees Retirement System of Michigan. While the Review Team expresses no opinion upon the merits of the proposal, there is no indication that County officials have to date given the matter serious consideration.

In addition, the County's obligation for Other Post-Employment Benefits (i.e., healthcare coverage for County employees and retirees) is significant. According to the County Executive's Recovery Plan, unfunded healthcare-related liabilities were estimated to be $1.3 billion as of the last actuarial valuation. Furthermore, funds that have been set aside for this purpose amount to less than one percent of liabilities. Indeed, the Recovery Plan noted that healthcare-related liabilities represent 40 percent of the County's long-term financial obligations. Yet, despite the financial significance of this matter, County officials have made no discernible effort to resolve it.

f. Ineffective Communication.

There appears to have been, and remains, a lack of effective communication, both within the administrative structure of the County and between that structure and the County Board of Commissioners. For example, several Commissioners advised the Review Team that they learned through the media of the decision by the County Executive to transmit the June 17, 2015, request for a preliminary review to the State of Michigan. Given the significant role that the County Commission will play in the resolution of the County's financial woes, the reason for such an oversight in communication was not readily apparent to the Review Team.

Likewise, numerous union officials indicated that they had offered various suggestions to improve the County's financial and operational condition. These included concessions in the form of counterproposals. These counterproposals were made either directly to County officials or indirectly to labor relations staff representing County officials. However, union officials indicated that they had received no meaningful response. The Review Team expresses no opinion concerning the merits of the various suggestions and counterproposals. However, the apparent inability of County officials to offer meaningful responses further underscores a lack of effective communication.

C. Conclusion

Based upon the foregoing information, meetings, and review, the Review Team confirms the findings of the preliminary review, the determination of the Local Emergency Financial Assistance Loan Board, and concludes that a financial emergency exists within Wayne County.

II. Section 5(3) Requirements

Section 5(3) of the Act requires that this report include the existence or an indication of the likely occurrence of any of the conditions set forth in subdivisions (a) through (m).[13] The conditions in subdivisions (b)(*iii*), (e), and (k) of Section 5(3) exist or are likely to occur, as follows:

- As noted in the preliminary review, the County's primary pension plan had a funding level of 45.1 percent and had a liability of $910.5 million based upon the actuarial valuation dated September 30, 2013. The funding level increased to 47 percent as of September 30, 2014, according to the County Commission's Office of Fiscal Agency. (Section 5(3)(e).)

- The County had a cumulative General Fund deficit of $73.8 million as of September 30, 2014, which will not be eliminated within the two-year period preceding the end of the fiscal year of the County during which this Review Team report is received. (Section 5(3)(b)(*iii*).)

III. Review Team Report Transmittal Requirements

Section 5(3) of the Act also requires that a copy of this report be transmitted to the Wayne County Executive, County Commissioners, the Speaker of the House of Representatives, the Senate Majority Leader, and each State Senator and Representative who represents Wayne County.

cc: Warren C. Evans, County Executive
Wayne County Board of Commissioners
Kevin Cotter, Speaker of the House of Representatives
Arlan B. Meekhof, Senate Majority Leader
Michigan Senators representing Wayne County
Michigan Representatives representing Wayne County

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[13] Subdivisions (a) through (m) of Section 5(3) of the Act provide as follows:

> (a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.
>
> (b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:
>
> (*i*) Taxes withheld on the income of employees.
>
> (*ii*) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.
>
> (*iii*) Any contribution required by a pension, retirement, or benefit plan.

- During the current fiscal year (May 2015), County records reflected a negative cash balance in the General Fund of $170.3 million. Stated another way, the General Fund owed other County funds, including some restricted funds, an aggregate of $170.3 million. (Section 5(3)(k).)

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.

(g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.

(i) 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.

(j) Existence of a structural operating deficit.

(k) Use of restricted revenues for purposes not authorized by law.

(l) The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.

(m) Any other facts and circumstances indicative of local government financial emergency.