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MUNICIPAL FISCAL EMERGENCY LAWS
Background and Guide to State-Based Approaches

by Eric A. Scorsone

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Abstract

Since the Great Recession of 2008, many municipalities have faced difficult fiscal conditions. During these fiscal emergencies, states have often intervened in an attempt to minimize the damage done to credit markets and public safety. This paper is a survey of the resulting state laws, currently in place in 19 states, and their ramifications throughout the country. These laws involve the state governments becoming directly or indirectly enmeshed in local fiscal and governing affairs. The laws vary in the powers each state may use to address a fiscal emergency, from altering union bargaining laws to allowing tax increases to appointing a state receiver to altering a municipality's organizational structure. This paper provides a comprehensive overview of these state policies and some of the factors that may have influenced the adoption of such policies.

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Municipal Fiscal Emergency Laws:

Background and Guide to State-Based Approaches

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I. An Introduction to Local Fiscal Emergencies

The Great Recession, which started in 2008, has exposed serious financial problems in local governments' books. Declining revenue, increasing cost commitments, and drops in pension portfolio values threaten the fiscal sustainability of local governments and, in particular, city governments. State laws, including collective bargaining rules, pension governance rules, and tax and spending limits imposed on local governments, have exacerbated these problems. To date, a number of municipalities have been forced to make dramatic changes in their fiscal portfolios ("Local Government Fiscal Crises," no date). A small subset of these circumstances has led to state takeovers of municipal governments.

Historical Perspective

The United States has a long history of municipal fiscal emergency laws. Their most recent incarnation occurred following New York City's 1975 fiscal crisis in states like Michigan, Rhode Island, Tennessee, Pennsylvania, and Nevada. In their general form, these laws have followed New York City's 1975 playbook. But New York City's system was based on much older models from the late 19th and early 20th centuries. These older models included railroad bankruptcies in the 19th century and the problems that emerged among municipal governments during the Great Depression.

In 1935, attorney Edward Dimock discussed equity receivership, first used by bankrupt US railroads in the late 19th century, and how it could be applied to municipal insolvency

(Dimock, 1935).[1] He was writing at the time of the Great Depression, when hundreds of municipalities were defaulting on debt loads built up in the prosperity of the 1920s. Many municipalities were unable to repay their debts. In some cases, these governments restructured debt and extended repayment timeframes; in others, the debt went unpaid. Federal and state policymakers had few, if any, tools to address these municipal problems. In this environment, Dimock believed there were other examples from American history, especially the railroad bankruptcies, that state and local policymakers could draw upon.

For Dimock, the three key elements to address municipal insolvency were (1) takeover of management, (2) prohibiting individual creditors from taking action to undermine the government entity, and (3) a plan of adjustment for meeting some degree of creditor needs (Dimock, 1935). His model included a provision for emergency financing where needed. He proposed that this system could resolve municipal insolvency as it resolved 19th-century railroad bankruptcies.

It is remarkable how Dimock anticipated the types of state intervention and municipal fiscal emergency laws in place today. For example, he discussed the need for a state commission to oversee and track a troubled municipality and one that can veto expenditures and provide budgetary control. He also foresaw the need for the state to borrow on behalf of the municipality to ensure ongoing public safety operations. Further, he anticipated the problems and challenges that people will express in the state takeover of a municipality. In New York City in 1975, the state followed his model to craft both the Municipal Assistance Corporation to provide financing

[1] Edward James Dimock was an attorney from the 1890s through the 1940s who had many municipal clients and later became a federal judge. During the 19th century, many railroads had gone bankrupt after expanding too rapidly. Judges developed equity receivership due to the lack of US statutes on bankruptcy at the time. A receiver took over the management of the firm, overseen by the judge, and a plan to resolve all debts was produced, which included the issuance of new debt and transforming some debt holders into equity holders.

support to the city and the Emergency Financial Control Board[2] (Berman, 1995). Even earlier, New Jersey and North Carolina adopted similar approaches following the Great Depression (Berman, 1994–95).

Current Policy Environment

Given this historical background, states have many options in devising municipal fiscal emergency legislation. Some states have chosen to deal with the problem on a case-by-case basis. Other states address the issue by passing general legislation that may apply to most or all municipal and other local governments in the state (Cahill et al., 1994). This general legislation may include provisions for emergency financing or for more expansive powers that would include state intervention in the control of a local government. This last option would be the fullest expression of the Dimock model.

Since 2008, municipalities around the country have been placed under state fiscal emergency intervention laws. In Michigan, those cities include Ecorse, River Rogue, Highland Park, Detroit, Flint, Hamtramck, and Benton Harbor. The state faced widespread public scrutiny in the national media for being among the nation's most aggressive in granting extensive powers to an emergency manager. Other states also took over municipal affairs. New York placed Nassau County under a control board. Pennsylvania placed several cities and townships under state control, including New Castle, Westfall Township, Reading, Harrisburg, and Altoona. In New Jersey, Atlantic City recently fell under state supervision. These situations, and the threat of more problems, have stimulated the debate over what approaches states should be using.

[2] The New York City Emergency Financial Control Board acted as a veto body over city financial decisions. The idea was to ensure that city leaders made wise financial decisions. If they did not, in the view of the board, the board could act to nullify those decisions (such as labor agreements and issuance of debt).

Given the interest in these types of policies, this paper seeks to explain the current set of state laws on municipal fiscal emergencies. The Dimock model provides a basis for classification and the criteria used here to determine which state laws this analysis will include. The main criterion is that a state has a legal process through which a specific intervention occurs in local affairs upon identification of a fiscal emergency. This means that state law provides for a state receiver, state agency, or financial control board to oversee the local government. Some states appoint a receiver in the case of bond defaults, especially revenue bond defaults (Spiotto et al., 2012). This paper will not analyze these types of interventions because I am interested in laws that address general municipal fiscal emergencies as opposed to those due only to bond default.[3] This analysis also excludes states that may have, for example, an emergency financing program but no intervention mechanism.

A number of states are utilizing a municipal fiscal emergency law with an intervention mechanism. Connecticut, Florida, Illinois, Indiana, Massachusetts, Michigan, New Jersey, New York, Ohio, North Carolina, Pennsylvania, and Rhode Island have a Dimock-type state intervention law in the case of fiscal emergency.[4] Connecticut, New York, and Massachusetts are special legislation states that address the problem on a case-by-case basis and will be discussed in their own section briefly.

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[3] There is some difficulty in summarizing state statutes regarding municipal fiscal emergencies due to the complexity of conditions and triggers that may occur throughout the process. The discussion in this paper refers to the decision point in the law whereby a receiver or financial control board has been appointed. This simplification may gloss over some of the exact details of the process leading up to such an appointment.

[4] Other reports on state-based municipal fiscal emergency laws have taken different approaches in classifying and reporting on these issues. Typically, those reports have looked at a broader set of state interventions, such as emergency financing programs or receivers appointed for revenue bond defaults. This report specifically focuses on Dimock-style state intervention in local affairs such as state-appointed receivers or financial control boards only and also examines in more detail some specific characteristics of those programs, such as exit strategies, that are often ignored. Several reports were consulted following an original research review and search. These reports included Berman, 1995; Cahill and James, 1992, Pew, 2012; Public Financial Management, 2011; and Spiotto et al., 2012. These reports served as a cross-check to ensure full coverage of states with these laws in place.

Local Fiscal Emergencies

What is a local government fiscal crisis? In one sense, it is simply a lack of cash to pay ongoing commitments. These commitments may include vendor payments, pension payments, payroll, bond payments, and other such items. Governments typically hold both cash and investment vehicles for financial assets. When cash and short-term investments on hand are less than immediate cash commitments, there is situation of cash insolvency, or a local fiscal emergency.

Many precipitating factors may lead to cash insolvency. A government may face a drop in revenue during a regional or national business cycle. Falling revenues force governments to adjust spending commitments. Short-term adjustments include furloughs, deferred maintenance and capital expenditures, shifting fiscal years, and travel and training freezes. Such measures will conserve cash but are likely predicated on a quick rebound in revenues. If the downturn is prolonged, governments may then turn to more drastic measures, such as layoffs, program reductions, and fee or tax increases. Governments may also engage in short-term borrowing in the bond market, and they may defer pension payments, which act as a form of implicit borrowing. Eventually, budget insolvency may turn into cash insolvency as the government consumes cash reserves, and a fiscal crisis ensues. Local government fiscal emergency laws target these problems.

To fully assess the efficacy of municipal fiscal emergency laws, there are a number of ways to depict the underlying causes of fiscal distress. A policy solution is only effective relative to its ability to properly address the problem's underlying cause. On one hand, we can imagine that the causes of local fiscal crisis are internal conditions, such as mismanagement and corruption. Elected officials may commit themselves to costly contractual obligations, such as pension and employee benefits, debt, or economic development financing schemes that

burden the municipality down the road. Officials may make these commitments in exchange for political support.

The other side of the fiscal emergency story depicts problems that occur because of external conditions or factors outside of a municipality's control. External conditions might include the loss of state and federal funding, the loss of a factory or a major business establishment, or a downturn in the local economy. External shocks may be catalysts of the fiscal distress process, ultimately resulting in a fiscal emergency if not addressed.

Fiscal distress can be thought of as being composed of some combination of internal and external factors. The financial architecture the state government imposes shapes local officials' policy decisions. This financial architecture includes the definition of the tax base, local tax and fee options, spending mandates, charter provisions, and intergovernmental cooperation incentives and barriers. The external factors represent the community's economic base. This base is the driving force behind spending and revenue outcomes. The economic base includes all potential sources of revenue, such as tourism and commuter income. No matter the type of state-imposed local tax structure, this economic base is the foundation for revenue generation and for spending needs.

Table 1 shows the potential interplay of causes of fiscal emergencies. The horizontal portion of the table describes a municipality where internal management is strong or weak. Poor internal management could be on display through corruption trials, frequent turnover of top management or elected officials, poor audit reports, or ongoing budget overruns. The vertical side of the table relates to whether the local economy is healthy or unhealthy. Unhealthy external conditions might be reflected by poverty rates, poor educational attainment, low household income, or other such factors.

Table 1. A Risk Matrix Based on the Underlying Causes of Municipal Fiscal Emergencies

	Strong internal management	Weak internal management
Healthy local economy	Low risk	Moderate risk
Unhealthy local economy	Moderate risk	High risk

At the point where the external and internal (economic and management) conditions intersect, we can locate different municipalities at any given point in time. For example, if internal and external conditions are both in the positive category, there may be a low risk of fiscal emergency. At the other extreme, a government facing both poor management and difficult socioeconomic conditions is a higher-risk candidate for fiscal distress or an emergency situation. Some municipalities face situations where either positive management or economic factors coincide with their opposite on the other factor: a municipality with a strong economy may be faced with corruption or mismanagement. Alternatively, a government may have strong management and be facing difficult socioeconomic conditions, such as high poverty, an older building stock, or high crime rates. These governments' fiscal situations may be more difficult to gauge and may ultimately veer toward or away from a fiscal emergency.

This process plays out very differently across the country, but the basic outline provides a general description of a local fiscal crisis. Within this backdrop, state governments have attempted to develop new policy tools to address such crises. There are several reasons why such laws exist.

Recent Developments in Fiscal Emergency Laws

A state response to local government problems may be conditioned on the idea of home rule or local control of cities, towns, and counties. Some states have a strong historical and legal tradition that makes local governments important in their own right. The state may provide some

technical assistance but take a hands-off approach to local fiscal problems otherwise. Another factor is the state's history of local fiscal emergencies. Typically, municipal fiscal emergency laws exist where a municipality has already experienced a fiscal crisis or emergency. Finally, state governments may feel that a fiscal crisis in one municipality could cause problems or impair the welfare of citizens in other local governments or in the state as a whole. Thus, any number of reasons may drive a state to adopt or not adopt these laws.

Across the country, both recently and in the past, states and municipalities have faced fiscal emergencies. Laws and processes to address these crises have emerged and evolved over time across the states. Ohio passed its first fiscal emergency law in the late 1970s in response to a crisis facing Cleveland (Budd and Sweigart, 2013). The law was later extended to townships and counties in 1996. Michigan first passed its law in the early 1990s due to a crisis facing Ecorse, a small suburb outside Detroit. Legislators dramatically changed and strengthened the law in 2011, voters rejected it in a 2012 referendum, and the state legislature revised it in a different form in 2013 (Michigan Radio, 2014). New Jersey and North Carolina have had laws on the books since fiscal troubles emerged during the Great Depression (New Jersey Local Government Supervision Act; North Carolina Statutes 159.1-159-180). Finally, there are states such as Rhode Island and Indiana where laws are very recent. Different states' laws have evolved together and in similar fashion, but they have often been policy innovations in response to the changing nature of fiscal problems over time.

Given the degree of fiscal stress that municipalities across the country face, states are continually testing new solutions. The next section describes the basic mechanics behind state laws for local fiscal emergencies, including the triggering conditions to identify a fiscal emergency, the powers of various actors to address the crisis, and the strategies for the state to

exit the process. The third section explores potential reasons why some states have adopted laws to address fiscal emergencies while others have generally ignored the problem or have not had to address it. The final section contains closing thoughts regarding state intervention in local fiscal emergencies.

II. The Framework for Understanding Local Fiscal Emergency Laws

This section describes the different aspects of a state's municipal fiscal emergency laws, including the general nature of the laws passed, trigger mechanisms, budget powers and authorization, collective bargaining issues, and exit strategies. Examples from different states show how each characteristic varies across the nation. Tables provide descriptions of key provisions of state laws.

Features of Municipal Fiscal Emergency Laws

Municipal fiscal emergency laws share many characteristics. They generally define the conditions that would trigger a crisis, the steps the state and local government should take once the triggers are observed, the powers available to the state once the crisis is established, and, in some cases, the exit strategy. Within this general framework, states vary widely in the details of how laws are written and enforced. These details help explain the differences in the emergence and deployment of state resources and powers in addressing municipal fiscal problems.

There are many factors to consider when classifying states' municipal fiscal emergency laws. Classification factors can include the state agency involved in the process, the impact on public collective bargaining rules, budget and debt powers, personnel decisions, tax policy decisions, economic development funding, and even intergovernmental

collaboration or consolidation activities. Each of these factors may play a critical role in addressing the implementation of a municipal fiscal emergency. States have provided different powers to different types of agents, such as receivers or control boards, and different variations of these factors, often in response to state laws that impact municipalities. For example, some states may not have a tax and expenditure limitation law or collective bargaining laws for public sector unions, and thus these would not be issues in a municipal fiscal emergency. This section will explore each of these features, along with examples of their implementation in various states.

General vs. special legislative states. In 34 states, there is no explicit municipal fiscal emergency law. For historical, political, or even cultural reasons, these states have not seen fit to provide any specific legislative authority, either general or special, to address these types of problems. Three states have passed special legislation that only addresses a particular municipality or local government in crisis. Thirteen states have passed laws that deal in a general form with municipal fiscal emergencies.

Three states—Massachusetts, New York, and Connecticut—prefer to deal with municipal fiscal emergences via specific legislation to address a specific municipality's problem. Chelsea and Springfield are examples of two cities in Massachusetts where the state took over local finances. School districts were included as a function of the municipal government.

In many ways, the New York City and Chelsea experiences set the stage for the types of interventions that would occur in the future in those cities. These interventions included emergency financing through the state, a control board that had powers to review and veto certain local decisions, and adjustments to wages and benefits for employees.

Thirteen states have addressed municipal fiscal emergencies through a general law or statute approach. In these cases, the state legislature passes a law that covers a large portion of the state's local governments if any fiscal emergency conditions appear. Pennsylvania has a longstanding history of attempting to address municipal fiscal problems via a general law approach. Two Pennsylvania statutes address these issues: Act 47 or the Municipalities Financial Recovery Act, and Act 6 or the Pennsylvania Intergovernmental Cooperation Authority Act (Gannon, 1993–94). These statutes have been in place since the late 1980s and represent one of the first major and systemic attempts by a state to address municipal fiscal distress. Act 47 deals with most municipalities in the state, while Act 6 was specifically designed for Philadelphia and later Pittsburgh.[5]

A general law approach may provide for greater preventive measures and awareness of the problem for officials. The downside of this approach is that it doesn't always provide the flexibility or specific tools that an emergency may require. It may be difficult to write one statute that can address the unique problems of rural towns, large cities, and counties. A special legislative approach ensures that state officials have the tools to address a specific government entity. However, an ad hoc or special legislative approach may not provide state officials with tools to prevent or forestall a crisis. Such approaches may also make local officials uncertain as to how the state will react in any given crisis.

Table 2 provides a general description of all state-based municipal fiscal emergency laws. The second column shows whether the state has a general legislative status or a special legislative status. A later section of this paper will discuss those states with special legislative status.[6]

[5] This analysis only considers Pennsylvania Act 47.
[6] This section deals with all states. From this point forward, the discussion focuses on states with general legislative law approaches as described in table 2.

Table 2. General Characteristics of State Laws Concerning Municipal Fiscal Emergencies

State	Legislative status*	Type of state oversight
Connecticut	SL	Local control board
Florida	GL	Local control board
Illinois	GL	Local control board
Indiana	GL	Receiver
Maine	GL	State control board
Massachusetts	SL	Local control board
Michigan	GL	Receiver
Nevada	GL	State department
New Jersey	GL	State control board and receiver
New York	SL	Local control board
North Carolina	GL	State control board
Ohio	GL	Local control board
Pennsylvania	GL	Receiver
Rhode Island	GL	Receiver or local control board
Tennessee	GL	State control board
Texas	GL	Judicial process

* GL = general legislation, SL = special legislation.

Source: review of state legislative websites.

The term "receiver" means that a single person is placed in some form of control over the local government or municipality. This individual may go by several different titles, including emergency manager, receiver, coordinator, or overseer, but he or she generally has some level of control over municipal fiscal affairs and general management. The other option is a control board composed of any number of individuals who oversee local fiscal and managerial affairs. The control board may be a state or local body. Nevada actually uses a state department for this function (Nevada RS 354.655). The role that state agencies play in these situations varies from state to state. The Ohio state auditor, for example, plays an important role in local control boards and local fiscal oversight (Ohio Code 118.05). Texas only provides for a form of judicially run receivership (Texas Code § 101.006).

Fiscal emergency trigger conditions. One component of every municipal fiscal emergency law is the definition of a crisis or emergency and the basis for state action. Specifications might include

what events will trigger an emergency, who will be in charge of determining when such an emergency occurs, an appeals process upon the definition of an emergency, and the steps to be taken upon declaring a fiscal emergency.

States use a variety of financial triggers to establish a crisis, including failure to make a bond payment, failure to properly withhold employee taxes, failure to meet payroll, and failure to meet a vendor or other creditor obligation. Indiana uses this approach, with these conditions plus the failure to make a required pension payment and the carryover of interfund borrowing for more than two years (Indiana Code 6-1.1-20.3-6.5). The interfund borrowing trigger is important, as local governments may be tempted to borrow from an enterprise fund or other restricted fund that is flush with cash to meet the general fund's payment obligations.

Michigan and Nevada have extensive lists of conditions that will trigger an emergency (Michigan Act 436 of 2012; Nevada RS 354.685). These conditions include the existence of fund balance deficits, internal control problems, violations of statutes, inability to meet payroll, failure to file an audit report, interfund borrowing, failure to follow budget and appropriation laws, bond covenant violations, bond rating downgrades, and others. Rhode Island has a relatively short list of triggers, including failure to file an audit report, bond downgrading, inability to access credit markets, and deficits. Other states take a limited approach in defining an emergency. Texas simply states that a municipality may file with a court if it cannot voluntary agree to a resolution with creditors (Texas Code § 101.006). Maine also takes a Spartan approach, with the failure to redistribute state taxes or a missed bond payment as potential signs of crisis (Maine RS 30-A § 6105). Tennessee's approach is based on the local government requesting state assistance (Tennessee, Title 9-13-2).

The Pennsylvania statute, more than any other, sets forth specific criteria for the state to collect on a regular basis from all municipalities a local fiscal conditions report (State of Pennsylvania, 2013). This report may act as an early warning of where fiscal difficulties may be brewing. Pennsylvania, like Michigan, Ohio, and Indiana, has a fairly specific list of trigger conditions for emergencies (Michigan Act 436 of 2012; Ohio Code 118.03; Indiana Code 6-1.1-20.3-6.5). This list includes ongoing deficits, failure to make payroll or bond payments, large accumulated deficits, missed minimum pension payments, and a few other technical issues. Pennsylvania provides for a unique condition related to the reduction in municipal services from the previous year as a trigger (State of Pennsylvania, 2013). The law further states that in assessing municipal services, the department must consider the time trend of service delivery since 1982 (State of Pennsylvania, 2013). This requirement is unusual in that most other states only have financial triggers to establish that an emergency is occurring or imminent.

Absent Pennsylvania's explicit statutory language for an early warning system, most states' laws provide for state assistance or a state takeover only when evidence of the crisis has peaked. Missing payroll or a bond payment could potentially be a calamitous event for a municipality. In many cases, the law's practical implementation is that state governments or even local officials do not wait for these extreme events but rather act prior to their occurrence. Some states, such as Michigan and New York, have deployed early warning systems outside of the state emergency fiscal laws framework (Kloha et al., 2005; DeWitt, 2012). Early warning systems are not necessarily part of a municipal fiscal emergency law, however. They may be enacted separately from the law or not at all.

Financial triggers may play an important role in the implementation of municipal fiscal emergency laws. State agencies act with different degrees of flexibility depending on the legal

language that provides them the authority to act in a crisis. Also, local officials may derive certain powers or limits on power depending on how statutes are written. In some states, the impetus is on the local government to act, whereas other states take a more proactive stand in addressing municipal fiscal problems.

Collective bargaining and personnel policy. As stated earlier, municipal fiscal emergency laws must often be viewed in the context of other laws that impact municipalities. In this case, there is a clear relationship between the existence and nature of state public sector collective bargaining laws and the types of powers or authority given to financial control boards or receivers. The 13 states that have a general legislative form of municipal fiscal emergency law have a variety of collective bargaining laws. Tennessee law prohibits employers from bargaining with employees. This prohibition may explain the lack of a collective bargaining provision in the state's fiscal emergency law. New York, Pennsylvania, Michigan, Texas, Nevada, Connecticut, New Jersey, Oregon, Rhode Island, Florida, Massachusetts, and Maine all have strong collective bargaining rights for public employees (Valletta et al., 1988). Some of these states have enacted policies in their fiscal emergency laws that address these issues, while others have not. Ohio has no collective bargaining provision, and North Carolina, like Tennessee, prohibits collective bargaining. Not surprisingly, Ohio and North Carolina also do not have provisions related to collective bargaining in their fiscal emergency laws.

Since the emergence of public sector collective bargaining laws in the 1960s, the issue of public sector unionization has been front and center in the implementation of municipal fiscal emergency laws. Generally, employee compensation costs drive municipal budgets; employee and retiree costs may represent up to 50 percent of a municipality's budget (McNichol, 2012).

Municipalities are personnel-intensive businesses that, despite technological improvements, still require large numbers of workers. Given this economic reality, elected officials and analysts have paid significant attention to the issue of employee and retiree costs, including wages and salaries, pensions, and active and retiree health care costs (see, for example, Maciag, 2014). This discussion will focus on personnel policy in terms of organizational structure and hiring and firing decisions, and on compensation issues such as pay and benefits.

Some states allow municipalities, in the form of a control board, receiver, or even the elected officials themselves, to reopen and reset pay, benefits, and work rules as part of the solution to fiscal distress. Other states only allow changes to benefits and pay going forward, with no impact on existing earned benefits. This area is one of considerable legal consternation and fighting between unions, municipal employers, and state governments (Helms, 2013). In many cases, state courts have upheld statutes that allow changes to collective bargaining agreements in the face of a fiscal emergency (Munnell and Quinby, 2012).

Michigan is an example of a state that has aggressively pursued this type of approach. The Michigan municipal fiscal emergency law (Act 436 of 2012) allows the emergency manager to ignore and set aside union contracts and establish new pay and benefits as well as work rules (Michigan Act 436 of 2012). The state deemed these powers necessary because of the perception that employee costs were largely fixed due to state collective bargaining laws and because fiscal emergencies required extraordinary measures. Michigan's law is a good example of the interaction among various laws in understanding the causes of and potential resolutions to fiscal crises.

Several Michigan emergency managers have used their authority to reduce employee pay and benefits, although in some cases there have been legal and constitutional challenges to these changes (Longley, 2013). Flint's emergency manager attempted to increase co-pays for

retired workers in the city's health care plans. Flint's changes have been successfully challenged in federal district court, but are now facing a city appeal (Adams, 2014). The Detroit Public Schools emergency manager authorized a 10 percent reduction in salaries and wages and faced a lawsuit from the teachers union in federal court. It will likely be years before these legal challenges are resolved.

Other states also allow changes in employee agreements in the face of a crisis. Nevada places oversight officials in charge of the collective bargaining process, but does not provide any extraordinary powers to unilaterally override employee collective bargaining agreements (Nevada RS 354.695). Pennsylvania law does not allow for any changes to existing contracts, but does provide that any new agreements must not conflict with a receiver's recovery plan (State of Pennsylvania, 2013). The other states generally do not allow unilateral contract changes to pay and benefits, but may provide some authority for union contract approval (see table 3).

Besides changes to collective bargaining agreements, state laws also play a major role in setting general personnel policy in a distressed municipality. This policy may govern the number of employees, number of departments, hiring and firing practices and procedures, reporting structure, and other items not necessarily covered in a collective bargaining agreement. State officials may feel that a municipality's current retinue of personnel is not up to financially sound decision-making. Therefore, state receivers typically have the power of hiring, firing, and evaluating overall performance for personnel. The effectiveness of this proposal, if in fact personnel issues are contributing to fiscal distress, turns on the issue of elected officials' ability to later undo these changes. Another issue that often arises is a state receiver's ability to change personnel in the face of a city charter, which may have its own provisions regarding personnel and compensation policy.

Several state laws allow for significant personnel actions by state receivers. Nevada law allows state officials to impose hiring restrictions and to hire any needed technical assistance, including a financial manager, to run the government (Nevada RS 354.695). Indiana law allows the emergency manager to eliminate or change the pay of government employees (Indiana Code 6-1.1-20.3-8.5). Maine law allows the Board of Emergency Municipal Finance to appoint certain key officials but otherwise grants limited authority in this arena (Maine RS 30-A § 6108). Tennessee makes no provisions related to personnel changes or employee contracts (Tennessee, Title 9-13-2).

Table 3 shows the state's ability to impose personnel changes in a local government facing fiscal crisis as defined by that state's law. Column 2 shows the ability of the receiver or board to make unilateral changes in wages, benefits, and work rules defined in union contracts. Column 3 describes whether the state mechanism ensures that any new union contracts are negotiated by the receiver or board and depicts the ability of the state control mechanism to induce personnel changes. States have made a variety of choices, with many allowing for oversight and approval of new union contracts, but only two states allow for unilateral changes in existing contracts.

Table 3. Changes to Personnel and Personnel Policy

State	Unilateral contract changes or termination	Union contract approval	Personnel hiring and firing
Florida	No	No	No
Illinois	No	Yes	No
Indiana	No	Yes	Yes
Maine	No	No	Yes
Michigan	Yes	Yes	Yes
Nevada	No	Yes	Yes
New Jersey	No	Yes	Yes
North Carolina	No	No	No
Ohio	No	No	No
Pennsylvania	Yes	Yes	Yes
Rhode Island	No	Yes	Yes
Tennessee	No	No	No
Texas	No	No	No

Source: Review of state legislative websites.

Required financial plans. A fiscal emergency often centers on a local government's budget estimation and debt approval process. Fiscal distress is often at least proximally caused by a high debt burden or by a local government's inability to ensure that spending is at or below the expected and actual level of revenues (Spiotto et al., 2012; Berman, 1995; Falconer, 1990–91; Honadle et al., 2004). It is not surprising, therefore, that state receivers or control boards are given the power to play a major role in budget and debt decisions. In some states, such as Michigan, receivers are actually given the direct power to establish and set the local budget (Michigan Act 436 of 2012). In most other states, the budget and debt power is of a negative nature, where the receiver can veto local elected officials' decisions but does not formulate those plans. The structure of this power may be critical in deciding the route of a state intervention in local fiscal affairs.

A typical requirement in many state laws is the development of a financial plan for reducing the deficit and addressing the fiscal emergency. State legislation usually details how such plans are to be structured, who writes them, and the person(s) in charge of their implementation. Pennsylvania has a complicated system with several phases involved. Pennsylvania may appoint a coordinator if a local unit is designated as distressed, and the coordinator and local officials may each develop recovery plans (State of Pennsylvania, 2013). The secretary of community and economic development may select one plan or the other. If the plans are not implemented or other conditions arise, the state may appoint a receiver, take control of the local government, and declare an emergency. In this case, the receiver develops a plan and submits it to the Commonwealth Court for approval. The adoption of such a plan by a local government is a critical condition for continuing to receive state aid. For any state with these provisions, the financial plan's objective is to ensure that

state and local officials have a clear pathway for the resumption of local financial sustainability. Furthermore, the existence of a written plan provides state officials with a tool to ensure accountability via financial control boards, receivers, or local officials and to monitor progress or enforce compliance or penalties if necessary.

There are several factors to consider in the development and implementation of a financial plan, including who is in charge of the plan, its development timeline, and penalties for failing to live up to the plan. In the Ohio law, the chief elected official of the municipal government is required to submit a financial recovery plan within 120 days of the declaration of an emergency (Ohio Code 118.06). In this case, the financial supervision commission must approve the plan. The Michigan, Rhode Island, and Indiana laws all place the impetus of the financial recovery plan on the emergency manager or receiver (Michigan Act 436 of 2012; Indiana Code 6-1.1-20.3-8.5; Rhode Island, § 45-9-3). In the case of Michigan, state officials must approve the plan. Other states do not require a recovery plan as part of the state process.

Why would these differences be important? They reflect the state's choice regarding where to locate power in crises. States like Michigan, Rhode Island, and Indiana appear to place little faith in local officials and require state-appointed officials to develop and implement plans. Other states that do require a financial plan place the responsibility with local officials. In Michigan, for example, these plans require another step where the state treasurer must approve the emergency manager's plan. States thus face a trade-off in whether to place faith in local officials to develop a fiscal emergency plan or only to allow a state appointed board or official to develop such a plan and, in that case, to impose a signification reduction in local control.

The final element of a financial recovery plan is its enforcement. Pennsylvania takes an interesting approach where the local government can reject the coordinator's plan and develop its own plan (State of Pennsylvania, 2013). If the local government rejects the coordinator's plan, the elected chief official or legislative body must submit its own plan. This plan is subject to approval by the secretary of the Department of Community and Economic Development. If a CEO's plan or a legislative plan is adopted, these officials would be in charge of implementation. Michigan also requires the state's approval for a financial recovery plan in some circumstances (Michigan Act 436 of 2012).

Table 4 depicts the types of financial recovery plans and who approves these plans. This table shows recovery plans that must be submitted after the declaration of a fiscal emergency. A financial recovery plan shows how the local unit will address the emergency by raising revenues, reducing costs, or some combination to achieve fiscal sustainability over some period of time, typically two to five years. These plans are usually in addition to any traditional budget that state law requires, as column 2 shows. Columns 3 and 4 indicate who will develop the local unit's plan and who, if anyone, will approve it.

Table 4. Financial Recovery Plans

State	Financial recovery plan required?	Who develops the plan?	Approval
Florida	Optional	Local officials	Governor
Illinois	Yes	Local officials	Financial assistance board
Indiana	Yes	Local officials and emergency manager	No discussion
Maine	No	N/A	N/A
Michigan	Yes	Local officials or emergency manager	State treasurer
Nevada	Yes	State department of tax	No discussion
New Hampshire	No	N/A	N/A
New Jersey	Yes	Chief operating officer	No discussion
North Carolina	Optional	Local officials	Local government commission
Ohio	Yes	Local officials	Financial supervisory commission
Pennsylvania	Yes	Local officials, coordinator or receiver	Secretary or commonwealth court
Rhode Island	Yes	Fiscal overseer	No discussion
Tennessee	Yes	Local officials	State funding board
Texas	No	N/A	N/A

Source: Review of state legislative websites.

Tax and fee increases. The ability to raise taxes and fees may be part of the toolkit in a state takeover situation. Besides reducing costs, another option to address a municipal fiscal emergency is to raise revenues. The problem with tax increases is that these decisions have economic consequences. Frequently, government officials will estimate that a tax increase will increase government revenue. However, over time, households and businesses may respond to higher tax rates by relocating homes and capital. Thus, outmigration and a subsequent reduction in the tax base may offset any short-term revenue gains (Phillips and Goss, 1995). In either case, increased revenues via tax increases remain a possibility to address fiscal emergencies.

In two states, Illinois and Indiana, the act of designating unit of government as distressed may be predicated on maximizing tax options. For example, Indiana requires the Distressed Unit Appeal Board to consider whether a local unit has exercised all tax options, including instituting a local option income tax (Indiana Code 6-1.1-20.3-6.5). Both Indiana and Illinois state that a local fiscal distress designation will be based on whether the local government is maximizing available taxing capacity (Indiana Code 6-1.1-20.3-6.5; Illinois Code 65 ILCS 5/8-12-4). This provision is clearly designed to ensure that a municipality does not end up in a distressed category because it is not levying the maximum statutory rate. Illinois's approach is to use a double threshold rule that a municipality must be in the highest of all Illinois municipalities in terms of tax rate and the lowest 5 percent in terms of tax yield. This rule basically means that a municipality must be attempting to fully tax residents and, due to low income or high exemptions, these tax rates are not producing much yield. Indiana states that a municipality must be levying a maximum tax capacity per the assessment of the Advisory Commission on Intergovernmental Relations. On the other hand, Michigan, which also allows cities to levy a local option income tax, does not consider the adoption issue in designating distress. The other states do not consider the maximization or adoption of tax rates or new tax options in defining the existence of a financially stressed governmental unit.

Besides using tax policy to designate distress, states also may designate taxing authority to a state board or receiver or provide new taxing options once a declaration of distress or an emergency has occurred. The authority to enact a tax increase depends on state law. Some states require voter approval. In others, local officials can raise taxes without voter approval. States may actually require a tax increase before providing additional aid or assistance to a distressed local government. Indiana, Pennsylvania, and Nevada allow the control board or receiver to

adopt new taxes or to raise taxes to address financial problems. With regard to new tax options, most states limit localities, state financial control boards, or state receivers to the available tax options per standard law in the state. Only Pennsylvania and Nevada have explicit provisions regarding new tax options beyond what is already in law (State of Pennsylvania, 2013; Nevada RS 354.705). In Pennsylvania, the municipality may exceed the legal maximum rate if a court approves. Nevada provides a number of tax options for the locality or the Nevada Department of Taxation to pursue in an emergency. The Nevada Tax Commission, upon a recommendation from the Nevada Department of Taxation, may raise property taxes in a distressed jurisdiction.

Table 5 provides a description of the various state provisions regarding existing and new or additional taxing powers. The second column (taxing authority) provides a sense of whether a state board or receiver can control tax revenue options at all. The third column (new taxing options) describes whether local officials, a state board, or a receiver can explicitly seek new tax options beyond existing law. For example, the table indicates that states such as Florida and New Hampshire do not provide any discussion of the issue of tax limits or tax adoption in regard to fiscal emergencies. Indiana explicitly prohibits giving any taxing power to the local emergency manager, and Pennsylvania and Nevada provide that power to the state overseers and even provide new tax options.

Table 5. Tax Options for Distressed Municipalities

State	Taxing authority	New taxing powers
Florida	No discussion	No new taxing powers
Illinois	Board has authority over existing taxes	No new taxing powers (provision to ensure tax effort)
Indiana	Prohibited	Possible extension with Distressed Unit Appeal Board approval
Maine	No discussion	No new taxing powers
Michigan	Only via voter approval	No new taxing powers
Nevada	Department and commission have authority	New taxing powers provided; Nevada Tax Commission authority
New Hampshire	No discussion	No new taxing powers
New Jersey	Chief operating officer	No new taxing powers
North Carolina	No discussion	No new taxing powers
Ohio	Only oversight and approval of local officials' actions	No new taxing powers
Pennsylvania	Court approval for override of maximum tax rate	New taxing powers via court of common pleas; can set rates above maximum allowed by law
Rhode Island	Receiver, commission, or overseer has authority	No new taxing powers
Tennessee	No discussion	No new taxing powers
Texas	No discussion	No new taxing powers

Source: Review of state laws.

Changing the boundaries: disincorporation, annexation, and intergovernmental cooperation rules. The ability to disincorporate, dissolve, or consolidate a township, city, or county government may be among the most controversial of all powers provided in a state takeover situation. This type of act represents the decision that an entity is financially unviable both now and in the future. Recently, Michigan used special legislation to dissolve two distressed school districts (Longley, 2013). Generally, states require a voter-approved process of all entities involved to dissolve or eliminate a government entity or to consolidate governments. In such a situation, the status of ongoing debt commitments also must be resolved. For example, Michigan

provides for the authority of an emergency manager to consider the disincorporation of a local government. However, the state has not provided any real guidance on the nature of that process and its relationship to the Home Rule City Act, which mandates that consolidation or disincorporation requires a multijurisdiction vote. Thus, this provision is likely not operational, despite being on the books.

Most states simply do not mention these options as part of the fiscal emergency legislation. In some states, another statute may cover the rules for disincorporation or dissolution. Only Michigan, Ohio, and Nevada contemplate disincorporation under municipal fiscal emergency laws (Ohio RS 118.31; Michigan Act 436 of 2012; Nevada RS 354.723). Michigan and Ohio provide only short, vague descriptions of the process, referencing other state laws. Nevada law provides an extensive process for the consideration of municipal disincorporation if it is deemed that the crisis still exists three years hence. The Nevada Tax Commission may be required to schedule a vote of the jurisdiction's electors. If the voters fail to approve disincorporation, taxes are further raised and services severely limited. In the case of an approval for disincorporation, the remaining debt is reallocated to the county government and the jurisdiction otherwise ceases to function. All three states require a vote of the people affected.

Exit strategy and conditions. The process through which a state removes itself from a local fiscal emergency situation is the ultimate end point of these laws. Given the issue's importance, it is surprising that most state statutes fail to address it with much specificity. However, in practice, this issue turns out to be a critical fulcrum upon which the success of a state intervention policy often rests. The reason is that state and local governments will often battle over when to end an intervention.

Rhode Island is a good example of a state that wrestles with an exit strategy. The state statute declares that an emergency is over when a balanced budget or fiscal sustainability is achieved (Rhode Island, § 45). However, the legislation does not clearly define these terms. In particular, it leaves the nebulous term "fiscal sustainability" open-ended. There is no mention of time frame, the basis for sustainability, or the types of plans that would be seen as achieving this state of affairs.

There is also the issue of who in state or local government may declare an end to a fiscal emergency. In Rhode Island again, the law states that "the director of revenue may abolish the overseer" (Rhode Island, § 45-9-5). The word "may" is critical in this sentence; it gives wide discretion to the director of revenue to determine when fiscal sustainability is achieved. This language is in stark contrast to the careful delineation of triggering conditions for when a municipality has a fiscal emergency and state intervention is deemed necessary. In Tennessee, by contrast, there is essentially no mention of when state intervention should end (Tennessee, Title 9). However, Tennessee establishes a very different process, where state intervention is relatively minimal.

The states employ a wide variety of exit options and strategies. Nevada law allows the state to require five years of continued reporting after the crisis is deemed over (Nevada RS, 354.725). The Nevada process is fairly specific, with exit conditions including demonstrated local capacity for financial management, clearing up of statutory violations, no fund deficits, and revenue increases. States such as Indiana, Maine, Ohio, and Michigan refer back to the elimination of the original trigger conditions or to the opinion of the receiver or control board in determining if a termination of an emergency declaration is warranted (Indiana Code 6-1.1-20.3; Ohio Code 118.27; Michigan Act 436 of 2012; Maine RS 30-A § 6110). This is a critical issue

that ultimately determines the long-term effectiveness of these statues in truly addressing the financial sustainability of distressed local governments.

Table 6 describes the exit strategies of the states with general legislative laws. Many states provide no discussion of an exit strategy or are vague about the process. Another possibility is that resolution of a local fiscal emergency could be the termination of that local unit's existence. As discussed earlier, few states address the questions of disincorporation, dissolution, or even merger with another local unit of government, and none does so in the context of ending a fiscal emergency.[7]

Table 6. State Exit Strategies

	Authority to end emergency	Triggers specified
Florida	No discussion	N/A
Illinois	Financial Advisory Authority	Yes
Indiana	Distressed Unit Appeal Board	Yes
Maine	Opinion of commission	No
Michigan	Emergency manager or governor	No
Nevada	Nevada Tax Commission	Yes
New Hampshire	No discussion	N/A
New Jersey	Chief operating officer; governor	Yes
North Carolina	Local government commission	No
Ohio	Financial commission or state auditor	Yes
Pennsylvania	Secretary of the Department of Community and Economic Development	Yes
Rhode Island	No explicit discussion for receiver	No
Tennessee	No discussion	N/A
Texas	No discussion	N/A

Special legislation states. As discussed previously, three states—Massachusetts, New York, and Connecticut—invoke municipal-specific laws rather than invoking a law to cover all municipal fiscal emergencies. There is no general purpose legislation in the case of a triggering event for a municipal fiscal emergency; rather, the state passes a law that only applies to that specific

[7] It is possible that state law addresses this issue in another statute, but that issue was beyond the scope of this paper.

municipality. In theory, each of these laws may take very different approaches to any given municipality, although in practice, there is a general template that states will follow in these cases. These states will be examined separately from states that have general purpose municipal fiscal emergency laws.

For Massachusetts, the cities of Chelsea, Springfield, and Lawrence are among those that have had a state-appointed overseer (Cahill et al., 1994; Berman, 1995). As in other places, the financial control boards in Massachusetts generally have the authority to control and veto municipal budgets, review and approve all contracts, appoint and remove city employees, control general human resource issues, employ experts as needed, restructure departments and operations, and exercise many other powers as needed. Thus, the Massachusetts approach employs a broad variety of powers and essentially strips power from local officials. The Lawrence, Springfield, and Chelsea city takeovers were all similar in the types of authority and power deployed to address the fiscal crisis (Berman, 1995).

Connecticut has also exercised special legislation to take over municipalities. The cities of Jewett City, Bridgeport, West Haven, and Waterbury have all been taken over in the past few decades. Bridgeport is perhaps the most infamous, as it attempted in the 1980s to file for bankruptcy against state wishes (Berman, 1995). The battle was finally resolved in favor of state government, and the city ended up not in bankruptcy, but under state control.

New York also uses a special legislation approach to address municipal fiscal emergencies. The most famous state intervention was the takeover through a financial control board of New York City in 1975 (Spiotto et al., 2012). In many ways, the New York City takeover defined and set the standard for state policy in this arena, partly due to it being the largest American city and partly because it played into a narrative that American cities were in

decline. The New York City law set the stage for many of the ideas deployed today in state takeovers, including budget control by an external board, intervention in collective bargaining, emergency state aid and loans, and better control over revenue estimating and forecasting procedures. An important part of the New York City takeover was that the state played a negative role as opposed to a positive role in controlling finances. Local officials were still in control of day-to-day operations, and they set the budget. The financial control board oversaw operations and finances and vetoed actions that did not fit the plan to achieve financial sustainability. Other states have taken a more direct approach of seizing control of operations and finances and removing or suspending local officials and authority. New York State has also intervened in Yonkers and Nassau County in a similar fashion to New York City (Foderaro, Aug. 10, 1988). Nassau County is one of the few county governments taken over by a state (Halbfinger, Jan. 26, 2011).

As we have seen, these three states take different approaches in addressing fiscal distress. Connecticut and Massachusetts use a more direct form of intervention, where local officials are pushed aside in large part and state-appointed boards take the reins. New York, at least in the case of New York City, allows more local control, but has a financial control board that maintains veto authority over budgetary and collective bargaining processes (Berman, 1995). All three states have strong public sector collective bargaining laws as well. Not surprisingly, these states follow a general pattern based on state intervention practices from their previous experiences. The New York City experience set the stage for New York State's policies, while in Massachusetts, it was Chelsea's experience, and in Connecticut, it was Bridgeport's.

Other states, those without general purpose legislation, could in many cases pass special legislation to address a specific municipality's fiscal problems. In the 21st century, there is wide

experience available for state governments to learn from without their own general purpose legislation or experience with special legislation to address municipal fiscal emergencies. Thus, we might expect that one of the 34 states without these types of laws would likely model any future needs on the experience of the 16 states that have already carved a path.

III. State Adoption of Municipal Fiscal Emergency Laws

The previous section provided a framework for understanding the various mechanisms through which the fiscal emergency laws operate. This framework does not move our understanding forward in terms of why states adopt such policies in the first place. The beginning of this paper proposed several ideas that might suggest the variation in the adoption of municipal fiscal emergency laws across the states. These possible explanations might include collective bargaining laws and unionization, past history with fiscal crisis, local autonomy and home rule, tax and spending limits, and the overall role of debt and debt management among municipalities. This section will provide an exploratory analysis of each of these factors that suggests potential hypotheses and research questions without undertaking a specific empirical analysis.

Home Rule and Local Autonomy

Home rule is the notion that a municipality has some degree of autonomy and discretion in setting rules and laws separate from the state government. State legislation, statutory action, or a constitutional provision may provide this discretion. Almost all states have some form of home rule, although the specifics vary greatly across the nation. State takeovers of local governments are often contested on the basis of home rule and the loss of local democracy. Given the

importance of home rule in many states, fiscal emergency rules often state directly their rationale for essentially overriding this feature of state-local federalism.

Maine is among the states that directly address the need for state intervention in local affairs. Maine's legislative purpose is to ensure the local governments' transfers of state taxes collected by municipalities (Maine RS 30-A § 6102). Pennsylvania provides intent language that includes maintaining fiscal integrity and protecting public welfare; most importantly, it specifies that a failure of one government's fiscal affairs will impact other municipalities and even the state (State of Pennsylvania, 2013). Tennessee also finds that it is crucial that local governments maintain their fiscal health to ensure the smooth provision of services to citizens (Tennessee, Title 9-13-2). Michigan extends this logic to include the potential impact of the loss of financial integrity of one government and its impact on other governments' credit ratings (Michigan Act 436 of 2012). Rhode Island also proclaims the importance of access to capital markets as a rationale for overriding local democracy (Rhode Island, § 45-9-1). Other states, such as Indiana, Florida, and Nevada, make no mention of this type of purpose.

Another possibility is that local autonomy may play an important role in understanding which states adopt municipal fiscal emergency laws. Local autonomy may mean that local governments have great discretion in monitoring the budget and maintaining fiscal integrity, but at the same time, they are exposed to potential problems of poor management. Wolman et al. (no date) have developed a local government autonomy index. This index includes ability or discretion to raise local revenues, scope of state mandates on local government, and the importance of local governments in the state. A state with high autonomy would be one where local governments are an important part of the state economy, have a high number of revenue options, have few state mandates, and have a large capacity to manage operations. A positive

score indicates that a state has a high degree of autonomy and vice versa. The number in parentheses is a ranking of the state among all 50. Table 7 depicts the 16 states with fiscal emergency laws and the level of autonomy they each may exercise.

Table 7. Local Government Autonomy across the States

State	Wolman et al. Autonomy Index score and ranking (1–50)
Connecticut	−.753 (48)
Florida	.378 (12)
Illinois	.390 (10)
Indiana	.015 (27)
Maine	−.446 (43)
Massachusetts	−.022 (30)
Michigan	−.175 (34)
Nevada	.103 (23)
New Jersey	−.255 (37)
New Mexico	.191 (17)
New York	.845 (1)
North Carolina	.131 (19)
Ohio	.599 (4)
Pennsylvania	.085 (25)
Rhode Island	−.728 (47)
Tennessee	.681 (2)

Note: The Wolman et al. (no date) index is based on three broad categories: the importance of local government in the state, local government discretion, and local government capacity. Local government importance includes the relative importance of local government revenue and employment in the state. Local discretion is measured as functional responsibility of local government, tax and spending limits, and assessment limits. Finally, local government capacity is based on the diversity of local government revenue sources. From these measures, Wolman et al. create an index for each state, with equal weight given to each factor.

Although there is some slight evidence that states with low autonomy and limited functional responsibility exhibit a greater degree of adoption of state fiscal emergency laws, it is certainly not ironclad. For example, Ohio exhibits a great degree of autonomy, while Rhode Island and Michigan are on the low end of the autonomy rankings. Again, more sophisticated statistical analysis and additional data collection will be required to understand the precise relationship between the two variables. Also, there appears to be no evidence of a relationship

between autonomy measures and the use of special legislative state intervention approaches versus general legislative approaches.

Tax and Spending Limits

Since the mid- to late 1970s, many states have experienced significant restrictions on the ability to increase property taxes. These limitations may be based on rate restrictions, revenue collection limits, or growth limits. These limitations may play an important role in understanding the fiscal problems facing local governments in the last few decades. If revenues are limited and costs continue to rise, one can imagine how a fiscal wedge can be created, especially in older municipalities where fixed costs may be a larger share of the budget.

One forum for understanding the potential impact of tax and spending limits on fiscal emergency law adoption is the Amiel-Deller-Stallman index (Amiel et al., 2009). This index scores each state based on the degree of tax and spending limitation placed on local governments. The score is a weighted system of a number of factors and is scaled from 0 to 38, with 38 being the highest value. Colorado scored a 38, making it the place with the most restrictive local tax and spending limits in the nation. States that score a zero—as Maine, Connecticut, New Hampshire, and Vermont did—have no local tax and spending limit laws. For the 16 states we have identified, we can examine the potential correlation between adoption of municipal fiscal emergency laws and tax and spending limits. States with strict tax and spending limits might have more financially troubled municipalities; yet, these limits might keep more discipline on local fiscal behavior. As table 8 shows, no clear pattern emerges. While some states, such as Nevada and Michigan, have strict tax and spending limits at the local level, other states with municipal fiscal emergency laws, such as Maine, appear to have virtually no

restrictions. Of course, a simple correlation such as this cannot prove that any relationship exists between these two variables; it can only provide a first look at the possibilities.

Table 8. Tax and Spending Limit Index at the Local Government Level by State

	Amiel-Deller-Stallman index score
Connecticut	0
Florida	22
Illinois	20
Indiana	9
Maine	0
Massachusetts	14
Michigan	37
Nevada	29
New Jersey	11
New York	17
North Carolina	7
Ohio	21
Pennsylvania	12
Rhode Island	10
Tennessee	3
Texas	18

Notes: A higher number indicates greater tax and spending limits; zero indicates no limit. The state with the highest value is Colorado, at 38. The Amiel-Deller-Stallman tax and spending limit index is based on a series of underlying variables and the combining of those variables to create an overall index. The index represents the strictness or rigidity of a state's tax and spending limit on local governments. The measures include the existence and type of property tax limit, ability to increase assessments, general revenue limit, general spending limit, override potential, method of override, and scope. The existence of different characteristics of a state's tax and spending limit law add points to that state's score. In sum, the Amiel-Deller-Stallman analysis considers 42 different characteristics. Adding the total points across all categories provides a state's total score.

Collective Bargaining and Unionization Laws

On the expenditure side, observers have pointed out that collective bargaining rules may drive up government costs and restrict the flexibility management needs to address the fiscal wedge. Collective bargaining rules come in many forms. These rules may require bargaining by the

employer or may only provide for a bargaining forum without requiring it. The laws may cover different classes of employees, such as public safety workers or teachers, as compared with general employees of a municipality. These rules may address the types of items that may be bargained over, including work rules, pay, and benefits. Finally, the collective bargaining laws may include a process for dealing with impasses, such as binding arbitration rules. The exact composition of these rules can be viewed as a set of processes and constraints that will drive at least to some extent a municipality's fiscal affairs. The existence or strength of state collective bargaining rules may be a determinant in which states adopt municipal fiscal emergency laws. To date, there has been no creation of a collective bargaining law index, although the National Bureau of Economic Research does have a database containing some of the information needed (Valletta et al., 1988).

The Impact of Previous Fiscal Emergencies on Current Laws

Certainly, a major factor in understanding the adoption of municipal fiscal emergency laws is state experience with these types of events. As stated earlier, New Jersey and North Carolina were early adopters of these types of state-based interventions into local fiscal affairs following the Great Depression. But other states, such as Michigan, that also experienced widespread problems in the 1930s did not pass such laws until the early 1990s. In today's environment, a municipality's experience with these problems will likely lead it to adopt a statue to create a process to address local fiscal problems. Rhode Island adopted its law in the context of a widespread fiscal crisis facing many municipalities in the state. Its statues appear to model some provisions of the Michigan law but also parts of other state laws.

The adoption of Michigan's new law in 2011 and its appendage in 2012 must certainly be considered in this context (Michigan Act 436 of 2012). The Michigan law is unique in the power and authority it gives to a state-sponsored emergency manager. Almost uniquely, the Michigan emergency manager has quasi-judicial powers related to breaking contracts. Michigan law attempts to carefully address this potential usurpation of federal bankruptcy power by making these changes temporary and based on a specific set of emergency conditions. These provisions are being challenged in federal court. Notably, bonded debt deals must be paid; an emergency manager cannot involuntary adjust them.

This section has explored some of the possible rationales or factors behind state adoption of municipal fiscal emergency laws. These factors could be represented in empirically based analyses of adoption studies or even used as factors to potentially explain the relative effectiveness of state-based strategies. Given the nuances and differences across state laws, there is a real challenge in categorizing such laws in numerical form. Nevertheless, this remains an important area of investigation, and the study of these issues has only recently been truly touched on by authors such as Coe (2008). In order to properly guide decision makers, more research is needed in the areas of adoption and policy effectiveness.

IV. Concluding Thoughts and Summary

Municipal fiscal emergency laws have taken many forms across the states. The Great Recession has forced many states to use these laws and has forced the creation of new laws and tools for states. It is possible to provide a general characterization of the types of laws in existence. A number of states have adopted an intervention policy wherein a state agency, state receiver, or financial control board provides oversight and, in some cases, direct control of a municipality's

fiscal and managerial affairs. Such a policy's goal is to mitigate a fiscal emergency and return a jurisdiction to financial stability. These laws can be classified based on their impact on personnel policy, budgetary and debt action, types of financial recovery plans, boundary shifting, and tax policy decisions. There are a wide variety of approaches and pathways across the nation, with some states being more aggressive than others in restricting local control. States such as Tennessee and Texas have taken relatively hands-off approaches in many of these areas, while states such as Michigan and Rhode Island are aggressive. In particular, Michigan stands out as a state that has been aggressive in creating almost a form of quasi-bankruptcy, where a state emergency manager can break existing contracts in some cases.

States have passed these policies to address the problem of municipal fiscal distress. The question then should be asked if the experience of several decades reflects relative success or failure. In fairness, situations of extreme municipal fiscal distress remain rare, which in itself speaks to perhaps one level of policy success. At the same time, there are a number of communities, including Detroit; Harrisburg, Pennsylvania; Springfield, Massachusetts; Nassau County, New York; and Atlantic City, New Jersey, among others, where conditions have triggered these laws recently. This paper did not attempt to evaluate the success or failure of these policies, but we can suggest a general framework for potentially considering this issue.

Where municipal fiscal emergency laws exist, generally speaking, they respond to poor management, local incompetence, and perhaps even corruption. Many laws are premised on the notion that local incompetence, mismanagement, or other internal pressures and causes are driving the fiscal crisis. For example, many laws allow a state receiver or financial control board to replace personnel if they deem it necessary. Also, states typically force local officials to develop a financial recovery plan, and state officials exert at least veto power over budget and debt decisions for some

period of time. The state may require local officials to maximize all available tax options. The operating theory, generalizing across the states, is that the internal side of the table is the source of the problems, and that certain changes and the adoption of certain policies, which local officials were unable to get passed, are necessary to ensure fiscal sustainability. In most cases, state laws, while vague on specific exit triggers or conditions, assume that the local government is viable in the long term and should be returned to local control.

State intervention laws have been criticized for addressing the quadrant in table 1 that only represents poor management and policymaking, often above the underlying structural problems of the state's own local finance architecture. State receivers typically have powers that address the immediate financial and in some cases organizational challenges facing a local government. These powers, if implemented properly, will likely result in a budget surplus being generated. In some cases, services may improve, and in others, services may be cut. However, a state receiver's powers end when he or she is removed from office, and this raises the question of mechanisms to prevent recidivism. A tougher question to answer is whether the typical state intervention process can actually solve the financial and economic structural challenges facing a local government in crisis.

One academic critic of these types of state intervention laws has been Michelle Wilde Anderson of the University of California at Berkeley law school (Anderson, 2012). Her critique echoes many of the complaints that opponents of state-appointed receivers and state takeovers have voiced. She takes a particular look at Michigan and Rhode Island. Each has had a strong receiver- or emergency manager-type position that supersedes elected officials' control of local government. Other states, such as Indiana, have similar provisions but have not used the law to date in the same fashion. Anderson's main critique is that the laws presuppose that technical

incompetence is the core of the problem and do not address structural issues of revenues and spending (Anderson, 2011). Economists such as Nobel Prize winner Douglass North have emphasized the critical importance of institutional structures and rules in a variety of economic situations (North, 1990). These issues need to be further and more systematically examined in the field of local government finance as opposed to simply focusing on poor management or corruption. The critique may be correct and point to the need for either stronger preventive action on the front end to ensure that these problems do not occur or stronger laws that give state receivers or control boards more power or authority to shift structural conditions. Few state fiscal emergency manager laws acknowledge the importance of institutional structure.

These laws do not in most cases attempt to address structural factors such as the architecture of the state's local public finance system, economic development problems, or underlying social pressures. It would be a lot to ask of any single law to address such multifaceted problems. Nevertheless, the idea behind these laws is that a local government has been unable to adapt to its circumstances and has fallen into a crisis that external actors must manage. A few states do discuss the possibility of dissolution or disincorporation. Michigan law also contemplates the need to break long contracts that may be driving up fixed costs, especially in the area of legacy costs such as pensions and retiree health care. Strengthened laws or other approaches may be necessary to assist states in ensuring long-term fiscal sustainability for some distressed municipalities.

These legal or policy extensions might include new tools to dissolve or merge municipal corporations, new revenue options, strategies to address the significant burden of pension and retiree health care costs, and reductions in state mandates. Some municipalities that made sense during the United States' industrial era may simply need to be merged into an

adjoining or higher level of government to ensure public safety and welfare. These communities may not have the wealth or resources to exist with the loss of industry. Many cities face a crushing burden of legacy costs, including pension and retiree health care costs. State control boards or receivers may need new tools to address these costs, as Michigan has tried to do. These issues will generally be external or structural in nature in the matrix depicted in table 1. Without addressing these types of issues, the laws may still be criticized for only addressing local management failures.

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