



Consent deal between Detroit, state was doomed from the start, some say

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By Matt Helms and Joe Guillen Detroit Free Press Staff Writers

The first seeds of the state's takeover of Detroit were planted last summer, when it became increasingly clear that city officials were unprepared to adopt deep structural changes needed to keep the city afloat, state officials and observers said Wednesday.

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The City Council narrowly agreed a year ago today to a financial stability agreement brokered by Mayor Dave Bing and Gov. Rick Snyder. The deal, they hoped, would keep city officials in charge but under significant state oversight.

Despite deep division over the agreement -- approved in a 5-4 council vote -- it got off to a promising start. Bing and the council in late May agreed to slash nearly \$250 million from the city's \$1.12-billion budget for 2012-13.

But a series of missteps, disagreements and a repeal of the state's emergency manager law soon slowed or stopped progress on a number of fronts.

Detroit never regained its footing.

Snyder appointed the city's first emergency manager, bankruptcy lawyer Kevyn Orr, on March 14 over protests by many council members who favored a new consent agreement instead.

• Photos: Meet Kevyn Orr, Detroit's emergency manager

It's unclear whether the city's finances could have been fixed if the consent agreement had been handled differently. Some argue it was doomed from Day One, and Snyder already had made up his mind. Many of those involved in brokering the consent agreement, which was made obsolete by the emergency manager's appointment, were reluctant to discuss it a year later.

City Council President Charles Pugh's spokeswoman said he wasn't available Wednesday. Several other council members declined to comment, as did Bing's spokesman. Representatives for Snyder couldn't be reached.

Council President Pro Tem Gary Brown, the only council member who voted against appealing Snyder's decision to appoint an emergency manager, said rehashing the consent agreement's demise is not productive because an emergency manager is now in place.

"We were growing the deficit and we weren't able to achieve the savings that we thought we could achieve with the consent agreement," Brown said. "Everything else is just an excuse."

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It's clear the agreement faced long odds.

The first signs of serious trouble, in the view of state officials and others, popped up quickly. Council members in closed meetings backed a legal challenge to the agreement by the city's top lawyer, corporation counsel Krystal Crittendon. She argued the city charter prevented such a deal because the state owed Detroit tens of millions in revenue sharing and unpaid water bills.

A judge ultimately said Crittendon had no legal standing to pursue it, but the move angered state Treasurer Andy Dillon and members of Snyder's administration. They publicly warned that the legal fight could cost the city crucial bond money and drive up its borrowing costs. Critics accused the state of fear-mongering as state officials urged the city to drop the fight and pushed Bing to fire Crittendon.

Observers who had doubted the consent agreement's viability say the dispute merely brought to public attention the kinds of roadblocks they believed would kill the deal, which they saw as doomed from the start because it was forced on reluctant city officials -- particularly the council.

"The choice for the city was either sign it or have an emergency financial manager appointed because at that point the governor only had those two choices," Douglas Bernstein, who leads the banking, bankruptcy and creditors' rights practice at Plunkett Cooney law firm in Bloomfield Hills, said Wednesday. "What it did was at least provide in a written document a number of items that needed to be addressed. It got those issues out on the table for everyone to see. What it didn't do is give a time frame for all of those things to be accomplished."

That lack of deadlines, Bernstein said, was a major drawback. New, tougher deadlines -- which the state called milestones -- were added later.

But, by that point, more serious troubles loomed.

- Little progress was made during the summer to reduce expenses. In July, Bing won approval from the city-state financial advisory board to impose another \$100 million in wage and benefit cuts on unionized city workers, which council members later rejected. The cuts were imposed, but the savings have been slow to materialize.

- In August, the state Supreme Court ordered a referendum on Public Act 4, the state's emergency manager law, to appear on the November ballot. The law was suspended, taking away the PA4's toughest powers granted to emergency managers and officials in consent agreements: the ability to impose new contract terms on employee unions.

Authority under PA4 reverted to a weaker previous law, Public Act 72, and seriously hurt the city's abilities to save more than \$100 million under the consent agreement and a supplementary set of cost-saving milestones. Most of those savings couldn't be achieved after the repeal, Brown said.

- Talk of a deal for the state to lease Belle Isle from the city and run it as a state park for up to 99 years drew outrage from the council. The deal would have saved the city \$6 million a year in upkeep, but the council wouldn't take the proposal to a vote, leading Snyder to pull the offer in January.

- In the fall, the Financial Advisory Board warned Bing administration officials that, by its projections, Detroit was headed for a cash crisis by year's end because so little savings had materialized.

Concerns grow

At first, the Bing administration defended its actions, but in November, it conceded Detroit's cash-flow picture was dire, and Detroit could add another \$90 million to its \$327 million accumulated deficit.

That triggered alarms, a spokesman for the state Treasury said Wednesday.

"The real concern was the cash burn," said Terry Stanton, a



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spokesman for Dillon, who was unavailable for comment. "The city began to indicate to the treasurer that it was going to run out of cash by the end of the calendar year, and that was, for the lack of a better term, the last straw, the point at which the treasurer decided to alert the governor that a review was warranted."

That review concluded, unsurprisingly, that Detroit had little chance of fixing itself without deeper state intervention. The state's impatience was clear when, during the council's appeal hearing on the report's conclusion, a member of the review team recalled the city's unsuccessful lawsuit to block the agreement and the slow pace at which city officials implemented its terms.

"Barely had the ink dried upon the stability agreement before city officials challenged in court the validity of the agreement," review team member Frederick Headen said at the hearing March 12 in Lansing. "And once those legal challenges were found to be without merit, city officials exhibited a notable lack of enthusiasm for implementing terms of the stability agreement into which they had entered."

City officials argued the state was breaking off the agreement prematurely and a revised consent agreement would bring about a recovery. But state officials wanted no part of another consent agreement and are looking to Orr to do what the agreement failed to do: right the city's finances.

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