Does Lansing Township Have Too Much Debt?

By James L. Tatum III[1]

A previous research note asked, "how much debt is too much debt?"[2] Lansing Township's current indebtedness provides an opportunity to further think about that question, and to think about the consequences if a local unit does have too much debt.

This research note will proceed in four parts. Part One is a narrative of how the Township came to be so indebted. Part Two is an analysis of the Township's financial condition. Parts Three and Four on bankruptcy and annexation, respectively, answer what could happen if the Township chose either option to lower its indebtedness.

1. How did the Township become so indebted?

The Great Recession (2007–2009) was one of the deepest economic downturns since the Great Depression (1929–1933). U.S. Gross Domestic Product (GDP)—a measure of national economic activity—shrank by 2 percent between 2008 and 2009.[3] The 2007–2009 economic crisis—precipitated by a real estate market bust—stressed the finances of the 50 States and their approximately 90,075 constituent localities. Property tax revenues—the main source of municipal income—diminished as property values fell. In the Township, taxable value shrank from $345.4 million in 2007[4] to $270.9 million in 2012[5], a 21.6 percent decrease. Consequently, tax revenues declined by 25 percent, from $2.7 million in FY 2007 to $2.1 million in FY 2012.

To boost the Township economy, local elected officials, and appointed members of the Downtown Development Authority (DDA) envisioned an expansion of residential and commercial development located near East Towne Center, an already lively retail center. North of East Towne Center would be an 83,000 square foot site of commercial and residential property: The Heights at Eastwood.[6]

The Township issued $22 million in bonds in 2010 to initiate the economic development project.[7] However, more money was eventually needed to finish the economic development project. The DDA issued $7.5 million in debt in 2013.[8] In addition to the debt incurred for the economic development project, the DDA entered a 99-year lease for the land on which the economic development project was to be built.[9] But then, the DDA could not pay the lease. The lease was amended in 2012 so that the Township rather than DDA became liable for lease payments.[10]

Lease payments were deferred in 2012, 2013, and 2014.[11] To resolve this, the Township, DDA and the landlord—a local private developer—formed a joint venture. Profits from the joint venture were intended to cover lease

[1] James L. Tatum III is a lecturer in Eastern Michigan University's Political Science Department, an analyst in the City of Detroit's Office of the Chief Financial Officer, and Principal and Owner of River Park Consultancy, LLC. In addition to his professional activities, he is an accomplished academic. His research on debt, pensions, insolvency, Chapter 9 bankruptcy, and dissolution has been published in trade, law, and academic journals.
[2] Center for Local Government Finance and Policy. 2021. "How Much Debt Is Too Much Debt?" Accessed July 8, 2022. https://www.canr.msu.edu/news/how-much-debt-is-too-much.
[3] Bureau of Economic Analysis. 2022. "Table 1.1.5 Gross Domestic Product." National Income and Product Accounts. Accessed July 8, 2022. https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey.
[4] Ingham County, Michigan. 2007. "2007 Equalization Report." Accessed July 8, 2022. https://docs.ingham.org/Department/Equalization/EQUALIZATION%20REPORTS/2007%20Equalization%20Report.pdf.
[5] Ingham County, Michigan. 2007. "2007 Equalization Report." Accessed July 8, 2022. https://docs.ingham.org/Department/Equalization/EQUALIZATION%20REPORTS/2012%20Eqaulization%20Report%20with%20Factor.pdf.
[6] Downtown Development Authority. 2009. "Downtown Development Authority Minutes: September 29, 2009." Accessed July 8, 2022. https://lansingtwpmi.documents-on-demand.com/?l=69eab44672184462b31171f2d9abb5e3&d=e4ac9ab58388439d8b5cd9d4d1c05ca6.
[7] Municipal Securities Rulemaking Board: Electronic Municipal Market Access. "2010 Downtown Development Bonds." Accessed July 8, 2022. https://emma.msrb.org/EP480572-EP374777-EP771703.pdf.
[8] Municipal Securities Rulemaking Board: Electronic Municipal Market Access. "2013 Tax Increment Bonds, Series A & B." Accessed July 8, 2022. https://emma.msrb.org/ER647754-ER502632-ER905376.pdf.
[9] Reed, Steven R. 2016. "The Heights: As Eastwood grew, Lansing Twp. debt spiraled." *Lansing State Journal*, August 25, 2016.
[10] *Ibid*.
[11] *Ibid*.

payments owed by the Township and DDA. However, if either are unable to make lease payments, the developer earns additional ownership stake in the joint venture.[12]

To date, the economic development project has created debt and other commitments but not prosperity. The Heights at Eastwood—83,000 square feet in all—has never achieved 30 percent occupancy.[13] Both payments from intended occupants, and incremental tax revenues from development have been less than forecasted. Township residents are left with the consequences.

2. Township financial condition

There are two aspects or questions inherent to financial condition analysis: (a) whether a local unit can pay what it owes on time and in full, and (b) whether it can honor its part of the social contract—whether it can meet citizens' demands and render adequate services. To answer this twofold question, three areas come into focus: (a) debt and revenue, (b) surpluses and deficits, and (c) cash on hand. Primarily, this analysis will focus on the Township but due to the economic development project undertaken by the DDA, for which the debt was issued, and the interplay between the Township and DDA, there will be a limited analysis of the DDA as well.

2.1. Debt and revenue

To preface this section, it is important to define what is meant by "debt." Colloquially, debt is used to refer to all manner of liabilities: loans payable, bonds payable, actuarially determined pension benefits, claims from lawsuits, etc. But while all debts are liabilities, not all liabilities are debts. Here, debt is strictly in reference to loans payable and bonds payable: where there is a borrower and lender(s), where money was borrowed and must be repaid.

There are two metrics used to assess indebtedness: the debt-to-revenue ratio and the debt service-to-revenue ratio. One, the debt-to-revenue ratio, measures current resources relative to the total debt burden. The other, the debt service-to-revenue ratio, measures the strain debt service places on annual operations.

Table A tabulates debt, revenue, and the debt-to-revenue ratio from FY 2009 to FY 2020, the most recent year for which data is available. In FY 2009, the fiscal year before the Township incurred debt to finance the economic development project, the Township collected \$4.1 million in townshipwide revenue[14] and had \$2.4 million in debt. The debt-to-revenue ratio was 0.6. Put simply, for every dollar in revenue, the Township had 60 cents in debt. In FY 2010, the debt-to-revenue ratio sharply increased to 5.7 after the Township issued \$22 million in debt. The Township collected \$4.1 million in revenue and had \$23.6 million in debt. In FY 2020, the debt-to-revenue ratio declined to 2.1. (For perspective, the City of Detroit had a debt-to-revenue ratio of 1.71 in the fiscal year that immediately preceded its bankruptcy in 2013.)

A	Township		
($) In Thousands	Total Governmental Funds		
	DEBT[2]	REVENUE[4]	DEBT-TO-REVENUE RATIO[5]
FY 2009	$ 2,420	$ 4,166	0.6
FY 2010	23,591	4,143	5.7
FY 2011	23,433	5,739	4.1
FY 2012	22,626	6,391	3.5
FY 2013	22,848	8,223	2.8
FY 2014	22,040	7,970	2.8
FY 2015	21,197	7,988	2.7
FY 2016	20,276	8,210	2.5
FY 2017	19,711	8,055	2.4
FY 2018	19,080	8,220	2.3
FY 2019	18,485	7,859	2.4
FY 2020	17,885	8,603	2.1

Notes:
(1) Data from Township Annual Comprehensive Financial Reports (ACFR).
(2) Data from ACFR: Notes to Financial Statements - Note 6 - Long-Term Financial Obligations.
(3) "Debt" inclusive of bonds payable, does *not* include other liabilities.
(4) Data from ACFR: Fund Financial Statements - Governmental Funds - Statement of Revenues, Expenditures, and Changes in Fund Balances.
(5) Debt-to-revenue ratio = debt ÷ revenue

[12] *Ibid*.
[13] *Ibid*.

[14] "Townshipwide revenue" is equivalent to Total Governmental Funds revenue. Data acquired from the Township's Annual Comprehensive Financial Report—Statement of Revenues, Expenditures, and Changes in Fund Balances.

As of FY 2020, for every dollar in revenue collected by the Township there is $2.10 in debt. Equally important to the total amount of debt is the structure of the debt, the amount and pace of principal and interest payments, and the consequences for the Township's other commitments. Herein is the value of the debt service-to-revenue ratio that captures the amount debt service eats out of annual revenues.

Per Table B, the Township spent $365,095 in debt service in FY 2009. The debt service-to-revenue ratio was 0.1, which means the Township spent approximately 10 percent of its annual revenue on debt service, an amount that is widely considered normal and healthy. However, since FY 2012, the Township has had a debt service-to-revenue ratio of approximately 0.4. Each fiscal year since FY 2012, the Township has had to send 30 to 40 percent or so of its annual revenues to bondholders.

B ($) In Thousands	Township Total Governmental Funds		
	DEBT SERVICE[2]	REVENUE[2]	DEBT SERVICE-TO-REVENUE RATIO[3]
FY 2009	$ 365	$ 4,166	0.1
FY 2010	363	4,143	0.1
FY 2011	1,766	5,739	0.3
FY 2012	2,412	6,391	0.4
FY 2013	2,945	8,223	0.4
FY 2014	3,305	7,970	0.4
FY 2015	3,155	7,988	0.4
FY 2016	3,321	8,210	0.4
FY 2017	2,990	8,055	0.4
FY 2018	3,309	8,220	0.4
FY 2019	2,676	7,859	0.3
FY 2020	3,337	8,603	0.4

Notes:
(1) Data from Township Annual Comprehensive Financial Reports (ACFR).
(4) Data from ACFR: Fund Financial Statements - Governmental Funds - Statement of Revenues, Expenditures, and Changes in Fund Balance.
(3) Debt service-to-revenue ratio = debt service ÷ revenue

Table A tabulates those debts that are firstly payable from Township revenues, Table C is inclusive of some of the debts incurred by the Township on behalf of the DDA. Why? The DDA is a component unit of the Township, it is the jurisdiction's business development arm, separate yet connected to the main municipal corpus. In 2012, the Township issued $8.9 million in debt but in addition to the promise to make payments from the incremental tax revenues collected by the DDA from the economic development project, the Township contractually committed its own tax revenues.[15] In other words, if incremental tax revenues from the DDA are insufficient to meet debt service the Township will pay the difference. So, it is reasonable to construe a portion of these debts that are firstly tied to the performance of DDA projects as Township liabilities. If examined under this expanded definition, the Township's debt burden is $24.5 million rather than $17.9 million, and the debt-to-revenue ratio is 2.8.[16]

C ($) In Thousands	Township & DDA Total Governmental Funds		
	DEBT[2]	REVENUE[4]	DEBT-TO-REVENUE RATIO[5]
FY 2009	$ 12,010	$ 4,166	2.9
FY 2010	33,141	4,143	8.0
FY 2011	32,753	5,739	5.7
FY 2012	32,141	6,391	5.0
FY 2013	31,938	8,223	3.9
FY 2014	30,725	7,970	3.9
FY 2015	29,462	7,988	3.7
FY 2016	28,111	8,210	3.4
FY 2017	27,111	8,055	3.4
FY 2018	26,035	8,220	3.2
FY 2019	24,980	7,859	3.2
FY 2020	24,497	8,603	2.8

Notes:
(1) Data from Township Annual Comprehensive Financial Reports (ACFR).
(2) Data from ACFR: Notes to Financial Statements - Note 6 - Long-Term Financial Obligations
(3) "Debt" inclusive of Township bonds *and* DDA bonds issued in 2007 and 2012.
(4) Data from ACFR: Fund Financial Statements - Governmental Funds - Statements of Revenues, Expenditures, and Changes in Fund Balances.
(5) Debt-to-revenue ratio = debt ÷ revenue

[15] Municipal Securities Rulemaking Board: Electronic Municipal Market Access. "2012 Downtown Development Refunding Bonds." Accessed July 8, 2022. https://emma.msrb.org/ER635323-ER491865-ER894760.pdf.

[16] Under an even more expansive view, an additional $6.9 million of debt may be added to the tally. In 2013, the DDA issued $7.5 million in debt that has not been expressly tied to the Township. However, the Township has transferred special revenues related to the Lansing Board of Water and Light to the DDA. If this debt is included in the Township's total debt burden the debt-to-revenue ratio is 3.6 in FY 2020.

Debt is not in and of itself bad. Debt finance pays for the acquisition and construction (and sometimes demolition) of fixed assets—jails, schoolhouses, police cars and fire trucks—and other capital projects that are often beyond what can be paid for with annual revenues. For the Township, the issue is that the local unit may have borrowed beyond its means. The Township has between $2.10 and $2.80 in debt for every dollar in revenue and until recently was in violation of the state's debt limit per Public Act 34 of 2001 ("Revised Municipal Finance Act").[17] Moreover, the debt was non-productive. The debt paid for an economic development project that, at present, is a failure.

If both the Township and DDA's debts are accounted for, the combined debt burden, loans payable and bonds payable, is $36.8 million. More worrisome, this analysis does not—purposely so—include other serious financial commitments, such as those from the costs to provide benefits to current employees and retirees.

Additionally, there are lease payments owed to a local private developer involved in the economic development project, as well as tax refunds the Township must issue to businesses that appealed their assessments.[18]

2.2. Surpluses and deficits

The Township has an Assessors Department, Police Department, Fire Department, Planning and Development Department, Parks and Recreation Department, Code Compliance Department, and is run by the Township's Supervisor, Board of Trustees, Clerk, and Treasurer. Taxes are levied on citizens, and other sources of revenue are collected to support services to citizens. Table D, a condensed income statement for the Township's General Fund (the primary "account" for receipts and disbursements), illustrates the financial sustainability of the Township's operations.

D ($) In Thousands	Township General Fund											
	FY 2009	FY 2010[3]	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
INFLOWS												
Revenue	$ 3,869	$ 4,143	$ 3,918	$ 4,097	$ 4,226	$ 3,971	$ 4,714	$ 4,596	$ 4,759	$ 4,388	$ 4,660	$ 4,810
Other Sources	11	11	13	-	-	17	-	531	265	-	184	-
Revenue and Other Sources, Subtotal	$ 3,880	$ 4,155	$ 3,931	$ 4,097	$ 4,226	$ 3,988	$ 4,714	$ 5,128	$ 5,025	$ 4,388	$ 4,843	$ 4,810
OUTFLOWS												
Expenditures	$ 3,934	$ 3,959	$ 3,776	$ 3,925	$ 4,430	$ 4,285	$ 4,280	$ 5,173	$ 5,027	$ 4,725	$ 4,704	$ 4,800
Other Uses	-	-	-	8	88	10	10	10	10	10	5	24
Expenditures and Other Uses, Subtotal	$ 3,934	$ 3,959	$ 3,776	$ 3,933	$ 4,518	$ 4,295	$ 4,290	$ 5,183	$ 5,037	$ 4,735	$ 4,709	$ 4,824
SURPLUS/(DEFICIT), i.e., Profit/(Loss)	**$ (54)**	**$ 196**	**$ 155**	**$ 164**	**$ (292)**	**$ (307)**	**$ 425**	**$ (55)**	**$ (12)**	**$ (347)**	**$ 134**	**$ (14)**
Fund Balance, i.e., Net Assets	$ 1,165	$ 1,461	$ 1,616	$ 1,780	$ 1,487	$ 1,181	$ 1,605	$ 1,550	$ 1,538	$ 1,191	$ 1,325	$ 1,311

Notes:
(1) Data from Township Annual Comprehensive Financial Reports (ACFR).
(2) Data from ACFR: Fund Financial Statements - Governmental Funds - Statement of Revenues, Expenditures, and Changes in Fund Balances.
(3) There was a $100,000 adjustment to fund balance in FY 2010.

[17] Michigan State Legislature. 2001. "Revised Municipal Finance Act." Accessed July 8, 2022. https://www.legislature.mi.gov/(S(qimi1n455rzvsc22dznhcmyo))/documents/mcl/pdf/mcl-Act-34-of-2001.pdf.

[18] *Supra* note 9.

Table D shows FY 2009 and FY 2020, a total of twelve fiscal years. In seven of those twelve fiscal years, the Township ran a deficit—where resource outflows exceed resource inflows. In those twelve fiscal years, debt service increased by $3 million or 814 percent between FY 2009 and FY 2012. In FY 2009, the Township spent $365,095 on debt service and spent $3.3 million in debt service in FY 2012, and debt service has remained elevated.

Likewise, the DDA has run a deficit in six out of twelve years, and were it not for loans, the DDA would have run a deficit in nine of twelve years. Between FY 2015 and FY 2019, the DDA borrowed $6 million (includes loans payable, not bonds payable). If not for those loans, the DDA would have an *accumulated* deficit—when liabilities exceed assets—of $6 million rather than an accumulated surplus of approximately $41,656 as of FY 2020.

2.3. Cash on hand

2022 Berkshire Hathaway Annual Shareholder Meeting:

> We believe in having cash and there have been a few times in history, and will be more times in history where if you don't have it, you don't get to play the next day… I mean it's just—it's like oxygen, you know, it's there all the time but if it disappears for a few minutes, it's all over. — Warren Buffett[19]

Fiscal crises are fundamentally crises of insufficient cash on hand. To measure the adequacy of an entity's cash on hand, it is useful to calculate days of cash on hand. The metric is somewhat fanciful, it asks and answers "if calamity were to strike and revenue streams were shutoff in an instant, for how many days could an entity continue business as normal?" The fanciful nature of the question aside, the metric is useful to understand how an entity could cope with economic slumps, natural and man-made disasters, and other strains on its finances and operations.

The data in Table E shows that between FY 2009 to FY 2018, the Township had 75 days or more of cash on hand—at most 125 days in FY 2012. In FY 2020, the most recent year for which data is available, the number of days of cash on hand dwindled to 39 days, a little over a month's worth. Three to six months is considered normal and healthy. The decline in the Township's cash on hand is a consequence of the deficits run year after year.

E	Township General Fund		
($) In Thousands	CASH AND CASH EQUIVALENTS[2]	EXPENDITURES[3]	DAYS OF CASH ON HAND[4]
FY 2009	$ 1,221	$ 3,934	113
FY 2010	1,347	3,959	124
FY 2011	1,146	3,776	111
FY 2012	1,346	3,925	125
FY 2013	1,336	4,430	110
FY 2014	885	4,285	75
FY 2015	1,336	4,280	114
FY 2016	832	5,173	59
FY 2017	1,357	5,027	99
FY 2018	1,170	4,725	90
FY 2019	953	4,704	74
FY 2020	507	4,800	39

Notes:
(1) Data from Township Annual Comprehensive Financial Reports (ACFR).
(2) Data from ACFR: Fund Financial Statements - Governmental Funds - Balance Sheet.
(3) Data from ACFR: Fund Financial Statements - Governmental Funds - Statements of Revenues, Expenditures, and Changes in Fund Balance.
(4) Days of cash on hand = cash and cash equivalents ÷ (expenditures ÷ 365)

3. Chapter 9 bankruptcy

Sometimes, people, businesses, and local units borrow too much and make contractual promises that cannot be kept. Bankruptcy confers to these debtors the power to break contracts—break contracts with bondholders, break contracts with employees and retirees, break contracts with vendors and other creditors.[20] Orchestrated under federal law—the Bankruptcy Code—the process provides a forum for hapless debtors to reach settlements with creditors. Chapter 9 of the Bankruptcy Code specifically addresses local units that cannot pay "debts as they become due."[21]

Municipal default may be disorderly. Outside of bankruptcy, each of the municipal debtor's creditors have an incentive to "race to the courthouse," to

[19] YouTube: CNBC Television. 2022. "We will always have a lot of cash on hand, says Warren Buffett." Accessed July 8, 2022. https://www.youtube.com/watch?v=NpE6MQ1U2fc.
[20] Skeel, Jr., David A. 2013. "Is Bankruptcy the Answer for Troubled Cities and States." *Houston Law Review* 50 (4): 1063–1093.

[21] Cornell Law School: Legal Information Institute. 2022. "U.S. Code: Title 11, § 101." Accessed July 8, 2022. https://www.law.cornell.edu/uscode/text/11/101.

sue the municipal debtor and collect on their own individual claims potentially to the detriment of the municipal debtor's ability to meet claims collectively. Inside of bankruptcy, efforts to sue and collect from the municipal debtor are halted when a case is filed, as an automatic stay comes into effect to provide the municipal debtor a chance to reach an accord with creditors. The municipal debtor then has the sole ability to submit a "plan of adjustment" for consideration that determines who will be paid and how much.[22] Neither creditors nor the Bankruptcy Court may interfere with the day-to-day operations of the municipal debtor. Inside of bankruptcy, the municipal debtor cannot be forced to raise taxes, layoff staff or sell assets. The local elected officials (or state-appointed receivers) remain in control contrast with commercial debtors where a bankruptcy trustee is appointed by the Bankruptcy Court, and the private company in bankruptcy may be forced to liquidate—to sell off assets and shut down—if creditors are unhappy with settlement offers.[23]

But whether a municipal debtor can file for bankruptcy is a financial *and* a political question. Under the Bankruptcy Code a municipal debtor must be insolvent to successfully file a case.[24] For people and businesses, insolvency commonly means that liabilities exceed assets. For municipal debtors, the issue is whether there is sufficient cash on hand to "pay debts as they become due." To be deemed insolvent, a municipal debtor must have defaulted on a debt or be projected to default within the near future.[25] There are other technical requirements, but the next to be discussed is that of state authorization as it is fundamentally a political question. Under the Bankruptcy Code a municipal debtor must have state authorization to file a case.[26] The City of Detroit, for example, received authorization in 2013 from then-Governor Rick Snyder to file for bankruptcy.[27] The City of Hamtramck requested authorization in 2010 from then-Governor Jennifer Granholm but she said no, so the City was left to sort out its mess outside of bankruptcy.[28]

Default—failure to pay what is owed or perform on a contractual promise is in and of itself uncommon for local units; bankruptcies, intended to resolve defaults, are even more uncommon.[29] Since 1934, when Chapter 9 was made a part of the Bankruptcy Code, there have been approximately 650 bankruptcies, most of which have been undertaken by special districts—water and sewer districts, public utilities, development authorities—which are often wound down like insolvent businesses.[30] It is much rarer for counties, cities, and towns (or townships) to file. Few local units fail financially, and of those that do, few choose or are allowed to file for bankruptcy. Bankruptcy is a last resort. States have other options. States can place local units—"creatures of the state"—in receivership and appoint a financial overseer, provide aid, dissolve or consolidate the local unit with another, and pass laws favorable to the financial survival of the local unit.

States often fear that if a local unit files for bankruptcy, and as a result earns the reputation as a deadbeat, then the state and its other constituent municipalities may also suffer reputational harm and it may become more difficult to issue debt.[31] Only around half the States permit constituent municipalities to file for bankruptcy.[32] Like with the City of Hamtramck, even when state law may be permissive toward bankruptcy, state authorities may oppose individual cases. In 1991, for example, the City of Bridgeport, Connecticut filed for bankruptcy, but then-State Attorney General Richard Blumenthal opposed it and the City's case was rejected by the Bankruptcy Court.[33] Later in 2011, the City of Harrisburg, Pennsylvania suffered the same embarrassment when it filed for bankruptcy but was rejected after then-Governor Tom Corbett opposed the City's case.[34]

[22] Kordana, Kevin A. 1997. "Tax Increases in Municipal Bankruptcies." *Virginia Law Review* 83 (6): 1035–1107.
[23] *Ibid*.
[24] *Ibid*.
[25] *Ibid*.
[26] *Ibid*.
[27] Bomey, Nathan. 2016. *Detroit Resurrected*. New York: W. W. Norton & Company.
[28] Davey, Monica. 2010. "Michigan Town Is Left Pleading for Bankruptcy." *The New York Times*, December 27, 2010.
[29] *Supra* note 20.
[30] *Ibid*.
[31] Halstead, John M., Shantaram Hegde, and Linda Schmid Klein. 2004. "Orange County Bankruptcy: Financial Contagion in the Municipal Bond and Bank Equity Markets." *Financial Review* 39 (2), 239–315.
[32] *Supra* note 20.
[33] Judson, George. 1991. "U.S. Judge Blocks Bridgeport From Bankruptcy Court." *The New York Times*, August 2, 1991.
[34] Tavernise, Sabrina. 2011. "Judge Rejects Harrisburg's Bankruptcy." *The New York Times*, November 23, 2011.

If indeed insolvent and permitted to proceed with its case, a municipal debtor may then set about the business of bankruptcy: to break contracts and formulate a plan of adjustment. Under the Bankruptcy Code, the plan of adjustment or financial settlement (a) cannot unfairly discriminate between creditors, (b) must be in the best interest of creditors, (c) fair and equitable, and (d) feasible. Creditors can review the plan of adjustment and take a vote. Plan confirmation requires the consent of creditors who hold at least two-thirds of the amount of claims per creditor class and 51 percent or more of the number of claims per creditor class.[35] But if even one creditor class consents to a plan, the plan may be approved by the Bankruptcy Court and forced onto holdouts. This method of plan confirmation is known as a "cramdown." In fact, this is how Detroit's case came to conclusion on November 7, 2014.[36] The Bankruptcy Court's confirmation of the plan of adjustment binds both the municipal debtor and creditors to its terms and provides the municipal debtor a "fresh start."

3.1. Secured debts and unsecured debts

There are several factors that complicate answers to questions about how the plan of adjustment will adjust debts, questions like "who will not be paid?", "who will be paid?", and "how much will they be paid?" Most important to these questions, is the structure of the debt or debts subject to adjustment. Is the debt secured or is the debt unsecured? Secured debts are debts underwritten by more than the borrowers promise to repay. There are specific assets, collateral, that a creditor may seize, or hold onto to ensure satisfaction of their claim. Unsecured debts are just the opposite, creditors may only rely on the borrower's promises. To better understand the concept of security interest, and to answer the above questions, it is necessary to discuss the types of debts issued by states and municipalities. Equally important, it is necessary to discuss what would happen to defaulted debts *outside* of bankruptcy to better understand what would happen *inside* of bankruptcy.

Governments levy taxes on the incomes, property and purchases of the citizens within their boundaries, and local units may also receive transfers from the States and Federal Government. In addition to these sources of municipal income, local units may access capital markets and issue bonds (I.O.U.s) to obtain money for short-term cash flow, capital projects and other needs. Generally, municipal bonds are either structured as general obligation bonds ("general obligations") or revenue bonds ("special obligations").[37] The difference is in the means of repayment.[38]

General obligations are supported by the borrower's "full faith and credit," i.e., the taxing power of the bond issuer.[39] Because taxes are compulsory, general obligations are viewed as exceptionally safe assets with a low risk of default.[40] Special obligations are riskier, as repayment is tied to a specific revenue stream.[41] Governments that operate like a business, or local units with proprietary operations—a municipal airport, water and sewer districts that earn revenues from user fees, port authorities and the like—often issue special obligations to raise money for the implementation, construction, and or administration of public projects.[42] The revenues from the public projects are then used to repay the bonds. But sometimes public projects fail.

Outside of bankruptcy, bondholders who own general obligations that have been defaulted on may sue the municipal debtor and request a writ of mandamus or court-ordered tax increase.[43] The municipal debtor may then be compelled via court order to raise taxes sufficient in amount to amortize the debt. If a public project fails to be as profitable as forecasted, and there is insufficient revenue to pay down special obligations, those bondholders have no such recourse. Inside of bankruptcy, this is all turned upside down.[44] Broad claims to a local unit's tax revenues are construed as too unspecific to be enforceable, and so general obligations are treated as unsecured debts.[45]

[35] Cornell Law School: Legal Information Institute. 2022. "U.S. Code, Title 11, § 943 – Confirmation." Accessed July 8, 2022. https://www.law.cornell.edu/uscode/text/11/943.
[36] In re City of Detroit, 504 B.R. 191, 207–08 (Bankr. E.D. Mich. 2013).
[37] Morrison, Fred L. 2002. "The Insolvency of Public Entities in the United States." *The American Journal of Comparative Law* 50 (1): 567–579.
[38] *Ibid*.
[39] *Ibid*.
[40] *Ibid*.
[41] Doty, Robert. 2013. "Diversity and Default Risks of Municipal Bonds." *Municipal Finance Journal* 34 (2): 55–87.
[42] *Supra* note 37.
[43] *Supra* note 22.
[44] *Ibid*.
[45] *Ibid*.

Comparatively, claims on specific revenues—user rates for water and sewer services, and incremental tax revenues from economic development projects, for example—are considered secured.[46]

3.2. Lansing Township in bankruptcy

What would happen if the Township filed for bankruptcy? Some of its debts may be fully impaired in bankruptcy because those debts are unsecured. Some of its debts may not be impaired, at least not beyond what is secured. Based on FY 2020 audited financial statements, the Township and DDA have a combined debt burden of $36.8 million: $30.8 million in bonds payable, and $6 million in loans payable. Of those $36.8 million in debts, an estimated $23.9 million is unsecured, and $12.9 million is secured.

In 2010, the Township issued $22 million in debt for which the Township "pledged the full faith and credit and the limited taxing power of the Township for the payment of the principal of an interest on the Bonds." These are general obligations and are unsecured.[47] Later in 2012, the Township issued $8.9 million in debt. Compared to the $22 million in debt issued in 2010, these debts primarily promised repayment from incremental tax revenues from development supposedly incurred by the DDA. In short, these debts would be repaid from the revenues derived from the public project for which the debt was incurred. Additionally, the Township committed that if there was insufficient revenue from these incremental tax revenues to pay debt service that it would make up the difference from its own tax revenues.

The DDA issued $7.5 million in debt on its own credit in 2013. Compared to the $8.9 million in debt issued in 2012 the Township is unconnected from debt service. Instead, bondholders are set to be repaid from incremental tax revenues from development and franchise fees, and other miscellaneous sources. If these revenue sources prove inadequate, bondholders are likely out of luck and may not sue the Township to compel the Township to repay those debts. Inside of bankruptcy, both the $8.9 million issued in 2012 and $7.5 million issued in 2013 qualify as secured debts. As such, bondholders may be protected from impairment up to the value of the incremental tax revenues that were promised.

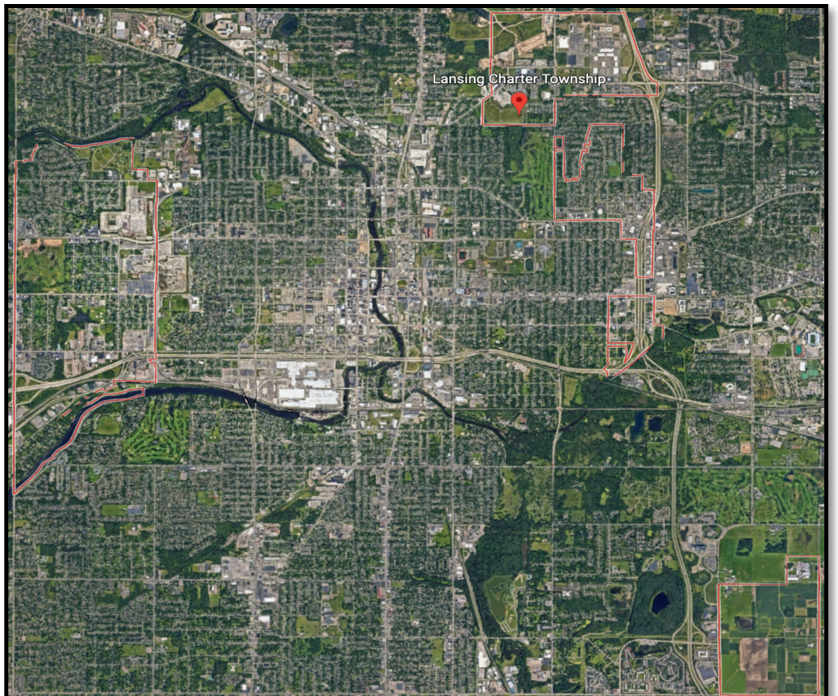
In addition to the explicit debts of either the Township or the DDA, there are the leases entered into by the Township and DDA related to the economic development project. As noted earlier in this research note, the Township and DDA were party to a lease with a local private developer, the terms of which last for 99 years. Reports from the *Lansing State Journal* say that the DDA has failed to make payments in multiple years and has instead entered into a joint venture with the same individual or company that holds the 99-year lease.[48] Per the terms of the lease: if the Township or DDA fail to make lease payments, ownership stake in the joint venture is surrendered to the local private developer.[49] Based on the Township's audited financial statements, loans have been extended to the DDA by the same joint venture: a complicated mess that could be sorted out in bankruptcy whereby both contracts could be canceled.[50]

So is the Township bankrupt? No. The Township has not filed to adjust its debts in Bankruptcy Court. But even more colloquially, the Township is not yet "bankrupt." The Township's cash on hand has continued to decline each year, but it has not run out of money yet (*yet* based on audited financial statements from FY 2020; it is currently FY 2023). The Township has received cash infusions from the Federal Government, such as the $863,202 received from the 2021 American Recovery Plan Act.[51] Moreover, there are other options to address the Township's indebtedness. Governor Gretchen Whitmer is likely to have the same hesitation that Governor Tom Corbett or State Attorney General Richard Blumenthal had about the financial collapse of a constituent municipality and the politics are as important as the dollars and cents.

[46] *Ibid*.
[47] In a second section on "purpose and security" within the bond contract, "The Township also pledges for the payment of the principal and interest on the Bonds certain revenues to be collected and captured by the DDA, which revenues have been irrevocably pledged by the DDA to the Township for the payment of the Bonds." Both because there is an internal discrepancy within the bond contract and an absence of an identifiable specific revenue, such as incremental tax revenue, the secondary pledge is disregarded for the purposes of this analysis and these debts are interpreted as general obligations that are unsecured.
[48] *Supra* note 9.
[49] *Ibid*.
[50] *Supra* note 22.
[51] Michigan Department of Treasury. 2021. "American Rescue Plan Act (ARPA) Coronavirus Local Fiscal Recovery Fund Non-Entitlement Unit of Local Government: Notice of Approval."

4. Annexation

If one were to look at an outline of the Township, and were not told beforehand that it was landlocked, one could understandably mistake the local unit for a set of islands. Annexation: the amendment of jurisdictional boundaries by a local unit that expands the territory under its control has left the Township bereft. Incorporated in 1859, the City of Lansing took some land.[52] The City of East Lansing, incorporated in 1907, took some more.[53] In the process, Lansing Township, once 36 square miles, is now 4.9 square miles spread across five disconnected areas.[54]



But what if either the City of Lansing or East Lansing were to take the rest of the Township's land? What would happen to the Township's debts? Is this a way for the citizens to leave the debt behind as they enjoy their newly attained cityhood? No. If Lansing Township was subsumed by the City of Lansing or East Lansing via annexation, its debts would come with its citizens, and the Township's debts would become the City's debts per Public Act 279 of 1909 ("Home Rule City Act"). For further elucidation on the issue, refer to Sylvan Township v. City of Chelsea, a case that made its way to the State Supreme Court. Sylvan Township sued the City of Chelsea. The Township claimed that the City was responsible for a portion of the Township's debts after the City (formerly a village located in the Township) incorporated. Sylvan Township won.[55] Conclusively, it can be said that annexation does not wipe away debts. State statute (Home Rule City Act) is clear on this matter, as is case law (Sylvan Township v. City of Chelsea).

Still, annexation—whether partial or complete—could have a substantial effect on Township finances. On July 22, it was reported that 120 Township residents located in the Groesbeck area requested to be annexed by the City of Lansing.[56] The Groesbeck area currently receives City services and is surrounded by the City.[57] On November 8, 2022, Groesbeck area residents will be asked to further consummate that already close relationship. Consequently, for the Township, it will lose taxpayers.[58] Yet, in accordance with the Home Rule City Act, the City will become liable for a proportion of Township debts equivalent to the taxable property subsumed from the Township. But the bifurcation of debts is incomplete. Based on preliminary analysis by the Ingham County Treasurer's office, *Township* debts will be divvied up, but those debts incurred by the DDA (the balance of which was $12.9 million—loans payable and bonds payable—as of FY 2020) will remain with the DDA. If approved, the annexation could worsen City finances as the balance between population loss and debt avoidance will be asymmetric and not in the Township's favor.

[52] City of Lansing. 2022. "History." Accessed July 8, 2022. https://www.lansingmi.gov/291/History.
[53] City of East Lansing. 2022. "History." Accessed July 8, 2022. https://www.cityofeastlansing.com/518/History.
[54] Census Bureau. 2020. "Lansing Township." Accessed July 8, 2022. https://www.census.gov/quickfacts/lansingchartertownshipinghamcountymichigan.
[55] Westlaw: Michigan State Supreme Court. 2015. "Sylvan Township v. City of Chelsea."
[56] Ellis, Mike. 2022. "Group of Lansing Township residents want to be annexed into the City of Lansing." *Lansing State Journal*, July 22, 2022.
[57] City of Lansing. 2022. "City Council Meeting Minutes: August 8, 2022." Accessed August 11, 2022. https://lansingmi.civicclerk.com/Web/Player.aspx?id=3481&key=-1&mod=-1&mk=-1&nov=0
[58] *Ibid*.

Conclusion

For reasons both political and practical, Lansing Township is unlikely to file for bankruptcy, or be swallowed up by nearby cities. Still, these are possibilities, and it is important to explore the ramifications for either. The likelier outcome is that the Township continues to pay down debts tied to the economic development project at the expense of services and the ability to invest in quality-of-life improvements. Instead of bankruptcy or transformation via annexation, what is likely is austerity and tax increases. The Township Board just voted to increase taxes in 2021.[59] If the Township finances worsen still, the State may become involved (see Public Act 436 of 2012, "Local Financial Stability and Choice Act").[60] The State Treasury Department may provide technical assistance, the Township may issue fiscal stabilization bonds, and if need be, a state receiver may be appointed. Each of these is a likelier eventuality than bankruptcy or annexation.

In any case, the Township's experience furthers the discussion about debt, and helps us better answer the question: "how much debt is too much debt?" In the future, this answer can hopefully be arrived at before an entity has crossed the threshold—whatever that threshold may be. But until such a time, those that teeter on the precipice of insolvency may provide lessons on how to draw back from the breach. So, both elected officials, citizens, and bondholders should watch the Township and what it does carefully.

About the Center

The vision of the Center is based on the promotion of fiscally healthy and thriving local governments in Michigan and elsewhere. This vision will be realized via outreach education, applied research and student classroom and internship training that guides and informs current and future policymakers.

The center's foundation is built on a strong body of work by colleagues at Michigan State University going back to the 1960s, including Lynn Harvey, Sandra S. Batie, A. Allan Schmid, and Jim Schaffer, Alvin House, Ken VerBurg, David Schweikhardt and many others. The Center is also built on strong external partnerships with groups such as the Michigan Association of Counties, Michigan Municipal League, Michigan Association of Townships, Michigan Municipal Treasurers Association, Citizens Research Council, Lansing Financial Health Team, many other organizations and many local governments across the state of Michigan.

The Center will continue to grow this significant body of work. This work can be viewed in two ways:

1. Playing by the rules

State government is the architect of the local government system, and we explain how to play within those rules in sessions such as new commissioner training.

2. Changing the rules of the game

We work with the state government and other stakeholders to think about the impact of rule changes on the fiscal and overall health and stability of local governments.

[59] Lansing Township, Michigan. 2022. "Board of Trustees Meeting: November 9, 2021. Accessed July 8, 2022. https://lansingtwpmi.documents-on-demand.com/?l=ef4b5637a1954fa2a5c81bf3fd68193c&d=03b967ca4f4dec11a35a000c29a59557.

[60] Michigan State Legislature. 2012. "Local Financial Stability and Choice Act." Accessed July 8, 2022. https://www.legislature.mi.gov/(S(aznit3sqnip4sffu0boewm4e))/documents/mcl/pdf/mcl-act-436-of-2012.pdf.