

# Legal battle brews over Detroit bankruptcy filing

## DETROIT: SNAPSHOT OF A CITY IN TROUBLE

On July 18, Detroit became the largest U.S. city to file for bankruptcy. The city struggles with high unemployment and diminishing city services. A look at some statistics that shape Detroit:

Source: City of Detroit, Bureau of Labor Statistics, Detroit Free Press, Census Bureau, USA TODAY research  
Kevin A. Kepple, Frank Pompa, Anne R. Carey, Paul Overberg, Karl Gelles and Joan Murphy, USA TODAY

Paul Egan, Joe Guillen and Matt Helms, Detroit Free Press 7:22 p.m. EDT July 19, 2013

*The city's emergency manager says that pension and health care benefits are safe for at least the next six months.*



(Photo: Bill Pugliano, Getty Images)

SHARE

CONNECT

424

TWEET

[https://twitter.com/intent/tweet?url=http://usat.ly/12PGBof&text=Legal%20battle%20brews%](https://twitter.com/intent/tweet?url=http://usat.ly/12PGBof&text=Legal%20battle%20brews%20Detroit)

DETROIT -- While Detroit emergency manager Kevyn Orr on Friday was offering short-term reassurances to thousands of city pensioners whose benefits are in jeopardy, his lawyers were waging a whirlwind legal battle over the constitutionality of the bankruptcy filing that could land both sides before a federal judge early next week.

On Friday, Michigan Attorney General Bill Schuette said he will appeal an Ingham County judge's ruling that Detroit's bankruptcy filing must be withdrawn because it violates the Michigan Constitution and state law.

However, the order from Ingham County Circuit Judge Rosemarie Aquilina ultimately could have little effect because the bankruptcy case already was filed in federal court, and federal law generally trumps state law. The city filed a motion requesting to include the state as a party in the bankruptcy code's provisions that put on hold all lawsuits against the city, a clear attempt to fight the Ingham County ruling by preventing the state from being sued in similar fashion. The city is asking U.S. District Judge Steven Rhodes to hold a hearing on Tuesday, or earlier, to decide this and other matters.

Friday's legal wrangling marks the beginning of what is expected to be a lengthy bankruptcy process that will involve more than 100,000 creditors, which include the Police and Fire Retirement System and the General Retirement System and its 20,000 retirees.

Orr provided retirees some temporary relief Friday, telling the Detroit Free Press that pension and health care benefits are safe for at least the next six months.

"We have made a decision that for the balance of this year, the next six months, we're not touching pension or health care," Orr said in an interview with Free Press editors and reporters. "So all pensioners, all employees you should understand: It's status quo for the next six months."

The announcement was welcome news to Thomas Berry of Livonia, who retired from the Detroit Police Department six years ago after more than 34 years on the job.

"I think that's huge," Berry said. "You've given me five months to evaluate. We're going to sock away more and maybe spend a lot less."

Orr has not yet specified the cuts to pensions he will seek through the bankruptcy process. He has proposed freezing pensions and moving workers to a 401(k)-style plan to help alleviate the pension systems' unfunded liabilities of \$3.5 billion. He also wants to move retirees to Medicare or health care exchanges being set up through the Affordable Care Act.

Orr, alongside Michigan Gov. Rick Snyder, spent Friday in a series of public appearances and meetings explaining why it was necessary for Detroit to file for bankruptcy protection and how the lengthy process is likely to affect the city's residents, workers and retirees. The duo stressed bankruptcy was long overdue, and is the best path to resolve the city's liabilities of about \$18.5 billion. They said services to residents will improve.

**STORY:** [Judge selected to oversee Detroit bankruptcy \(http://www.usatoday.com/story/news/nation/2013/07/19/judge-selected-to-oversee-detroit-bankruptcy/2570417/\)](http://www.usatoday.com/story/news/nation/2013/07/19/judge-selected-to-oversee-detroit-bankruptcy/2570417/)

Orr said the lawsuits from pension boards and others didn't spur the filing. He said he was simply running out of time.

"We're dealing with 60 years of deferred maintenance in 18 months," Orr said during a news conference at Wayne State University, referring to the length of time in which he'll oversee the city.

Still, Orr singled out retirees and pension fund lawsuits filed in recent days to try to stop the state-approved bankruptcy filing, based on the argument that the state's constitution prevents the city or state from cutting protected pension benefits for retirees. Orr deflected criticism from union leaders and pension officials that he wasn't bargaining in good faith in recent weeks, citing lawsuits opponents filed.

"That's the very thing I had pleaded for not to happen," said Orr, standing next to Snyder. "Anyone who thinks I wasn't negotiating in good faith, when they're suing me, look at that context."

**STORY: GM CEO: Auto industry had role in fiscal slide** (<http://www.usatoday.com/story/money/cars/2013/07/19/gm-ceo-akerson-bankruptcy-detroit-competition/2568787/>)

In a spate of orders out of Ingham County Circuit Court arising from three separate lawsuits, Aquilina said Snyder and Orr must take no further actions that threaten to diminish the pension benefits of city of Detroit retirees.

"I have some very serious concerns because there was this rush to bankruptcy court that didn't have to occur and shouldn't have occurred," Aquilina said.

Lawyers representing pensioners and two city pension funds got an emergency hearing with Aquilina on Thursday at which she said she planned to issue an order to block the bankruptcy filing. But lawyers and the judge learned Orr filed the bankruptcy petition in Detroit five minutes before the hearing began.

Aquilina said the Michigan Constitution prohibits actions that will lessen the pension benefits of public employees, including those in the city of Detroit. Snyder and Orr violated the constitution by going ahead with the bankruptcy filing, because they know reductions in those benefits will result, Aquilina said.

"We can't speculate what the bankruptcy court might order," said Assistant Attorney General Brian Devlin, representing the governor and other state defendants.

"It's a certainty, sir," Aquilina replied. "That's why you filed for bankruptcy."

Devlin said Snyder has to follow both the Michigan Constitution and the U.S. Constitution.

**STORY: Detroit bankruptcy rattles muni bond investors** (<http://www.usatoday.com/story/money/markets/2013/07/19/detroit-muni-bond-investors/2568039/>)

Schuetz's office issued a statement saying an appeal has been filed on behalf of the governor in all three cases before Aquilina.

Aquilina issued a declaratory judgment that says the bankruptcy filing violated the Michigan Constitution. She also ordered that a copy of her declaratory judgment be sent to President Barack Obama, saying he "bailed out Detroit" and may want to look into the pension issue.

In the Schuetz appeal, state attorneys say Aquilina abused her discretion and the question of a Detroit bankruptcy filing is now moot.

"The governor has authorized the bankruptcy proceeding and the petition has been filed," the appeal said.

University of Michigan law professor John Pottow said the issue could travel up the court system, all the way to the Michigan Supreme Court. Or it could be answered decisively and quickly in bankruptcy court, he said.

"There's nothing that precludes a federal judge from adjudicating the constitutionality of the Michigan statute," Pottow said. "The bankruptcy judge can interpret Michigan law."

**MORE: Full coverage of Detroit's financial crisis from the Detroit Free Press** ([http://www.freep.com/article/99999999/NEWS01/120322073&template=theme&theme=DETROIT\\_FINANCIAL\\_CRISIS](http://www.freep.com/article/99999999/NEWS01/120322073&template=theme&theme=DETROIT_FINANCIAL_CRISIS))

Snyder said the decision to file for bankruptcy was based on the unmistakable conclusion there was no other option for a city that had reached the end of the line. Detroit, he said, was done in by decades of residential and business flight to the suburbs, loss of its manufacturing base, chronic overspending and mismanagement and corrupt leadership, all reaching a climax as the economic meltdown and the national housing crisis hit.

"Let's get to the point of saying enough is enough," Snyder said. "This is 60 years of bad outcomes. Let's do something about it, finally."

Meanwhile, Aquilina is scheduled to hold a hearing at 9 a.m. Monday to decide whether Snyder has the authority to approve a bankruptcy filing that would affect accrued pension benefits.

Contributing: Nathan Bomey of the Free Press



The city of Detroit (Photo: Carlos Osorio, AP)

SHARE

CONNECT

**424**

TWEET

<https://twitter.com/intent/tweet?url=http://usat.ly/12PGBof&text=Legal%20battle%20brews%20over%20Detroit%20bankruptcy%20filin>