

**DEPARTMENT ABLAZE: LEGAL SOLUTIONS FOR THE
DANGEROUSLY UNDERFUNDED DETROIT FIRE
DEPARTMENT**

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I. INTRODUCTION

I am the son of a firefighter from Boston, Massachusetts. I spent many childhood and adolescent days at the firehouse, responding to calls with my father and, at times, watching him run into buildings engulfed in flames.

I live in Detroit, Michigan now, but a few nights back, I received a call from my father informing me that he was responding to a large fire and that I should turn on the radio scanner to listen in. I went to an Internet radio scanner and listened to the Boston firefighters communicate at the fire ground; the first units arrived within three minutes of the call.

When my father arrived and assumed command, he struck the fifth and sixth alarms, bringing in approximately 150 firefighters and 20 apparatus, extinguishing three large house fires, and saving several other houses within close proximity to the flames.¹ At the same time, the dispatch center contacted a neighboring community to respond to medical calls in Boston while Boston's resources were in use at the scene. Thirty people were displaced from this fire, but there were no injuries to any residents and only a minor shoulder injury to one firefighter.² If this fire occurred in Detroit, however, the story would be different.

In this Note, I hope to inform the reader of the economic hardships the Detroit Fire Department is undergoing. To do so, I will continue to employ a narrative method to demonstrate the impact that the legal issues surrounding departmental funding and resources have on actual individuals in Detroit by providing examples of inadequate public safety services.³

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1. Derek J. Anderson & Meghan E. Irons, *Fire Rips through 3 Dorchester Three-Deckers*, BOSTON GLOBE (Mar. 28, 2013), <http://www.bostonglobe.com/metro/2013/03/27/six-alarm-fire-burns-three-triple-deckers-dorchester-people-are-displaced/xyqaOvEcG611vq7BXmHlTN/story.html>.

2. *Id.*

3. See Richard Delgado & Jean Stefancic, *Imposition*, 35 WM. & MARY L. REV. 1025 (1994). I will be employing a narrative method similar to that used by Richard

With that said, at 4:00 PM on a frigid January day in Detroit, Michigan, I discussed the major cutbacks to the city's fire department with a Captain and his team of firefighters in their station. The group discussed how many of them were previously laid off and demoted due to budget cuts. Further, they informed me that often the firehouses in the city are without heat, and the fire companies themselves are frequently shut down for the day because of staff cuts.⁴

The kitchen we sat in was filled with supplies donated by the community or bought by the firefighters. The city supplies nothing.

The wall behind me displayed photographs of men lost from this firehouse. One in particular perished while fighting a fire in a vacant building, and one of the men speaking with me watched him die.

Suddenly, a call came announcing a potential fire approximately four miles from the fire station. The Captain offered me a seat in the ladder truck to respond to the call, which I enthusiastically accepted. We roared out of the station while the men began suiting up for a potential fire. The firefighter sitting next to me spoke to himself quietly, as if preparing for the Super Bowl, while the Captain turned around from the front seat to discuss the apartment complex to which we were responding.

As we were speeding to the call, we passed an abandoned fire station. "That was closed a few years back," the Captain informed me. That fire station was two minutes from the potential building fire.

"Once they close a fire station, they make all of us pack up our stuff and we're gone," he explained. "Thieves break in that night, [and] steal all of the piping and anything else that was left inside. They never open back up."

It took roughly eight minutes to arrive at the scene. The building was four stories and housed, what appeared to be, at least 100 residents. There was no fire showing.

Delgado. Delgado argues that using a narrative method technique assists the reader in an understanding of "how statutes and case law interact with the setting and background against which they are issued and read. Many authors show how stories become internalized, after which they efficiently and invisibly determine what we see." *Id.* at 1028. By using this narrative technique, the reader will better understand the dire need for action in the underfunded public safety field in Michigan and in the nation as a whole. Many of the narratives used in this article are firsthand accounts; thus, they are largely uncorroborated. However, there are significant news articles and documentaries focusing on these issues that address the Detroit Fire Department's dire situation. *See, e.g.*, BURN (Apostle and TBVE 2012) (documentary following crews in Detroit as they battle fires with insufficient staffing and budget cuts).

4. Kimberly Craig, *Detroit Firefighters Use Stove to Heat Fire House After Days of Going Without Heat*, ABC DETROIT SEVEN ACTION NEWS (Jan. 16, 2013), <http://www.wxyz.com/dpp/news/detroit-fire-fighters-use-stove-to-heat-fire-house-after-days-of-going-without-heat>.

The firefighters ran into the building to investigate; this time it was a false alarm. The Captain approached me and pointed to the fourth floor. “We do not have an operational ladder on this truck.” If there was a fire there, they would not be able to get people out of those floors without running right into the flames, and it would take a while for another truck with a working ladder to arrive. “Every minute counts when it comes to a fire.” The Detroit firefighters, in such a situation, would have to watch as people burned inside the building or took crushing leaps from the windows. The fire department does not even have the funds to purchase replacements for the life-nets used to catch falling citizens.

On average, this firehouse responds to at least three fires a night, normally set by arsonists or squatters in abandoned buildings. “Nothing will get done until something awful happens,” the Captain informed me. He did the sign of the cross and said, “I truly hope it never comes to that.” These problems threaten the lives of citizens in city of Detroit and require a solution.

This Note posits that there are solutions, and it seeks to provide guidance to the budgetary and municipal control problems facing the Detroit Fire Department.

Part II of this Note will provide details of fire fighting in the United States complemented with a background on regional governments, mutual aid agreements, and affirmative rights. Part III will offer an analysis of a regional department versus mandatory mutual aid agreements. Further, Part III will provide model legislation creating an affirmative right to public safety.

I will seek, throughout this Note, to provide advice for Detroit as well as similarly situated departments across the country. If the problems facing the Detroit Fire Department are not addressed, fire rates will continue to climb, death tolls will multiply, and costs of insurance will likely increase.⁵

5. The Insurance Service Office’s Public Protection Classification Service (PPC) uses the Fire Suppression Rating Schedule (FSRS) to determine a 1-10 scale of fire departments throughout the country. This model addresses a department’s ability to suppress fires. Many insurance providers use this rating; therefore, a fire department’s inability to respond to fires could have a direct impact on a resident’s insurance rates. For detailed information, see *Fire Suppression Rating Schedule (FSRS) Overview*, INS. SERVICES OFF., <http://www.iso.com/Products/Public-Protection-Classification-Service/Fire-Suppression-Rating-Schedule-FSRS-manual-for-PPC-grading.html> (last visited May 19, 2014).

II. BACKGROUND

On August 28, 2012, fire units stationed in Downtown Detroit were battling two different fires in two different locations in the city.⁶ At approximately 10:00 PM, the Detroit Fire Department was alerted of a third fire at the popular Hockeytown Café in Downtown Detroit.⁷ Detroit battles more fires than any city in the nation;⁸ multiple fires at one time are a common occurrence.⁹

Two months before these fires, there were three other rigs located around the corner from Hockeytown, but due to cutbacks, those units were “browned out”¹⁰ and were no longer in service.¹¹

In order to fight the fire at Hockeytown, units had to travel over seven miles to reach it. Luckily, the popular downtown area and restaurant were not busy that night, and crews managed to keep damage to a minimum.¹²

What if the restaurant had been crowded or the fire had spread faster? Or, rather than Hockeytown, what if the fire was at the Detroit Lions’ Ford Field during a crowded Sunday night football game with the closest fire unit being located seven miles away? In this scenario, a small kitchen grease fire could easily gain momentum in the domed stadium without a fire company to stop it from spreading.¹³

To best understand firefighting and the reasons behind the poor response times like this, it is helpful to understand the firefighting profession across the nation and how Detroit compares.

6. For a detailed account, see Bill McGraw, *Hockeytown Cafe Blaze Showed Potential Risk in Fire Department Cuts*, DEADLINE DETROIT (Aug. 29, 2012), http://www.deadlinedetroit.com/articles/1718/hockeytown_cafe_blaze_showed_potential_risk_in_fire_department_cuts.

7. *Id.*

8. Yarden Schwartz & Jim Gold, *Detroit May Let Abandoned Buildings Burn; Film Documents Firefighters’ Tough Times*, NBC NEWS (Apr. 24, 2012), <http://usnews.nbcnews.com/news/2012/04/24/11376348-detroit-may-let-abandoned-buildings-burn-film-documents-firefighters-tough-times?lite> (“Last year alone, the Fire Department fielded 30,000 fire calls. The city of 714,000 sees 30 structure fires a day. In contrast, Los Angeles, a city of nearly 4 million, faces just 11 structure fires a day.”).

9. *Id.*

10. The term “browned out” is used for a fire station that is temporarily closed due to budget restraints. See Bill McGraw, *Manpower Crisis in Detroit Fire Department: 40 Percent of Rigs Out of Service Today*, DEADLINE DETROIT (July 5, 2012), http://www.deadlinedetroit.com/articles/1072/manpower_crisis_in_detroit_fire_department_40_percent_of_rigs_out_of_service_today.

11. See McGraw, *supra* note 6.

12. *Id.*

13. *Grease Fires: Dangerous, Fast-Spreaders*, CBS NEWS (Feb. 11, 2009), http://www.cbsnews.com/2100-501083_162-4522922.html.

A. The History and Statistics

Firefighting began in the United States during colonial times and was largely composed of volunteer groups.¹⁴ As time passed and the inefficiencies of volunteer fire departments became evident, technological, political, and societal forces led to organized municipal fire departments.¹⁵

To grasp the potential impact that the changes suggested in this Note may have, it is helpful to understand the national statistics of organized fire departments. In 2013, there were approximately one million firefighters in the United States,¹⁶ making up roughly 30,000 separate fire departments.¹⁷ These departments have within their control an estimated 67,000 pumper vehicles (engine companies), 7,000 aerial apparatus (ladder trucks), and 55,000 stations.¹⁸

Nationally, fire services fight nearly 400,000 residential fires, which caused almost 3,000 deaths, 13,000 injuries, and 7 million dollars in property damage in 2011.¹⁹ Additionally, nonresidential fires occur 85,000 times annually, causing 80 deaths, over 1,000 injuries, and 2 billion dollars in property damage.²⁰

When examined at the state or district level, Washington D.C. has the highest amount of deaths from fires, and Hawaii has the lowest.²¹ Notably, Michigan has the eleventh highest death rate in the country due to fires.²²

14. Annelise G. Anderson, *The Development of Municipal Fire Departments in the United States*, J. LIBERTARIAN STUD., Spring 1979, at 331 (providing an in-depth analysis of the evolution of fire departments in the United States).

15. *Id.* at 348.

16. NAT'L FIRE PROT. ASS'N FIRE ANALYSIS & RESEARCH DIV., US FIRE DEPARTMENT PROFILE THROUGH 2011 (2012) (providing an updated comprehensive overview of fire department statistics in the United States).

17. *Id.* at 17.

18. *Id.* at 21.

19. U.S. FIRE ADMIN., RESIDENTIAL AND NONRESIDENTIAL BUILDING FIRE ESTIMATE (2011), available at <http://www.usfa.fema.gov/statistics/estimates/index.shtm>.

20. *Id.*

21. U.S. FIRE ADMIN., STATE FIRE DEATH RATES AND RELATIVE RISK (2013), available at <http://www.usfa.fema.gov/statistics/estimates/states.shtm> (stating that Washington D.C. had 33.5 deaths per million, Hawaii had 3.9 deaths per million, and Michigan had 16.4 deaths per million).

22. *Id.*

The Detroit Fire Department alone responds to an average of 30,000 fires a year, causing 47 deaths, most of which are elderly individuals and children.²³

Further, many departments are responsible not only for fire suppression, but also for emergency medical services.²⁴ These medical calls make up over half of the actual emergencies responded to by fire departments, utilizing a large amount of resources.²⁵

B. Controlling Forces

The Michigan constitution, like other state constitutions, expressly permits the legislature to establish municipal forms of government.²⁶ Importantly, the Michigan legislature then established the state as a “home-rule state,”²⁷ explicitly guaranteeing that any area of the law not governed by state constitutional provisions or other legislative acts is left within the discretion of the municipality.²⁸ Therefore, in Michigan as well other states, statutes grant control over fire departments to municipalities and local governments.²⁹

23. *City of Detroit Fire Department FAQs*, DETROIT.GOV, <http://www.detroitmi.gov/DepartmentsandAgencies/FireDepartment/FAQs.aspx> (last visited Nov. 18, 2012).

24. FEMA, *Fire Department Overall Run Profile*, 7 TOPICAL FIRE REPORT SERIES, no. 4, 2007, at 1; *see also* DETROIT FIRE DEP’T DIV. OF EMS, www.detroitmi.gov/DepartmentsandAgencies/FireDepartment/EMS.aspx (last visited Mar. 1, 2014).

25. *Id.*

26. MICH. CONST. art. VII, § 27.

27. MICH. CONST. art. VII, § 22. This provision is known as a home rule, and provides in part, that

each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

Id. *See also* MICH. COMP. LAWS ANN. §§ 117.1-.38 (West 2012).

28. MICH. CONST. art. VII, § 22; *see also* *Dooley v. City of Detroit*, 121 N.W.2d 724, 732 (Mich. 1963) (“Consistent with the whole purpose of the home rule cities act and the constitutional provisions pursuant to which it was enacted, the authority granted was in broad general terms, each city being left free to determine for itself what excises would best meet its local needs.”).

29. MICH. COMP. LAWS ANN. § 70.1 (West 2012) (“[Villages] may adopt ordinances and regulations to protect against fires and may establish and maintain a fire department and organize and maintain fire companies.”); MICH. COMP. LAWS ANN. § 109.1 (West 2012) (“The council of any city shall have power to enact such ordinances and establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires, and to protect the property and persons of the citizens against damage and

Municipal authorities have created hundreds of fire departments in Michigan alone, serving over 1,000 townships, 274 cities, and 259 villages.³⁰ The budget of each department obviously varies based on the size of the municipality and its needs, but funding largely comes out of the general funds created by taxation from townships and cities.³¹ Local tax dependency of fire departments thus makes them susceptible to the economic instabilities a locality may face.³² This is problematic where the population is high in a specific locality, but the tax base is low,³³ and it fosters a situation where the department of a municipality is ill-equipped to serve the citizens.³⁴

Local funding problems force American taxpayers from across the country to supply federal grants to ensure that local municipalities can

accident resulting therefrom; and for this purpose to establish and maintain a fire department; to organize and maintain fire companies; to employ and appoint firemen; to make and establish rules and regulations for the government of the department, the employees, firemen, and officers thereof; and for the care and management of the engines, apparatus, property and buildings pertaining to the department; and prescribing the powers and duties of such employees, firemen, and officers.”); *see also* *Simpson v. Gage*, 161 N.W. 898 (Mich. 1917) (holding that a city’s fire department is distinctly a matter which concerns the inhabitants of the city as an organized community apart from the people of the state at large); *see also* MONT. CODE ANN. § 7-33-4101 (West 2011) (“In every city and town of this state there must be a fire department . . .”); *see also* W. VA. CODE § 8-15-9 (West 2012) (“Any municipality may provide for, establish, equip and maintain a full-time paid fire department.”); MASS. GEN. LAWS ANN. ch. 48, § 42A (West 2012) (“In towns which accept this section or have accepted corresponding provisions of earlier laws there shall be a fire department established under the direction of the select men.”); OHIO REV. CODE ANN. § 737.21 (West 2011-12) (“The legislative authority of a municipal corporation may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of its citizens against damage and accidents resulting therefrom, and for such purpose may establish and maintain a fire department, provide for the establishment and organization of fire engine and hose companies and rescue units.”); *see also* CAL. GOV’T CODE § 38611 (West 1955) (“The legislative authority of a city shall establish a fire department for the city.”).

30. MICH.’S SYSTEM OF LOCAL GOV’T, MICHIGAN MANUAL 2006-2007, 715 (2007).

31. *See* MICH. COMP. LAWS. ANN. § 41.801 (West 2012). (“The township, board of a township, or the township boards of adjoining townships acting jointly, whether or not the townships are located in the same county, may purchase police and fire motor vehicles, apparatus, equipment, and housing and for that purpose may provide by resolution for the appropriation of general or contingent funds.”); *see also* MICH. COMP. LAWS ANN. § 41.811 (permitting the creation of joint administrative boards to pool funding between two or more municipalities for fire services).

32. For an empirical study on the funding of fire services, *see* Rogers Ahlbrandt Jr., *Efficiency in the Provision of Fire Services*, 16 PUB. CHOICE 1 (1973).

33. *See* Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 10 (2000).

34. *See id.*; *see also* Christine Ferretti, *Detroit Firefighters Sue to Block Staffing Cuts*, DETROIT NEWS (Aug. 29, 2012) (reporting that two handicap individuals died in a fire where a firehouse located only one minute away was recently closed due to budget cuts).

minimally serve the needs of the communities they protect via federal taxation.³⁵ Without these grants, departments such as those in Detroit and other communities would be unable to provide firefighters with the equipment and work hours necessary to keep the city safe.³⁶

These funding conditions have led to numerous contractual battles between municipalities and fire departments, with firefighters claiming that they do not have enough equipment and staff to serve the city, while the city decries lack of funding.³⁷ This condition forces the city and the fire department, both of which aim to serve the citizens, to clash.³⁸ However, despite litigation and statistics regarding fires, medical services, and department needs, cities and townships in Michigan and across the country are under no affirmative duty to solve these problems and to protect the lives and safety of their citizens and property.³⁹

C. An Overview of Affirmative Rights

In the Michigan constitution and every state constitution, education is a guaranteed right to all citizens.⁴⁰ That is to say, much like the right to practice religion without state interference under the federal Constitution, in Michigan, children have a right to an education.⁴¹ Other common affirmative rights in state constitutions include disease prevention in livestock, victims' rights, open court rights, and assistance to indigent and mentally handicapped individuals.⁴² Michigan also offers a constitutional amendment for the protection of the public health and

35. Tony Briscoe, *Detroit Fire Dept. Gets New Clothing, Safety Equipment*, DETROIT PUB. SAFETY FOUND. (Oct. 18, 2012), <http://www.detroitpublicsafetyfoundation.org/2012/10/22/detroit-fire-dept-gets-new-clothing-safety-equipment/>; see also Barbara Brooks, *More Michigan Fire Departments Receive Federal Grants*, FIRE DEP'T NETWORK NEWS (Nov. 5, 2012), <http://www.fdnntv.com/Michigan-Fire-Departments-AFG-Grants>.

36. *Id.*

37. See, e.g., *Detroit Fire Fighters Ass'n IAFF Local 344 v. City of Detroit*, 753 N.W.2d 579 (Mich. 2008); *Pontiac Fire Fighters Union Local 376 v. City of Pontiac*, 753 N.W.2d 595 (Mich. 2008).

38. *Id.*

39. Jeffery Omar Usman, *Good Enough for Government Work: The Interpretation of Positive Constitutional Rights in State Constitutions*, 73 ALB. L. REV. 1459 (2010) ("[T]he Due Process Clause imposes no affirmative obligations upon government to protect an individual's life, liberty or property.").

40. MICH. CONST. art. VIII, § 2; see also Usman, *supra* note 39, at 1465.

41. MICH. CONST. art. VIII, § 2. For a discussion of positive and negative rights, see David P. Currie, *Positive and Negative Constitutional Rights*, 53 U. CHI. L. REV. 864 (1986).

42. Usman, *supra* note 39, at 1465.

general welfare.⁴³ Yet, there is no right for one to pick up a phone, dial 911, and have an emergency crew save his life and property.⁴⁴

Moreover, federal courts have long held that the government at the national level is not under a duty to provide any public safety services to its citizens.⁴⁵ The federal government only requires that where a city or state creates the danger, it must provide safety services to the public; the states owe no duty to provide affirmative services.⁴⁶ If the federal government no longer chooses to fund municipal fire services, it may discontinue grants at will, and the city is under no obligation to recoup that loss.

States, although under no duty to create affirmative rights, may experiment with affirmative rights for their citizens, creating a potential arena for public safety to be a guarantee for their people.⁴⁷ If there were a constitutional guarantee, and the city, within its means, cannot provide adequate public safety structures for its citizens, courts may issue a remedy to those harmed by the inadequate public services.⁴⁸ Currently, those harmed or killed in a fire have no right to seek a remedy against a

43. MICH. CONST. art. IV, § 51. This article of the Michigan Constitution, although it provides some similar function to the proposed course of action in this Note, remains much too broad and susceptible to wide interpretations and has never been read to include a right to public safety. *See id.*; *see also* Usman, *supra* note 39, at 1473.

44. *See generally* MICH. CONST.

45. *See, e.g., Archie v. City of Racine*, 847 F.2d 1211, 1220 (7th Cir. 1988) (“[A]s a general matter, the State is under no constitutional duty to provide substantive services for those within its border.”). The court goes on to question how there could be an argument for public safety as an affirmative right even if the government does not provide minimal social services as a right. *Id.*

46. *See Brooks v. City of Philadelphia*, 747 F. Supp. 2d 477, 484 (E.D. Pa. 2010) (citing *Deshaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189 (1989); *Kneipp v. Tedder*, 95 F.3d 1199, 1205 (3d Cir. 1996) (“[I]t is well established that the [Fourteenth Amendment] does not impose an affirmative duty upon the state to act to protect its citizens. . . . However, there is an exception to this general rule for a ‘state created danger,’ imposing liability where a state actor places a plaintiff in . . . danger.”).

47. *See Helen Hershkoff, Foreword: Positive Rights and the Evolution of State Constitutions*, 33 RUTGERS L.J. 799, 820 (2002) (“The existing state constitutional tradition of positive rights comports with a theory of federalism that invites local experimentation, promotes distinct participatory communities, and facilitates the provision of public goods to satisfy citizen preference.”) (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”)).

48. *See State ex rel. Morrison v. Sebelius*, 179 P.3d 366, 381 (Kan. 2008) (“[T]o enforce a positive right, courts must mandate a positive remedy by requiring the state government to act and thereby fulfill the constitutional right.”).

municipality for failing to provide adequate fire and emergency medical services.⁴⁹

D. A Regional Body and Mutual Aid

Though there is no affirmative obligation for the state to provide public safety, municipalities often contract with one or more other municipalities to limit dangers to their citizens by providing mutual aid when there are large emergencies or forces are spread thin.

It is well settled that mutual aid agreements and municipal relationships are necessary for responses to large disasters.⁵⁰ Yet, state and federal officials do not mandate most of these agreements, but rather localities decide whether to enter into agreements or not.⁵¹ In Michigan, only law enforcement agencies have the statutory obligation to contract with other municipalities.⁵² Other states nevertheless explicitly authorize mutual aid agreements for fire departments.⁵³ In Detroit, Michigan State Police and Wayne County Sheriffs often aid Detroit Police when staffing is low or there is a need for prevention of crime,⁵⁴ but assistance with the fire department is limited and is often riddled with communication breakdowns and ineffective assistance from other communities.⁵⁵

49. See MICH. COMP. LAWS ANN. § 691.1407 (West 2012); *Love v. City of Detroit*, 716 N.W.2d 604, 606 (Mich. Ct. App. 2006) (“The firefighters’ actions did not constitute the proximate cause of decedents’ deaths.”); *Downs v. Saperstein Assoc. Corp.*, 697 N.W.2d 190 (Mich. Ct. App. 2005) (holding that there is no common law duty to decedents that die in fire under the gross negligence exception to governmental immunity).

50. Alan D. Cohn, *Mutual Aid: Intergovernmental Agreements for Emergency Preparedness and Response*, 37 URB. LAW 1, 2 (2005) (“Success in responding to a major incident depends on effective mutual aid relationships between governmental entities.”).

51. *Id.* at 4 (“[I]t is critical for state and local government attorneys to understand th[e] issues [when negotiating mutual aid agreements] and bring this understanding to the drafting and negotiating process.”).

52. MICH. COMP. LAWS ANN. § 3.732 (West 2012); see also 63 C.J.S. *Municipal Corporations* § 633 (2014).

53. See, e.g., VT. STAT. ANN. tit. 20, § 2981 (West 2012) (“A municipality or fire district may vote to authorize its fire department, by its chief or chief engineer, to enter into agreements with such other duly authorized fire departments, or any private and volunteer fire department, as seem appropriate to provide mutual aid fire protection on a systematic basis.”); see also ALASKA STAT. ANN. § 18.70.150 (West 2012); IOWA CODE ANN. § 28E.31 (West 2012).

54. George Hunter, *Amid Cuts, Detroit Gets Police Help*, DETROIT NEWS (July 5, 2012), <http://www.detroitnews.com/article/20120705/METRO01/207050380>.

55. Charles Sercombe, *Mutual Aid or Communication Breakdown*, HAMTRAMCK REV. (Sept. 17, 2012), www.hamtramckreview.com/2012/09/mutual-aid-or-communication-breakdown/.

Scholars differ on whether mutual aid is a sufficient solution to problems in municipalities and whether heightened regionalism would benefit local entities, like fire departments, and the communities they serve.⁵⁶ This Note will give effective solutions to economic issues affecting the public safety of citizens and discuss how a regional body might aid in that goal.⁵⁷

The thousands of fire departments in Michigan and throughout the nation serve to protect individuals, families, and property. As economic hardship continues to ail communities such as Detroit, the citizens of these areas are increasingly vulnerable to fires, lack of emergency medical services, and other disasters. The following sections will address the issues of regional government, mutual aid agreements, and affirmative rights in detail and analyze various solutions that will contribute to a safer and better-equipped society. Currently, the problems the Detroit Fire Department faces are enormous and, frankly, terrifying.

III. METHODS AND SOLUTIONS TO UNDERFUNDED FIRE DEPARTMENTS

Wayne State University, located in the Midtown area of Detroit, Michigan, enrolls over 20,000 students with thousands living on campus.⁵⁸ Every day, countless students, faculty, and staff fill lecture halls, dine at on-campus restaurants, and exercise at workout facilities.

Nearby, Henry Ford Hospital, with 802 beds, serves patients suffering from a wide variety of ailments,⁵⁹ and like most hospitals, it houses patients who are unable to move quickly in the event of an emergency.

The Midtown Detroit area, with its shops, restaurants, hospitals, and large public research university, however, is protected by only one fire engine and a ladder truck with a ladder that is non-operational.⁶⁰ In the event of a major emergency, such as a fire at a hospital or a dorm tower,

56. See Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, 78 WASH. L. REV. 93 (2003).

57. See *infra* Part III.A.

58. Wayne State University, U.S. NEWS RANKINGS (Jan. 29, 2014), <http://colleges.usnews.rankingsandreviews.com/best-colleges/wayne-state-2329>.

59. Henry Ford Facts and Statistics, HENRY FORD HEALTH SYS., <http://www.henryford.com/body.cfm?id=38768#hospitals> (last visited Mar. 1, 2014).

60. These facts come from the author's discussions with many firefighters and union officials. See generally Tony Briscoe & George Hunter, *Boys Home Alone Trapped by Fire; 1 Dies*, DETROIT NEWS (Jan. 30, 2013), <http://www.detroitnews.com/article/20130130/METRO01/301300346>. This article typifies the dire situation in Detroit. Crews often respond to fires without proper equipment and services, while the nearest working vehicle with adequate equipment is often miles away. Where seconds count, victims often perish.

crews will not have functioning equipment to save the thousands of lives in the buildings. Students and patients trapped on upper floors will be forced to jump or burn alive while firefighters helplessly watch from below. The City of Detroit is a time bomb; the people at risk are innumerable; and the current broken system requires immediate remedying.

A. Regional and Nationwide Alternatives to the Status Quo

1. Regional Fire Departments

Municipal law, which controls the creation of fire departments, is solely the province of state governments.⁶¹ Many scholars advocate for important duties owed to citizens to be spread regionally rather than locally to maximize efficiency.⁶² Understandably, however, the idea of regionalism as applied to fire departments has incredible political barriers.⁶³ Further, the idea of creating a regional fire department creates tension at the firefighting level, specifically at the start of a department merger because of differences between urban, suburban, and rural firefighting, and the department differences across municipalities.⁶⁴

These issues are vast and could potentially lead to clashes at the scene of an emergency. For example, when comparing Detroit to neighboring communities, Detroit staffs every fire vehicle with four firefighters, while smaller communities often have only two firefighters per apparatus.⁶⁵ Further, the drastically different cultures between fire

61. See MICH. CONST. art. VII, § 22; see also Reynolds, *supra* note 56, at 97 (citing *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907)) (“[S]tate governments are the undisputed masters of their political subdivisions.”).

62. Reynolds, *supra* note 56; see also Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1166-67 (1996) (arguing that the decentralized governing structure of metropolitan areas has major problems and that an adequate solution lies in the formation of regionally elected governments to handle regional problems such as physical infrastructure and wealth distribution).

63. Reynolds, *supra* note 56, at 158-59 (“The political barriers [to regionalism] are substantial. In the final analysis, however, it is the responsibility of the state governments that have facilitated the problem to solve it.”).

64. Jessie Halladay, *Merger Talks Mount as Suburban Fire Districts Struggle Financially*, COURIER-JOURNAL.COM (Aug. 5, 2012), <http://www.courier-journal.com/article/20120806/NEWS01/308060005/Merger-talks-mount-suburban-fire-districts-struggle-financially>.

65. FAQs, CITY OF DETROIT, <http://www.detroitmi.gov/DepartmentsandAgencies/FireDepartment/FAQs.aspx> (last visited Mar. 1, 2014) (“The number of Firefighters assigned to a firehouse can range from four (4) to twelve (12). The number of Firefighters at any given firehouse varies according to the amount of apparatus assigned

departments in Detroit and those of neighboring communities in Oakland County serve a drastically dissimilar tax base.⁶⁶ Moreover, the residential and business structures in an urban area such as Detroit and those in surrounding communities differ greatly.⁶⁷ Therefore, this creates added dangers for firefighters responding to the fires and for citizens in those buildings when an inexperienced firefighting crew responds to an unfamiliar structure.⁶⁸

Opponents of a regional governmental entity also argue that local governments represent autonomous citizens who can best decide how their municipality operates. They contend that local control produces a more efficient system where municipalities compete with one another for tax base and citizenry.⁶⁹

Assuming that opponents of a regional governmental entity are correct and a regional fire department is inefficient and problematic, however, ignores the fact that in an emergency such as a fire, citizens expect someone to respond when they dial 911. A regional governmental fire authority may be able to fulfill these expectations.

The authority would permit a system where underfunded departments, such as those in Detroit, merge with better-funded suburban departments. This would create a safer environment for the citizens of low-income cities while also supplying the skills of city firefighters to suburban areas. For example, in the Wayne State University hypothetical above, if an operational ladder truck is required, a nearby Highland Park

to the firehouse. There will be at least four Firefighters who work twenty-four hours a day per Engine, Ladder, or Tactical Mobile Squad.”).

66. REYNOLDS FARLEY ET AL., *DETROIT DIVIDED* 2-4 (Russel Sage Foundation 2000); see also *Statistics*, U.S. CENSUS BUREAU, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 15, 2014) (search applicable county). The United States Census Bureau estimates the median household income in Oakland County to be \$68,888.00, while in Wayne County the median household income is only \$38,479.00. *Id.*

67. FARLEY ET AL., *supra* note 66, at 2-4 (explaining that Detroit is largely made up of abandoned buildings, office buildings, and homes, while metro-Detroit offers a much more affluent lifestyle).

68. James Dalton et al., *Tactical Considerations for Firefighting Operations in Lightweight Construction*, FIRE RESCUE MAG., Feb. 2010 (discussing the importance of firefighters being familiar with the structures they respond to and the dangers therein).

69. Reynolds, *supra* note 56, at 103-4 (citing Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956)). Reynolds explains that under Tiebout’s theory, citizens act as “consumer voters” by deciding which services they want in their locality and which they do not. *Id.* This fosters competition among communities to provide their citizens with the services they desire. *Id.* Under a regional government, therefore, citizens will not gain the needs they desire but rather succumb to the needs of the region as a whole. *Id.* Tiebout argued, according to Reynolds, that local governments are more efficient than regional governments. *Id.*

apparatus will respond on the initial alarm without the municipal barriers. Students would no longer face the plunge out of the dorms to survive the flames because the equipment would likely arrive in minutes.

Admittedly, the idea of regionalism cuts to the heart of the common understandings of local fire and police departments, as their creation is currently under the Home Rule Act and subject to municipal discretion and control.⁷⁰ A regional department, however, is only one potential avenue to address the ailing department in Detroit and elsewhere.

2. Mandatory Mutual Aid Agreements as a Middle Ground

The success of mutual aid agreements is apparent when looking at the regional response in New York on September 11, 2011 or the Boston fire narrative above,⁷¹ and it is clearly an effective way to respond to large-scale emergencies.⁷² Mandating mutual aid agreements among municipal fire departments, even in small-scale emergencies, may be an alternative to a statutorily-obligated regional department.

Mutual aid agreements must be in writing⁷³ and are normally separated into four categories: automatic mutual aid, mutual aid, regional mutual aid, and statewide mutual aid.⁷⁴ These agreements provide, perhaps, a more suitable solution to departmental woes by allowing for contractual regionalism without forced merging of departments. Further, mutual aid can allow municipal autonomy while fostering cooperation between the region's fire services.⁷⁵ Although similar problems arise in firefighting styles and experience levels at the scene,⁷⁶ by allowing individual departments to retain their identity, the sense of camaraderie

70. MICH CONST. art. VII, § 22; *see also* MICH. COMP. LAWS ANN. §§ 117.1-.38 (West 2012).

71. *See supra* Part I.

72. PHIL LYNN, U.S. DEP'T OF JUSTICE, MUTUAL AID: MULTI-JURISDICTIONAL FOR MEETING REGIONAL THREATS 1 (2005).

73. *Id.* at 11.

74. For detailed analysis, *see id.* at 7.

75. Cohn, *supra* note 50, at 4 (arguing that mutual aid relationships are crucial to emergency response and preparedness because no single municipality or government entity is prepared for every emergency that could take place).

76. *Id.* at 9. Cohn highlights other major "pitfalls" that will not be discussed in this Note—namely, "compensation for injuries, liability to responders, liability to third parties," governmental immunity, and identification and reimbursement. *Id.* Adequate state legislation can resolve these issues by requiring municipalities to pay their own workers as if they were operating in their respective municipality, and, with proper state legislation, immunity, liability, and indemnity can also work under this model.

within the department will remain the same while still permitting the safety advantages of a regional department to the citizens.⁷⁷

Nonetheless, although mutual aid agreements could serve to establish a quasi-regional fire department, as of yet, these agreements are left to the individual local governments by way of a legislative grant of power to the municipalities.⁷⁸ This leaves tremendous discretion for local governments to enter into agreements or opt out of agreements altogether. Further, without oversight, municipalities could potentially rely on the mutual aid from other cities while cutting their own departments. This could lead to a cycle of budget cutting and reliance whereby departments continue cutting their own staff and resources, leading to a region of underfunded, understaffed fire protection services.

In order to remedy this, there must be legislative guidance to local governments entering into mutual aid agreements that mandate cooperation. Statutory solutions outside of Michigan are currently available for a model.⁷⁹ To ensure compliance, the legislature must require strict adherence by municipalities to the legislative direction, which will avoid municipalities relying too heavily on other cities' emergency services.

Importantly, statutes throughout the country mandate mutual aid agreements for interstate agreements⁸⁰ and state agreements with the federal government.⁸¹ Moreover, the federal government acting through

77. J. Kevin Ford & Aaron M. Schmidt, *Emergency Response Training: Strategies for Enhancing Real-World Performance*, 75 J. HAZARDOUS MATERIALS 195, 201 (2000). Although there are difficulties when multiple departments respond, Schmidt notes that "it is . . . imperative that the various individuals across departments and agencies work effectively together when an emergency occurs. Optimal emergency management hinges on the [teamwork] among individuals." *Id.*

78. Cohn, *supra* note 50, at 9. Cohn discusses the authority local governments have in entering into these agreements and, further, the importance of these agreements being signed and each party having the equipment and resources necessary to fulfill its end of the agreement.

79. MD. CODE ANN., CRIM. PROC. § 2-105(e)(2)(ii) (West 2004) (requiring police from different counties to work with police from other jurisdictions, and, interestingly, detailing that police officers operating in different jurisdictions when providing mutual aid receive the same immunities as they would within their boundaries). As indicated by Cohn, *supra* note 50, at 10, there is not a like requirement for fire departments.

80. Cohn, *supra* note 50, at 10 (citing R.I. GEN. LAWS ANN. § 30-15.8-1(a) (West 2004)) ("The governor may enter into an agreement with any state bordering Rhode Island or with any office or agency of that state pledging to the state of Rhode Island participation in a mutual aid plan in the event of a disaster.").

81. WYO. STAT. ANN. § 19-13-203 (West 2004) ("Any one (1) or more fire protection services, emergency medical care providers, homeland security programs or local government subdivision of this state may enter into a mutual aid agreement with any one (1) or more fire protection services, emergency medical care providers, homeland

the Federal Emergency Management Agency (FEMA) will compensate states when they come to the mutual aid of a neighboring state during an emergency.⁸²

Using these models will aid in determining the correct language a body of legislation should have in order to create an adequate mutual aid provision within a state. However, mutual aid alone is insufficient to remedy the funding issues and safety dilemmas facing the cities and townships of Michigan and the nation.⁸³ The current mutual aid models for fire services are, again, subject to the discretion of municipalities or dependent on large-scale emergencies as seen in the federal legislation and interstate agreements above.⁸⁴

Further, opponents of a mutual aid system point out that there is distrust among contracting municipalities, and they often fear constitutional and other legal issues when contracting.⁸⁵ However, as Phil Lynn points out, this is remedied by providing municipalities with a shield from liability in other jurisdictions, and if a shield provision is not in the agreement, the municipalities face liability should they respond to a fire outside their jurisdiction.⁸⁶

Despite the criticisms, mandatory mutual aid provisions will likely provide an excellent model to attach to any legislation regarding public safety as an affirmative right. Obligating municipalities to enter into these agreements will assist departments when forces are spread thin. As in the Ford Field hypothetical discussed above,⁸⁷ if there are mandatory mutual aid provisions, the Detroit Fire Department would receive aid from Dearborn, Grosse Pointe, and Highland Park should disaster strike while Detroit units are too far from the scene. However, aside from mutual aid agreements, and before delving into affirmative rights, the federal government may also provide useful resources that deserve attention.

security programs or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement.”).

82. Cohn, *supra* note 50, at 23 (citing Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877 (1996) (providing that states providing aid to other states will receive compensation and benefits from the states to which they provide aid)). However, as Cohn points out, FEMA, under the Public Assistance Program, will reimburse all costs that the aiding state took on. *Id.*

83. LYNN, *supra* note 72, at 9 (addressing the importance of the notion that although participation is necessary for these agreements to function properly, they are not mandated, and nonparticipation leads to a compromising of mutual aid’s effectiveness).

84. See MICH. CONST. art. VII, § 22; see also MICH. COMP. LAWS ANN. §§ 117.1-.38 (West 2012); see also Cohn, *supra* note 50.

85. Cohn, *supra* note 50, at 9. See also *supra* note 76.

86. Cohn, *supra* note 50, at 10.

87. See *supra* Part II.

3. *An Expanded Federal Firefighting Agency*

The federal firefighting agency, the United States Department of Agriculture's (USDA) fire service, could expand beyond its main role as a forest fire service.⁸⁸ This could provide a backup plan for municipalities when funds are low or large-scale emergencies take place. An expanded federal agency, however, would broaden federal power by impeding on a traditionally local matter, which many criticize.⁸⁹

In addition, much like the argument against a regional authority, the current federal firefighters are trained to fight raging forest fires and lack the expertise of fighting a large structure fire, and the cost of training them would likely be prohibitive.⁹⁰ Moreover, the USDA fire service has major budget issues of its own and likely does not have the funding to provide additional fire services beyond its current scope.⁹¹ Therefore, although the federal government provides an option, I do not find that an expanded federal agency is an adequate or feasible solution.

4. *Solutions: Combining Mutual Aid with a Regional Authority*

Although raising tax revenue in communities throughout the state of Michigan or nationally is outside the scope of this article, the citizens of low-income communities still deserve adequate protection in fire and

88. See generally information regarding the United States Department of Agriculture's Fire Service. U.S. FOREST SERV., <http://www.fs.fed.us/fire/> (last visited May 16, 2014).

89. See, e.g., Kurt T. Lash, *The Lost Original Meaning of the Ninth Amendment*, 83 TEX. L. REV. 331 (2004).

90. See *Wildlife Urban Interface*, USDA FOREST SERV., http://www.fs.usda.gov/detail/cibola/landmanagement/resourcemanagement/?cid=fsbdev3_0656.88 (last visited May 16, 2014). The USDA provides,

Wildland firefighters are trained to fight wildland fires. Their focus is on protecting the natural resources. They do not carry the appropriate equipment nor are they trained to fight structural fires. Structural firefighters are not trained to fight wildfires nor are they equipped with the specialized equipment wildland firefighters use. Structural firefighters focus on the immediate structure burning. When homes ignite in the WUI, attentions are diverted from the wildlands to saving structures and lives.

The role of Federal agencies in the wildland/urban interface includes wildland firefighting, hazardous fuels reduction, cooperative prevention and education and technical assistance. Structural fire protection . . . is the responsibility of Tribal, State and local governments.

Id.

91. Sara Kliff, *Uninsured and Fighting Blazes: Welcome to the Life of a Federal Firefighter*, WASH. POST (June 27, 2012), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/06/27/uninsured-and-fighting-blazes-welcome-to-the-life-of-a-federal-firefighter/> (focusing on federal firefighters who are without health insurance, are stuck in temporary positions, and are fighting for legislation to remedy these issues).

medical emergencies.⁹² Combining a regional oversight board with strict mutual aid provisions will aid departments strapped for resources. Further, introducing regional dispatching methods for fire safety will add fluidity to mutual aid, while statutorily mandated training exercises with fire departments across regions will ensure cooperation at emergency scenes. However, to ensure these provisions are in place, it is necessary to amend the Michigan constitution to provide public safety as a right to all, which will provide bite to the legislation.

B. Ensuring the Safety of Citizens: Public Safety as a Positive State Constitutional Right

As discussed,⁹³ although the federal government is under no duty to provide services to its citizens via the U.S. Constitution, states may provide their citizens with services such as education using an affirmative right.⁹⁴ Once an affirmative right is guaranteed, failing to comply could result in a remedy for the individual(s) harmed.⁹⁵ In fact, numerous courts have held that affirmative obligations in state constitutions establish “judicially enforceable rights.”⁹⁶

Much like education in Michigan,⁹⁷ a guarantee of public safety’s response to fires and medical emergencies will perhaps provide more state funding, as it does for schools,⁹⁸ by creating a political incentives to

92. See Briffault, *supra* note 33, at 10.

93. See *supra* Part II; see also Usman, *supra* note 39, at 1462 (giving a thoughtful and clear explanation of positive rights versus negative rights).

94. Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1132 (1999). Hershkoff discusses that unlike the Federal Constitution, state constitutions offer many economic and social rights to their citizens. In this article, Hershkoff argues that positive welfare rights in a state constitution should not be reviewed federally under the rational basis test. Rather, “the relevant judicial question should be whether a challenged law achieves, or is at least likely to achieve, the constitutionally prescribed end, and not, as federal rationality review would have it, whether the law is within the bounds of state legislative power.” *Id.* Using this interpretation, any positive right granted to the citizens of a state, say Michigan, regarding public safety would require a heightened standard of review, not simply rational basis, and, therefore, any proposed legislation under this rule must be carefully drafted and enacted under Hershkoff’s premise.

95. State ex rel. Morrison v. Sebelius, 179 P.3d 366, 381 (Kan. 2008)).

96. Scott R. Bauries, *The Education Duty*, 47 WAKE FOREST L. REV. 705, 722 (2012).

97. MICH. CONST. art. VIII, § 2.

98. *Id.* (“The legislature shall maintain *and* support a system of free public elementary and secondary schools” (emphasis added)). See also Gannon v. State, No. 109, 335, 2014 WL 895194 (Kan. Mar. 7, 2014) (holding that Kansas violated its constitutional right to education by cutting tax funding to schools, which the plaintiffs argued harmed student standardized test scores).

mandate a safer, better equipped response team. By creating an amendment to the Michigan constitution that provides for fire and medical response as an affirmative right, no longer will a city such as Detroit argue against their fire department in budget battles, as the city would be under a duty to provide the department with basic supplies to ensure reasonable safety of the citizens. Further, the city will receive more state aid and assistance, much like the public school system. Even more, citizens will no longer beg for relief after they are harmed by the inadequate response times and underfunded fire services, only to find that they are owed no duty.

On the other hand, critics argue that affirmative constitutional provisions only provide direction for legislators and the state but do not provide remedies for individual damages.⁹⁹ However, many courts contradict this notion and have held that the creation of an affirmative right in a state constitution mandates the legislature to remedy constitutional violations, and therefore the individual will benefit from the amendment.¹⁰⁰

Establishing public safety as an affirmative right in the Michigan constitution and supplementing the amendment with mandatory mutual aid agreement legislation will protect that right and assure that any statutory provisions created thereof will have judicial enforcement and political pressure behind them. The results of the permanent placement of public safety in the Michigan constitution will ensure that legislators and municipalities are focusing on public safety and avoiding the pitfalls Detroit is witnessing.

Moreover, creating a right to public safety will help prevent the “brown out” scenario from the narrative above.¹⁰¹ In that scenario, the closed firehouse was only two minutes from the emergency. If the building were on fire and citizens were burned alive or forced to jump with no safety nets to catch them, those citizens would now have a right of action against the city. This would force city leaders to keep firehouses open to avoid costly litigation and political pressure, thus making the community safer.

The following, and final section, of Part III will outline a sufficient beginning to solving the public safety dilemmas facing Michigan and the other states of our nation. First, a draft amendment guaranteeing public safety is presented, followed by a draft statute to supplement the draft amendment.

99. Bauries, *supra* note 96.

100. Usman, *supra* note 39, at 1508.

101. *See supra* Part I.

THE PUBLIC SAFETY RIGHT AMENDMENT

§ 1.

a. Being that public emergency response to fires as well as medical emergencies is necessary for the safety and the happiness of a modern society, fire departments and medical response services shall forever be guaranteed.¹⁰²

PUBLIC SAFETY DRAFT STATUTE FOR MICHIGAN:
MCL X.XX THE MANDATORY MUTUAL AID ACT

§ 1

Being that no single municipal fire department or ambulance service is fully equipped to respond to all possible incidents that might occur within its jurisdiction:¹⁰³

A. The Legislature will aid and support local fire departments and emergency medical agencies.

B. The Legislature, or its appointed agent(s), must define what it determines to be sufficiently sized regions throughout the state for the creation of Fire and Medical Safety Regions.

i. The Legislature, from time to time, may redraw region lines as population shifts or demand increases or decreases for emergency response.

ii. A board will be created for each region with one representative appointed by the Governor from each member municipality. The board will ensure cooperation among the members and organize training events.

§ 2.

Every fire protection service or emergency medical care provider in the region(s) will enter into mutual aid agreements with every member of the region it is located in to provide emergency services to the region members if required due to a public safety need.¹⁰⁴

When responding to an emergency in another jurisdiction, the responding service will be lawfully considered in its jurisdiction and will

102. This language closely mirrors MICH. CONST. art. VIII, §1.

103. Cohn, *supra* note 50, at 4.

104. See WYO. STAT. ANN. § 19-13-203 (West 2004). See *supra* note 81. The language used in this part of the Draft Amendment closely resembles that of the Wyoming statute.

be subjected to any and all liabilities as if it were within its jurisdiction.¹⁰⁵

§ 3

Every member of each region shall be required to train with each other member two (2) times annually beginning at the statutory creation of regions.¹⁰⁶

The governor may, at his/her discretion, require more training as he/she determines is necessary.

§ 4

A three-person board appointed by the governor shall oversee the cooperation between departments and services for each region.

Members of this board shall be only part-time employees of the State, and meet once a month or as required by the circumstances.

§ 5

Each region shall be staffed with five full time dispatchers with direct communication with each municipality's emergency dispatch system, and shall operate the dispatching system twenty-four hours a day, seven days a week, with schedules as determined by the region board.

§ 6

Failure to comply with sections 1-2 will create a lawful claim by any citizen, excluding an emergency responder performing its duties, against a township, city, village, or other body that operates an emergency response team.

The claim will be based solely on whether an emergency response team's failure to comply with this Act, or any statute resulting hereof, allowed physical injury or property damage to occur when, if there was compliance, the injury or damage would not have occurred.

105. See generally Cohn, *supra* note 50, at 2-4 (discussing the complicated issues that mutual aid provisions create regarding indemnity, liability, and employee benefits). By allowing a department to operate and conduct itself as if it were still in its home jurisdiction, many of these problems are solved, and in a simple manner. See also *id.* at 10-19 (discussing in detail indemnification and other liabilities that arise when a department is operating in another jurisdiction).

106. Requiring departments within a region to train with another department will create a more effective and efficient emergency response as well as familiarize the individual emergency responders with one another.

IV. CONCLUSION

Growing up, we learn that in case of an emergency, you dial 911, and emergency response will be there in minutes. This is no longer the case in Detroit. Children, even if they can call the emergency line, are dying in their homes, suffering from budget battles and regional politics in which they have no part.

As fires continue to rage in Detroit and citizens frequently perish in structure fires, the need for corrective measures is increasing. Employing the techniques outlined in this Note and enshrining the right to public safety in the state constitution will save the lives of many.

If the city, its people, and the economic community are to flourish, public safety must be a guarantee. Therefore, amending the Michigan constitution, and creating statutory provisions to supplement it, is vital.

Every minute that passes without corrective measures is a minute that allows the fire to spread. Including an affirmative right to public safety in the Michigan constitution will create a safer modern society, in which a phone call to emergency services will result in an adequate response.