

City of Pontiac Community Forum:

A discussion of the placement of an
Emergency Financial Manager



March 30, 2009

The Local Government Fiscal Responsibility Act

Public Act 72 of 1990

- This act is the primary statute under which State officials are authorized to intervene in units of local government experiencing serious financial problems and/or financial emergencies.
- The Governor may, after completion of the steps set out in the Act, declare a financial emergency exists in a unit of local government. Those steps are summarized below.
- If a financial emergency is declared, the Governor assigns responsibility for managing the emergency to the Local Emergency Financial Assistance Loan Board (ELB). In turn, the ELB appoints an Emergency Financial Manager (EFM) to resolve the financial emergency.
- While an EFM may set aside service contracts and other obligations of the local unit, and may renegotiate labor contracts, he/she cannot abrogate collective bargaining agreements.

Summary of Local Government Fiscal Responsibility Act Process

Step 1: If one or more conditions indicative of a local government financial problem exist (outlined on page 2), the State Treasurer must conduct a preliminary review.

Step 2: The State Treasurer must inform the Governor within 30 days of commencement of the preliminary review whether or not a serious financial problem may exist.

Step 3: The Governor must appoint a review team if certain conditions exist.

Step 4: The review team must report to the Governor within 60 days of its appointment and reach conclusions on whether a financial problem exists and whether a consent agreement can be reached or an EFM needs to be placed.

Step 5: Within 30 days after receipt of the review team report, the Governor must decide on a course of action, based on the report.

Step 6: If the Governor determines that a local government financial emergency exists, the Governor must provide written notification to the chief administrative officer of the unit of local government, who then may request a hearing within 10 days.

Step 7: After the hearing or, if no hearing was requested, after expiration of the opportunity for a hearing, the Governor must either confirm or revoke the determination of a local government financial emergency.

Step 8: A local government can appeal the Governor's determination to circuit court.

Step 9: If the Governor confirms the determination of a local government financial emergency, the Governor assigns responsibility for managing the local government financial emergency to the Local Emergency Financial Assistance Loan Board.

Step 10: The Local Emergency Financial Assistance Loan Board must appoint an emergency financial manager.

Step 11: The emergency financial manager, in consultation with the unit of local government, must develop a written financial plan.

Step 12: The Governor may determine that the conditions for revoking a declaration of financial emergency have been met after receiving a recommendation from the Local Emergency Financial Assistance Loan Board.

Conditions that Trigger a Preliminary Review by Treasury

- The governing body or the chief administrative officer of a local government requests a preliminary review under this article. The request shall be in writing and shall identify the existing financial conditions that make the request necessary.
- The state treasurer receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of \$10,000.00 or 1% of the annual general fund budget of the local government, provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state treasurer of his or her intention to invoke this provision.
- The state treasurer receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the jurisdiction of the local government equal to not less than 10% of the total vote cast for all candidates for governor within the jurisdiction of the local government at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.
- The state treasurer receives written notification from the trustee, actuary, or at least 10% of the beneficiaries of a local government pension fund alleging that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.
- The state treasurer receives written notification that employees of the local government have not been paid and it has been at least 7 days after the scheduled date of payment.
- The state treasurer receives written notification from a trustee, paying agent, or bondholder of a default in a bond payment or a violation of 1 or more bond covenants.
- The state treasurer receives a resolution from either the senate or the house of representatives requesting a preliminary review under this section.
- The local government has violated the conditions of an order issued pursuant to, or of a requirement of, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.
- The local government has violated the conditions of an order issued in the effectuation of the purposes of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942, by the local emergency financial assistance loan board created by the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.
- The local government has violated the requirements of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440, and the state treasurer has forwarded a report of this violation to the attorney general.
- The local government has failed to comply with the requirements of section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, for filing or instituting a deficit recovery plan.
- The local government fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the state treasurer and is required under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55.
- The local government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.
- A court has ordered an additional tax levy without the prior approval of the governing body of the local government.

Pontiac Timeline

July 12, 2007

Pontiac Mayor Clarence Phillips requests a review of the city's financial condition via letter to the State Treasurer.

July 31, 2007

Department of Treasury conducts a preliminary review of Pontiac's finances to determine whether a financial emergency exists.

August 31, 2007

State Treasurer reports to Governor, advising that a serious financial problem exists in Pontiac.

April 28, 2008

The Governor appoints a Financial Review Team.

June 23, 2008

Financial Review Team confirms findings of the preliminary review, concluding that a serious financial problem exists. Mayor and City Council sign-off on a Consent Agreement which includes a plan to resolve the city's financial problems.

February 19, 2009

Financial Review Team advises the Governor that city officials have failed to abide by the terms of the Consent Agreement.

February 20, 2009

Governor Granholm notifies Mayor Phillips and City Council members that she has determined a financial emergency exists in Pontiac and offers a courtesy meeting with the Financial Review Team.

March 4, 2009

Mayor Phillips and three City Council members meet with the Financial Review Team.

March 19, 2009

Governor Granholm informs the Local Emergency Financial Assistance Loan Board that a financial emergency exists in Pontiac and directs the board to appoint an Emergency Financial Manager. The Local Emergency Financial Assistance Loan Board appoints Fred Leeb as EFM.

Frequently Asked Questions Regarding Public Act 72 of 1990 and the Appointment of Emergency Financial Managers

What is Public Act 72 of 1990?

The Local Government Fiscal Responsibility Act is the primary State statute under which State officials are authorized to intervene in units of local government that experience serious financial problems, or financial emergencies.

Why was the Act adopted?

The State Legislature determined all of the following:

- That the public health and welfare of the citizens of this State would be adversely affected by the insolvency of units of local government, including certain school districts.
- That the survival of units of local government was vitally necessary to the interests of the people of this State to provide necessary governmental services.
- That it was vitally necessary to protect the credit of this State and its political subdivisions.
- And, that it was a valid public purpose for this State to take action and to assist units of local government in a fiscal emergency situation to remedy such an emergency situation by requiring prudent fiscal management.

What triggers the Act?

There are 14 possible conditions that trigger a Preliminary Review by the Department of Treasury (see page 3).

What happens when the Act is triggered?

The State Treasurer conducts a preliminary review of the financial condition of the unit of local government. Once that review is concluded, the State Treasurer reports the result to the Governor. If a serious financial problem is found to exist, the Governor appoints a Financial Review Team to conduct a more detailed review of the local unit's finances.

Who serves on a Financial Review Team?

For units of local government other than school districts, Financial Review Teams consist of the State Treasurer, the State Auditor General, a nominee of the Senate Majority Leader, a nominee of the Speaker of the House of Representatives, and others with relevant professional experience whom the Governor chooses to appoint.

What is the purpose of a Financial Review Team?

The Financial Review Team is appointed to conduct a detailed review of the financial condition of the unit of local government. A Financial Review Team generally has 60 days to complete its work and file its report. A Financial Review Team report must reach one of the following three conclusions:

- A serious financial problem does not exist in the unit of local government, or
- A serious financial problem exists in the unit of local government, but a Consent Agreement containing a plan to resolve the problem has been adopted, or

-- A local government financial emergency exists because no satisfactory plan exists to resolve the serious financial problem.

If the third conclusion is reached, or if a unit of local government signs, but subsequently violates a Consent Agreement, then a financial emergency is determined to exist in the unit of local government and an Emergency Financial Manager (EFM) is appointed.

Who appoints Emergency Financial Managers?

For units of local government other than school districts, EFMs are appointed by, and serve at the pleasure of, the Local Emergency Financial Assistance Loan Board, which consists of the State Treasurer, the Director of the Department of Management and Budget, and the Director of the Department of Energy, Labor and Economic Growth.

Must an Emergency Financial Manager be a resident of the unit of local government for which he or she is appointed?

No.

Who pays Emergency Financial Managers?

Under PA 72, an EFM is entitled to compensation paid by the unit of local government for which he or she is appointed. The Local Emergency Financial Assistance Loan Board establishes the level of compensation and also approves actual and necessary expenses.

Do Emergency Financial Managers have the authority to hire staff?

Yes. With approval from the Local Emergency Financial Assistance Loan Board, an EFM may appoint additional staff considered necessary. The EFM has authority to create new positions, and to fill any vacancy in a permanent position.

Does an Emergency Financial Manager have the authority to direct existing staff?

Yes. The EFM may issue, to officials or employees of the unit of local government, any orders which he/she considers necessary to accomplish the purposes of PA 72, including, but not limited to, orders for the timely and satisfactory implementation of a financial plan. An order issued by an EFM is binding on officials or employees of the unit of local government.

Does the Emergency Financial Manager need public approval for a financial plan?

No. Section 21 of the Act provides that "[i]n consultation with" officials of the unit of local government, an EFM shall develop, and may amend a written financial plan for the unit of local government. The financial plan implemented by the EFM must contain information for each year during which year the financial plan is in effect.

Does an Emergency Financial Manager have authority to change existing labor contracts without negotiation?

No. While EFMs are authorized to *renegotiate* labor contracts they are not authorized to abrogate such agreements.

May the Emergency Financial Manager amend the budget of the unit of local government without the approval of the local legislative body or chief executive officer?

Yes. An EFM may amend, revise, approve, or disapprove the budget of the unit of local government, and limit the total amount appropriated or expended during the balance of the financial emergency.

Does an Emergency Financial Manager have the authority to issue, approve, or disapprove certain obligations?

Yes. The EFM may approve or disapprove, amend, or revise a plan for paying all outstanding obligations of the unit of local government.

Does an Emergency Financial Manager have the authority to eliminate a department or transfer functions of one department to another, or eliminate positions?

Yes. Notwithstanding the provisions of any charter to the contrary, an EFM may consolidate departments of a unit of local government, or transfer functions from one department to another department, and may appoint, supervise, and, at his or her discretion, remove heads of departments other than elected officials, the clerk of the unit of local government, or any ombudsman position in the unit of local government.

Does an Emergency Financial Manager have the authority to enter into contracts with other units of local government for services?

Yes.

Does an Emergency Financial Manager have the authority to reduce pay or eliminate benefits for a mayor and city council members?

Yes. An EFM may reduce, suspend, or eliminate the salary, or other compensation, of the chief administrative officer and members of the governing body of the unit of local government during the financial emergency. However, an EFM cannot impair vested retirement benefits for these officials.

Does an Emergency Financial Manager have the authority to sell assets of a unit of local government?

Yes. An EFM may, except as restricted by charter or otherwise, sell or otherwise use the assets of a unit of local government to meet past or current obligations, provided that the use of the assets for this purpose does not endanger the public health, safety, or welfare of residents of the unit of local government.

Does an Emergency Financial Manager have the authority to review payments to employees?

Yes. The EFM may review payrolls or other claims against the unit of local government before payment.

Does an Emergency Financial Manager have the authority to implement layoffs?

Yes.

Does an Emergency Financial Manager have the authority to impose taxes?

No. Neither an EFM, nor the Local Emergency Financial Assistance Loan Board, have the power to impose taxes, over and above those already authorized, without the approval at an election of a majority of the qualified electors voting on the question.

Does an Emergency Financial Manager have the authority to institute Bankruptcy proceedings for a unit of local government?

Yes. An EFM may institute proceedings only under Chapter 9 of the United States Bankruptcy Code, if the Emergency Financial Manager determines either:

-- That no feasible financial plan can be adopted that can satisfactorily resolve the financial emergency in a timely manner, or

-- That an adopted financial plan that has been in effect for at least 180 days, cannot be implemented, as written or as it might be amended, in a manner that can satisfactorily resolve the financial emergency in a timely manner.

Before instituting bankruptcy proceedings, an EFM first must notify in writing the Local Emergency Financial Assistance Loan Board. The Board then has 60 days during which it can disapprove institution of bankruptcy proceedings.

Once appointed, how long does an Emergency Financial Manager serve?

For units of local government other than school districts, EFMs serve at the pleasure of the Local Emergency Financial Assistance Loan Board until such time as the financial emergency has been resolved.

Should you have additional questions that are not answered above and that were not addressed during this Community Forum, contact the Department of Treasury at (517) 373-3223.