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DEPARTMENT OF TREASURY  
LANSING

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## **Frequently Asked Questions Regarding Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act**

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### **1. What is Public Act 4 of 2011?**

Public Act 4 of 2011, also known as the Local Government and School District Fiscal Accountability Act is the primary State statute under which State officials are authorized to intervene in units of local government that experience severe financial stress or financial emergencies.

### **2. Why was the Act adopted?**

The State Legislature determined all of the following:

--That the public health, safety, and welfare of the citizens of this State would be materially and adversely affected by the insolvency of units of local government, including school districts.

--That the fiscal accountability of units of local government is vitally necessary to the interests of the citizens of this State to assure the provision of necessary governmental services essential to the public health, safety, and welfare.

-- That it is vitally necessary to protect the credit of this State and its political subdivisions.

-- And, that it is necessary for the public good and a valid public purpose for this State to take action and to assist units of local government in a condition of financial stress or financial emergency so as to remedy the stress or emergency by requiring prudent fiscal management and efficient provision of services.

### **3. To what units of local government does the Act apply?**

The Act applies to local governments and to municipal governments.

### **4. What is a local government?**

The Act defines a local government as a municipal government or a school district.

## **5. What is a municipal government?**

The Act defines a municipal government as a city, village, township, charter township, county, an authority established by law, or a public utility owned by a city, village, township, or county.

## **6. What is the State Financial Authority?**

For a municipal government, the State Financial Authority is the State Treasurer. For a school district, the State Financial Authority is the Superintendent of Public Instruction.

## **7. What triggers the Act?**

Among the 18 separate conditions specified in the Act are the following:

-- The governing body or the chief administrative officer of a unit of local government requests a preliminary review under the Act, the request is in writing, and identifies the existing or anticipated financial conditions or events that make the request necessary.

-- The State Financial Authority receives a written request from a creditor with an undisputed claim that remains unpaid six months after its due date against the unit of local government that exceeds the greater of \$10,000 or one percent of the annual general fund budget of the unit of local government.

-- The State Financial Authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the unit of local government equal to at least five percent of the total vote cast for all candidates for governor within the unit of local government at the last preceding election at which a governor was elected.

-- The State Financial Authority receives written notification that a unit of local government has not timely deposited its minimum obligation payment to the unit of local government pension fund as required by law.

-- The State Financial Authority receives written notification that the unit of local government has failed for a period of seven days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

-- The State Financial Authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the unit of local government of a default in a bond or note payment or a violation of one or more bond or note covenants.

-- The State Financial Authority receives a resolution from either the State Senate or the House of Representatives requesting a preliminary review.

- A unit of municipal 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 unit of local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.
- A court has ordered an additional tax levy without the prior approval of the governing body of the unit of local government.
- A unit of local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by one or more nationally recognized credit rating agencies.
- The existence of other facts or circumstances that in the sole discretion of the State Treasurer for a municipal government are indicative of municipal financial stress, or, that in the sole discretion of the Superintendent of Public Instruction for a school district are indicative of school district financial stress.

**8. What happens when the Act is triggered?**

The State Financial Authority may conduct a preliminary review of the financial condition of a unit of local government. If the preliminary review results in a finding of probable financial stress in the unit of local government, the Governor then appoints a Review Team to conduct a more detailed review of the financial condition of the unit of local government.

**9. Who serves on a Review Team?**

For municipal governments (i.e., units of local government other than school districts), Review Teams consist of the State Treasurer, or his or her designee, the Director of the Department of Technology, Management, and Budget, or his or her designee, a nominee of the Senate Majority Leader, a nominee of the Speaker of the House of Representatives, and any other State officials or other persons with relevant professional experience whom the Governor chooses to appoint. The Superintendent of Public Instruction (or his or her designee) also is a member if a school district is involved.

**10. What is the purpose of a Review Team?**

If a preliminary review of a unit of local government results in a finding of probable financial stress, the Governor appoints a Review Team to conduct a more detailed review of the financial condition of the unit of local government. A Review Team has 60 days to complete its work and file its report unless the Governor requires an earlier date; the Governor also may grant one 30-day extension.

**11. What authority does a Review Team possess?**

A Review Team has full authority to do all of the following:

- Examine the books and records of the unit of local government.
- Utilize the services of other State agencies and employees.
- Negotiate and sign a consent agreement with the chief administrative officer of the unit of local government.

## **12. What must a Review Team include in its Report?**

A Review Team report must include any of the following conditions, if they either exist or are likely to occur:

- A default in the payment of principal or interest on bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.
- A failure, for a period of 30 days or more beyond the due date, to transfer one or more of the following to the appropriate agency:
  - Taxes withheld on the income of employees.
  - For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.
  - Any contribution required by a pension, retirement, or benefit plan.
- A failure for a period of seven days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.
- The total amount of accounts payable for the current fiscal year, as determined by the uniform chart of accounts of the State Financial Authority is in excess of 10 percent of the total expenditures of the unit of local government in that fiscal year.
- A failure to eliminate an existing deficit in any fund of the unit of local government within the two-year period preceding the end of the fiscal year of the unit of local government during which the Review Team report is received.
- A projection of a deficit in the general fund of the unit of local government for the current fiscal year in excess of 5 percent of the budgeted revenues for the general fund.
- A failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.
- The existence of material loans to the general fund from other funds of the unit of local government which are not regularly settled between the funds or that are increasing in scope.

- The existence after the close of the fiscal year of material, recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.
- The existence of a structural operating deficit.
- The use of restricted revenues for purposes not authorized by law.
- Any other facts and circumstances indicative of local government financial stress or financial emergency.

**13. What are the levels of financial problems specified in the Act and how do they differ?**

The levels are: no financial or mild financial stress, severe financial stress, or financial emergency.

**14. What is considered to be no or mild financial stress?**

A unit of local government is considered to be in a condition of no or mild financial stress if a Review Team report concludes either of the following:

- None of the conditions (listed in the Question 12) exist or are likely to occur within the current or next succeeding fiscal year of the unit of local government.
- If those conditions do occur, they will not threaten the capability of the unit of local government to provide necessary governmental services essential to public health, safety, and welfare.

**15. What is considered to be severe financial stress?**

A unit of local government is considered to be in a condition of severe financial stress if either of the following occurs:

- A Review Team report concludes that one or more of the conditions (listed in Question 12) exist, or are likely to occur within the current or next succeeding fiscal year of the unit of local government, and if left unaddressed may threaten the future capability of the unit of local government to provide necessary governmental services essential to public health, safety, and welfare.
- The chief administrative officer of the unit of local government recommends that the unit of local government be considered in severe financial stress.

**16. What is considered to be a financial emergency?**

A unit of local government is considered to be in a condition of financial emergency if any of the following occurs:

- A Review Team report concludes that two or more of the conditions (listed in Question 12) exist, or are likely to occur within the current fiscal year of the unit of local government and threatens the future capability of the unit of local government to provide necessary governmental services essential to public health, safety, and welfare.
- The unit of local government failed to provide timely and accurate information enabling a Review Team to complete its report.
- The unit of local government failed to comply in all material respects with a continuing operations plan, a recovery plan, the terms of an approved deficit elimination plan, or an agreement entered into pursuant to a deficit elimination plan.
- The unit of local government materially breached the terms of a consent agreement.
- The unit of local government is in a condition of severe financial stress and a consent agreement was not adopted.
- The chief administrative officer of the unit of local government, based upon the existence or likely occurrence of one or more of the conditions (listed in Question 12) recommends that a financial emergency be declared and the State Treasurer concurs with the recommendation.

**17. If a Review Team negotiates a Consent Agreement, what are the contents of the Consent Agreement?**

A consent agreement may provide for remedial measures considered necessary to address a financial problem in the unit of local government, provide for its financial stability, and may utilize State financial management and technical assistance as necessary in order to alleviate the financial problem in the unit of local government. In addition, a consent agreement must provide for periodic financial status reports to the State Financial Authority.

In order for a consent agreement to go into effect, it must be approved by resolution of the governing body of the unit of local government and must be approved and executed by the State Financial Authority. A consent agreement must provide that in the event of a material, uncured breach of the consent agreement, the State Treasurer is authorized to place the unit of local government into receivership. Finally, a consent agreement may include either a continuing operations plan or a recovery plan.

**18. What are the contents of a Continuing Operations Plan?**

Pursuant to Section 14a of the Act, the State Financial Authority may require that a consent agreement contain a continuing operations plan that is prepared and filed by local officials. The State Financial Authority then has 14 days either to approve or reject a continuing operations plan. If a plan is rejected, local officials have 30 additional days to submit a revised plan. If the revised plan also is rejected, the unit of local government is considered in

material breach of the consent agreement. A continuing operations plan must include all of the following:

- A detailed projected budget of revenues and expenditures over not less than three fiscal years which demonstrates that expenditures in the unit of local government will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.
- A cash flow projection for the budget period.
- An operating plan for the budget period that assures fiscal accountability for the unit of local government.
- A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the fiscal accountability for the unit of local government.
- An evaluation of the costs associated with pension and post-employment health care obligations for which the unit local government is responsible and a plan for how those costs will be addressed within the budget period.
- A provision for submitting quarterly compliance reports to the State Financial Authority demonstrating compliance with the continuing operations plan.

#### **19. What are the contents of a Recovery Plan?**

The State Financial Authority also may require that a consent agreement contain a recovery plan developed and adopted by the State Financial Authority in consultation with the Review Team. A recovery plan may, at the discretion of the State Treasurer, include one or more of the following:

- A detailed projected budget of revenues and expenditures over not less than three fiscal years which demonstrates that expenditures in the unit of local government will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.
- A cash flow projection for the budget period.
- An operating plan for the budget period that assures fiscal accountability for the unit of local government.
- A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the fiscal accountability for the unit of local government.
- An evaluation of costs associated with pension and post-employment health care obligations for which the unit of local government is responsible and a plan for how those costs

will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.

-- Procedures for cash control and cash management, including, but not limited to, procedures for the timely collection, securing, depositing, balancing, and expending of cash, and may include the designation of appropriate fiduciaries.

-- A provision for submitting quarterly compliance reports to the State Financial Authority and the chief administrative officer of the unit of local government that demonstrates compliance with the recovery plan.

## **20. What actions are triggered by a Review Team report?**

A Review Team report is filed with the Governor. Within 10 days of receiving the report, the Governor must make one of the following determinations:

-- That the unit of local government is not in a condition of severe financial stress.

-- That the unit of local government is in a condition of severe financial stress, but a consent agreement containing a plan to resolve the financial stress has been adopted.

-- That a local government financial emergency exists and no satisfactory plan exists to resolve the emergency.

-- That the unit of local government entered into a consent agreement containing a continuing operations plan or a recovery plan to resolve a financial problem, but materially breached the consent agreement.

## **21. What is receivership?**

If, after statutory due process has been accorded to local officials, the Governor confirms the existence of a financial emergency, the Governor then is required to declare the unit of local government to be in receivership and to appoint an emergency manager. However, receivership under the Act is not synonymous with judicial receivership.

## **22. What is the role of local officials if a unit of local government is placed in receivership?**

If a unit of local government is placed in receivership, beginning then and throughout the receivership, the governing body and chief administrative officer of the unit of local government may not exercise any of the powers of those offices except as may specifically authorized in writing by the Emergency Manager. In addition, the governing body and chief administrative officer are subject to any conditions required by the Emergency Manager.

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

No. However, an Emergency Manager must be an individual (as opposed to a firm) and

possess a minimum of five years' experience and demonstrable expertise in business, financial, or local or State budgetary matters.

**24. What compensation is an Emergency Manager entitled to receive?**

Pursuant to Section 15 of the Act, an Emergency Manager is entitled to compensation and reimbursement for actual and necessary expenses in an amount established in a contract approved by the State Treasurer.

**25. Who pays an Emergency Manager?**

The compensation and reimbursement for actual and necessary expenses are paid by the unit of local government for which the Emergency Manager is appointed.

**26. In general terms, what authority does an Emergency Manager possess?**

An Emergency Manager has broad statutory authority in receivership to rectify a financial emergency and to assure the fiscal accountability of the unit of local government and the capacity of the unit of local government to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. An Emergency Manager "acts for and in the place and stead of the governing body and the office of chief administrative officer of the unit of local government."

**27. Do Emergency Managers have the authority to hire staff?**

Yes. In addition to staff otherwise authorized by law, an Emergency Manager may appoint additional staff and secure professional assistance considered necessary. An Emergency Manager has the authority to create new positions, and complete authority to fill any vacancy in a permanent position by any appointing authority of the unit of local government.

**28. Does an Emergency Manager have the authority to direct existing staff?**

Yes. Pursuant to Section 17 of the Act, an order issued by an Emergency Manager is binding on officials or employees of the unit of local government to whom it is issued. An Emergency Manager may issue to officials or employees of the unit of local government any orders which the Emergency Manager considers necessary to accomplish the purposes of the Act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan.

**29. Does an Emergency Manager have the authority to determine staffing levels or implement layoffs?**

Yes. Notwithstanding any minimum staffing level requirement established by charter or contract, an Emergency Manager may establish and implement staffing levels for a unit of local government.

**30. What is the purpose of a financial and operating plan?**

The purpose of a financial and operating plan is to assure that a unit of the local government is able to provide necessary or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government.

**31. What are the contents of a financial and operating plan?**

Pursuant to Section 18 of the Act, a financial and operating plan is required to provide for all of the following:

- Conducting all aspects of the operations of the local government within the resources available according to the Emergency Manager's revenue estimate.
- The payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the unit of local government and all other uncontested legal obligations.
- The modification, rejection, termination, and renegotiation of contracts.
- The timely deposit of required payments to the pension fund for the unit of local government or in which the local government participates.
- For school districts, an academic and educational plan.
- Any other actions considered necessary by the Emergency Manager in his or her discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the unit of local government from receivership.

**32. Does an Emergency Manager possess the authority to change existing labor contracts without negotiation?**

Yes. After meeting and conferring with bargaining representatives, if in the sole discretion of an Emergency Manager, a prompt and satisfactory resolution is unlikely to be obtained, the Emergency Manager may reject, modify, or terminate one or more terms or conditions of an existing collective bargaining agreement.

**33. Must an Emergency Manager make certain findings before rejecting, modifying, or terminating an existing collective bargaining agreement?**

Yes. An Emergency Manager and the State Treasurer must first determine that all of the following conditions are satisfied:

- The financial emergency in the unit of local government has created a circumstance in which it is reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.

-- Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

-- Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

-- Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

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

Yes. An Emergency Manager 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.

**35. Does an Emergency Manager have the authority to issue, approve, or disapprove vendor contracts?**

Yes.

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

Yes. An Emergency Manager 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 of the unit of local government.

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

Yes.

**38. Does an Emergency Manager possess the authority to reduce pay or eliminate benefits for local officials?**

Section 19a of the Act provides that the salaries, wages, and other compensation, including the accrual of post-employment benefits of the chief administrative officer and governing body of a unit of local government are eliminated immediately after the unit of local government is placed in receivership and during the duration of the receivership.

However, an Emergency Manager may restore in whole or in part any of the salaries, wages, or other compensation or benefits “of the chief administrative officer and members

of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to the extent that the manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.”

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

Yes. If provided in a financial and operating plan, or if with the written approval of the Governor or his or her designee, an Emergency Manager may sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of a unit of local government, provided that the use of the assets, liabilities, functions, or responsibilities for this purpose does not endanger the public health, safety, or welfare of residents of the unit of local government, or unconstitutionally impair a bond, note, security, or untested legal obligation of the unit of local government.

**40. Does an Emergency Manager have the authority to review payments to employees?**

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

**41. Does an Emergency Manager have the authority to impose taxes?**

No. An Emergency Manager cannot 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. However, an Emergency Manager is authorized to order one, or more, millage elections for the unit of local government.

**42. Does an Emergency Manager possess authority to remove local pension board members or to exercise the authority of a local pension board?**

Yes. A municipal government pension fund must be actuarially funded at a level of at least 80 percent according to the most recent governmental accounting standards at the time the most recent comprehensive annual financial report for the municipal government or its pension fund is due. If not, the Emergency Manager may remove one or more of the serving trustees of the local pension board, or replace all the serving trustees of the local pension board if the State Treasurer appoints the Emergency Manager as the sole trustee of the local pension board.

**43. Does an Emergency Manager possess authority to recommend consolidation of municipal governments?**

Yes. For a city, village, or township, an Emergency Manager may recommend to the State Boundary Commission that the municipal government for which he or she was appointed consolidate with one or more other municipal governments. The Emergency Manager first would have to determine that consolidation would materially alleviate the financial emergency

of the municipal government and that it would not materially and adversely affect the financial situation of the one or more units of local government with which the municipal government in receivership would be consolidated. Consolidation would have to proceed as provided by law.

**44. Does an Emergency Manager possess authority to dissolve municipal government?**

Yes. With the approval of the Governor, an Emergency Manager may disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law.

**45. Does an Emergency Manager possess the authority to institute Bankruptcy proceedings for a unit of local government?**

Yes. If, in the judgment of an Emergency Manager, no reasonable alternative to rectifying the financial emergency of a unit of local government in receivership exists, then the Emergency Manager may recommend to the Governor and the State Treasurer that the unit of local government be authorized to proceed under Title 11 of the United States Code. The effect of instituting bankruptcy proceedings would be to make the unit of local government a debtor under the United States Bankruptcy Code.

If the Governor approves a recommendation to initiate bankruptcy proceedings, the Governor must inform the State Treasurer and the Emergency Manager in writing of the decision, with a copy to the Superintendent of Public Instruction if the unit of local government is a school district. A recommendation by an Emergency Manager to the Governor and State Treasurer must include either of the following determinations:

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

**46. Is an Emergency Manager required to file reports concerning his or her actions?**

Yes. An Emergency Manager is required to make quarterly reports to the State Treasurer with respect to the financial condition of the unit of that local government that is in receivership, with a copy to the Superintendent of Public Instruction if the unit of local government is a school district.

In addition, an Emergency Manager is required to file quarterly with the Governor, the Senate Majority Leader, the Speaker of the House of Representatives, the clerk of the unit of local government that is in receivership, and to post on the internet on the website of the unit of local government, reports containing all of the following:

- A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the source of the funds.
- A list of each contract that the Emergency Manager awarded or approved with a cumulative value of \$5,000.00 or more, the purpose of the contract, and the identity of the contractor.
- A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of \$5,000.00 or more and the proposed use of the funds.
- A description of any new position created or any vacancy in a position filled by the appointing authority.
- A description of any position that has been eliminated or from which an employee has been laid off.
- A copy of the contract with the Emergency Manager.
- The salary and benefits of the Emergency Manager.
- The financial and operating plan required by the Act.

**47. Once appointed, how long does an Emergency Manager serve?**

An Emergency Manager serves until he or she is removed by the Governor, the State Legislature, or until the financial emergency is rectified. If an Emergency Manager is removed, the Governor is required, within 30 days of the removal, to appoint a new Emergency Manager.

**48. When does a receivership and financial emergency end?**

Pursuant to Section 15 of the Act, a unit of local government is removed from receivership when the financial conditions are corrected in a sustainable fashion as determined by the State Treasurer in accordance with the Act. This occurs essentially after the underlying financial emergency has been addressed.

Furthermore, as provided by Section 24 of the Act, a unit of local government that is in receivership is considered to be in a condition of financial emergency until the Emergency Manager declares the financial emergency to be rectified in his or her quarterly report to the State Treasurer, and is subject to the written concurrence of the State Treasurer, and the concurrence of the Superintendent of Public Instruction if the unit of local government is a school district. The declaration cannot be made until the financial conditions have been addressed and rectified.

**49. Does Public Act 72 of 1990 remain in effect?**

No. Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, was repealed by Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act.

**50. How are Emergency Financial Managers who were appointed under Act 72 affected by Act 4?**

Act 4 provides that an Emergency Financial Manager who was appointed and serving for a unit of local government under State law prior to the effective date of Act 4 is to continue under Act 4 as an Emergency Manager for that unit of local government and is to fulfill his or her duties and responsibilities and exercise all of the powers granted under former State statute.