

Frequently Asked Questions Regarding Public Act 72 of 1990, Local Government Fiscal Responsibility Act, 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?

Among the conditions specified in the Act are the failure by a unit of local government to pay creditors, the failure to make timely pension contributions, and payless paydays. In addition, certain officials, or residents, of a unit of local government may request a preliminary review under the Act, as may either the State Senate or House of Representatives.

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 in the unit of local government, the Governor then appoints a financial review team to conduct a more detailed review of the financial condition of the unit of local government.

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, someone nominated by the Senate Majority Leader, someone nominated by 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. For school districts, Financial Review Teams consist of the State Superintendent of Public Instruction, the State Treasurer, the Director of the Department of Management and Budget, someone nominated by the Senate Majority Leader, and someone nominated by the Speaker of the House of Representatives.

What is the purpose of a Financial Review Team?

If a preliminary review of a unit of local government determines that a serious financial problem exists, the Governor appoints a Financial Review Team to conduct a more detailed review of the financial condition of the unit of local government. A Financial Review Team generally has 60 days (generally 30 days in the case of school districts) 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 is appointed.

Who appoints Emergency Financial Managers?

For units of local government other than school districts, Emergency Financial Managers 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. Emergency Financial Managers for school districts are appointed by the Governor, subject to the advice and consent of the State Senate.

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?

Pursuant to Section 18 of the Act, an Emergency Financial Manager 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. In addition to staff otherwise authorized by law, an Emergency Financial Manager, with the approval of the Local Emergency Financial Assistance Loan Board, may appoint additional staff and secure professional assistance considered necessary. The Emergency Financial 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.

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

Yes. Pursuant to Section 19 of the Act, an Emergency Financial Manager may issue to officials or employees of the unit of local government any orders which the Emergency Financial 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 plan. An order issued by an Emergency Financial Manager is binding on officials or employees of the unit of local government to whom it is issued.

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

No. Section 20 of the Act provides that “[i]n *consultation with*” officials of the unit of local government, an Emergency Financial Manager shall develop, and may from time to time amend a written financial plan for the unit of local government. The financial plan implemented by the Emergency Financial Manager must contain information for each year during which the financial plan is in effect.

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

No. While emergency financial managers are authorized to *renegotiate* labor contracts, they are not authorized to abrogate such contracts or obligations. Therefore, the Act 72 process offers no safe harbor to units of local government seeking to avoid improvidently entered into obligations.

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 Emergency Financial 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.

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

Yes. The Emergency Financial Manager 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 Emergency Financial 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, 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 councilmembers?

Yes. An Emergency Financial Manager 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 Emergency Financial Manager 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 Emergency Financial Manager 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 Emergency Financial Manager 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 Emergency Financial Manager, 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 Emergency Financial Manager 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 Emergency Financial Manager 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. The effect of instituting bankruptcy proceedings would be to make the unit of local government a debtor under the United States Bankruptcy Code.

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

For units of local government other than school districts, Emergency Financial Managers serve at the pleasure of the Local Emergency Financial Assistance Loan Board until such time as the financial emergency has been resolved. For school districts, Emergency Financial Managers serve one-year terms, but may be reappointed.