



CRC MEMORANDUM



No. 1106

A publication of the Citizens Research Council of Michigan

April 2011

THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT PUBLIC ACT 4 OF 2011

Summarizes CRC Report #368 available at www.crcmich.org/PUBLICAT/2010s/2010/rpt368.html

The Local Government and School District Fiscal Accountability Act (PA 4 of 2011) is the third iteration of statutes that authorize the state to intervene directly in the financial affairs of local governments. By providing for earlier state intervention and the takeover of a local government or school district by a state appointed emergency manager who would assume all of the authority and responsibility of local officials, as well as have power to terminate collective bargaining agreements and contracts, and even to dissolve the unit of government, the state hopes to encourage local officials to resolve financial problems promptly. PA 4 retains the essential process established in earlier statutes (trigger events and preliminary review; appointment of a review team authorized to negotiate a consent agreement and with a limited set of possible recommendations; local government right of review and appeal; state appointment of a financial manager with specified powers and duties) but this act provides much greater powers to the state and to the emergency manager.

PA 4 lowers the threshold for state intervention by expanding the list of initiating events and allowing for a preliminary review at the discretion of the state treasurer. The preliminary investigation may lead to appointment of a review team, which conducts a more thorough review to determine whether any of the events specified in the act, or any other facts or circumstances indicative of financial stress or of a financial emergency, exist. The review team is required to meet with the local government and is empowered to examine the books and records of the local government and to utilize the services of other state agencies and employees. The state department of treasury is to provide staff support to the review team. If the state financial authority approves, the review team may appoint an individual or firm to perform the review and submit a report.

The review team must complete the review within 60 days, unless a 30 day extension is granted, and must make one of four possible recommendations.

- The local government is not in financial stress or is in a condition of mild financial stress.
- The local government is in a condition of severe financial stress, but a consent agreement containing a plan to resolve the problem has been adopted.
- The local government is in a condition of severe financial stress and a consent agreement has not been adopted.
- A financial emergency exists and there is no satisfactory plan to resolve the emergency.

The new act provides greater direction and specificity in the development of consent agreements, which may grant one or more powers of an emergency manager to one or more local officials (only the power to reject, modify, or terminate a collective bargaining agreement cannot be granted to a local official under a consent agreement). The consent agreement may contain either a continuing operations plan developed by the local government, or a more demanding recovery plan developed by the state financial authority. Beginning 30 days after the consent agreement is approved, the local government is exempted from collective bargaining requirements for the term of the agreement, unless the state treasurer determines otherwise. A companion statute, PA 9, amends the public employment relations act and provides that a local unit that enters into a consent agreement is exempt from the requirement to collectively bargain and to enter collective bargaining agreements for the duration of the consent agreement.

The state financial authority (the state treasurer, or the superintendent of public instruction for school districts) determines when the conditions of the consent agreement have been met.



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The governor is required to make a determination within ten days of receiving the review team's recommendation. If a consent agreement is not adopted or is materially breached, the governor may declare that a financial emergency exists. The unit may request a hearing, and if, after the hearing, the governor confirms the emergency, the unit may appeal the decision to the Ingham County circuit court. If the determination is not set aside, or if the determination is not appealed, the governor declares the unit to be in receivership and appoints an individual to serve as emergency manager. That individual, who serves at the pleasure of the governor, may or may not be an official or employee of the local government and may or may not be a resident of the local government, but must have at least five years experience and demonstrable expertise in business, financial, or local or state budgetary matters. The governor may delegate his or her duties under the act, including the appointment of an emergency manager, to the state treasurer.

PA 4 expands the authority of emergency managers in school districts, general purpose local governments, special authorities, and publicly owned utilities. The emergency manager is paid by the local government, according to a contract that must be approved by the state treasurer and posted on

the state Department of Treasury's website. At the time an emergency manager is appointed, the powers and duties of the chief administrative officer and governing body are transferred to the emergency manager.

The emergency manager must develop a financial and operating plan for the local government. The plan must provide for the following:

- (a) Conducting the operations of the local government within the resources available.
- (b) The payment in full of scheduled debt service and all other uncontested legal obligations.
- (c) The modification, rejection, termination, and renegotiation of contracts (a new provision).
- (d) Timely deposit of required payments to the pension fund.
- (e) For school districts, an academic and educational plan (a new provision).
- (f) Any other actions considered necessary by the emergency manager to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

The object of the financial and operating plan is to assure that governmental services essential to the public health, safety, and welfare will be provided and to assure the fiscal accountability of the local government. The emergency manager must submit the

plan to the state treasurer, to the superintendent of public instruction if the unit is a school district, and to the local CAO and governing body, within 45 days after the emergency manager's appointment. The plan must be in the form required by the state treasurer, and may be modified as necessary by the emergency manager with notice to the state treasurer. The financial and operating plan may serve as a deficit elimination plan. Within 30 days of submitting the financial and operating plan to the state financial authority, the emergency manager is required to conduct a public informational meeting on the plan, but no local or public approval of the plan is required. The emergency manager is authorized to issue orders necessary to implement the financial and operating plan and those orders are binding on local elected and appointed officials, employees, agents, and contractors.

The emergency manager may hire staff and secure professional assistance as he or she considers necessary. Emergency managers for school districts are granted unequivocal authority over academic and operational matters. An emergency manager may enter into contracts, but any contract with a cumulative value of \$50,000 or more is subject to competitive bidding. However, the emergency manager may submit the issue to the state treasurer, who may ex-

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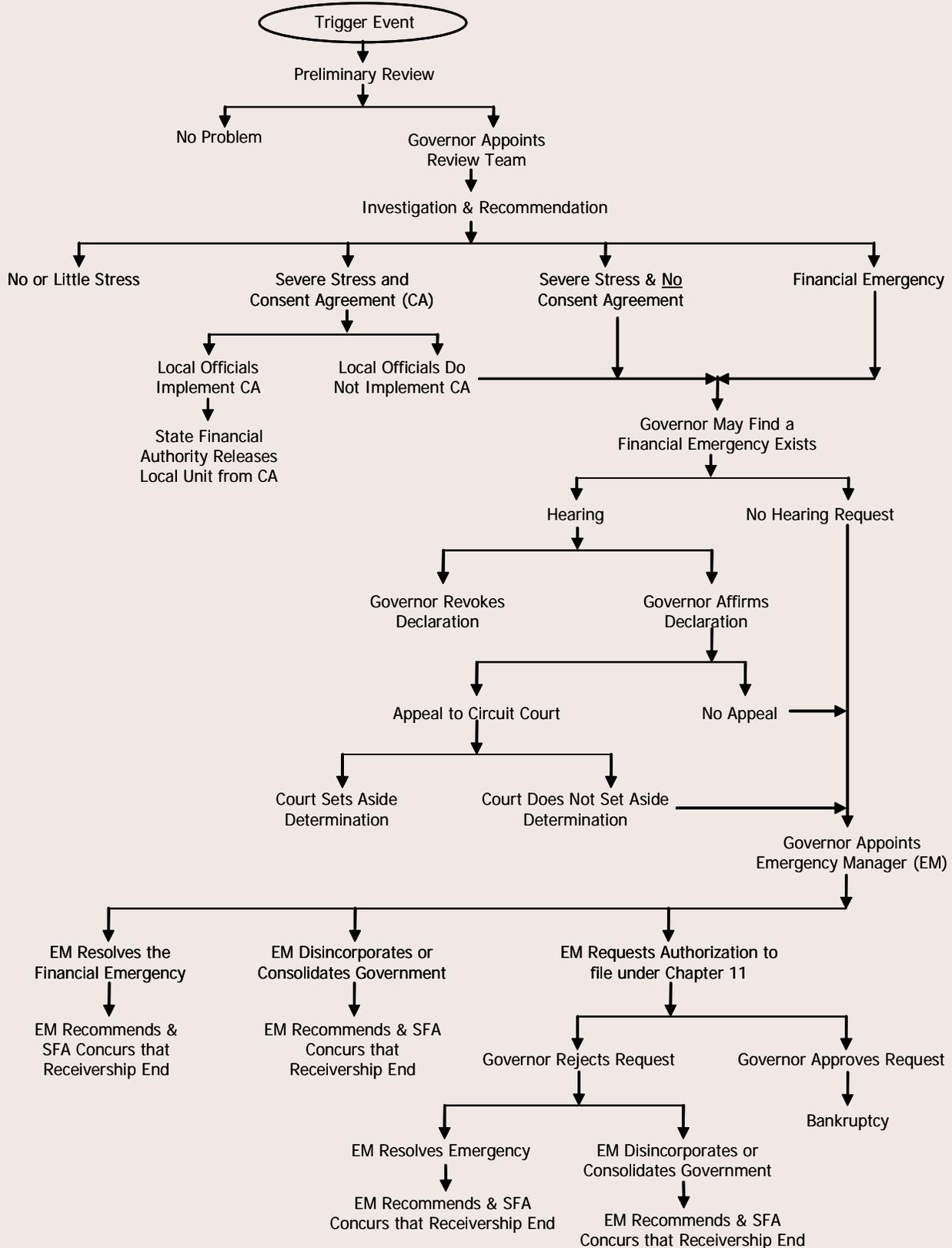
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**Diagram 1
The Public Act 4 Process**



empt that potential contract from competitive bidding.

Although the financial and operating plan must include provision for payment in full of scheduled debt service on all bonds, notes, municipal securities and all other uncontested legal obligations, emergency managers have the ability to reject, modify, or terminate non-labor contracts, such as service or purchasing contracts. This is a power that has been available only under federal bankruptcy provisions.

The emergency manager acts as sole agent of the local government in collective bargaining with employees or representatives and approves any contract or agreement. PA 4 authorizes an emergency manager to overrule minimum staffing requirements in charters and contracts. Furthermore, emergency managers are authorized to reject, modify, and terminate collective bargaining agreements after meeting and conferring with the bargaining unit and determining (in the emergency manager's sole discretion) that no satisfactory

agreement can be obtained. One exemption is provided: an emergency manager cannot change a collective bargaining provision for the payment of a benefit on the death of a police officer or firefighter in the line of duty.

Emergency managers may be empowered to assume control of pension funds that are not at least 80 percent actuarially funded

The emergency manager may recommend consolidation with another municipal corporation, or may, with the governor's approval, dissolve the municipal corporation. The emergency manager may request that the local unit be allowed to file under federal bankruptcy provisions, and the governor makes that decision.

The act provides more explicit protections for emergency managers and those hired by emergency managers and makes local governments responsible for the costs associated with lawsuits and claims against the emergency manager and his or her agents. Also, under this act, an emergency manager can be removed by a two-thirds vote of the legislature.

PA 4 contains a severability clause, which would protect other provisions of the act even if some sections are rejected by the courts.

A local government remains in receivership until the emergency manager declares the financial emergency to be rectified and the state treasurer (and the superintendent of public instruction if the local government is a school district) concurs. Before the termination of receivership, the emergency manager must adopt and implement a two-year budget, including all contractual and employment agreements, to start at the end of the receivership. The local government is prohibited from amending that budget without the approval of the state treasurer, and from revising any order or ordinance implemented by the emergency manager for a period of one year.

These changes are intended to address problems and frustrations encountered by emergency financial managers and state officials under PA 72, and to provide the governor with more options to empower local elected officials with extraordinary powers.