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How a Financial Emergency Works

A Summary of the Local Fiscal Stability and Choice Act Process Public Act 436 of 2012

Step One: If one or more conditions indicative of probable financial stress in a local government exist, the State Financial Authority (State Treasurer or Superintendent of Public Instruction) may conduct a preliminary review, after providing the local government with specific written notification of the review.

Step Two: The State Financial Authority must within 20 days of commencing a preliminary review provide an interim report to the local government and to the State Senators and Representatives representing the local government. The local government may provide comments within 5 days of receipt. The State Financial Authority must within 30 days of commencing a preliminary review provide a final report to the Local Emergency Financial Assistance Loan Board (ELB) and to the State Senators and Representatives representing the local government. The ELB must within 20 days determine whether probable financial stress exists.

Step Three: The Governor must appoint a review team if the ELB determines that probable financial stress exists.

A review team consists of the State Treasurer (or his or her designee), the Director of the Department 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 selected by the Governor. The Superintendent of Public Instruction (or his or her designee) also is a member if a school district is involved.

Step Four: Unless the Governor specifies an earlier date, or grants a 30-day extension, a review team must report to the Governor within 60 days of its appointment whether specific statutory conditions exist or are likely to occur and must reach one of the following conclusions:

1. A financial emergency does not exist in the local government.
2. A financial emergency exists in the local government.

A review team report must also be forwarded to the State Treasurer, the chief administrative officer and governing body of the local government, the Speaker of the House of Representatives, the Senate Majority Leader, and to the State Senators and Representatives representing the local government.

Step Five: Within 10 days after receipt of the review team report, the Governor must make one of the following determinations:

1. A financial emergency does not exist in the local government.
2. A financial emergency exists in the local government.

Step Six: If the Governor determines that a financial emergency exists, he or she must provide written notification to the chief administrative officer of the unit of local government who may request within 7 days after receiving notice a hearing conducted by the State Financial Authority or his or her designee.

Step Seven: 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 financial emergency.

Step Eight: A local government by a two-thirds vote of its governing body may appeal the Governor's determination within 10 business days to the Court of Claims (Ingham County Circuit Court). The determination may be set aside only if found to be either:

1. Not supported by competent, material, and substantial evidence on the whole record.
2. Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

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Step Nine: Within 7 days after confirmation of a financial emergency, the governing body of the local government must select one of the following:

1. Consent Agreement option.
2. Emergency Manager option.
3. Neutral Evaluation Process option.
4. Chapter 9 Bankruptcy option.

Except as otherwise provided in the Act, a local government may not utilize any of the foregoing options more than once. A local government that does not select one of the above options is required to proceed under the Neutral Evaluation Process option.

Step Ten: A local government that selects the Emergency Manager option is placed in receivership. Upon appointment of the Emergency Manager, the chief administrative officer and governing body of the local government are prohibited from exercising any powers of offices without written approval of the Emergency Manager and their compensation and benefits are eliminated, but may be restored by the Emergency Manager. A local government is removed from receivership upon one of the following:

1. When the financial conditions that were the basis for the financial emergency are corrected in a sustainable fashion.
2. If, at least 18 months after an Emergency Manager is appointed, a local governing body by a two-thirds vote removes the Emergency Manager and removes the local government from receivership.

Step Eleven: If, at least 18 months after an Emergency Manager is appointed, a local government removes the Emergency Manager and itself from receivership, but the financial emergency continues to exist, the local government is required to proceed under the Neutral Evaluation Process option.

If, at least 18 months after an Emergency Manager is appointed, a local government removes the Emergency Manager, but does not remove itself from receivership, the local government may within 10 days negotiate a consent agreement with the State Treasurer, provided the local government has not previously breached a consent agreement under the Act. If a consent agreement is not reached, the local government is required to proceed under the Neutral Evaluation Process option.

Step Twelve: If a local government selects the Chapter 9 Bankruptcy option, the Governor may place contingencies upon a local government, including the selection of an individual to act exclusively on behalf of the local government in any Chapter 9 proceedings.