OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 88

132nd General Assembly
(As Introduced)

Sens. Terhar, Eklund, Huffman

BILL SUMMARY

- Modifies the appointing authorities and composition of a financial planning and supervision commission that has been established for a municipal corporation, county, or township that is in a state of fiscal emergency.

- Changes provisions that apply to appointed commission members.

- Requires the financial plan submitted to the commission to include a description of the source and amount of all funds available to the municipal corporation, county, or township, including restricted funds.

- Requires the financial plan to provide for the use of all funds available to the municipal corporation, county, or township, with exceptions.

- Authorizes the commission, under certain circumstances, to prohibit expenditures from the general fund and all funds of the municipal corporation, county, or township in any month from exceeding 85% of expenditures from the general fund and all funds for that month in the preceding fiscal year.

- Includes the bill's new expenditure limitations in existing expenditure restrictions for purposes of applying certain financial plan noncompliance and penalty laws.

- Retains the fiscal watch law that changed the time period for filing a financial recovery plan and that added a condition for moving a municipal corporation, county, or township from a fiscal watch to a fiscal emergency.

CONTENT AND OPERATION

Financial planning and supervision commission membership and appointing authorities

Background

Under continuing law, when the Auditor of State determines that a fiscal emergency exists in a municipal corporation, county, or township (hereinafter, a "local government") because one or more statutory fiscal emergency conditions exist, for example, the local government has defaulted on debt obligations or failed to make employee payroll, a financial planning and supervision commission is established to assist the local government with its financial recovery.

The membership of a financial planning and supervision commission is based upon the population of the local government that is under a fiscal emergency. A commission is composed of four core voting members, but if the local government has a population of 1,000 or more, three additional members are appointed to the commission.[1]

The bill

The bill revises who makes appointments to a commission, and, in some cases, the commission membership, as follows:

Financial Planning and Supervision Commission (for a municipal corporation, county, or township with a population of less than 1,000)		
Entity	**Under existing law**	**Under the bill[2]**
Municipal corporation	The Treasurer of State, Director of Budget and Management, the mayor, and the presiding officer of the legislative authority.	Same.
County	The Treasurer of State, Director of Budget and Management, the president of the board of county commissioners, and the county auditor.	Same, except a county commissioner, rather than the president of the board, is a member.

[1] R.C. 118.05; R.C. 118.03 and 118.04, not in the bill.

[2] R.C. 118.05(B)(1).

Financial Planning and Supervision Commission (for a municipal corporation, county, or township with a population of less than 1,000)		
Entity	**Under existing law**	**Under the bill[2]**
Charter county (currently, Summit and Cuyahoga counties)	Same as for a county that has not adopted a charter.	Same, except the county executive and county fiscal officer, rather than county commissioner and auditor, are members.
Township	The Treasurer of State, Director of Budget and Management, a member of the board of township trustees, and the county auditor.	Same.

Financial Planning and Supervision Commission (for a municipal corporation, county, or township with a population of 1,000 or more)		
Entity	**Under existing law**	**Under the bill[3]**
Municipal corporation	The Treasurer of State; Director of Budget and Management; the mayor; the presiding officer of the legislative authority; and three members appointed by the Governor (with the consent of the Senate) from a list of five nominees submitted by the mayor and presiding officer of the legislative authority. If the Governor believes that the listed nominees are not well-qualified, the Governor must fill remaining positions by appointing persons who are.	The Treasurer of State; Director of Budget and Management; the mayor; the presiding officer of the legislative authority; one member appointed by the Governor; one member appointed by the mayor and confirmed by the legislative authority; and one member appointed by the county auditor of the county in which the largest portion of the municipality's territory is located. The county auditor may appoint herself or himself.
County	The Treasurer of State; Director of Budget and Management; president of the board of county commissioners; the county auditor; and three members appointed by the Governor (with the consent of the Senate) from a list of five nominees submitted by the board of county commissioners. If the Governor believes that the listed nominees are not well-qualified, the Governor must fill remaining	The Treasurer of State; Director of Budget and Management; one county commissioner; the county auditor; one member appointed by the Governor; and two members appointed by the board of county commissioners. A member of the board of county commissioners is ineligible for appointment as one of the three additional members.

[3] R.C. 118.05(B)(2).

Financial Planning and Supervision Commission (for a municipal corporation, county, or township with a population of 1,000 or more)		
Entity	**Under existing law**	**Under the bill**[3]
	positions by appointing persons who are.	
Charter county (currently, Summit and Cuyahoga counties)	Same as for a county that has not adopted a charter.	The Treasurer of State; Director of Budget and Management; the county executive and county fiscal officer, if the charter county has both officers; one member appointed by the Governor; one member appointed by the county executive; and one member appointed by the county council. A county executive or a member of the county council is ineligible for appointment as one of the three additional members.
Township	The Treasurer of State; Director of Budget and Management; a member of the board of township trustees; the county auditor; and three members appointed by the Governor (with the consent of the Senate) from a list of five nominees submitted by the board of township trustees. If the Governor believes that the listed nominees are not well-qualified, the Governor must fill remaining positions by appointing persons who are.	The Treasurer of State; Director of Budget and Management; a member of the board of township trustees; the county auditor; one member appointed by the Governor; and two members appointed by the board of township trustees. A member of the board of township trustees is ineligible for appointment as one of the three additional members.

The bill requires that the appointing authorities appoint the three additional members not later than 15 days after the Auditor of State determines that a fiscal emergency exists, rather than existing law's requirement that the Governor make all three appointments within 30 days after receiving the list of nominees from a local government. And, the bill authorizes the appointing authority that appointed the member to remove the member, or to appoint a member in case of a vacancy. Under existing law, the Governor can remove any of the three appointed members for misfeasance, nonfeasance, or malfeasance in office or to appoint another member when a vacancy occurs.[4]

Appointed commission members

For a county auditor who serves on a municipal corporation's commission, the bill makes an exception to the residency requirement and the candidacy prohibition ((2) and (3), below). Otherwise, continuing law requires that each of the three appointed commission members: (1) have certain knowledge and experience in financial matters and management, or business organization or operations, (2) reside in, or have an office or principal place of professional or business activity within, the local government under a fiscal emergency, and (3) cannot become a candidate for elected public office while serving as a commission member.[5]

The Director of Budget and Management serves as chairperson of a commission. Under the bill, the chair may remove an appointed member if that member fails to attend three commission meetings. Existing law allows the chair to remove a member, only if the three missed meetings are consecutive.[6]

Existing law specifies that appointed commission members are not subject to filing a financial disclosure statement with the Ohio Ethics Commission. The bill clarifies that an appointed commission member who is a township trustee or is not an elected official is not subject to filing a financial disclosure statement.[7]

Financial plan requirements

Under continuing law, a local government under a fiscal emergency must submit a detailed financial plan to the financial planning and supervision commission for its approval. The financial plan must identify actions to be taken to eliminate the fiscal emergency conditions. The commission must ensure that the local government properly implements the financial plan. Among other things, the commission must monitor and approve the local government's expenditures.[8]

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[4] R.C. 118.05(B)(2).

[5] R.C. 118.05(B)(2).

[6] R.C. 118.05(D).

[7] R.C. 118.05(K). These individuals are not required to file financial statements anyway. *See* R.C. 102.02(H), not in the bill.

[8] R.C. 118.06.

To the other items that a local government must address in the financial plan, the bill adds that the financial plan must:

(1) Include a description of the source and amount of all funds available to the local government, including funds upon which the local government previously has placed restrictions.[9]

(2) Provide for the use of all funds available to the local government, including funds upon which restrictions previously had been placed by the local government, but the financial plan cannot include funds upon which such restrictions have been placed by other sections of the Revised Code or the Ohio Constitution.[10]

Expenditure limitations

For omissions in the financial plan

Under continuing law, if a local government under a fiscal emergency fails to submit a financial plan or a segment of a plan, its expenditures in any month cannot exceed 85% of expenditures from its general fund for that month in the previous fiscal year. The bill adds that this limitation applies to all of the local government's funds, not only expenditures from the general fund. Under continuing law, the financial planning and supervision commission may authorize a higher percent for any month if the local government justifies the need.[11]

Further, the bill applies this same expenditure limitation if the commission finds that the local government failed to comply with the financial plan requirements in (1) and (2), under "**Financial plan requirements**," above. The commission can prohibit expenditures from the local government's general fund and all funds in any month from exceeding 85% of expenditures from the general fund and all funds for that month in the previous fiscal year. The commission may authorize a higher percent for any month if the local government justifies the need. If the commission considers it prudent, it also may limit expenditures from any other fund of the local government. Limitations that are imposed remain in effect until the commission approves an amended financial plan that includes a description of the source and amount of all funds available to the local government and that provides for the use of all such funds in implementing the plan.[12]

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[9] R.C. 118.06(A)(1)(c).

[10] R.C. 118.06(A)(2).

[11] R.C. 118.12(A).

[12] R.C. 118.06(E).

For failure to provide accurate information and reports

Continuing law requires a local government under a fiscal emergency to cooperate with the financial planning and supervision commission by providing all information and reports the commission or financial supervisor (the financial supervisor is the Auditor of State or someone the Auditor contracts with to provide that service) requests. The bill requires that the information and reports be accurate, and adds that the local government and its officers and employees must provide information and reports within 30 days after the commission or financial supervisor requests them.[13]

The bill requires that the commission review and approve the information and reports submitted to it or to the financial supervisor. If the commission determines that a local government has not promptly provided accurate information and reports, the commission may impose the same expenditure limitation described under "**For omissions in the financial plan**," immediately above. Limitations imposed remain in effect until the commission determines that the local government has provided the accurate information and reports requested by the commission or the financial supervisor.[14]

Expenditure limitations not affected by noncompliance

Continuing law[15] that prohibits the appropriations and tax budgets of a local government under a fiscal emergency from being contrary to the financial plan specifies that expenditure restrictions are not delayed, modified, or affected by a local government's delay, failure, or refusal to act or comply with that law. The bill includes as expenditure restrictions the new expenditure limitations explained above in "**For omissions in the financial plan**" and "**For failure to provide accurate information and reports**."[16]

Penalty for violating expenditure limitations

Continuing law prohibits an officer or employee of a local government, during the fiscal emergency period, from making any expenditure in excess of the expenditure restrictions. The bill adds as expenditure restrictions the new expenditure limitations explained above in "**For omissions in the financial plan**" and "**For failure to provide**

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[13] R.C. 118.05(G) and 118.11(A); R.C. 118.01(P), not in the bill.

[14] R.C. 118.11(B).

[15] R.C. 118.13.

[16] R.C. 118.13(D).

accurate information and reports." Under continuing law, violating this prohibition is a second degree misdemeanor, and, upon conviction, the officer or employee must forfeit the office or employment and is ineligible to hold any public office or other position of trust in Ohio or be employed by any public entity in Ohio for a seven-year period immediately following the date of conviction, in addition to any other penalty or liability provided by law for a local government.[17]

Subsequent financial plans

Under existing law, if the commission rejects an initial financial plan, the local government must submit another financial plan that meets specific requirements, except that the subsequent plan does not have to include an evaluation of the feasibility of entering into shared services agreements with other political subdivisions to jointly exercise powers, perform functions, or render services if so authorized by statute. The bill requires that the evaluation be included in the local government's subsequent plan.[18]

Continuance of a law regarding fiscal watches

Am. Sub. H.B. 64 amended a law (R.C. 118.023) that specifies what a local government must do when it has been declared to be under a fiscal watch. The two changes made to that law were to be in effect only until September 29, 2017. One change reduced, from 120 to 90 days, the amount of time a local government under a fiscal watch was given to submit its financial recovery plan to the Auditor of State. The other change added the following condition under which the Auditor of State must move the local government from a fiscal watch to a fiscal emergency: The Auditor of State finds that the local government has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and the Auditor determines a fiscal emergency declaration is necessary to prevent further decline. (The Auditor of State already must move a local government from a fiscal watch to a fiscal emergency if the local government does not submit a feasible financial recovery plan within a prescribed time period.)[19]

The bill retains these two changes. In other words, the law continues to operate the way it does as amended by H.B. 64, and the law does not "expire" September 29, 2017.[20]

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[17] R.C. 118.99(A)(1) and (C).

[18] R.C. 118.06(B).

[19] R.C. 118.023, not in the bill.

[20] Section 3.

HISTORY

ACTION	DATE
Introduced	03-02-17

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