



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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H.B. 103

132nd General Assembly
(As Passed by the General Assembly)

Reps. Reineke, Blessing, Cupp, Dever, Riedel, Wiggam, Anielski, Hambley, Bishoff, Antonio, Arndt, Conditt, Green, Greenspan, Keller, Miller, Perales, Retherford, Rezabek, Rogers, Scherer, Seitz, R. Smith, Sprague, Sweeney, West, Young

Sens. Coley, Uecker, Balderson, Burke, Eklund, Hackett, Hite, Hoagland, Huffman, Obhof, Peterson, Wilson

Effective date: October 17, 2017

ACT 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 (hereinafter, a "local government") 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 local government, including restricted funds.
- Requires the financial plan to provide for the use of all funds available to the local government, with exceptions.
- Authorizes the commission, under certain circumstances, to prohibit expenditures from the general fund and all funds of the local government in any month from exceeding 85% of expenditures from the general fund and all funds for that month in the preceding fiscal year.
- Incorporates new expenditure limitations into continuing 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 local government from a fiscal watch to a fiscal emergency.

CONTENT AND OPERATION

Financial planning and supervision commissions

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 on the population of the local government. 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 act

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

Financial Planning and Supervision Commission (for a local government with a population of less than 1,000)		
Entity	Under former law	Under the act²
Municipal corporation	The Treasurer of State, Director of Budget and Management, the mayor, and the presiding officer of the legislative authority.	Same.

¹ R.C. 118.05; R.C. 118.03 and 118.04, not in the act.

² R.C. 118.05(B)(1).



Financial Planning and Supervision Commission (for a local government with a population of less than 1,000)		
Entity	Under former law	Under the act²
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.
Charter county with both a county executive and county fiscal officer under the charter (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 local government with a population of 1,000 or more)		
Entity	Under former law	Under the act³
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 the Governor considers well qualified.	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	The Treasurer of State; Director of Budget and Management; one county commissioner; the county auditor; one member appointed by the Governor; and

³ R.C. 118.05(B)(2).

**Financial Planning and Supervision Commission
(for a local government with a population of 1,000 or more)**

Entity	Under former law	Under the act ³
	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 positions by appointing persons who are.	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.
Charter county with both a county executive and county fiscal officer under the charter (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 act 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. Former law required that the Governor make all three appointments within 30 days after receiving the list of nominees from a local government. The act also authorizes the appointing authority that appointed the member to remove the member



for misfeasance, nonfeasance, or malfeasance in office, or to appoint a member in case of a vacancy. Under former law, the Governor could remove any of the three appointed members for those reasons or appoint another member when a vacancy occurred.⁴

Appointed commission members

For a county auditor who serves on a municipal corporation's commission, the act makes an exception to the requirement that each of the three appointed commission members reside in, or have an office or principal place of professional or business activity within, the municipal corporation under a fiscal emergency. The act also exempts a county auditor serving on a municipal corporation's commission from the prohibition that none of the three appointed members can become a candidate for elected public office while serving as a commission member. Otherwise, continuing law requires that the county auditor and appointed commission members have certain knowledge and experience in financial matters and management, or business organization or operations.⁵

The Director of Budget and Management serves as chairperson of a commission. Under the act, the chair may remove an appointed member if that member fails to attend three commission meetings. Former law allowed the chair to remove a member only if the three missed meetings were consecutive.⁶

Former law specified that appointed commission members were not subject to filing a financial disclosure statement with the Ohio Ethics Commission. The act 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

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). Ongoing Ohio law does not require these individuals to file financial statements. See R.C. 102.02(H), not in the act.



implements the financial plan. Among other things, the commission must monitor and approve the local government's expenditures.⁸

To the other items that a local government must address in the financial plan, the act 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 act expands this limitation to apply 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. If the commission considers it prudent, it also may limit expenditures from any other fund of the local government.¹¹

Further, the act 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. 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

⁸ R.C. 118.06.

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 act 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 act 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,**" above. Limitations imposed remain in effect until the commission determines that the local government has provided the accurate information and requested reports.¹⁴

Expenditure limitations not affected by noncompliance

Continuing law¹⁵ 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 act includes as expenditure restrictions the new expenditure limitations, explained above, for omissions in the financial plan and for failure to provide accurate information and reports.¹⁶

Penalty for violating expenditure limitations

Continuing law prohibits a local government officer or employee, during the fiscal emergency period, from making any expenditure in excess of the expenditure restrictions. The act adds as expenditure restrictions the new expenditure limitations, explained above, for omissions in the financial plan and for failure to provide accurate information and reports. Under continuing law, a violation is a second degree

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

¹⁴ R.C. 118.11(B).

¹⁵ R.C. 118.13.

¹⁶ R.C. 118.13(D).



misdeemeanor, 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 seven years immediately following the conviction, in addition to any other penalty or liability provided by law for a local government.¹⁷

Subsequent financial plans

Under continuing law, if the commission rejects an initial financial plan, the local government must submit another financial plan that meets specific requirements. The act requires that the subsequent plan 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. Former law did not require this evaluation to be included in the local government's subsequent plan.¹⁸

Continuance of a law regarding fiscal watches

In 2015, H.B. 64 of the 131st General Assembly 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. The act retains these two changes. In other words, the law continues to operate the way it does as amended by H.B. 64.¹⁹

The first change that the act retains reduced, from 120 to 90 days, the time a local government under a fiscal watch was given to submit its financial recovery plan to the Auditor of State. The other change retained 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

¹⁷ R.C. 118.99(A)(1) and (C).

¹⁸ R.C. 118.06(B).

¹⁹ Section 3. An identical provision to retain these changes was enacted in Section 105.20 of the main operating budget act, H.B. 49 of the 132nd General Assembly. The H.B. 49 provision takes effect September 29, 2017.



watch to a fiscal emergency if the local government does not submit a feasible financial recovery plan within a prescribed time period.)²⁰

HISTORY

ACTION	DATE
Introduced	03-01-17
Reported, H. State & Local Gov't	03-28-17
Passed House (96-1)	03-29-17
Reported, S. Gov't Oversight & Reform	06-28-17
Passed Senate (33-0)	06-28-17

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²⁰ R.C. 118.023, not in the act.

