Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

H.B. 337

130th General Assembly
(As Introduced)

Reps. Terhar, Becker, Grossman, Lynch, Roegner, Thompson, Beck, Brenner, Butler, Conditt, Henne, J. Adams, Duffey, Retherford, McGregor, Rosenberger

BILL SUMMARY

- Authorizes the Director of Budget and Management to suspend state funding for counties, townships, or municipal corporations that fail to comply with certain budget and debt laws.
- Adds conditions under which a financial planning and supervision commission established for a village or township that is under a fiscal emergency may be terminated.
- Authorizes the Auditor of State to issue an order prohibiting the sale or encumbrance of the real or tangible personal property of a municipal corporation, township, or county that is under a fiscal watch or fiscal emergency for consideration greater than $500,000, except when the sale or encumbrance is approved by a financial planning and supervision commission.
- Allows the order to be overruled by majority vote of the financial planning and supervision commission if the municipal corporation, township, or county is under a fiscal emergency, but not when it is under a fiscal watch.
- Revises certain budgeting requirements that apply to counties, townships, and municipal corporations.
- Requires that an actuarial valuation of the pension assets, liabilities, and funding requirements of a political subdivision's retirement system be performed annually, and that a valuation report be submitted to the Ohio Retirement Study Council and the Auditor of State.

- Mandates that the governing authority of the political subdivision's retirement system amortize the system's unfunded actuarial accrued pension liability over a period of not more than 30 years.
- Requires the retirement system's governing authority to submit a plan to the Council and the Auditor of State that indicates how the amortization period will be reduced to not more than 30 years if, in any year, the period necessary to amortize the unfunded liability exceeds 30 years.
- Requires the legislative authority of the political subdivision to adopt and substantially comply with the plan if it is approved by the Council and Auditor of State.
- Suspends all state funding, other than benefit assistance to individuals, to a political subdivision that fails to adopt an amortization plan for its retirement system or fails to comply with an approved plan.

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CONTENT AND OPERATION

Suspension of state funding

The bill requires the Director of Budget and Management to suspend the payment of "all state funding" for a county, township, or municipal corporation, other than benefit assistance to individuals, if the Director receives notice from the Auditor of State (presumably after an audit) that a county, township, or municipal corporation has failed to comply[1] with any of the following laws:

[1] R.C. 117.54.

(1) A provision in the Uniform Public Securities Law that sets forth the process by which a county, township, or municipal corporation may issue and sell "securities," meaning bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, and that establishes requirements for their issuance or sale;[2]

(2) Provisions in the Uniform Public Securities Law that prohibit a municipal corporation, county, or township from incurring net indebtedness that exceeds a specified percentage of its tax valuation;[3]

(3) The law authorizing a municipal corporation, county, or township to establish reserve balance accounts, special revenue funds, and capital project funds;[4]

(4) The law limiting a political subdivision's appropriations from each fund by the estimated revenue available for expenditure therefrom, and limiting general fund negative cash balances if the limitation is imposed under authority granted by the bill;[5]

(5) The Local Fiscal Emergencies Law, which, among other things, establishes fiscal watch and fiscal emergency procedures for municipal corporations, counties, and townships, requires the establishment of, and their submission of a detailed financial plan to, a financial planning and supervision commission if they are under a fiscal emergency, and generally regulates their fiscal integrity.[6]

The Auditor of State is authorized, but is not required, to notify the Director of a county's, township's, or municipal corporation's failure to comply with these specific laws. The suspension of state funding ceases upon subsequent notification from the Auditor of State to the Director that the county, township, or municipal corporation has achieved substantial compliance with the laws. Upon receipt of the subsequent notification, the Director must release all funds withheld.[7]

Under the bill, "state funding" means any state revenue transferred to a county, township, or municipal corporation including, but not limited to, local government fund allocations,[8] public utility tangible personal property tax replacement payments

[2] R.C. 133.01(GG) and 133.03, not in the bill.

[3] R.C. 133.05, 133.07, and 133.09, not in the bill.

[4] R.C. 5705.13.

[5] R.C. 5705.39.

[6] R.C. Chapter 118.

[7] R.C. 117.54.

[8] R.C. 5747.50, not in the bill.

for fixed-rate levy losses,[9] business tangible personal property tax replacement payments for fixed-sum levy losses,[10] and property tax reduction reimbursement payments for the 10% rollback of real property and manufactured home taxes[11] and for the homestead reduction.[12] "State funding" does not include any appropriations for current expenses, or any funds provided pursuant to a contract, including casino gaming tax proceeds provided under the Ohio Constitution.[13]

Fiscal watches and fiscal emergencies

Conditions that terminate a financial planning and supervision commission

Any time a fiscal emergency is declared for a municipal corporation, county, or township, a financial planning and supervision commission must be established for that entity. The commission oversees the recovery of the municipal corporation, county, or township from the fiscal emergency, and reviews a detailed financial plan to eliminate the fiscal emergency that the mayor of the municipal corporation, the board of county commissioners, or board of township trustees is required to submit to the commission. Ongoing law terminates the commission if the municipal corporation, county, or township under the fiscal emergency meets four conditions, for example, it met the objectives of the financial plan.

The bill adds as an alternative condition[14] for terminating the financial planning and supervision commission that a village under a fiscal emergency has dissolved and wound up its affairs in accordance with any of the following procedures in continuing law: (1) the Attorney General, upon petition of the financial supervisor and approval of the commission, files a legal action on behalf of the state to dissolve the village if it has been under a fiscal emergency for at least four consecutive years and its financial plan cannot reasonably be expected to correct and eliminate all fiscal emergency conditions within five years,[15] (2) the village surrenders its corporate powers upon petition of 40% of the village's electors and after an affirmative vote of a majority of the village's electors

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[9] R.C. 5727.86, not in the bill.

[10] R.C. 5751.22, not in the bill.

[11] R.C. 321.24, not in the bill.

[12] R.C. 323.156 and 4503.068, not in the bill.

[13] R.C. 117.54.

[14] R.C. 118.27(A)(1).

[15] R.C. 118.31, not in the bill.

at a special election,[16] or (3) the Auditor of State requests that the Attorney General institute legal action to dissolve the village because, as found in the audit report, the village has a population of 150 persons or less and consists of less than two square miles.[17]

The bill also adds as an alternative condition[18] for terminating the commission that a township under a fiscal emergency has dissolved according to a procedure under continuing law whereby the Attorney General, upon petition of the financial supervisor and approval of the commission, files a legal action on behalf of the state to dissolve the township because it has a population of less than 5,000, has been under a fiscal emergency for at least four consecutive years and implementation of its financial plan cannot reasonably be expected to correct and eliminate all fiscal emergency conditions within five years, and has wound up its affairs in accordance with continuing law.[19]

Fiscal watch and fiscal emergency requirements

The bill requires any municipal corporation, county, or township that is under a fiscal watch or fiscal emergency to notify the Auditor of State before selling or encumbering any real or tangible personal property fully or partially owned by the county, township, or municipal corporation for consideration greater than $500,000. The Auditor of State may issue an order prohibiting the property's sale or encumbrance if the Auditor of State determines that the sale or encumbrance is not in the best long-term financial interest of the municipal corporation, county, or township. However, the Auditor of State is prohibited from issuing such an order respecting a sale or encumbrance of property that has been approved by vote of a financial planning and supervision commission.

An order by the Auditor of State prohibiting the sale or encumbrance of property by a municipal corporation, county, or township under a *fiscal emergency* may be overruled by majority vote of the financial planning and supervision commission, but an order by the Auditor of State prohibiting the sale or encumbrance of property by a municipal corporation, county, or township under a *fiscal watch* is final and may not be appealed.[20]

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[16] R.C. 703.20 and 703.21, not in the bill.

[17] R.C. 703.201 and 703.21, not in the bill.

[18] R.C. 118.27(A)(2).

[19] R.C. 118.31, 503.02, and 503.17 to 503.21, not in the bill.

[20] R.C. 118.40.

Budgeting requirements

"Rainy day" reserve balance accounts

Continuing law authorizes the taxing authority of a subdivision to establish reserve balance accounts to accumulate currently available resources for certain purposes. A reserve balance account for the purpose of stabilizing political subdivision budgets against cyclical changes in revenues and expenditures may be established in the general fund or in one or more special funds for operating purposes of the subdivision. The amount of money to be reserved by the taxing authority in a reserve balance account for that purpose in any fiscal year cannot exceed 5% of the revenue credited in the preceding fiscal year to the fund in which the account is established, or, in the case of a county's or township's reserve balance account, the greater of that amount or one-sixth of the expenditures during the preceding fiscal year from the fund in which the account is established.

The bill states that it is the General Assembly's intent that each county, township, and municipal corporation maintain a reserve balance account in its general fund to stabilize budgets against cyclical changes in revenues and expenditures, and that the account consist of an amount of money equal to approximately 5% of the revenue credited to the general fund in the preceding fiscal year.[21]

Negative cash balances

The bill authorizes a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation to establish limits on the negative cash balance of its general fund, but in no case may the negative cash balance of that general fund exceed 10% of the general fund's total revenue in the preceding fiscal year.[22]

Statement regarding condition of the general fund

The bill requires the fiscal officer of a municipal corporation, county, and township to furnish a monthly statement to the chief executive officer and the legislative authority of the municipal corporation, the board of county commissioners, or the board of township trustees, as appropriate, showing the condition of the municipal corporation's, county's, or township's general fund. The statements must provide a summary of the status of appropriations to enable the chief executive officer and the legislative authority, or the board, to exercise and maintain effective

[21] R.C. 5705.13.

[22] R.C. 5705.39.

supervision and control over the expenditures of the municipal corporation, county, or township. Upon the request of the chief executive officer or legislative authority, or the board, the fiscal officer also must furnish statements showing the condition of any other fund.[23]

If the chief executive officer or the legislative authority of the municipal corporation, the board of county commissioners, or the board of township trustees, ascertains that the available revenue receipts and balances for the general fund for the current fiscal year will in all probability be less than the appropriations for the year, the chief executive officer or the legislative authority, or the board, must take such actions as will prevent the expenditures and incurred obligations of the municipal corporation, county, or township from exceeding such revenue receipts and balances. The bill defines "expenditures and incurred obligations" as including all moneys expended or obligated pursuant to appropriations by the legislative authority of a county, township, or municipal corporation.

If the chief executive officer or the legislative authority of the municipal corporation, the board of county commissioners, or the board of township trustees, ascertains that the available revenue receipts and balances for any fund other than the general fund for the current fiscal year will in all probability be less than the appropriations from that fund for the year, the chief executive officer or the legislative authority, or the board, must take such actions as will prevent the expenditures and incurred obligations of the municipal corporation, county, or township from exceeding such revenue receipts and balances. If the chief executive officer or the legislative authority, or the board, determines that the available revenue receipts and balances in any fund or across all funds will likely be less than the appropriations for the year, the chief executive officer or the legislative authority, or the board, may issue orders or pass an ordinance or resolution to reduce expenditures or implement personnel actions, including, but not limited to, mandatory cost savings days[24] similar to those in the program established by the Director of Administrative Services for exempt state employees, who were required to forfeit up to 80 hours of holiday pay.[25]

The requirements and authorizations imposed by the bill on the chief executive officer of a municipal corporation are subject to any limitations on the scope of the officer's authority pursuant to the municipal charter, if any, and ordinances. No order

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[23] R.C. 5705.413(B) and (C).

[24] R.C. 124.392, not in the bill.

[25] R.C. 5705.413.

may be issued by a chief executive officer except in accordance with the authority granted to the officer by a municipal charter or ordinances.[26]

Mayor's protest of excessive expenditure

The bill repeals a law that authorizes a mayor to protest an expenditure authorized by the legislative authority of the municipal corporation that exceeds the municipal corporation's revenues for the current year, by entering the protest on the legislative authority's journal.[27]

Political subdivision retirement system

Actuarial valuation and report

The bill establishes various duties that the governing authority of a retirement system of a political subdivision must perform. The bill defines "political subdivision" as a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.[28] In reality, these duties and requirements apply only to the Cincinnati Retirement System, a defined benefit plan administered by the city of Cincinnati. (see **COMMENT**, below).

The bill requires the governing authority of a political subdivision's retirement system to have prepared annually, by or under the supervision of an actuary, an actuarial valuation of the pension assets, liabilities, and funding requirements of the retirement system. The actuary must complete the valuation in accordance with actuarial standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and prepare a report of the valuation. The report must include all of the following:

- A summary of the benefit provisions evaluated.
- A summary of the census data and financial information used in the valuation.
- A description of the actuarial assumptions, actuarial cost method, and asset valuation method used in the valuation, including a statement of the assumed rate of payroll growth and assumed rate of growth or decline in the number of members contributing to the retirement system.

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[26] R.C. 5705.413(B)(5).

[27] Repeal of R.C. 733.33.

[28] R.C. 171.20(A).

- A summary of findings that includes a statement of the actuarial accrued pension liabilities and unfunded actuarial accrued pension liabilities.

- A schedule showing the effect of any changes in the benefit provisions, actuarial assumptions, or cost methods since the last annual actuarial valuation.

- A statement of whether contributions to the retirement system are expected to be sufficient to satisfy the funding objectives established by the board. (Presumably the board is the Actuarial Standards Board.)

The governing authority must submit the report to the Ohio Retirement Study Council (Council) and the Auditor of State not later than the first day of September following the year for which the valuation was made.

Amortization of unfunded pension liabilities; amortization plan

The bill requires the governing authority of a political subdivision's retirement system to establish a period of not more than 30 years to amortize the retirement system's unfunded actuarial accrued pension liability. If, in any year, the period necessary to amortize the unfunded actuarial accrued pension liability exceeds 30 years, as determined by the annual actuarial valuation required by the bill, the governing authority, not later than 180 days after receipt of the valuation, must prepare and submit to the Council and the Auditor of State a report that includes the number of years needed to amortize that liability as determined by the annual actuarial valuation, and a plan approved by the governing authority that indicates how the governing authority will reduce the amortization period of that unfunded liability to not more than 30 years.[29]

The Council must determine whether the amortization plan is reasonable in comparison to plans established by the "other retirement systems." (Presumably these other retirement systems are the state retirement systems.) The Auditor of State must determine whether the plan is fiscally reasonable with respect to any other financial obligations of the political subdivision. The legislative authority of the political subdivision must adopt a plan only if the plan is approved by both the Council and the Auditor of State. No political subdivision may fail to substantially comply with the plan that is adopted.[30]

If a political subdivision fails to adopt an amortization plan or to substantially comply with an approved plan, upon certification of the Auditor of State, the Auditor of

[29] R.C. 171.21(A).

[30] R.C. 171.21(B) and (C).

State must notify the Office of Budget and Management (OBM), and all "state funding," as defined in "**Suspension of state funding**," above, for that political subdivision, other than benefit assistance to individuals, must be withheld until subsequent notification from the Auditor of State to OBM that a plan has been adopted or substantial compliance with the plan has been achieved, as the case may be. Upon receiving the subsequent notification, OBM is required to release all funds withheld from the political subdivision.[31]

State funding will not be withheld if the legislative authority of the political subdivision adopts an approved plan in accordance with the bill, the adopted plan becomes the subject of a resolution for a referendum vote on the plan, *and* a majority of the electors voting on the question disapprove the plan.[32]

COMMENT

1. The retirement provisions of the bill, insofar as they apply to municipal corporations, may be affected by the home rule provision of the Ohio Constitution that gives municipal corporations authority to exercise all powers of local self-government.[33] Employee compensation has been held to be a matter of local self-government.[34] And if a municipal retirement system is viewed as being a form of employee compensation, management of the system might be a matter of municipal local self-government that is exempt from the retirement provisions of the bill. But another home rule provision of the Ohio Constitution authorizes the General Assembly to pass laws providing for the examination of the books and accounts of the public undertakings of municipal corporations.[35] And if the municipal retirement provisions of the bill effectively provide for such an examination, then the municipal retirement provisions may be effective notwithstanding the powers of municipal local self-government.[36]

2. The retirement provisions of the bill also may be affected by the provision of the Ohio Constitution that requires laws to have a general and uniform operation.[37] On

[31] R.C. 171.21(D).

[32] R.C. 171.21(E).

[33] Ohio Constitution, Article XVIII, sec. 3.

[34] *United Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local Union No. 377 v. City of Youngstown*, 64 Ohio St.2d 158, 160 (1980), citing *State ex rel. Mullin v. Mansfield*, 26 Ohio St.2d 129 (1971).

[35] Ohio Constitution, Article XVIII, sec. 13.

[36] 1938 Op. Atty. Gen. No. 2225.

[37] Ohio Constitution, Article II, Sec. 26.

the one hand, the retirement provisions are drafted in such a manner that they can apply to any municipal or other political subdivision retirement system. But in actual operation the retirement provisions will apply to only the Cincinnati Retirement System. It has been held that a law is to be evaluated under the general and uniform rule "by the nature of its subject matter, its operation and effect, and not by its form only."[38] This might suggest that the operation of the retirement provisions, and not their drafting, is decisive. But it also has been held that a law, currently applying to one instance, nevertheless is general and uniform if it could affect other instances in the future.[39] This might indicate that, while only the Cincinnati Retirement System currently is subject to the retirement provisions, other municipal or political subdivision retirement systems conceivably might come into existence in the future that then would be subject to the retirement provisions.[40]

HISTORY

ACTION	DATE
Introduced	11-06-13

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[38] *Hixson v. Burson*, 54 Ohio St. 470, syllabus paragraph 1 (1896).

[39] *Assur v. Cincinnati*, 88 Ohio St. 181 (1913).

[40] As noted in the preceding paragraph, municipal corporations arguably have authority under their powers of local self-government to create municipal retirement systems for their officers and employees. Ohio Constitution, Article XVIII, Sec. 3 (discussed in the first comment). It also may be significant with regard to the retirement provisions that the home rule provisions concede a policy of statewide fiscal oversight. Ohio Constitution, Article XVIII, Sec. 13 (also discussed in **COMMENT** 1). The retirement provisions may form part of this policy.