

LOCAL GOVERNMENT FISCAL RESPONSIBILITY ACT

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House Bill 5654

Sponsor: Rep. Philip LaJoy

Committee: Local Government and Urban Policy

Complete to 3-22-04

A SUMMARY OF HOUSE BILL 5654 AS INTRODUCED 3-16-04

The bill would create a new act that would be known as the Local Government Fiscal Responsibility Act. Under the bill, the state treasurer would be authorized and required to invoke this act whenever one or more of the following occurred:

- a written request from the governing body or the chief administrative officer of a local government for an investigation, with the request to identify the existing or threatened fiscal issues;
- written notification from a pension fund alleging the local government had missed a deposit;
- written notification that employees had not been paid and that it was seven days or more since a scheduled date of payment;
- notification that a bond had been defaulted or a bond covenant violated;
- a request for preliminary review by the State Senate or State House of Representatives;
- a violation of the Municipal Finance Act, the Emergency Municipal Loan Act, or the Uniform Budgeting and Accounting Act;
- notice that the local government had failed to provide an annual financial report or audit required by the Uniform Budgeting and Accounting Act and conforming with the minimum requirements of the state treasurer;
- the local government was delinquent in the distribution of tax revenues that it had collected for another taxing jurisdiction and that taxing jurisdiction requested a review;
- a court had ordered an additional tax levy without the prior approval of the local unit's governing body; or,
- the local government's *fiscal score* was 25 or greater.

[Fiscal score. Under the bill, each community would be assigned a fiscal score, with points awarded based on data in five key areas—the general fund fund balance; the number of years of a downward trend in general fund tax revenues; the number of years of a downward trend in general fund revenues; capital expenditures as percent of the general fund budget; and the ratio of pension benefits and required contributions to current pay and benefits. The score would be calculated by the local auditor in a manner specified in the bill, and submitted with the audit report.]

Investigation by state treasurer; investigation team. Within 15 days after notice, the state treasurer would be required to begin an investigation of the financial condition of the local government, and complete that investigation within 30 days (although one 30-day extension could be granted). The investigation team would have full power to examine all books and records, and utilize the services of other state agencies to complete its work. After the investigation, the team would have to conclude—based upon the occurrences noted above, and the fiscal score—whether the local unit of government should be considered a tier 1 local government (any conditions, or score of 25 to 40), tier 2 local government (any conditions, or score between 41 to 55), or tier 3 local government (more than one condition, and fiscal score of 56 or more).

If the investigation team concluded the local unit was a **tier 1 local government**, the treasurer would require that the local government file a **continuing operations plan** within 30 days. The bill specifies a number of components of the plan (a three-year budget, three-year cash-flow, an operating plan that delineates changes to ensure viability, and a maintenance and capital expenditures plan). If the community failed to submit an acceptable plan, it would be downgraded, and receive a tier 2 rating.

If a community were classified as a **tier 2 local government**, the state treasurer would be required to appoint a **financial monitor** within 15 days. The financial monitor could not have been an elected or appointed official or employee of the local government for at least five years before appointment, and would not have to be a resident of the community. The financial monitor would be paid from the local government's state-shared revenues, and would serve until the local government was returned to tier 1. The local government would return to tier 1 when it corrected its tier 2 conditions, and lowered its fiscal score to less than 40.

The financial monitor would be required to develop a five-year financial recovery plan, in consultation with the local government, and include in that plan a number of reports required under the legislation.

If the investigating team concluded that the local government should be classified as a **tier 3 local government**, then the state treasurer would be required to appoint an **emergency financial manager** within five days. The financial manager could not have been an elected or appointed official or employee of the local government, for at least five years before appointment, and would not have to be a resident of the community. The financial manager would be paid from the local government's state-shared revenues, and would serve until the local government was returned to tier 2 status. The manager

could then continue as the monitor, at the discretion of the state treasurer. A community would return to tier 2 status when it corrected its tier 3 conditions and lowered its fiscal score to less than 56.

Orders issued by the financial manager to officials or employees of the local government would be binding on them.

Financial manager. Under the bill, the financial manager would be required to take all actions necessary in order to alleviate the financial situation of the tier 3 local government, including but not limited to 22 separate actions specified in the bill. The actions cover budgeting; liquidation of all outstanding debt; examining all books of account; approving all appropriations, contracts, expenditures, or loans; the creation of any new position, or the filling of vacant positions; payroll review; consolidating departments and transferring functions; selling or otherwise using the assets of the local government to meet past or current obligations; applying for loans from the state; setting and revising rates for utility services; settling claims with creditors, including restructuring debt; setting and approving all actuarial assumptions for pension obligations with the recommendation of a qualified actuary; and calling for a special election to amend the charter, if necessary.

The financial manager would be required to provide monthly reports to the state treasurer summarizing his or her activities and the condition of the community.

If, in the judgment of the financial manager, there were no reasonable alternative, he or she could authorize the tier 3 local government to seek bankruptcy protection under Chapter 11 of the United States Code, after giving 10 days' written notice to the state treasurer.

Upgrading to higher tier. Under the bill, a local government would be upgraded to a higher tier if the financial monitor or manager made that determination in his or her quarterly report. A determination could not be made until every factor giving rise to the classification had been addressed and corrected.

Liability. The bill specifies that there would be no financial liability for the state, any member of an investigation team, the financial monitor, and the financial manager, for any obligation or claim held against a local government that resulted from actions taken under this legislation.

No taxing power. The bill also specifies that the proposed legislation should not be construed to give the financial monitor or the financial manager the power to impose taxes over and above those already authorized, without the approval of a majority of the qualified electors voting at a regular or special election.

Cooperation. Elected officials of a local government would be required to provide assistance and information necessary and properly requested by an investigating team, the

financial monitor, or the financial manager, and failure to comply would be considered gross neglect of duty.

Sunset. The act would be repealed effective December 31, 2007.

FISCAL IMPACT:

The bill is currently being examined for any fiscal impact.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.