

An Introduction to Fiscal Emergency

A brief manual designed to acquaint newly appointed members of a financial planning and supervision commission with guidelines for the commission's operation.

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Prepared by the Auditor of State's Office

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Financial Planning and Supervision Commission

Chapter 118: Local Fiscal Emergencies

As a newly appointed member of a financial planning and supervision commission (the commission), you are being asked to help guide a city, village, county or township (a local government) that is in financial trouble back to fiscal stability. The purpose of this document is to help you understand the role of the commission. This document begins with a brief summary of the nature of a fiscal emergency and the purpose of the commission. It proceeds to provide a detailed discussion of the commission's structure, its powers and duties, its operation and its responsibilities.

General Overview of a Fiscal Emergency

Chapter 118 of the Ohio Revised Code governs the actions that the state may take when a local government is experiencing financial trouble. Depending on the severity of the problem, the Auditor of State may declare the government to be in fiscal watch or fiscal emergency. If a government is placed in fiscal watch, the Auditor of State's Office provides free assistance to help the government regain its financial footing. If a fiscal emergency is declared, a commission is appointed to oversee the financial activity of the government until the emergency is terminated.

The determination of whether a local government should be declared in fiscal emergency is based on an analysis performed by the Auditor of State's Office. An analysis is initiated either at the request of the Governor, the county budget commission or the local government itself, or may be initiated directly by the State Auditor. There are six conditions that

mandate the declaration of a fiscal emergency, ranging from not making payroll or debt payments timely to having accumulated substantial unpaid bills or running the funds of the local government into significant deficits. (For a discussion of funds and the basic accounting process followed by the local government, see the Appendix.)

Once a local government is declared in fiscal emergency, a commission is formed. The primary function of the commission is to assist in the preparation of a long-range financial plan designed to remedy the government's financial problems. The plan is intended to be a detailed, step-by-step guide agreed to and accepted by both the local government and the commission. Once the plan is in place, the role of the commission is to insure that the plan is followed.

The Auditor of State's Office serves as financial supervisor to the commission, providing technical support and advice. The Auditor of State's Office also reviews the government's existing system of accounting and reporting and issues a report identifying needed improvements.

The activity of the commission continues until the local government has eliminated the fiscal emergency conditions that prompted the initial declaration and made the necessary improvements to its accounting system, or has a plan in place that insures that these conditions will be satisfied within two years from the date of the termination. If the emergency is terminated prior to these conditions being met, the Auditor of State is required to monitor the progress of the government to insure full implementation of an effective accounting system and the complete elimination of the emergency conditions.

Organization of the Commission: (R.C. §118.05)

When a fiscal emergency has been declared by the Auditor of State in any city, village, county or township, a financial planning and supervision commission is established. A commission consists of seven voting members. Four members are ex-officio while three are appointed.

Ex-Officio Members

The Treasurer and the Director of Budget and Management serve as ex-officio members representing the state. The remaining ex-officio members hold elected positions within the local government. In a municipality, they are the mayor and the presiding officer of the legislative authority. In a county, the President of the Board of Commissioners and the County Auditor serve as ex-officio members. In a township, a member of the Board of Trustees and the County Auditor speak on behalf of the township. In most cases, each ex-officio member may designate an individual to attend meetings on the member's behalf. All designations must be in writing, executed by the ex-officio member and filed with the secretary of the commission. Designations may be changed with due regard for continuity.

Appointed Members

Three local members of the commission are nominated and appointed in the following manner. Within 10 days of a declaration of fiscal emergency, the mayor and presiding officer of the legislative authority of the municipality, the board of county commissioners, or the board of township trustees nominate five individuals whose names are submitted to the Governor. If the Governor is not satisfied that at least three of the nominees are well qualified, he requests that the officials submit the names of not more than three additional nominees within five days. Within 30 days after receiving the nominations the Governor appoints three members to the commission from the nominations or he may appoint any other individuals who are qualified. The appointments are made with the advice and consent of the Ohio Senate. The appointees serve for the life of the commission, subject to removal by the Governor for misconduct in office. In the event of a resignation or other vacancy, the Governor appoints a successor under this same process.

Initial Meeting and Quorum

Immediately after appointing the three local members, the Governor calls the first meeting of the commission. Written notice of the time, date and location must be provided to each member at least 48 hours prior to the meeting. The director of budget and management or his designee is the chairperson. The commission must elect a vice-chair and may appoint a

secretary and other officers as needed. These appointees may, but need not, be members of the commission. The commission may adopt and amend by-laws. Five members constitute a quorum for conducting business. For any action taken by a vote of the commission, five affirmative votes are required. All members of the commission may vote on all matters coming before the commission regardless of the office the member may hold within the local government and may continue to exercise all functions of their offices within the local government while serving as members of the commission. The local government must provide reasonable office space for the commission to conduct its business.

Auditor of State's Role

The Auditor of State serves as the financial supervisor to the commission. If requested, the Auditor of State will designate employees of the office to assist the commission. Upon request by the commission, the head of any state agency will temporarily assign accounting and budgeting personnel to assist the commission.

Qualifications and Disclosure Responsibilities of the Three Appointed Members: (R.C. §118.05)

Each appointed member of the commission must have knowledge and experience in financial matters, financial management or business organization or operations, and at least five years of private sector experience in the management of a business or financial enterprise, or in management consulting, public accounting or other professional activity. The member must reside within the local government under fiscal emergency. A member cannot have held any elected office during the five years preceding his or her appointment. A member may not become a candidate for elected public office while serving on the commission.

Each appointed member is required to file a signed written statement with the commission setting forth the general nature of the sale of goods, property or services, or of loans to the local government in which the appointee or the appointees' family has a pecuniary interest. Members must also disclose if they, or an immediate family member, own more

than 5 percent in any corporation, partnership or enterprise that has a pecuniary interest in any sale or loan to the local government.

Development of a Financial Plan (R.C. § 118.06)

In the approach created by the legislature within Chapter 118, the key to a local government's eventual financial recovery is the development of a sound, complete and detailed financial recovery plan. The primary responsibility of the commission is to insure that the government develops a workable plan and then operates within the plan's constraints.

The Local Government's Role

Within 120 days after the first meeting of the commission, the mayor of the municipality, the board of county commissioners or the board of township trustees must submit to the commission a detailed financial plan, approved by ordinance or resolution, which contains the following:

- 1 Actions that will be taken by the local government to:
 - a Eliminate all fiscal emergency conditions determined to exist by the analysis conducted by the Auditor of State's Office;
 - b Satisfy any judgments, past due accounts payable, and all past due and payable payroll and fringe benefits;
 - c Eliminate the deficits in all deficit funds;
 - d Restore to construction funds and other special funds any moneys that were used for purposes not within the purposes of such funds, borrowed from construction funds by the purchase of debt obligations of the local government with the moneys of such funds or missing from the construction funds or special funds and not accounted for;
 - e Balance the budgets, avoid future deficits in any funds and maintain current payments of payroll, fringe benefits and all accounts;
 - f Avoid any fiscal emergency condition in the future;
 - g Restore the ability of the local government to market long-term general obligation bonds under provisions of applicable law.

- 2 The legal authorities permitting the local government to take each of the above actions;
- 3 The approximate dates of the commencement, progress upon, and completion of the above actions, and a reasonable period of time expected to be required to implement the plan. The local government, in consultation with the commission, shall prepare a reasonable time schedule for progress toward and achievement of the requirements for the plan. The plan shall be consistent with that time schedule;
- 4 The amount and purpose of any debt obligations that will be issued, together with assurances that any debt obligations will not exceed debt limits supported by appropriate certifications by the fiscal officer of the local government and the county auditor;
- 5 Assurances that the local government will establish monthly levels of expenditures and encumbrances as required by Chapter 118;
- 6 Assurances that the local government will conform to statutes with respect to tax budgets and appropriation measures;
- 7 The detail, form and supporting information that the commission requires.

As you can tell by reading the guidelines, the plan is intended to be a detailed blueprint identifying the specific steps the local government anticipates taking, when they will be taken and the authority that authorizes the local government to take them. Once the plan is adopted by the legislative authority, it is filed with the commission and the Auditor of State.

Commission's Role in Financial Plan Implementation

After consultation with the Auditor of State, the commission either approves or disapproves the plan. If the commission rejects the financial plan, it must inform the mayor and legislative authority of the municipality or the board of county commissioners or the board of township trustees of the reasons for its rejection. Within 30 days after the rejection of any plan, the mayor with the approval of the legislative

authority, the board of county commissioners or the board of township trustees must submit another plan to the commission and the Auditor of State for approval or rejection.

The authority of the commission to reject a financial plan is limited. Any initial or subsequent financial plan passed by the local government must be approved by the commission provided it complies with the seven criteria outlined above, and the commission finds that the plan is bona fide and can reasonably be expected to be implemented within the period specified in the plan.

Amendment of a Financial Plan

The legislative body of the local government may conduct any financial plan subsequent to its adoption in the same manner as the passage and approval by the commission of an initial or subsequent plan.

Failure to Submit a Financial Plan

If the local government fails to timely submit a financial plan, expenditures from the government's general fund in each month may not exceed 85 percent of the expenditures from the general fund for that same month in the preceding fiscal year, unless the commission authorizes a higher percent for any month based upon the local government's justification of need.

Rejection of a Proposed Plan

If the commission rejects a proposed plan, the local government is prohibited from making any expenditure that is inconsistent with the reasons given by the commission for the plan's rejection. If the local government fails to submit a revised financial plan within the time required, the 85 percent limitation on monthly general fund expenditures for failure to submit a plan goes into effect.

Adherence to the Financial Plan

There are two aspects of the local government's ongoing financial activity where adherence to the constraints of the financial plan is critical, the budgetary process and the issuance of debt. The involvement of the

commission in each of these activities is designed to prevent the local government from diverging from the approved plan.

Budgetary Process

Before spending any money, every city, village, county and township must comply with the budgetary process set forth in Chapter 5705 of the Ohio Revised Code. This chapter establishes restrictions on the financial activities of local governments, which are designed to insure that expenditures are limited to estimated available resources. A local government that is in fiscal emergency is likely to have violated one or more of these restrictions. The budgetary process created by the chapter includes guidelines for appropriations, estimated resources and the preparation of an annual tax budget. For a local government in fiscal emergency, this process is further limited by the inability to vary from the actions contained in the financial plan.

Nature of Appropriations

The primary responsibility of the legislative authority of any local government is to determine how to allocate available financial resources to meet the service demands of the community. The document used to make this allocation is the appropriation measure. The appropriation measure is classified by fund and then usually by department (police, fire, highways, etc.) and account (salaries, fringe benefits, etc.) within each fund. The amount of money allocated by the legislative authority to each account within the appropriation measure sets a limit on how much may be spent for that purpose during the year. The appropriation measure may be amended during the year by the legislative authority as circumstances change.

Existing Appropriation Measure

Any existing appropriation measure that is not consistent with the initial approved plan is ineffective for purposes of any expenditures to the extent it authorizes expenditures in excess of the revenues available after approval of the plan. The local government is required to amend the appropriation measure to make it consistent with the financial plan.

New Appropriation Measures

No appropriation measure may be adopted that is contrary to the approved financial plan. An appropriation measure must be submitted to the commission or, when authorized by the commission, to the Auditor of State, for review to determine whether or not the measure is consistent with the financial plan prior to its approval by the legislative authority. The local government is required to cooperate with the commission or the Auditor of State during this review. The commission or Auditor of State advises the legislative authority if any modifications in the appropriation measure are considered necessary.

Budget Commission

In each county, a county budget commission oversees the budgetary process. The members of the budget commission are the county auditor, county treasurer and the county prosecutor.

Estimated Resources

The certificate of estimated resources identifies by fund the amount of money a local government has to spend. The certificate is issued by the county budget commission and sets the limit a legislative authority may appropriate within each fund. Before giving a certificate of estimated resources to the local government, the county budget commission must consult with the commission, and the commission is authorized to revise the certificate to insure that it is consistent with the financial plan.

Tax Budget

For most local governments, the budgetary process begins with the preparation of the tax budget. The tax budget sets forth by fund the amount the local government estimates it will have available to spend in the following year and, by fund, department and account, the amounts the local government would like to spend during the following year. It is prepared after consultation with the officials and department heads within the local government and after public hearings where the community is offered an opportunity for input. The completed tax budget is filed with the county budget commission and used to set the rates at which property taxes will be levied for the following year.

Any tax budget of the local government must be consistent with the approved financial plan. Before submitting the tax budget to the county auditor, the local government must submit the budget to the commission and cooperate in its review. The local government must make the modifications to the tax budget that the commission determines to be necessary to conform to the financial plan. If the government fails to make these modifications, the commission must certify the modifications to the budget commission. The budget commission shall then make these modifications.

In several counties, the budget commission has replaced the tax budget with less detailed data specified by the budget commission. This less detailed information should still be reviewed by the commission to insure conformance with the plan.

Limitations on Revenue Estimates

For purposes of the financial plan, tax budgets and certificates of estimated revenues, estimated revenues may not anticipate a favorable vote of the electorate of the local government or the general assembly, other than appropriations of moneys for existing programs at current levels. Any revenues that are conditional upon the actions of the local government's officials or departments must be identified within each month and be accompanied by documentation showing that the action necessary to insure receipt of the revenue has been taken. The commission may exclude from revenue estimates any amounts that it considers uncertain of realization.

Debt Obligation Activities

A local government in fiscal emergency may be faced with two problems which can be addressed by issuing debt. The first is a short-term cash flow problem, which arises when expenditures come due prior to the receipt of revenues. This issue may be addressed by issuing debt that will be repaid from future current year receipts. Chapter 118 authorizes several types of short-term cash flow borrowing. It is anticipated that this debt will be fully repaid prior to the end of the fiscal year in which the debt is issued.

A second problem that borrowing may be used to address, and a primary reason for fiscal emergency declarations in Ohio, is overspending from a local government's general and other operating funds. In this situation, the local government has spent substantially more for operating purposes than it had available. This situation occurs when the local government pays operating costs using resources that are restricted for other purposes, such as construction or debt service. This condition is presented on financial statements by reporting a deficit in the general operating fund. The deficit represents the restricted resources that have been spent improperly and must be repaid. Chapter 118 authorizes long-term borrowing to address this situation.

Careful consideration must be given before approving long-term borrowing to address this type of deficit because it requires the local government to use money received in future years to pay debt that otherwise would have been available to pay for operations. It uses future years' resources to correct a current year problem. The problem is post-poned or spread over a longer period, which may make it more manageable or make it someone else's problem, but may not actually solve it. Borrowing in this situation probably should not be employed by itself, but rather combined with other approaches to arrive at an overall strategy. A primary issue will be whether the reduced money for operations in future years will still be enough to provide adequate services.

Debt obligations may be issued or incurred by the local government only upon prior approval by the commission. The commission is required to disapprove the issuance of debt obligations if, in its judgment, issuance would impede or be inconsistent with the purposes of the financial plan.

Conditions for Approval

The commission may not approve the issuance of debt obligations unless:

- 1 The ordinance authorizing their issuance, the ordinance or resolution providing for their award and every document forming part of the contract with the purchasers of debt obligations are first submitted to the commission.

- 2 The ordinance authorizing the debt obligations contains a covenant to the effect that the local government will comply with all provisions of Chapter 118, with the orders, directions and requests of the commission and the Auditor of State, and with the financial plan. The commission may prescribe the form of the covenant.
- 3 The local government, at the time of such approval, is in compliance with Chapter 118.

The commission may adopt procedures for (a) giving preliminary or conditional approval of an ordinance authorizing debt obligations; (b) giving final approval upon review of the remaining documents; and (c) evidencing such approvals.

Limitations on Debt Issuance

The commission may not approve the issuance of a debt obligation if issuance:

- 1 Would cause the local government to exceed debt limits;
- 2 Would impair the ability of overlapping subdivisions to issue unvoted faith and credit debt obligations for necessary permanent improvements, as defined in R.C.§133.01;
- 3 Would, in the judgment of the commission, lead to the reallocation of minimum levies as described in division (A) (3) of R.C §118.03.

Market Enhancements

Chapter 118 prescribes a variety of terms and conditions that are designed to insure eventual repayment of debt issued by a local government in fiscal emergency. Many of these procedures may be included as covenants in the documents accompanying the issuance. They include such things as the use of a fiscal agent to hold the money that will be used for debt repayment and the direct payment of pledged receipts to the fiscal agent. There are also limitations on the amount of debt that may be issued and the debt's maturity. Proceeds of the debt may also be carefully controlled to insure that they are used only for the purposes identified in the authorizing statute.

There are other practices and procedures that may be incorporated into any debt issue that are designed to enhance the marketability of the issue. Bond counsel will be able to provide guidance on which need to be included in a specific issue.

Authorized Debt

Chapter 118 authorizes the issuance of current revenue notes and advance tax payment notes to address short-term cash flow issues. The Chapter also permits the issuance of local government fund notes and general obligation, special obligation and revenue bonds for the purpose of eliminating fiscal emergency conditions.

Local Government Fund Notes

During a fiscal emergency period and with the commission's approval, a local government may issue local government fund notes for a period of no more than eight calendar years, in anticipation of amounts to be allocated to it pursuant to R.C. §5747.50(B) or to be apportioned to it under R.C. §5747.51 or 5747.53. The principal amount of, and interest on, the notes due and payable in any year shall not exceed 50 percent of the total amount of local government fund moneys allocated or apportioned to the local government for the year preceding the year in which the notes are issued. The notes may mature in semiannual or annual installments in such amounts as may be fixed by the commission and need not mature in substantially equal semiannual or annual installments. The notes are payable solely from local government fund money.

Bonds

Chapter 118 authorizes the issuance of general obligation, special obligation or revenue bonds for the purpose of eliminating fiscal emergency conditions. Notes in anticipation of the issuance of the bonds may also be issued. Bonds have a maximum maturity of 20 years and the notes have a maximum maturity of five years.

Commission Powers and Duties: (R.C. § 118.07)

Commission Powers

Every financial planning and supervision commission has the following powers, any of which may be assigned to the financial supervisor:

- 1 To review tax budgets, tax levy ordinances, bond and note ordinances or resolutions, appropriation measures and certificates of estimated resources to insure that all are consistent with the financial plan and a balanced budget for the current year.
- 2 To review supporting information upon which the plan and budget are based to determine whether revenue estimates and estimates of expenditures and appropriations will produce a balanced budget.
- 3 To inspect and secure copies of documents, ordinances, resolutions or instruments related to financial accounting and reporting systems, debt obligations, debt limits, any financial plan, balanced budgets, appropriation measures, reports of audits, statements or invoices or other worksheets or records of the local government. Any attorney-client privilege remains inviolate.
- 4 To inspect and secure copies of any document, instrument, certification, records of proceedings or other worksheet or records of the bureau, county budget commission, county auditor or other official or employee of the local government or other political subdivision, unit or agency of government of the state.
- 5 To review, revise and approve determinations and certifications affecting the local government made by the county budget commission or county auditor to insure that they are consistent with the laws of the state.
- 6 To bring civil actions, including mandamus, to enforce Chapter 118.
- 7 To approve the amount and purpose of any issue of debt obligations.
- 8 To authenticate and assist the appropriate officers of the local government in the delivery of debt obligations.
- 9 To consult with the officials of the local government and the Auditor of State regarding any necessary or appropriate steps to bring the

books of account, accounting systems and financial procedures and reports into compliance with requirements prescribed by the Auditor of State, and on desirable modifications and supplementary systems and procedures.

- 10 To provide assistance to the local government in the structuring of the terms and the placement or sale of debt obligations.
- 11 To perform all other powers, duties and functions as provided under Chapter 118.
- 12 To make and enter into all contracts and agreements necessary or incidental to the commission's performance of its duties and exercise of its powers.
- 13 To consult with officials of the local government and make recommendations for cost reductions or revenue increases to achieve balanced budgets and carry out the financial plan.

Commission Duties

Review of Appropriation Measures

During the fiscal emergency period, the commission shall review the local government's appropriation measure for the next fiscal year and do the following:

- 1 Determine the adequacy of revenues to meet expenditures for the fiscal year;
- 2 Determine the extent of any deficiency of revenues to meet expenditures;
- 3 Require documentation to substantiate any item of revenue or appropriation;
- 4 Report on its determination no later than 60 days after receipt of an appropriation measure for the next fiscal year.

When the period of fiscal emergency begins more than three months before the end of the current fiscal year, the report and determination shall also be made for the appropriation measure for the current fiscal year, and the report shall be issued within 60 days after taking office.

In making its determination, the commission may rely on any information considered in its judgment to be reliable or material. The commission is not restricted by any tax budget or certificate or any other document which the local government may have adopted or received from any other governmental agency.

Monthly Levels of Expenditure

During the fiscal emergency, the commission must require the local government to establish, by ordinance or resolution, monthly levels of expenditures and encumbrances consistent with the financial plan and the commission's review of revenues compared to expenditures. The commission must approve and monitor the monthly levels of expenditures and encumbrances and require documentation to substantiate any departure from these levels.

The responsibility for reviewing and reporting on the appropriation measures and for monitoring monthly expenditures may be assigned by the commission to the financial supervisor.

Annual Report

Each year, on or before the first day of April, the commission is required to report to the Speaker of the House of Representatives and the President of the Senate concerning the progress of the local government to eliminate fiscal emergency conditions, failures to comply with Chapter 118 and make recommendations for further actions. Such actions may include legislative action to make provisions of law more effective or to enhance local revenue or financing capabilities. The commission may make interim reports as it deems appropriate and must provide additional reports as requested by either house of the General Assembly.

Termination of the Commission: (R.C. §118.27)

Conditions for Termination

A commission continues to function until a determination is made that the local government has achieved all of the following:

- 1 Planned, and is in the process of good faith implementation of, an effective financial accounting and reporting system in accordance with R.C. §118.10, and it is reasonably expected that such implementation will be completed within two years;
- 2 Corrected and eliminated, or has planned and is in the process of good faith implementation of correcting and eliminating, all of the fiscal emergency conditions that existed at the time the government was declared to be in fiscal emergency, and no new fiscal emergency conditions have occurred.
- 3 Met the objectives of the financial plan described in R.C. §118.06.
- 4 The local government prepares a financial forecast for a five-year period in accordance with the standards issued by the Auditor of State and the Auditor of State renders an opinion on the forecast that is non-adverse.

Request to Terminate the Commission

The local government, the Governor or the commission may make a written request to the Auditor of State to conduct an analysis to determine if the conditions exist to terminate the commission, or the Auditor of State may initiate the process. A decision to terminate the commission and its functions may also be made by the commission. The decision to terminate the commission is certified to the commission, the Auditor of State, the Governor and the budget commission.

Commission's Final Report

The commission is required to prepare and submit a final report of its activities, in an appropriate form for the purpose of providing a record of its activities and assisting other commissions created under Chapter 118 in the conduct of their functions. All of the books and records of the commission are to be delivered to the Auditor of State for retention and safekeeping.

Monitoring by the Auditor of State after Termination

The Auditor of State is required to monitor the progress of the local government in correcting and eliminating the fiscal emergency conditions that still remained at the time of termination. If the local government has

not corrected and eliminated all fiscal emergency conditions within two years from the date of termination, the Auditor of State may re-declare the fiscal emergency.

If, at the time of termination, an effective financial accounting and reporting system has not been fully implemented, the Auditor of State must monitor the progress of implementation and exercise the authority to secure full implementation at the earliest time feasible, but within two years from termination of the commission.

Cooperation with the Commission

The officials and employees of the local government and the state are authorized and directed by statute to assist the commission and the financial supervisor diligently and promptly in the prosecution of their duties, including the furnishing of any required materials and documents.

The commission may direct its certifications, notifications, orders or requests to particular officers of the local government or the state, or to the local budget commission, by mail or other delivery. Any directives are effective and binding upon the officer, county budget commission or local government, and upon officials and employees who have the responsibility to act in the matter, have within their control the authority to perform consistent with the directive or have in their possession the information required or requested. The duty to act pursuant to any certification, notification, order or request may be enforced by writ of mandamus petitioned for by the commission on behalf of the state.

The local government and its officers and employees who have possession of information, or the responsibility for developing information related to the functions of the commission, must at all times cooperate with the commission. They are required to provide, on a continuing basis, all information requested, ordered or needed by the commission or the Auditor of State to formulate judgments regarding (a) revenue and expenditure estimates; (b) the financial plan or any modification submitted by the local government; (c) the monitoring of the implementation of the

financial plan; and (d) consideration of any amendments of the financial plan initiated by the commission or the local government. All information and reports by the local government and its officers and employees must be in the form and include details as requested by the commission.

Expenses, Compensation, Payment of Bills: (R.C. § 118.08 and R.C. § 118.09)

General Expenses

The members of the commission serve without compensation, but are paid necessary and actual expenses that are incurred while engaged in the business of the commission. Any expense or obligation incurred by the commission is payable solely from appropriations made by the General Assembly.

Auditor Related Expenses

The commission will enter into an annual contract with the Local Government Services Section of the Auditor of State's Office that identifies the services the commission wishes to receive, the rate associated with providing those services and an estimate of the hours required to perform the requested services. All expenses for services rendered by the Auditor of State for a period of 24 months are paid by the commission from an appropriation made by the General Assembly. Expenses for services rendered beyond this period are borne by the local government unless the director of budget and management waives the costs and allows payment in accordance with the following:

- 1 If the continued performance of the Auditor of State is required for a period of 25 to 30 months, the local government is responsible for 20 percent of the cost.
- 2 If the continued performance of the Auditor of State is required for a period of 31 to 36 months, the local government is responsible for 50 percent of the cost.

- 3 If the continued performance of the Auditor of State is required for a period of 37 months or more, the local government is responsible for 100 percent of the cost, except as follows:

If the local government fails to make any required payment to the Auditor, the Auditor of State may certify the amount due to the county auditor. That amount shall be withheld from any fund or funds belonging to the local government and in the custody of the county auditor, except for funds reserved for payment of local government fund notes. Upon receiving the certification from the Auditor of State, the county auditor shall draw a voucher for the amount due in favor of the Auditor of State.

Liability for Claims or Damages: (R.C. § 118.05)

The Auditor of State, the commission members and any person authorized to act on the commission's behalf are not personally liable or subject to any suit, judgment or claim for damage from the exercise of, or failure to exercise, the powers, duties and functions granted to them under Chapter 118.

These individuals and the commission are subject to mandamus proceedings to compel the performance of their duties with respect to debt obligations issued under this Chapter. This provision is designed to make the securities marketable by reassuring the purchasers of the securities that the obligations will be repaid timely and in full.

Penalties

During the period of the fiscal emergency, the officers and employees of the local government are prohibited from knowingly entering into an obligation or making an expenditure that is contrary to the approved financial plan, knowingly entering into financial transactions that require commission approval without first receiving that approval, knowingly failing or refusing to prepare or amend a financial plan, knowing preparing

or presenting to the commission information that is false or misleading or knowing using moneys of a construction or debt service fund for a purpose other than the purpose for which the fund was created.

The violation of any of these prohibitions is a second degree misdemeanor. In addition to the penalties normally associated with a second degree misdemeanor, the officer or employee also forfeits the office or employment with the local government.

APPENDIX

Local Government Financial Records

Local governments receive money from a variety of sources including property and income taxes from residents, grants from the State and Federal government, fees from people to whom they provide services and sales tax from people who make purchases within the community. Many of these revenues are restricted as to how they may be spent. For example, voters may have approved a property tax levy that is specifically for the operation of the police department or the State may have provided a grant for the construction of a street. It is the responsibility of the local government to be able to demonstrate that each of these resources was used for the intended purpose. If the government maintained its financial records as one single entity (like one giant checkbook), it would be very difficult to determine that the resources were being used for the appropriate purposes. The financial records of local governments are therefore split into many individual funds. The purpose of a fund is to segregate the resources that are restricted to be used for a particular purpose from the other resources of the government. Each local government maintains the following types of funds.

Special revenue funds – these funds account for resources which are restricted for use within the operation of a specific program of the government. A property tax levy for the operation of the police department would be accounted for in a special revenue fund.

Capital projects funds – these funds account for resources that are restricted for the acquisition or construction of major capital assets, like buildings or equipment. A grant from the Ohio Department of Transportation for the building or widening of a road would be accounted for in a capital projects fund.

Debt service funds – these funds account for receipts that are to be used for the payment of principal and interest on debt.

Enterprise funds – activities which are supported by charges to the recipient of the services being provided are accounted for in enterprise funds. Utilities like water, electric and sewer are routinely accounted for in enterprise funds.

Internal service funds – like enterprise funds, these funds account for payments for services. The difference is that the charges are paid from departments within the local government. An example of an internal service fund activity is an employee medical benefits self-insurance program, where the local government has elected to pay the medical claims of its employees itself rather than contract with an insurer and pay premiums.

Fiduciary funds – there are several types of fiduciary funds, but the common characteristic is that the money in these funds is held or used for the benefit of other governments, individuals or organizations. No money for programs of the local government itself is accounted for in fiduciary funds.

General fund – the general fund accounts for all resources not required to be accounted for somewhere else. The general fund accounts for resources which are unrestricted as to how they may be used. All local governments have a general fund.

Within each fund, a local government establishes an account structure to help it track where its revenues come from (sources) and how its money is spent (uses). This approach provides the information necessary to manage, control and report on the government's many varied activities. Typical revenue sources include:

- Property Tax
- Income Tax
- Sales Tax
- Charges for Services
- Fees, Licenses and Permits
- Contributions and Donations
- Grants
- Fines and Forfeitures

Each major source category is further classified either by the specific nature of the revenue (i.e. real property tax, personal property tax etc.) or by the department or activity that generated the revenue (i.e. fees-health department or fees-engineering).

Each use of the government's resources (expenditure or disbursement) is also classified using categories such as program (public safety, recreation) department (police, parks) object (salaries, fringe benefits) and sub-object (regular or overtime, health insurance or retirement contribution). This account structure established by each local government identifies where the financial resources come from and how they were used. A simple financial operating statement might look like this:

	General Fund	Fire Special Revenue Fund	Debt Service Fund	Street Capital Projects Fund
Receipts:				
Property Taxes	10,000	4,500	2,300	
Charges for Services	2,000			
Grants				15,000
Other	750			
Total	\$12,750	\$4,500	\$2,300	\$15,000
Disbursements:				
Public Safety	1,200	3,600		
Recreation	3,250			
General Government	5,000			
Capital Outlay	600			
Debt Service:				13,250
Principal			2,000	
Interest			150	
Total	\$10,050	\$3,600	\$2,150	\$13,250
Excess of Receipts over Disbursements	2,700	900	150	1,750
Fund Balance Beginning of Year	6,500	1,800	900	0
Fund Balance End of Year	\$9,200	\$2,700	\$1,050	\$1,750

When a local government encounters financial problems, the underlying fund structure of the government must be recognized when formulating a recovery plan. Even though the government may have cash in the bank, the use of that cash may be restricted because the cash “belongs” to a fund where the use of the money is restricted. A government with \$250,000 in the bank may appear to have the necessary resources with which to operate, but a closer look as to how that money is allocated among its funds may present a completely different picture. For example, the cash could be allocated like this:

General Fund	(\$175,000)
Street Construction	205,000
Debt Service	44,000
Capital Projects	176,000
Total	\$250,000

This is an example of a government that has been using restricted resources to operate activities that are accounted for within the general fund. Instead of taking action to raise general fund revenues or to reduce general fund costs, the government spent restricted resources for inappropriate purposes. Now the government is faced with the more difficult task of restoring the general fund to a sound financial position. This will likely require more severe measures than those that would have prevented this situation in the first place.

DISCLAIMER

This publication is intended to provide an overview of the issues contained within and should not be utilized in the place of advice from legal counsel or in the place of the Ohio Revised Code.



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