

# AN ACT

To amend sections 118.05, 118.06, 118.11, 118.12, 118.13, and 118.99 and to repeal the version of section 118.023 of the Revised Code that is scheduled to take effect September 29, 2017, to modify the composition and powers of the financial planning and supervision commission of a political subdivision that is in a state of fiscal emergency and to clarify the duties of that political subdivision.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 118.05, 118.06, 118.11, 118.12, 118.13, and 118.99 of the Revised Code be amended to read as follows:

Sec. 118.05. (A) Pursuant to the powers of the general assembly and for the purposes of this chapter, upon the occurrence of a fiscal emergency in any municipal corporation, county, or township, as determined pursuant to section 118.04 of the Revised Code, there is established, with respect to that municipal corporation, county, or township, a body both corporate and politic constituting an agency and instrumentality of the state and performing essential governmental functions of the state to be known as the "financial planning and supervision commission for ..... (name of municipal corporation, county, or township)," which, in that name, may exercise all authority vested in such a commission by this chapter. Except as otherwise provided in division (L) of this section, a separate commission is established with respect to each municipal corporation, county, or township as to which there is a fiscal emergency as determined under this chapter.

(B) A commission shall consist of the following voting members:

(1) Four ex officio members: the treasurer of state; the director of budget and management; in the case of a municipal corporation, the mayor of the municipal corporation and the presiding officer of the legislative authority of the municipal corporation; in the case of a county, ~~the president a member~~ of the board of county commissioners and the county auditor; in the case of a county that has adopted a charter under Article X, Ohio Constitution, and under that charter has both a county executive and a county fiscal officer, the county executive and the county fiscal officer; and in the case of a township, a member of the board of township trustees and the county auditor.

The treasurer of state may designate a deputy treasurer or director within the office of the treasurer of state or any other appropriate person who is not an employee of the treasurer of state's office; the director of budget and management may designate an individual within the office of budget and management or any other appropriate person who is not an employee of the office of budget and management; the presiding officer of the legislative authority of the municipal corporation may designate any other member of the legislative authority; the board of county commissioners may designate any other member of the board or the fiscal officer of the county; and

the board of township trustees may designate any other member of the board or the fiscal officer of the township to attend the meetings of the commission when the ex officio member is absent or unable for any reason to attend. A designee, when present, shall be counted in determining whether a quorum is present at any meeting of the commission and may vote and participate in all proceedings and actions of the commission. The designations shall be in writing, executed by the ex officio member or entity making the designation, and filed with the secretary of the commission. The designations may be changed from time to time in like manner, but due regard shall be given to the need for continuity.

(2) If a municipal corporation, county, or township has a population of at least one thousand, three additional members nominated and appointed not later than fifteen days after the auditor of state determines that a fiscal emergency exists as follows:

~~The mayor and presiding officer of the legislative authority of the municipal corporation, the board of county commissioners, or the board of township trustees shall, within ten days after the determination of the fiscal emergency by the auditor of state under section 118.04 of the Revised Code, submit in writing to the governor the nomination of five persons agreed to by them and meeting the qualifications set forth in this division. If the governor is not satisfied that at least three of the nominees are well qualified, the governor shall notify the mayor and presiding officer, or the board of county commissioners, or the board of township trustees to submit in writing, within five days, additional nominees agreed upon by them, not exceeding three. The governor shall appoint three members from all the agreed-upon nominees so submitted or a lesser number that the governor considers well qualified within thirty days after receipt of the nominations, and shall fill any remaining positions on the commission by appointment of any other persons meeting the qualifications set forth in this division. All appointments by the governor shall be made with the advice and consent of the senate.~~

For a municipal corporation, the governor shall appoint one member; the mayor shall appoint one member confirmed by the legislative authority of the municipal corporation; and the county auditor of the county in which the largest portion of the territory of the municipal corporation is located shall appoint one member. The county auditor may appoint the county auditor to the commission.

For a county, the governor shall appoint one member and the board of county commissioners shall appoint two members. In the case of a county that has adopted a charter under Article X, Ohio Constitution, and under that charter has both a county executive and a county council, the governor shall appoint one member, the county executive shall appoint one member, and the county council shall appoint one member. A member of the board of county commissioners, a county executive, or a member of the county council is ineligible for appointment to the commission under this paragraph.

For a township, the governor shall appoint one member and the board of township trustees shall appoint two members. A member of the board of township trustees is ineligible for appointment to the commission under this paragraph.

Each of the three appointed members shall serve during the life of the commission, subject to removal by ~~the governor~~ the appointing authority for misfeasance, nonfeasance, or malfeasance in office. In the event of the death, resignation, incapacity, removal, or ineligibility to serve of an appointed member, ~~the governor, pursuant to the process for original appointment,~~ appointing

authority that appointed the member shall appoint a successor.

Each appointed member shall be an individual:

~~(a)~~ Who has knowledge and experience in financial matters, financial management, or business organization or operations;

~~(b)~~ Whose residency, office, or principal place of professional or business activity is situated within the municipal corporation, county, or township, except that a county auditor who serves on the commission of a municipal corporation is not required to reside or have an office or principal place of professional or business activity in the municipal corporation;

~~(c)~~ Who shall not become a candidate for elected public office while serving as a member of the commission, except a county auditor who serves on the commission of a municipal corporation may be a candidate for reelection to the county auditor's office.

(C) Immediately after appointment of the initial appointed members of the commission, the governor shall call the first meeting of the commission and shall cause written notice of the time, date, and place of the first meeting to be given to each member of the commission at least forty-eight hours in advance of the meeting.

(D) The director of budget and management shall serve as chairperson of the commission. The commission shall elect one of its members to serve as vice-chairperson and may appoint a secretary and any other officers, who need not be members of the commission, it considers necessary. The chairperson may remove ~~an appointed member appointed by the governor~~ if that member fails to attend three ~~consecutive~~ meetings. In that event, the ~~governor appointing authority~~ shall fill the vacancy in the same manner as the original appointment.

(E) The commission may adopt and alter bylaws and rules, which shall not be subject to section 111.15 or Chapter 119. of the Revised Code, for the conduct of its affairs and for the manner, subject to this chapter, in which its powers and functions shall be exercised and embodied.

(F) Four members of a commission established pursuant to divisions (B)(1) and (2) of this section constitute a quorum of the commission. The affirmative vote of a majority of the members of the commission is necessary for any action taken by vote of the commission. No vacancy in the membership of the commission shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the commission. Members of the commission, and their designees, are not disqualified from voting by reason of the functions of the other office they hold and are not disqualified from exercising the functions of the other office with respect to the municipal corporation, county, or township, its officers, or the commission.

(G) The auditor of state shall serve as the "financial supervisor" to the commission unless the auditor of state elects to contract for that service. As used in this chapter, "financial supervisor" means the auditor of state.

(H) At the request of the commission, the auditor of state shall designate employees of the auditor of state's office to assist the commission and the financial supervisor and to coordinate the work of the auditor of state's office and the financial supervisor. Upon the determination of a fiscal emergency in any municipal corporation, county, or township, the municipal corporation, county, or township shall provide the commission with such reasonable office space in the principal building housing city, county, or township government, where feasible, as it determines is necessary to carry out its duties under this chapter.

(I) The financial supervisor, the members of the commission, the auditor of state, and any person authorized to act on behalf of or assist them shall not be personally liable or subject to any suit, judgment, or claim for damages resulting from the exercise of or failure to exercise the powers, duties, and functions granted to them in regard to their functioning under this chapter, but the commission, the financial supervisor, the auditor of state, and those other persons shall be subject to mandamus proceedings to compel performance of their duties under this chapter and with respect to any debt obligations issued pursuant or subject to this chapter.

(J) At the request of the commission, the administrative head of any state agency shall temporarily assign personnel skilled in accounting and budgeting procedures to assist the commission or the financial supervisor in its duties as financial supervisor.

(K) The appointed members of the commission who are members of the board of township trustees or are not elected officials are not subject to section 102.02 of the Revised Code. Each appointed member of the commission shall file with the commission a signed written statement setting forth the general nature of sales of goods, property, or services or of loans to the municipal corporation, county, or township with respect to which that commission is established, in which the appointed member has a pecuniary interest or in which any member of the appointed member's immediate family, as defined in section 102.01 of the Revised Code, or any corporation, partnership, or enterprise of which the appointed member is an officer, director, or partner, or of which the appointed member or a member of the appointed member's immediate family, as so defined, owns more than a five per cent interest, has a pecuniary interest, and of which sale, loan, or interest such member has knowledge. The statement shall be supplemented from time to time to reflect changes in the general nature of any such sales or loans.

(L) A commission is not established with respect to any village or township with a population of less than one thousand as of the most recent federal decennial census. Upon the occurrence of a fiscal emergency in such a village or township, the auditor of state shall serve as the financial supervisor of the village or township and shall have all the powers and responsibilities of a commission.

Sec. 118.06. (A)(~~1~~) Within one hundred twenty days after the first meeting of the commission, the mayor of the municipal corporation or the board of county commissioners or board of township trustees shall submit to the commission a detailed financial plan, as approved or amended and approved by ordinance or resolution of the legislative authority, containing the following:

- (~~1~~)(~~a~~) Actions to be taken by the municipal corporation, county, or township to:
  - (~~a~~)(~~i~~) Eliminate all fiscal emergency conditions determined to exist pursuant to section 118.04 of the Revised Code;
  - (~~b~~)(~~ii~~) Satisfy any judgments, past due accounts payable, and all past due and payable payroll and fringe benefits;
  - (~~e~~)(~~iii~~) Eliminate the deficits in all deficit funds;
  - (~~d~~)(~~iv~~) Restore to construction funds and other special funds moneys from such funds that were used for purposes not within the purposes of such funds, or borrowed from such construction funds by the purchase of debt obligations of the municipal corporation, county, or township with the moneys of such funds, or missing from the construction funds or such special funds and not

accounted for;

~~(e)-(v)~~ Balance the budgets, avoid future deficits in any funds, and maintain current payments of payroll, fringe benefits, and all accounts;

~~(f)-(vi)~~ Avoid any fiscal emergency condition in the future;

~~(g)-(vii)~~ Restore the ability of the municipal corporation, county, or township to market long-term general obligation bonds under provisions of law applicable to municipal corporations, counties, or townships generally.

~~(2)-(b)~~ The legal authorities permitting the municipal corporation, county, or township to take the actions enumerated pursuant to division (A)(1)(a) of this section;

~~(3)-(c)~~ A description of the source and amount of all funds available to the municipal corporation, county, or township, including funds upon which the municipal corporation, county, or township previously has placed restrictions;

~~(d)~~ The approximate dates of the commencement, progress upon, and completion of the actions enumerated pursuant to division (A)(1)(a) of this section, a five-year forecast reflecting the effects of those actions, and a reasonable period of time expected to be required to implement the plan. The municipal corporation, county, or township, in consultation with the commission and the financial supervisor, shall prepare a reasonable time schedule for progress toward and achievement of the requirements for the financial plan and the financial plan shall be consistent with that time schedule.

~~(4)-(e)~~ The amount and purpose of any issue of debt obligations that will be issued, together with assurances that any such debt obligations that will be issued will not exceed debt limits supported by appropriate certifications by the fiscal officer of the municipal corporation, county, or township and the county auditor;

~~(5)-(f)~~ Assurances that the municipal corporation, county, or township will establish monthly levels of expenditures and encumbrances pursuant to division (B)(2) of section 118.07 of the Revised Code;

~~(6)-(g)~~ Assurances that the municipal corporation, county, or township will conform to statutes with respect to tax budgets and appropriation measures;

~~(7)-(h)~~ The detail, the form, and the supporting information that the commission may direct;

~~(8)-(i)~~ An evaluation of the feasibility of entering into shared services agreements with other political subdivisions for the joint exercise of any power, performance of any function, or rendering of any service, if so authorized by statute.

~~(2)~~ The financial plan developed under division (A) of this section shall provide for the use of all funds available to the municipal corporation, county, or township, including funds upon which restrictions previously had been placed by the municipal corporation, county, or township, but shall not include funds upon which such restrictions have been placed by other sections of the Revised Code or the Ohio Constitution.

(B) The financial plan developed pursuant to division (A) of this section shall be filed with the financial supervisor and the financial planning and supervision commission and shall be updated annually. After consultation with the financial supervisor, the commission shall either approve or reject any initial or subsequent financial plan. If the commission rejects the initial or any subsequent financial plan, it shall forthwith inform the mayor and legislative authority of the municipal

corporation or the board of county commissioners or board of township trustees of the reasons for its rejection. Within thirty days after the rejection of any plan, the mayor with the approval of the legislative authority by the passage of an ordinance or resolution, or the board of county commissioners or board of township trustees, shall submit another plan meeting the requirements of ~~divisions~~ division (A)(1) to (7) of this section; to the commission and the financial supervisor for approval or rejection by the commission.

(C) Any initial or subsequent financial plan passed by the municipal corporation, county, or township shall be approved by the commission if it complies with ~~divisions~~ division (A)(1) to (7) of this section, and if the commission finds that the plan is bona fide and can reasonably be expected to be implemented within the period specified in the plan.

(D) Any financial plan may be amended subsequent to its adoption in the same manner as the passage and approval of the initial or subsequent plan pursuant to divisions (A) to (C) of this section.

(E) If the commission finds that the financial plan submitted by the municipal corporation, county, or township fails to include a description of the source and amount of all funds available to the municipal corporation, county, or township or fails to provide for the use of all such funds in implementing the plan, the commission may prohibit expenditures from the general fund and all funds of the municipal corporation, county, or township in any month from exceeding eighty-five per cent of expenditures from the general fund and all funds for that month in the preceding fiscal year. The commission may authorize a higher per cent for any month upon justification of need by the municipal corporation, county, or township. If the commission considers it prudent, the commission also may limit expenditures from any other fund of the municipal corporation, county, or township. Any limitations imposed under this division 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 municipal corporation, county, or township and that provides for the use of all such funds in implementing the plan.

(F) If a municipal corporation, county, or township fails to submit a financial plan as required by this section, or fails to substantially comply with an approved financial plan, upon certification of the commission, the commission shall notify the office of budget and management and all state funding for that municipal corporation, county, or township other than benefit assistance to individuals shall be withheld until subsequent notification from the commission to the office of budget and management that a feasible plan has been submitted and approved or substantial compliance with the plan has been achieved, as the case may be. Upon receipt of the subsequent notification, the office of budget and management shall release all funds withheld from the political subdivision under this section.

Sec. 118.11. (A) The municipal corporation, county, or township and all its officers and employees having possession of the required information or the responsibility for developing such information, shall at all times cooperate in assisting the functions of the financial planning and supervision commission by providing to the commission or, when authorized by the commission, the financial supervisor, on a continuing basis, all information requested, ordered, or needed by the commission or the financial supervisor to formulate judgments regarding revenue and expenditure estimates, the financial plan or any modification thereof submitted by the municipal corporation, county, or township, the monitoring of the implementation of the financial plan, and consideration of

any amendments of the financial plan initiated by the commission or the municipal corporation, county, or township. ~~All~~ The municipal corporation, county, or township and its officers and employees shall provide accurate information and reports by the municipal corporation, county, or township and its officers and employees shall be to the commission and the financial supervisor in such form and detail as requested from time to time by the commission or the financial supervisor. The municipal corporation, county, or township and its officers and employees shall provide the requested information and reports within thirty days after the commission or financial supervisor requests the information or reports.

(B) The commission shall review and approve the information and reports submitted to it or to the financial supervisor by the municipal corporation, county, or township under division (A) of this section. If the commission determines that a municipal corporation, county, or township has not promptly provided accurate information and reports under that division, the commission may prohibit expenditures from the general fund and all funds of the municipal corporation, county, or township in any month from exceeding eighty-five per cent of expenditures from the general fund and all funds for that month in the preceding fiscal year. The commission may authorize a higher per cent for any month upon justification of need by the municipal corporation, county, or township. If the commission considers it prudent, the commission also may limit expenditures from any other fund of the municipal corporation, county, or township. Any limitations imposed under this division remain in effect until the commission determines that the municipal corporation, county, or township has provided the accurate information and reports requested by the commission or the financial supervisor.

Sec. 118.12. (A) After the date by which the municipal corporation, county, or township is required to submit a financial plan or segment of a financial plan to the financial planning and supervision commission, if the municipal corporation, county, or township has failed to submit a financial plan or segment as required by this chapter, expenditures from the general fund and all funds of the municipal corporation, county, or township in any month may not exceed eighty-five per cent of expenditures from the general fund and all funds for such month in the preceding fiscal year, except the commission may authorize a higher per cent for any month upon justification of need by the municipal corporation, county, or township. If considered prudent by the commission, expenditures from any other fund of the municipal corporation, county, or township also may be limited.

(B) After submission of a proposed financial plan by the municipal corporation, county, or township to the commission, until approval or disapproval no expenditure may be made contrary to such proposed financial plan.

(C) After disapproval by the commission of a proposed financial plan, no expenditure may be made by the municipal corporation, county, or township inconsistent with the reasons for disapproval given pursuant to division (B) of section 118.06 of the Revised Code; and if the municipal corporation, county, or township fails to submit a revised financial plan within the time required, the expenditure limits of division (A) of this section are applicable.

(D) After approval of a financial plan, or any amendment thereof, no expenditure may be made contrary to the approved financial plan, or amendment thereof, without the advance approval of the financial supervisor. The commission, by a majority vote, may overrule the decision of the

financial supervisor.

Sec. 118.13. (A) No appropriation measure may be adopted contrary to the financial plan approved by the financial planning and supervision commission. Any existing appropriation measure inconsistent with the approved financial plan is ineffective for purposes of any expenditures to the extent it authorizes expenditures in excess of the revenues available after approval of the financial plan, and shall be amended promptly by the legislative authority of the municipal corporation, county, or township to be consistent with the financial plan. Any appropriation measure prior to approval by the legislative authority of the municipal corporation, county, or township shall be submitted to the commission or, when authorized by the commission, the financial supervisor for review to determine whether the measure is consistent with the financial plan. The municipal corporation, county, or township, through the appropriate representatives of the legislative authority and the fiscal officer, shall cooperate with the commission or the financial supervisor in such review. The commission or the financial supervisor shall advise of any modifications in such appropriation measure deemed necessary to conform to the financial plan.

(B) Prior to giving a certificate of estimated resources or amendment thereof to the municipal corporation, county, or township, the county budget commission shall consult with the commission, and the commission shall revise such certificate or amended certificate in any respect in which the certificate or amended certificate is, in its judgment, inconsistent with the financial plan.

(C) Any tax budget of the municipal corporation, county, or township shall be consistent with the financial plan approved by the commission. Before submitting the tax budget to the county auditor, the municipal corporation, county, or township shall submit such tax budget to the commission and shall cooperate with the commission in its review of such tax budget. The municipal corporation, county, or township shall make such modifications in the tax budget as the commission determines to be necessary to conform to the financial plan. If the municipal corporation, county, or township fails to make such modifications, the commission shall certify to the budget commission the modifications necessary to conform to the financial plan, and the budget commission shall make such modifications. This division does not apply to a county, township, or municipal corporation for which the county budget commission has waived the requirement to adopt a tax budget pursuant to section 5705.281 of the Revised Code.

(D) Nothing in this section, and no delay or failure or refusal to act under or comply with the provisions of this section, delays, modifies, or affects the expenditure restrictions contained in division (E) of section 118.06 or division (B) of section 118.11 or in section 118.12 of the Revised Code.

(E) For purposes of the financial plan, tax budgets, and certificates of estimated resources, the revenue estimates shall not include revenues conditioned upon future favorable action by the electorate of the municipal corporation, county, or township or by the general assembly or congress, other than appropriations of moneys for existing and continuing programs at current levels. The estimate of revenues for any month shall separately state and designate as conditional those revenues which are conditioned upon the future issuance of debt obligations, transfers of funds, advances from funds, payments or reimbursements from the sale of debt obligations, sale of capital assets of the municipal corporation, county, or township, increases in utility rates and other charges, or imposition or increase in taxes, and shall be accompanied by documentation showing that the council or official



with authority to act to achieve realization of such conditional revenues has acted in time for realization of such revenues in the month or months indicated. In any event, there shall not be included any source or amount which in the judgment of the commission, or when authorized by the commission, the financial supervisor, is uncertain of realization to form a proper basis for financial planning or budgeting.

Sec. 118.99. (A) During the fiscal emergency period, no officer or employee of the municipal corporation, county, or township shall do any of the following:

(1) Knowingly enter into any contract, financial obligation, or other liability of the municipal corporation, county, or township involving an expenditure, or make any expenditure in excess of the amount permitted by division (E) of section 118.06 or division (B) of section 118.11 or by section 118.12 of the Revised Code;

(2) Knowingly enter into any contract, financial obligation, or other liability of the municipal corporation, county, or township, or knowingly execute or deliver debt obligations, or transfer, advance, or borrow moneys from one fund of the municipal corporation, county, or township to or for any other fund of the municipal corporation, county, or township where any of such actions are required to be approved by the financial planning and supervision commission unless such actions have been so approved or deemed to be approved as provided in or pursuant to this chapter;

(3) Knowingly fail or refuse to take any of the actions required by this chapter for the preparation or amendment of the financial plan, or knowingly prepare, present, or certify any information or report for the commission or any of its employees, advisory committees, task forces, or agents that is false or misleading or which is recklessly prepared or presented without due care for its accuracy, or, upon learning that any such information is false or misleading, or was recklessly prepared or presented, knowingly fail promptly to advise the commission, or the employee, advisory committee, task force, or agent to whom such information was given, of that fact;

(4) Knowingly use or cause to be used moneys of a construction fund for purposes other than the lawful purposes of the construction fund, or knowingly use or cause to be used moneys of a fund created under this chapter for the payment of principal and interest on debt obligations, or a bond retirement fund, or sinking fund for other than the payment of the principal of and interest on debt obligations or other authorized costs or payments from such funds, or knowingly fail to perform the duty of such officer or employee to cause the prompt deposit of moneys to any of the funds referred to in this division.

(B) The prohibitions set forth in division (A) of this section are in addition to any other prohibitions provided by law for a municipal corporation, county, or township, or by or pursuant to a municipal charter.

(C) In addition to any other penalty or liability provided by law for a municipal corporation, county, or township, or by or pursuant to a municipal charter, a violation of division (A)(1), (2), (3), or (4) of this section is a misdemeanor of the second degree. Upon conviction of any officer or employee of a municipal corporation, county, or township for any violation under division (A)(1), (2), (3), or (4) of this section, such officer or employee shall forfeit office or employment. For the seven-year period immediately following the date of conviction, such officer shall also be ineligible to hold any public office or other position of trust in this state or be employed by any public entity in this state.

SECTION 2. That existing sections 118.05, 118.06, 118.11, 118.12, 118.13, and 118.99 of the Revised Code are hereby repealed.

SECTION 3. The version of section 118.023 of the Revised Code that is scheduled to take effect September 29, 2017, is hereby repealed. It is not the intent of this repeal to affect the continued operation of the version of section 118.023 of the Revised Code that is currently in effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_