



Ohio Revised Code

Section 118.04 Determining existence of fiscal emergency condition.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

(A) The existence of a fiscal emergency condition constitutes a fiscal emergency. The existence of fiscal emergency conditions shall be determined by the auditor of state. Such determination, for purposes of this chapter, may be made only upon the filing with the auditor of state of a written request for such a determination by the governor, by the county budget commission, by the mayor of the municipal corporation, or by the presiding officer of the legislative authority of the municipal corporation when authorized by a majority of the members of such legislative authority, by the board of county commissioners, or by the board of township trustees, or upon initiation by the auditor of state. The request may designate in general or specific terms, but without thereby limiting the determination thereto, the condition or conditions to be examined to determine whether they constitute fiscal emergency conditions. Promptly upon receipt of such written request, or upon initiation by the auditor of state, the auditor of state shall transmit copies of such request or a written notice of such initiation to the mayor and the presiding officer of the legislative authority of the municipal corporation or to the board of county commissioners or the board of township trustees by personal service or certified mail. Such determinations shall be set forth in written reports and supplemental reports, which shall be filed with the mayor, fiscal officer, and presiding officer of the legislative authority of the municipal corporation, or with the board of county commissioners or the board of township trustees, and with the treasurer of state, secretary of state, governor, director of budget and management, and county budget commission, within thirty days after the request. The auditor of state shall so file an initial report immediately upon determining the existence of any fiscal emergency condition.

(B) In making such determination, the auditor of state may rely on reports or other information filed or otherwise made available by the municipal corporation, county, or township, accountants' reports, or other sources and data the auditor of state considers reliable for such purpose. As to the status of funds or accounts, a determination that the amounts stated in section 118.03 of the Revised Code are exceeded may be made without need for determination of the specific amount of the excess. The auditor of state may engage the services of independent certified or registered public accountants, including public accountants engaged or previously engaged by the municipal



corporation, county, or township, to conduct audits or make reports or render such opinions as the auditor of state considers desirable with respect to any aspect of the determinations to be made by the auditor of state.

(C) A determination by the auditor of state under this section that a fiscal emergency condition does not exist is final and conclusive and not appealable. A determination by the auditor of state under this section that a fiscal emergency exists is final, except that the mayor of any municipal corporation affected by a determination of the existence of a fiscal emergency condition under this section, when authorized by a majority of the members of the legislative authority, or the board of county commissioners or board of township trustees, may appeal the determination of the existence of a fiscal emergency condition to the court of appeals having territorial jurisdiction over the municipal corporation, county, or township. The appeal shall be heard expeditiously by the court of appeals and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the auditor of state and such court within thirty days after certification by the auditor of state to the mayor and presiding officer of the legislative authority of the municipal corporation or to the board of county commissioners or board of township trustees as provided for in division (A) of this section. In such appeal, determinations of the auditor of state shall be presumed to be valid and the municipal corporation, county, or township shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the auditor of state as to the existence of a fiscal emergency condition under section 118.03 of the Revised Code was in error. If the municipal corporation, county, or township fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the auditor of state was in error, the court shall dismiss the appeal. The municipal corporation, county, or township and the auditor of state may introduce any evidence relevant to the existence or nonexistence of such fiscal emergency conditions at the times indicated in the applicable provisions of divisions (A) and (B) of section 118.03 of the Revised Code. The pendency of any such appeal shall not affect or impede the operations of this chapter; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this chapter shall be imposed by the court or any court pending determination of such appeal; and all things may be done under this chapter that may be done regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this chapter during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the court of appeals reverses the determination of the existence of a fiscal emergency condition by the auditor of



state, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

(D) All expenses incurred by the auditor of state relating to a determination or termination of a fiscal emergency under this section, a fiscal watch under section 118.021 of the Revised Code, or a fiscal caution under section 118.025 of the Revised Code, including providing technical and support services, shall be reimbursed from an appropriation for that purpose. If necessary, the controlling board may provide sufficient funds for these purposes.