

House Bill 3518

Sponsored by Representative LIVELY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires governing body of local government or special government body to notify Governor when local government or special government body is insolvent. Authorizes Governor in certain circumstances to take certain actions to resolve state of fiscal emergency in insolvent local government or special government body.

Authorizes Governor to establish Fiscal Emergency Oversight Board for local government or special government body in state of fiscal emergency. Authorizes board, on behalf of local government or special government body in state of fiscal emergency, to file petition and seek all relief available to municipality under federal bankruptcy law. Provides circumstances in which Governor may terminate board's oversight of local government or special government body.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fiscal emergencies in units of local government; creating new provisions; repealing ORS
3 548.705, 548.710 and 548.715; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) For purposes of sections 1 to 4 of this 2015 Act, a local government as**
6 **defined in ORS 174.116 or a special government body as defined in ORS 174.117 shall be con-**
7 **sidered insolvent if:**

8 (a) **Due to a lack of funds, the local government or special government body fails to:**

9 (A) **Make short-term loan payments in the fiscal year in which the payments are due;**

10 (B) **Make bond debt service payments or other long-term debt payments when due;**

11 (C) **Pay uncontested claims from creditors within 90 days after the claims are presented;**

12 (D) **Transfer at the appropriate times employee payroll taxes, the employer portion of**
13 **payroll taxes, or any employee or employer contributions to any employee pension, retire-**
14 **ment or benefit plan; or**

15 (E) **Pay, for one pay period, wages and salaries owed to employees or retirement benefits**
16 **owed to former employees; or**

17 (b) **The governing body of the local government or special government body determines**
18 **that fiscal distress compromises the ability of the local government or special government**
19 **body to provide a minimally adequate level, currently or within the next fiscal year, of any**
20 **service that the local government or special government body is required to provide by state**
21 **law.**

22 (2) **The governing body of a local government or special government body shall notify the**
23 **Governor when the governing body determines that the local government or special govern-**
24 **ment body is insolvent.**

25 (3)(a) **This subsection applies on the earliest date on which the Governor:**

26 (A) **Receives notification from the governing body of a local government or special gov-**
27 **ernment body pursuant to subsection (2) of this section;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (B) Receives a petition containing verifiable evidence of the fiscal distress of a local
 2 government or special government body signed by a number of registered electors of the lo-
 3 cal government or special government body equal to not less than five percent of the total
 4 number of votes cast for all candidates for Governor by electors within the local government
 5 or special government body at the most recent election at which a candidate for Governor
 6 was elected to a full term;

7 (C) Receives written notification that the local government or special government body
 8 has not timely deposited a minimum pension obligation payment or is otherwise in default
 9 on the local government's or special government body's obligations to the Public Employees
 10 Retirement System;

11 (D) In consultation with the Secretary of State and State Treasurer, determines that
 12 fiscal distress compromises the ability of a local government or special government body to
 13 provide a minimally adequate level, currently or within the next fiscal year, of any service
 14 that the local government or special government body is required to provide by state law;
 15 or

16 (E) Receives a resolution of the Senate or House of Representatives, or of both houses
 17 of the Legislative Assembly, declaring a state of fiscal emergency for the local government
 18 or special government body.

19 (b)(A) The Governor shall contact the governing body of a local government or special
 20 government body that is the subject of a notification, petition, determination or resolution
 21 under paragraph (a) of this subsection to request information regarding actions the govern-
 22 ing body has taken to resolve or mitigate the consequences of the local government's or
 23 special government body's fiscal distress.

24 (B) The governing body shall provide any information requested by the Governor within
 25 45 days after the date of the request.

26 (C) The Governor, in consultation with the State Treasurer, shall determine whether the
 27 local government or special government body needs state assistance to resolve the fiscal
 28 distress. If the Governor determines that state assistance is needed, the local government
 29 or special government body shall be considered to be in a state of fiscal emergency.

30 (4) With respect to a local government or special government body in a state of fiscal
 31 emergency, the Governor may:

32 (a) Require approval of the local government's or special government body's budget by
 33 the Governor;

34 (b) Authorize a loan of state funds to the local government or special government body
 35 and provide terms for repayment of the loan;

36 (c) Prohibit a local government or special government body from issuing bonds, notes,
 37 certificates of indebtedness or any other form of debt until such time as the local govern-
 38 ment or special government body is no longer in a state of fiscal emergency;

39 (d) Cause inspection and review of the records, information, reports and assets of the
 40 local government or special government body as the Governor considers necessary and re-
 41 quire the appropriate officers of the local government or special government body to coop-
 42 erate in any inspection or review under this paragraph;

43 (e) Consult with officers and auditors of the local government or special government body
 44 and appropriate state officers regarding any steps necessary to bring the books of account,
 45 accounting systems, financial procedures and reports of the local government or special

1 **government body into compliance with state requirements;**

2 **(f) Provide technical assistance to the local government or special government body;**

3 **(g) Establish a Fiscal Emergency Oversight Board under section 2 of this 2015 Act to**
4 **oversee the activities of the local government or special government body;**

5 **(h) Require implementation of a plan prepared by a Fiscal Emergency Oversight Board,**
6 **in consultation with appropriate state and local officers, that prescribes actions to resolve**
7 **the state of fiscal emergency in the local government or special government body; or**

8 **(i) Take any other action the Governor considers necessary to resolve the state of fiscal**
9 **emergency in the local government or special government body.**

10 **SECTION 2. (1)(a) If the Governor elects to establish a Fiscal Emergency Oversight**
11 **Board for a local government or special government body under section 1 of this 2015 Act,**
12 **the Governor shall appoint members to the board and select a chair.**

13 **(b) Members of the board must have experience in areas relevant to the state of fiscal**
14 **emergency of the local government or special government body whose activities the board**
15 **will oversee. Relevant areas include, but are not limited to, municipal finance, pension law,**
16 **public safety, irrigation and water management and bankruptcy law.**

17 **(2) The board shall adopt rules necessary to conduct board business.**

18 **(3) The board may:**

19 **(a) Inspect and review the records, information, reports and assets of the local govern-**
20 **ment or special government body as necessary.**

21 **(b) Consult with officers and auditors of the local government or special government body**
22 **and appropriate state officers, and engage and pay for professional services, regarding any**
23 **steps necessary to bring the books of account, accounting systems, financial procedures and**
24 **reports of the local government or special government body into compliance with state re-**
25 **quirements.**

26 **(c) Review the operations, management, efficiency, productivity and financing of the**
27 **functions and operations of the local government or special government body.**

28 **(d) Consult with other government bodies for the consolidation of all administrative di-**
29 **rection and support services of the local government or special government body, including,**
30 **but not limited to, services for asset sales, economic and community development, building**
31 **inspections, parks and recreation, facilities management, engineering and construction, in-**
32 **surance coverage, risk management, planning and zoning, information systems, fleet man-**
33 **agement, and purchasing.**

34 **(e) Exercise any function or power of any officer or employee, board, authority or com-**
35 **mission, whether elected or otherwise, of the local government or special government body**
36 **affecting the fiscal condition of the local government or special government body.**

37 **(f) Recommend to the Governor that a petition be filed for relief under federal bank-**
38 **ruptcy law on behalf of the local government or special government body, pursuant to sec-**
39 **tion 3 of this 2015 Act.**

40 **(4)(a) Upon the recommendation of the Governor, the board, in consultation with officers**
41 **of the state and the local government or special government body, shall prepare a plan that**
42 **prescribes actions to resolve the state of fiscal emergency of the local government or special**
43 **government body.**

44 **(b) A plan prepared under this subsection must, at least:**

45 **(A) Provide for payment in full of all obligations described in section 1 (1)(a) of this 2015**

1 Act, designating as priority items those obligations that are or will become due within the
 2 immediately following three years.

3 (B) Establish priority budgeting, or zero-based budgeting, in order to eliminate budget
 4 items that, in the judgment of the board, the local government or special government body
 5 cannot afford.

6 (C) Prohibit a level of operations that, in the judgment of the board, can be sustained
 7 only with nonrecurring revenues.

8 (D) Provide for the consolidation, sourcing or discontinuance of any administrative di-
 9 rection and support services, including, but not limited to, services for asset sales, economic
 10 and community development, building inspections, parks and recreation, facilities manage-
 11 ment, engineering and construction, insurance coverage, risk management, planning and
 12 zoning, information systems, fleet management, and purchasing.

13 (5) Recommendations, reports and plans of the Fiscal Emergency Oversight Board shall
 14 be submitted to the Governor for approval.

15 (6) All officers and employees of the local government or special government body shall
 16 cooperate with the Fiscal Emergency Oversight Board upon request.

17 (7) Consent of the governing body of the local government or special government body
 18 is not required for the board to act. Any power assumed by the board shall be delegated by
 19 officers and employees of the local government or special government body.

20 (8) In the event the board recommends to the Governor that a petition be filed for relief
 21 under federal bankruptcy law on behalf of the local government or special government body,
 22 pursuant to section 3 of this 2015 Act, the board or a committee of the board's members,
 23 shall represent the local government or special government body in all bankruptcy pro-
 24 ceedings and shall remain in control of the local government or special government body
 25 through the effective date of the plan of adjustment confirmed by the court.

26 (9) Subject to the home rule provisions of Article VI, section 10, or Article XI, section
 27 2, of the Oregon Constitution, any rule, ordinance or other directive of the board may not
 28 be amended or repealed by the electors of the local government or special government body.
 29 A rule, ordinance or other directive of the board may be amended or repealed solely by the
 30 board or by the Legislative Assembly by law.

31 (10) The costs of administering the board, including the cost of professional services,
 32 shall be an obligation of the State of Oregon and funded from moneys appropriated by the
 33 Legislative Assembly.

34 **SECTION 3.** (1) Upon the recommendation of a Fiscal Emergency Oversight Board es-
 35 tablished, pursuant to section 2 of this 2015 Act, to oversee the activities of a local govern-
 36 ment as defined in ORS 174.116 or a special government body as defined in ORS 174.117, and
 37 with the written approval of the Governor, the board may, on behalf of the local government
 38 or special government body:

39 (a) File a petition and seek all relief that is available to a municipality under federal
 40 bankruptcy law;

41 (b) Take any action necessary to carry out the plan for adjustment of debts confirmed
 42 by the court in the bankruptcy proceedings; and

43 (c) Incur and pay expenses incident to the bankruptcy proceedings and carrying out the
 44 plan.

45 (2) The board shall act on behalf of the local government or special government body in

1 the bankruptcy proceedings and may appoint a committee of the board's members to oversee
2 the plan process in the bankruptcy court.

3 **SECTION 4.** The Governor may terminate the oversight of the activities of a local gov-
4 ernment or special government body by a Fiscal Emergency Oversight Board, established
5 pursuant to section 2 of this 2015 Act, and all state action to resolve the state of fiscal
6 emergency of the local government or special government body, if the Governor has deter-
7 mined that:

8 (1) The local government or special government body has established and is operating an
9 effective financial accounting and reporting system;

10 (2) The local government or special government body has resolved the state of fiscal
11 emergency; and

12 (3) If the board has filed a petition for relief under federal bankruptcy law on behalf of
13 the local government or special government body, pursuant to section 3 of this 2015 Act, the
14 plan for adjustment of debts has been confirmed and become effective.

15 **SECTION 5.** ORS 548.705, 548.710 and 548.715 are repealed.

16 **SECTION 6.** Sections 1 to 4 of this 2015 Act and the repeal of ORS 548.705, 548.710 and
17 548.715 by section 5 of this 2015 Act become operative on January 1, 2016.

18 **SECTION 7.** This 2015 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
20 on its passage.

21 _____