

House Bill 2086

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

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**.

Authorizes 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 help 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.

Takes effect on 91st day following adjournment sine die.

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 prescribing an effective date.

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 2017 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 may 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-**

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.

ernment body pursuant to subsection (2) of this section; or

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

(b)(A) The Governor shall contact the governing body of a local government or special government body that is the subject of a notification or petition under paragraph (a) of this subsection to request information regarding actions the governing body has taken to resolve or mitigate the consequences of the local government's or special government body's fiscal distress.

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

(C) The Governor, in consultation with the State Treasurer, shall determine whether the local government or special government body needs state assistance to resolve the fiscal distress.

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

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

(b) Consult with officers and auditors of the local government or special government body and appropriate state officers regarding any steps necessary to bring the books of account, accounting systems, financial procedures and reports of the local government or special government body into compliance with state requirements;

(c) Provide technical assistance to the local government or special government body;

(d) Establish a Fiscal Emergency Oversight Board under section 2 of this 2017 Act to oversee the activities of the local government or special government body;

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

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

SECTION 2. (1)(a) If the Governor elects to establish a Fiscal Emergency Oversight Board for a local government or special government body under section 1 of this 2017 Act, the Governor shall appoint members to the board and select a chair.

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

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

(3) The board may:

(a) Inspect and review the records, information, reports and assets of the local government or special government body as necessary.

(b) Consult with officers and auditors of the local government or special government body

1 and appropriate state officers, and engage and pay for professional services, regarding any
 2 steps necessary to bring the books of account, accounting systems, financial procedures and
 3 reports of the local government or special government body into compliance with state re-
 4 quirements.

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

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

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

16 (f) Recommend that a petition be filed for relief under federal bankruptcy law on behalf
 17 of the local government or special government body, pursuant to section 3 of this 2017 Act.

18 (4)(a) The board, in consultation with officers of the state and the local government or
 19 special government body, may prepare a plan that prescribes actions to resolve the state of
 20 fiscal emergency of the local government or special government body.

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

22 (A) Provide for payment in full of all obligations described in section 1 (1)(a) of this 2017
 23 Act, designating as priority items those obligations that are or will become due within the
 24 immediately following three years.

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

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

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

35 (5) All officers and employees of the local government or special government body shall
 36 cooperate with the Fiscal Emergency Oversight Board upon request.

37 (6) Consent of the governing body of the local government or special government body
 38 is not required for the board to act. Any power assumed by the board shall be delegated by
 39 officers and employees of the local government or special government body.

40 (7) In the event the board recommends that a petition be filed for relief under federal
 41 bankruptcy law on behalf of the local government or special government body, pursuant to
 42 section 3 of this 2017 Act, the board or a committee of the board's members, shall represent
 43 the local government or special government body in all bankruptcy proceedings and shall
 44 remain in control of the local government or special government body through the effective
 45 date of the plan of adjustment confirmed by the court.

1 (8) Subject to the home rule provisions of Article VI, section 10, or Article XI, section
2 2, of the Oregon Constitution, any rule, ordinance or other directive of the board may not
3 be amended or repealed by the electors of the local government or special government body.
4 A rule, ordinance or other directive of the board may be amended or repealed solely by the
5 board or by the Legislative Assembly by law.

6 (9) The costs of administering the board, including the cost of professional services, shall
7 be an obligation of the State of Oregon and funded from moneys appropriated by the Legis-
8 lative Assembly.

9 **SECTION 3.** (1) Upon the recommendation of a Fiscal Emergency Oversight Board es-
10 tablished, pursuant to section 2 of this 2017 Act, to oversee the activities of a local govern-
11 ment as defined in ORS 174.116 or a special government body as defined in ORS 174.117, the
12 board may, on behalf of the local government or special government body:

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

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

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

19 (2) The board shall act on behalf of the local government or special government body in
20 the bankruptcy proceedings and may appoint a committee of the board's members to oversee
21 the plan process in the bankruptcy court.

22 **SECTION 4.** The Governor may terminate the oversight of the activities of a local gov-
23 ernment or special government body by a Fiscal Emergency Oversight Board, established
24 pursuant to section 2 of this 2017 Act, and all state action to resolve the state of fiscal
25 emergency of the local government or special government body, if the Governor has deter-
26 mined that:

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

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

31 (3) If the board has filed a petition for relief under federal bankruptcy law on behalf of
32 the local government or special government body, pursuant to section 3 of this 2017 Act, the
33 plan for adjustment of debts has been confirmed and become effective.

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

35 **SECTION 6.** Sections 1 to 4 of this 2017 Act and the repeal of ORS 548.705, 548.710 and
36 548.715 by section 5 of this 2017 Act become operative on January 1, 2018.

37 **SECTION 7.** This 2017 Act takes effect on the 91st day after the date on which the 2017
38 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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