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HOUSE BILL NO. 2172

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 15.2-2512.1 of the Code of Virginia, relating to local fiscal distress; Planning District 19.

Patron—Wachsmann

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2512.1 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2512.1. Local fiscal distress; determination by Auditor of Public Accounts; state intervention.**

A. For purposes of this section:

"Auditor" means the Auditor of Public Accounts.

"Emergency fiscal manager" means an official appointed by the Commission on Local Government to implement a remediation plan approved by the Commission under subsection H to restore fiscal health for a locality in the Commonwealth. The "emergency fiscal manager" shall have broad powers to rectify the financial emergency and to assure the fiscal accountability of the locality and the locality's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare.

"Fiscal distress" means a situation whereby the provision and sustainability of public services, or the ability to appropriately fund financial liabilities, is threatened by various administrative and financial shortcomings, including cash flow issues, inability to pay expenses, revenue shortfalls, deficit spending, structurally imbalanced budgets, billing and revenue collection inadequacies and discrepancies, debt overload, failure to meet obligations to authorities, school divisions, or political subdivisions of the Commonwealth, lack of trained and qualified staff to process administrative and financial transactions, or the inability to timely produce an audited financial report. "Fiscal distress" may be caused by factors internal to the locality or external to the locality, and in various degrees such conditions may or may not be controllable by management or the local governing body or its constitutional officers.

B. The Auditor shall use leading indicators based on financial data and relevant nonfinancial factors to develop criteria for a preliminary determination that a locality may be in fiscal distress. Such criteria shall be based upon information regularly collected by the Commonwealth or otherwise regularly made public by the locality and the locality's annual audited financial reporting required to be submitted to the Auditor. Information provided by the Virginia Retirement System, the Virginia Resources Authority, the Virginia Public Building Authority, and other state and regional authorities concerning late or missed payments shall be shared with the Auditor.

C. Based upon the criteria established by the Auditor, the Auditor shall establish a prioritized early warning system. Under the prioritized early warning system, the Auditor shall establish a regular process whereby it reviews audited financial data and other relevant factors and qualitative information on at least an annual basis to make a preliminary determination that a locality may meet the criteria for fiscal distress. As part of the early warning system, the Auditor shall use leading financial indicators based on key data from the locality's audited financial reports to evaluate information related to a locality's financial position, financial reserves, debt, and operating revenues and expenditures, along with other relevant factors as applicable. The Auditor shall further evaluate localities that are identified as needing additional evaluation based on their initial financial indicators on the basis of additional leading indicators that may include retirement liabilities, revenue growth, economic and property market value data, reports prepared by the Commission on Local Government on revenue fiscal stress, and other relevant qualitative information.

If a locality has not submitted its audited annual financial report, pursuant to §§ 15.2-2510 and 15.2-2511, within 18 months of the required December 15 deadline or provided a plan to do so, the Auditor shall notify the Governor, the Secretary of Finance, and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government that the Auditor is unable to review the locality's financial data as part of the early warning system or evaluate its financial condition due to the locality's delay with submitting its audited annual financial report. A locality's inability to timely produce its required audited financial report within 18 months of the required deadline as specified in this subsection or to provide a plan to do so shall automatically effectuate the provisions pursuant to subsection D whereby the Auditor shall make a preliminary determination that the locality may meet the criteria for fiscal distress.

D. For a locality where the Auditor has made a preliminary determination of fiscal distress based upon the

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HB2172

early warning system criteria, the Auditor shall notify the local governing body of its preliminary determination that it may meet the criteria for fiscal distress. In coordination with the local governing body or chief executive officer, the Auditor may conduct a review and request documents and data from the locality and the locality's published budget information. Such review shall consider factors including budget processes, debt, borrowing, expenses and payables, revenues and receivables, and other areas, including staffing and the identification of external variables contributing to a locality's financial position. Any local governing body that receives requests for information from the Auditor pursuant to such preliminary determination based on the above-described threshold levels shall acknowledge receipt of such a request and shall ensure that a response is provided within the timeframes specified by the Auditor. If the locality does not acknowledge the Auditor's notification of a preliminary determination or does not provide a response to the Auditor's requests within reasonable timeframes so specified, the Auditor shall notify the Governor, the Secretary of Finance, and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government that the locality is not responsive. After such review, if the local governing body or chief executive officer requests assistance or the Auditor is of the opinion that state assistance, oversight, or targeted intervention is needed, either to further assess, help stabilize, or remediate the situation, the Auditor shall notify the Governor and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government and the governing body of the locality in writing, outlining specific issues or actions that need to be addressed by state assistance, oversight, or intervention.

E. 1. Once the Governor has received a notification from the Auditor indicating fiscal distress in a specific locality, the Governor shall consult with the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations about a plan for state assistance, oversight, or intervention prior to any expenditure of funds from the cash reserve. Any plan approved by the Governor for state assistance, oversight, or intervention shall, at a minimum, specify the purpose of such state assistance, oversight, or intervention efforts, the estimated duration of such efforts, and the anticipated resources, dollar amounts, and personnel directed toward such efforts. The staffing necessary to carry out the assistance, oversight, or intervention plan may be assembled from either public agencies or private entities or both and, notwithstanding any other provisions of law, the Governor may use an expedited method of procurement to secure such staffing when, in his judgment, the need for state assistance, oversight, or intervention is of an emergency nature such that action must be taken in a timely manner to avoid or address unacceptable financial risks to the Commonwealth.

2. The Director of the Department of Planning and Budget shall identify any amounts remaining unexpended from general fund appropriations in the state budget as of June 30 of each year, which constitute state aid to local governments. The Director shall provide a listing of such amounts designated by item number and by program on or before August 15 of each year to the Governor and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations.

3. From such unexpended balances identified by the Director of the Department of Planning and Budget, the Governor may reappropriate up to \$750,000 from amounts that would otherwise revert to the balance of the general fund and transfer such amounts as necessary to establish a component of fund balance, which may be used for the purpose of providing state assistance, oversight, and intervention actions for localities deemed to be fiscally distressed and in need of state assistance, oversight, or intervention to address such distress. Any such reappropriation approved by the Governor shall be separately identified in the commitments specified on the balance sheet and financial statements of the State Comptroller for the close of each fiscal year, to the extent that such reserve is not used or added to by future appropriation actions.

4. Prior to any expenditure of the reappropriated reserve, the Governor and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government shall receive a notification from the Auditor that a specific locality is in need of state assistance, oversight, or intervention because of a worsening financial situation. The Auditor may issue such a notification upon receipt of an audited financial statement or other information that indicates the existence of fiscal distress. However, no such notification shall be made until appropriate follow up and correspondence ascertains that, in the opinion of the Auditor, such fiscal distress exists. Such notification may also be issued by the Auditor if written concerns raised about fiscal distress are not adequately addressed by the locality in question. The notification issued by the Auditor indicating fiscal distress in a specific locality pursuant to subsection D shall satisfy the notification requirement of this subdivision.

F. The governing body and the elected constitutional officers of a locality subject to a plan of state assistance, oversight, or intervention approved by the Governor shall assist all state-appointed staff conducting such efforts regardless of whether such staff are from public agencies or private entities. The state-appointed staff shall provide periodic reports in writing to the Governor and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and

Appropriations and Local Government outlining the scope of issues discovered and any recommendations made to address such issues, and the progress that is made on such recommendations or other state assistance, oversight, or intervention efforts. These periodic reports shall specifically address the degree of cooperation the state-appointed team is receiving from locally elected officials, including constitutional officers, city, county, or town managers, and other local personnel in regard to their intervention work.

G. The Commission on Local Government shall act in an oversight capacity for the purpose of determining whether a locality has taken appropriate action to address the issues specified in subsection D as requested by the intervention staff and whether the locality appears to be on track to resolve its fiscal distress. Technical assistance, based on the Auditor's existing oversight and support provided for local governments, shall be provided to the Commission on Local Government by the Auditor, and all agencies of the Commonwealth shall provide assistance to the Commission, upon request. The Commission on Local Government shall report its findings and conclusions to the Governor and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government.

H. For purposes of this subsection, "locality" means any ~~locality~~ city located in Planning District 19 with a population greater than 20,000 based on the latest estimate provided by the Weldon Cooper Center for Public Service. If the Commission on Local Government's report to the Governor concludes that a locality is either unwilling or unable to comply with the conditions necessary to address its fiscal distress, the Commission on Local Government shall appoint an emergency fiscal manager and implement a remediation plan to restore sustainable fiscal health to the locality. Following such appointment and during the duration of state remediation, the governing body and the chief executive officer of the locality shall not exercise any of the powers of those offices directly or indirectly relating to the locality's finances except as provided in this subsection and such governing body and chief executive officer shall be subject to any conditions required by the emergency fiscal manager. Notwithstanding any other provision of law, general or special, the emergency fiscal manager may shift certain responsibilities and duties from the treasurer of the locality to the emergency fiscal manager if the emergency fiscal manager determines that it is necessary in order to implement the remediation plan. The emergency fiscal manager shall (i) implement an approved fiscal recovery plan; (ii) approve all professional services, suppliers, service provider contracts, and contractual labor agreements; (iii) approve all city employee payrolls; (iv) approve all long-term debt service and loan payments; (v) complete internal control and forensic audit assessments, as needed; and (vi) approve the annual operating and capital budget. The emergency fiscal manager may make recommendations to the governing body regarding the locality's personnel and staffing. The authority granted under this subsection may apply to any locality facing fiscal distress whether such fiscal conditions originated before or after the enactment of this authority. The emergency fiscal manager shall submit a remediation plan to resolve the locality's fiscal distress to the Commission on Local Government, which shall approve, reject, or revise the plan after timely notice of any proposed actions to be taken has been provided to the public and an opportunity for public input has been provided and such input has been considered by the Commission on Local Government. Such plan shall specify the purpose of remediation efforts, including the roles and responsibilities of the local governing body and the chief executive officer, directly or indirectly, relating to the locality's finances and the benchmarks that will allow a locality to exit the state remediation plan upon meeting such benchmarks. Following approval of the remediation plan by the Commission on Local Government, the emergency fiscal manager shall report regularly to the Commission on Local Government, the Governor, and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government regarding progress in implementation of the remediation plan. The Commission on Local Government shall determine when the locality has met the benchmarks approved in the remediation plan and shall so notify the Governor and the Chairmen of the House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and Appropriations and Local Government.

I. The Department of General Services shall develop a master contract of qualified private sector turnaround specialists with expertise in local government intervention that the Governor can use to procure intervention services in an expeditious manner when he determines that state intervention is warranted in situations of local fiscal distress.