

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2686

BY DELEGATES WESTFALL, HOTT AND MARTIN

[By Request of the West Virginia State Auditor's
Office]

[Introduced February 23, 2021; Referred
to the Committee on Political Subdivisions then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §6-9C-1, §6-9C-2, §6-9C-2a, §6-9C-3, §6-9C-4, §6-9C-5, §6-9C-6, §6-9C-7,
 3 §6-9C-8, §6-9C-9, §6-9C-10, and §6-9C-11 all relating generally to fiscal emergencies of
 4 local governments; establishing a system to remediate those emergencies; and requiring
 5 certain action be taken by the State Auditor or a designee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9C. LOCAL FISCAL EMERGENCIES.

§6-9C-1. Legislative findings.

1 (a) The Legislature finds:

2 (1) That local governments are instrumentalities of this state, and the Legislature must act
 3 for the public health, safety and welfare of its citizens to promote fiscal integrity of local
 4 governments to prevent future emergencies;

5 (2) That negative economic changes, waste, fraud or abuse by public officials, or a
 6 combination thereof, necessarily result in a significant impact on the revenues and effectiveness
 7 of local governments, and cause significant indebtedness without any current possibility for
 8 recovery; and

9 (3) That the failure of a local government to take actions on its own to address such a
 10 condition will adversely affect the health, safety and welfare not only of the residents of the local
 11 government, but also of other people of the state.

12 (b) It is the intent of the Legislature to direct the State Auditor or a designee to:

13 (1) Take necessary and appropriate actions to limit and restrict the powers of local
 14 governments to prevent the abuse of statutory powers;

15 (2) Require reports and examinations of their financial condition, transactions, operations
 16 and undertakings;

17 (3) Ensure the fiscal integrity of local governments so that they may provide for the health,
 18 safety and welfare of their citizens; and

19 (4) Determine if local governments have paid due principal and interest on their debt
20 obligations, meet financial obligations to their employees, vendors and suppliers, and provide for
21 proper financial accounting procedures, budgeting and taxing practices.

22 (c) The Legislature further finds that the fiscal emergency conditions described in this
23 article result from and constitute abuses of the powers of a local government to borrow money,
24 contract debts and levy taxes, and that those conditions impair and threaten the health, safety
25 and welfare of the people of the state within and beyond the local government.

§6-9C-2. Definitions.

1 As used in this article:

2 “Committee” means a financial planning and supervision group officially created under this
3 article.

4 “Debt obligations” means bonds, notes, certificates of indebtedness, bond anticipation
5 notes, current revenue notes, local government fund notes, leases or other obligations issued or
6 incurred in borrowing money, or to renew, refund, fund or refinance, or issued in exchange for,
7 such obligations, and any interest coupons pertaining thereto.

8 “Default” means failure to pay the principal of or the interest on a debt obligation, or failure
9 to make other payment to be made to the holder or owner of a debt obligation, in the full amount
10 and at the time provided for in the contractual commitment with respect thereto, unless the time
11 for such payment has been extended by the owner or holder of the debt obligation without penalty
12 or premium and without the effect of subjecting the local government to the initiation of remedies
13 pertaining to such debt obligation or other debt obligations.

14 “Deficit fund” means the general fund or any other fund that, as at the time indicated, has
15 a deficit balance or a balance that is less than the amount required to be in such fund pursuant to
16 law or pursuant to contractual requirements, demonstrating that over a period of time
17 expenditures charged or chargeable to the fund have exceeded moneys credited to the fund, or
18 that moneys credited to the fund have not been in the amounts required by law or contractual

19 requirements.

20 “Effective financial accounting and reporting system” means an accounting and reporting
21 system as prescribed by the West Virginia State Auditor’s Office.

22 “Employee benefits” means expenditures for goods and services furnished to local
23 government officers or employees by the local government, including, but not limited to, such
24 benefits as food, temporary housing and clothing, and the provision of pension, retirement,
25 disability, hospitalization, health care, insurance or other benefits to employees requiring the
26 advance payment of money other than directly to employees or other beneficiaries, or the deposit
27 or reservation of money for such purpose.

28 “Estimated revenues” means the aggregate estimates of revenue receipts in the budget
29 of the general fund and other funds as estimated and supplemented, modified, or amended by
30 the local government, as approved by the West Virginia State Auditor’s Office or other regulatory
31 agency.

32 “Financial recovery plan” means the financial plan approved by the committee in
33 accordance with §6-9C-6 of this code, as it may from time to time be amended in accordance with
34 this article.

35 “Fiscal emergency” means the existence of fiscal emergency conditions.

36 “Fiscal emergency period” means the period of time commencing on the date when the
37 determination of a fiscal emergency is made by the State Auditor or a designee and ending when
38 the determination of termination is made and certified.

39 “Fiscal watch” means the existence of fiscal watch conditions as provided in this article.

40 “General fund” means the fund used to account for and report the primary operating
41 activities of the local government.

42 “General fund budget” means the estimates of revenue and expenditure as a plan of
43 financial operation of the general fund during the applicable fiscal year as approved by the West
44 Virginia State Auditor’s Office or other regulatory agency.

45 “Local government” means any unit of local government within the state, including a
46 county, municipality, and any other authority, board, commission, district, office, public authority,
47 public corporation, or other instrumentality of a county, municipality, or any combination of two or
48 more local governments.

49 “Other funds” means funds other than the general fund, including, but not limited to, .
50 special revenue funds, capital project funds, debt service funds, permanent funds, enterprise
51 funds, internal service funds, pension trust funds, custodial funds, investment trust funds, and
52 private purpose trust funds.

53 “Payroll” means compensation due and payable to employees of local government other
54 than employee benefits.

§6-9C-2a. Auditable Condition of Local Governments.

1 The State Auditor or designee may determine that a local government’s accounts, records,
2 files, or reports have not been maintained in accordance with §6-9-2 of this code. The State
3 Auditor or designee shall notify the local government, in writing, of the deficiencies present and
4 the action necessary to present the accounts, records, files, or reports in an auditable condition.
5 Furthermore, the State Auditor or designee may prescribe the deadline for the local government
6 in completing the necessary action and institute a fiscal monitoring plan to improve the local
7 government’s financial records.

§6-9C-3. Initiating fiscal watch review.

1 A local government may undergo a fiscal watch review to determine whether it is
2 approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written
3 request to the State Auditor or a designee from the governing body when duly authorized by a
4 majority of the legislative authority; or may be initiated by the State Auditor or a designee if
5 conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but
6 are not limited to: (a) the inability of a local government to meet financial obligations; (b) the lack
7 of adequate financial records necessary to conduct an examination pursuant to §6-9-1 et seq. of

8 this code; (c) an examination pursuant to §6-9-1 et seq. of this code, would cause an undue
9 financial burden to the local government.

10 The State Auditor or a designee will notify the local government when a fiscal watch review
11 will or will not be conducted. The State Auditor's Office will perform the fiscal watch review, which
12 may be substituted for an examination, as required by §6-9-1 et seq. of this code at the discretion
13 of the State Auditor or a designee. Furthermore, all working papers acquired or created to
14 produce the fiscal watch review shall be considered confidential pursuant to §6-9-9b of this code.

**§6-9C-4. Guidelines for identifying potential for declarations of fiscal watch or fiscal
emergency; rulemaking authority.**

1 (a) The State Auditor or a designee shall propose rules for legislative approval in
2 accordance with the provisions of §29A-3-1 et seq. of this code, setting forth guidelines for
3 identifying fiscal practices and budgetary conditions of local government that, if uncorrected, could
4 result in declaration of a fiscal watch or fiscal emergency.

5 (b) If the State Auditor or a designee determines that a local government is engaging in
6 any of those practices or that any of those conditions exist, the State Auditor or a designee may
7 declare the local government to be under a fiscal watch.

8 (c) The State Auditor or a designee, may visit and inspect any local government that is
9 declared to be under a fiscal watch. The State Auditor or a designee may provide technical
10 assistance to the local government in implementing proposals to eliminate the practices or
11 budgetary conditions that prompted the declaration of fiscal watch and may make
12 recommendations concerning those proposals.

13 (d) If the State Auditor or a designee finds that a local government declared to be under a
14 fiscal watch has not made reasonable proposals or otherwise taken action to discontinue or
15 correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch,
16 and if the State Auditor or a designee considers it necessary to prevent further fiscal decline, the
17 State Auditor or a designee may determine that the local government should be in a state of fiscal

18 emergency.

§6-9C-5. Conditions constituting grounds for fiscal watch.

1 (a) The conditions constituting grounds for a fiscal watch may include, but are not limited
2 to:

3 (1) Accounts have been due and payable for more than thirty days or for which a penalty
4 was added for failure to pay. Accounts include, but are not limited to, final judgments, employee
5 benefits payments due and payable, and amounts due and payable to persons and other
6 governmental entities and including any interest and penalties thereon. Accounts that are due
7 and payable do not include any account, or portion of any account, that is being contested in good
8 faith.

9 (2) The deficit amount within the general fund for the preceding fiscal year exceed the
10 estimated revenues made in the general fund budget of the current fiscal year.

11 (3) The local government has failed to comply with debt covenants as required by the
12 issuer of any debt with such requirement.

13 (4) Any such rule, as proposed by the State Auditor or a designee for legislative approval
14 in accordance with the provisions of §29A-3-1 et seq. of this code, identified as indicators of
15 financial watch condition.

§6-9C-6. Declaring existence of fiscal watch; financial recovery plan.

1 (a) Upon determining that one or more of the conditions constituting grounds for a fiscal
2 watch are present, the State Auditor or a designee shall issue a written declaration of the
3 existence of a fiscal watch to the governing body of the local government. The fiscal watch shall
4 be in effect until the State Auditor or a designee determines that the conditions have been
5 satisfactorily addressed, cancels the watch, or until the State Auditor or a designee determines
6 that a state of fiscal emergency exists. The State Auditor or a designee, shall provide such
7 technical and support services to the municipal corporation, county or political subdivision after a
8 fiscal watch has been declared to exist as the State Auditor or a designee considers necessary

9 and provide mandatory recommendations to address the fiscal watch conditions.

10 (b) Within 90 days after the day a written declaration of the existence of a fiscal watch is
11 issued under this section, the governing body of the local government for which a fiscal watch
12 was declared shall submit to the State Auditor or a designee a financial recovery plan that shall
13 identify actions to be taken to eliminate all of the conditions described in §6-9C-5 of this code,
14 and shall include a schedule detailing the approximate dates for beginning and completing the
15 actions and a five-year forecast reflecting the effects of the actions. The financial recovery plan
16 also shall evaluate the feasibility of entering into shared services agreements with other political
17 subdivisions for the joint exercise of any power, performance of any function, or rendering of any
18 service, if so authorized by statute. The financial recovery plan is subject to review and approval
19 by the State Auditor or a designee. The State Auditor or a designee may extend the amount of
20 time by which a financial recovery plan is required to be filed, for good cause shown.

21 (c) The State Auditor or a designee may declare that a fiscal emergency condition exists
22 under this article in the municipal corporation, county, or political subdivision if either of the
23 following applies:

24 (1) A feasible financial recovery plan for a local government for which a fiscal watch was
25 declared is not submitted within the time period prescribed by §6-9C-6(b) of this code, or within
26 any extension of time thereof; or

27 (2) The State Auditor or a designee finds that a local government for which a fiscal watch
28 has been declared has not made reasonable proposals or otherwise taken action to discontinue
29 or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal
30 watch, and the State Auditor or a designee determines a fiscal emergency declaration is
31 necessary to prevent further decline.

§6-9C-7. Fiscal emergency conditions.

1 (a) The conditions constituting a fiscal emergency of a local government may include, but
2 are not limited to:

3 (1) The existence, of a default on any debt obligation for more than thirty days.

4 (2) The failure to make payment of all payroll to employees of the local government in the
5 amounts and at the times required by law, ordinances, resolutions, or agreements.:

6 (3) The failure to make payment of all employee benefits of the local government in the
7 amounts and at the times required by law, ordinances, resolutions, or agreements.

8 (4) The existence of a condition in which accounts were due and payable from the general
9 fund and that either had been due and payable for at least thirty days or to which a penalty has
10 been added for failure to pay, including, but not limited to, final judgments, employee benefits
11 payments due and payable, and amounts due and payable to persons and other governmental
12 entities and including any interest and penalties thereon. Accounts due and payable do not
13 include any account, or portion of any account, that is being contested in good faith.

14 (5) The deficit amount within the general fund for the preceding fiscal year exceed the
15 estimated revenues made in the general fund budget of the current fiscal year.

16 (6) The local government has failed to comply with debt covenants as required by the
17 issuer of any debt with such requirement.

18 (7) Any such rule, as proposed by the State Auditor or a designee for legislative approval
19 in accordance with the provisions of §29A-3-1 et seq. of this code, identified as indicators of a
20 financial emergency condition.

21 (8) The State Auditor or a designee declares a fiscal emergency pursuant to section 6 of
22 this code.

23 (b) Any condition described in subdivisions §6-9C-7(a)(4), §6-9C-7(a)(5), §6-9C-7(a)(6),
24 or §6-9C-7(a)(7) of this section shall not constitute a fiscal emergency condition if the local
25 government clearly demonstrates to the satisfaction of the State Auditor or a designee that such
26 condition no longer exists prior to the time of the determination.

27 (c) Neither the time periods nor the amounts used in §6-9C-7(a) to determine what
28 constitutes a fiscal emergency condition of a local government for purposes of this article

29 authorize actions otherwise contrary to law or any agreement of the local government.

§6-9C-8. Determining existence of fiscal emergency conditions.

1 (a) The existence of fiscal emergency conditions shall be determined by the State Auditor
2 or a designee. Fiscal emergency condition determinations shall be set forth in written reports by
3 the State Auditor or a designee, which shall be filed with the governing body, and with the State
4 Treasurer, Secretary of State, Governor, and Legislative Auditor.

5 (b) In making such determination, the State Auditor or a designee may rely on reports or
6 other information filed or otherwise made available by the local government, accountants' reports,
7 or other sources and data the State Auditor or a designee considers reliable for such purpose.
8 The determination of a fiscal emergency condition may be made without need of the specific
9 amounts noted related to such conditions.

10 (c) A determination by the State Auditor or a designee under this section that a fiscal
11 emergency condition does not exist is final and conclusive and not appealable. A determination
12 by the State Auditor or a designee under this section that a fiscal emergency exists is final, except
13 that the governing body affected by a determination of the existence of a fiscal emergency
14 condition under this section, when authorized by a majority of the members of their governing
15 body, may appeal the determination of the existence of a fiscal emergency condition to the circuit
16 court of the county having territorial jurisdiction over the local government. The appeal shall be
17 heard expeditiously by the circuit court for good cause shown shall take precedence over all other
18 civil matters except earlier matters of the same character. Notice of such appeal must be filed
19 with the State Auditor or a designee and such court within 30 days after the notification of a fiscal
20 emergency determination by the State Auditor or a designee to the governing body of the local
21 government as provided for in §6-9C-8(a).

22 (d) Upon such appeal, determinations of the State Auditor or a designee shall be
23 presumed to be valid and the local government shall have the burden of proving, by clear and
24 convincing evidence, that each of the determinations made by the State Auditor or a designee as

25 to the existence of a fiscal emergency condition under this Article was in error. If the local
26 government fails, upon presentation of its case, to prove by clear and convincing evidence that
27 each such determination by the State Auditor or a designee was in error, the court shall dismiss
28 the appeal. The local government and the State Auditor or a designee may introduce any evidence
29 relevant to the existence or nonexistence of such fiscal emergency conditions at the times
30 indicated in the applicable provisions of subsections §6-9C-8(a) and §6-9C-8(b).

31 (e) The pendency of any such appeal shall not affect or impede the operations of this
32 article; no restraining order, temporary injunction, or other similar restraint upon actions consistent
33 with this article shall be imposed by the court or any court pending determination of such appeal;
34 and all things may be done under this article that may be done regardless of the pendency of any
35 such appeal. Any action taken or contract executed pursuant to this article during the pendency
36 of such appeal is valid and enforceable among all parties, notwithstanding the decision in such
37 appeal. If the circuit court reverses the determination of the existence of a fiscal emergency
38 condition by the State Auditor or a designee, the determination no longer has any effect, and any
39 procedures undertaken as a result of the determination shall be terminated.

40 (f) All expenses incurred by the State Auditor or a designee relating to a determination or
41 termination of a fiscal emergency or a fiscal watch under this article, including providing technical
42 and support services, or for conducting a financial review, shall be reimbursed from an
43 appropriation for that purpose. If necessary, the governing body may provide sufficient funds for
44 these purposes.

§6-9C-9. Financial planning and supervision committee; rule-making authority.

1 (a) Upon the occurrence of a fiscal emergency in any local government, there is
2 established, with respect to that local government, a supervising body to perform essential
3 governmental functions of the local government to be known as the “financial planning and
4 supervision committee for (name of local government)”, which, in that name, may exercise all
5 authority vested in such a committee by this article. Furthermore, if a local government in which

6 fiscal watch or fiscal emergency exists has failed to develop a financial recovery plan the.
7 “financial planning and supervision committee for (name of local government)” may develop such
8 a plan for the local government.

9 (b) The State Auditor shall propose rules for legislative approval in accordance with the
10 provisions of §29A-3-1 et seq. of this code, setting forth the following:

11 (1) Minimum requirements for the composition of the members of said committee;

12 (2) The rules of governance for such a committee;

13 (3) Requirements for the detailed financial recovery plan to be submitted by the subject
14 local government;

15 (4) The powers, duties and functions of the committee;

16 (5) The payment of expenses and obligations;

17 (6) The establishment of enhanced financial reporting;

18 (7) The requirements of the local government operating under the plan;

19 (8) Recourse for a noncompliant local government;

20 (9) Limitations for appropriations;

21 (10) Communications of the committee;

22 (11) The approval of debt obligations;

23 (12) The issuance of general obligation, special obligation, or revenue bonds and notes in
24 anticipation of bonds; and

25 (13) The continuance and dissolution of the committee.

§6-9C-10. Compliance

1 (a) Local government officials shall:

2 (1) Take the necessary corrective action recommended by the State Auditor or designee
3 pursuant to §6-9C-2a of this code to present financial records in an auditable condition.

4 (2) Complete and mandatory recommendations imposed by the State Auditor or designee
5 pursuant to §6-9C-6a.

6 (3) Provide a financial recovery plan in accordance with §6-9C-6b of this code.

7 (4) Make reasonable proposals or otherwise take action to discontinue or correct the fiscal
8 practices or budgetary conditions that prompted the declaration of fiscal watch or fiscal
9 emergency.

10 (5) Comply with the financial recovery plan instituted by a financial planning and
11 supervision committee created pursuant to §6-9C-9 of this code.

12 (b) If local government officials fail to adequately comply with the provision of this section,
13 the State Auditor or designee may institute appropriate recourse measures pursuant to the rules
14 authorized by §6-9C-9 of this code.

§6-9C-11. Severability.

1 (a) In case any section or provision of this article, including any condition or prerequisite
2 to any action or determination thereunder, or in case any act or action, or part thereof, made, or
3 taken under this article, or any application thereof, is for any reason held to be illegal or invalid,
4 such illegality or invalidity shall not affect the remainder thereof or any other section or provision
5 of this article, including any condition or prerequisite to any action or determination thereunder,
6 or any agreement, act or action, or part thereof, made, entered into, or taken under such article,
7 which shall be construed and enforced and applied as if such illegal or invalid portion were not
8 contained therein, nor shall such illegality or invalidity or any application thereof affect any legal
9 and valid application thereof, and each such section, provision, agreement, act, or action, or part
10 thereof, shall be deemed to be effective, operative, made, and entered into or taken in the manner
11 and to the full extent permitted by law.

12 (b) Any action or proceeding bringing into question the interpretation, legality, or validity
13 of any provision of this article, the existence or authority, or the legality or validity of any act, of
14 the committee or the State Auditor, or of any action taken under this article, is a matter of great
15 public interest to the state and shall be advanced on the docket of the court and expedited to final
16 determination.

NOTE: The purpose of this bill is to establish a system to remediate fiscal emergencies of local governments.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.