

Senate Bill 599

By: Senators Anavitarte of the 31st, Gooch of the 51st, Dixon of the 45th and Bearden of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 81 of Title 36 of the Official Code of Georgia Annotated,
2 relating to local government budgets and audits, so as to provide for regulation of local
3 governments in fiscal distress; to provide for criteria for identifying fiscal distress and
4 audited financial reports; to provide for a financial health warning program; to provide for
5 plans for state assistance, oversight, and intervention; to require cooperation by local
6 governments; to provide for reporting; to provide for oversight by the Department of
7 Community Affairs; to provide for appointment of emergency fiscal managers; to provide
8 for remediation plans; to provide for a master roster of turnaround specialists and contracts
9 with consultants; to provide for definitions; to provide for related matters; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 1 of Chapter 81 of Title 36 of the Official Code of Georgia Annotated, relating to
14 local government budgets and audits, is amended by adding a new Code section to read as
15 follows:

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16 "36-81-12.

17 (a) As used in this Code section, the term:

18 (1) 'Department' means the Department of Audits and Accounts.

19 (2) 'Emergency fiscal manager' means a qualified professional appointed by the
20 Department of Community Affairs under this Code section to implement a remediation
21 plan to restore fiscal health to a local government that is unwilling or unable to address
22 its fiscal distress through the standard oversight process.

23 (3) 'Financial health warning program' means the systematic, annual process established
24 by the state auditor pursuant to this Code section to identify, monitor, and respond to
25 fiscal distress in local governments.

26 (4) 'Fiscal distress' means a condition in which a local government's ability to sustain the
27 provision of public services or to meet its financial obligations, is threatened, due to
28 internal or external factors and whether or not within the control of its governing
29 authority or appointed officials, by any of the following:

30 (A) Cash flow shortfalls;

31 (B) Inability to pay current obligations;

32 (C) Revenue shortfalls;

33 (D) Deficit spending;

34 (E) Structurally imbalanced budgets;

35 (F) Inadequate revenue collection practices;

36 (G) Excessive debt;

37 (H) Failure to meet obligations to state authorities, local school systems, or other
38 political subdivisions;

39 (I) Insufficient qualified financial staff; or

40 (J) The inability to produce an audited annual financial report in a timely manner.

41 (5) 'Remediation plan' means the written plan developed by an emergency fiscal manager
42 and approved by the Department of Community Affairs pursuant to subsection (h) of this
43 Code section, which shall set forth:

44 (A) The specific corrective fiscal actions required to restore the local government's
45 fiscal health;

46 (B) The respective roles and responsibilities of the emergency fiscal manager and the
47 local governing body during the remediation period;

48 (C) Measurable benchmarks that, when satisfied, will permit the local government to
49 exit state remediation; and

50 (D) An estimated timeline for achieving such benchmarks.

51 (6) 'State assistance' means the voluntary provision of financial resources, expert
52 advisory services, technical guidance, or other support by the state to a local government
53 to help address identified fiscal concerns, with the cooperation of such local government.

54 (7) 'State intervention plan' means the plan for state assistance, oversight, or targeted
55 intervention approved by the Governor pursuant to subsection (e) of this Code section
56 following notification by the state auditor of a local government's fiscal distress.

57 (8) 'Targeted intervention' means a directive action authorized by the Governor, upon
58 recommendation of the state auditor, requiring a local government to take one or more
59 specific corrective measures to address identified fiscal deficiencies and limited in scope
60 to the identified areas of concern and not assuming general fiscal control over the local
61 government, including, but not limited to, requiring adoption of a specific budget
62 adjustment, mandating implementation of identified revenue collection improvements,
63 and requiring a forensic audit of a specific fund or function.

64 (9) 'Turnaround specialist' means a firm or individual with documented expertise in the
65 fiscal management, financial restructuring, or operational recovery of governmental
66 entities, including counties, municipalities, authorities and other political subdivisions.

67 (b)(1) The state auditor shall develop criteria for identifying local governments that may
68 be in fiscal distress, using leading financial indicators and relevant nonfinancial factors.
69 Such criteria shall be designed to identify local governments exhibiting, or at material
70 risk of developing, fiscal distress. The criteria need not correspond on a one-to-one basis
71 with each factor listed for fiscal distress in subsection (a) of this Code section, but shall,
72 taken as a whole, provide a reasonable basis for identifying local governments at risk of
73 fiscal distress before such conditions become a crisis. Such criteria shall be based upon:
74 (A) Annual audited financial reports required to be submitted to the department
75 pursuant to applicable law;
76 (B) Financial and demographic data regularly collected by state agencies or otherwise
77 publicly available;
78 (C) Information provided by the Georgia Environmental Finance Authority, the
79 Georgia Municipal Association, the Association County Commissioners of Georgia,
80 and other state authorities regarding missed or late financial obligations; and
81 (D) Such other economic, demographic, and operational factors as the state auditor
82 deems relevant to a comprehensive assessment of local fiscal health.
83 (2)(A) The state auditor shall publish the criteria used in the financial health warning
84 program, which shall include:
85 (i) Specific data points and financial ratios that will be measured for each local
86 government;
87 (ii) Numerical thresholds or ranges that will be applied to each indicator to determine
88 whether a signal of potential fiscal distress is present; and
89 (iii) The method by which results across all indicators will be combined to support
90 a preliminary determination.
91 (B) The state auditor shall from time to time revise the criteria to reflect changes in
92 best practices and data availability.

93 (c)(1) Based upon the criteria established pursuant to paragraph (1) of subsection (b) of
94 this Code section, the state auditor shall establish and maintain a financial health warning
95 program. The program shall include a regular process, conducted no less than annually,
96 by which the department reviews the financial data, audited reports, and relevant
97 qualitative information of all local governments to identify those that may meet the
98 criteria for fiscal distress.

99 (2) As part of such program, the state auditor shall evaluate:

100 (A) Financial position, including fund balance levels and trends;

101 (B) Financial reserves and liquidity;

102 (C) Debt levels and debt service obligations;

103 (D) Operating revenue trends and structural budget balance; and

104 (E) Such additional indicators as the state auditor deems necessary, which may include
105 unfunded pension and other post-employment benefit liabilities, revenue growth
106 patterns, property value trends, and demographic and economic conditions.

107 (3) A local government that has not submitted its required annual audited financial report
108 within 18 months after the close of its fiscal year shall be deemed to have triggered a
109 preliminary determination of potential fiscal distress under subsection (d) of this Code
110 section. Upon such determination, the state auditor shall notify the Governor, the
111 Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons
112 of the Senate Finance Committee and the House Committee on Ways and Means.

113 (d)(1) When the state auditor makes a preliminary determination, based upon the
114 financial health warning program criteria, that a local government may be in fiscal
115 distress, the state auditor shall:

116 (A) Notify the governing authority of the local government in writing of such
117 determination;

118 (B) In coordination with the governing authority of such local government or its chief
119 elected official or chief executive officer, conduct a review that may include requests
120 for documents, financial records, budget information, and other relevant data; and

121 (C) Consider relevant factors in the review, including budget processes, debt levels and
122 borrowing practices, expenditures and accounts payable, revenue and collection
123 practices, staffing capacity, and external economic conditions.

124 (2) Any local government that receives a preliminary determination notification shall
125 acknowledge receipt of such notification and provide a written response to the state
126 auditor's information requests within the time frames specified by the state auditor, which
127 shall be reasonable. Failure to acknowledge or respond within such time frames shall
128 constitute grounds for the state auditor to notify the Governor, the Lieutenant Governor,
129 and the Speaker of the House of Representatives that the local government is
130 nonresponsive to the department's oversight process.

131 (3) Following the review by the state auditor, if the governing authority or chief elected
132 official or chief executive officer of a local government requests state assistance, or if the
133 state auditor determines that state assistance, oversight, or targeted intervention is
134 necessary to further assess, stabilize, or remediate the local government's financial
135 condition, the state auditor shall provide written notification to the Governor, the
136 Lieutenant Governor, the Speaker of the House of Representatives, the chairpersons of
137 the Senate Finance Committee and the House Committee on Ways and Means, and the
138 governing authority of the local government. Such notification shall specify the issues
139 identified and the nature of state assistance, oversight, or intervention recommended.

140 (e)(1) Upon receipt of notification from the state auditor pursuant to subsection (d) of
141 this Code section, the Governor shall consult with the Lieutenant Governor, the Speaker
142 of the House of Representatives, and the chairpersons of the Senate Finance Committee
143 and the House Committee on Ways and Means regarding a plan for state assistance,
144 oversight, or intervention prior to the expenditure of any state funds for that purpose.

145 (2) Any plan approved by the Governor for state assistance, oversight, or intervention
146 shall, at a minimum:

147 (A) Specify the purpose and objectives of the assistance, oversight, or intervention;

148 (B) Estimate the anticipated duration of such efforts;

149 (C) Identify the resources, dollar amounts, and personnel to be directed toward such
150 efforts; and

151 (D) Establish benchmarks and timelines for measuring the effectiveness of such efforts.

152 (3) Staffing necessary to carry out an approved state assistance, oversight, or intervention
153 plan may be assembled from public agencies, private entities, or both as determined by
154 the Governor.

155 (4) Notwithstanding any other provision of law to the contrary, when the Governor
156 determines that the need for state assistance, oversight, or intervention regarding a local
157 government is of an emergency nature such that delay in action would cause material
158 harm to the provision of public services or to the financial interests of this state, the
159 Governor may direct the Department of Administrative Services to authorize an
160 emergency procurement pursuant to Code Section 50-5-71, or to utilize existing
161 state-wide contracts or pre-qualified vendor rosters established under subsection (i) of
162 this Code section, to secure necessary staffing or professional services in an expeditious
163 manner. Any such emergency procurement shall be reported to the chairpersons of the
164 Senate Finance Committee and the House Committee on Ways and Means within ten
165 business days.

166 (f)(1) The governing body, the elected constitutional officers, the chief executive officer,
167 and all appointed officials and employees of any local government subject to an approved
168 state assistance, oversight, or intervention plan shall cooperate fully with all state
169 appointed staff conducting such activities, whether such staff members are from public
170 agencies or private entities. Such governing body, officers, officials, and employees shall

171 provide timely access to financial records, systems, and personnel as requested by state
172 appointed staff.

173 (2) State appointed staff shall provide periodic written reports to the Governor, the
174 Lieutenant Governor, and the Speaker of the House of Representatives describing the
175 scope of fiscal issues identified, recommendations made, and progress achieved. Such
176 reports shall specifically address the degree of cooperation received from local elected
177 and appointed officials.

178 (g)(1) The Department of Community Affairs shall act in an oversight capacity to
179 determine whether a local government subject to a state intervention plan has taken
180 appropriate corrective actions and whether the local government appears on track to
181 resolve its fiscal distress. The state auditor shall provide technical assistance to the
182 Department of Community Affairs, and all agencies of the state shall provide assistance
183 to the Department of Community Affairs upon request.

184 (2) The Department of Community Affairs shall report its findings and conclusions to
185 the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives
186 at intervals specified in the approved intervention plan, but no less frequently than
187 annually.

188 (h)(1) If, after its oversight review under subsection (g) of this Code section, the
189 Department of Community Affairs concludes that a local government is either unwilling
190 or unable to comply with the conditions necessary to address its fiscal distress, such
191 department may recommend to the Governor the appointment of an emergency fiscal
192 manager for such local government. The Governor shall consult with the Lieutenant
193 Governor and the Speaker of the House of Representatives before authorizing such an
194 appointment.

195 (2) Upon authorization by the Governor, the Department of Community Affairs shall
196 appoint an emergency fiscal manager who shall have the following authority and
197 responsibilities regarding the local government:

- 198 (A) Develop, submit to the Department of Community Affairs for approval, and
199 implement a remediation plan as described in this subsection;
- 200 (B) Approve all professional services, supplier contracts, and contractual labor
201 agreements;
- 202 (C) Approve employee payrolls;
- 203 (D) Approve long-term debt service and loan payments;
- 204 (E) Commission internal control and forensic audit assessments as needed; and
- 205 (F) Approve the annual operating and capital budget during the period of state
206 remediation.
- 207 (3) During the period in which an emergency fiscal manager is in place, the governing
208 authority and chief elected official or chief executive officer of the local government shall
209 not exercise any powers relating to the local government's finances except as specifically
210 authorized by the emergency fiscal manager. The emergency fiscal manager may make
211 recommendations to the governing authority regarding personnel and staffing matters.
- 212 (4) The emergency fiscal manager shall submit a remediation plan to the Department of
213 Community Affairs which shall approve, reject, or revise the plan following public notice
214 and an opportunity for public comment. The approved remediation plan shall specify the
215 roles and responsibilities of the local governing authority, the benchmarks for exiting
216 state remediation, and the estimated timeline for restoring fiscal health. The emergency
217 fiscal manager shall report regularly to the Department of Community Affairs, the
218 Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the
219 chairpersons of the Senate Finance Committee and the House Committee on Ways and
220 Means regarding progress in implementing such remediation plan.
- 221 (5) The Department of Community Affairs shall determine when a local government has
222 satisfied the benchmarks established in the approved remediation plan and shall notify
223 the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and
224 the chairpersons of the Senate Finance Committee and the House Committee on Ways

225 and Means of such determination. Upon such determination, the authority of the
226 emergency fiscal manager shall terminate, and the governing authority shall resume full
227 fiscal authority.

228 (i)(1) The Department of Administrative Services, in consultation with the state auditor
229 and the Department of Community Affairs, shall establish and maintain a master
230 state-wide contract roster for local government turnaround specialists pursuant to Code
231 Section 50-5-57.

232 (2) To qualify for inclusion on the roster, a firm or individual shall demonstrate, at
233 minimum:

234 (A) Experience providing fiscal recovery or financial advisory services to
235 governmental entities of comparable complexity;

236 (B) Professional credentials in governmental accounting, public administration, or
237 municipal finance, including, but not limited to, certified public accountants or
238 equivalent licensure or certification; and

239 (C) No disqualifying conflicts of interest with this state or any of its political
240 subdivisions.

241 (3) The Department of Administrative Services shall conduct a competitive solicitation
242 to establish the initial roster and shall update such roster no less frequently than every
243 three years. The Governor may utilize the roster to procure turnaround specialist services
244 for any local government subject to a state intervention plan or emergency fiscal manager
245 appointment under this Code section, using the expedited procurement process authorized
246 under subsection (e) of this Code section."

247 **SECTION 2.**

248 All laws and parts of laws in conflict with this Act are repealed.