

HOUSE BILL NO. 655

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Coyner)

A BILL to amend and reenact § 15.2-2903 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2512.1, relating to local fiscal distress; state intervention.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2903 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2512.1as 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

27 the inability to timely produce an audited financial report. "Fiscal distress" may be caused by factors  
28 internal to the locality or external to the locality, and in various degrees such conditions may or may not  
29 be controllable by management or the local governing body or its constitutional officers.

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

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

48 If a locality has not submitted its audited annual financial report, pursuant to §§ 15.2-2510 and  
49 15.2-2511, within 18 months of the required December 15 deadline or provided a plan to do so, the Auditor  
50 shall notify the Governor, the Secretary of Finance, and the Chairmen of the House Committees on  
51 Appropriations and Counties, Cities and Towns and the Senate Committees on Finance and  
52 Appropriations and Local Government that the Auditor is unable to review the locality's financial data as  
53 part of the early warning system or evaluate its financial condition due to the locality's delay with

54 submitting its audited annual financial report. A locality's inability to timely produce its required audited  
55 financial report within 18 months of the required deadline as specified in this subsection or to provide a  
56 plan to do so shall automatically effectuate the provisions pursuant to subsection D whereby the Auditor  
57 shall make a preliminary determination that the locality may meet the criteria for fiscal distress.

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

79 E. 1. Once the Governor has received a notification from the Auditor indicating fiscal distress in a  
80 specific locality, the Governor shall consult with the Chairmen of the House Committee on Appropriations

81 and the Senate Committee on Finance and Appropriations about a plan for state assistance, oversight, or  
82 intervention prior to any expenditure of funds from the cash reserve. Any plan approved by the Governor  
83 for state assistance, oversight, or intervention shall, at a minimum, specify the purpose of such state  
84 assistance, oversight, or intervention efforts, the estimated duration of such efforts, and the anticipated  
85 resources, dollar amounts, and personnel directed toward such efforts. The staffing necessary to carry out  
86 the assistance, oversight, or intervention plan may be assembled from either public agencies or private  
87 entities or both and, notwithstanding any other provisions of law, the Governor may use an expedited  
88 method of procurement to secure such staffing when, in his judgment, the need for state assistance,  
89 oversight, or intervention is of an emergency nature such that action must be taken in a timely manner to  
90 avoid or address unacceptable financial risks to the Commonwealth.

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

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

105 4. Prior to any expenditure of the reappropriated reserve, the Governor and the Chairmen of the  
106 House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on  
107 Finance and Appropriations and Local Government shall receive a notification from the Auditor that a

108 specific locality is in need of state assistance, oversight, or intervention because of a worsening financial  
109 situation. The Auditor may issue such a notification upon receipt of an audited financial statement or other  
110 information that indicates the existence of fiscal distress. However, no such notification shall be made  
111 until appropriate follow up and correspondence ascertains that, in the opinion of the Auditor, such fiscal  
112 distress exists. Such notification may also be issued by the Auditor if written concerns raised about fiscal  
113 distress are not adequately addressed by the locality in question. The notification issued by the Auditor  
114 indicating fiscal distress in a specific locality pursuant to subsection D shall satisfy the notification  
115 requirement of this subdivision.

116 F. The governing body and the elected constitutional officers of a locality subject to a plan of state  
117 assistance, oversight, or intervention approved by the Governor shall assist all state-appointed staff  
118 conducting such efforts regardless of whether such staff are from public agencies or private entities. The  
119 state-appointed staff shall provide periodic reports in writing to the Governor and the Chairmen of the  
120 House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on  
121 Finance and Appropriations and Local Government outlining the scope of issues discovered and any  
122 recommendations made to address such issues, and the progress that is made on such recommendations  
123 or other state assistance, oversight, or intervention efforts. These periodic reports shall specifically address  
124 the degree of cooperation the state-appointed team is receiving from locally elected officials, including  
125 constitutional officers, city, county, or town managers, and other local personnel in regard to their  
126 intervention work.

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

134 House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on  
135 Finance and Appropriations and Local Government.

136 H. If the Commission on Local Government's report to the Governor concludes that a locality is  
137 either unwilling or unable to comply with the conditions necessary to address its fiscal distress, the  
138 Commission on Local Government shall appoint an emergency fiscal manager and implement a  
139 remediation plan to restore sustainable fiscal health to the locality. Following such appointment and during  
140 the duration of state remediation, the governing body and the chief executive officer of the locality shall  
141 not exercise any of the powers of those offices directly or indirectly relating to the locality's finances  
142 except as provided in this subsection and such governing body and chief executive officer shall be subject  
143 to any conditions required by the emergency fiscal manager. Notwithstanding any other provision of law,  
144 general or special, the emergency fiscal manager may shift certain responsibilities and duties from any of  
145 a locality's constitutional officers to the emergency fiscal manager if the emergency fiscal manager  
146 determines that it is necessary in order to implement the remediation plan. The emergency fiscal manager  
147 shall (i) implement an approved fiscal recovery plan; (ii) approve all professional services, suppliers,  
148 service provider contracts, and contractual labor agreements; (iii) approve all city employee payrolls; (iv)  
149 approve all long-term debt service and loan payments; (v) complete internal control and forensic audit  
150 assessments, as needed; and (vi) approve the annual operating and capital budget. The emergency fiscal  
151 manager may make recommendations to the governing body regarding the locality's personnel and  
152 staffing. The authority granted under this subsection may apply to any locality facing fiscal distress  
153 whether such fiscal conditions originated before or after the enactment of this authority. The emergency  
154 fiscal manager shall submit a remediation plan to resolve the locality's fiscal distress to the Commission  
155 on Local Government, which shall approve, reject, or revise the plan after timely notice of any proposed  
156 actions to be taken has been provided to the public and an opportunity for public input has been provided  
157 and such input has been considered by the Commission on Local Government. Such plan shall specify the  
158 purpose of remediation efforts, including the roles and responsibilities of the local governing body and  
159 the chief executive officer, directly or indirectly, relating to the locality's finances and the benchmarks  
160 that will allow a locality to exit the state remediation plan upon meeting such benchmarks. Following

161 approval of the remediation plan by the Commission on Local Government, the emergency fiscal manager  
162 shall report regularly to the Commission on Local Government, the Governor, and the Chairmen of the  
163 House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on  
164 Finance and Appropriations and Local Government regarding progress in implementation of the  
165 remediation plan. The Commission on Local Government shall determine when the locality has met the  
166 benchmarks approved in the remediation plan and shall so notify the Governor and the Chairmen of the  
167 House Committees on Appropriations and Counties, Cities and Towns and the Senate Committees on  
168 Finance and Appropriations and Local Government.

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

173 **§ 15.2-2903. General powers and duties of Commission.**

174 The Commission shall have the following general powers and duties:

- 175 1. To make regulations, including rules of procedure for the conducting of hearings;
- 176 2. To keep a record of its proceedings and to be responsible for the custody and preservation of its  
177 papers and documents;
- 178 3. To serve as a mediator between localities;
- 179 4. To investigate, analyze, and make findings of fact, as directed by law, as to the probable effect  
180 on the people residing in any area of the Commonwealth of any proposed action in that area:
  - 181 a. To annex territory,
  - 182 b. To have an area declared immune from annexation,
  - 183 c. To establish a town or independent city,
  - 184 d. To settle or adjust boundaries between localities,
  - 185 e. To make a transition from city status to town status,
  - 186 f. To make a transition from a county to a city,
  - 187 g. To consolidate two or more localities, at least one of which is a county, into a city, or

- 188 h. To enter into economic growth-sharing agreements among localities;
- 189 5. To conduct investigations, analyses and determinations, in the sole discretion of the
- 190 Commission, for the guidance of localities in the conduct of their affairs upon the request of such localities;
- 191 6. To receive from all agencies, as defined in § 2.2-128, assessments of all mandates imposed on
- 192 localities administered by such agencies. The assessments shall be conducted on a schedule to be set by
- 193 the Commission, with the approval of the Governor and the Secretary of Commerce and Trade, provided
- 194 that the assessments shall not be required to be performed more than once every four years. The purpose
- 195 of the assessments shall be to determine which mandates, if any, may be altered or eliminated. If an
- 196 assessment reveals that such mandates may be altered or eliminated without interruption of local service
- 197 delivery and without undue threat to the health, safety and welfare of the residents of the Commonwealth,
- 198 the Commission shall so advise the Governor and the General Assembly;
- 199 7. To prepare and annually update a catalog of state and federal mandates imposed on localities
- 200 including, where available, a summary of the fiscal impact on localities of all new mandates. All
- 201 departments, agencies of government, and localities are directed to make available such information and
- 202 assistance as the Commission may request in maintaining the catalog;
- 203 8. [Expired];
- 204 9. To act in an oversight capacity and coordinate with the Auditor of Public Accounts for the
- 205 purpose of determining whether a locality in fiscal distress has taken appropriate action as provided in §
- 206 15.2-2512.1; and
- 207 10. To perform such other duties as may be imposed upon it, from time to time, by law.
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