

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1111

Introduced by Stinner, 48.

Read first time January 18, 2018

Committee:

- 1 A BILL FOR AN ACT relating to political subdivisions; to amend section
- 2 84-304, Revised Statutes Supplement, 2017; to adopt the Fiscal
- 3 Stress Management Act; to provide powers and duties for the Auditor
- 4 of Public Accounts; to harmonize provisions; and to repeal the
- 5 original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Fiscal Stress Management Act.

3 Sec. 2. For purposes of the Fiscal Stress Management Act, the
4 following definitions apply:

5 (1) Auditor means the Auditor of Public Accounts;

6 (2) Financial indicator means a financial figure or calculation
7 including, but not limited to, receipts, disbursements, cash balances,
8 liabilities, and long-term debt showing a trend in financial activity;

9 (3) Fiscal distress means a situation whereby the provision and
10 sustainability of public services of a taxing authority is threatened by
11 various financial shortcomings including, but not limited to, cash flow
12 inadequacy, inability to pay expenses, revenue shortfalls, deficit
13 spending, structurally imbalanced budgets, billing and revenue collection
14 inadequacies and discrepancies, or debt overload;

15 (4) Fiscal watch means the monitoring, assessment, reporting, and
16 declaration of being under the status of fiscal watch by the auditor
17 based upon financial indicators of a taxing authority for the purposes of
18 detecting and evaluating its state of fiscal distress; and

19 (5) Taxing authority means the governing body of any village, city,
20 or county.

21 Sec. 3. (1) Pursuant to the authority of the Legislature to provide
22 for the public health, safety, and welfare for citizens of this state and
23 to require reports and examinations of the financial condition,
24 transactions, operations, and undertakings of taxing authorities, the
25 public policy and a public purpose of this state is to encourage fiscal
26 integrity of taxing authorities so that they may provide for the health,
27 safety, and welfare of their local citizens, meet their financial
28 obligations, and provide for the responsible stewardship of taxpayer
29 dollars. The failure of a taxing authority to so act adversely affects
30 the health, safety, and welfare not only of the people of a village,
31 city, or county but also of other people of the state beyond the village,

1 city, or county.

2 (2) The intent of the Legislature in enacting the Fiscal Stress
3 Management Act is to encourage the fiscal integrity of villages, cities,
4 or counties.

5 Sec. 4. The auditor shall review annually or biennially, as the
6 case may be, the financial indicators of taxing authorities to determine
7 if the conditions for a fiscal watch have been met.

8 Sec. 5. (1) The auditor shall evaluate the review process to ensure
9 that the existence of any of the financial indicators accurately reflect
10 a state of fiscal stress, whether it is the opinion of the auditor that
11 taxing authorities at risk of fiscal stress are being adequately
12 identified by any of the financial indicators, and whether there are
13 taxing authorities identified as being under a state of fiscal stress by
14 the existence of any of the financial indicators when the auditor can
15 reasonably determine that they are not under a state of fiscal stress.

16 (2) Before December 31, 2018, and before December 31, 2019, the
17 auditor shall submit to the Legislature a report on the evaluation of the
18 review process set forth under the Fiscal Stress Management Act. The
19 submission of the report shall be made electronically.

20 Sec. 6. Beginning in fiscal year 2020-21, after review of the
21 financial indicators of taxing authorities, the auditor shall declare a
22 taxing authority as being under the status of a fiscal watch by the
23 occurrence of one or more of the following financial indicators:

24 (1) The fiscal year-end unencumbered cash balances of the village,
25 city, or county have decreased over the past three years;

26 (2) The outstanding bonded indebtedness at fiscal year-end has
27 reached a ratio equal to or more than twenty percent of revenue;

28 (3) If a comprehensive annual financial report has been completed
29 and all liabilities as reported on the comprehensive annual financial
30 report at fiscal year-end have reached a ratio equal to or more than
31 twenty percent of revenue;

1 (4) The village, city, or county is at the maximum levy rate over
2 the past three years; or

3 (5) The unused restricted funds authority, as described in section
4 13-521, of the village, city, or county has decreased over the past three
5 years.

6 Sec. 7. (1) When declaring the existence of a fiscal watch to a
7 taxing authority, the auditor shall issue the declaration in writing
8 electronically or by first-class mail. The fiscal watch shall be in
9 effect until the auditor determines that none of the conditions are
10 present, cancels the watch, and notifies the taxing authority of such
11 cancellation in writing electronically or by first-class mail.

12 (2) The auditor shall submit to the Legislature by the first
13 legislative day of each biennium a report of his or her findings on the
14 financial indicators of taxing authorities and the status of all such
15 taxing authorities which are under a fiscal watch. The report shall be
16 made available to the public on the auditor's web site.

17 Sec. 8. (1) The auditor shall develop guidelines for identifying
18 fiscal practices and budgetary conditions of taxing authorities that, if
19 uncorrected, could result in a future declaration of a fiscal watch and
20 make such guidelines available to taxing authorities. The auditor shall
21 also make available to a taxing authority the results of the review of
22 its financial indicators.

23 (2) The auditor may add to the budget form of any taxing authority
24 any unpaid obligations or liabilities to be included in the requirements
25 already sustained under current budgeting practices.

26 Sec. 9. Section 84-304, Revised Statutes Supplement, 2017, is
27 amended to read:

28 84-304 It shall be the duty of the Auditor of Public Accounts:

29 (1) To give information electronically to the Legislature, whenever
30 required, upon any subject relating to the fiscal affairs of the state or
31 with regard to any duty of his or her office;

1 (2) To furnish offices for himself or herself and all fuel, lights,
2 books, blanks, forms, paper, and stationery required for the proper
3 discharge of the duties of his or her office;

4 (3)(a) To examine or cause to be examined, at such time as he or she
5 shall determine, books, accounts, vouchers, records, and expenditures of
6 all state officers, state bureaus, state boards, state commissioners, the
7 state library, societies and associations supported by the state, state
8 institutions, state colleges, and the University of Nebraska, except when
9 required to be performed by other officers or persons. Such examinations
10 shall be done in accordance with generally accepted government auditing
11 standards for financial audits and attestation engagements set forth in
12 Government Auditing Standards (2011 Revision), published by the
13 Comptroller General of the United States, Government Accountability
14 Office, and except as provided in subdivision (11) ~~(10)~~ of this section,
15 subdivision (16) of section 50-1205, and section 84-322, shall not
16 include performance audits, whether conducted pursuant to attestation
17 engagements or performance audit standards as set forth in Government
18 Auditing Standards (2011 Revision), published by the Comptroller General
19 of the United States, Government Accountability Office.

20 (b) Any entity, excluding the state colleges and the University of
21 Nebraska, that is audited or examined pursuant to subdivision (3)(a) of
22 this section and that is the subject of a comment and recommendation in a
23 management letter or report issued by the Auditor of Public Accounts
24 shall, on or before six months after the issuance of such letter or
25 report, provide to the Auditor of Public Accounts a detailed written
26 description of any corrective action taken or to be taken in response to
27 the comment and recommendation. The Auditor of Public Accounts may
28 investigate and evaluate the corrective action. The Auditor of Public
29 Accounts shall then electronically submit a report of any findings of
30 such investigation and evaluation to the Governor, the appropriate
31 standing committee of the Legislature, and the Appropriations Committee

1 of the Legislature. The Auditor of Public Accounts shall also ensure that
2 the report is delivered to the Appropriations Committee for entry into
3 the record during the committee's budget hearing process;

4 (4)(a) To examine or cause to be examined, at the expense of the
5 political subdivision, when the Auditor of Public Accounts determines
6 such examination necessary or when requested by the political
7 subdivision, the books, accounts, vouchers, records, and expenditures of
8 any agricultural association formed under Chapter 2, article 20, any
9 county agricultural society, any joint airport authority formed under the
10 Joint Airport Authorities Act, any city or county airport authority, any
11 bridge commission created pursuant to section 39-868, any cemetery
12 district, any community redevelopment authority or limited community
13 redevelopment authority established under the Community Development Law,
14 any development district, any drainage district, any health district, any
15 local public health department as defined in section 71-1626, any
16 historical society, any hospital authority or district, any county
17 hospital, any housing agency as defined in section 71-1575, any
18 irrigation district, any county or municipal library, any community
19 mental health center, any railroad transportation safety district, any
20 rural water district, any township, Wyuka Cemetery, the Educational
21 Service Unit Coordinating Council, any entity created pursuant to the
22 Interlocal Cooperation Act, any educational service unit, any village,
23 any service contractor or subrecipient of state or federal funds, any
24 political subdivision with the authority to levy a property tax or a
25 toll, or any entity created pursuant to the Joint Public Agency Act.

26 For purposes of this subdivision, service contractor or subrecipient
27 means any nonprofit entity that expends state or federal funds to carry
28 out a state or federal program or function, but it does not include an
29 individual who is a direct beneficiary of such a program or function or a
30 licensed health care provider or facility receiving direct payment for
31 medical services provided for a specific individual.

1 (b) The Auditor of Public Accounts may waive the audit requirement
2 of subdivision (4)(a) of this section upon the submission by the
3 political subdivision of a written request in a form prescribed by the
4 auditor. The auditor shall notify the political subdivision in writing of
5 the approval or denial of the request for a waiver.

6 (c) Through December 31, 2017, the Auditor of Public Accounts may
7 conduct audits under this subdivision for purposes of sections 2-3228,
8 12-101, 13-2402, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037,
9 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987.

10 (d) Beginning on May 24, 2017, the Auditor of Public Accounts may
11 conduct audits under this subdivision for purposes of sections 13-2402,
12 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 71-1631.02, and
13 79-987 and shall prescribe the form for the annual reports required in
14 each of such sections. Such annual reports shall be published annually on
15 the web site of the Auditor of Public Accounts;

16 (5) To report promptly to the Governor and the appropriate standing
17 committee of the Legislature the fiscal condition shown by such
18 examinations conducted by the auditor, including any irregularities or
19 misconduct of officers or employees, any misappropriation or misuse of
20 public funds or property, and any improper system or method of
21 bookkeeping or condition of accounts. The report submitted to the
22 committee shall be submitted electronically. In addition, if, in the
23 normal course of conducting an audit in accordance with subdivision (3)
24 of this section, the auditor discovers any potential problems related to
25 the effectiveness, efficiency, or performance of state programs, he or
26 she shall immediately report them electronically to the Legislative
27 Performance Audit Committee which may investigate the issue further,
28 report it electronically to the appropriate standing committee of the
29 Legislature, or both;

30 (6)(a) To examine or cause to be examined the books, accounts,
31 vouchers, records, and expenditures of a fire protection district. The

1 expense of the examination shall be paid by the political subdivision.

2 (b) Whenever the expenditures of a fire protection district are one
3 hundred fifty thousand dollars or less per fiscal year, the fire
4 protection district shall be audited no more than once every five years
5 except as directed by the board of directors of the fire protection
6 district or unless the auditor receives a verifiable report from a third
7 party indicating any irregularities or misconduct of officers or
8 employees of the fire protection district, any misappropriation or misuse
9 of public funds or property, or any improper system or method of
10 bookkeeping or condition of accounts of the fire protection district. In
11 the absence of such a report, the auditor may waive the five-year audit
12 requirement upon the submission of a written request by the fire
13 protection district in a form prescribed by the auditor. The auditor
14 shall notify the fire protection district in writing of the approval or
15 denial of a request for waiver of the five-year audit requirement. Upon
16 approval of the request for waiver of the five-year audit requirement, a
17 new five-year audit period shall begin.

18 (c) Whenever the expenditures of a fire protection district exceed
19 one hundred fifty thousand dollars in a fiscal year, the auditor may
20 waive the audit requirement upon the submission of a written request by
21 the fire protection district in a form prescribed by the auditor. The
22 auditor shall notify the fire protection district in writing of the
23 approval or denial of a request for waiver. Upon approval of the request
24 for waiver, a new five-year audit period shall begin for the fire
25 protection district if its expenditures are one hundred fifty thousand
26 dollars or less per fiscal year in subsequent years;

27 (7) To appoint two or more assistant deputies (a) whose entire time
28 shall be devoted to the service of the state as directed by the auditor,
29 (b) who shall be certified public accountants with at least five years'
30 experience, (c) who shall be selected without regard to party affiliation
31 or to place of residence at the time of appointment, (d) who shall

1 promptly report to the auditor the fiscal condition shown by each
2 examination, including any irregularities or misconduct of officers or
3 employees, any misappropriation or misuse of public funds or property,
4 and any improper system or method of bookkeeping or condition of
5 accounts, and it shall be the duty of the auditor to file promptly with
6 the Governor a duplicate of such report, and (e) who shall qualify by
7 taking an oath which shall be filed in the office of the Secretary of
8 State;

9 (8) To conduct audits and related activities for state agencies,
10 political subdivisions of this state, or grantees of federal funds
11 disbursed by a receiving agency on a contractual or other basis for
12 reimbursement to assure proper accounting by all such agencies, political
13 subdivisions, and grantees for funds appropriated by the Legislature and
14 federal funds disbursed by any receiving agency. The auditor may contract
15 with any political subdivision to perform the audit of such political
16 subdivision required by or provided for in section 23-1608 or 79-1229 or
17 this section and charge the political subdivision for conducting the
18 audit. The fees charged by the auditor for conducting audits on a
19 contractual basis shall be in an amount sufficient to pay the cost of the
20 audit. The fees remitted to the auditor for such audits and services
21 shall be deposited in the Auditor of Public Accounts Cash Fund;

22 (9) To carry out his or her powers and duties under the Fiscal
23 Stress Management Act;

24 (10) ~~(9)~~ To develop and maintain an annual budget and actual
25 financial information reporting system for political subdivisions that is
26 accessible online by the public;

27 (11) ~~(10)~~ When authorized, to conduct joint audits with the
28 Legislative Performance Audit Committee as described in section 50-1205;
29 and

30 (12) ~~(11)~~ Unless otherwise specifically provided, to assess the
31 interest rate on delinquent payments of any fees for audits and services

1 owing to the Auditor of Public Accounts at a rate of fourteen percent per
2 annum from the date of billing unless paid within thirty days after the
3 date of billing. For an entity created pursuant to the Interlocal
4 Cooperation Act or the Joint Public Agency Act, any participating public
5 agencies shall be jointly and severally liable for the fees and interest
6 owed if such entity is defunct or unable to pay.

7 Sec. 10. Original section 84-304, Revised Statutes Supplement,
8 2017, is repealed.