



Ohio Revised Code

Section 118.17 Issuing local government fund notes.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

(A) During a fiscal emergency period and with the approval of the financial planning and supervision commission, a municipal corporation, county, or township may issue local government fund notes, in anticipation of amounts to be allocated to it pursuant to division (B) of section 5747.50 of the Revised Code or to be apportioned to it under section 5747.51 or 5747.53 of the Revised Code in a future year or years, for a period of no more than eight calendar years. The principal amount of the notes and interest on the notes due and payable in any year shall not exceed fifty per cent of the total amount of local government fund moneys so allocated or apportioned to the municipal corporation, county, or township for the year preceding the year in which the notes are issued. The notes may mature in semiannual or annual installments in such amounts as may be fixed by the commission, and need not mature in substantially equal semiannual or annual installments. The notes of a municipal corporation may be authorized and issued, subject to the approval of the commission, in the manner provided in sections 717.15 and 717.16 of the Revised Code, except that, notwithstanding division (A)(2) of section 717.16 of the Revised Code, the rate or rates of interest payable on the notes shall be the prevailing market rate or rates as determined and approved by the commission, and except that they shall not be issued in anticipation of bonds, shall not constitute general obligations of the municipal corporation, and shall not pledge the full faith and credit of the municipal corporation.

(B) The principal and interest on the notes provided for in this section shall be payable, as provided in this section, solely from the portion of the local government fund that would otherwise be apportioned to the municipal corporation, county, or township and shall not be payable from or constitute a pledge of or claim upon, or require the levy, collection, or application of, any unvoted ad valorem property taxes or other taxes, or in any manner occupy any portion of the indirect debt limit.

(C) Local government fund notes may be issued only to the extent needed to achieve one or more of the following objectives of the financial plan:

(1) Satisfying any contractual or noncontractual judgments, past due accounts payable, and all past due and payable payroll and fringe benefits to be taken into account under section 118.03 of the Revised Code;



(2) Restoring to construction funds or other restricted funds any money applied from such funds to uses not within the purposes of such funds and which could not be transferred to such use under section 5705.14 of the Revised Code;

(3) Eliminating deficit balances in all deficit funds, including funds that may be used to pay operating expenses.

In addition to the objectives set forth in divisions (C)(1) to (3) of this section, local government fund notes may be issued and the proceeds of those notes may be used for the purpose of retiring or replacing other moneys used to retire current revenue notes issued pursuant to section 118.23 of the Revised Code to the extent that the proceeds of the current revenue notes have been or are to be used directly or to replace other moneys used to achieve one or more of the objectives of the financial plan specified in divisions (C)(1) to (3) of this section. Upon authorization of the local government fund notes by the legislative authority of the municipal corporation, county, or township, the proceeds of the local government fund notes and the proceeds of any such current revenue notes shall be deemed to be appropriated, to the extent that the proceeds have been or are to be so used, for the purposes for which the revenues anticipated by any such current revenue notes are collected and appropriated within the meaning of section 133.10 of the Revised Code.

(D) The need for an issue of local government fund notes for such purposes shall be determined by taking into consideration other money and sources of moneys available therefor under this chapter or other provisions of law, and calculating the respective amounts needed therefor in accordance with section 118.03 of the Revised Code, including the deductions or offsets therein provided, for determining that a fiscal emergency condition exists, and by eliminating any duplication of amounts thereunder. The respective amounts needed to achieve such objectives and the resulting aggregate net amount shall be determined initially by a certification of the fiscal officer as and to the extent approved by the financial supervisor. The principal amount of such notes shall not exceed the aggregate net amount needed for such purposes. The aggregate amount of all issues of such notes shall not exceed three times the average of the allocation or apportionment to the municipal corporation, county, or township of moneys from the local government fund in each of the three fiscal years preceding the fiscal year in which the notes are issued.

(E) The proceeds of the sale of local government fund notes shall be appropriated by the municipal corporation, county, or township for and shall be applied only to the purposes, and in the respective amounts for those purposes, set forth in the certification given pursuant to division (D) of this section, as the purposes and amounts may be modified in the approval by the commission provided for in this section. The proceeds shall be deposited in separate accounts with a fiscal agent designated in the resolution referred to in division (F) of this section and released only for such respective purposes in accordance with the procedures



set forth in division (D) of section 118.20 of the Revised Code. Any amounts not needed for such purposes shall be deposited with the fiscal agent designated to receive deposits for payment of the principal of and interest due on the notes.

(F) An application for approval by the financial planning and supervision commission of an issue of local government fund notes shall be authorized by a preliminary resolution adopted by the legislative authority. The resolution may authorize the application as a part of the initial submission of the financial plan for approval or as a part of any proposed amendment to an approved financial plan or at any time after the approval of a financial plan, or amendment to a financial plan, that proposes the issue of such notes. The preliminary resolution shall designate a fiscal agent for the deposit of the proceeds of the sale of the notes, and shall contain a covenant of the municipal corporation, county, or township to comply with this chapter and the financial plan.

The commission shall review and evaluate the application and supporting certification and financial supervisor action, and shall thereupon certify its approval or disapproval, or modification and approval, of the application.

The commission shall certify the amounts, maturities, interest rates, and terms of issue of the local government fund notes approved by the commission and the purposes to which the proceeds of the sale of the notes will be applied in respective amounts.

The commission shall certify a copy of its approval, of the preliminary resolution, and of the related certification and action of the financial supervisor to the fiscal officer, the financial supervisor, the county budget commission, the county auditor, the county treasurer, and the fiscal agent designated to receive and disburse the proceeds of the sale of the notes.

(G) Upon the sale of any local government fund notes issued under this section, the commission shall determine a schedule for the deposit of local government fund distributions that are pledged for the payment of the principal of and interest on the notes with the fiscal agent or trustee designated in the agreement between the municipal corporation, county, or township and the holders of the notes to receive and disburse the distributions. The amounts to be deposited shall be adequate to provide for the payment of principal and interest on the notes when due and to pay all other proper charges, costs, or expenses pertaining thereto.

The amount of the local government fund moneys apportioned to the municipal corporation, county, or township that is to be so deposited in each year shall not be included in the tax budget and appropriation measures of the municipal corporation, county, or township, or in certificates of estimated revenues, for that year.

The commission shall certify the schedule to the officers designated in division (F) of this section.



(H) Deposit of amounts with the fiscal agent or trustee pursuant to the schedule determined by the commission shall be made from local government fund distributions to or apportioned to the municipal corporation, county, or township as provided in this division. The apportionment of local government fund moneys to the municipal corporation, county, or township for any year from the undivided local government fund shall be determined as to the municipal corporation, county, or township without regard to the amounts to be deposited with the fiscal agent or trustee in that year in accordance with division (G) of this section. After the amount of the undivided local government fund apportioned to the municipal corporation, county, or township for a calendar year is determined, the county auditor and the county treasurer shall withhold from each monthly amount to be distributed to the municipal corporation, county, or township from the undivided local government fund, and transmit to the fiscal agent or trustee for deposit, one-twelfth of the amount scheduled for deposit in that year pursuant to division (G) of this section.

(I) If the commission approves the application, the municipal corporation, county, or township may proceed with the issuance of the notes as approved by the commission.

All notes issued under authority of this section are lawful investments for the entities enumerated in division (A)(1) of section 133.03 of the Revised Code and are eligible as security for the repayment of the deposit of public moneys.

Upon the issuance of any notes under this section, the fiscal officer of the municipal corporation, county, or township shall certify the fact of the issuance to the county auditor and shall also certify to the county auditor the last calendar year in which any of the notes are scheduled to mature.

(J) After the legislative authority of the municipal corporation, county, or township has passed an ordinance or resolution authorizing the issuance of local government fund notes and subsequent to the commission's preliminary or final approval of the ordinance or resolution, the director of law, prosecuting attorney, or other chief legal officer of the municipal corporation, county, or township shall certify a sample of the form and content of a note to be used to issue the local government fund notes to the commission. The commission shall determine whether the sample note is consistent with this section and the ordinance or resolution authorizing the issuance of the local government fund notes, and if the sample note is found to be consistent with this section and the ordinance, the commission shall approve the sample note for use by the municipal corporation, county, or township. The form and content of the notes to be used by the municipal corporation, county, or township in issuing the local government fund notes may be modified at any time subsequent to the commission's approval of the sample note upon the approval of the commission and the director of law, prosecuting attorney, or other chief legal officer of the municipal corporation, county, or township. The failure of the director of law, prosecuting attorney, or other chief



legal officer of the municipal corporation, county, or township to make the certification required by this division shall not subject that legal officer to removal pursuant to the Revised Code or the charter of a municipal corporation. If the director of law, prosecuting attorney, or other chief legal officer fails or refuses to make the certification required by this division, or if any officer of the municipal corporation, county, or township fails or refuses to take any action required by this section or the ordinance or resolution authorizing the issuance or sale of local government fund notes, the mayor of the municipal corporation or the board of county commissioners or board of township trustees may cause the commencement of a mandamus action in the supreme court against the director of law, prosecuting attorney, or other chief legal officer to secure the certification required by this division or other action required by this section or the ordinance or resolution. If an adjudication of the matters that could be adjudicated in validation proceedings under section 133.70 of the Revised Code is necessary to a determination of the mandamus action, the mayor, the board of county commissioners, or the board of township trustees or the mayor's or board's legal counsel shall name and cause to be served as defendants to the mandamus action all of the following:

- (1) The director of law, prosecuting attorney, or other chief legal officer, or other official of the municipal corporation, county, or township, whose failure or refusal to act necessitated the action;
- (2) The municipal corporation, through its mayor, or the board of county commissioners or board of township trustees;
- (3) The financial planning and supervision commission, through its chairperson;
- (4) The prosecuting attorney and auditor of each county in which the municipal corporation, county, or township is located, in whole or in part;
- (5) The auditor of state;
- (6) The property owners, taxpayers, citizens of the municipal corporation, county, or township and others having or claiming any right, title, or interest in any property or funds to be affected by the issuance of the local government fund notes by the municipal corporation, county, or township, or otherwise affected in any way thereby.

Service upon all defendants described in division (J)(6) of this section shall be either by publication three times, with at least six days between each publication, in a newspaper of general circulation in Franklin county and a newspaper of general circulation in the county or counties where the municipal corporation, county, or township is located, or by publication in both such newspapers as provided in section 7.16 of the Revised Code. The publication and the notice shall indicate that the nature of the action is in mandamus, the name of the parties to the action, and that the action may result in the validation of the subject local government



fund notes. Authorization to commence such an action by the legislative authority of the municipal corporation, county, or township is not required.

A copy of the complaint in the mandamus action shall be served personally or by certified mail upon the attorney general. If the attorney general has reason to believe that the complaint is defective, insufficient, or untrue, or if in the attorney general's opinion the issuance of the local government fund notes is not lawful or has not been duly authorized, defense shall be made to the complaint as the attorney general considers proper.

(K) The action in mandamus authorized by division (J) of this section shall take priority over all other civil cases pending in the court, except habeas corpus, and shall be determined with the least possible delay. The supreme court may determine that the local government fund notes will be consistent with the purpose and effects, including not occupying the indirect debt limit, provided for in this section and will be validly issued and acquired. Such a determination shall include a finding of validation of the subject local government fund notes if the court specifically finds that:

(1) The complaint in mandamus, or subsequent pleadings, include appropriate allegations required by division (C) of section 133.70 of the Revised Code, and that the proceeding is in lieu of an action to validate under section 133.70 of the Revised Code;

(2) All parties described in divisions (J)(1) to (6) of this section have been duly served with notice or are otherwise properly before the court;

(3) Notice of the action has been published as required by division (J) of this section;

(4) The effect of validation is required to provide a complete review and determination of the controversy in mandamus, and to avoid duplication of litigation, danger of inconsistent results, or inordinate delay in light of the fiscal emergency, or that a disposition in the mandamus action would, as a practical matter, be dispositive of any subsequent validation proceedings under section 133.70 of the Revised Code.

(L) Any decision that includes a finding of validation has the same effect as a validation order established by an action under section 133.70 of the Revised Code.

(M) Divisions (J) and (K) of this section do not prevent a municipal corporation, county, or township from using section 133.70 of the Revised Code to validate local government fund notes by the filing of a petition for validation in the court of common pleas of the county in which the municipal corporation, county, or township is located, in whole or in part.

(N) It is hereby determined by the general assembly that a validation action authorized by section 133.70 of the Revised Code is not an adequate remedy at law with respect to a municipal corporation, county, or township that is a party to a mandamus action pursuant to



divisions (J) and (K) of this section and in which a fiscal emergency condition has been determined to exist pursuant to section 118.04 of the Revised Code because of, but not limited to, the following reasons:

- (1) It is urgently necessary for such a municipal corporation, county, or township to take prompt action to issue local government fund notes for the purposes provided in division (C) of this section;
 - (2) The potentially ruinous effect upon the fiscal condition of a municipal corporation, county, or township by the passage of the time required to adjudicate such a separate validation action and any appeals thereof;
 - (3) The reasons stated in division (K)(4) of this section.
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