AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL No. 449

Introduced by Senator Pavley

February 16, 2011

An act to add and repeal Article 6 (commencing with Section 12485) of Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as amended, Pavley. Controller: local agency financial review.

Existing law requires certain local agencies to furnish reports to the Controller concerning financial transactions of the local agency, subject to uniform accounting and reporting procedures prescribed by the Controller. The Controller may provide for the investigation of certain local agency finances if a report is not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect.

This bill would additionally authorize the Controller to conduct a preliminary review to determine the existence of a local agency financial problem, and perform an audit upon completion of that review, subject to specified criteria.

The bill would require the Controller to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the Controller to report to the Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds all of the following:

(1) The economic recession has disproportionately affected California and, in particular, the local agencies that deliver vital services to the public. Many local agencies have been forced to take unprecedented steps to avert financial crisis and maintain a sound credit rating.

(2) The State of California has a vital financial interest in the solvency of its local agencies. When insolvency occurs at a local agency, the municipal credit in the state can be negatively impacted, costing the state and local governments millions of dollars, making borrowing more difficult, and hindering the state's economic recovery.

(3) The health and welfare of the citizens of the state would be adversely affected by the insolvency of local agencies. Therefore, the fiscal health of local agencies is vitally necessary to the interests of this state in providing necessary governmental services.

(b) Accordingly, the Legislature declares that it is a valid public purpose for the state to assist a local agency in a fiscal emergency to avert or manage financial problems as defined in this act, and that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

SEC. 2. Article 6 (commencing with Section 12485) is added to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 6. Local Agency Financial Review and Assistance

12485. (a) The Controller may conduct a preliminary review to determine the existence of a local agency financial problem if one of the following occur:

(1) (A) The governing body, chief administrative officer, or chief executive of a local agency requests a preliminary review under this section. The request shall be in writing and shall identify the existing fiscal conditions that make the request necessary.

(B) If the local agency requests a review, any costs incurred pursuant to this paragraph shall be borne by the local agency.

(2) (A) The Controller receives a written request from a creditor with an undisputed claim against the local agency that exceeds the greater of ten thousand dollars ($10,000) or 1 percent of the annual general fund budget of the local agency, and that remains unpaid six months after its due date, provided that no less than 30 days prior to submitting the request, the creditor notifies the local agency in writing of his or her intention to submit the request.

(B) For purposes of this subdivision, a claim shall be deemed undisputed unless the local agency has made a determination that any of the following conditions are present:

(i) There is a discrepancy between the invoice or claimed amount and the provisions of the contract or grant.

(ii) There is a discrepancy between the invoice or claimed amount and either the claimant's actual delivery of property or services to the local agency or the local agency's acceptance of that delivery or deliveries.

(iii) Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the local agency by the claimant.

(iv) The invoice has been improperly executed or needs to be corrected by the claimant.

(v) There is a discrepancy between the refund or other payment due as calculated by the person to whom the money is owed and by the local agency.

(3) The Controller receives notification from the trustee, actuary, or at least 10 percent of the beneficiaries of a local agency pension fund alleging that the local agency has not timely deposited its minimum obligation payment to the pension fund as required by law.

(4) The Controller receives notification from a trustee, paying agent, or bondholder of a default in a bond payment, or a violation of one or more bond covenants, by a local agency.

(b) The Controller may conduct a preliminary review to determine the existence of a local agency financial problem if two or more of the following occur:

(1) The Controller receives notification that employees of the local agency have not been paid and it has been at least seven days after the scheduled date of payment.

(2) The Controller receives notification that the local agency is delinquent in the distribution of tax revenues as required by law.

(3) The Controller receives notification that a local agency has implemented retirements and layoffs constituting greater than 20 percent of the local agency's workforce, relative to the prior year budget.

(4) The Controller receives notification that a local agency has reduced its police or fire services funding by more than 50 percent, relative to the prior year budget.

(c) The Controller may conduct a preliminary review to determine the existence of a local agency financial problem if three or more of the following occur:

(1) The Controller receives notification that the local agency has a critical cashflow situation, evidenced by a midyear borrowing not anticipated in the most recently enacted budget.

(2) The Controller receives notification that a local agency has enacted a midyear budget correction.

(3) The Controller receives notification that a local agency has had a decline in year-over-year general fund collections of greater than 15 percent.

(4) The Controller receives notification that a local agency has had deficits in *one or more* major restricted funds, defined as providing greater than 10 percent of the local agency's annual total budget, *for a period exceeding a fiscal year*.

(5) The local agency fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the Controller as required by law.

(d) In conducting a preliminary review pursuant to this section, the Controller shall provide the local agency written notification of the review, and shall meet with the local agency officials to receive, discuss, and consider information provided by the local agency concerning the agency's financial condition.

(e) The Controller shall provide written notification to the Governor and the Legislature within 120 days after beginning a preliminary review pursuant to this section, when the review has determined that one or more conditions indicative of a serious financial problem may exist within the local agency.

(f) When conducting a preliminary review, the Controller shall give priority consideration to preliminary reviews conducted pursuant to subdivision (a) over subdivisions (b) and (c). The Controller shall further give priority consideration to preliminary reviews conducted pursuant to subdivision (b) over subdivision (c).

12486. (a) The Controller may conduct an audit of the local agency for purposes of determining if one or more of the following conditions indicative of a serious financial problem have occurred, or are likely to occur, if remedial action is not taken:

(1) A default in the payment of principal or interest upon bonded indebtedness for which no funds, or insufficient funds, are on hand and segregated in a special trust fund.

(2) Failure for a period of 30 days or more beyond the due date to transfer one or more of the following to the appropriate agency:

(A) Taxes withheld on the income of employees.

(B) Taxes collected by the local agency as agent for another governmental entity or taxing authority.

(C) Any contribution required by a pension, retirement, or benefit plan.

(3) Failure for a period of 30 days or more to pay wages and salaries or other compensation or benefits owed to local agency employees or retirees.

(4) The total amount of accounts payable for the current fiscal year, as determined by the financial records of the local agency, is in excess of 10 percent of the total expenditures of the local agency in that fiscal year.

(5) Failure to eliminate an existing deficit in any fund of the local agency within the two-year period preceding the end of the local agency's fiscal year for which a preliminary review was conducted pursuant to Section 12485.

(6) Projection of a deficit in the general fund of the local agency for the current fiscal year in excess of 10 percent of the budgeted revenues for the general fund.

(b) (1) The governing body, chief administrative officer, or chief executive of a local agency may request an audit under this section. The request shall be in writing and shall identify the existing fiscal conditions that make the request necessary.

(2) If the local agency requests a review, any costs incurred pursuant to this section shall be borne by the local agency.

(c) The local agency shall make its books and records available to the Controller for this purpose.

(d) In conducting an audit pursuant to this section, the Controller shall provide the local agency written notification of the audit, and shall meet with the local agency officials to receive, discuss, and consider information provided by the local agency concerning the agency's financial condition.

(e) The Controller shall give priority consideration to conducting an audit of local agencies that meet the conditions pursuant in this section, over local agencies that only meet the conditions for a preliminary review pursuant to Section 12485.

(f) If an audit conducted pursuant to this section finds that one or more conditions indicative of a serious financial problem may exist within a local agency, the Controller shall provide written notification to the Governor and the Legislature within 120 days after beginning that audit.

12487. (a) The Controller shall convene a local agency financial review committee to provide assistance to local agencies that seek help in averting or managing a financial problem. The committee shall meet no less than annually.

(b) The committee shall be chaired by the Controller and include representatives of the office of the Treasurer and the Department of Finance.

(c) The Controller shall utilize the services of a consultant having extensive financial management and accounting experience with local agencies in the state, to assist in evaluating and assisting local agencies that are undergoing or facing a financial problem.

(d) A local agency may request assistance from the committee in meeting the ordinary needs of government operations. The request shall identify the existing financial conditions that make the request necessary.

(e) A local agency that is subject to a preliminary review pursuant to Section 12485, or an audit pursuant to Section 12486, shall receive priority consideration by the local agency financial review committee.

(f) In consultation with the local agency requesting assistance, and using any applicable data from a preliminary review or audit conducted pursuant to this article if a preliminary review or audit has occurred, the committee shall recommend a financial recovery plan for the local agency. The financial recovery plan shall consider both of the following:

(1) Conducting the operations of the local agency within the resources available according to the data provided by the local agency.

(2) The payment in full of the scheduled debt service requirements on all bonded and other indebtedness and other uncontested legal obligations of the local agency.

(g) The Controller shall report to the Legislature, no later than June 30, 2012, and annually thereafter, on the actions of the committee and status of all engagements with local agencies pursuant to this section.

12488. For purposes of this article, “local agency” means a city, county, city and county, special district, or redevelopment agency.

12489. This article shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

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