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# COUNTY ADVISORY BULLETIN

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**Bulletin 2021-4**

**July, 2021**

## **State Fiscal Recovery Fund Appropriations**

**APPLICABLE LEGISLATION:** Amended Substitute HB 168 (134th General Assembly)

**REVISED CODE SECTIONS:** The bill contains appropriations and temporary law provisions to guide state agency spending. It does not amend the Revised Code.

**LEAD SPONSOR:** Representatives Mark Fraizer and Mike Loychik

**HOUSE COSPONSORS:** Representatives Edwards, Carfagna, Cross, Jones, O'Brien, Roemer, Abrams, Baldrige, Bird, Brent, Brown, Callender, Carruthers, Click, Creech, Crossman, Cutrona, Denson, Galonski, Ghanbari, Ginter, Hoops, Householder, Howse, Ingram, Jarrells, John, Kelly, Lanese, Leland, Lepore-Hagan, Lightbody, Liston, Manning, Miller, A., Miller, J., Miranda, Oelslager, Pavliga, Richardson, Robinson, Russo, Schmidt, Seitz, Sheehy, Smith, K., Smith, M., Sobecki, Stein, Stewart, Swearingen, Sweeney, Troy, Upchurch, Weinstein, West, White, Young, B., Young, T.

**SENATE COSPONSORS:** Senators Brenner, Hottinger, Dolan, Schuring, Manning, Antonio, Blessing, Cirino, Craig, Fedor, Gavarone, Hackett, Hoagland, Huffman, S., Johnson, Lang, Reineke, Roegner, Romanchuk, Rulli, Schaffer, Sykes, Thomas, Williams, Yuko

**EFFECTIVE DATE:** June 29, 2021

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### **SUMMARY**

House Bill 168 appropriates over \$2 billion in State Fiscal Recovery Funds made available from the federal government under the American Rescue Plan Act of 2021 (ARPA). Over the next two years, the state will receive a distribution of \$5.37 billion in Fiscal Recovery Funds for its own discretionary use, and an additional \$843.7 million for a pass-through distribution to non-entitlement units of local government. These amounts will be received in two equal

distributions. The appropriations in the legislation are from the first tranche. They will be used for four purposes:

- Repayment of federal loans to the state Unemployment Compensation Trust Fund;
- Creation of a grant program for infrastructure improvements at pediatric behavioral health facilities under the Ohio Department of Mental Health and Addiction Services;
- Distribution of Coronavirus Local Fiscal Recovery Funds to townships and municipalities with a population under 50,000 considered nonentitlement units of local government under the American Rescue Plan Act;
- Establishment of the Water and Sewer Quality grant program in the Ohio Department of Development.

The appropriations are subject to all of the applicable provisions established in House Bill 110, the main operating Act of the 134<sup>th</sup> General Assembly for the FY 2022 – 2023 biennium. Allowable uses of the ARPA funds are defined by rules and guidelines established by the U.S. Department of the Treasury, and available on its website at:

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

## **WATER AND SEWER QUALITY PROGRAM**

Temporary Law Sections: 259.10, 259.20, 259.30

The Act appropriates \$250 million in FY 2022 for a new Water and Sewer Quality grant program in the Department of Development. Not more than one percent of the appropriation may be used to pay the administrative costs of the program. Any unexpended, unencumbered balance remaining at the end of FY 2022 is reappropriated for the program in FY 2023.

The Department of Development must utilize the funds available under the program to provide grants to political subdivisions related to water and sewer quality projects. The Act defines “political subdivision” as a county, township, municipal corporation, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. This language appears to encompass “Chapter 6119” regional water and sewer districts. The department must determine project eligibility and establish a means of applying for grants under the program. A recipient political subdivision must provide a local match or contribution, but the Act does not define a minimum or maximum limit for the matching amount. The department is permitted to waive the local match or contribution in extraordinary circumstances.

**Not later than August 27, 2021 (sixty days after the section establishing the program goes into effect), the county engineer of each county in the state must submit to ODOD a list of projects within the county that are eligible to receive funding under the program.**

The list must indicate the priority level of each project, in comparison to the other projects on the list. The department may provide grants under the program for projects on the list, or for projects otherwise submitted by a political subdivision, so long as a project satisfies the eligibility criteria established by the Department. It should be noted that under the Treasury guidelines, eligible water and sewer projects are aligned with allowable uses under the U.S. Environmental Protection Agency’s Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF). The equivalent programs under the Ohio EPA are known as the Water Pollution Control Loan Fund (WPCLF) and the Water Supply Revolving Loan Account

(WSRLA). The alignment of eligibility is for administrative purposes only, it does not require a recipient to use these revolving loan programs.

Commissioners should work closely with the county sanitary engineer to identify and prioritize projects that are important to county government. Although the county engineer is responsible for transmitting the county's finalized list of projects to the Department of Development, in most counties the sanitary engineer is a separate position, and it will be vital to involve the sanitary engineer throughout the process in order to obtain the appropriate advice and expertise. Moreover, the language of HB 168 clearly allows township and municipal projects to be considered eligible for funding, so the list presented to the department should reflect the priorities of all of the political subdivisions in the county. Given the availability of ARPA funding to counties, townships, and municipalities, the HB 168 process can be used as opportunity to begin a long-term discussion about regionalization and opportunities for collaboration that can continue in the future.

## **CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS**

Temporary Law Section: 220.11

The Act appropriates \$422 million in FY 2022 in a new line item, Coronavirus Local Fiscal Recovery (042526), for use by OBM to disburse funding to cities, villages, and townships with populations under 50,000. These entities are considered nonentitlement units of local government under ARPA and must receive funding through the state, (i.e., they are not "entitled" to a direct distribution from the U.S. Treasury in the same manner as counties and cities with populations over 50,000). The Act requires that funds must be distributed in accordance with the provisions of ARPA and consistent with Treasury department guidelines. It should be noted that ARPA prohibits a local government from receiving a distribution amount that is greater than 75 percent of its annual budget that was in place as of January 27, 2020.

OBM has released preliminary estimates of distribution amounts, subject to revision due to the 75 percent rule. Preliminary estimates may be accessed [here](#). Local governments must complete a registration process with OBM in order to receive the funds. The [OBM portal](#) opened for applications as of July 6, 2021.

The \$422 million total distribution represents half of the expected total amount of funds that will be made available to nonentitlement units of local government in Ohio. The state may request the second tranche of funds from the Treasury no sooner 12 months after the initial distribution which occurred on May 28, 2021.

House Bill 168 confirms a state policy decision to consider townships as eligible nonentitlement units of local government under ARPA. The U.S. Treasury department had left this decision to the state because the eligibility of Ohio townships was unclear in the text of ARPA. ARPA defines a "nonentitlement unit of government" as a "city" as that term is defined in the Housing and Urban Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.<sup>1</sup>

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<sup>1</sup> The definition of a city in the HUD law (42 U.S.C. 5302(a)(5)) reads as follows:

The term "city" means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not

Initially, the Treasury department determined that three Ohio townships with populations greater than 50,000 were eligible for direct funding. Otherwise, the Treasury department adopted the classification of the U.S. Census Bureau that Ohio townships are “weak” minor civil divisions because they are unincorporated and do not exercise the full range of governmental authority. In Ohio and six other states with similar weak minor civil divisions, the Treasury department directed the state to undertake a “facts-and-circumstances test to determine whether the MCD [minor civil division] has the legal and operational capacity to accept ARPA funds and provides a broad range of services that would constitute eligible uses under ARPA.”<sup>2</sup> Treasury’s guidance indicated that it would defer to the state’s judgment in this regard.

## **UNEMPLOYMENT COMPENSATION TRUST FUND**

Temporary Law Section: 215.10

Due to the sudden, large increase in unemployment compensation claims in 2020, the available balance in the state Unemployment Compensation Trust Fund became insufficient to pay unemployment claims. The State of Ohio requested loans from the federal government to cover the shortfall. As of June 2021, the balance of these loans was approximately \$1.5 billion. If the loans are not repaid, federal law requires a gradual decrease in the federal unemployment compensation tax credits available to contributing Ohio employers.

On August 31, 2021, House Bill 168 instructs the Ohio Department Job and Family Services (ODJFS) to certify the amount of the remaining balance of these federal loans advanced to the state under section 1201 of the "Social Security Act," 42 U.S.C. 1321. The amount must be certified to the Office of Budget and Management, the Governor, and to legislative leadership. Upon receipt of this certification, the Director of Budget and Management must remit the certified amount from the State Fiscal Recovery Fund (Fund 5CV3) to the Mutualized Account in the State Unemployment Compensation Fund, which is under the control of ODJFS. After receiving the funds, ODJFS will remit the amount to the U.S. Department of the Treasury.

If the state borrows federal funds in the second half of calendar year 2021, the same administrative process will take place. ODJFS must certify the remaining loan balance on December 27, 2021, and OBM will transfer the amount to ODJFS for payment to the U.S. Treasury.

## **ARPA PEDIATRIC BEHAVIORAL HEALTH**

Temporary Law Sections: 215.20, 215.30

The Act appropriates \$84 million in FY 2022 for a new line item, ARPA Pediatric Behavioral Health” (336648), in the Ohio Department of Mental Health and Addiction Services. The

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entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

<sup>2</sup> U.S. Department of the Treasury, “Coronavirus Local Fiscal Recovery Fund: Guidance on Distribution of Funds to Non-Entitlement Units of Local Government,” p. 2, available at: [https://home.treasury.gov/system/files/136/NEU\\_Guidance.pdf](https://home.treasury.gov/system/files/136/NEU_Guidance.pdf)

appropriation is to be used to support infrastructure improvements at pediatric behavioral health care facilities to improve inpatient and outpatient settings.