

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1402

INTRODUCER: Senator Latvala

SUBJECT: Local Governmental Financial Emergencies

DATE: March 31, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Present	Yeatman	CA	Pre-meeting
2.		AED	
3.		AP	
4.		RC	

I. Summary:

SB 1402 makes numerous changes to the “Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act.” Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the appropriate committees and subcommittees of the House of Representatives and of the Senate, including the Legislative Auditing Committee, must contact the local governmental entity or the Commissioner of Education to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition into the future.

The bill also revises the composition and duties of financial emergency boards. The bill specifies who can appoint members and establishes member qualifications. The bill revises the duties of the board and authorizes the board to assume operational and institutional control over a local governmental entity’s or district school board’s functions under certain circumstances.

II. Present Situation:

Financial Emergencies

The Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act (act) governs certain local governmental financial

emergencies.¹ The purposes of the act are to promote financial responsibility of the entities, assist the entities in providing essential services without interruption and in meeting their financial obligations, and to assist the entities through improvement of local financial management procedures.²

The act provides that local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when any of the following conditions occur:³

- Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of lack of funds.
- Failure to transfer at the appropriate time, due to lack of funds:
 - Taxes withheld on the income of employees; or
 - Employer and employee contributions for:
 - Federal social security; or
 - Any pension, retirement, or benefit plan of an employee.
- Failure for one pay period to pay, due to lack of funds:
 - Wages and salaries owed to employees; or
 - Retirement benefits owed to former employees.

If a financial emergency exists due to a lack of funds, or will occur if action is not taken to assist a local government, the local government must notify the Governor and the Legislative Auditing Committee.⁴ A charter school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A district school board must notify the Commissioner of Education and the Legislative Auditing Committee.⁵

Additionally, any state agency must notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, within 30 days after determining there is a financial emergency that occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board.⁶

Upon notification that a financial emergency occurred or will occur, the Governor or his or her designee must contact the local governmental entity or the Commissioner of Education or his or her designee to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition.⁷ The information requested must be

¹ Sections 218.50-218.504, F.S.

² Section 218.501, F.S.

³ Section 218.503(1), F.S.

⁴ Section 218.503(2), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 218.503(3), F.S.

provided within 45 days of the request. The Governor, or the Commissioner of Education, as appropriate, must determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. At that point, certain measures of assistance may occur, including:

- Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education;
- Authorizing a state loan to a local governmental entity and providing for repayment of same;
- Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer in a financial emergency;
- Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed;
- Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- Providing technical assistance to the local governmental entity or the district school board;
- Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board; and
- Requiring and approving a plan, to be prepared by officials of the local governmental entity or district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be in a financial emergency.⁸

Financial Emergency Boards

If a financial emergency board is established for a local governmental entity, the Governor must appoint board members and select a chair.⁹ If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair.¹⁰ The board must adopt roles necessary for conducting board business. The financial emergency board may:

- Review records, reports, and assets of the local governmental entity or the district school board as needed;
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or district school board into compliance with state requirements;
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board; and
- Consult with other governmental entities for consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management,

⁸ *Id.*

⁹ Section 218.503(3)(g), F.S.

¹⁰ *Id.*

engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.¹¹

Recommendations and reports made by the board must be submitted to the Governor for local governmental agencies or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 218.503, F.S., to expand the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the appropriate committees and subcommittees of the House of Representatives and of the Senate, including the Legislative Auditing Committee, must contact the local governmental entity or the Commissioner of Education to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition in the future.

The bill also revises the financial emergency boards. The bill provides that a financial emergency board must consist of an odd number of members comprised of at least 7 members but not more than 13. If the board is established for a local governmental entity, the President of the Senate and the Speaker of the House of Representatives must each appoint two of the board members. The Governor must appoint the remainder of the board members and designate the chair. If the board is established for a district school board, the President of the Senate and the Speaker of the House of Representatives must each appoint two of the board members. The State Board of Education must appoint the remainder of the board members and designate the chair.

The bill establishes qualifications for appointees to the financial emergency board. The members should collectively possess the knowledge, skills, and competencies needed to perform their individual responsibilities and accomplish the mission of the board, including, but not limited to, internal quality control, finance, business administration, and public works. The chair must have experience in at least one of the following positions or areas:

- Inspector General.
- Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.

¹¹ *Id.*

¹² *Id.*

- Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.
- Certified fraud examiner.

The board must have access to records, data, and other information of the local governmental entity or the district school board necessary to carry out its duties and must be given the technical and financial resources necessary to complete those duties. The board must adopt rules as necessary for conducting board business. In addition, the board may:

- Hire or retain legal counsel.
- Obtain external advice and assistance if the internal audit staff lacks the knowledge, skills, or other competencies needed to perform all or part of the duties necessary to resolve the financial emergency conditions.
- Request and obtain assistance from any federal agency, state agency, or local entity.
- Issue and serve subpoenas or subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and data in any format. In the event of noncompliance with a subpoena issued, the chair of the board may petition the circuit court of the county for an order requiring the person to appear and testify and to produce documents.
- Require a person to file a statement in writing, under oath, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.
- Makes such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.
- Consult with other governmental entities for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Each recommendation and report made by the board addressing a local entity must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, and the local governmental entity under review. Each recommendation and report addressing a district school board must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, the Commissioner of Education, and the State Board of Education.

If a local governmental entity or district school board fails to remedy or take action on recommendations made in any report within 60 days after receipt, the board may assume operational and institutional control of the functions of the local government entity or district school board.

Section 2 amends s. 218.504, F.S., to conform cross-references made by the act.

Section 3 provides that this act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Power of Appointment

The current statute enables a financial emergency board to research and investigate a number of matters relevant to the financial condition of the affected local governmental entity and to report its findings. The statute does not enable a financial emergency board to take actions that are binding on anyone. With such limitations, a financial emergency board functions more in the nature of a legislative entity¹³ similar to the Auditor General¹⁴ or the Administrative Procedures Committee.¹⁵

The bill expands the authority of a financial emergency board to include the following new powers:

- Adoption of rules. The bill is silent as to whether this would be done under s. 120.54, F.S.
- Subpoena witnesses and compel compliance by petitioning the appropriate circuit court.
- Require the filing of written factual statements under oath.
- If a local governmental entity fails to implement the board's recommendations within 60 days, the board is authorized to "assume operational and institutional control of the local governmental entity's...functions."

These changes to the powers of financial emergency boards render uncertain their status as entities within the legislative branch. The new powers are similar to those traditionally

¹³ See Commission on Ethics v. Sullivan, 489 So. 2d 10, 13 (Fla. 1986).

¹⁴ Art. III, s. 2, Fla. Const.; ss. 11.42, 11.45(3), F.S.

¹⁵ Joint Rules of the Florida Legislature 4.1(1)(a); s. 120.545, F.S.

exercised by executive, not legislative, branch entities.¹⁶ These changes may impact the method of appointing members of a financial emergency board provided in the bill.

The power to appoint officers to exercise executive power is in the Governor.¹⁷ However, although legislative control of appointments to legislative entities does not violate the separation of powers doctrine,¹⁸ provision for legislative appointments to an entity exercising executive power may be improper.

The bill provides for the Speaker of the House and the President of the Senate each to make two appointments directly to a financial emergency board. Because the bill expands the powers of emergency boards into areas constituting executive action, such direct appointments may conflict with the separation of powers doctrine.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 260-264 require that each recommendation and report made by the financial emergency board addressing a local entity must be submitted to the local governmental entity under review. However, lines 265-270 do not require a recommendation and report made by the financial emergency board addressing a district school board to be submitted to the district school board under review. It is unclear if this omission is intentional.

¹⁶ See Chiles v. Public Service Commission Nominating Council, 573 So. 2d 829, 832 (Fla. 1991); Commission on Ethics, supra.

¹⁷ Art. IV, s. 1(a). Fla. Const.

¹⁸ Art. II, s. 3, Fla. Const.; See Chiles, supra.

Temporary Control of Local Government Powers

Lines 274-277 provide that a “financial emergency board may assume operational and institutional control of the local governmental entity’s or district school board’s functions.” This provision may not fully take into account the differences in home rule authority between counties, school districts, municipalities, independent special districts, and dependent special districts, which may affect this temporary control of local government powers.

Authority of Local Governments

Counties¹⁹ are political subdivisions of the state mandated by the State Constitution. Charter counties have all power for local government not inconsistent with general law or special law adopted by a referendum of county voters.²⁰ Non-charter counties have all powers provided by general or special law.²¹ Unless otherwise provided by charter, counties are governed by a board of county commissioners elected to staggered terms of 4 years.²² Five other county officers are required by the State Constitution.²³

School districts also are required political subdivisions of the state.²⁴ The same section requires each district to have a school board of five or more members elected to terms of 4 years. School districts generally are operated, controlled, and supervised by the elected school board.²⁵

Municipalities are created by special act of the Legislature in 66 counties.²⁶ The State Constitution does not mandate the creation of municipalities but provides municipalities with all power and authority necessary to provide municipal services and operate municipal government.²⁷

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,²⁸ special act,²⁹ local ordinance,³⁰ or by rule of the Governor and Cabinet.³¹ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.³²

¹⁹ Art. VIII, s. 1(a), Fla. Const.

²⁰ Art. VIII, s. 1(g), Fla. Const. *See also* ch. 125, F.S.

²¹ Art. VIII, s. 1(f), Fla. Const.

²² Art. VIII, s. 1(e), Fla. Const.

²³ The sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court. Art. VIII, s. 1(d), Fla. Const. This section allows the manner of selecting the officer to be changed by charter or special law and permits abolishing one or all of the constitutional offices provided their respective powers are transferred to another office.

²⁴ Art. IX, s. 4(a), Fla. Const.

²⁵ Section 1001.32(2), F.S.

²⁶ Municipalities in Miami-Dade County are created by the Miami-Dade County Commission. *See* art. VIII, s. 6(e), Fla. Const., incorporating by reference art. VIII, s. 10, Fla. Const. (1885, as amended).

²⁷ Art. VIII, s. 2, Fla. Const.

²⁸ Section 189.031(3), F.S.

²⁹ *Id.*

³⁰ Section 189.02(1), F.S.

³¹ Section 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

³² 2017-2018 Local Gov't Formation Manual, p. 64, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last visited Mar. 29, 2017).

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality.³³ An “independent special district” is any district that is not a dependent special district.³⁴

General law sets out the various powers, and constraints on power, for counties,³⁵ school districts,³⁶ municipalities,³⁷ independent special districts,³⁸ and dependent special districts.³⁹ While the bill would create a general law provision for financial emergency boards to assume temporary control of some functions of the local governmental entity, the type of government affected and the constitutional source of other authority may render difficult the exercise of such assumed control. For example, as political subdivisions of the state, counties and school districts are not solely controlled by statute. In the event of a temporary assumption of local control of operations either of a county or school district, the statute does not directly remove the authority of the elected county commission or the elected school board as may be provided by the State Constitution. For a municipality, the statute may need to expressly empower the financial emergency board to temporarily exercise the authority of the board of commissioners under general law or as provided by the State Constitution.

Suspension by Governor

The bill does not specify whether officials of a local governmental entity who fail to implement the recommendations of a financial emergency board are subject to suspension and removal from office. The Governor may suspend any county officer or district school board member for stated cause and fill the office by appointment for the period of the suspension.⁴⁰ A separate statute provides that a member of a district school board who votes to incur indebtedness against district funds in excess of appropriations in the district budget, or takes other action in violation of the statute, has committed malfeasance and misfeasance subjecting that member to removal by the

³³ Section 189.012(2), F.S.

³⁴ Section 189.012(3), F.S.

³⁵ Ch. 125, F.S. See also, e.g., ch. 129, F.S. (County Annual Budget), ch. 130, F.S. (County Bonds), ch. 145, F.S. (Compensation of County Officers), ch. 153, F.S. (Water and Sewer Systems), ch. 154, F.S. (Public Health Facilities), ch. 159, F.S. (Bond Financing), ch. 161, F.S. (Beach and Shore Preservation), ch. 162, F.S. (County and Municipal Code Enforcement).

³⁶ Ch. 1001, Part II, F.S.

³⁷ Ch. 166, F.S. See also, e.g., ch. 171, F.S. (Local Government Boundaries), ch. 175, F.S. (Firefighter Pensions), ch. 180, F.S. (Municipal Public Works), ch. 185, F.S., (Municipal Police Pensions).

³⁸ Ch. 189, F.S. Other chapters deal with specific types of independent districts, including ch. 190, F.S. (community development districts), ch. 191, F.S. (fire control districts), and ch. 298, F.S. (water control districts).

³⁹ Ch. 189, F.S. Although most dependent districts are created and empowered under ch. 189, others may have additional statutory authority. See e.g., ch. 163, Part III, F.S. (community redevelopment agencies).

⁴⁰ Art. IV, s. 7(a), Fla. Const. The causes listed in the State Constitution are “malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.” For purposes of this constitutional provision, district school board members are county officers. *In re Advisory Opinion to the Governor – Sch. Bd. Member – Suspension Auth.*, 626 So. 2d 684, 687 (Fla. 1993).

Governor.⁴¹ The Governor also may suspend any elected or appointed municipal officer for cause and, unless there is an alternative method to replace the official, the Governor may fill the office by temporary appointment.⁴² Members of special district governing boards also are subject to suspension by the Governor.⁴³

VIII. Statutes Affected:

This bill substantially amends sections 218.503 and 218.504 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴¹ Section 1011.10, F.S.

⁴² Section 112.51(1), (3), F.S. The causes listed by the statute are “malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.

⁴³ Section 112.511, F.S.