

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 Community Affairs Committee

BILL: SB 90

INTRODUCER: Senator Gaetz

SUBJECT: Financial Emergencies

DATE: January 11, 2011 REVISED: 1/11/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/2 amendments
2.			ED	
3.			GO	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires counties and municipalities that are in a state of financial emergency and therefore subject to review and oversight by the Governor, to include a structure and services consolidation plan in local government plans that seek to improve the efficiency, accountability, and coordination of delivering local government services under s. 163.07, F.S.

This bill also authorizes financial emergency review boards for local governmental entities and district school boards to consult with other governmental entities for the consolidation of all administrative direction and support services when the entity is declared to be in a state of financial emergency. The bill further allows the Governor or Commissioner of Education to require local government entities and district school boards to develop a plan for consolidation in the entity's financial emergency plan.

This bill substantially amends sections 163.07 and 218.503, of the Florida Statutes.

II. Present Situation:

Efficiency and Accountability in Local Government Services

Section 163.07, F.S., provides procedures that allow and encourage local governments to adopt plans that seek to improve the efficiency, accountability and coordination of delivering local government services.¹ Such plans are initiated by a resolution that is adopted by a majority vote of the governing body(s) of:

- Each of the counties involved,
- The majority of the municipalities within each county, *or*
- The municipality or combination of municipalities that represent a majority of the municipal population in each county.²

The resolution must establish a commission composed of representatives from the county, municipality, and any affected special districts, who are responsible for developing a plan to deliver local government services in accordance with the purposes of this section.³ The adopted plan must:

- Designate the area and local government services that are subject to the plan.
- Describe the existing organizational and financial structure of such services, and provide for the reorganization thereof.
- Designate the local agency that is responsible for delivering each service.
- Designate services that should be delivered regionally or countywide, without restricting the power of a municipality to finance and deliver services.
- Provide means to reduce the costs of providing local government services and enhance service provider accountability.
- Include a multi-year capital outlay plan for infrastructure.
- Specifically describe any expansion of municipal boundaries that would further the goals of this section.
- Provide procedures for modifying or terminating the plan.
- Specify any modifications to any special acts that are necessary in order to effectuate the plan.
- Provide an effective date.⁴

Any plan that is developed pursuant to s. 163.07, F.S., must conform to current local government comprehensive plans and must be approved by a majority vote of the governing body(s):

- In each of the counties involved,
- Of a majority of municipalities in each county, *and*
- Of the municipality(s) that represent a majority of the municipal population in each county.⁵

After the plan is approved the governing bodies in the participating county(s) and municipality(s), the plan must also be approved by a majority of the voters in each county, and a

¹ Section 163.07(2), F.S.

² Section 163.07(2), F.S.

³ *Id.*

⁴ Section 163.07(3)(a)–(j), F.S.

⁵ Section 163.07(4) - (5)(a), F.S.

majority of the voters of the municipalities that represent a majority of the municipal population of each county, through a countywide voter referendum.⁶ Any plan that calls for the merger or dissolution of special districts, or for municipal annexation must comply with the statutory provisions in chapters 189 and 171, F.S, respectively.⁷

Financial Emergency

The Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act⁸, located in Part V, of ch. 218, F.S., was enacted to preserve and protect the fiscal solvency of local government entities,⁹ charter schools, and district school boards that are in a state of financial emergency. Under the provisions of this act, a local governmental entity, charter school, charter technical career center, or district school board that meets one of the statutory indicators of financial distress is required to notify the Governor or Commissioner of Education and the Legislative Auditing Committee.¹⁰

Statutory indicators of financial distress include any one of the following conditions:

- 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 a lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.
- Failure to transfer the following at the appropriate time, due to a lack of funds:
 - Taxes withheld on the income of employees; or
 - Employer and employee contributions for federal social security or for employees' pension, retirement or benefit plan.
- Failure for one day period, to pay wages and salaries owed to employees, or retirement benefits owed to former employees due to a lack of funds.
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, for which sufficient local government, charter school, charter technical career center, or district school board resources, are not able to cover.¹¹

Upon notification that one or more of these conditions are met, the Governor or Commissioner of Education, as appropriate, must then determine whether state assistance is needed in order to resolve or prevent the local government entity's financial condition.¹² If state assistance is needed, then the entity is determined to be in a state of financial emergency.¹³

⁶ Section 163.07 (5)(b), F.S.

⁷ Section 163.07(6) – (7)

⁸ The full title of this act is the “Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act”.

⁹ Section 218.502, F.S., defines local government entity to mean “a county, municipality, or special district”.

¹⁰Section 218.503(1)-(2), F.S. **Note:** 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; and the district school board shall notify the Commissioner of Education and the Legislative Auditing Committee.

¹¹ Section 218.503(1)(a) –(e), F.S. “. . . as reported on the balance sheet or statement of net on the general purpose or fund financial statements.”

¹² Section 218.503(3), F.S.

¹³ *Id.*

Once an entity is determined to be in a state of financial emergency, the Governor or Commissioner of Education has the power to implement certain remedial measures to assist the entity in resolving the financial emergency.¹⁴ Pursuant to subsection (3) of s. 218.503, F.S., the Governor or Commissioner of Education may:

- Require the local governmental entity or district school board's budget to be approved by the Governor or Commissioner of Education respectively.
- Authorize and provide for the repayment of a state loan to the local governmental entity.
- Prohibit the local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt while they are in a state of financial emergency.
- Inspect and review the local governmental entity or district school board's records, information, reports, and assets.
- Consult with local governmental entity and district school board officials and auditors to discuss the necessary procedures to bring the books of account, accounting systems, financial procedures and reports into compliance with state requirements.
- Provide technical assistance to the local governmental entity or district school board.
- Establish a financial emergency board that would oversee local government or district school board activities, which shall be appointed by the Governor or State Board of Education as appropriate.
- Require and approve a plan to be prepared by the local governmental entity or district school board that prescribes the necessary actions to adjust the entity's debt.¹⁵

Subsection (5) of s. 218.503, F.S., prohibits a local government entity or district school board from applying under the bankruptcy provisions of the United States Constitution without prior approval from the Governor for local governmental entities or the Commissioner of Education for district school boards.¹⁶

A.) Financial Emergency Board

In implementing measures to assist a local government entity or district school board declared to be in a state of financial emergency, the Governor, or the Commissioner of Education, may establish a financial emergency board to oversee local government or district school board activities.¹⁷ The Governor or the State Board of Education, as appropriate, shall appoint members and select a chair to serve on the board. Once established, the board may:

- Review the entity's records, reports, and assets;
- Consult with the local entity officials and auditors and with state officials regarding the necessary steps to bring the entity's books of account, accounting systems, financial procedures and reports into compliance with state requirements; and
- Review the entity's operations, management, efficiency, productivity, and financing of functions and operations.¹⁸

¹⁴ Section 218.503 (3), F.S.

¹⁵ Section 218.503(3)(a)-(h), F.S.

¹⁶ Section 218.503(5), F.S.

¹⁷ Section 218.503 (3)(g)1., F.S.

¹⁸ Section 218.503 (3)(g)1. a.-c., F.S.

Any “recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.”¹⁹

B.) Financial Emergency Plan

Upon declaration of a state of financial emergency, the Governor or Commissioner of Education may require the respective local governmental entity or district school board to develop a plan, subject to the Governor or Commissioner’s approval, that prescribes remedial actions to adjust the entity’s current financial state.²⁰ The adopted plan must include, but need not be limited to:

- Provision(s) for the full payment of obligations outlined in subsection (1) of s. 218.503, F.S., designated as priority items, that are currently due or will become due.²¹
- The establishment of priority budgeting or zero-based budgeting, in order to eliminate items that are not affordable.
- The prohibition of a level of operations which can be sustained only with nonrecurring revenues.²²

III. Effect of Proposed Changes:

Section 1 creates subsection (6) in s. 163.07, F.S., to require county or municipal plans that seek to improve the efficiency, accountability, and coordination of the delivery of local government services, to include a structural and services consolidation plan if the county or municipality is subject to review and oversight by the Governor pursuant to s. 218.503, F.S.

Section 2 amends paragraph (g) of s. 218.503(3), F.S., to authorize financial emergency boards appointed by the Governor or Commissioner of Education, as appropriate, after a declaration of a state of financial emergency, to consult with other governmental entities for the consolidation of all the administrative direction and support services. Such services include, but are 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.

This section also amends paragraph (h) of s. 218.503(3), F.S., to require local governmental entities or district school boards that have been instructed by the Governor or Commissioner of Education to develop plans after being declared in a state of financial emergency, to include the consolidation, sourcing, or discontinuance of all administrative direction and support services as part of the entity’s adopted plan. Such services include, but are 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.

Section 3 provides that this act shall take effect on July 1, 2011.

¹⁹ Section 218.503 (3)(g)2., F.S.

²⁰ Section 218.503 (3)(h), F.S.

²¹ Note- subsection (1) of s. 218.503, F.S., as previously discussed above, addresses the indicators of financial distress.

²² Section 218.503 (3)(h)1.-3., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Counties and municipalities that elect to adopt an efficiency and accountability plan and that are under the review and oversight of the Governor due to financial emergency will be required to include a structural and services consolidation plan as part of any adopted efficiency and accountability plan under s. 163.07, F.S.

Local government entities and district school boards that are declared by the Governor or Commissioner of Education to be in a state of financial emergency will be required to include the consolidation, sourcing or discontinuance of all administrative direction and support services as part of the entity's adopted financial emergency plan.

Financial emergency boards acting on behalf of an entity that has been declared to be in a state of financial emergency will be authorized to consult with other governmental entities for the consolidation of all administrative direction and support services.

VI. Technical Deficiencies:

The sponsor may want to clarify the term, "structural and services consolidation plan", located on lines 117-118 of the bill.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 405462 by Senate Committee on Community Affairs on January 11, 2011:
Emphasizes that a local governmental entity or district school board financial emergency plan must include provisions *implementing* the consolidation, sourcing, or discontinuance of all administrative direction and support services (WITH TITLE AMENDMENT).

Barcode 464888 by Senate Committee on Community Affairs on January 11, 2011:
Clarifies that counties and municipalities that elect to adopt an efficiency and accountability plan under s. 163.07, F.S., and that are under the review and oversight of the Governor due to financial emergency must include a plan for the consolidation of all administrative direction and support services as part of any adopted efficiency and accountability plan (WITH TITLE AMENDMENT).