

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: CS/SB 90

INTRODUCER: Education Pre-K - 12 Committee and Senator Gaetz

SUBJECT: Financial Emergencies

DATE: March 15, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Fav/2 amendments</b>
2.	Brown	Matthews	ED	<b>Fav/CS</b>
3.	Roberts	Roberts	GO	<b>Favorable</b>
4.			BC	
5.				
6.				

**I. Summary:**

This bill requires counties and municipalities that have adopted local efficiency, accountability and coordination plans to include a structural and services consolidation component in the plan, when those entities are in a state of financial emergency. Required elements of a consolidation plan are provided.

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 an entity is declared in a state of financial emergency. The bill permits the Governor or Commissioner of Education to require local government entities and district school boards to include a plan for consolidation in the entity's financial emergency plan.

The constitutional ability of the Governor to suspend members of the governing body of a local governmental entity or district school board for a failure to correct a state of financial emergency is clarified.

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., outlines a voluntary plan for local governments to use to resolve conflict and increase efficiency regarding the delivery of local government services.<sup>1</sup> Initiation of the plan requires a resolution by majority vote of the governing body(s) of any one 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.<sup>2</sup>

Required elements of the resolution include identification of a commission of representatives from the county, municipality, and any affected special districts whose purpose is to develop the plan; identification of support services; and a proposed timetable.<sup>3</sup> The adopted plan must:

- Designate the included area and local government services.
- Describe the existing organization and anticipated reorganization of these services.
- Identify responsible local agencies.
- Designate services that should be delivered regionally or countywide.
- Outline cost reduction and increased provider accountability measures.
- Include a multi-year capital outlay plan for infrastructure.
- Specifically describe any related expansion of municipal boundaries.
- Provide procedures for modifying or terminating the plan.
- Specify modifications to any necessary special acts.
- Provide an effective date.<sup>4</sup>

Any plan developed must conform to current local government comprehensive plans and be approved by 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.<sup>5</sup>

Following initial approval, the plan must also be approved by a majority of voters in each county, and a majority of voters of the municipalities that represent a majority of the municipal population of each county, through a countywide referendum.<sup>6</sup> Plans involving special district mergers or dissolutions, or municipal annexation require additional compliance.<sup>7</sup>

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<sup>1</sup> s. 163.07(2), F.S.

<sup>2</sup> s. 163.07(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> s. 163.07(3)(a) – (j), F.S.

<sup>5</sup> s. 163.07(4) and (5)(a), F.S.

<sup>6</sup> s. 163.07(5)(b), F.S.

<sup>7</sup> s. 163.07(6) – (7)

### **Financial Emergency**

Chapter 218, F.S., provides the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act<sup>8</sup>, to preserve the fiscal solvency of local government entities,<sup>9</sup> charter schools, and district school boards that are in a state of financial emergency. Under its provisions, 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.<sup>10</sup>

Statutory indicators of financial distress include any one of the following conditions based on lack of funds:

- Failure within the same fiscal year in which due, to pay short-term loans, make bond debt service or other long term debt payments when due.
- Failure to pay uncontested claims from creditors within 90 days after presented.
- Failure to transfer on time, employee income withholding taxes or contributions for federal social security or employees' pension, retirement or benefit plans.
- Failure to pay current employee wages and salaries or retirement benefits to former employees for one pay period.
- Insufficient resources by the local government, charter school, charter technical career center, or district school board, to fund an unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit.<sup>11</sup>

Upon notification that one or more of these conditions is met, the Governor or Commissioner of Education, as appropriate, must then determine whether state assistance is needed to resolve or prevent the financial deterioration.<sup>12</sup> If state assistance is needed, then the entity is determined to be in a state of financial emergency.<sup>13</sup>

Once a determination is made, the Governor or Commissioner of Education has the power to implement certain remedial measures to resolve the financial emergency.<sup>14</sup> Pursuant to s. 218.503(3), 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 repayment of a state loan to the local governmental entity.

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<sup>8</sup> The full title of this act is the "Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act".

<sup>9</sup> s. 218.502, F.S., defines local government entity to mean "a county, municipality, or special district".

<sup>10</sup> s. 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.

<sup>11</sup> s. 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."

<sup>12</sup> s. 218.503(3), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> s. 218.503 (3), F.S.

- Prohibit issuance of bonds, notes, certificates of indebtedness, or any other form of debt while in a state of financial emergency.
- Inspect and review the entity's records, information, reports, and assets.
- Consult with local governmental entity and district school board officials and auditors to discuss necessary procedures to bring accounting books, systems, financial procedures and reports into state compliance.
- Provide technical assistance.
- Establish a financial emergency board to oversee local government or district school board activities, 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 necessary actions to adjust the entity's debt.<sup>15</sup>

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

### ***Financial Emergency Board***

In assisting 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 activities.<sup>17</sup> The Governor or the State Board of Education shall appoint members and select a chair. Once established, the board may:

- Review the entity's records, reports, and assets;
- Consult with local entity officials and auditors and with state officials regarding the necessary steps to bring the entity's accounting books, 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.<sup>18</sup>

All recommendations and reports made by the financial emergency board must be provided to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards.<sup>19</sup>

### ***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 Governor or Commissioner approval, that prescribes remedial actions to adjust the entity's current financial state.<sup>20</sup> The adopted plan must include:

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<sup>15</sup> s. 218.503(3)(a)-(h), F.S.

<sup>16</sup> s. 218.503(5), F.S.

<sup>17</sup> s. 218.503 (3)(g)1., F.S.

<sup>18</sup> s. 218.503 (3)(g)1. a.-c., F.S.

<sup>19</sup> s. 218.503 (3)(g)2., F.S.

<sup>20</sup> s. 218.503 (3)(h), F.S.

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

***District School Boards***

Section 1011.051, F.S., requires superintendents to provide written notice to the district school board and the Commissioner of Education (Commissioner) if the unreserved general fund balance in a district’s approved operating budget is projected to drop below 3 percent of projected general fund revenues.<sup>23</sup> If it is projected to drop below 2 percent, in addition to the notice requirement, the Commissioner must make a determination within 14 days to appoint a financial emergency board if the Commissioner does not reasonably expect that the district has a plan in place to avoid a financial emergency.<sup>24</sup>

The Department of Education reports that the following school districts have either been in a state of financial emergency or are subject to notification requirements:

School District	Date of Notification	Projected Financial Condition Ratio at Time of Notification (FY 2009-10)	Financial Condition Ratio at June 30, 2010
Gadsden	March 15, 2010	1.74%	5.72%
Indian River	August 30, 2010	1.61%	1.53%
Jefferson	April 27, 2010	1.90%	2.84%
Taylor	April 30, 2010	1.79%	6.65%

School District	Date of Notification	Projected Financial Condition Ratio at Time of Notification (FY 2008-09)	Financial Condition Ratio at June 30, 2010
Dade	February 23, 2009	2.25%	3.83%
Gadsden	February 17, 2009	0%	5.72%
Glades	March 5, 2009	.71%	16.91%
Jefferson	March 9, 2009	0%	2.84%
Volusia	March 3, 2009	1.40%	8.75%
Washington	March 10, 2009	1.66%	26.13%

<sup>21</sup> s. 218.503(1), F.S., as previously discussed above, addresses the indicators of financial distress.

<sup>22</sup> s. 218.503 (3)(h)1.-3., F.S.

<sup>23</sup> s. 1011.051(1), F.S.

<sup>24</sup> s. 1011.051(2), F.S.

The following school districts have been included in the Auditor General’s “Significant Financial Trends and Findings Reports” as having a financial condition ratio below 3 percent for the 2008-09 fiscal year: Highlands, Jefferson, Manatee, Miami-Dade and Taylor county district school boards.

Exact amounts are reflected in the following table:

School District	Financial Condition Ratio (FY 2008-09)	Number of Consecutive Years Ratio Under 3%
Highlands	2.01%	1
Jefferson	-8.05%	2
Manatee	2.96%	2
Miami-Dade	2.36%	3
Taylor	0.48%	6

For fiscal year 2009-10, the Auditor General has issued an operational report indicating that Indian River county district school board reported a financial condition ratio below 3 percent.<sup>25</sup> As the Auditor General has not completed audits for fiscal year 2009-10, there may be additional district school boards identified as meeting the threshold ratio in upcoming reports.

**III. Effect of Proposed Changes:**

This bill mandates inclusion of consolidation of services plans for entities in a state of financial emergency as follows:

- For counties and municipalities that have adopted the voluntary efficiency plan pursuant to s. 163.07, F.S.; or
- For local entities, including district school boards, for which the Governor or Commissioner of Education has required a corrective plan.

This bill defines consolidation of administrative direction and support services to include such services as asset purchasing and sales, economic and community development, including planning and zoning, building inspections, facilities and fleet management, engineering and construction, and insurance coverage and risk management.

Section 7, article IV, of the state constitution, authorizes the Governor, through executive order, to suspend certain public officers, including state officers who are not subject to impeachment proceedings, and county officers.<sup>26</sup> The Senate then has the authority to remove, or reinstate, the suspended official. A Florida Supreme Court opinion clarified that district school board members are considered to be county officers, for purposes of suspension authority, as are the sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county

<sup>25</sup> E-mail from David Ward, Audit Supervisor, Office of the Auditor General (February 15, 2011). The 2008-09 fiscal year findings are published in Office of the Auditor General Report No. 2011-028. Fiscal year 2009-10 findings are contained in Report No. 2011-055.

<sup>26</sup> sec. 7, art. IV., of the state constitution, provides, in part: “(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office...any county officer, for malfeasance, misfeasance, neglect of duty....The senate may...remove from office or reinstate the suspended official....”

commissioners and elected superintendents of schools.<sup>27</sup> This same opinion indicates, however, that superintendents who are appointed are not subject to removal through this constitutional provision.

Pursuant to the constitutional authority of section 7, article IV, of the state constitution, this bill classifies the failure of a district school board to correct a state of financial emergency as malfeasance, misfeasance, and neglect of duty, which enables a sitting Governor to suspend and recommend removal of district school board members. This language does not appear to reach elected district school superintendents. Also, the bill leaves the discretion with the Governor to determine when to act on the suspension of a member of a district school board or local governmental entity.

This bill does not limit local entities to consolidation with geographically adjacent or demographically similar entities to realize cost savings through shared support.

#### **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 Governor review and oversight due to financial emergency will be required to include a structural and services consolidation plan as part of the adopted plan under s. 163.07, F.S. Any fiscal impact is indeterminate at this time.

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<sup>27</sup> *In re Advisory Opinion to the Governor-School Board Member-Suspension Authority*, 626 So.2d 684, 689-690 (Fla. S.Ct. 1993).

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. Any fiscal impact is indeterminate at this time.

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:**

None.

**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.)

**CS by Education Pre-K – 12 Committee on February 21, 2011:**

The committee substitute:

- Provides clarification that the consolidation of administrative and support services is meant to encompass the same types of services listed in both the voluntary development of an efficiency plan and the plan developed through the entity being in a state of financial emergency; and
- Clarifies the constitutional ability of a Governor to suspend and recommend removal of a district school board member on a malfeasance, misfeasance, or neglect of duty basis through a failure to correct a state of financial emergency.

- B. **Amendments:**

None.