

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 368

INTRODUCER: Senator Gaetz

SUBJECT: Local Government

DATE: October 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows entities in a state of financial emergency to consult with other governmental bodies regarding the consolidation of administrative and support services. Plans created to end a financial emergency must include provisions implementing any consolidation, sourcing, or discontinuance of administrative direction or support services. In addition, this bill provides that governing board members who fail to resolve a financial emergency may be suspended from office by executive order.

The bill also amends the approval process for special assessments designed to improve business and historic districts in municipalities.

The bill amends sections 170.01 and 218.503 of the Florida Statutes.

II. Present Situation:

Supplemental and Alternative Methods of Making Local Municipal Improvements

Section 170.01, F.S., grants municipalities, by their governing authority, to provide a number of local improvements. These range from the construction of streets and sidewalks to the excavation and grading of greenbelts and sewers. Utilities may be relocated, parks and recreation facilities built, and water mains constructed. Improvements related to offstreet parking facilities, parking garages or other similar facilities, and mass transportation systems are also possible but must be approved by a vote of a majority of affected property owners.

Special assessments may be levied for the local improvements with conditions. Assessments may be collected only on benefited property and only at a rate of assessment based on the special advantage accruing to the property. The benefit is to be different in type or degree from benefits provided to the community as a whole.

Subsection 3 of s. 170.01, F.S., outlines further guidance on special assessments levied for the purpose of stabilizing and improving three specific types of improvements:

- Retail business districts,
- Wholesale business districts, or
- Nationally recognized historic districts.

A special assessment collected against property benefited for these purposes is “subject to the approval of a majority of the affected property owners.”¹

Local Government Entity and District School Board Financial Emergencies

Part V of Chapter 218, F.S., comprises the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act (Act). The purpose of the Act is to preserve the fiscal solvency of local government entities,² charter schools, charter technical career centers, and district school boards that are in a state of financial emergency. Under the Act’s provisions, those bodies that meet one of the statutory indicators of financial distress are required to notify the Governor or Commissioner of Education and the Legislative Auditing Committee.³

Conditions Indicating Financial Distress

Subsections (a)-(e) of s. 218.503(1), F.S., provide indicators of financial distress which include any one of the following conditions based on lack of funds:

- Failure to pay short-term loans or failure to make bond debt service or other long-term debt payments within the same fiscal year in which due;
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented;
- Failure to transfer taxes withheld on the income of employees, failure to transfer employer and employee contributions for Federal social security, or failure to transfer any pension, retirement, or benefit plan of an employee at the appropriate time;
- Failure to pay wages and salaries owed to employees or retirement benefits owed to former employees for one pay period;

¹ Section 170.01(3), F.S.

² s. 218.502, F.S., defines local government entity to mean “a county, municipality, or special district”.

³ 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.

- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, for which sufficient resources of the entity are not available to cover the deficit.⁴

According to the Florida State Auditor’s office, the following are figures for entities the office has reviewed that met one or more of the financial distress indicators for the 2009-2010 fiscal year:⁵

Entity	Audit Reports Reviewed	Met at Least One Indicator
Counties ⁶	66	None (0.0%)
Municipalities	379	10 (2.6%)
Special Districts ⁷	730	73 (10.0%)
Charter Schools	398	39 (9.8%)

Determination of Financial Emergency

Upon notification that one or more of these conditions is met, the Governor or Commissioner of Education, as appropriate, must determine whether state assistance is needed to resolve or prevent the financial deterioration. The entity is determined to be in a state of financial emergency if state assistance is needed.⁸

Once a determination is made, the Governor or Commissioner of Education has the power to implement certain remedial measures to resolve the financial emergency. 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;
- 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;

⁴ Section 1011.051, F.S., provides additional insufficient resource conditions for school districts. If the unreserved general fund balance in a district’s approved operating budget is projected to drop below 3 percent and 2 percent of projected general fund revenues, the school board superintendent is required to provide written notice to the district school board and the Commissioner of Education. Florida Auditor General Report No. 2012-023 cited three school districts in the state that met this condition in the 2009-10 fiscal year.

⁵ E-mail from Marilyn Rosetti, Audit Manager, Local Government Reviews & Special Audits, State of Florida Auditor General (Nov. 2, 2011) (on file with the Senate Committee on Community Affairs). The audit report filing deadline for FY 2009-10 was September 30, 2011; the Auditor General’s office is still receiving FY 2009-10 fiscal year audits.

⁶ The consolidated government of Duval County/City of Jacksonville is included in municipalities.

⁷ Approximately 750 additional special districts are not captured here. Dependent special districts may satisfy the reporting requirements of s. 218.32, F.S., (annual financial reports filed with Department of Financial Services) and s. 218.39, F.S., (audit reports) through inclusion with the local governing authority’s annual financial report or audit. For FY 2008-09, about 450 dependent special districts were included in the local governing authority’s audit. In addition, nearly 300 special districts in FY 2008-09 did not meet the thresholds of s. 218.39, F.S. requiring an audit by the Auditor General.

⁸ s. 218.503(3), F.S.

- 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; and
- 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.

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

Financial Emergency Board

One of the measures available to the Governor or the Commissioner of Education to assist in resolving a financial emergency is the establishment of a financial emergency board.⁹ This board is charged with overseeing activities of the targeted entity. 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.¹⁰

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.¹¹

Financial Emergency Plan

Another measure the Governor or Commissioner of Education may require of entities when resolving a financial emergency is the development of a plan prescribing remedial actions.¹² Subject to Governor or Commissioner approval, the adopted plan must include but is not limited to:

- Provision for full payment of obligations outlined in s. 218.503(1), F.S., designated as priority items, that are currently due or will become due;
- Establishment of priority budgeting or zero-based budgeting to eliminate items that are not affordable; and
- The prohibition of a level of operations which can be sustained only with nonrecurring revenues.¹³

⁹ s. 218.503 (3)(g)1., F.S.

¹⁰ s. 218.503 (3)(g)1.a.-c., F.S.

¹¹ s. 218.503 (3)(g)2., F.S.

¹² s. 218.503 (3)(h), F.S.

¹³ Section 1011.051(2), F.S. provides additional emergency plan provisions for school districts. If a school district's unreserved general fund is projected to drop below 2 percent of general fund revenues and the Commissioner of Education

Article IV, Section 7 of the Florida Constitution: Suspensions

Article IV, section 7 of the Florida Constitution provides the following:

By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 170.01(3), F.S., to require that special assessments on property to stabilize and improve certain business and historic districts be subject to the approval by a majority vote of the affected property owners voting in an election. The determination of a majority will be predicated by the number of property owners who actually participate in an election.

Section 2 amends paragraphs (g) and (h) of s. 218.503(3), F.S., regarding measures to resolve financial emergencies. This section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of all 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 provides that entities required by the Governor or Commissioner of Education to develop remedial financial emergency plans must include provisions implementing 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, the services cited above.

determines that the district does not have a plan that is reasonably anticipated to avoid a financial emergency, the Commissioner shall appoint a financial emergency board to assist the district.

¹⁴ FLA CONST. art. IV, s. 7.

Finally, this section creates s. 218.503(6), F.S., to clarify the constitutional ability of a Governor to suspend and recommend removal of members of governing bodies who fail to resolve a state of financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

Section 3 provides that this act shall take effect July 1, 2012.

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:

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.

Local government entities and district school boards in a state of financial emergency who are required to adopt financial emergency plans must include provisions implementing the consolidation, sourcing or discontinuance of all administrative direction and support services as part of the entity's adopted financial emergency plan.

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.)

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.
