

2012368er

1
2 An act relating to financial emergencies; amending s.
3 218.39, F.S.; requiring the Auditor General to notify
4 each member of the governing body of a local
5 governmental entity, district school board, charter
6 school, or charter technical career center of certain
7 fund balance deficits; amending s. 218.503, F.S.;
8 removing a condition under which local governmental
9 entities, charter schools, charter technical career
10 centers, and district school boards are subject to
11 certain review and oversight by the Governor, the
12 charter school sponsor, the charter technical career
13 center sponsor, or the Commissioner of Education;
14 requiring a local governmental entity or district
15 school board to provide requested information within a
16 specified period of time; authorizing a financial
17 emergency board for a local governmental entity or
18 district school board to consult with other
19 governmental entities for the consolidation of
20 administrative direction and support services;
21 authorizing the Governor or Commissioner of Education
22 to require a local governmental entity or district
23 school board to include provisions implementing the
24 consolidation, sourcing, or discontinuance of all
25 administrative direction and support services in
26 certain plans; providing that the members of the
27 governing body of a local governmental entity or the
28 members of a district school board who fail to resolve
29 a state of financial emergency are subject to

2012368er

30 suspension or removal from office; providing an
31 effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsection (5) of section 218.39, Florida
36 Statutes, is amended to read:

37 218.39 Annual financial audit reports.—

38 (5) At the conclusion of the audit, the auditor shall
39 discuss with the chair of the governing body of the local
40 governmental entity or the chair's designee, the elected
41 official of each county agency or the elected official's
42 designee, the chair of the district school board or the chair's
43 designee, the chair of the board of the charter school or the
44 chair's designee, or the chair of the board of the charter
45 technical career center or the chair's designee, as appropriate,
46 all of the auditor's comments that will be included in the audit
47 report. If the officer is not available to discuss the auditor's
48 comments, their discussion is presumed when the comments are
49 delivered in writing to his or her office. The auditor shall
50 notify each member of the governing body of a local governmental
51 entity, district school board, charter school, or charter
52 technical career center for which:

53 (a) Deteriorating financial conditions exist that may cause
54 a condition described in s. 218.503(1) to occur if actions are
55 not taken to address such conditions.

56 (b) A fund balance deficit in total or for that portion of
57 a fund balance not classified as restricted, committed, or
58 nonspendable, or a total or unrestricted net assets deficit, as

2012368er

59 reported on the fund financial statements of entities required
60 to report under governmental financial reporting standards or on
61 the basic financial statements of entities required to report
62 under not-for-profit financial reporting standards, for which
63 sufficient resources of the local governmental entity, charter
64 school, charter technical career center, or district school
65 board, as reported on the fund financial statements, are not
66 available to cover the deficit. Resources available to cover
67 reported deficits include fund balance or net assets that are
68 not otherwise restricted by federal, state, or local laws, bond
69 covenants, contractual agreements, or other legal constraints.
70 Property, plant, and equipment, the disposal of which would
71 impair the ability of a local governmental entity, charter
72 school, charter technical career center, or district school
73 board to carry out its functions, are not considered resources
74 available to cover reported deficits.

75 Section 2. Paragraph (e) of subsection (1) and subsection
76 (3) of section 218.503, Florida Statutes, are amended, and
77 subsection (6) is added to that section, to read:

78 218.503 Determination of financial emergency.—

79 (1) Local governmental entities, charter schools, charter
80 technical career centers, and district school boards shall be
81 subject to review and oversight by the Governor, the charter
82 school sponsor, the charter technical career center sponsor, or
83 the Commissioner of Education, as appropriate, when any one of
84 the following conditions occurs:

85 ~~(e) A fund balance deficit in total or for that portion of~~
86 ~~a fund balance not classified as restricted, committed, or~~
87 ~~nonspendable, or a total or unrestricted net assets deficit, as~~

2012368er

88 ~~reported on the fund financial statements of entities required~~
89 ~~to report under governmental financial reporting standards or on~~
90 ~~the basic financial statements of entities required to report~~
91 ~~under not-for-profit financial reporting standards, for which~~
92 ~~sufficient resources of the local governmental entity, charter~~
93 ~~school, charter technical career center, or district school~~
94 ~~board, as reported on the fund financial statements, are not~~
95 ~~available to cover the deficit. Resources available to cover~~
96 ~~reported deficits include fund balance or net assets that are~~
97 ~~not otherwise restricted by federal, state, or local laws, bond~~
98 ~~covenants, contractual agreements, or other legal constraints.~~
99 ~~Property, plant, and equipment, the disposal of which would~~
100 ~~impair the ability of a local governmental entity, charter~~
101 ~~school, charter technical career center, or district school~~
102 ~~board to carry out its functions, are not considered resources~~
103 ~~available to cover reported deficits.~~

104 (3) Upon notification that one or more of the conditions in
105 subsection (1) have occurred or will occur if action is not
106 taken to assist the local governmental entity or district school
107 board, the Governor or his or her designee shall contact the
108 local governmental entity or the Commissioner of Education or
109 his or her designee shall contact the district school board to
110 determine what actions have been taken by the local governmental
111 entity or the district school board to resolve or prevent the
112 condition. The information requested must be provided within 45
113 days after the date of the request. If the local governmental
114 entity or the district school board does not comply with the
115 request, the Governor or his or her designee or the Commissioner
116 of Education or his or her designee shall notify the members of

2012368er

117 the Legislative Auditing Committee who may take action pursuant
118 to s. 11.40. The Governor or the Commissioner of Education, as
119 appropriate, shall determine whether the local governmental
120 entity or the district school board needs state assistance to
121 resolve or prevent the condition. If state assistance is needed,
122 the local governmental entity or district school board is
123 considered to be in a state of financial emergency. The Governor
124 or the Commissioner of Education, as appropriate, has the
125 authority to implement measures as set forth in ss. 218.50-
126 218.504 to assist the local governmental entity or district
127 school board in resolving the financial emergency. Such measures
128 may include, but are not limited to:

129 (a) Requiring approval of the local governmental entity's
130 budget by the Governor or approval of the district school
131 board's budget by the Commissioner of Education.

132 (b) Authorizing a state loan to a local governmental entity
133 and providing for repayment of same.

134 (c) Prohibiting a local governmental entity or district
135 school board from issuing bonds, notes, certificates of
136 indebtedness, or any other form of debt until such time as it is
137 no longer subject to this section.

138 (d) Making such inspections and reviews of records,
139 information, reports, and assets of the local governmental
140 entity or district school board as are needed. The appropriate
141 local officials shall cooperate in such inspections and reviews.

142 (e) Consulting with officials and auditors of the local
143 governmental entity or the district school board and the
144 appropriate state officials regarding any steps necessary to
145 bring the books of account, accounting systems, financial

2012368er

146 procedures, and reports into compliance with state requirements.

147 (f) Providing technical assistance to the local
148 governmental entity or the district school board.

149 (g)1. Establishing a financial emergency board to oversee
150 the activities of the local governmental entity or the district
151 school board. If a financial emergency board is established for
152 a local governmental entity, the Governor shall appoint board
153 members and select a chair. If a financial emergency board is
154 established for a district school board, the State Board of
155 Education shall appoint board members and select a chair. The
156 financial emergency board shall adopt such rules as are
157 necessary for conducting board business. The board may:

158 a. Make such reviews of records, reports, and assets of the
159 local governmental entity or the district school board as are
160 needed.

161 b. Consult with officials and auditors of the local
162 governmental entity or the district school board and the
163 appropriate state officials regarding any steps necessary to
164 bring the books of account, accounting systems, financial
165 procedures, and reports of the local governmental entity or the
166 district school board into compliance with state requirements.

167 c. Review the operations, management, efficiency,
168 productivity, and financing of functions and operations of the
169 local governmental entity or the district school board.

170 d. Consult with other governmental entities for the
171 consolidation of all administrative direction and support
172 services, including, but not limited to, services for asset
173 sales, economic and community development, building inspections,
174 parks and recreation, facilities management, engineering and

2012368er

175 construction, insurance coverage, risk management, planning and
176 zoning, information systems, fleet management, and purchasing.

177 2. The recommendations and reports made by the financial
178 emergency board must be submitted to the Governor for local
179 governmental entities or to the Commissioner of Education and
180 the State Board of Education for district school boards for
181 appropriate action.

182 (h) Requiring and approving a plan, to be prepared by
183 officials of the local governmental entity or the district
184 school board in consultation with the appropriate state
185 officials, prescribing actions that will cause the local
186 governmental entity or district school board to no longer be
187 subject to this section. The plan must include, but need not be
188 limited to:

189 1. Provision for payment in full of obligations outlined in
190 subsection (1), designated as priority items, which ~~that~~ are
191 currently due or will come due.

192 2. Establishment of priority budgeting or zero-based
193 budgeting in order to eliminate items that are not affordable.

194 3. The prohibition of a level of operations which can be
195 sustained only with nonrecurring revenues.

196 4. Provisions implementing the consolidation, sourcing, or
197 discontinuance of all administrative direction and support
198 services, including, but not limited to, services for asset
199 sales, economic and community development, building inspections,
200 parks and recreation, facilities management, engineering and
201 construction, insurance coverage, risk management, planning and
202 zoning, information systems, fleet management, and purchasing.

203 (4) (a) Upon notification that one or more of the conditions

2012368er

204 in subsection (1) have occurred or will occur if action is not
205 taken to assist the charter school, the charter school sponsor
206 or the sponsor's designee and the Commissioner of Education
207 shall contact the charter school governing body to determine
208 what actions have been taken by the charter school governing
209 body to resolve or prevent the condition. The Commissioner of
210 Education has the authority to require and approve a financial
211 recovery plan, to be prepared by the charter school governing
212 body, prescribing actions that will resolve or prevent the
213 condition.

214 (b) Upon notification that one or more of the conditions in
215 subsection (1) have occurred or will occur if action is not
216 taken to assist the charter technical career center, the charter
217 technical career center sponsor or the sponsor's designee and
218 the Commissioner of Education shall contact the charter
219 technical career center governing body to determine what actions
220 have been taken by the governing body to resolve or prevent the
221 condition. The Commissioner of Education may require and approve
222 a financial recovery plan, to be prepared by the charter
223 technical career center governing body, prescribing actions that
224 will resolve or prevent the condition.

225 (c) The Commissioner of Education shall determine if the
226 charter school or charter technical career center needs a
227 financial recovery plan to resolve the condition. If the
228 Commissioner of Education determines that a financial recovery
229 plan is needed, the charter school or charter technical career
230 center is considered to be in a state of financial emergency.

231
232 The Department of Education, with the involvement of sponsors,

2012368er

233 charter schools, and charter technical career centers, shall
234 establish guidelines for developing a financial recovery plan.

235 (5) A local governmental entity or district school board
236 may not seek application of laws under the bankruptcy provisions
237 of the United States Constitution except with the prior approval
238 of the Governor for local governmental entities or the
239 Commissioner of Education for district school boards.

240 (6) The failure of the members of the governing body of a
241 local governmental entity or the failure of the members of a
242 district school board to resolve a state of financial emergency
243 constitutes malfeasance, misfeasance, and neglect of duty for
244 purposes of s. 7, Art. IV of the State Constitution.

245 Section 3. This act shall take effect July 1, 2012.