

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB EAC 12-01 Financial Emergencies

SPONSOR(S): Economic Affairs Committee, Hukill

TIED BILLS: **IDEN./SIM. BILLS:** SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee	13 Y, 3 N	Rojas	Tinker
1) Finance & Tax Committee	16 Y, 8 N	Wilson	Langston
2) State Affairs Committee	9 Y, 6 N	Camechis	Hamby

SUMMARY ANALYSIS

The bill amends ch. 218, F.S., which addresses financial emergencies experienced by counties, cities, special districts, charter schools, charter technical career centers, and district school boards (collectively referred to as “applicable entities”).

Currently, applicable entities are subject to *review and oversight* by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education (Commissioner), as appropriate, if one or more of five specified financial conditions occur. As recommended by the Auditor General of Florida, this bill deletes one condition relating to a fund balance deficit and net assets deficit because the existence of these deficits does not necessarily indicate a financial emergency requiring state intervention. Instead, the bill amends the law to require independent auditors of applicable entities to consider, during each annual audit, a fund balance deficit or net assets deficit. If a deficit exists and sufficient resources are not available to cover the deficit, the auditor must notify each governing board member of the applicable entity.

If one or more of the specified financial conditions have occurred or will occur if action is not taken, the applicable entity must notify the Legislative Auditing Committee (LAC) and either the Governor (for local governments) or the Commissioner (all other applicable entities). When notified by a county, city, special district, or district school board, the Governor or Commissioner must request additional information from the entity to determine if state assistance is necessary to resolve or prevent the condition. Current law does not, however, specify a timeframe within which an entity must respond to a request from the Governor or Commissioner. According to the Auditor General, many entities that received requests in the past did not respond in a timely manner. Therefore, as recommended by the Auditor General, the bill amends the law to require entities to respond to a request within 45 days. If the entity does not submit a timely response, the Governor or the Commissioner, or their respective designees, must notify the LAC. The LAC may then take action pursuant to its statutory authority, which may include conducting an investigation, holding hearings, issuing subpoenas, or directing the withholding of funds until the entity complies with the law.

The Governor and Commissioner are authorized to implement certain measures to address financial emergencies of counties, cities, special districts, and district school boards. This bill adds to those measures by authorizing a financial emergency board, appointed to oversee a financially distressed entity, to consult with other governmental entities for “the consolidation of 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. The bill also requires entities that must adopt a financial emergency plan to include provisions “implementing the consolidation, sourcing, or discontinuance” of the same administrative direction and support services.

Lastly, the bill creates s. 218.503(6), F.S., which explicitly provides that “failure of the members of the governing body of a local governmental entity or the failure of the members of a district school board to resolve a state of financial emergency constitutes malfeasance, misfeasance, and neglect of duty for purposes of s. 7, Art. IV of the State Constitution.” As such, members of county commissions, city commissions, and district school boards may be subject to suspension from office for failure to resolve a financial emergency.

This bill does not have an impact on state or local government revenues. See FISCAL COMMENTS.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7031c.SAC

DATE: 2/1/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

County, City, Special District, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies

Part V of Ch. 218, F.S., is known as 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 counties, cities, special districts,¹ charter schools, charter technical career centers, and district school boards (collectively referred to as “applicable entities”) that are in a state of financial emergency.

Conditions Indicating Financial Distress

Current Situation

According to s. 218.503(1)(a)-(e), F.S., applicable entities are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner, as appropriate, when any one of the following conditions occurs due to lack of funds:

- a) 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.
- b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented.
- c) Failure to transfer at the appropriate time 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.
- d) Failure for one pay period to pay wages and salaries owed to employees or retirement benefits owed to former employees.
- e) A total fund balance deficit, an unrestricted fund balance deficit, a total net assets deficit, or an unrestricted net assets deficit² if sufficient resources are not available to cover the deficit.³

In 2011, the Auditor General issued a report⁴ on the Local Government Financial Reporting System. The report concluded that the condition specified in s. 218.503(1)(e), F.S., regarding a fund balance deficit or net assets deficit, has not been an effective indicator of a state of financial emergency, yet applicable entities must bear the cost of notifying the appropriate officials if such conditions exist. The Auditor General recommended eliminating that condition and revising s. 218.39(5), F.S., to require independent auditors of applicable entities to consider those same deficits in determining whether an entity is experiencing deteriorating financial conditions and, if sufficient funds are unavailable to cover a deficit, to disclose such findings to each member of the entity’s governing body.

Section 218.39, F.S., governs annual audit reports of local entities, specifically requiring that if, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor

¹ s. 218.502, F.S., defines local government entity to mean “a county, municipality, or special district”.

² The difference between assets and liabilities in governmental funds (used to report governmental activities) is “fund balance” and this difference in proprietary funds (used to report business-type activities) is “net assets.” Under current generally accepted accounting principles, fund balance is reported as reserved or unreserved and net assets are reported as restricted or unrestricted. Unreserved fund balance and unrestricted net assets are a measure of current available resources whereas reserved fund balance and restricted net assets represent resources already expended or are limited as to where they can be expended. It is important for an entity to maintain sufficient levels of unreserved fund balance and unrestricted net assets to ensure the entity can respond to emergencies or other unexpected occurrences. Declining unreserved fund balance/unrestricted net assets may indicate that an entity could have difficulty maintaining a stable revenue structure or providing an adequate level of services. Florida Auditor General Report No. 2011-196, p. 6.

³ 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 FY 2009-10.

⁴ Florida Auditor General Report No. 2011-196.

General, each of the following entities must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by *an independent certified public accountant* retained by it and paid from its public funds:

- a) Each county.
- b) Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000, as reported on the fund financial statements.
- c) Any special district with revenues or the total of expenditures and expenses in excess of \$100,000, as reported on the fund financial statements.
- d) Each district school board.
- e) Each charter school established under s. 1002.33, F.S.
- f) Each charter technical center established under s. 1002.34, F.S.

At the conclusion of the audit, the auditor must discuss with the statutorily designated person for each entity, all of the auditor's comments that will be included in the audit report. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office. Pursuant to s. 218.39(5), F.S., the auditor must notify each member of the governing body of a local governmental entity, district school board, charter school, or charter technical career center for which deteriorating financial conditions exist that may cause a condition described in s. 218.503(1), F.S., to occur if actions are not taken to address such conditions.

Effect of Proposed Changes

As recommended by the Auditor General of Florida, this bill deletes paragraph (e) of s. 218.503(1), F.S., to remove the statutory condition relating to a fund balance deficit and net assets deficit. In its place, the bill amends s. 218.39(5), F.S., to require independent auditors of an applicable entity to consider, during each annual audit, whether a fund balance deficit or net assets deficit exists. If a deficit exists and sufficient resources are not available to cover the deficit, the auditor must notify each governing board member of the applicable entity. The effect is to require auditors to consider fund deficits as a potential indicator of financial distress, rather than considering such deficits an automatic statutory indicator of financial distress.

Communications Regarding Financial Emergencies of Counties, Cities, Special Districts, and District School Boards

Present Situation

Under the Act's provisions, an applicable entity must notify the Legislative Auditing Committee and Governor (counties, cities, special districts) or Commissioner (all other applicable entities including charter schools and charter technical career centers)⁵ when one or more of the conditions specified in s. 218.503(1), F.S., have occurred or will occur if action is not taken to assist the entity.

Upon notification that one or more of the conditions have occurred or will occur if action is not taken to assist a county, city, special district, or district school board, the Governor or Commissioner, as appropriate, must determine whether state assistance is needed to resolve or prevent the financial deterioration. The Act requires the Governor or Commissioner to contact the entity to determine what actions have been taken to resolve or prevent the condition.⁶ However, the Act does not specify a timeframe within which entities must respond to requests for information from the Governor or the Commissioner, or provide consequences for failure to respond. According to the Auditor General's 2011 report, many entities that received such requests in the past did not respond in a timely manner.⁷

⁵ 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 must notify the Commissioner of Education and the Legislative Auditing Committee.

⁶ s. 218.403(3), F.S.

⁷ Florida Auditor General Report No. 2011-196, p. 4.

Effect of Proposed Changes

As recommended by the Auditor General, the bill amends s. 218.503(3), F.S., to require counties, cities, special districts, and district school boards to respond within 45 days to a request for information from the Governor or Commissioner. If the entity does not submit a timely response, the Governor or the Commissioner, or their respective designees, must notify the Legislative Auditing Committee (LAC). The bill further authorizes the LAC to take action pursuant to s. 11.40, F.S., which may include conducting an investigation, holding hearings, issuing subpoenas, or directing the withholding of funds until the entity complies with the law.

Measures to Address Financial Emergencies of Counties, Cities, Special Districts, and District School Boards

Current Situation

If the Governor or Commissioner determines that state assistance is needed, the county, city, special district, or district school board is considered to be in a state of financial emergency. As a result, the Governor or Commissioner is authorized to implement certain remedial measures to resolve the financial emergency, including:⁸

- a) requiring approval of an entity's budget by the Governor or Commissioner, as appropriate;
- b) authorizing and providing for repayment of a state loan to an entity;
- c) prohibiting issuance of bonds, notes, certificates of indebtedness, or any other form of debt while in a state of financial emergency;
- d) inspecting and reviewing an entity's records, information, reports, and assets;
- e) consulting with an entity's officials and auditors to discuss necessary procedures to bring accounting books, systems, financial procedures, and reports into state compliance;
- f) providing technical assistance;
- g) establishing a financial emergency board, appointed by the Governor or State Board of Education as appropriate, to oversee an entity's activities, and
- h) requiring and approving a financial emergency plan to be prepared by the entity that prescribes necessary actions to remedy the financial emergency.⁹

As indicated above, the Governor or Commissioner may establish a financial emergency board to assist in resolving a financial emergency experienced by a county, city, special district, or district school board.¹⁰ If created, the board must oversee activities of the entity experiencing the financial emergency. To accomplish its oversight task, a board may:

- review an entity's records, reports, and assets;
- consult with an entity's officials and auditors as well as state officials regarding the steps necessary to bring the entity's accounting books, systems, financial procedures, and reports into compliance with state requirements; and
- review an entity's operations, management, efficiency, productivity, and financing of functions and operations.¹¹

All recommendations and reports issued by a financial emergency board must be provided to the Governor (for counties, cities, and special districts) or to the Commissioner and the State Board of Education (for district school boards) for appropriate action.¹²

⁸ s. 218.503(3), F.S.

⁹ Section 218.503(5), F.S., prohibits a county, city, special district, or district school board from applying for bankruptcy under the United States Constitution without prior approval from the Governor (for counties, cities, and special districts) or the Commissioner (for district school boards). Section 1002.345, F.S., provides additional requirements for charter schools and charter technical career centers that are in deteriorating financial conditions and financial emergencies, but that provision is not amended by this bill.

¹⁰ s. 218.503 (3)(g), F.S. Note: The statute does not authorize creation of a financial emergency board if a charter school or charter technical career center is experiencing a financial emergency.

¹¹ s. 218.503 (3)(g)1.a.-c., F.S.

¹² s. 218.503 (3)(g)2., F.S.

The Governor or Commissioner may also require a county, city, special district, or district school board experiencing a financial emergency to prepare, in consultation with the appropriate state officials, a financial emergency plan prescribing actions that will resolve the emergency.¹³ Subject to approval by the Governor or Commissioner, an 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
- prohibition of a level of operations that can be sustained only with nonrecurring revenues.¹⁴

Effect of Proposed Changes

The bill amends s. 218.503(3)(g), F.S., to authorize, but not require, a financial emergency board appointed by the Governor or Commissioner to consult with other governmental entities for the consolidation of 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.

The bill also amends s. 218.503(3)(h), F.S., to require any financial emergency plan adopted by a county, city, special district, or district school board to include provisions implementing the consolidation, sourcing, or discontinuance of administrative direction and support services. Such services include, but are not limited to, the services listed immediately above.

Suspension of Public Officers

Present Situation

Article IV, section 7 of the Florida Constitution authorizes the suspension of certain public officers, specifically providing as follows:

- (a) 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 ... 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. The suspended officer may at any time before removal be reinstated by the governor.
- (b) The senate may, in proceedings prescribed by law, remove from office or reinstate *the suspended official* and for such purpose the senate may be convened in special session by its president or by a majority of its membership.
- (c) By order of the governor any *elected municipal officer* indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter. [Emphasis added.]

The Florida Supreme Court has defined the constitutional grounds for suspensions of public officials as follows:¹⁵

- “Misfeasance” refers to the performance by an officer in his official capacity of a legal act in an improper or illegal manner. Misfeasance is literally a misdeed or a trespass.

¹³ s. 218.503 (3)(h), F.S.

¹⁴ 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 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.

¹⁵ *State ex rel. Hardie v. Coleman*, 115 Fla. 119, 155 So. 129 (1934).

- “Malfeasance” refers to evil conduct or illegal deed, doing of that which one ought not to do, performance of act by officer in official capacity that is wholly illegal and wrongful.
- “Neglect of duty” refers to neglect or failure of an officer to do and perform some duty imposed by virtue of his office or required by law. It is not material whether the neglect is willful, through malice, ignorance, or oversight. When such neglect is grave and the frequency of it is such as to endanger or threaten the public welfare it is gross.
- “Incompetency” refers to any physical, moral, or intellectual quality, lack of which incapacitates one to perform duties of his office. Incompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them. It may also arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election.

For purposes of the Governor's constitutional power to suspend *county officers*, county officers are the sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioners, school board members, and elected superintendent of schools.¹⁶ An officer, official, or employee of any city-county merged form of government, who exercises the powers and duties of a county officer, whether elected or appointed, is deemed to be a county officer subject to the governor's suspension power. If the charter or other authority under which any city-county merger is accomplished provides means for the suspension or removal of such officers, then the power to suspend is concurrent in the city-county government and in the governor.¹⁷

The Governor also has statutory authority to suspend from office *any elected or appointed municipal official* for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.¹⁸

When a method for removal from office is not otherwise provided by the State Constitution or by law, the statutes authorize the Governor to suspend from office *an elected or appointed public official, by whatever title known*, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his or her official conduct or duties, and may fill the office by appointment for the period of suspension, not to extend beyond the term.¹⁹

Effect of Proposed Changes

The bill creates s. 218.503(6), F.S., which explicitly provides that “failure of the members of the governing body of a local governmental entity or the failure of the members of a district school board to resolve a state of financial emergency constitutes malfeasance, misfeasance, and neglect of duty for purposes of s. 7, Art. IV of the State Constitution.” As such, members of county commissions, city commissions, and district school boards may be subject to suspension from office for failure to resolve a financial emergency.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.39(5), F.S., relating to annual financial audit report requirements for counties, cities, special districts, district school boards, charter schools, and charter technical career centers.

Section 2: Amends s. 218.503(3), F.S., relating to determinations of financial emergencies and authorized measures to resolve financial emergencies in counties, cities, special districts, and district school boards; relating to suspensions of public officers for failure to resolve a state of financial emergency and declaring such failures misfeasance, malfeasance, and neglect of duty for purposes of Art. IV, s. 7, Fla. Const.

Section 3: Provides an effective date of July 1, 2012.

¹⁶ *In re Advisory Opinion to Governor-School Bd. Member-Suspension Authority*, 626 So.2d 684 (Fla. 1993).

¹⁷ s. 112.49, F.S.

¹⁸ s. 112.51, F.S.

¹⁹ s. 112.52, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

Financial emergency boards acting on behalf of a county, city, special district, or district school board 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.

If a county, city, special district, or district school board is required to prepare a financial emergency plan, the adopted plan must include provisions implementing the consolidation, sourcing or discontinuance of administrative direction and support services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other: The bill creates s. 218.503(6), F.S., to address the Governor's constitutional authority to suspend "members of the governing body of a local governmental entity" or "members of a district school board" for failure to resolve a financial emergency, and declares such failure to be malfeasance, misfeasance, and neglect of duty. As such, members of county commissions, city commissions, and district school boards may be subject to suspension from office for failure to resolve a financial emergency.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.