

HB 7031

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1 A bill to be entitled
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

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29 a state of financial emergency are subject to
 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
 54 cause a condition described in s. 218.503(1) to occur if actions
 55 are not taken to address such conditions.

56 (b) A fund balance deficit in total or for that portion of

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57 a fund balance not classified as restricted, committed, or
58 nonspendable, or a total or unrestricted net assets deficit, as
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:

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85 ~~(c) 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~~
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
105 in 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
 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
 133 entity 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
 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
 159 the local governmental entity or the district school board as
 160 are 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 administrative direction and support services,
 172 including, but not limited to, services for asset sales,
 173 economic and community development, building inspections, parks
 174 and recreation, facilities management, engineering and
 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
 190 in subsection (1), designated as priority items, 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

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

203 (6) The failure of the members of the governing body of a
204 local governmental entity or the failure of the members of a
205 district school board to resolve a state of financial emergency
206 constitutes malfeasance, misfeasance, and neglect of duty for
207 purposes of s. 7, Art. IV of the State Constitution.

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