

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 Committee on Appropriations

BILL: CS/SB 1402

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Local Governmental Financial Emergencies

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>_____</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1402 makes numerous changes to the “Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act.” Specifically, the bill:

- Expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards when certain conditions exist to include the Senate, the House of Representatives, and the Legislative Auditing Committee.
- Requires a local governmental entity, or an agency in certain cases to notify the President of the Senate and the Speaker of the House of Representatives when certain financial emergencies exist.
- Requires, upon notification of financial emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee to contact the local governmental entity or the Commissioner of Education to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition into the future.

The bill revises the composition and duties of financial emergency boards by:

- Specifying who can nominate and appoint members,
- Establishing member qualifications,
- Revising the duties of the board, and

- Authorizing the Governor to suspend a member of the governing body of the local governmental entity or district school board for malfeasance and misfeasance under certain circumstances.

The bill may have an indeterminate fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board. The establishment of a financial emergency board is not required and remains an optional measure that may be implemented in instances of a financial emergency.

The bill take effect upon becoming a law.

II. Present Situation:

Financial Emergencies

The Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act (act) governs certain local governmental financial emergencies.¹ The purposes of the act are to promote financial responsibility of the entities, assist the entities in providing essential services without interruption and in meeting their financial obligations, and to assist the entities through improvement of local financial management procedures.²

The act provides that local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when any of the following conditions occur:³

- 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, as a result of lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of lack of funds.
- Failure to transfer at the appropriate time, due to lack of funds:
 - 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.
- Failure for one pay period to pay, due to lack of funds:
 - Wages and salaries owed to employees; or
 - Retirement benefits owed to former employees.

If a financial emergency exists due to a lack of funds, or will occur if action is not taken, a local government entity must notify the Governor and the Legislative Auditing Committee.⁴ A charter

¹ Sections 218.50-218.504, F.S.

² Section 218.501, F.S.

³ Section 218.503(1), F.S.

⁴ Section 218.503(2), F.S.

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. A district school board must notify the Commissioner of Education and the Legislative Auditing Committee.⁵

Additionally, any state agency must notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, within 30 days after determining a financial emergency has occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board.⁶

Upon notification that a financial emergency occurred or will occur, the Governor or his or her designee must contact the local governmental entity or the Commissioner of Education or his or her designee to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition.⁷ The information requested must be provided within 45 days of the request. The Governor, or the Commissioner of Education, as appropriate, must determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency and certain measures of assistance may occur, including:

- Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education;
- Authorizing a state loan to a local governmental entity and providing for repayment of same;
- Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer in a financial emergency;
- Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed;
- Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- Providing technical assistance to the local governmental entity or the district school board;
- Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board; and
- Requiring and approving a plan, to be prepared by officials of the local governmental entity or district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be in a financial emergency.⁸

⁵ *Id.*

⁶ *Id.*

⁷ Section 218.503(3), F.S.

⁸ *Id.*

Financial Emergency Boards

If a financial emergency board is established for a local governmental entity, the Governor must appoint board members and select a chair.⁹ If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair.¹⁰ The board must adopt rules necessary for conducting board business. The financial emergency board may:

- Review records, reports, and assets of the local governmental entity or the district school board as needed;
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or district school board into compliance with state requirements;
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board; and
- Consult with other governmental entities for consolidation of all 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.¹¹

Recommendations and reports made by the board must be submitted to the Governor for local governmental agencies or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.¹²

Suspension by Governor

The Governor may suspend any county officer or district school board member for stated cause and fill the office by appointment for the period of the suspension.¹³ A separate statute provides that a member of a district school board who votes to incur indebtedness against district funds in excess of appropriations in the district budget, or takes other action in violation of the statute, has committed malfeasance and misfeasance subjecting that member to removal by the Governor.¹⁴ The Governor also may suspend any elected or appointed municipal officer for cause and, unless there is an alternative method to replace the official, the Governor may fill the office by temporary appointment.¹⁵ Members of special district governing boards also are subject to suspension by the Governor.¹⁶

⁹ Section 218.503(3)(g), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Art. IV, s. 7(a), Fla. Const. The causes listed in the State Constitution are “malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.” For purposes of this constitutional provision, district school board members are county officers. In re Advisory Opinion to the Governor – Sch. Bd. Member – Suspension Auth., 626 So. 2d 684, 687 (Fla. 1993).

¹⁴ Section 1011.10, F.S.

¹⁵ Section 112.51(1), (3), F.S. The causes listed by the statute are “malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.

¹⁶ Section 112.511, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 218.503, F.S., to expand the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, this section provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. When certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee must contact the local governmental entity or the Commissioner of Education to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition in the future.

Section 1 also revises the composition of financial emergency boards. This section provides that a financial emergency board must consist of an odd number of members comprised of at least 7 members but not more than 13. If the board is established for a local governmental entity, the President of the Senate and the Speaker of the House of Representatives must each nominate five individuals as candidates for appointment to the board. The Governor shall choose two candidates from each list and appoint them as four of the members of the board. The Governor must appoint the remainder of the board members and designate the chair. If the board is established for a district school board, the President of the Senate, the Speaker of the House of Representatives and the State Board of Education must each nominate five individuals as candidates for appointment to the board. The Governor shall choose two candidates from each list and appoint them as six of the members of the board. The State Board of Education shall appoint the remainder of the board members and designate the chair of the board.

This section establishes qualifications for appointees to the financial emergency board. The members should collectively possess the knowledge, skills, and competencies needed to perform their individual responsibilities and accomplish the mission of the board, including, but not limited to, internal quality control, finance, business administration, and public works. The chair must have experience in at least one of the following positions or areas:

- Inspector General.
- Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.
- Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.
- Certified fraud examiner.

The board must have access to records, data, and other information of the local governmental entity or the district school board necessary to carry out its duties and must be given the technical

and financial resources necessary to complete those duties. The board must adopt rules as necessary for conducting board business. In addition, the board may:

- Hire or retain legal counsel.
- Obtain external advice and assistance if the financial emergency board or the staff of the entity under review lacks the knowledge, skills, or other competencies needed to perform all or part of the duties necessary to resolve the financial emergency conditions.
- Request and obtain assistance from any federal agency, state agency, or local entity.
- Issue and serve subpoenas or subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and data in any format. In the event of noncompliance with a subpoena issued, the chair of the board may petition the circuit court of the county for an order requiring the person to appear and testify and to produce documents.
- Require a person to file a statement in writing, under oath, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.
- Makes such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.
- Consult with other governmental entities for the consolidation of all 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.

Each recommendation and report made by the board addressing a local entity must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, and the local governmental entity under review. Each recommendation and report addressing a district school board must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, the district school board under review, the Commissioner of Education, and the State Board of Education.

If a local governmental entity or district school board fails to remedy or take action on recommendations made in any report within 60 days after receipt, the Governor may suspend, for malfeasance and misfeasance in office, a member of the governing body of the local governmental entity or the district school board who failed to vote affirmatively to remedy or take action on the recommendations.

Section 2 amends s. 218.504, F.S., to conform cross-references made by the act.

Section 3 provides that this bill takes effect upon becoming a law.

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:

The bill may have an indeterminate fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board. However, the establishment of a financial emergency board is not required and remains an optional measure that may be implemented in instances of a financial emergency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 218.503 and 218.504 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on April 3, 2017:**

- Requires the Speaker of the House and the President of the Senate to nominate five individuals to serve on the board, rather than appoint members, for a local governmental entity. The Governor must then appoint two board members from each list (a total of four).
- Requires the Speaker of the House of Representatives, the President of the Senate, and the State School Board to each nominate five individuals, rather than appoint members, for an emergency financial board for a district school board. The Governor must then appoint two board members from each list (a total of six).
- Revises the potential consequences for a local governmental entity or district school board that does not remedy the financial emergency or take action on the recommendations of the financial emergency board within 60 days. Those members of the governing body for the local governmental entity or district school board who do not vote affirmatively to remedy or take action on the recommendations are deemed to have committed malfeasance and misfeasance in office, subjecting them to suspension by the Governor.
- Removes the authority of the financial emergency board to assume operation and institutional control of the local governmental entity's or district school board's functions.

B. Amendments:

None.