

By the Committee on Community Affairs; and Senator Latvala

578-03380-17

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1                   A bill to be entitled  
2           An act relating to local governmental financial  
3           emergencies; amending s. 218.503, F.S.; expanding the  
4           entities that have oversight over local governmental  
5           entities, charter schools, charter technical career  
6           centers, and district school boards under certain  
7           circumstances; specifying the number of members to be  
8           on a financial emergency board; specifying the manner  
9           of appointing members to the board; providing  
10          qualifications of members and the chair of the board;  
11          revising the information to which the board has  
12          access; requiring the adoption of rules to conduct  
13          board business; authorizing the board to hire or  
14          retain legal counsel; requiring recommendations and  
15          reports to be submitted to specified entities;  
16          providing that certain board members of a local  
17          governmental entity or district school board who fail  
18          to vote affirmatively to take certain actions in  
19          certain circumstances are subject to suspension by the  
20          Governor; amending s. 218.504, F.S.; conforming  
21          provisions to changes made by the act; providing an  
22          effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Subsections (1), (2), and (3) of section  
27           218.503, Florida Statutes, are amended, subsections (4), (5),  
28           and (6) are renumbered as subsections (5), (6), and (7),  
29           respectively, and a new subsection (4) is added to that section,

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30 to read:

31 218.503 Determination of financial emergency.—

32 (1) Local governmental entities, charter schools, charter  
33 technical career centers, and district school boards shall be  
34 subject to review and oversight by the Governor, the Senate, the  
35 House of Representatives, the Legislative Auditing Committee,  
36 the charter school sponsor, the charter technical career center  
37 sponsor, or the Commissioner of Education, as appropriate, when  
38 any one of the following conditions occurs:

39 (a) Failure within the same fiscal year in which due to pay  
40 short-term loans or failure to make bond debt service or other  
41 long-term debt payments when due, as a result of a lack of  
42 funds.

43 (b) Failure to pay uncontested claims from creditors within  
44 90 days after the claim is presented, as a result of a lack of  
45 funds.

46 (c) Failure to transfer at the appropriate time, due to  
47 lack of funds:

48 1. Taxes withheld on the income of employees; or

49 2. Employer and employee contributions for:

50 a. Federal social security; or

51 b. Any pension, retirement, or benefit plan of an employee.

52 (d) Failure for one pay period to pay, due to lack of  
53 funds:

54 1. Wages and salaries owed to employees; or

55 2. Retirement benefits owed to former employees.

56 (2) A local governmental entity shall notify the Governor,  
57 the President of the Senate, the Speaker of the House of  
58 Representatives, and the Legislative Auditing Committee; a

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59 charter school shall notify the charter school sponsor, the  
60 Commissioner of Education, and the Legislative Auditing  
61 Committee; a charter technical career center shall notify the  
62 charter technical career center sponsor, the Commissioner of  
63 Education, and the Legislative Auditing Committee; and a  
64 district school board shall notify the Commissioner of Education  
65 and the Legislative Auditing Committee, when one or more of the  
66 conditions specified in subsection (1) have occurred or will  
67 occur if action is not taken to assist the local governmental  
68 entity, charter school, charter technical career center, or  
69 district school board. In addition, any state agency must,  
70 within 30 days after a determination that one or more of the  
71 conditions specified in subsection (1) have occurred or will  
72 occur if action is not taken to assist the local governmental  
73 entity, charter school, charter technical career center, or  
74 district school board, notify the Governor, charter school  
75 sponsor, charter technical career center sponsor, or the  
76 Commissioner of Education, as appropriate, and the President of  
77 the Senate, the Speaker of the House of Representatives, and the  
78 Legislative Auditing Committee.

79 (3) Upon notification that one or more of the conditions in  
80 subsection (1) have occurred or will occur if action is not  
81 taken to assist the local governmental entity or district school  
82 board, the Governor or his or her designee, in cooperation with  
83 the President of the Senate or his or her designee, the Speaker  
84 of the House of Representatives or his or her designee, and the  
85 Legislative Auditing Committee, shall contact the local  
86 governmental entity or the Commissioner of Education or his or  
87 her designee ~~shall contact the district school board to~~

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88 determine what actions have been taken by the local governmental  
89 entity or the district school board to resolve or prevent the  
90 condition. The information requested must be provided within 45  
91 days after the date of the request. If the local governmental  
92 entity or the district school board does not comply with the  
93 request, the Governor or his or her designee or the Commissioner  
94 of Education or his or her designee shall notify the members of  
95 the Legislative Auditing Committee who may take action pursuant  
96 to s. 11.40. The Governor or the Commissioner of Education, as  
97 appropriate, shall determine whether the local governmental  
98 entity or the district school board needs state assistance to  
99 resolve or prevent the condition into the future. If state  
100 assistance is needed, the local governmental entity or district  
101 school board is considered to be in a state of financial  
102 emergency. The Governor or the Commissioner of Education, as  
103 appropriate, may ~~has the authority to~~ implement measures as set  
104 forth in ss. 218.50-218.504 to assist the local governmental  
105 entity or district school board in resolving the financial  
106 emergency. Such measures may include, but are not limited to:

107 (a) Requiring approval of the local governmental entity's  
108 budget by the Governor or approval of the district school  
109 board's budget by the Commissioner of Education.

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

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

116 (d) Making such inspections and reviews of records,

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117 information, reports, and assets of the local governmental  
118 entity or district school board as are needed. The appropriate  
119 local officials shall cooperate in such inspections and reviews.

120 (e) Consulting with officials and auditors of the local  
121 governmental entity or the district school board and the  
122 appropriate state officials regarding any steps necessary to  
123 bring the books of account, accounting systems, financial  
124 procedures, and reports into compliance with state requirements.

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

127 (g)~~1.~~ Establishing and empowering a financial emergency  
128 board to oversee the activities of the local governmental entity  
129 or the district school board as set forth in subsection (4). ~~If~~  
130 ~~a financial emergency board is established for a local~~  
131 ~~governmental entity, the Governor shall appoint board members~~  
132 ~~and select a chair. If a financial emergency board is~~  
133 ~~established for a district school board, the State Board of~~  
134 ~~Education shall appoint board members and select a chair. The~~  
135 ~~financial emergency board shall adopt such rules as are~~  
136 ~~necessary for conducting board business. The board may:~~

137 a. ~~Make such reviews of records, reports, and assets of the~~  
138 ~~local governmental entity or the district school board as are~~  
139 ~~needed.~~

140 b. ~~Consult with officials and auditors of the local~~  
141 ~~governmental entity or the district school board and the~~  
142 ~~appropriate state officials regarding any steps necessary to~~  
143 ~~bring the books of account, accounting systems, financial~~  
144 ~~procedures, and reports of the local governmental entity or the~~  
145 ~~district school board into compliance with state requirements.~~

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146 ~~e. Review the operations, management, efficiency,~~  
147 ~~productivity, and financing of functions and operations of the~~  
148 ~~local governmental entity or the district school board.~~

149 ~~d. Consult with other governmental entities for the~~  
150 ~~consolidation of all administrative direction and support~~  
151 ~~services, including, but not limited to, services for asset~~  
152 ~~sales, economic and community development, building inspections,~~  
153 ~~parks and recreation, facilities management, engineering and~~  
154 ~~construction, insurance coverage, risk management, planning and~~  
155 ~~zoning, information systems, fleet management, and purchasing.~~

156 ~~2. The recommendations and reports made by the financial~~  
157 ~~emergency board must be submitted to the Governor for local~~  
158 ~~governmental entities or to the Commissioner of Education and~~  
159 ~~the State Board of Education for district school boards for~~  
160 ~~appropriate action.~~

161 (h) Requiring and approving a plan, to be prepared by  
162 officials of the local governmental entity or the district  
163 school board in consultation with the appropriate state  
164 officials, prescribing actions that will cause the local  
165 governmental entity or district school board to no longer be  
166 subject to this section. The plan must include, but need not be  
167 limited to:

168 1. Provision for payment in full of obligations outlined in  
169 subsection (1), designated as priority items, which are  
170 currently due or will come due.

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

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

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175 4. Provisions implementing the consolidation, sourcing, or  
176 discontinuance of all administrative direction and support  
177 services, including, but not limited to, services for asset  
178 sales, economic and community development, building inspections,  
179 parks and recreation, facilities management, engineering and  
180 construction, insurance coverage, risk management, planning and  
181 zoning, information systems, fleet management, and purchasing.

182 (4) (a) Any financial board established must consist of an  
183 odd number of members comprised of at least 7 but not more than  
184 13 members.

185 1. If a financial emergency board is established for a  
186 local governmental entity, the President of the Senate and the  
187 Speaker of the House of Representatives shall each nominate five  
188 individuals as candidates for appointment to the board. The  
189 Governor shall choose two candidates from each list and appoint  
190 them as four of the members of the board. The Governor shall  
191 appoint the remainder of the board members and shall designate  
192 the chair of the board.

193 2. If a financial emergency board is established for a  
194 district school board, the President of the Senate, the Speaker  
195 of the House of Representatives, and the State Board of  
196 Education shall each nominate five individuals as candidates for  
197 appointment to the board. The Governor shall choose two  
198 candidates from each list and appoint them as six of the members  
199 to the board. The State Board of Education shall appoint the  
200 remainder of the board members and shall designate the chair of  
201 the board.

202 (b) Appointees to a financial emergency board should  
203 collectively possess the knowledge, skills, and competencies

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204 needed to perform their individual responsibilities and  
205 accomplish the mission of the financial emergency board,  
206 including, but not limited to, internal quality control,  
207 finance, business administration, and public works. The chair of  
208 the financial emergency board must have experience in at least  
209 one of the following positions or areas:

210 1. Inspector general.

211 2. Supervisory experience in an office of inspector general  
212 or an investigative public agency similar to an office of  
213 inspector general.

214 3. Local, state, or federal law enforcement officer.

215 4. Local, state, or federal court judge.

216 5. Senior-level auditor or comptroller.

217 6. The administration and management of complex audits and  
218 investigations.

219 7. Managing programs for prevention, examination,  
220 detection, elimination of fraud, waste, abuse, mismanagement,  
221 malfeasance, or misconduct in government or other organizations.

222 8. Certified fraud examiner.

223 (c) The financial emergency board shall have access to  
224 records, data, and other information of the local governmental  
225 entity or the district school board that the board deems  
226 necessary to carry out its duties and shall be given the  
227 technical and financial resources necessary to complete those  
228 duties. The financial emergency board shall adopt such rules as  
229 are necessary for conducting board business. The board may:

230 1. Hire or retain legal counsel.

231 2. Obtain external advice and assistance if the financial  
232 emergency board or the staff of the entity under review lacks



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233 the knowledge, skills, or other competencies needed to perform  
234 all or part of the duties necessary to resolve the financial  
235 emergency conditions.

236 3. Request and obtain assistance from any federal agency,  
237 state agency, or local entity.

238 4. Issue and serve subpoenas or subpoenas duces tecum to  
239 compel the attendance of witnesses and the production of  
240 documents, reports, answers, records, accounts, and data in any  
241 format. In the event of noncompliance with a subpoena issued  
242 pursuant to this subparagraph, the chair of the financial  
243 emergency board may petition the circuit court of the county for  
244 an order requiring the subpoenaed person to appear and testify  
245 and to produce documents.

246 5. Require a person to file a statement in writing, under  
247 oath, as to all the facts and circumstances concerning the  
248 matter to be audited, examined, or investigated.

249 6. Make such reviews of records, reports, and assets of the  
250 local governmental entity or the district school board as are  
251 needed.

252 7. Consult with officials and auditors of the local  
253 governmental entity or the district school board and the  
254 appropriate state officials regarding any steps necessary to  
255 bring the books of account, accounting systems, financial  
256 procedures, and reports of the local governmental entity or the  
257 district school board into compliance with state requirements.

258 8. Review the operations, management, efficiency,  
259 productivity, and financing of functions and operations of the  
260 local governmental entity or the district school board.

261 9. Consult with other governmental entities for the

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262 consolidation of all administrative direction and support  
263 services, including, but not limited to, services for asset  
264 sales, economic and community development, building inspections,  
265 parks and recreation, facilities management, engineering and  
266 construction, insurance coverage, risk management, planning and  
267 zoning, information systems, fleet management, and purchasing.

268 (d)1. Each recommendation and report made by the financial  
269 emergency board addressing a local entity must be submitted to  
270 the Governor, the President of the Senate, the Speaker of the  
271 House of Representatives, the Legislative Auditing Committee,  
272 and the local governmental entity under review.

273 2. Each recommendation and report made by the financial  
274 emergency board addressing a district school board must be  
275 submitted to the Governor, the President of the Senate, the  
276 Speaker of the House of Representatives, the Legislative  
277 Auditing Committee, the district school board under review, the  
278 Commissioner of Education, and the State Board of Education for  
279 appropriate action.

280 (e) If a local governmental entity or the district school  
281 board, as appropriate, fails to remedy or take action on  
282 recommendations made in any report submitted under paragraph (d)  
283 within 60 days after receiving the recommendations, a member of  
284 the governing body of the local governmental entity or the  
285 district school board, as appropriate, who failed to vote  
286 affirmatively to remedy or take action on the recommendations is  
287 subject to suspension from office by the Governor for  
288 malfeasance and misfeasance in office.

289 Section 2. Paragraph (b) of subsection (1) and subsection  
290 (2) of section 218.504, Florida Statutes, are amended to read:

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291           218.504 Cessation of state action.—The Governor or the  
292 Commissioner of Education, as appropriate, has the authority to  
293 terminate all state actions pursuant to ss. 218.50–218.504.

294 Cessation of state action must not occur until the Governor or  
295 the Commissioner of Education, as appropriate, has determined  
296 that:

297           (1) The local governmental entity, charter school, charter  
298 technical career center, or district school board:

299           (b) Has resolved the conditions outlined in s. 218.503(1)  
300 or (4) ~~s. 218.503(1)~~.

301           (2) None of the conditions outlined in s. 218.503(1) or (4)  
302 ~~s. 218.503(1)~~ exists.

303           Section 3. This act shall take effect upon becoming a law.