

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1209 Dissolution of Municipalities

**SPONSOR(S):** Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, Fischer

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee	15 Y, 1 N, As CS	Curry	Langston
3) State Affairs Committee			

### SUMMARY ANALYSIS

A municipality may be dissolved subject to a special act of the Legislature or an ordinance passed by the governing body of the municipality approved by the voters at a referendum.

The bill would require any municipality that meets one or more specified criteria to hold a referendum on municipal dissolution. Those criteria include:

- The municipality was determined to be in a state of financial emergency subsequent to June 17, 2004, and has been in a state of financial emergency for two or more years.
- The municipality has failed to comply with the terms of any signed agreement with the Governor's office as part of a financial emergency where a financial emergency board has been established.
- The municipality has submitted its annual financial report required by s. 218.32, F.S., and its annual financial audit report required by s. 218.39, F.S., more than three months late for two or more consecutive years.
- A grand jury or Auditor General audit report was issued within the past three years that contained a significant number of findings and the municipality failed to resolve five or more of those findings within 12 twelve months from the issuance of the report.

If any of these criteria are met, the governing body of the municipality (or the governing body of the county in which the municipality is located, if the governing body of the municipality fails to act) has 30 days to set the date of a referendum to dissolve the municipality. The referendum must be held at the next regularly scheduled general election. The municipality is required to provide notice at least once each week for two consecutive weeks prior to the election in a newspaper of general circulation in the municipality.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Municipal Dissolution

The charter of a municipality may be revoked and the municipality dissolved subject to a special act of the Legislature or an ordinance passed by the governing body of the municipality approved by the voters at a referendum.<sup>1</sup> If a referendum is required for dissolution, the governing body of the municipality sets the date of the election.<sup>2</sup> The referendum may be held during the next regularly scheduled election or during an earlier special election (but no sooner than thirty days after the passage of the ordinance). If the governing body of the municipality does not set the date for the referendum within thirty days of passing the ordinance, the governing body of the county or counties in which the municipality is located may set the date for the referendum. Notice of the referendum election must be published at least weekly for two consecutive weeks in a newspaper of general circulation in the municipality prior the election.

A municipality may only be dissolved if:<sup>3</sup>

- The municipality to be dissolved is not “substantially surrounded” by other municipalities;
- The county or another municipality must be demonstrably able to provide necessary services in the area of the former municipality; and
- An equitable arrangement has been made concerning any bonded indebtedness and vested rights of employees of the municipality to be dissolved.

##### Municipal Financial Reporting

Each municipality is required to submit an annual financial report to the Department of Financial Services (DFS).<sup>4</sup> The chair of the governing body of the municipality, as well as the chief financial officer, must sign the report. Component units of the municipality, as defined by generally accepted accounting principles, are required to provide the municipality with the financial information necessary to complete the report within a reasonable time period.<sup>5</sup>

A municipality’s annual financial report must be submitted to DFS:

- Within 45 days after the completion of the audit report, but no later than nine months after the end of the fiscal year (for a municipality that is required to provide an audit under s. 218.39(1), F.S.);<sup>6</sup> or
- No later than nine months after the end of the fiscal year (for a municipality that is not required to provide for an audit under s. 218.39(1), F.S.)<sup>7</sup>

If a municipality fails to file its annual financial report within the required period, DFS is required to notify the Legislative Auditing Committee (JLAC).<sup>8</sup>

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<sup>1</sup> S. 165.051(1), F.S. Under its constitutional home rule charter, only Miami-Dade County may abolish municipalities within the county and the Legislature may not do so by special act. See art. VIII, s. 6(e), Fla. Const., incorporating by reference art. VIII, s. 11, Fla. Const. (1885).

<sup>2</sup> S. 165.051(2), F.S.

<sup>3</sup> S. 165.061(3), F.S.

<sup>4</sup> S. 218.32(1)(a), F.S.

<sup>5</sup> S. 218.32(1)(b), F.S.

<sup>6</sup> S. 218.32(1)(d), F.S.

<sup>7</sup> S. 218.32(1)(e), F.S.

<sup>8</sup> S. 218.32(1)(f), F.S.

DFS must notify the President of the Senate and the Speaker of the House of Representatives if any municipality does not report any financial activity for four consecutive fiscal years. The notification must include any special law which authorized the incorporation of the municipality and is sufficient to initiate statutory dissolution procedures.<sup>9</sup>

Each municipality with revenues or the total of expenditures and expenses in excess of \$250,000, as reported on the fund financial statements, must complete an annual financial audit of its accounts and records, conducted by an independent certified public accountant, within nine months after the end of its fiscal year (unless the municipality has been notified by the first day of the fiscal year that the Auditor General will be performing a financial audit for that year).<sup>10</sup>

The auditor, upon completion of the audit, must discuss all comments that will be included in the audit report with the chair of the governing body of the municipality or the chair's designee.<sup>11</sup> If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to the officer's office. The auditor must notify each member of the governing body of the municipality when the report shows:<sup>12</sup>

- 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; or
- A fund balance deficit in total or a deficit for that portion of a fund balance not classified as restricted, committed, or nonspendable, or a total or unrestricted net assets deficit, as reported on the fund financial statements of entities required to report under governmental financial reporting standards or on the basic financial statements of entities required to report under not-for-profit financial reporting standards, for which sufficient resources of the municipality, as reported on the fund financial statements, are not available to cover the deficit.

The municipal officer must file a written statement of explanation or rebuttal concerning the auditor's findings, including corrective action to be taken, with the governing body of the municipality within 30 days of the delivery of the auditor's findings.<sup>13</sup>

All audit reports must be conducted in accordance with rules adopted by the Auditor General and submitted within 45 days after the delivery of the audit report to the governing body of the audited municipality, but no later than 9 months after the end of the municipality's fiscal year.<sup>14</sup> The report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.

The Auditor General must notify JLAC of any audit report that indicates an audited municipality has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.<sup>15</sup> JLAC may direct the governing body of the municipality to provide a written statement explain why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the timeline and nature of the corrective action. If JLAC determines the written statement is insufficient, the committee may require the chair of the governing body of the municipality or the chair's designee to appear before the committee. If the audited entity is determined to have failed to take full corrective action for which there is no reasonable justification or has failed to comply with JLAC requests, JLAC may initiate proceeding in accordance with s. 11.40(2), F.S.<sup>16</sup>

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<sup>9</sup> S. 218.32(3)(a), F.S. See s. 165.051(1)(a), F.S.

<sup>10</sup> S. 218.39(1), F.S. Section 218.39(1)(g), F.S., provides that a municipality with revenues or the total of expenditures and expenses between \$100,000 and \$250,000, as reported on the fund financial statements, must conduct a financial audit if it has not been subject to a financial audit pursuant to this subsection within the two preceding fiscal years.

<sup>11</sup> S. 218.39(5), F.S.

<sup>12</sup> S. 218.39(5)(a)-(b), F.S.

<sup>13</sup> S. 218.39(6), F.S.

<sup>14</sup> S. 218.39(7), F.S.

<sup>15</sup> S. 218.39(8), F.S.

<sup>16</sup> Pursuant to s. 11.40(2)(a), F.S., JLAC may conduct a hearing to determine if a county, municipality, or school district should be subject to further state action, including withholding distribution of certain state funds.

## Financial Emergency

A municipality is subject to review and oversight by the Governor if the municipality, due to lack of funds, fails to:<sup>17</sup>

- Pay short-term loans or long-term debt payments in the fiscal year in which they are due;
- Pay uncontested claims from creditors within 90 days after the claim is presented;
- Make a timely transfer of tax withholding on employee salaries;
- Make a timely transfer of employer and employee contributions for Social Security or any pension, retirement of benefit plan of an employee; or
- Pay the wages and salaries owed to current employees or retirement benefits owed to former employees.

If any of these conditions occur or will occur within the next 30 days if no action is taken to assist the municipality, the municipality is required to inform the Governor and JLAC.<sup>18</sup> Upon receiving the notice, the Governor (or a designee) contacts the municipality to determine what actions have been taken to resolve or prevent the condition.<sup>19</sup> The requested information must be provided within 45 days. If a municipality fails to comply, the Governor must notify JLAC which may take action pursuant to s. 11.40(2), F.S.

If the Governor determines state assistance is necessary to resolve or prevent the conditions, the municipality is considered to be in a state of financial emergency.<sup>20</sup> The Governor is authorized to implement measures to resolve the financial emergency, including (but not limited to):<sup>21</sup>

- Requiring gubernatorial approval of the municipality's budget;
- Authorizing a state loan to the municipality and providing for repayment;
- Prohibiting the municipality from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section;
- Making inspections and reviews of records, information, reports, and assets of the municipality;
- Consulting with municipal officials and auditors and appropriate state officials concerning the steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements; and
- Providing technical assistance.

The Governor may also establish a financial emergency board to oversee the activities of the municipality.<sup>22</sup> The board is appointed by the Governor, who also selects the board's chair. The board must adopt rules for conducting business and is empowered to:<sup>23</sup>

- Review the records, reports, and assets of the municipality;
- Consult with municipal officials and auditors and appropriate state officials concerning the steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the municipality; and
- 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.

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<sup>17</sup> S. 218.503(1), F.S.

<sup>18</sup> S. 218.503(2), F.S.

<sup>19</sup> S. 218.503(3), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 218.503(3)(a)-(f), F.S.

<sup>22</sup> S. 218.503(3)(g)1., F.S.

<sup>23</sup> S. 218.503(3)(g)1.a.-d., F.S.

Any recommendations and reports made by the board must be submitted to the Governor for appropriate action.<sup>24</sup>

The Governor may also require the municipality, in consultation with the appropriate state officials, to approve a plan prescribing actions for the municipality to exit the state of financial emergency.<sup>25</sup> The plan, at a minimum, must include:<sup>26</sup>

- Provision for payment in full of all obligations which triggered the state of financial emergency that are currently due or will come due;<sup>27</sup>
- Establishing priority budgeting or zero-based budgeting in order to eliminate items that are not affordable;
- Prohibiting a level of operations which can be sustained only with nonrecurring revenues; and
- Provisions implementing the consolidation, sourcing, or discontinuance 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.

The failure of members of the governing body of a municipality to resolve a state of financial emergency may result in the removal of those members for malfeasance, misfeasance, and neglect of duty.<sup>28</sup>

The Governor may terminate a state of financial emergency upon making a determination that the municipality:<sup>29</sup>

- Has established and is operating an effective financial accounting and reporting system;
- Has resolved the conditions that triggered the state of financial emergency, and
- Does not currently meet any of the criteria to trigger a state of financial emergency.

As of November 15, 2018, 11 municipalities were in a state of financial emergency.<sup>30</sup>

Prior to a law change in 2004, a local governmental entity that met any of the financial emergency conditions specified in s. 218.503, F.S., was automatically determined to be in a state of financial emergency. Subsequent to the law change, effective June 17, 2004, the determination is made by the Governor based on the entity's need for state assistance.<sup>31</sup>

### **Effect of Proposed Changes**

The bill would require any municipality that meets one or more specified criteria to hold a referendum on municipal dissolution. Those criteria include:

- The municipality was determined to be in a state of financial emergency subsequent to June 17, 2004, and has been in a state of financial emergency for two or more years.
- The municipality has failed to comply with the terms of any signed agreement with the Governor's office as part of a financial emergency where a financial emergency board has been established.<sup>32</sup>
- The municipality has submitted its annual financial report required by s. 218.32, F.S., and its annual financial audit report required by s. 218.39, F.S., more than three months late for two or more consecutive years.

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<sup>24</sup> S. 218.503(3)(g)1., F.S.

<sup>25</sup> S. 218.503(3)(h), F.S.

<sup>26</sup> S. 218.503(3)(h)1.-4., F.S.

<sup>27</sup> These items must be designated as priority items.

<sup>28</sup> S. 218.503(6), F.S. See Art. IV, s. 7, Fla. Const. (suspension power of the Governor).

<sup>29</sup> S. 218.504, F.S.

<sup>30</sup> Joint Legislative Auditing Committee, *Financial Emergencies*, [http://www.leg.state.fl.us/cgi-bin/View\\_Page.pl?File=financial-emergencies.cfm&Directory=committees/joint/Jcla/&Tab=committees](http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=financial-emergencies.cfm&Directory=committees/joint/Jcla/&Tab=committees) (last visited Jan. 28, 2020).

<sup>31</sup> Chapter 2004-305, L.O.F.

<sup>32</sup> The bill states that failing to submit a recovery plan, the required budget documents and amendments, or invoices that support requested expenditures constitute a failure to comply with the agreement.

- A grand jury or Auditor General audit report was issued within the past three years that contained a significant number of findings and the municipality failed to resolve five or more of those findings within twelve months from the issuance of the report.

If any of the above criteria occur, the governing body of the municipality (or the governing body of the county the municipality is located in, if the governing body of the municipality fails to act) has 30 days to set the date of a referendum to dissolve the municipality. The referendum must be held at the next regularly scheduled general election. The municipality is required to provide notice at least once each week for two consecutive weeks in a newspaper of general circulation in the municipality prior to the election.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 165.051, F.S., concerning municipal dissolution procedures.

Section 2: Provides an effective date of July 1, 2020.

**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:

The bill may increase municipality expenditures to the extent a municipality must hold a referendum as required by the act.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because this bill requires municipalities to conduct a referendum election if certain conditions are met; however, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of article VII, s. 18 of the Florida Constitution.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide rulemaking authority or require executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that a municipality may be subject to a referendum on municipal dissolution if the municipality has:

- submitted its annual financial report and the annual financial audit report more than three months late for two or more consecutive years, or
- been the subject of a grand jury or an Auditor General audit report issued within the past three years that contains a significant number of findings and the municipality failed to resolve five or more of those findings within twelve months from the issuance of the report.

The amendment also requires any referendum on municipal dissolution held pursuant to the provisions of the bill occur at a general election.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

On February 19, 2020, the Ways and Means Committee adopted an amendment and reported the bill favorably. The amendment clarifies the municipalities who will qualify for dissolution by referendum based on the state of financial emergency criterion by providing that the municipality “must be determined to be in a state of financial emergency subsequent to June 17, 2004,” and have been in a state of financial emergency for two or more years.

This analysis is drawn to the bill as amended by the Ways and Means Committee.