

1                                   A bill to be entitled  
 2       An act relating to financial emergencies; amending s.  
 3       218.39, F.S.; identifying certain fund balance  
 4       deficits as a potential factor of deteriorating  
 5       financial condition; amending s. 218.503, F.S.;  
 6       requiring response to inquiries; authorizing a  
 7       financial emergency review board for a local  
 8       governmental entity or district school board to  
 9       consult with other governmental entities for the  
 10      consolidation of all administrative direction and  
 11      support services; authorizing the Governor or  
 12      Commissioner of Education to require a local  
 13      governmental entity or district school board to  
 14      develop a plan implementing the consolidation,  
 15      sourcing, or discontinuance of all administrative  
 16      direction and support services; providing that the  
 17      members of the governing body of a local governmental  
 18      entity or the members of a district school board who  
 19      fail to resolve a state of financial emergency are  
 20      subject to suspension or removal from office;  
 21      providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25   Section 1. Subsection (5) of section 218.39, Florida Statutes  
 26   is amended to read:

27       218.39 Annual financial audit reports.—

28       (5) At the conclusion of the audit, the auditor shall

29 discuss with the chair of the governing body of the local  
 30 governmental entity or the chair's designee, the elected  
 31 official of each county agency or the elected official's  
 32 designee, the chair of the district school board or the chair's  
 33 designee, the chair of the board of the charter school or the  
 34 chair's designee, or the chair of the board of the charter  
 35 technical career center or the chair's designee, as appropriate,  
 36 all of the auditor's comments that will be included in the audit  
 37 report. If the officer is not available to discuss the auditor's  
 38 comments, their discussion is presumed when the comments are  
 39 delivered in writing to his or her office. The auditor shall  
 40 notify each member of the governing body of a local governmental  
 41 entity, district school board, charter school, or charter  
 42 technical career center for which:

43 (a) ~~d~~eteriorating financial conditions exist that may  
 44 cause a condition described in s. 218.503(1) to occur if actions  
 45 are not taken to address such condition.

46 (b) A fund balance deficit in total or for that portion of  
 47 a fund balance not classified as restricted, committed, or  
 48 nonspendable, or a total or unrestricted net assets deficit, as  
 49 reported on the fund financial statements of entities required  
 50 to report under governmental financial reporting standards or on  
 51 the basic financial statements of entities required to report  
 52 under not-for-profit financial reporting standards, for which  
 53 sufficient resources of the local governmental entity, charter  
 54 school, charter technical career center, or district school  
 55 board, as reported on the fund financial statements, are not  
 56 available to cover the deficit. Resources available to cover

57 reported deficits include fund balance or net assets that are  
 58 not otherwise restricted by federal, state, or local laws, bond  
 59 covenants, contractual agreements, or other legal constraints.  
 60 Property, plant, and equipment, the disposal of which would  
 61 impair the ability of a local governmental entity, charter  
 62 school, charter technical career center, or district school  
 63 board to carry out its functions, are not considered resources  
 64 available to cover reported deficits.

65 Section 2. Section 218.503, Florida Statutes, is amended  
 66 to read:

67 218.503 Determination of financial emergency.—

68 (1) Local governmental entities, charter schools, charter  
 69 technical career centers, and district school boards shall be  
 70 subject to review and oversight by the Governor, the charter  
 71 school sponsor, the charter technical career center sponsor, or  
 72 the Commissioner of Education, as appropriate, when any one of  
 73 the following conditions occurs:

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

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

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

- 83 1. Taxes withheld on the income of employees; or
- 84 2. Employer and employee contributions for:

- 85 a. Federal social security; or
- 86 b. Any pension, retirement, or benefit plan of an
- 87 employee.
- 88 (d) Failure for one pay period to pay, due to lack of
- 89 funds:
- 90 1. Wages and salaries owed to employees; or
- 91 2. Retirement benefits owed to former employees.
- 92 ~~(c) A fund balance deficit in total or for that portion of~~
- 93 ~~a fund balance not classified as restricted, committed, or~~
- 94 ~~nonspendable, or a total or unrestricted net assets deficit, as~~
- 95 ~~reported on the fund financial statements of entities required~~
- 96 ~~to report under governmental financial reporting standards or on~~
- 97 ~~the basic financial statements of entities required to report~~
- 98 ~~under not-for-profit financial reporting standards, for which~~
- 99 ~~sufficient resources of the local governmental entity, charter~~
- 100 ~~school, charter technical career center, or district school~~
- 101 ~~board, as reported on the fund financial statements, are not~~
- 102 ~~available to cover the deficit. Resources available to cover~~
- 103 ~~reported deficits include fund balance or net assets that are~~
- 104 ~~not otherwise restricted by federal, state, or local laws, bond~~
- 105 ~~covenants, contractual agreements, or other legal constraints.~~
- 106 ~~Property, plant, and equipment, the disposal of which would~~
- 107 ~~impair the ability of a local governmental entity, charter~~
- 108 ~~school, charter technical career center, or district school~~
- 109 ~~board to carry out its functions, are not considered resources~~
- 110 ~~available to cover reported deficits.~~
- 111 (2) A local governmental entity shall notify the Governor
- 112 and the Legislative Auditing Committee; a charter school shall

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113 | notify the charter school sponsor, the Commissioner of  
114 | Education, and the Legislative Auditing Committee; a charter  
115 | technical career center shall notify the charter technical  
116 | career center sponsor, the Commissioner of Education, and the  
117 | Legislative Auditing Committee; and a district school board  
118 | shall notify the Commissioner of Education and the Legislative  
119 | Auditing Committee, when one or more of the conditions specified  
120 | in subsection (1) have occurred or will occur if action is not  
121 | taken to assist the local governmental entity, charter school,  
122 | charter technical career center, or district school board. In  
123 | addition, any state agency must, within 30 days after a  
124 | determination that one or more of the conditions specified in  
125 | subsection (1) have occurred or will occur if action is not  
126 | taken to assist the local governmental entity, charter school,  
127 | charter technical career center, or district school board,  
128 | notify the Governor, charter school sponsor, charter technical  
129 | career center sponsor, or the Commissioner of Education, as  
130 | appropriate, and the Legislative Auditing Committee.

131 |       (3) Upon notification that one or more of the conditions  
132 | in subsection (1) have occurred or will occur if action is not  
133 | taken to assist the local governmental entity or district school  
134 | board, the Governor or his or her designee shall contact the  
135 | local governmental entity or the Commissioner of Education or  
136 | his or her designee shall contact the district school board to  
137 | determine what actions have been taken by the local governmental  
138 | entity or the district school board to resolve or prevent the  
139 | condition. The information requested must be provided within 45  
140 | days after the date of the request. If the entity does not

141 comply with the request, the Governor, or the Commissioner of  
 142 Education, or their respective designee shall notify the  
 143 Legislative Auditing Committee who may take action pursuant to  
 144 s. 11.40.

145 The Governor or the Commissioner of Education, as appropriate,  
 146 shall determine whether the local governmental entity or the  
 147 district school board needs state assistance to resolve or  
 148 prevent the condition. If state assistance is needed, the local  
 149 governmental entity or district school board is considered to be  
 150 in a state of financial emergency. The Governor or the  
 151 Commissioner of Education, as appropriate, has the authority to  
 152 implement measures as set forth in ss. 218.50-218.504 to assist  
 153 the local governmental entity or district school board in  
 154 resolving the financial emergency. Such measures may include,  
 155 but are not limited to:

156 (a) Requiring approval of the local governmental entity's  
 157 budget by the Governor or approval of the district school  
 158 board's budget by the Commissioner of Education.

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

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

165 (d) Making such inspections and reviews of records,  
 166 information, reports, and assets of the local governmental  
 167 entity or district school board. The appropriate local officials  
 168 shall cooperate in such inspections and reviews.

169 (e) Consulting with officials and auditors of the local  
 170 governmental entity or the district school board and the  
 171 appropriate state officials regarding any steps necessary to  
 172 bring the books of account, accounting systems, financial  
 173 procedures, and reports into compliance with state requirements.

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

176 (g)1. Establishing a financial emergency board to oversee  
 177 the activities of the local governmental entity or the district  
 178 school board. If a financial emergency board is established for  
 179 a local governmental entity, the Governor shall appoint board  
 180 members and select a chair. If a financial emergency board is  
 181 established for a district school board, the State Board of  
 182 Education shall appoint board members and select a chair. The  
 183 financial emergency board shall adopt such rules as are  
 184 necessary for conducting board business. The board may:

185 a. Make such reviews of records, reports, and assets of  
 186 the local governmental entity or the district school board as  
 187 are needed.

188 b. Consult with officials and auditors of the local  
 189 governmental entity or the district school board and the  
 190 appropriate state officials regarding any steps necessary to  
 191 bring the books of account, accounting systems, financial  
 192 procedures, and reports of the local governmental entity or the  
 193 district school board into compliance with state requirements.

194 c. Review the operations, management, efficiency,  
 195 productivity, and financing of functions and operations of the  
 196 local governmental entity or the district school board.

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

204 2. The recommendations and reports made by the financial  
 205 emergency board must be submitted to the Governor for local  
 206 governmental entities or to the Commissioner of Education and  
 207 the State Board of Education for district school boards for  
 208 appropriate action.

209 (h) Requiring and approving a plan, to be prepared by  
 210 officials of the local governmental entity or the district  
 211 school board in consultation with the appropriate state  
 212 officials, prescribing actions that will cause the local  
 213 governmental entity or district school board to no longer be  
 214 subject to this section. The plan must include, but need not be  
 215 limited to:

216 1. Provision for payment in full of obligations outlined  
 217 in subsection (1), designated as priority items, which ~~that~~ are  
 218 currently due or will come due.

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

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

223 4. Provisions implementing the consolidation, sourcing, or  
 224 discontinuance of administrative direction and support services,

225 including, but not limited to, services for asset sales,  
 226 economic and community development, building inspections, parks  
 227 and recreation, facilities management, engineering and  
 228 construction, insurance coverage, risk management, planning and  
 229 zoning, information systems, fleet management, and purchasing.

230 (4) (a) Upon notification that one or more of the  
 231 conditions in subsection (1) have occurred or will occur if  
 232 action is not taken to assist the charter school, the charter  
 233 school sponsor or the sponsor's designee and the Commissioner of  
 234 Education shall contact the charter school governing body to  
 235 determine what actions have been taken by the charter school  
 236 governing body to resolve or prevent the condition. The  
 237 Commissioner of Education has the authority to require and  
 238 approve a financial recovery plan, to be prepared by the charter  
 239 school governing body, prescribing actions that will resolve or  
 240 prevent the condition.

241 (b) Upon notification that one or more of the conditions  
 242 in subsection (1) have occurred or will occur if action is not  
 243 taken to assist the charter technical career center, the charter  
 244 technical career center sponsor or the sponsor's designee and  
 245 the Commissioner of Education shall contact the charter  
 246 technical career center governing body to determine what actions  
 247 have been taken by the governing body to resolve or prevent the  
 248 condition. The Commissioner of Education may require and approve  
 249 a financial recovery plan, to be prepared by the charter  
 250 technical career center governing body, prescribing actions that  
 251 will resolve or prevent the condition.

252 (c) The Commissioner of Education shall determine if the

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253 charter school or charter technical career center needs a  
 254 financial recovery plan to resolve the condition. If the  
 255 Commissioner of Education determines that a financial recovery  
 256 plan is needed, the charter school or charter technical career  
 257 center is considered to be in a state of financial emergency.

258  
 259 The Department of Education, with the involvement of sponsors,  
 260 charter schools, and charter technical career centers, shall  
 261 establish guidelines for developing a financial recovery plan.

262 (5) A local governmental entity or district school board  
 263 may not seek application of laws under the bankruptcy provisions  
 264 of the United States Constitution except with the prior approval  
 265 of the Governor for local governmental entities or the  
 266 Commissioner of Education for district school boards.

267 (6) The failure of the members of the governing body of a  
 268 local governmental entity or the failure of the members of a  
 269 district school board to resolve a state of financial emergency  
 270 constitutes malfeasance, misfeasance, and neglect of duty for  
 271 purposes of s. 7, Art. IV of the State Constitution.

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