

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1289 Local Financial Emergencies

**SPONSOR(S):** Raulerson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Whittaker	Harrington
2) Local, Federal & Veterans Affairs Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

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 a financial emergency exists. The Governor or the Commissioner of Education, as appropriate, may implement measures to assist the local governmental entity or district school board in resolving a financial emergency. For example, a financial emergency board may be created to oversee the activities of the local governmental entity or the district school board. If a board is established for a local governmental entity, the Governor must appoint board members and select a chair. If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair. Financial emergency boards may, among other tasks, provide recommendations and reports to the Governor or the Commissioner of Education.

The bill expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also 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 what 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.

The bill also revises the financial emergency boards. The bill specifies who can appoint members and establishes member qualifications. The bill revises the duties of the board and authorizes the board to assume operational and institutional control over a local governmental entity's or district school board's functions under certain circumstances.

The bill may have an indeterminate fiscal impact on the state and does not appear to have a fiscal impact on local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Financial Emergencies

The Local Governmental Entity, Chart School, Charter Technical Career Center, and District School Board Financial Emergencies Act (act) governs certain local governmental financial emergencies.<sup>1</sup> 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.<sup>2</sup>

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 certain financial emergencies exist:<sup>3</sup>

- 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 must notify the Governor and the Legislative Auditing Committee.<sup>4</sup> A charter 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.<sup>5</sup>

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 there is a financial emergency that occurred or could occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board.<sup>6</sup>

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 what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition.<sup>7</sup> The information requested must be provided within 45 days of the

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<sup>1</sup> Sections 218.50 – 218.504, F.S.

<sup>2</sup> Section 218.501, F.S.

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

<sup>4</sup> Section 218.503(2), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 218.503(3), F.S.

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. At that point, certain measures of assistance may occur, including:<sup>8</sup>

- 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.

#### 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.<sup>9</sup> If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair.<sup>10</sup> The board must adopt roles necessary for conducting board business. The financial emergency board may:<sup>11</sup>

- Review 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 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.

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.<sup>12</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

## Effect of the Bill

The bill expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also 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 what 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.

The bill also revises the financial emergency boards. The bill provides that a financial emergency board must consist of an odd number of members comprised of at least seven 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 appoint two of the board members. 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 and the Speaker of the House of Representatives must each appoint two of the board members. The State Board of Education must appoint the remainder of the board members and designate the chair.

The bill establishes qualifications for members of a financial emergency board. Such members must 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 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 and given the technical and financial resources necessary to complete their duties. The board must adopt rules necessary for conducting board business. In addition, the board may:

- Hire or retain legal counsel.
- Obtain external advice and assistance if the 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 board may assume operational and institutional control of the functions of the local government entity or district school board.

**B. SECTION DIRECTORY:**

- Section 1. Amends s. 218.503, F.S., expanding the entities that have oversight over local government entities, charter schools, charter technical career centers, and district school boards under certain circumstances; revises the financial emergency board.
- Section 2. Amends s. 218.504, F.S., conforming provisions to changes made by the bill.
- Section 3. Provides an effective date of becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.
2. Expenditures:  
See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The financial emergency board must adopt rules necessary for conducting their business.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.