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1                   A bill to be entitled  
2           An act relating to financial emergencies; amending s.  
3           218.39, F.S.; requiring the Auditor General to notify  
4           each member of the governing body of a local  
5           governmental entity, district school board, charter  
6           school, or charter technical career center of certain  
7           fund balance deficits; amending s. 218.503, F.S.;  
8           removing a condition under which local governmental  
9           entities, charter schools, charter technical career  
10          centers, and district school boards are subject to  
11          certain review and oversight by the Governor, the  
12          charter school sponsor, the charter technical career  
13          center sponsor, or the Commissioner of Education;  
14          requiring a local governmental entity or district  
15          school board to provide requested information within a  
16          specified period of time; authorizing a financial  
17          emergency board for a local governmental entity or  
18          district school board to consult with other  
19          governmental entities for the consolidation of  
20          administrative direction and support services;  
21          authorizing the Governor or Commissioner of Education  
22          to require a local governmental entity or district  
23          school board to include provisions implementing the  
24          consolidation, sourcing, or discontinuance of all  
25          administrative direction and support services in  
26          certain plans; providing that the members of the  
27          governing body of a local governmental entity or the  
28          members of a district school board who fail to resolve

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29 a state of financial emergency are subject to  
30 suspension or removal from office; providing an  
31 effective date.

32

33 Be It Enacted by the Legislature of the State of Florida:

34

35 Section 1. Subsection (5) of section 218.39, Florida  
36 Statutes, is amended to read:

37 218.39 Annual financial audit reports.—

38 (5) At the conclusion of the audit, the auditor shall  
39 discuss with the chair of the governing body of the local  
40 governmental entity or the chair's designee, the elected  
41 official of each county agency or the elected official's  
42 designee, the chair of the district school board or the chair's  
43 designee, the chair of the board of the charter school or the  
44 chair's designee, or the chair of the board of the charter  
45 technical career center or the chair's designee, as appropriate,  
46 all of the auditor's comments that will be included in the audit  
47 report. If the officer is not available to discuss the auditor's  
48 comments, their discussion is presumed when the comments are  
49 delivered in writing to his or her office. The auditor shall  
50 notify each member of the governing body of a local governmental  
51 entity, district school board, charter school, or charter  
52 technical career center for which:

53 (a) Deteriorating financial conditions exist that may  
54 cause a condition described in s. 218.503(1) to occur if actions  
55 are not taken to address such conditions.

56 (b) A fund balance deficit in total or for that portion of

57 a fund balance not classified as restricted, committed, or  
 58 nonspendable, or a total or unrestricted net assets deficit, as  
 59 reported on the fund financial statements of entities required  
 60 to report under governmental financial reporting standards or on  
 61 the basic financial statements of entities required to report  
 62 under not-for-profit financial reporting standards, for which  
 63 sufficient resources of the local governmental entity, charter  
 64 school, charter technical career center, or district school  
 65 board, as reported on the fund financial statements, are not  
 66 available to cover the deficit. Resources available to cover  
 67 reported deficits include fund balance or net assets that are  
 68 not otherwise restricted by federal, state, or local laws, bond  
 69 covenants, contractual agreements, or other legal constraints.  
 70 Property, plant, and equipment, the disposal of which would  
 71 impair the ability of a local governmental entity, charter  
 72 school, charter technical career center, or district school  
 73 board to carry out its functions, are not considered resources  
 74 available to cover reported deficits.

75 Section 2. Paragraph (e) of subsection (1) and subsection  
 76 (3) of section 218.503, Florida Statutes, are amended, and  
 77 subsection (6) is added to that section, to read:

78 218.503 Determination of financial emergency.—

79 (1) Local governmental entities, charter schools, charter  
 80 technical career centers, and district school boards shall be  
 81 subject to review and oversight by the Governor, the charter  
 82 school sponsor, the charter technical career center sponsor, or  
 83 the Commissioner of Education, as appropriate, when any one of  
 84 the following conditions occurs:

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85       ~~(c) A fund balance deficit in total or for that portion of~~  
86 ~~a fund balance not classified as restricted, committed, or~~  
87 ~~nonspendable, or a total or unrestricted net assets deficit, as~~  
88 ~~reported on the fund financial statements of entities required~~  
89 ~~to report under governmental financial reporting standards or on~~  
90 ~~the basic financial statements of entities required to report~~  
91 ~~under not-for-profit financial reporting standards, for which~~  
92 ~~sufficient resources of the local governmental entity, charter~~  
93 ~~school, charter technical career center, or district school~~  
94 ~~board, as reported on the fund financial statements, are not~~  
95 ~~available to cover the deficit. Resources available to cover~~  
96 ~~reported deficits include fund balance or net assets that are~~  
97 ~~not otherwise restricted by federal, state, or local laws, bond~~  
98 ~~covenants, contractual agreements, or other legal constraints.~~  
99 ~~Property, plant, and equipment, the disposal of which would~~  
100 ~~impair the ability of a local governmental entity, charter~~  
101 ~~school, charter technical career center, or district school~~  
102 ~~board to carry out its functions, are not considered resources~~  
103 ~~available to cover reported deficits.~~

104       (3) Upon notification that one or more of the conditions  
105 in subsection (1) have occurred or will occur if action is not  
106 taken to assist the local governmental entity or district school  
107 board, the Governor or his or her designee shall contact the  
108 local governmental entity or the Commissioner of Education or  
109 his or her designee shall contact the district school board to  
110 determine what actions have been taken by the local governmental  
111 entity or the district school board to resolve or prevent the  
112 condition. The information requested must be provided within 45

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113 days after the date of the request. If the local governmental  
114 entity or the district school board does not comply with the  
115 request, the Governor or his or her designee or the Commissioner  
116 of Education or his or her designee shall notify the members of  
117 the Legislative Auditing Committee who may take action pursuant  
118 to s. 11.40. The Governor or the Commissioner of Education, as  
119 appropriate, shall determine whether the local governmental  
120 entity or the district school board needs state assistance to  
121 resolve or prevent the condition. If state assistance is needed,  
122 the local governmental entity or district school board is  
123 considered to be in a state of financial emergency. The Governor  
124 or the Commissioner of Education, as appropriate, has the  
125 authority to implement measures as set forth in ss. 218.50-  
126 218.504 to assist the local governmental entity or district  
127 school board in resolving the financial emergency. Such measures  
128 may include, but are not limited to:

129 (a) Requiring approval of the local governmental entity's  
130 budget by the Governor or approval of the district school  
131 board's budget by the Commissioner of Education.

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

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

138 (d) Making such inspections and reviews of records,  
139 information, reports, and assets of the local governmental  
140 entity or district school board as are needed. The appropriate

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141 local officials shall cooperate in such inspections and reviews.

142 (e) Consulting with officials and auditors of the local  
143 governmental entity or the district school board and the  
144 appropriate state officials regarding any steps necessary to  
145 bring the books of account, accounting systems, financial  
146 procedures, and reports into compliance with state requirements.

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

149 (g)1. Establishing a financial emergency board to oversee  
150 the activities of the local governmental entity or the district  
151 school board. If a financial emergency board is established for  
152 a local governmental entity, the Governor shall appoint board  
153 members and select a chair. If a financial emergency board is  
154 established for a district school board, the State Board of  
155 Education shall appoint board members and select a chair. The  
156 financial emergency board shall adopt such rules as are  
157 necessary for conducting board business. The board may:

158 a. Make such reviews of records, reports, and assets of  
159 the local governmental entity or the district school board as  
160 are needed.

161 b. Consult with officials and auditors of the local  
162 governmental entity or the district school board and the  
163 appropriate state officials regarding any steps necessary to  
164 bring the books of account, accounting systems, financial  
165 procedures, and reports of the local governmental entity or the  
166 district school board into compliance with state requirements.

167 c. Review the operations, management, efficiency,  
168 productivity, and financing of functions and operations of the

169 local governmental entity or the district school board.

170 d. Consult with other governmental entities for the  
 171 consolidation of administrative direction and support services,  
 172 including, but not limited to, services for asset sales,  
 173 economic and community development, building inspections, parks  
 174 and recreation, facilities management, engineering and  
 175 construction, insurance coverage, risk management, planning and  
 176 zoning, information systems, fleet management, and purchasing.

177 2. The recommendations and reports made by the financial  
 178 emergency board must be submitted to the Governor for local  
 179 governmental entities or to the Commissioner of Education and  
 180 the State Board of Education for district school boards for  
 181 appropriate action.

182 (h) Requiring and approving a plan, to be prepared by  
 183 officials of the local governmental entity or the district  
 184 school board in consultation with the appropriate state  
 185 officials, prescribing actions that will cause the local  
 186 governmental entity or district school board to no longer be  
 187 subject to this section. The plan must include, but need not be  
 188 limited to:

189 1. Provision for payment in full of obligations outlined  
 190 in subsection (1), designated as priority items, that are  
 191 currently due or will come due.

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

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

196 4. Provisions implementing the consolidation, sourcing, or

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

203 (6) The failure of the members of the governing body of a  
204 local governmental entity or the failure of the members of a  
205 district school board to resolve a state of financial emergency  
206 constitutes malfeasance, misfeasance, and neglect of duty for  
207 purposes of s. 7, Art. IV of the State Constitution.

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