

FINANCIAL EMERGENCY

S. 218.503, FS, Determination of Financial Emergency, 2018 FS

S. 1011.051, FS, Guidelines for General Funds, 2018 FS

S. 1011.09(4), FS, Expenditure of Funds, 2018 FS

The 2018 Florida Statutes

Title XIV

TAXATION AND FINANCE

Chapter 218

FINANCIAL MATTERS PERTAINING TO POLITICAL SUBDIVISIONS

218.503 Determination of financial emergency.—

(1) Local governmental entities, charter schools, charter technical career centers, and district school boards shall be 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 any one of the following conditions occurs:

(a) 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 a lack of funds.

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

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

1. Taxes withheld on the income of employees; or

2. Employer and employee contributions for:

a. Federal social security; or

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

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

1. Wages and salaries owed to employees; or

2. Retirement benefits owed to former employees.

(2) A local governmental entity shall notify the Governor and the Legislative Auditing Committee; a charter school shall notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee; a charter technical career center shall notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee; and a district school board shall notify the Commissioner of Education and the Legislative Auditing Committee, when one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board. In addition, any state agency must, within 30 days after a determination that one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board, notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify the members of the Legislative Auditing Committee who may take action pursuant to s. 11.40. **The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or**

the 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. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

- (a) 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.
- (b) Authorizing a state loan to a local governmental entity and providing for repayment of same.
- (c) 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 subject to this section.
- (d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.
- (e) 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.
- (f) Providing technical assistance to the local governmental entity or the district school board.

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

- a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.
- b. 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.
- c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.
- d. 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.

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

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the 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 subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which are currently due or will come due.
2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.
3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.
4. 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.

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

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

(c) The Commissioner of Education shall determine if the charter school or charter technical career center needs a financial recovery plan to resolve the condition. If the Commissioner of Education determines that a financial recovery plan is needed, the charter school or charter technical career center is considered to be in a state of financial emergency.

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

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

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

History.—s. 8, ch. 79-183; s. 54, ch. 89-169; s. 1180, ch. 95-147; s. 27, ch. 96-324; s. 29, ch. 97-96; s. 132, ch. 99-251; s. 1, ch. 2001-354; s. 35, ch. 2004-305; s. 5, ch. 2006-190; s. 6, ch. 2007-6; s. 5, ch. 2009-214; s. 21, ch. 2011-144; s. 2, ch. 2012-38.

The 2018 Florida Statutes

Title XLVIII

K – 20 EDUCATION CODE

Chapter 218

PLANNING AND BUDGETING

1011.051 Guidelines for general funds.—The district school board shall maintain a general fund ending fund balance that is sufficient to address normal contingencies.

¹(1) If at any time the portion of the general fund's ending fund balance not classified as restricted, committed, or nonspendable in the district's approved operating budget is projected to fall below 3 percent of projected general fund revenues during the current fiscal year, the superintendent shall provide written notification to the district school board and the Commissioner of Education.

(2)(a) If at any time the portion of the general fund's ending fund balance not classified as restricted, committed, or nonspendable in the district's approved operating budget is projected to fall below 2 percent of projected general fund revenues during the current fiscal year, the superintendent shall provide written notification to the district school board and the Commissioner of Education. Within 14 days after receiving such notification, if the commissioner determines that the district does not have a plan that is reasonably anticipated to avoid a financial emergency as determined pursuant to s. 218.503, the commissioner shall appoint a financial emergency board that shall operate under the requirements, powers, and duties specified in s. 218.503(3)(g).

(b) If any of the conditions identified in s. 218.503(1) existed in the 2015-2016 school year or thereafter, the department shall contract with an independent third party to conduct an investigation of all accounts and records to determine the cause of the deficit; what efforts, if any, were made to avoid the deficit; and whether any of the conditions identified in s. 1011.10 have occurred. The investigation must include a detailed review and analysis of documents and records, including, but not limited to, budget reports, journal entries, budget methodologies, staff emails, hard copy records, monthly financial statements, quarterly revenue and expenditure reports, finance staff job descriptions, and minutes from meetings. The results of the investigation must include recommendations for corrective action and controls to avoid a reoccurrence of a future budget shortfall. A final report shall be provided to the district school board, the department, the Legislative Auditing Committee, and the district's financial emergency board, if applicable.

History.—s. 11, ch. 2009-3; s. 24, ch. 2011-144; s. 13, ch. 2018-5.

¹Note.—Section 13, Ch. 2018-5, amended subsection (1), effective July 1, 2019, to read:

(1) If at any time the portion of the general fund's ending fund balance not classified as restricted, committed, or nonspendable in the district's approved operating budget is projected to fall below 3 percent of projected general fund revenues during the current fiscal year, the superintendent shall provide written notification to the district school board and the Commissioner of Education. If such financial condition exists for 2 consecutive fiscal years, the

superintendent shall reduce the district's administration expenditures reported pursuant to s. 1010.215(4)(a) in proportion to the reduction in the general fund's ending balance or the reduction in student enrollment, whichever is greater.

MCG NOTE: The underlined portions in (1) and (2) were added by the 2018 Legislature in S 13 of Ch 2018-5, Laws of Florida (HB 1279).

The 2018 Florida Statutes

Title XLVIII

K – 20 EDUCATION CODE

Chapter 1011

PLANNING AND BUDGETING

1011.09 Expenditure of funds by district school board.—All state funds apportioned to the credit of any district constitute a part of the district school fund of that district and must be budgeted and expended under authority of the district school board subject to the provisions of law and rules of the State Board of Education.

(1) A district school board shall credit interest or profits on investments to the specific budgeted fund, as defined by the accounting system required by s. 1010.01, that produced the earnings unless otherwise authorized by law or rules of the State Board of Education.

(2) A district school board may temporarily advance moneys from one fund, as defined by the accounting system required by s. 1010.01, to another fund when insufficient moneys are available to meet current obligations if the temporary advancement is repaid within 13 months, appropriate accounting records are maintained, and the temporary advancement does not restrict, impede, or limit implementation or fulfillment of the original purposes for which the moneys were received in the fund providing the advancement.

(3) Funds expended from school nonrecurring incentives or bonus type state or federal funded programs based on performance outcomes may not be used for measuring compliance with state or federal maintenance of effort, supplanting, or comparability standards.

¹(4) During the 2009-2010 fiscal year, unless otherwise specifically approved by the district school board, public funds may not be expended for out-of-state travel or cellular phones, cellular phone service, personal digital assistants, or any other mobile wireless communication device or service, including text messaging, whether through purchasing, leasing, contracting, or any other method. The expenditure of public funds for art programs, music programs, sports programs, and extracurricular programs for students is a higher priority than expending funds for employee travel and cellular phones.

History.—s. 612, ch. 2002-387; s. 25, ch. 2009-59; s. 15, ch. 2018-5.

¹Note.—Section 15, Ch. 2018-5, amended subsection (4), effective July 1, 2019, to read:

(4) If the financial conditions in s. 1011.051 exist, a district school board may not make expenditures for travel outside of the district or cellular phones, cellular phone service, personal digital assistants, or any other mobile wireless communication device or service, including text messaging, whether through purchasing, leasing, contracting, or any other method, while the financial conditions exist. The expenditure of public funds for art programs, music programs, sports programs, and extracurricular programs for students is a higher priority than expending funds for employee travel and cellular phones.

MCG NOTE: Subsection (4) was amended by the 2018 Legislature in S 15 of Ch 2018-5, Laws of Florida (HB 1279). The change effectively changes the previous language restricting the requirement to the 2009 – 10 year to make it permanent effective July 1, 2019.