

Local Government Guarantee

A unit of local government of the State of Florida may demonstrate financial responsibility as required in Rule 62-528.435(9), F.A.C., by submitting all of the following information:

1. The local government must submit a letter from its attorney attesting to the permittee meeting the definition of a local government as defined in Chapter 218, Florida Statutes (F.S.). The attorney must also attest to the local government's coverage under Chapter 218, Part V, F.S., Financial Emergencies. A copy of Chapter 218, Part V, F.S., is provided with this attachment.

If the permittee is unable to obtain a letter from its attorney regarding its status as a local government, an alternate demonstration of financial responsibility must be submitted to the FDEP. The alternatives suggested by the FDEP are:

- a. Surety Bond
 - b. Letter of Credit
 - c. Trust Fund
 - d. Financial Test
2. The local government must submit a Certification of Financial Responsibility which certifies unconditionally the obligation of the local government to perform plugging and abandonment of its injection system(s) pursuant to Chapter 62-528, F.A.C. The certification form provides information on the location of the injection system(s) guaranteed by the local government with the related cost estimates for plugging and abandonment.

The certification allows for an annual cost increase of 10 percent without submission of an updated certification form. Cancellation of the agreement may not take place without the written consent of the FDEP Secretary **(10% increase applies only within a permit cycle – financial responsibility must address full amount when renewing or reissuing a permit).**

The person signing the Certification on behalf of the local government must be an individual authorized to bind the local government **(the entity that is qualifying as a local government - not just the utility)** to such an agreement. The signing of this agreement must be notarized to complete the processing of the "Certification of Financial Responsibility" form. The wording of the certification form is provided in the attachment **Form for Certification of Financial Responsibility for Local Government.**

3. A copy of the financial statements **(for the entity qualifying as a local government – not the utility)** for the latest completed fiscal year must accompany items 1 and 2 above to complete the financial package for review by the FDEP. If the Department finds through its review of the financial statements that the financial strength of the unit of local government is questionable, the Department may notify the permittee of its intentions to deny the financial package as submitted. The permittee would then be required to submit an alternate financial demonstration to meet the requirements of Rule 62-528.435(9), F.A.C.

Plugging and Abandonment Plan/Cost Determination - In order to demonstrate financial responsibility a permittee or applicant must submit a detailed plugging and abandonment (P&A) plan to the Department for approval (injection and monitor well). The P&A plan should contain the following information:

1. A step-by-step plugging plan indicating where cement and other fillers (if any) will be placed.
2. A drawing showing the well construction and proposed placement of plugging materials. Appropriate depths should be indicated on this drawing.
3. Calculations showing the derivation of the volume of cement and other fillers (if any) needed to plug the well according to the plan prepared in Items 1 and 2 above. Separate calculations should be made for each well.
4. Calculations showing the derivation of the total cost for plugging each well (injection and monitor well(s)). Costs should be itemized for each well (i.e. cement cost, mobilization cost, etc.). Financial responsibility must be demonstrated for the sum of the total costs for all injection and associated monitor wells at a facility.

Timing of Demonstrations - Department rules require that financial responsibility be demonstrated at the time of permitting and maintained. A demonstration of financial responsibility will be required for each construction and operation permit application. Also, at any time during a permit cycle, if updated plugging and abandonment costs exceed the initial financial certification amount by ten percent or more, then a redemonstration shall be submitted to the Department. Updated plugging and abandonment cost estimates should be provided to the Department at the midpoint of the permit cycle. Permittees which utilize a UIC Financial Test shall redemonstrate annually, and forward the latest annual report or financial statement.

Financial responsibility is required for Class I injection wells, and any monitor well which penetrates to a depth below the underground source of drinking water.

Summary - Department UIC rules require that a permittee for a Class I injection well demonstrate and maintain financial responsibility. To do this, the applicant or permittee must first develop a plugging and abandonment plan and determine the cost associated with implementing this plan should it become necessary. These costs should be updated during the midpoint of the permit cycle and if the cost is ten percent or more above the amount of the previous financial responsibility demonstration is based, then a redemonstration must be made to the Department. Once the costs have been determined, several methods are available to demonstrate financial responsibility. Each method is described in the Department's guidelines for demonstrating financial responsibility.

CHAPTER 218
FINANCIAL MATTERS PERTAINING TO POLITICAL SUBDIVISIONS

PART V
FINANCIAL EMERGENCIES

218.50 Short title.--Sections 218.50-218.504 shall be known as the "Local Government Financial Emergencies Act."

History.--s. 8, ch. 79-183.

218.501 Purposes.--The purposes of ss. 218.50-218.504 are:

- (1) To preserve and protect the fiscal solvency of local governmental entities.
- (2) To assist local governmental entities in providing essential services without interruption and in meeting their financial obligations.
- (3) To assist local governmental entities through the improvement of local financial management procedures.

History.--s. 8, ch. 79-183; s. 25, ch. 96-324.

218.502 Definition.--As used in ss. 218.50-218.504, the term "local governmental entity" means a county, municipality, or special district.

History.--s. 8, ch. 79-183; s. 26, ch. 96-324.

218.503 Determination of financial emergency.--

(1) A local governmental entity is in a state of financial emergency when any of the following conditions occurs:

(a) Failure within the same fiscal year in which due to pay short-term loans from banks or failure to make bond debt service payments when due.

(b) 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.

(c) 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.

(d) An unreserved or total fund balance or retained earnings deficit for which sufficient resources of the local governmental entity are not available to cover the deficit for 2 successive years.

(e) Noncompliance of the local government retirement system with actuarial conditions provided by law.

(2) A local governmental entity shall notify the Governor 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. In addition, any state agency must, within 30 days after the identification of the financial emergency, notify the Governor 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 a local governmental entity.

(3) Upon notification that one or more of the conditions in subsection (1) exist, the Governor or his or her designee shall contact the local governmental entity to determine what actions have been taken by the local governmental entity to resolve the financial emergency. The Governor has the authority to implement measures as set forth in ss. 218.50-218.504 to resolve 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.

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

(c) Prohibiting a local governmental entity 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, in which inspections and reviews the appropriate local officials shall cooperate.

(e) Consulting with the officials of the local governmental entity and the appropriate state agency 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.

(g)

1. Establishing a financial emergencies board to oversee the activities of the local governmental entity. The board, if established, shall be appointed by the Governor. The Governor shall select a chair and such other officers as are necessary. The 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 as are needed.

b. Consult with the officials of the local governmental entity and appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity.

2. The recommendations and reports made by the board must be submitted to the Governor for appropriate action.

(h) Requiring and approving a plan, to be prepared by the appropriate state agency in conjunction with the local governmental entity, prescribing actions that will cause the local governmental entity 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 all payments due or to come due on debt obligations, pension payments, and all payments and charges imposed or mandated by federal or state law and for all judgments and past due accounts, as priority items of expenditures.

2. Establishment of a basis of priority budgeting or zero-based budgeting, so as to eliminate low-priority items that are not affordable.

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

(4) During the financial emergency period, the local governmental entity may not seek application of laws under the bankruptcy provisions of the United States Constitution except with the prior approval of the Governor.

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.

218.504 Cessation of state action.--The Governor has the authority to terminate all state actions pursuant to ss. 218.50-218.504. Cessation of state action must not occur until the Governor has determined that:

(1) The local governmental entity:

(a) Has established and is operating an effective financial accounting and reporting system.

(b) Has corrected or eliminated the fiscal emergency conditions outlined in s. 218.503.

(2) No new fiscal emergency conditions exist.

History.--s. 8, ch. 79-183; s. 28, ch. 96-324.