

By the Committee on Governmental Reform and Oversight and  
Senator Latvala

302-1754-98

1                                   A bill to be entitled  
2           An act relating to investment of public funds  
3           (RAB); amending s. 215.835, F.S.; prescribing  
4           rulemaking authority of the Division of Bond  
5           Finance and State Board of Administration;  
6           amending ss. 159.825, 218.405, 218.407,  
7           218.409, F.S.; prescribing rulemaking authority  
8           of the State Board of Administration; amending  
9           s. 240.551, F.S.; prescribing rulemaking  
10          authority of the Prepaid Postsecondary  
11          Education Expense Board; providing an effective  
12          date.

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

16           Section 1. Section 215.835, Florida Statutes, is  
17 amended to read:

18           215.835 Rulemaking authority.--The Division of Bond  
19 Finance and the State Board of Administration may adopt rules  
20 ~~as it deems~~ necessary to carry out the provisions and intent  
21 of this act.

22           Section 2. Section 159.825, Florida Statutes, is  
23 amended to read:

24           159.825 Terms of bonds.--

25           (1) The ordinance, resolution, indenture, agreement,  
26 or other instrument providing for the issuance of taxable  
27 bonds may provide for any of the following:

28           (a)~~(1)~~ The bonds shall be in such denominations, in  
29 such form, either bearer or registered, and payable at such  
30 place or places, either within or without the United States,  
31 at such time or times, as, in each case, the governing body

1 shall determine subject to any limitations on the maturity of  
2 bonds set forth in the statutes under authority of which the  
3 bonds are issued.

4 (b)~~(2)~~ The bonds shall be payable in legal tender of  
5 the United States, in a foreign currency, in commodities, or  
6 in precious metals, as the governing body shall determine.

7 (c)~~(3)~~ The governing body may appoint, in connection  
8 with the bond issue, a cotrustee located outside of the  
9 boundaries of the United States or its territories or  
10 possessions so long as it shall also appoint a trustee  
11 otherwise meeting the requirements of the statutes under  
12 authority of which the bonds are issued. The governing body  
13 may appoint, in connection with the bond issue, a paying agent  
14 or a copaying agent located outside the boundaries of the  
15 United States or its territories or possessions.

16 (d)~~(4)~~ Bonds shall bear interest at a rate not to  
17 exceed an average net interest cost rate, which shall be  
18 computed by adding 500 basis points to the 30-year Treasury  
19 Bond yield published in The Bond Buyer immediately preceding  
20 the first day of the calendar month in which the bonds are  
21 sold. If the interest rate on bonds bearing a floating or  
22 variable rate of interest as calculated on the date of the  
23 initial sale thereof does not exceed the limitation provided  
24 by this section, so long as the basis, method, or formula for  
25 computing the floating or variable rate does not change during  
26 the life of the bonds, subsequent increases in the interest  
27 rate in accordance with said basis, method, or formula shall  
28 not cause the interest rate on the bonds to violate the  
29 limitation provided by this paragraph ~~subsection~~. A  
30 certificate by the issuer of the bonds as to the computation  
31 of the interest rate in compliance with this requirement shall

1 be deemed conclusive evidence of compliance with the  
2 provisions of this paragraph ~~subsection~~. Such maximum rate  
3 does not apply to bonds rated by a nationally recognized  
4 rating service in any one of the three highest  
5 classifications, which rating services and classifications are  
6 determined pursuant to rules adopted by the State Board of  
7 Administration.

8 ~~(e)(5)~~ Upon the request of and application by a  
9 governmental unit, the State Board of Administration may  
10 authorize, for a specific issue or reissue of bonds, a rate of  
11 interest in excess of the maximum rate prescribed in paragraph  
12 ~~(d)subsection (4)~~. The governmental unit shall provide in  
13 its application ~~request~~:

14 ~~1.(a)~~ Relevant supporting data which shall include,  
15 but not be limited to:

16 ~~a.1.~~ The official statement or prospectus, if  
17 available, or similar information relating to the sale of the  
18 bonds;

19 ~~b.2.~~ The resolution or ordinance authorizing the  
20 issuance of the bonds;

21 ~~c.3.~~ Financial data relating to anticipated revenue,  
22 debt service, and coverage; and

23 ~~d.4.~~ The most recent financial statement of the  
24 governmental unit.

25 ~~2.(b)~~ Information relating to sale of the bonds,  
26 including the amount of the discount, if any. In making the  
27 determination to exceed the maximum interest rate, the State  
28 Board of Administration shall consider, but not be limited to  
29 considering, comparable sales of other taxable bonds of other  
30 governmental units and evidence that the objectives and intent  
31

1 of the issuing of such bonds will be realized. This  
2 subparagraph does ~~paragraph shall~~ not apply to:

3 a.1. Bonds which have been sold prior to June 30,  
4 1987, and which are delivered pursuant to said sale on or  
5 after June 30, 1987.

6 b.2. Bonds issued to finance projects under part II,  
7 part III, or part V of this chapter or health facilities under  
8 part III of chapter 154.

9 c.3. Limit or restrict the rate of interest on bonds  
10 or other obligations of municipal utilities or agencies  
11 thereof issued or made pursuant to authority provided in part  
12 II of chapter 166 and s. 215.431.

13 (f)(6) In connection with, or incidental to, the sale  
14 and issuance of bonds, the governmental unit may enter into  
15 any contracts which the governing body determines to be  
16 necessary or appropriate to achieve a desirable effective  
17 interest rate in connection with the bonds by means of, but  
18 not limited to, contracts commonly known as investment  
19 contracts, funding agreements, interest rate swap agreements,  
20 currency swap agreements, forward payment conversion  
21 agreements, futures, or contracts providing for payments based  
22 on levels of or changes in interest rates, or contracts to  
23 exchange cash flows or a series of payments, or contracts,  
24 including, without limitation, options, puts, or calls to  
25 hedge payment, rate, spread, or similar exposure. Such  
26 contracts or arrangements may also be entered into by  
27 governmental units in connection with, or incidental to,  
28 entering into any agreement which secures bonds or provides  
29 liquidity therefor. Such contracts and arrangements shall be  
30 made upon the terms and conditions established by the  
31 governing body, after giving due consideration for the credit

1 | worthiness of the counterparties, where applicable, including  
2 | any rating by a nationally recognized rating service or any  
3 | other criteria as may be appropriate.

4 |        ~~(g)(7)~~ In connection with, or incidental to, the sale  
5 | and issuance of the bonds, or entering into any of the  
6 | contracts or arrangements referred to in paragraph (f)  
7 | ~~subsection (6)~~, the governmental unit may enter into such  
8 | credit enhancement or liquidity agreements, with such payment,  
9 | interest rate, security, default, remedy, and other terms and  
10 | conditions as the governing body shall determine.

11 |        ~~(h)(8)~~ Notwithstanding any provisions of state law  
12 | relating to the investment or reinvestment of surplus funds of  
13 | any governmental unit, proceeds of the bonds and any moneys  
14 | set aside or pledged to secure payment of the principal of,  
15 | premium, if any, and interest on the bonds, or any of the  
16 | contracts entered into pursuant to paragraph (f)~~subsection~~  
17 | ~~(6)~~, may be invested in securities or obligations described in  
18 | the ordinance or resolution providing for the issuance of the  
19 | bonds.

20 |        (2) The State Board of Administration may adopt rules  
21 | necessary to administer this section.

22 |        Section 3. Section 218.405, Florida Statutes, is  
23 | amended to read:

24 |        218.405 Local Government Surplus Funds Trust Fund;  
25 | creation.--There is hereby created a Local Government Surplus  
26 | Funds Trust Fund to be administered by the State Board of  
27 | Administration and to be composed of local government surplus  
28 | funds deposited therein by units of local government under the  
29 | procedures established in this part. The board may adopt rules  
30 | to administer the provisions of this section.

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1           Section 4. Section 218.407, Florida Statutes, is  
2 amended to read:

3           218.407 Local government investment authority.--

4           (1) Upon determination by the governing body that it  
5 is in the interest of the unit of local government to deposit  
6 surplus funds in the trust fund, a resolution by the governing  
7 body shall be filed with the State Board of Administration  
8 authorizing investment of its surplus funds in the trust fund  
9 established by this part. The resolution shall name:

10           (a) The local government official, who may be the  
11 chief financial or administrative officer of the local  
12 government, or

13           (b) An independent trustee holding funds on behalf of  
14 the unit of local government,

15  
16 responsible for deposit and withdrawal of such funds ~~and shall~~  
17 ~~state the approximate cash-flow requirements of the local~~  
18 ~~government for the surplus funds to be invested.~~

19           (2) The State Board of Administration shall, upon the  
20 filing of the resolution, invest the moneys in the trust fund  
21 in the same manner and subject to the same restrictions as are  
22 set forth in s. 215.47. Except when authorized by the board,  
23 all units of local government which qualify to be participants  
24 in the Local Government Surplus Funds Trust Fund after January  
25 1, 1982, will normally have surplus funds deposited into a  
26 pooled investment account.

27           (3) The provisions of this part shall not impair the  
28 power of a unit of local government to hold funds in deposit  
29 accounts with banking or savings institutions or to invest  
30 funds as otherwise authorized by law.

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1           Section 5. Subsections (2), (3), (4), (5), and (6) of  
2 section 218.409, Florida Statutes, are amended to read:

3           218.409 Administration of the trust fund.--

4           (2) The State Board of Administration shall administer  
5 the investment trust funds on behalf of the participants and  
6 shall have the power to invest such funds. A fee may be  
7 charged on any transaction that is not in accord with the  
8 close of business as set by the board.

9           (3) The State Board of Administration may purchase  
10 such surety or other bonds as may be necessary for its  
11 officials in order to protect the fund. A reserve fund may be  
12 established to fulfill this purpose.

13           (4) All investments may be purchased jointly for the  
14 participants in the trust fund. The board may also purchase  
15 investments for a pooled investment account in which all  
16 participants may share pro rata, as determined by rule of the  
17 board, in the capital gain, income, or losses, subject to any  
18 penalties for early withdrawal. The board shall determine the  
19 rate of return for the pooled investment account. A system may  
20 be developed by the board to keep current account balance  
21 information and to apportion pooled investment earnings back  
22 to individual accounts.

23           (5) The State Board of Administration shall keep a  
24 separate account, designated by name and number of each  
25 participating local government. A maximum number of accounts  
26 allowed for each participant may be established by the board.  
27 Individual transactions and totals of all investments, or the  
28 share belonging to each participant, shall be recorded in the  
29 accounts.

30           (6) The State Board of Administration shall report  
31 semiannually or upon request to every participant having a

1 beneficial interest in the trust fund. The report shall show  
2 the changes in investments made during the preceding period.  
3 The report shall delineate, in a manner which is in accordance  
4 with generally accepted governmental accounting procedures,  
5 those funds on deposit, the manner in which the funds are  
6 invested, and the interest earnings thereon. The State Board  
7 of Administration shall furnish upon request the details of an  
8 investment transaction to any participant. Additional  
9 reporting may be made to pool participants.

10 Section 6. Paragraph (c) of subsection (5) of section  
11 240.551, Florida Statutes, is amended to read:

12 240.551 Florida Prepaid Postsecondary Education  
13 Expense Program.--

14 (5) The Florida Prepaid Postsecondary Education  
15 Expense Program shall be administered by the Prepaid  
16 Postsecondary Education Expense Board as an agency of the  
17 state. The Prepaid Postsecondary Education Expense Board is  
18 hereby created as a body corporate with all the powers of a  
19 body corporate for the purposes delineated in this section.  
20 For the purposes of s. 6, Art. IV of the State Constitution,  
21 the board shall be assigned to and administratively housed  
22 within the State Board of Administration, but it shall  
23 independently exercise the powers and duties specified in this  
24 section. The board shall consist of seven members to be  
25 composed of the Insurance Commissioner and Treasurer, the  
26 Comptroller, the Chancellor of the Board of Regents, the  
27 Executive Director of the State Board of Community Colleges,  
28 and three members appointed by the Governor and subject to  
29 confirmation by the Senate. Each member appointed by the  
30 Governor shall possess knowledge, skill, and experience in the  
31 areas of accounting, actuary, risk management, or investment



1 management. Each member of the board not appointed by the  
2 Governor may name a designee to serve the board on behalf of  
3 the member; however, any designee so named shall meet the  
4 qualifications required of gubernatorial appointees to the  
5 board. Members appointed by the Governor shall serve terms of  
6 3 years except that, in making the initial appointments, the  
7 Governor shall appoint one member to serve for 1 year, one  
8 member to serve for 2 years, and one member to serve for 3  
9 years. Any person appointed to fill a vacancy on the board  
10 shall be appointed in a like manner and shall serve for only  
11 the unexpired term. Any member shall be eligible for  
12 reappointment and shall serve until a successor qualifies.  
13 Members of the board shall serve without compensation but  
14 shall be reimbursed for per diem and travel in accordance with  
15 s. 112.061. Each member of the board shall file a full and  
16 public disclosure of his or her financial interests pursuant  
17 to s. 8, Art. II of the State Constitution and corresponding  
18 statute.

19 (c) The board shall have the powers necessary or  
20 proper to carry out the provisions of this section, including,  
21 but not limited to, the power to:

- 22 1. Adopt an official seal and rules.
- 23 2. Sue and be sued.
- 24 3. Make and execute contracts and other necessary  
25 instruments.
- 26 4. Establish agreements or other transactions with  
27 federal, state, and local agencies, including state  
28 universities and community colleges.
- 29 5. Invest funds not required for immediate  
30 disbursement.

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1           6. Appear in its own behalf before boards,  
2 commissions, or other governmental agencies.

3           7. Hold, buy, and sell any instruments, obligations,  
4 securities, and property determined appropriate by the board.

5           8. Require a reasonable length of state residence for  
6 qualified beneficiaries.

7           9. Restrict the number of participants in the  
8 community college plan, university plan, and dormitory  
9 residence plan, respectively. However, any person denied  
10 participation solely on the basis of such restriction shall be  
11 granted priority for participation during the succeeding year.

12          10. Segregate contributions and payments to the fund  
13 into various accounts and funds.

14          11. Contract for necessary goods and services, employ  
15 necessary personnel, and engage the services of private  
16 consultants, actuaries, managers, legal counsel, and auditors  
17 for administrative or technical assistance.

18          12. Solicit and accept gifts, grants, loans, and other  
19 aids from any source or participate in any other way in any  
20 government program to carry out the purposes of this section.

21          13. Require and collect administrative fees and  
22 charges in connection with any transaction and impose  
23 reasonable penalties, including default, for delinquent  
24 payments or for entering into an advance payment contract on a  
25 fraudulent basis.

26          14. Procure insurance against any loss in connection  
27 with the property, assets, and activities of the fund or the  
28 board.

29          15. Impose reasonable time limits on use of the  
30 tuition benefits provided by the program. However, any such  
31

1 limitation shall be specified within the advance payment  
2 contract.

3 16. Delineate the terms and conditions under which  
4 payments may be withdrawn from the fund and impose reasonable  
5 fees and charges for such withdrawal. Such terms and  
6 conditions shall be specified within the advance payment  
7 contract.

8 17. Provide for the receipt of contributions in lump  
9 sums or installment payments.

10 18. Establish other policies, procedures, and criteria  
11 to implement and administer the provisions of this section.

12 19. Require that purchasers of advance payment  
13 contracts verify, under oath, any requests for contract  
14 conversions, substitutions, transfers, cancellations, refund  
15 requests, or contract changes of any nature. Verification  
16 shall be accomplished as authorized and provided for in s.  
17 92.525(1)(a).

18 20. Adopt procedures to govern contract dispute  
19 proceedings between the board and its vendors.

20 Section 7. This act shall take effect upon becoming a  
21 law.

22  
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24 COMMITTEE SUBSTITUTE FOR  
25 Senate Bill 1332

26 Deletes all references to law enforcement and service awards.  
27 Makes technical changes to provide supplementary rulemaking  
28 authority pursuant to Ch. 120, Florida Statutes, for existing  
29 rules and to correct cross-references relating to bond terms,  
30 Local Government Surplus Funds Trust Fund, local government  
31 investment authority, administration of the trust fund, and  
the Florida Prepaid Postsecondary Education Expense Program.