

STORAGE NAME: h1625a.go

DATE: April 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1625

RELATING TO: Investment of Public Funds

SPONSOR(S): Representative Andrews

COMPANION BILL(S): CS/SB 1992 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3) FINANCE & TAXATION
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 1625 provides uniform guidelines for investment of public funds by school districts, counties, municipalities and special districts.

This bill modifies the requirements for an investment plan to be developed by a unit of local government and substantially changes the list of authorized investments for units of local governments which elect not to adopt a written investment policy.

This bill includes a set of safekeeping procedures for local governments to follow regarding securities purchased, and provides that the governing body of the unit of local government may receive bank trust receipts in return for the investment of surplus funds in securities. In addition, it authorizes the governing body of the unit of local government to sell authorized securities at the prevailing market rate, and to deposit the proceeds of the sale into the proper account of the unit of local government.

This bill modifies retirement system investment policies requiring that they include the following:

- a description of fiduciary standards, including a requirement that the board comply with fiduciary standards set forth in the Employee Retirement Income Security Act of 1974;
- a determination, for each actuarial valuation, of the total expected annual rate of return for the current year, the short term and the long term;
- a requirement that the plan be filed with the division of retirement and the plan's sponsor; and
- a valuation of illiquid investments for which a recognized market value is unavailable.

This bill provides an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pursuant to ss. 125.31, 166.261, 218.345, 219.075, and 236.24, F.S., counties, cities, special districts, county officers, and district school boards are authorized to invest surplus public funds. All of these statutes allow local government entities to invest in the Local Government Surplus Funds Trust Fund administered by the State Board of Administration (SBA), or they may invest the funds themselves in certain federal obligations and in specified types of securities.

Under part IV of chapter 218, F.S., the "Investment of Local Government Surplus Funds Act" (the Act), the Local Government Surplus Funds Trust Fund is created to serve as a repository for funds deposited by units of local government to be invested by the SBA, in the same manner and subject to the same restrictions as apply to investment of moneys in the Florida Retirement System Trust Fund (s. 215.47, F.S.). The SBA is also authorized to provide technical assistance to local governments in the investment of surplus funds.

Section 218.415, F.S., requires local governmental entities that have custody of public funds, but which choose not to deposit them in the Local Government Surplus Funds Trust Fund for investment by the SBA, to conduct other investment activity in accordance with a written investment plan, or alternatively, to invest in specified low-risk instruments. Units of local government without an investment plan are limited to investing in the following:

- The Local Government Surplus Funds Trust Fund, or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act.
- Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency.
- Savings accounts in state-certified qualified public depositories.
- Certificates of deposit in state-certified qualified public depositories.
- Direct obligations of the U.S. Treasury.
- Federal agencies and instrumentalities.

"Federal agencies and instrumentalities" include all securities issued by agencies of the federal government or corporations created by Congress, such as obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, etc.

Section 218.415, F.S., provides a blueprint for a written investment plan, spelling out required and recommended investment policies to be developed by units of local government to apply to funds under the control of the local government in excess of those required to meet current expenses. The investment policy must contain certain elements which include, for example:

- ▶ the investment objectives of the local government must include safety of capital, liquidity of funds, and investment income, in that order of priority;
- ▶ a list of authorized investments, including whether investments in derivative products are expressly authorized;
- ▶ a description of how the portfolio is structured to match liquidity to pay obligations with investment maturities;
- ▶ arrangements for the holding of the assets of the local government;
- ▶ a system of internal controls; and
- ▶ requirements for the chief financial officer to report to the governing body of the local government on the performance of the investment portfolio.

The Auditor General conducted a survey of the implementation of s. 218.415, F.S., by local governments, which is described in Report No. 13283, issued on July 16, 1998. Based on the results of the survey, the report concludes that "many local governments have not fully complied with the requirements set forth in Section 218.415, Florida Statutes." With respect to local governments which limit their investment activities to those investment options listed in s. 218, 415(15), F.S., the report finds that these local governments not only unnecessarily limit their investment options, but also, do not benefit from the investment safeguards afforded by a written investment policy."

However, in its review of local governments with an adopted investment policy, the results of the survey of local governments indicate that not all local governments follow their investment policy. Specifically, the Auditor General's report finds that the internal controls contemplated by s. 218.415(13), F.S., "have not been effectively implemented to promote compliance with s. 218.415, Florida Statutes." For example, the investment plans of 13 percent of the 95 local governments surveyed did not include a system of internal controls and operational procedures, and 41 percent of the plans did not require that the controls and procedures be reviewed by independent auditors as part of the local government's financial audit.

Also, ss. 125.31 and 219.075, F.S. (counties), s. 166.261, F.S., (municipalities), s. 218.345, F.S. (special districts), and s. 236.24, F.S. (school boards), impose requirements on the investments of counties, municipalities, special districts, and school boards that are in some cases inconsistent or duplicative with the requirements of s. 218.415, F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill provides uniform guidelines for investment of public funds by school districts, counties, municipalities and special districts.

Section 1: amends s. 218.415, F.S., to modify the requirements for an investment plan to be developed by a unit of local government, and substantially changes the list of authorized investments for units of local governments which elect not to adopt a written investment policy.

Investment Policy

- The bill clarifies that all funds related to the issuance of debt, including those governed by chapters 175 and 185, are not subject to the investment policy in s. 218.415, F.S.
- The bill prohibits investments not authorized by the investment policy (for those units of local government who adopt a policy).
- If the investment policy authorizes investments in derivative products, the bill requires officials responsible for making investment decisions to have sufficient expertise to manage them.
- The investment policy must list the use of reverse repurchase agreements as an authorized investment and such policy must limit the investments to transactions in which the proceeds are intended to provide liquidity.
- The investment policy must provide that where the unit of local government competitively bids a specific type of security, the most economically advantageous bid must be selected.
- The investment policy must provide for 8 hours of continuing education, annually, for the local government officials responsible for making investment decisions.

Authorized Investments for Local Government Units with Written Investment Plan

The bill adds a new subsection listing the specific investments authorized for those units of local governments adopting a written investment policy. These investments include:

- ▶ The Local Government Surplus Funds Trust Fund.
- ▶ Securities and Exchange Commission registered money market funds.
- ▶ Savings accounts or certificates of deposits in banks and savings and loan associations.
- ▶ Direct obligations of the United States Treasury.
- ▶ Securities registered under the Investment Company Act of 1940, as amended, under certain conditions.

Authorized Investments for Local Government Units with No Written Investment Policy

The bill modifies the list of investments authorized for local governments which do not have a written investment policy to include:

- ▶ The Local Government Surplus Funds Trust Fund.
- ▶ Securities and Exchange Commission registered money market funds.
- ▶ Savings accounts or certificates of deposit in banks and savings and loan associations.
- ▶ Direct obligations of the U. S. Treasury.

Securities

The bill includes a set of safekeeping procedures for local governments to follow regarding securities purchased under section 1, and provides that the governing body of the unit of local government may receive bank trust receipts in return for investment of surplus funds in securities. In addition, the section authorizes the governing body of the unit of local government to sell the security at the prevailing market rate and to deposit the proceeds of the sale into the proper account of the unit of local government.

Audits

The bill provides that certified public accountants conducting audits of units of local government pursuant to s. 11.45, F.S., are required to review, as part of the audit, whether the local government has complied with the investment policy requirements of s. 218.415, F.S. The Auditor General is required to notify the Joint Legislative Auditing Committee of any unit of local government that does not comply with the investment policy requirements of s. 218.415, F.S. The Auditor General may request that the Department of Revenue or Department of Banking and Finance withhold the payment of funds to a governmental entity determined out of compliance with these requirements and to notify the Department of Community Affairs in the case of special districts.

Sections 2: amends s. 112.625, F.S., to add the definition of plan sponsor to mean the local governmental entity which has established a local retirement system. In addition, the definition of "Statement value" is modified to provide that assets for which a fair market value is not provided are not included in the valuation of assets defined by section 302(c) of the Employee Retirement Income Security Act of 1974.

Section 3: amends s. 112.661, F.S., to define an investment policy for retirement systems governed by chapter 112. The investment plan must contain many of the same elements as the investment plans authorized by s. 218.415, F.S. However, the retirement system investment policies must also include the following:

- a description of fiduciary standards, including a requirement that the board comply with fiduciary standards set forth in the Employee Retirement Income Security Act of 1974;
- a determination, for each actuarial valuation, of the total expected annual rate of return for the current year, the short term and the long term;
- a requirement that the plan be filed with the division of retirement and the plan's sponsor; and

- a valuation of illiquid investments for which a recognized market value is unavailable.

Section 4: amends s. 28.33, F.S., to provide that the investment of surplus funds of the clerk of the court must be invested as described in s. 218.415, F.S.

Section 5: authorizes the investment of bond proceeds, and authorizes money held for the payment of debt service on bonds to be invested as provided in s. 218.415, F.S.

Section 6: allows the investment of surplus funds by county officers, including the tax collector, as provided in s. 218.415, F.S.

Sections 7 and 8: require the investment policies of school boards to comply with the provisions of s. 218.415, F.S. The list of authorized investments for school board surplus funds set forth in s. 236.24(2)(a), F.S., 1998 Supp., is repealed.

Sections 9 and 10: repeal certain sections of law which set individual investment policies for specific units of local government including:

- the investment by a school board of accumulated cash assets, not required for a current budget year;
- the investment of county surplus funds;
- the investment of municipal surplus funds; and
- the investment of special district surplus funds.

Section 11: provides an effective date of October 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill only requires local governments to adopt a written investment policy..

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments may have additional responsibilities and obligations related to establishing and conforming to provisions in a written investment policy.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Local governments will pay for costs related to the adoption of written investment policies.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

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Not applicable.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates ss. 112.661 and 112.662, F.S.; amends ss. 218.415, 28.33, 159.416, 219.075, 230.23, 236.24, F.S.; repeals ss. 166.261 and 218.345, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See Section IIB., EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The bill affects the investment conduct of units of local governments, including: counties, municipalities, special districts and school boards. To the extent the investment plan requirements improve the quality of the investment decisions made by the units of local government, local governments might achieve improved investment revenue. Some of the requirements reduce a local government's discretion in making investment decisions, while other provisions of the bill increase their flexibility.

However, those units of local government adopting a written investment policy will incur costs in complying with the auditing, continuing education and other requirements of s. 218.415, F.S.

2. Recurring Effects:

See 1. above.

3. Long Run Effects Other Than Normal Growth:

See 1. above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on April 14, 1999, the Committee on Governmental Operations adopted a "remove everything after the enacting clause" amendment, and reported the bill favorably with the amendment traveling with the bill.

The amendment: modifies language in the "SCOPE" of s. 218.415, F.S., retaining the provision that the investment policy shall not apply to pension funds, including those found in chs. 175 and 185, F.S.; modifies language in the "PERFORMANCE MEASUREMENT" provisions of s. 218.415, F.S., clarifying that it is the investment policy which shall specify performance measures; clarifies that it is the investment policy which shall address master purchase agreements; clarifies that it is the investment policy which shall require local government staff to analyze, select, and bid investments, and generally select the most economically advantageous bids; broadens the establishment of internal controls and reporting investment activities to "officials responsible for making investment decisions"; removes from the "AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES" provisions, references to pension plans governed by chapters 112, 175, and 185, F.S.; expands the authorized depositories of securities and trust receipts; removes from the "AUDITOR GENERAL; REVIEW" provisions, "notification of failure...to comply" is no longer a prerequisite to a hearing; adds a Definitions section to the bill; adds provisions in s. 112.661, F.S., which are similar to those found in the s. 218.415, F.S., amendment provisions, along with risk, diversification, and composition provisions, that investment policies require expected annual rates of return for each actuarial valuation, master repurchase agreements, and continuing education for board members; restores subparagraph 4(b), of s. 219.075, F.S., related to investment funds distribution; requires that school boards shall invest funds in accordance with s. 218.415, F.S.; and repeals s. 230.23(1)(k).

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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