

By the Committee on Governmental Operations; and Senator
Alexander

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1 A bill to be entitled
2 An act relating to local government finance; amending s.
3 218.401, F.S.; clarifying purpose and intent; amending s.
4 218.403, F.S.; defining the terms "board" and "trustees"
5 for purposes of the Investment of Local Government Surplus
6 Funds Act; amending s. 218.405, F.S.; providing for the
7 administration of the Local Government Surplus Funds Trust
8 Fund; providing duties of Trustees of the State Board of
9 Administration; amending s. 218.407, F.S.; requiring that
10 the board provide a unit of local government with certain
11 information before such unit makes a determination that it
12 is in the best interest of the local government unit to
13 deposit surplus funds in the trust fund; requiring the
14 filing of a resolution upon such determination; requiring
15 that the resolution contain certain information; requiring
16 that the board invest the moneys in the trust fund in a
17 certain manner; amending s. 218.409, F.S.; providing
18 duties of the board with regard to the administration of
19 the trust fund; providing for the establishment of a
20 reserve account; requiring monthly allocations to the
21 reserve account; limiting the amount of monthly
22 allocations; requiring that the board report annually to
23 every participant having a beneficial interest in the
24 trust fund; providing for the preparation of the report;
25 providing that such report is subject to independent
26 financial audit; requiring that the board provide a
27 monthly statement to beneficiaries; requiring that such
28 statement contain certain information; requiring that the
29 Investment Advisory Council assist the board in investing

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30 moneys held in the trust fund; providing duties of the
31 council; creating the Pool Participant Advisory Council;
32 providing purposes for the council; providing for
33 membership and composition of the council; requiring that
34 the executive director of the State Board of
35 Administration consider appropriate action and advise the
36 trustees accordingly under certain circumstances;
37 providing duties of the trustees under such circumstances;
38 authorizing the trustees to perform certain actions for
39 the purpose of ensuring the proper exercise of fiduciary
40 responsibility; authorizing the trustees to place assets
41 of the trust fund into a liquidating account; providing
42 for the maintenance and administration of such liquidating
43 accounts; providing powers and duties of trustees with
44 regard to assets in a liquidating account; providing for
45 distribution of cash received from income or liquidation
46 of assets held in a liquidating account; requiring the
47 audit of such accounts; authorizing certain reasonable
48 expenses to be charged to a liquidating account; excluding
49 certain information related to assets held in liquidating
50 accounts from certain statements; requiring that separate
51 statements be issued for such information; providing for
52 the transfer of reserves held in a liquidating account;
53 requiring that the status of such accounts be reported
54 regularly to the trustees, participants in the fund, the
55 Investment Advisory Council, and the Pool Participant
56 Advisory Council; providing an effective date.

57
58 Be It Enacted by the Legislature of the State of Florida:

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59
60 Section 1. Section 218.401, Florida Statutes, is amended to
61 read:

62 218.401 Purpose.--It is the intent of this part to promote,
63 through state assistance, the maximization of net interest
64 earnings on invested surplus funds of local units of government,
65 based on the principles of safety and liquidity, with the goal of
66 ~~thereby~~ reducing the need for imposing additional taxes.

67 Section 2. Section 218.403, Florida Statutes, is amended to
68 read:

69 218.403 Definitions.--The following words or terms, when
70 used in this part, shall have the following meanings:

71 (1) "Board" means the State Board of Administration.

72 (2)~~(1)~~ "Chief financial officer" means the mayor, manager,
73 administrator, clerk, comptroller, treasurer, director of
74 finance, or other local government official, regardless of the
75 title of his or her office, charged with administering the fiscal
76 affairs of a unit of local government.

77 (3)~~(2)~~ "Current expenses" means expenses to meet known cash
78 needs and anticipated cash-flow requirements for the short term.

79 (4)~~(3)~~ "Governing body" means the body or board in which
80 the legislative power of a unit of local government is vested.

81 (5)~~(4)~~ "Short term" means a maximum of 6 months of
82 operation.

83 (6)~~(5)~~ "Surplus funds" means any funds in any general or
84 special account or fund of a unit of local government, or funds
85 held by an independent trustee on behalf of a unit of local
86 government, which in reasonable contemplation will not be
87 immediately needed for the purposes intended.

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88 (7)~~(6)~~ "Trust fund" means the pooled investment fund
89 created by s. 218.405 and known as the Local Government Surplus
90 Funds Trust Fund. The term does not include a liquidating account
91 created under s. 218.409.

92 (8) "Trustees" means the Trustees of the State Board of
93 Administration.

94 (9)~~(7)~~ "Unit of local government" means any governmental
95 entity within the state not part of state government and shall
96 include, but not be limited to, the following and the officers
97 thereof: any county, municipality, school district, special
98 district, clerk of the circuit court, sheriff, property
99 appraiser, tax collector, supervisor of elections, authority,
100 board, public corporations, or any other political subdivision of
101 the state.

102 Section 3. Section 218.405, Florida Statutes, is amended to
103 read:

104 218.405 Local Government Surplus Funds Trust Fund;
105 creation.--

106 (1) There is ~~hereby~~ created a Local Government Surplus
107 Funds Trust Fund to be administered directly by the board or
108 through a professional money management firm selected by the
109 State board, of Administration and to be composed of local
110 government surplus funds deposited therein by units of local
111 government under the procedures established in this part.

112 (2) The trustees shall annually certify to the Joint
113 Legislative Auditing Committee that the trust fund is in
114 compliance with the requirements of this part and that the
115 trustees have conducted a review of the trust fund and determined
116 that the management of the trust fund is in accord with best-

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117 investment practices.

118 (3) The board may adopt rules to administer ~~the provisions~~
119 ~~of~~ this section.

120 Section 4. Section 218.407, Florida Statutes, is amended to
121 read:

122 218.407 Local government investment authority.--

123 (1) Before any determination by the governing body that it
124 is in the interest of the unit of local government to deposit
125 surplus funds in the trust fund, the board must provide to the
126 governing body enrollment materials, including a trust fund
127 profile containing impartial educational information describing
128 the administration and investment policy of the trust fund
129 including, but not limited to:

130 (a) Rights and conditions of participation, including
131 potential restrictions on withdrawals.

132 (b) Historical performance, investment holdings, credit
133 quality, and average maturity of the trust fund investments.

134 (c) Applicable administrative rules.

135 (d) Rate-determination processes for any deposit or
136 withdrawal.

137 (e) Any fees, charges, penalties, and deductions that apply
138 to the account.

139 (f) The most recently published financial statements or
140 independent audit, if available, prepared according to generally
141 accepted accounting principles.

142 (g) The disclosure statement for signature by the
143 appropriate local government official.

144 (2) Upon review of the enrollment materials and
145 determination by the governing body that it is in the interest of

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146 the unit of local government to deposit surplus funds in the
147 trust fund, a resolution by the governing body and the signed
148 acceptance of the disclosure statement by the local government
149 official designated in the resolution, who may be the chief
150 financial or administrative officer of the local government,
151 shall be filed with the State Board of Administration authorizing
152 investment of its surplus funds in the trust fund established by
153 this part. The resolution shall name:

154 (a) The local government official, who may be the chief
155 financial or administrative officer of the local government who
156 is responsible for deposit and withdrawal of such funds.~~or~~

157 (b) An independent trustee holding funds on behalf of the
158 unit of local government who is~~r~~

159
160 responsible for deposit and withdrawal of such funds.

161 (c) The source and use of the funds to be invested in the
162 trust fund and the schedule of distribution, if known.

163 ~~(3)(2)~~ The State board of Administration shall, upon the
164 filing of the resolution, invest the moneys in the trust fund in
165 the same manner and subject to the same restrictions as are set
166 forth in s. 215.47. ~~Except when authorized by the board,~~ All
167 units of local government which qualify to be participants in the
168 Local Government Surplus Funds Trust Fund shall ~~after January 1,~~
169 ~~1982, will normally~~ have surplus funds deposited into a pooled
170 investment account.

171 ~~(4)(3)~~ The provisions of this part shall not impair the
172 power of a unit of local government to hold funds in deposit
173 accounts with banking or savings institutions or to invest funds
174 as otherwise authorized by law.

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175 Section 5. Section 218.409, Florida Statutes, is amended to
176 read:

177 218.409 Administration of the trust fund.--

178 (1) Upon receipt of the resolution from the local governing
179 body, the State Board of Administration shall accept all wire
180 transfers of funds into the trust fund. The State Board of
181 Administration shall also wire-transfer invested local government
182 funds to the local government upon request of the local
183 government official named in the resolution.

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

189 (3) The State Board of Administration may purchase such
190 surety or other bonds or borrow funds from others that may be
191 secured by the assets held in such trust fund, and give and renew
192 notes for such borrowed funds as may be necessary ~~for its~~
193 ~~officials~~ in order to protect the trust fund. A reserve account
194 shall fund ~~may~~ be established and maintained through deductions
195 from pooled investment earnings in order to protect the trust
196 fund from credit-related losses in investments or declare one-
197 time dividends to be allocated to participants on an equitable
198 basis. Regular monthly allocations to the reserve fund may not
199 exceed, on an annualized basis, one-tenth of 1 percent of the
200 trust fund's investments until the reserve fund equals 1 percent
201 of investments. However, other allocations to the reserve fund
202 may be declared by the trustees of the State Board of
203 Administration. Any use of the reserve fund must be authorized by

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204 | the trustees ~~to fulfill this purpose.~~

205 | (4) ~~All investments may be purchased jointly for the~~
206 | ~~participants in the trust fund.~~ The board shall ~~may also~~ purchase
207 | investments for a pooled investment account in which all
208 | participants may share pro rata, as determined by rule of the
209 | board, in the capital gain, income, or losses, subject to any
210 | penalties for early withdrawal. The board shall determine the
211 | rate of return for the pooled investment account. A system may be
212 | developed by the board to keep current account balance
213 | information and to apportion pooled investment earnings back to
214 | individual accounts.

215 | (5) The State Board of Administration shall keep a separate
216 | account, designated by name and number of each participating
217 | local government. A maximum number of accounts allowed for each
218 | participant may be established by the board. Individual
219 | transactions and totals of all investments, or the share
220 | belonging to each participant, shall be recorded in the accounts.

221 | (6) The State Board of Administration shall report annually
222 | for the period ending June 30 ~~semiannually or upon request~~ to
223 | every participant having a beneficial interest in the trust fund.
224 | The report shall be prepared in accordance with generally
225 | accepted accounting principals ~~show the changes in investments~~
226 | ~~made during the preceding period.~~ Such The report shall be
227 | subject to annual independent external financial audit delineate,
228 | ~~in a manner which is in accordance with generally accepted~~
229 | ~~governmental accounting procedures, those funds on deposit, the~~
230 | ~~manner in which the funds are invested, and the interest earnings~~
231 | ~~thereon.~~ The State Board of Administration shall furnish upon
232 | request the details of an investment transaction to any

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233 participant. The board shall provide to each participant a
234 monthly statement accounting for the contributions made on behalf
235 of such participant, the interest and investment earnings
236 thereon, the value of the account, and any fees, penalties, or
237 other deductions applying thereto. The board shall make available
238 ongoing multimedia educational materials and communications
239 detailing historical performance, investment holdings, amortized
240 cost and market value of the trust fund, credit quality, and
241 average maturity of the trust fund investments. Additional
242 ~~reporting may be made to pool participants.~~

243 (7) Costs incurred in carrying out the provisions of this
244 part shall be deducted from the interest earnings accruing to the
245 trust fund. Such deductions shall be prorated among the
246 participant local governments in the percentage that each
247 participant's deposits bear to the total trust fund.

248 (8) (a) The principal, and any part thereof, of each and
249 every account constituting the trust fund shall be subject to
250 payment at any time from the moneys in the fund or as otherwise
251 provided in this section ~~by agreement between the State Board of~~
252 ~~Administration and the investing unit.~~

253 (b) An order or warrant may not be issued upon any account
254 for a larger amount than the share of the particular account to
255 which it applies; and if such order or warrant is issued, the
256 responsible official shall be personally liable under his or her
257 bond for the entire overdraft resulting from the payment if made.

258 (9) The Investment Advisory Council, as created pursuant to
259 s. 215.444, shall assist the board in investing moneys held in
260 the trust fund. The council shall regularly review the investment
261 status and performance of the trust fund, including credit

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262 quality, liquidity and cash flow, risk management, investment
263 policy guidelines, compliance exceptions, and any other policies,
264 procedures, or activities that the council deems relevant. Before
265 presenting the investment policy guidelines or any recommended
266 changes thereto to the Trustees of the State Board of
267 Administration for approval, the executive director of the board
268 shall present such guidelines or changes to the council for
269 review. The council shall present the results of its review to
270 the trustees before the board's final approval of the guidelines
271 or any changes thereto.

272 (10) There is created a six-member Pool Participant
273 Advisory Council for the purposes of regularly reviewing the
274 administration of the trust fund and making recommendations
275 regarding such administration to the trustees. The members of the
276 council shall be appointed by the board and subject to
277 confirmation by the Senate. Members must possess special
278 knowledge, experience, and familiarity obtained through active,
279 long-standing, and material participation in the dealings of the
280 trust fund. Each member shall serve a 4-year term. Any vacancy
281 shall be filled for the remainder of the unexpired term. The
282 council shall annually elect a chair and vice chair from within
283 its membership. A member may not serve consecutive terms as chair
284 or vice chair.

285 (11) If at the close of any 2 consecutive business days the
286 ratio of the trust fund's market value to amortized cost is below
287 .995 or above 1.005, or during a major market disruption causing
288 a suspension of trading, or if liquidity is impaired, the
289 executive director of the board shall promptly consider what
290 action, if any, shall be initiated, and advise the trustees of

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291 the State Board of Administration accordingly. If the trustees
292 believe the extent of any deviation from the trust fund's
293 amortized cost price per share may result in material dilution or
294 other unfair results to participants, the trustees shall take
295 such action as they deem appropriate to eliminate or reduce, to
296 the extent reasonably practicable, such dilution or unfair
297 results. In order to ensure the proper exercise of fiduciary
298 responsibility, the trustees may:

299 (a) Limit contributions to the trust fund or withdrawals
300 from the trust fund;

301 (b) Impose early redemption fees; and

302 (c) Create a liquidating account under subsection (12).

303 (12) At any time and at their discretion, the trustees may
304 segregate and place any assets of the trust fund, including any
305 reserve fund proceeds established in the trust fund, in a
306 liquidating account to be held and disposed of in accordance with
307 this subsection.

308 (a) Each liquidating account established by the segregation
309 of an asset of the trust fund pursuant to this paragraph shall be
310 maintained and administered solely for the benefit of, and the
311 proceeds thereof shall be distributed ratably to, all
312 participants in the trust fund at the time such assets are set
313 apart in such liquidating account, except as set forth below with
314 respect to reserves. The trustees shall have, with respect to any
315 such assets held in any such liquidating account or any
316 investment received in exchange for such assets, the same power
317 and authority as set forth in this section. The trustees shall
318 liquidate the investments held in any liquidating account if such
319 liquidation is in the best interests of the participants.

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320 (b) Additional money or future interest earnings from the
321 trust fund may not be invested in a liquidating account.

322 (c) Distributions of cash received from income or
323 liquidation of any asset held in a liquidating account shall be
324 made at such intervals as the trustees deem appropriate, but not
325 less frequently than monthly. All such distributions as of any
326 one time shall be made ratably and on the same basis among the
327 participants' beneficial interest in such liquidating account.

328 (d) Each liquidating account shall be audited in the manner
329 provided in subsection (6).

330 (e) All reasonable expenses incurred in the administration
331 of a liquidating account which would be chargeable to the
332 respective trust fund from which the asset held in such
333 liquidating account was segregated if incurred in the
334 administration of such trust fund may be charged to such
335 liquidating account.

336 (f) For the purpose of deposits to and withdrawals from the
337 trust fund, as well as determining the value of the units of the
338 trust fund and the income, gains, or losses of the trust fund
339 allocated among participants pursuant to this section, the value,
340 income, gains, or losses of any assets held in any liquidating
341 account shall be excluded, and separate financial statements
342 shall be prepared to reflect such for purposes of state and local
343 government financial reporting. Any reserves held in a
344 liquidating account may be transferred by the trustees at their
345 sole discretion back to the trust fund from which the assets were
346 originally segregated, to the extent that participants are
347 returned their original principal amount in the liquidating
348 account as such amount existed at the time of segregation.

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349 Regular reports regarding the status of a liquidating account
350 shall be provided to the trustees, participants, Investment
351 Advisory Council, and Pool Participant Advisory Council.

352 Section 6. This act shall take effect upon becoming a law.