

1                                   A bill to be entitled  
2           An act relating to the investment of local government  
3           surplus funds; amending s. 218.401, F.S.; revising the  
4           purpose of the Investment of Local Government Surplus  
5           Funds Act; amending s. 218.403, F.S.; providing  
6           definitions; amending s. 218.405, F.S.; authorizing the  
7           State Board of Administration to contract with a  
8           professional money management firm to administer the trust  
9           fund; establishing objectives of the trust fund; providing  
10          for trustee certification; providing for distribution of  
11          certain interest upon a contingency; amending s. 218.407,  
12          F.S.; requiring the distribution of certain enrollment  
13          materials to potential investors; specifying the contents  
14          of the enrollment materials; requiring the signed  
15          acceptance of a disclosure statement by the authorized  
16          local government official prior to investing in the trust  
17          fund; requiring surplus funds to be invested in pooled  
18          investment accounts; amending s. 218.409, F.S.; revising  
19          administration of the trust fund; providing standards of  
20          care, including level of prudence, ethics and conflicts of  
21          interest, and internal controls; providing for annual  
22          review and approval of investment policy and controls;  
23          providing for reports; revising the use and disclosure of  
24          reserves; requiring investments to be made in pooled  
25          accounts; requiring establishment and approval of an  
26          account balance information system; providing  
27          transparency; requiring monthly reports to certain persons  
28          and groups; providing criteria of the report; requiring

29 marking to market calculation and reporting; providing  
 30 criteria; providing for additional reporting; authorizing  
 31 limiting withdrawals from or contributions to the trust  
 32 fund under certain circumstances; providing criteria for  
 33 use of interest by board; requiring an annual financial  
 34 audit; requiring the audit to be reported to certain  
 35 persons and groups; requiring certification report by  
 36 trustees; creating the Participant Local Government  
 37 Advisory Council; providing for appointments, membership,  
 38 and meetings; providing for administrative location of the  
 39 council; providing powers and limitations of the council;  
 40 requiring biennial reports by the council to certain  
 41 persons and groups; amending ss. 218.411 and 218.412,  
 42 F.S.; conforming terminology; providing an effective date.

43

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

45

46 Section 1. Section 218.401, Florida Statutes, is amended  
 47 to read:

48 218.401 Purpose.--It is the intent of this part to  
 49 promote, through state assistance, the maximization of net  
 50 interest earnings on invested surplus funds of local units of  
 51 government, based on the principals of investor protection,  
 52 mandated transparency, and proper governance, with the goal of  
 53 ~~thereby~~ reducing the need for imposing additional taxes.

54 Section 2. Section 218.403, Florida Statutes, is amended  
 55 to read:

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56           218.403 Definitions.--The following words or terms, when  
57 used in this part, shall have the following meanings:

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

59           ~~(2)(1)~~ "Chief Financial Officer" means the mayor, manager,  
60 administrator, clerk, comptroller, treasurer, director of  
61 finance, or other local government official, regardless of the  
62 title of his or her office, charged with administering the  
63 fiscal affairs of a unit of local government.

64           ~~(3)(2)~~ "Current expenses" means expenses to meet known  
65 cash needs and anticipated cash-flow requirements for the short  
66 term.

67           (4) "GASB" means the Governmental Accounting Standards  
68 Board.

69           (5) "GFOA" means the Government Finance Officers  
70 Association.

71           ~~(6)(3)~~ "Governing body" means the body or board in which  
72 the legislative power of a unit of local government is vested.

73           ~~(7)(4)~~ "Short term" means a maximum of 6 months of  
74 operation.

75           ~~(8)(5)~~ "Surplus funds" means any funds in any general or  
76 special account or fund of a unit of local government, or funds  
77 held by an independent trustee on behalf of a unit of local  
78 government, which in reasonable contemplation will not be  
79 immediately needed for the purposes intended.

80           ~~(9)(6)~~ "Trust fund" means the pooled investment fund  
81 created by s. 218.405 and known as the Local Government Surplus  
82 Funds Trust Fund.

83           (10) "Trustees" mean the Trustees of the State Board of  
 84 Administration.

85           ~~(11)-(7)~~ "Unit of local government" means any governmental  
 86 entity within the state not part of state government and shall  
 87 include, but not be limited to, the following and the officers  
 88 thereof: any county, municipality, school district, special  
 89 district, clerk of the circuit court, sheriff, property  
 90 appraiser, tax collector, supervisor of elections, authority,  
 91 board, public corporations, or any other political subdivision  
 92 of the state.

93           Section 3. Section 218.405, Florida Statutes, is amended  
 94 to read:

95           218.405 Local Government Surplus Funds Trust Fund;  
 96 creation; objectives; certification; interest; rulemaking.--

97           (1) There is hereby created a Local Government Surplus  
 98 Funds Trust Fund to be administered by the ~~State board of~~  
 99 Administration and to be composed of local government surplus  
 100 funds deposited therein by units of local government under the  
 101 procedures established in this part. The board may contract with  
 102 a professional money management firm to manage the trust fund.

103           (2) The primary objectives, in priority order, of  
 104 investment activities shall be safety, liquidity, and  
 105 competitive returns with minimization of risks.

106           (3) The trustees shall annually certify to the Joint  
 107 Legislative Auditing Committee that the trust fund is in  
 108 compliance with the requirements of this part and that the  
 109 trustees have conducted a review of the trust fund and  
 110 determined that the management of the trust fund is in accord

111 with best investment practices.

112 (4) After the effective date of the Fund B Surplus Funds  
 113 Trust Fund created under s. 218.417, the board shall distribute  
 114 the earnings from the securities that were part of the November  
 115 2007 interest on a pro rata basis as those securities mature,  
 116 are sold, or have been worked out. In no event may the board or  
 117 a professional money management firm use the November 2007  
 118 interest for any other purpose but to be distributed to the  
 119 participants owed such interest as described above.

120 (5) The board may adopt rules to administer the provisions  
 121 of this section.

122 Section 4. Section 218.407, Florida Statutes, is amended  
 123 to read:

124 218.407 Local government investment authority.--

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

133 (a) All rights and conditions of participation, including  
 134 potential restrictions on withdrawals.

135 (b) The historical performance, investment holdings,  
 136 credit quality, and average maturity of the trust fund  
 137 investments.

138 (c) The applicable administrative rules.

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139        (d) The rate determination processes for any deposit or  
140 withdrawal.

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

143        (f) The most recently published financial statements or  
144 independent audits, if available, prepared under generally  
145 accepted accounting principles.

146        (g) A disclosure statement for signature by the  
147 appropriate local government official.

148        (2)(1) Upon review of the enrollment materials and upon  
149 determination by the governing body that it is in the interest  
150 of the unit of local government to deposit surplus funds in the  
151 trust fund, a resolution by the governing body and the signed  
152 acceptance of the disclosure statement by the local government  
153 official, who may be the chief financial or administrative  
154 officer of the local government, shall be filed with the State  
155 board and, if appropriate, a copy shall be provided to a  
156 professional money management firm of Administration authorizing  
157 investment of its surplus funds in the trust fund established by  
158 this part. The resolution shall name:

159        (a) The local government official, who may be the chief  
160 financial or administrative officer of the local government, or

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

163  
164 responsible for deposit and withdrawal of such funds.

165        (3)(2) The State board or a professional money management  
166 firm of Administration shall, upon the filing of the resolution,

167 invest the moneys in the trust fund in the same manner and  
 168 subject to the same restrictions as are set forth in s. 215.47.  
 169 ~~Except when authorized by the board,~~ All units of local  
 170 government that ~~which~~ qualify to be participants in the ~~Local~~  
 171 ~~Government Surplus Funds~~ trust fund shall ~~after January 1, 1982,~~  
 172 ~~will normally~~ have surplus funds deposited into a pooled  
 173 investment account.

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

178 Section 5. Section 218.409, Florida Statutes, is amended  
 179 to read:

180 218.409 Administration of the trust fund; creation of  
 181 advisory council.--

182 (1) Upon receipt of the items specified in s. 218.407  
 183 ~~resolution~~ from the local governing body, the ~~State board~~ or a  
 184 professional money management firm ~~of Administration~~ shall  
 185 accept all wire transfers of funds into the trust fund. The  
 186 ~~State board~~ or a professional money management firm ~~of~~  
 187 ~~Administration~~ shall also wire-transfer invested local  
 188 government funds to the local government upon request of the  
 189 local government official named in the resolution.

190 (2)(a) The trustees shall ensure that the ~~State board~~ or a  
 191 professional money management firm administers ~~of Administration~~  
 192 ~~shall administer~~ the ~~investment trust fund funds~~ on behalf of  
 193 the participants. The board or a professional money management  
 194 firm ~~and~~ shall have the power to invest such funds in accordance

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195 ~~with a written investment policy. A fee may be charged on any~~  
196 ~~transaction that is not in accord with the close of business as~~  
197 ~~set by the board. The investment policy shall be updated~~  
198 ~~annually to conform to best investment practices. The standard~~  
199 ~~of prudence to be used by investment officials shall be the~~  
200 ~~fiduciary standards as set forth in s. 215.47(9), which shall be~~  
201 ~~applied in the context of managing an overall portfolio.~~  
202 Investment officers acting in accordance with written procedures  
203 and an investment policy and exercising due diligence shall be  
204 relieved of personal responsibility for an individual security's  
205 credit risk or market price changes, provided deviations from  
206 expectations are reported in a timely fashion and the liquidity  
207 and the sale of securities are carried out in accordance with  
208 the terms of this part.

209 (b) Officers and employees involved in the investment  
210 process shall refrain from personal business activity that could  
211 conflict with the proper execution and management of the  
212 investment program or that could impair their ability to make  
213 impartial decisions. Employees and investment officials shall  
214 disclose any material interests in financial institutions with  
215 which they conduct business. They shall further disclose any  
216 personal financial or investment positions that could be related  
217 to the performance of the investment portfolio. Employees and  
218 officers shall refrain from undertaking personal investment  
219 transactions with the same individual with whom business is  
220 conducted on behalf of the board.

221 (c) The board or a professional money management firm and  
222 all employees have an affirmative duty to immediately disclose



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223 any material impact to the trust fund to the participants. To  
224 ensure such disclosure, a system of internal controls shall be  
225 established by the board, which shall be documented in writing  
226 as part of the investment policy. The controls shall be designed  
227 to prevent the loss of public funds arising from fraud, employee  
228 error, and misrepresentation by third parties, unanticipated  
229 changes in financial markets, or imprudent actions by employees  
230 and officers of the board or a professional money management  
231 firm. The controls shall also include formal escalation  
232 reporting guidelines for all employees. The guidelines shall  
233 establish procedures to address material impacts on the trust  
234 fund that require reporting and action.

235 (d) The investment policy shall be reviewed and approved  
236 annually by the trustees or when market changes dictate, and in  
237 each event the investment policy shall be reviewed by the  
238 Investment Advisory Council and by the Participant Local  
239 Government Advisory Council.

240 (3) The ~~State~~ board or a professional money management  
241 firm ~~of Administration~~ may purchase such surety or other bonds  
242 as may be necessary for its officials in order to protect the  
243 trust fund. A reserve fund may be established to fulfill this  
244 purpose. However, any reserve must be a portion of the  
245 management fee and must be fully disclosed, including its  
246 purpose, in the enrollment materials at the time a unit of local  
247 government considers participation. Further, any change in the  
248 amount to be charged for a reserve must have a reasonable notice  
249 period to allow any participant to withdraw from the trust fund  
250 prior to the new reserve charge being imposed.

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251           (4) ~~All investments may be purchased jointly for the~~  
252 ~~participants in the trust fund.~~ The board or a professional  
253 money management firm shall ~~may also~~ purchase investments for a  
254 pooled investment account in which all participants ~~may~~ share  
255 pro rata, ~~as determined by rule of the board,~~ in the capital  
256 gain, income, or losses, subject to any penalties for early  
257 withdrawal. Any provisions for penalties, including their  
258 purpose, must be disclosed in the enrollment materials. Any  
259 change in the amount to be charged for a penalty must have a  
260 reasonable notice period to allow any participant to withdraw  
261 from the trust fund prior to the new penalty charge being  
262 imposed ~~The board shall determine the rate of return for the~~  
263 ~~pooled investment account.~~ A system shall ~~may~~ be developed by  
264 the board, and disclosed in the enrollment materials, subject to  
265 annual approval by the trustees, to keep ~~current~~ account  
266 balances current ~~balance information~~ and to apportion pooled  
267 investment earnings ~~back~~ to individual accounts.

268           (5) The ~~State~~ board ~~of Administration~~ shall keep a  
269 separate account, designated by name and number of each  
270 participating local government. A maximum number of accounts  
271 allowed for each participant may be established by the board.  
272 Individual transactions and totals of all investments, or the  
273 share belonging to each participant, shall be recorded in the  
274 accounts.

275           (6) (a) The ~~State~~ board or a professional money management  
276 firm of Administration shall provide a report, at a minimum  
277 monthly ~~semiannually~~ or upon the occurrence of a material event,  
278 ~~request~~ to every participant having a beneficial interest in the

279 trust fund, the board's executive director, the trustees, the  
 280 Joint Legislative Auditing Committee, the Investment Advisory  
 281 Council, and the Participant Local Government Advisory Council.

282 The report shall include:

283 1. Reports of any material impacts on the trust fund and  
 284 any actions or escalations taken by staff to address such  
 285 impacts. The trustees shall provide quarterly a report to the  
 286 Joint Legislative Auditing Committee that the trustees have  
 287 reviewed and approved the monthly reports and actions taken, if  
 288 any, to address any impacts.

289 2. A management summary that provides an analysis of the  
 290 status of the current investment portfolio and the individual  
 291 transactions executed over the last month. This management  
 292 summary shall be prepared in a manner that will allow anyone to  
 293 ascertain whether investment activities during the reporting  
 294 period have conformed to investment policies. Such reporting  
 295 shall be in conformance with best market practices ~~show the~~  
 296 ~~changes in investments made during the preceding period. The~~  
 297 ~~report shall delineate, in a manner which is in accordance with~~  
 298 ~~generally accepted governmental accounting procedures, those~~  
 299 ~~funds on deposit, the manner in which the funds are invested,~~  
 300 ~~and the interest earnings thereon. The State board or a~~  
 301 professional money management firm ~~of Administration~~ shall  
 302 furnish upon request the details of an investment transaction to  
 303 any participant, the trustees, the Investment Advisory Council,  
 304 and the Participant Local Government Advisory Council.

305 (b) The market value of the portfolio shall be calculated  
 306 daily. Withdrawals from the trust fund shall be based on a

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307 process that is transparent to participants and will ensure that  
308 advantages or disadvantages do not occur to parties making  
309 deposits or withdrawals on any particular day. A statement of  
310 the market value and amortized cost of the portfolio shall be  
311 issued to participants in conjunction with any deposits or  
312 withdrawals. In addition, this information shall be reported  
313 monthly with the items in paragraph (a) to participants, the  
314 trustees, the Investment Advisory Council, and the Participant  
315 Local Government Advisory Council. The review of the investment  
316 portfolio, in terms of value and price volatility, shall be  
317 performed with practices consistent with the GFOA Recommended  
318 Practice on "Mark-to-Market Practices for State and Local  
319 Government Investment Portfolios and Investment Pools." In  
320 defining market value, consideration shall be given to GASB  
321 Statement 31. Additional reporting may be made to pool  
322 participants through regular and frequent ongoing multi-media  
323 educational materials and communications, including, but not  
324 limited to, historical performance, investment holdings,  
325 amortized cost and market value of the trust fund, credit  
326 quality, and average maturity of the trust fund investments.

327 (7) Administrative costs incurred in carrying out the  
328 provisions of this part shall be deducted from the interest  
329 earnings accruing to the trust fund. Such deductions shall be  
330 prorated among the participant local governments in the  
331 percentage that each participant's deposits bear to the total  
332 trust fund. The remaining interest earned shall be distributed  
333 monthly to participants according to the amount invested. Except  
334 for administrative costs, the board or a professional money

335 management firm may not transfer the interest or use the  
 336 interest for any other purpose, including, but not limited to,  
 337 making up investment losses.

338 (8) (a) The principal, and any part thereof, of each and  
 339 every account constituting the trust fund shall be subject to  
 340 payment at any time from the moneys in the trust fund. However,  
 341 the executive director may, in good faith, on the occurrence of  
 342 an event that has a material impact on liquidity or operations  
 343 of the trust fund, for 48 hours limit contributions to or  
 344 withdrawals from the trust fund to ensure that the board can  
 345 invest moneys entrusted to it in exercising its fiduciary  
 346 responsibility ~~or as otherwise provided by agreement between the~~  
 347 ~~State Board of Administration and the investing unit.~~ Such  
 348 action shall be immediately disclosed to all participants, the  
 349 trustees, the Joint Legislative Auditing Committee, the  
 350 Investment Advisory Council, and the Participant Local  
 351 Government Advisory Council. The trustees shall convene an  
 352 emergency meeting as soon as practicable from the time the  
 353 executive director has instituted such measures and review the  
 354 necessity of those measures. If the trustees agree with such  
 355 measures, the trustees shall vote to continue the measures for  
 356 up to an additional 15 days. The trustees must convene and vote  
 357 to continue any such measures prior to the expiration of the  
 358 time limit set, but in no case may the time limit set by the  
 359 trustees exceed 15 days.

360 (b) An order to withdraw funds ~~or warrant~~ may not be  
 361 issued upon any account for a larger amount than the share of  
 362 the particular account to which it applies; and if such order ~~or~~

363 ~~warrant~~ is issued, the responsible official shall be personally  
 364 liable under his or her bond for the entire overdraft resulting  
 365 from the payment if made.

366 (9) The Auditor General shall conduct an annual financial  
 367 audit of the trust fund, which shall include testing for  
 368 compliance with the investment policy. The completed audit shall  
 369 be provided to the participants, the board, the trustees, the  
 370 Investment Advisory Council, the Participant Local Government  
 371 Advisory Council, and the Joint Legislative Auditing Committee.  
 372 As soon as practicable, but no later than 30 days after  
 373 completion of the audit, the trustees shall report to the Joint  
 374 Legislative Auditing Committee that the trustees have reviewed  
 375 the audit of the trust fund and shall certify that any necessary  
 376 items are being addressed by a corrective action plan that  
 377 includes target completion dates.

378 (10) (a) The Participant Local Government Advisory Council  
 379 is created. The council shall consist of 16 members. The  
 380 executive director of the board shall be an ex officio member of  
 381 the council. Of the 16 members comprising the council, 13 must  
 382 be current participants in the trust fund and 3 must have  
 383 significant accounting or investment experience. The Governor,  
 384 the Attorney General, and the Chief Financial Officer shall each  
 385 make four appointments, three from among the trust fund  
 386 participants and one with significant accounting or investment  
 387 experience. The President of the Senate and the Speaker of the  
 388 House of Representatives shall each make two appointments, both  
 389 from trust fund participants. In choosing members from trust  
 390 fund participants, the appointing official shall attempt to

391 choose participants with differing levels of participation in  
392 the trust fund. The initial appointments to the council must be  
393 made within 30 days after the effective date of this act.  
394 Members shall serve 2-year terms. However, in order to establish  
395 staggered terms, for the initial appointments, each appointing  
396 official appointing four members shall appoint two members to a  
397 1-year term and two members to a 2-year term, and each  
398 appointing official appointing two members shall appoint one  
399 member to a 1-year term and one member to a 2-year term. A  
400 member shall not serve more than three consecutive terms.  
401 Members shall name the chairperson of the council. A member  
402 whose term has expired shall continue to serve on the council  
403 until such time as a replacement is appointed. The council shall  
404 meet quarterly or upon the call of the chairperson. A majority  
405 of the members constitutes a quorum for the conduct of business.  
406 Members of the council shall serve without compensation. The  
407 appointing official may only remove his or her appointee with  
408 cause. If the entity represented by an appointee ceases to be a  
409 participant in the trust fund, then the appointment is vacated.  
410 Vacancies shall be filled for the remainder of the term and by  
411 the original appointing official.

412 (b) The council is independent from but administratively  
413 attached to the board. A volunteer executive director for the  
414 council may be chosen by majority vote of the council.

415 (c) The council may:

416 1. Provide the board with input regarding proposed  
417 investment policies, internal controls, investment classes,

418 competitively bid contracts, and programs that may affect trust  
 419 fund participants.

420 2. Consider requests from trust fund participants to  
 421 review the board's investment policies, internal controls,  
 422 investment classes, competitively bid contracts, and programs  
 423 that may affect trust fund participants.

424 3. Review rules adopted by the board. The council may  
 425 provide input on any rule and offer alternatives that the  
 426 council believes reduce the impact on trust fund participants  
 427 while meeting the stated objectives of the proposed rule.

428 (d) The council does not have authority to:

429 1. Interfere with, modify, prevent, or delay board action  
 430 or investment activities;

431 2. Intervene in legal actions; or

432 3. Subpoena witnesses to testify or to produce documents,  
 433 but it may request witnesses to voluntarily testify or produce  
 434 documents.

435 (e) The council shall prepare and submit a written  
 436 biennial report to the board, trustees, the Investment Advisory  
 437 Council, and the Joint Legislative Auditing Committee that  
 438 describes the activities and recommendations of the council.

439 Section 6. Section 218.411, Florida Statutes, is amended  
 440 to read:

441 218.411 Authorization for state technical and advisory  
 442 assistance.--

443 (1) The ~~State board of Administration~~ is authorized, upon  
 444 request, to assist local governments in investing funds that are  
 445 temporarily in excess of operating needs by:



446 (a) Explaining investment opportunities to such local  
 447 governments through publication and other appropriate means.

448 (b) Acquainting such local governments with the state's  
 449 practice and experience in investing short-term funds.

450 (c) Providing, in cooperation with the Department of  
 451 Community Affairs, technical assistance to local governments in  
 452 investment of surplus funds.

453 (2) The ~~State board of Administration~~ may establish fees  
 454 to cover the cost of such services, which shall be paid by the  
 455 unit of local government requesting such service. Such fees  
 456 shall be deposited to the credit of the appropriation or  
 457 appropriations from which the costs of providing the services  
 458 have been paid or are to be charged.

459 Section 7. Section 218.412, Florida Statutes, is amended  
 460 to read:

461 218.412 Rulemaking authority.--The ~~State board of~~  
 462 ~~Administration~~ may adopt rules as it deems necessary to carry  
 463 out the provisions of this part for the administration of the  
 464 ~~Local Government Surplus Funds~~ trust fund.

465 Section 8. This act shall take effect upon becoming a law.