

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; amending s. 218.407, F.S.;
11 requiring the distribution of certain enrollment materials
12 to potential investors; specifying the contents of the
13 enrollment materials; requiring the signed acceptance of a
14 disclosure statement by the authorized local government
15 official prior to investing in the trust fund; requiring
16 surplus funds to be invested in pooled investment
17 accounts; amending s. 218.409, F.S.; revising
18 administration of the trust fund; providing standards of
19 care, including level of prudence, ethics and conflicts of
20 interest, and internal controls; providing for annual
21 review and approval of investment policy and controls;
22 providing for reports; revising the use and disclosure of
23 reserves; requiring investments to be made in pooled
24 accounts; requiring establishment and approval of an
25 account balance information system; providing
26 transparency; requiring monthly reports to certain persons
27 and groups; providing criteria of the report; requiring
28 marking to market calculation and reporting; providing

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

41

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

43

44 Section 1. Section 218.401, Florida Statutes, is amended
 45 to read:

46 218.401 Purpose.--It is the intent of this part to
 47 promote, through state assistance, the maximization of net
 48 interest earnings on invested surplus funds of local units of
 49 government, based on the principals of investor protection,
 50 mandated transparency, and proper governance, with the goal of
 51 ~~thereby~~ reducing the need for imposing additional taxes.

52 Section 2. Section 218.403, Florida Statutes, is amended
 53 to read:

54 218.403 Definitions.--The following words or terms, when
 55 used in this part, shall have the following meanings:

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

57 (2)~~(1)~~ "Chief Financial Officer" means the mayor, manager,
58 administrator, clerk, comptroller, treasurer, director of
59 finance, or other local government official, regardless of the
60 title of his or her office, charged with administering the
61 fiscal affairs of a unit of local government.

62 (3)~~(2)~~ "Current expenses" means expenses to meet known
63 cash needs and anticipated cash-flow requirements for the short
64 term.

65 (4) "GASB" means the Governmental Accounting Standards
66 Board.

67 (5) "GFOA" means the Government Finance Officers
68 Association.

69 (6)~~(3)~~ "Governing body" means the body or board in which
70 the legislative power of a unit of local government is vested.

71 (7)~~(4)~~ "Short term" means a maximum of 6 months of
72 operation.

73 (8)~~(5)~~ "Surplus funds" means any funds in any general or
74 special account or fund of a unit of local government, or funds
75 held by an independent trustee on behalf of a unit of local
76 government, which in reasonable contemplation will not be
77 immediately needed for the purposes intended.

78 (9)~~(6)~~ "Trust fund" means the pooled investment fund
79 created by s. 218.405 and known as the Local Government Surplus
80 Funds Trust Fund.

81 (10) "Trustees" mean the Trustees of the State Board of
82 Administration.

83 (11)~~(7)~~ "Unit of local government" means any governmental
84 entity within the state not part of state government and shall

85 include, but not be limited to, the following and the officers
 86 thereof: any county, municipality, school district, special
 87 district, clerk of the circuit court, sheriff, property
 88 appraiser, tax collector, supervisor of elections, authority,
 89 board, public corporations, or any other political subdivision
 90 of the state.

91 Section 3. Section 218.405, Florida Statutes, is amended
 92 to read:

93 218.405 Local Government Surplus Funds Trust Fund;
 94 creation; objectives; certification; interest; rulemaking.--

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

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

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

110 (4) The board may adopt rules to administer the provisions
 111 of this section.

112 Section 4. Section 218.407, Florida Statutes, is amended
113 to read:

114 218.407 Local government investment authority.--

115 (1) Prior to any determination by the governing body that
116 it is in the interest of the unit of local government to deposit
117 surplus funds in the trust fund, the board or a professional
118 money management firm must provide to the governing body
119 enrollment materials, including a trust fund profile containing
120 impartial educational information describing the administration
121 and investment policy of the trust fund, including, but not
122 limited to:

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

125 (b) The historical performance, investment holdings,
126 credit quality, and average maturity of the trust fund
127 investments.

128 (c) The applicable administrative rules.

129 (d) The rate determination processes for any deposit or
130 withdrawal.

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

133 (f) The most recently published financial statements or
134 independent audits, if available, prepared under generally
135 accepted accounting principles.

136 (g) A disclosure statement for signature by the
137 appropriate local government official.

138 (2)~~(1)~~ Upon review of the enrollment materials and upon
139 determination by the governing body that it is in the interest

140 of the unit of local government to deposit surplus funds in the
 141 trust fund, a resolution by the governing body and the signed
 142 acceptance of the disclosure statement by the local government
 143 official, who may be the chief financial or administrative
 144 officer of the local government, shall be filed with the State
 145 board and, if appropriate, a copy shall be provided to a
 146 professional money management firm ~~of Administration~~ authorizing
 147 investment of its surplus funds in the trust fund established by
 148 this part. The resolution shall name:

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

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

153
 154 responsible for deposit and withdrawal of such funds.

155 (3)-(2) The ~~State~~ board or a professional money management
 156 firm ~~of Administration~~ shall, upon the filing of the resolution,
 157 invest the moneys in the trust fund in the same manner and
 158 subject to the same restrictions as are set forth in s. 215.47.
 159 ~~Except when authorized by the board,~~ All units of local
 160 government that ~~which~~ qualify to be participants in the ~~Local~~
 161 ~~Government Surplus Funds~~ trust fund shall ~~after January 1, 1982,~~
 162 ~~will normally~~ have surplus funds deposited into a pooled
 163 investment account.

164 (4)-(3) The provisions of this part shall not impair the
 165 power of a unit of local government to hold funds in deposit
 166 accounts with banking or savings institutions or to invest funds
 167 as otherwise authorized by law.

168 Section 5. Section 218.409, Florida Statutes, is amended
 169 to read:

170 218.409 Administration of the trust fund; creation of
 171 advisory council.--

172 (1) Upon receipt of the items specified in s. 218.407
 173 ~~resolution~~ from the local governing body, the State board or a
 174 professional money management firm of Administration shall
 175 accept all wire transfers of funds into the trust fund. The
 176 State board or a professional money management firm of
 177 ~~Administration~~ shall also wire-transfer invested local
 178 government funds to the local government upon request of the
 179 local government official named in the resolution.

180 (2)(a) The trustees shall ensure that the State board or a
 181 professional money management firm administers of Administration
 182 ~~shall administer~~ the investment trust fund funds on behalf of
 183 the participants. The board or a professional money management
 184 firm and shall have the power to invest such funds in accordance
 185 with a written investment policy. A fee may be charged on any
 186 ~~transaction that is not in accord with the close of business as~~
 187 ~~set by the board.~~ The investment policy shall be updated
 188 annually to conform to best investment practices. The standard
 189 of prudence to be used by investment officials shall be the
 190 fiduciary standards as set forth in s. 215.47(9), which shall be
 191 applied in the context of managing an overall portfolio.
 192 Investment officers acting in accordance with written procedures
 193 and an investment policy and exercising due diligence shall be
 194 relieved of personal responsibility for an individual security's
 195 credit risk or market price changes, provided deviations from

196 expectations are reported in a timely fashion and the liquidity
197 and the sale of securities are carried out in accordance with
198 the terms of this part.

199 (b) Officers and employees involved in the investment
200 process shall refrain from personal business activity that could
201 conflict with the proper execution and management of the
202 investment program or that could impair their ability to make
203 impartial decisions. Employees and investment officials shall
204 disclose any material interests in financial institutions with
205 which they conduct business on behalf of the trust fund. They
206 shall further disclose any personal financial or investment
207 positions that could be related to the performance of the
208 investment portfolio. Employees and officers shall refrain from
209 undertaking personal investment transactions with the same
210 individual with whom business is conducted on behalf of the
211 board.

212 (c) The board or a professional money management firm and
213 all employees have an affirmative duty to immediately disclose
214 any material impact to the trust fund to the participants. To
215 ensure such disclosure, a system of internal controls shall be
216 established by the board, which shall be documented in writing
217 as part of the investment policy. The controls shall be designed
218 to prevent the loss of public funds arising from fraud, employee
219 error, and misrepresentation by third parties, unanticipated
220 changes in financial markets, or imprudent actions by employees
221 and officers of the board or a professional money management
222 firm. The controls shall also include formal escalation
223 reporting guidelines for all employees. The guidelines shall

224 establish procedures to address material impacts on the trust
 225 fund that require reporting and action.

226 (d) The investment policy shall be reviewed and approved
 227 annually by the trustees or when market changes dictate, and in
 228 each event the investment policy shall be reviewed by the
 229 Investment Advisory Council and by the Participant Local
 230 Government Advisory Council.

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

242 (4) All ~~investments may be purchased jointly for the~~
 243 participants in the trust fund. The board or a professional
 244 money management firm shall ~~may also~~ purchase investments for a
 245 pooled investment account in which all participants ~~may~~ share
 246 pro rata, ~~as determined by rule of the board,~~ in the capital
 247 gain, income, or losses, subject to any penalties for early
 248 withdrawal. Any provisions for penalties, including their
 249 purpose, must be disclosed in the enrollment materials. Any
 250 change in the amount to be charged for a penalty must have a
 251 reasonable notice period to allow any participant to withdraw

252 from the trust fund prior to the new penalty charge being
 253 imposed ~~The board shall determine the rate of return for the~~
 254 ~~pooled investment account.~~ A system shall ~~may~~ be developed by
 255 the board, and disclosed in the enrollment materials, subject to
 256 annual approval by the trustees, to keep ~~current~~ account
 257 balances current ~~balance information~~ and to apportion pooled
 258 investment earnings ~~back~~ to individual accounts.

259 (5) ~~The State board of Administration~~ shall keep a
 260 separate account, designated by name and number of each
 261 participating local government. A maximum number of accounts
 262 allowed for each participant may be established by the board.
 263 Individual transactions and totals of all investments, or the
 264 share belonging to each participant, shall be recorded in the
 265 accounts.

266 (6) (a) ~~The State board~~ or a professional money management
 267 firm of Administration shall provide a report, at a minimum
 268 monthly ~~semiannually~~ or upon the occurrence of a material event,
 269 ~~request~~ to every participant having a beneficial interest in the
 270 trust fund, the board's executive director, the trustees, the
 271 Joint Legislative Auditing Committee, the Investment Advisory
 272 Council, and the Participant Local Government Advisory Council.

273 The report shall include:

- 274 1. Reports of any material impacts on the trust fund and
 275 any actions or escalations taken by staff to address such
 276 impacts. The trustees shall provide quarterly a report to the
 277 Joint Legislative Auditing Committee that the trustees have
 278 reviewed and approved the monthly reports and actions taken, if
 279 any, to address any impacts.

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

296 (b) The market value of the portfolio shall be calculated
297 daily. Withdrawals from the trust fund shall be based on a
298 process that is transparent to participants and will ensure that
299 advantages or disadvantages do not occur to parties making
300 deposits or withdrawals on any particular day. A statement of
301 the market value and amortized cost of the portfolio shall be
302 issued to participants in conjunction with any deposits or
303 withdrawals. In addition, this information shall be reported
304 monthly with the items in paragraph (a) to participants, the
305 trustees, the Investment Advisory Council, and the Participant
306 Local Government Advisory Council. The review of the investment
307 portfolio, in terms of value and price volatility, shall be

308 performed with practices consistent with the GFOA Recommended
 309 Practice on "Mark-to-Market Practices for State and Local
 310 Government Investment Portfolios and Investment Pools." In
 311 defining market value, consideration shall be given to GASB
 312 Statement 31. Additional reporting may be made to pool
 313 participants through regular and frequent ongoing multi-media
 314 educational materials and communications, including, but not
 315 limited to, historical performance, investment holdings,
 316 amortized cost and market value of the trust fund, credit
 317 quality, and average maturity of the trust fund investments.

318 (7) Costs incurred in carrying out the provisions of this
 319 part shall be deducted from the interest earnings accruing to
 320 the trust fund. Such deductions shall be prorated among the
 321 participant local governments in the percentage that each
 322 participant's deposits bear to the total trust fund. The
 323 remaining interest earned shall be distributed monthly to
 324 participants according to the amount invested. Except for costs,
 325 the board or a professional money management firm may not
 326 transfer the interest or use the interest for any other purpose,
 327 including, but not limited to, making up investment losses.

328 (8) (a) The principal, and any part thereof, of each and
 329 every account constituting the trust fund shall be subject to
 330 payment at any time from the moneys in the trust fund. However,
 331 the executive director may, in good faith, on the occurrence of
 332 an event that has a material impact on liquidity or operations
 333 of the trust fund, for 48 hours limit contributions to or
 334 withdrawals from the trust fund to ensure that the board can
 335 invest moneys entrusted to it in exercising its fiduciary

336 ~~responsibility or as otherwise provided by agreement between the~~
337 ~~State Board of Administration and the investing unit. Such~~
338 action shall be immediately disclosed to all participants, the
339 trustees, the Joint Legislative Auditing Committee, the
340 Investment Advisory Council, and the Participant Local
341 Government Advisory Council. The trustees shall convene an
342 emergency meeting as soon as practicable from the time the
343 executive director has instituted such measures and review the
344 necessity of those measures. If the trustees agree with such
345 measures, the trustees shall vote to continue the measures for
346 up to an additional 15 days. The trustees must convene and vote
347 to continue any such measures prior to the expiration of the
348 time limit set, but in no case may the time limit set by the
349 trustees exceed 15 days.

350 (b) An order to withdraw funds ~~or warrant~~ may not be
351 issued upon any account for a larger amount than the share of
352 the particular account to which it applies; and if such order ~~or~~
353 ~~warrant~~ is issued, the responsible official shall be personally
354 liable under his or her bond for the entire overdraft resulting
355 from the payment if made.

356 (9) The Auditor General shall conduct an annual financial
357 audit of the trust fund, which shall include testing for
358 compliance with the investment policy. The completed audit shall
359 be provided to the participants, the board, the trustees, the
360 Investment Advisory Council, the Participant Local Government
361 Advisory Council, and the Joint Legislative Auditing Committee.
362 As soon as practicable, but no later than 30 days after
363 completion of the audit, the trustees shall report to the Joint

364 Legislative Auditing Committee that the trustees have reviewed
 365 the audit of the trust fund and shall certify that any necessary
 366 items are being addressed by a corrective action plan that
 367 includes target completion dates.

368 (10) (a) There is created a six-member Participant Local
 369 Government Advisory Council for the purposes of regularly
 370 reviewing the administration of the trust fund and making
 371 recommendations regarding such administration to the trustees.
 372 The members of the council shall be appointed by the board and
 373 subject to confirmation by the Senate. Members must possess
 374 special knowledge, experience, and familiarity obtained through
 375 active, long-standing, and material participation in the
 376 dealings of the trust fund. Each member shall serve a 4-year
 377 term. Any vacancy shall be filled for the remainder of the
 378 unexpired term. The council shall annually elect a chair and
 379 vice chair from within its membership. A member may not serve
 380 consecutive terms as chair or vice chair.

381 (b) The council shall prepare and submit a written
 382 biennial report to the board, trustees, the Investment Advisory
 383 Council, and the Joint Legislative Auditing Committee that
 384 describes the activities and recommendations of the council.

385 Section 6. Section 218.411, Florida Statutes, is amended
 386 to read:

387 218.411 Authorization for state technical and advisory
 388 assistance.--

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

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

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

396 (c) Providing, in cooperation with the Department of
 397 Community Affairs, technical assistance to local governments in
 398 investment of surplus funds.

399 (2) The ~~State board of Administration~~ may establish fees
 400 to cover the cost of such services, which shall be paid by the
 401 unit of local government requesting such service. Such fees
 402 shall be deposited to the credit of the appropriation or
 403 appropriations from which the costs of providing the services
 404 have been paid or are to be charged.

405 Section 7. Section 218.412, Florida Statutes, is amended
 406 to read:

407 218.412 Rulemaking authority.--The ~~State board of~~
 408 ~~Administration~~ may adopt rules as it deems necessary to carry
 409 out the provisions of this part for the administration of the
 410 ~~Local Government Surplus Funds~~ trust fund.

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