

## CHAPTER 97-9

### Senate Bill No. 332

An act relating to investment of public funds; amending s. 218.403, F.S.; defining the terms “current expenses” and “short term” for purposes of investment of local government surplus funds; amending s. 218.415, F.S.; prescribing applicability of provisions that require a unit of local government to make its investment activity consistent with an adopted, written investment plan; providing an effective date.

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

Section 1. Section 218.403, Florida Statutes, is amended to read:

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

(1) “Chief financial officer” means the mayor, manager, administrator, clerk, comptroller, treasurer, director of finance, or other local government official, regardless of the title of his or her office, charged with administering the fiscal affairs of a unit of local government.

(2) “Current expenses” means expenses to meet known cash needs and anticipated cash-flow requirements for the short term.

(3)(2) “Governing body” means the body or board in which the legislative power of a unit of local government is vested.

(4) “Short term” means a maximum of 6 months of operation.

(5)(3) “Surplus funds” means any funds in any general or special account or fund of a unit of local government, or funds held by an independent trustee on behalf of a unit of local government, which in reasonable contemplation will not be immediately needed for the purposes intended.

(6)(4) “Trust fund” means the pooled investment fund created by s. 218.405 and known as the Local Government Surplus Funds Trust Fund.

(7)(5) “Unit of local government” means any governmental entity within the state not part of state government and shall include, but not be limited to, the following and the officers thereof: any county, municipality, school district, special district, clerk of the circuit court, sheriff, property appraiser, tax collector, supervisor of elections, authority, board, public corporations, or any other political subdivision of the state.

Section 2. Section 218.415, Florida Statutes, is amended to read:

218.415 Local government investment policies.—~~On or before October 1, 1995, to the extent that any unit of local government elects to conduct~~ Investment activity by a unit of local government outside the framework

provided by this part, such activity must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with the investment guidelines set forth in subsection (15). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(14), or shall meet the alternative investment guidelines contained in subsection (15). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within their custody.

(1) SCOPE.—The investment policy shall apply to funds under the control of the unit of local government in excess of those required to meet ~~current short-term~~ expenses. The investment policy shall not apply to pension funds, including those funds in chapters 175 and 185; trust funds; or funds related to the issuance of debt where there are other existing policies or indentures in effect for such funds.

(2) INVESTMENT OBJECTIVES.—The investment policy shall describe the investment objectives of the unit of local government. Investment objectives shall include safety of capital, liquidity of funds, and investment income, in that order.

(3) PERFORMANCE MEASUREMENT.—The unit of local government shall develop performance measures as are appropriate for the nature and size of the public funds within its custody.

(4) PRUDENCE AND ETHICAL STANDARDS.—The investment policy shall describe the level of prudence and ethical standards to be followed by the unit of local government in carrying out its investment activities with respect to funds described in this section. The unit of local government shall adopt the Prudent Person Rule, which states that: “Investments should be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.”

(5) AUTHORIZED INVESTMENTS.—The investment policy shall list authorized investments ~~as provided by law or local ordinance~~. Investments in derivative products must be specifically authorized in the investment plan and may be considered only if the unit of local government’s chief financial officer has developed sufficient understanding of the derivative products and has the expertise to manage them. For purposes of this subsection, a “derivative” is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or index or asset values. The use of reverse repurchase agreements or other forms of leverage shall be prohibited or limited by investment policy to

transactions where the proceeds are intended to provide liquidity and for which the unit of local government has sufficient resources and expertise.

(6) **MATURITY AND LIQUIDITY REQUIREMENTS.**—The investment policy shall require that the investment portfolio is structured in such manner as to provide sufficient liquidity to pay obligations as they come due. To that end, the investment policy should direct that, to the extent possible, an attempt will be made to match investment maturities with known cash needs and anticipated cash-flow requirements.

(7) **PORTFOLIO COMPOSITION.**—The investment policy shall establish guidelines for investments and limits on security issues, issuers, and maturities. Such guidelines shall be commensurate with the nature and size of the public funds within the custody of the unit of local government.

(8) **RISK AND DIVERSIFICATION.**—The investment policy shall provide for appropriate diversification of the investment portfolio. Investments held should be diversified to the extent practicable to control the risk of loss resulting from overconcentration of assets in a specific maturity, issuer, instrument, dealer, or bank through which financial instruments are bought and sold. Diversification strategies within the established guidelines shall be reviewed and revised periodically, as deemed necessary by the appropriate management staff.

(9) **AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS.**—The investment policy should specify the authorized securities dealers, issuers, and banks from whom the unit of local government may purchase securities.

(10) **THIRD-PARTY CUSTODIAL AGREEMENTS.**—The investment policy shall provide appropriate arrangements for the holding of assets of the unit of local government. Securities should be held with a third party; and all securities purchased by, and all collateral obtained by, the unit of local government should be properly designated as an asset of the unit of local government. No withdrawal of securities, in whole or in part, shall be made from safekeeping, except by an authorized staff member of the unit of local government. Securities transactions between a broker-dealer and the custodian involving purchase or sale of securities by transfer of money or securities must be made on a “delivery vs. payment” basis, if applicable, to ensure that the custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction.

(11) **MASTER REPURCHASE AGREEMENT.**—The unit of local government shall require all approved institutions and dealers transacting repurchase agreements to execute and perform as stated in the Master Repurchase Agreement. All repurchase agreement transactions shall adhere to the requirements of the Master Repurchase Agreement.

(12) **BID REQUIREMENT.**—After the unit of local government staff has determined the approximate maturity date based on cash-flow needs and market conditions and has analyzed and selected one or more optimal types of investment, the security in question shall, when feasible and appropriate, be competitively bid.

(13) INTERNAL CONTROLS.—The investment policy shall provide for a system of internal controls and operational procedures. The unit of local government's chief financial officer shall, by January 1, 1996, establish a system of internal controls which shall be in writing and made a part of the governmental entity's operational procedures. The investment policy shall provide for review of such controls by independent auditors as part of any financial audit periodically required of the unit of local government. The internal controls should be designed to prevent losses of funds which might arise from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the unit of local government.

(14) REPORTING.—The investment policy shall provide for appropriate annual or more frequent reporting of investment activities. To that end, the governmental entity's chief financial officer shall prepare periodic reports for submission to the legislative and governing body of the unit of local government, which shall include securities in the portfolio by class or type, book value, income earned, and market value as of the report date. Such reports shall be available to the public.

(15) ALTERNATIVE INVESTMENT GUIDELINES.—In addition to or in lieu of establishing a written investment plan in accordance with investment policies developed pursuant to subsections (1)-(14), a unit of local government electing to conduct investment activity outside the framework provided by this part shall do so under the guidelines set forth in this section. The unit of local government may invest in the following instruments and may divest itself of such investments, at prevailing market prices or rates, subject to the limitations of this section:

(a) The Local Government Surplus Funds Trust Fund, or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act, as provided in s. 163.01.

(b) Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency.

(c) Savings accounts in state-certified qualified public depositories, as defined in s. 280.02.

(d) Certificates of deposit in state-certified qualified public depositories, as defined in s. 280.02.

(e) Direct obligations of the U.S. Treasury.

(f) Federal agencies and instrumentalities.

The securities listed in paragraphs (c), (d), (e), and (f) shall be invested to match investment maturities with current expenses ~~known cash needs and anticipated cash-flow requirements~~.

Section 3. This act shall take effect July 1, 1997.

Approved by the Governor April 17, 1997.

Filed in Office Secretary of State April 17, 1997.