

CHAPTER 98-124

Committee Substitute for Senate Bill No. 1332

An act relating to investment of public funds (RAB); amending s. 215.835, F.S.; prescribing rulemaking authority of the Division of Bond Finance and State Board of Administration; amending ss. 159.825, 218.405, 218.407, 218.409, F.S.; prescribing rulemaking authority of the State Board of Administration; amending s. 240.551, F.S.; prescribing rulemaking authority of the Prepaid Post-secondary Education Expense Board; providing an effective date.

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

Section 1. Section 215.835, Florida Statutes, is amended to read:

215.835 Rulemaking authority.—The Division of Bond Finance and the State Board of Administration may adopt rules ~~as it deems~~ necessary to carry out the provisions and intent of this act.

Section 2. Section 159.825, Florida Statutes, is amended to read:

159.825 Terms of bonds.—

(1) The ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of taxable bonds may provide for any of the following:

(a)(1) The bonds shall be in such denominations, in such form, either bearer or registered, and payable at such place or places, either within or without the United States, at such time or times, as, in each case, the governing body shall determine subject to any limitations on the maturity of bonds set forth in the statutes under authority of which the bonds are issued.

(b)(2) The bonds shall be payable in legal tender of the United States, in a foreign currency, in commodities, or in precious metals, as the governing body shall determine.

(c)(3) The governing body may appoint, in connection with the bond issue, a cotrustee located outside of the boundaries of the United States or its territories or possessions so long as it shall also appoint a trustee otherwise meeting the requirements of the statutes under authority of which the bonds are issued. The governing body may appoint, in connection with the bond issue, a paying agent or a copaying agent located outside the boundaries of the United States or its territories or possessions.

(d)(4) Bonds shall bear interest at a rate not to exceed an average net interest cost rate, which shall be computed by adding 500 basis points to the 30-year Treasury Bond yield published in The Bond Buyer immediately preceding the first day of the calendar month in which the bonds are sold. If the interest rate on bonds bearing a floating or variable rate of interest

as calculated on the date of the initial sale thereof does not exceed the limitation provided by this section, so long as the basis, method, or formula for computing the floating or variable rate does not change during the life of the bonds, subsequent increases in the interest rate in accordance with said basis, method, or formula shall not cause the interest rate on the bonds to violate the limitation provided by this ~~paragraph subsection~~. A certificate by the issuer of the bonds as to the computation of the interest rate in compliance with this requirement shall be deemed conclusive evidence of compliance with the provisions of this ~~paragraph subsection~~. Such maximum rate does not apply to bonds rated by a nationally recognized rating service in any one of the three highest classifications, which rating services and classifications are determined pursuant to rules adopted by the State Board of Administration.

~~(e)(5)~~ Upon the request of and application by a governmental unit, the State Board of Administration may authorize, for a specific issue or reissue of bonds, a rate of interest in excess of the maximum rate prescribed in paragraph (d) subsection (4). The governmental unit shall provide in its application request:

1.(a) Relevant supporting data which shall include, but not be limited to:

a.1. The official statement or prospectus, if available, or similar information relating to the sale of the bonds;

b.2. The resolution or ordinance authorizing the issuance of the bonds;

c.3. Financial data relating to anticipated revenue, debt service, and coverage; and

d.4. The most recent financial statement of the governmental unit.

2.(b) Information relating to sale of the bonds, including the amount of the discount, if any. In making the determination to exceed the maximum interest rate, the State Board of Administration shall consider, but not be limited to considering, comparable sales of other taxable bonds of other governmental units and evidence that the objectives and intent of the issuing of such bonds will be realized. This ~~subparagraph does paragraph~~ shall not apply to:

a.1. Bonds which have been sold prior to June 30, 1987, and which are delivered pursuant to said sale on or after June 30, 1987.

b.2. Bonds issued to finance projects under part II, part III, or part V of this chapter or health facilities under part III of chapter 154.

c.3. Limit or restrict the rate of interest on bonds or other obligations of municipal utilities or agencies thereof issued or made pursuant to authority provided in part II of chapter 166 and s. 215.431.

(f)(6) In connection with, or incidental to, the sale and issuance of bonds, the governmental unit may enter into any contracts which the governing body determines to be necessary or appropriate to achieve a desirable effective interest rate in connection with the bonds by means of, but not limited

to, contracts commonly known as investment contracts, funding agreements, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, options, puts, or calls to hedge payment, rate, spread, or similar exposure. Such contracts or arrangements may also be entered into by governmental units in connection with, or incidental to, entering into any agreement which secures bonds or provides liquidity therefor. Such contracts and arrangements shall be made upon the terms and conditions established by the governing body, after giving due consideration for the credit worthiness of the counterparties, where applicable, including any rating by a nationally recognized rating service or any other criteria as may be appropriate.

~~(g)(7)~~ In connection with, or incidental to, the sale and issuance of the bonds, or entering into any of the contracts or arrangements referred to in ~~paragraph (f) subsection (6)~~, the governmental unit may enter into such credit enhancement or liquidity agreements, with such payment, interest rate, security, default, remedy, and other terms and conditions as the governing body shall determine.

~~(h)(8)~~ Notwithstanding any provisions of state law relating to the investment or reinvestment of surplus funds of any governmental unit, proceeds of the bonds and any moneys set aside or pledged to secure payment of the principal of, premium, if any, and interest on the bonds, or any of the contracts entered into pursuant to ~~paragraph (f) subsection (6)~~, may be invested in securities or obligations described in the ordinance or resolution providing for the issuance of the bonds.

(2) The State Board of Administration may adopt rules necessary to administer this section.

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

218.405 Local Government Surplus Funds Trust Fund; creation.—There is hereby created a Local Government Surplus Funds Trust Fund to be administered by the State Board of Administration and to be composed of local government surplus funds deposited therein by units of local government under the procedures established in this part. The board may adopt rules to administer the provisions of this section.

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

218.407 Local government investment authority.—

(1) Upon determination by the governing body that it is in the interest of the unit of local government to deposit surplus funds in the trust fund, a resolution by the governing body shall be filed with the State Board of Administration authorizing investment of its surplus funds in the trust fund established by this part. The resolution shall name:

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

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

responsible for deposit and withdrawal of such funds ~~and shall state the approximate cash-flow requirements of the local government for the surplus funds to be invested.~~

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

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

Section 5. Subsections (2), (3), (4), (5), and (6) of section 218.409, Florida Statutes, are amended to read:

218.409 Administration of the trust fund.—

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

(3) The State Board of Administration may purchase such surety or other bonds as may be necessary for its officials in order to protect the fund. A reserve fund may be established to fulfill this purpose.

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

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

(6) The State Board of Administration shall report semiannually or upon request to every participant having a beneficial interest in the trust fund. The report shall show the changes in investments made during the preceding period. The report shall delineate, in a manner which is in accordance with generally accepted governmental accounting procedures, those funds

on deposit, the manner in which the funds are invested, and the interest earnings thereon. The State Board of Administration shall furnish upon request the details of an investment transaction to any participant. Additional reporting may be made to pool participants.

Section 6. Paragraph (c) of subsection (5) of section 240.551, Florida Statutes, is amended to read:

240.551 Florida Prepaid Postsecondary Education Expense Program.—

(5) The Florida Prepaid Postsecondary Education Expense Program shall be administered by the Prepaid Postsecondary Education Expense Board as an agency of the state. The Prepaid Postsecondary Education Expense Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. For the purposes of s. 6, Art. IV of the State Constitution, the board shall be assigned to and administratively housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in this section. The board shall consist of seven members to be composed of the Insurance Commissioner and Treasurer, the Comptroller, the Chancellor of the Board of Regents, the Executive Director of the State Board of Community Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management. Each member of the board not appointed by the Governor may name a designee to serve the board on behalf of the member; however, any designee so named shall meet the qualifications required of gubernatorial appointees to the board. Members appointed by the Governor shall serve terms of 3 years except that, in making the initial appointments, the Governor shall appoint one member to serve for 1 year, one member to serve for 2 years, and one member to serve for 3 years. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term. Any member shall be eligible for reappointment and shall serve until a successor qualifies. Members of the board shall serve without compensation but shall be reimbursed for per diem and travel in accordance with s. 112.061. Each member of the board shall file a full and public disclosure of his or her financial interests pursuant to s. 8, Art. II of the State Constitution and corresponding statute.

(c) The board shall have the powers necessary or proper to carry out the provisions of this section, including, but not limited to, the power to:

1. Adopt an official seal and rules.
2. Sue and be sued.
3. Make and execute contracts and other necessary instruments.
4. Establish agreements or other transactions with federal, state, and local agencies, including state universities and community colleges.
5. Invest funds not required for immediate disbursement.

6. Appear in its own behalf before boards, commissions, or other governmental agencies.
7. Hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board.
8. Require a reasonable length of state residence for qualified beneficiaries.
9. Restrict the number of participants in the community college plan, university plan, and dormitory residence plan, respectively. However, any person denied participation solely on the basis of such restriction shall be granted priority for participation during the succeeding year.
10. Segregate contributions and payments to the fund into various accounts and funds.
11. Contract for necessary goods and services, employ necessary personnel, and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for administrative or technical assistance.
12. Solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of this section.
13. Require and collect administrative fees and charges in connection with any transaction and impose reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract on a fraudulent basis.
14. Procure insurance against any loss in connection with the property, assets, and activities of the fund or the board.
15. Impose reasonable time limits on use of the tuition benefits provided by the program. However, any such limitation shall be specified within the advance payment contract.
16. Delineate the terms and conditions under which payments may be withdrawn from the fund and impose reasonable fees and charges for such withdrawal. Such terms and conditions shall be specified within the advance payment contract.
17. Provide for the receipt of contributions in lump sums or installment payments.
18. Establish other policies, procedures, and criteria to implement and administer the provisions of this section.
19. Require that purchasers of advance payment contracts verify, under oath, any requests for contract conversions, substitutions, transfers, cancellations, refund requests, or contract changes of any nature. Verification shall be accomplished as authorized and provided for in s. 92.525(1)(a).
20. Adopt procedures to govern contract dispute proceedings between the board and its vendors.

Section 7. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.