

Committee Substitute for Senate Bill No. 2422

An act relating to the investment of local government surplus funds; amending s. 218.401, F.S.; revising the purpose of the Investment of Local Government Surplus Funds Act; amending s. 218.403, F.S.; providing definitions; amending s. 218.405, F.S.; authorizing the State Board of Administration to contract with a professional money management firm to administer the trust fund; establishing objectives of the trust fund; providing for trustee certification; amending s. 218.407, F.S.; requiring the distribution of certain enrollment materials to potential investors; specifying the contents of the enrollment materials; requiring the signed acceptance of a disclosure statement by the authorized local government official prior to investing in the trust fund; requiring surplus funds to be invested in pooled investment accounts; amending s. 218.409, F.S.; revising administration of the trust fund; providing standards of care, including level of prudence, ethics and conflicts of interest, and internal controls; providing for annual review and approval of investment policy and controls; providing for reports; revising the use and disclosure of reserves; requiring investments to be made in pooled accounts; requiring establishment and approval of an account balance information system; providing transparency; requiring monthly reports to certain persons and groups; providing criteria of the report; requiring marking to market calculation and reporting; providing criteria; providing for additional reporting; authorizing limiting withdrawals from or contributions to the trust fund under certain circumstances; providing criteria for use of interest by board; requiring an annual financial audit; requiring the audit to be reported to certain persons and groups; requiring certification report by trustees; creating the Participant Local Government Advisory Council; providing for appointments, membership, terms, the filling of vacancies, and officers; requiring biennial reports by the council to certain persons and groups; amending ss. 218.411 and 218.412, F.S.; conforming terminology; creating s. 218.418, F.S.; providing definitions; creating s. 218.421, F.S.; providing for the purpose of the Fund B Surplus Funds Trust Fund; providing rulemaking authority; providing for administration of the trust fund; providing for annual certification by the Trustees of the State Board of Administration to the Joint Legislative Auditing Committee that the trust fund has been reviewed and is in compliance with the requirements of this section; providing restrictions on the trust fund; providing criteria for payment of accrued funds; restricting participant transactions in the trust fund; providing for investment policy criteria; providing procedures for internal controls; providing duty to disclose material impacts on the trust fund; providing for investment policy implementation; providing criteria for payment of costs and use of interest; providing authority to trustees to distribute remaining reserve upon self-liquidation; providing reporting requirements; requiring monthly reports to certain persons and groups; providing criteria of

the report; providing for additional reporting; requiring trustee review; creating s. 218.422, F.S.; requiring the Auditor General to review the trust fund prior to the 2013 Regular Session and provide a summary report to certain persons and entities; providing for expiration of ss. 218.418-218.422, F.S., upon termination or self-liquidation of the trust fund; providing a contingent effective date.

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

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

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

Section 2. 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) “Board” means the State Board of Administration.

~~(2)~~(4) “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.

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

(4) “GASB” means the Governmental Accounting Standards Board.

(5) “GFOA” means the Government Finance Officers Association.

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

~~(7)~~(4) “Short term” means a maximum of 6 months of operation.

~~(8)~~(5) “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.

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

(10) “Trustees” mean the Trustees of the State Board of Administration.

~~(11)~~(7) “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 3. Section 218.405, Florida Statutes, is amended to read:

218.405 Local Government Surplus Funds Trust Fund; creation; objectives; certification; interest; rulemaking.—

(1) 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 contract with a professional money management firm to manage the trust fund.

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

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

(4) 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) Prior to any 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, the board or a professional money management firm must provide to the governing body enrollment materials, including a trust fund profile containing impartial educational information describing the administration and investment policy of the trust fund, including, but not limited to:

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

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

(c) The applicable administrative rules.

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

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

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

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

~~(2)(4)~~ Upon review of the enrollment materials and 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 and the signed acceptance of the disclosure statement by the local government official, who may be the chief financial or administrative officer of the local government, shall be filed with the State board and, if appropriate, a copy shall be provided to a professional money management firm 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.

~~(3)(2)~~ The State board or a professional money management firm 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 that which qualify to be participants in the Local Government Surplus Funds trust fund shall after January 1, 1982, will normally have surplus funds deposited into a pooled investment account.

~~(4)(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. Section 218.409, Florida Statutes, is amended to read:

218.409 Administration of the trust fund; creation of advisory council.—

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

(2)(a) The trustees shall ensure that the State board or a professional money management firm administers of Administration shall administer the investment trust fund funds on behalf of the participants. The board or a professional money management firm and shall have the power to invest such funds in accordance with a written investment policy. The investment policy shall be updated annually to conform to best investment practices. The standard of prudence to be used by investment officials shall be the fiduciary standards as set forth in s. 215.47(9), which shall be applied in the

context of managing an overall portfolio. Portfolio managers acting in accordance with written procedures and an investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this part.

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

(c) The board or a professional money management firm and all employees have an affirmative duty to immediately disclose any material impact to the trust fund to the participants. To ensure such disclosure, a system of internal controls shall be established by the board, which shall be documented in writing as part of the investment policy. The controls shall be designed to prevent the loss of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the board or a professional money management firm. The controls shall also include formal escalation reporting guidelines for all employees. The guidelines shall establish procedures to address material impacts on the trust fund that require reporting and action.

(d) The investment policy shall be reviewed and approved annually by the trustees or when market changes dictate, and in each event the investment policy shall be reviewed by the Investment Advisory Council and by the Participant Local Government Advisory Council. 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 or a professional money management firm of Administration may purchase such surety or other bonds as may be necessary for its officials in order to protect the trust fund. A reserve fund may be established to fulfill this purpose. However, any reserve must be a portion of the management fee and must be fully disclosed, including its purpose, in the enrollment materials at the time a unit of local government considers participation. Further, any change in the amount to be charged for a reserve must have a reasonable notice period to allow any participant to withdraw from the trust fund prior to the new reserve charge being imposed.

(4) All investments may be purchased jointly for the participants in the trust fund. The board or a professional money management firm shall 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. Any provisions for penalties, including their purpose, must be disclosed in the enrollment materials. Any change in the amount to be charged for a penalty must have a reasonable notice period to allow any participant to withdraw from the trust fund prior to the new penalty charge being imposed. ~~The board shall determine the rate of return for the pooled investment account.~~ A system ~~shall~~ may be developed by the board, and disclosed in the enrollment materials, subject to annual approval by the trustees, to keep current account balances current 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)(a) ~~The State board or a professional money management firm of Administration~~ shall provide a report, at a minimum monthly semiannually or upon the occurrence of a material event, request to every participant having a beneficial interest in the trust fund, the board's executive director, the trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The report shall include:

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

2. A management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last month. This management summary shall be prepared in a manner that will allow anyone to ascertain whether investment activities during the reporting period have conformed to investment policies. Such reporting shall be in conformance with best market practices 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 or a professional money management firm of Administration shall furnish upon request the details of an investment transaction to any participant, the trustees, the Investment Advisory Council, and the Participant Local Government Advisory Council.

(b) The market value of the portfolio shall be calculated daily. Withdrawals from the trust fund shall be based on a process that is transparent to participants and will ensure that advantages or disadvantages do not occur to parties making deposits or withdrawals on any particular day. A statement of the market value and amortized cost of the portfolio shall be issued to participants in conjunction with any deposits or withdrawals. In addition,

this information shall be reported monthly with the items in paragraph (a) to participants, the trustees, the Investment Advisory Council, and the Participant Local Government Advisory Council. The review of the investment portfolio, in terms of value and price volatility, shall be performed with practices consistent with the GFOA Recommended Practice on “Mark-to-Market Practices for State and Local Government Investment Portfolios and Investment Pools.” In defining market value, consideration shall be given to GASB Statement 31. Additional reporting may be made to pool participants through regular and frequent ongoing multi-media educational materials and communications, including, but not limited to, historical performance, investment holdings, amortized cost and market value of the trust fund, credit quality, and average maturity of the trust fund investments.

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

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

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

(9) The Auditor General shall conduct an annual financial audit of the trust fund, which shall include testing for compliance with the investment policy. The completed audit shall be provided to the participants, the board, the trustees, the Investment Advisory Council, the Participant Local Government Advisory Council, and the Joint Legislative Auditing Committee.

As soon as practicable, but no later than 30 days after completion of the audit, the trustees shall report to the Joint Legislative Auditing Committee that the trustees have reviewed the audit of the trust fund and shall certify that any necessary items are being addressed by a corrective action plan that includes target completion dates.

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

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

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

218.411 Authorization for state technical and advisory assistance.—

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

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

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

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

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

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

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

Section 8. Section 218.418, Florida Statutes, is created to read:

218.418 Definitions.—As used in ss. 218.421-218.422, the term:

(1) “Board” means the State Board of Administration.

(2) “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.

(3) “Trust fund” means the pooled investment fund known as the Fund B Surplus Funds Trust Fund.

(4) “Trustees” means the Trustees of the State Board of Administration.

(5) “Unit of local government” means any governmental entity within the state not part of state government and includes, but is not 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 corporation, or other political subdivision of the state.

Section 9. Section 218.421, Florida Statutes, is created to read:

218.421 Fund B Surplus Funds Trust Fund; purpose; rulemaking; administration; reporting.—

(1)(a) The purpose of the Fund B Surplus Funds Trust Fund is to maximize the payout of principal on invested surplus funds of units of local government formerly in Fund B of the Local Government Surplus Funds Trust Fund through a prudent work out of the trust fund with the ultimate goal of self-liquidating the trust fund through maturity and payout of the investments.

(b) The State Board of Administration may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(2)(a) The board or a professional money management firm shall administer the trust fund on behalf of the participants based on a written investment policy, approved by the trustees, and shall have the power to work out, restructure, or invest such funds. The trustees shall annually certify to the Joint Legislative Auditing Committee that the trustees have conducted a review of the trust fund and that the trust fund is in compliance with the requirements of this section. Any new investments must be made in money market or equivalent funds. The board or a professional money management firm shall keep a separate account, designated by name and number of each participating local government. Individual transactions and totals of all investments, or the share belonging to each participant, shall be recorded in the accounts. Any moneys accrued in the trust fund shall be subject to payment from the trust fund on a monthly basis to the trust fund participants according to their proportional interest in the trust fund so long as at least \$100,000 is in the trust fund at the end of that month. After all securities have matured, been sold, or worked out, a final distribution shall be made to the participants in the trust fund. Participants may not conduct transactions in the trust fund.

(b) The board or a professional money management firm and all employees of the board or firm have an affirmative duty to immediately disclose any material impact to the trust fund to the participants. To ensure such disclosure, a system of internal controls shall be established by the board, which shall be documented in writing as part of the investment policy. The controls shall be designed to prevent the loss of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the board or a professional money management firm. The controls shall also include formal escalation reporting guidelines for all employees. The guidelines shall establish procedures to address material impacts on the trust fund that require reporting and action.

(c) The investment policy shall be reviewed and approved by the trustees upon the transfer of the funds into the trust fund or when market changes dictate, and in each event, the investment policy shall be reviewed by the Investment Advisory Council and by the Participant Local Government Advisory Council.

(d) Costs incurred in carrying out the provisions of this section, which shall be prorated among the participants in the percentage that each participant's deposits bear to the total trust fund, may be deducted from any interest earned in the trust fund. The board or a professional money management firm may not transfer the interest or use the interest for any other purpose, including, but not limited to, making up investment losses.

(e) After the trust fund self-liquidates, any remaining reserve may be transferred by the trustees at their sole discretion back to the trust fund from which the assets were originally separated.

(3)(a) The board or a professional money management firm shall provide a report at a minimum, monthly, or upon the occurrence of a material event, to every participant having a beneficial interest in the trust fund, the board's executive director, the trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The report shall include:

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

2. A management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last month. This management summary shall be prepared in a manner that will allow anyone to ascertain whether investment activities during the reporting period have conformed to investment policies. Such reporting shall be in conformance with best market practices.

3. The board or a professional money management firm shall furnish upon request the details of an investment transaction to any participant, the

trustees, the Investment Advisory Council, and the Participant Local Government Advisory Council.

(b) Additional reporting may be made to participants in the trust fund through regular and frequent ongoing multi-media educational materials and communications, including, but not limited to, historical performance, investment holdings, amortized cost and market value of the trust fund, credit quality, and average maturity of the trust fund investments.

(4) The trustees shall review the board's progress in returning the principal in the trust fund to the participants at each meeting of the board until the trust fund self-liquidates or is terminated by law.

Section 10. Section 218.422, Florida Statutes, is created to read:

218.422 Fund B Surplus Funds Trust Fund; review.—Unless the Fund B Surplus Funds Trust Fund has been terminated by law or through self-liquidation, prior to the 2013 Regular Session of the Legislature, the Auditor General shall review the trust fund and the steps taken up to that time to return as much of the principal to the participants as possible and provide a summary report to the board, the trustees, the President of the Senate, the Speaker of the House of Representatives, the Investment Advisory Council, and the Participant Local Government Advisory Council.

Section 11. Sections 218.418, 218.421, and 218.422, Florida Statutes, as created by this act, shall expire at the time the Fund B Surplus Funds Trust Fund is terminated by law or self-liquidates as determined and announced by the executive director of the State Board of Administration, whichever occurs first.

Section 12. This act shall take effect upon becoming a law, if House Bill 7097 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.