CHAPTER 2000-264

Committee Substitute for Senate Bill No. 372

An act relating to investment of public funds; amending s. 112.625, F.S.; revising and providing definitions under the Florida Protection of Public Employee Retirement Benefits Act; creating s. 112.661, F.S.; requiring that investment of the assets of any local retirement system or plan be consistent with a written investment policy; specifying requirements for such policies with respect to scope, investment objectives, performance measurement, investment standards, maturity and liquidity requirements, portfolio composition, risk and diversification, rate of return, third-party custodial agreements, master repurchase agreements, bid requirements, internal controls, continuing education requirements, reporting and filing requirements, and valuation of illiquid investments; requiring that such policies list authorized investments and prohibiting investments not so listed; amending s. 218.415, F.S.; revising requirements relating to local governments' investment policies; revising the funds to which written investment policies apply and revising requirements relating to bids, internal controls, and reporting; specifying authorized investments for those local governments that adopt a written investment policy; prohibiting investments not listed in such policy; requiring continuing education for officials responsible for investment decisions; revising the list of authorized investments for those local governments that do not adopt a written investment policy; providing requirements with respect to the disposition and sale of securities, and funds subject to preexisting contracts; providing for preemption of conflicting laws; providing that audits of local governments shall report on compliance with said section; providing powers and duties of the Joint Legislative Auditing Committee, the Department of Revenue, the Department of Banking and Finance, and the Department of Community Affairs to enforce compliance; amending s. 11.45, F.S.; revising authority of the Department of Revenue and the Department of Banking and Finance to follow up on entities that fail to submit required audits; amending s. 218.32, F.S.; revising authority of the Department of Banking and Finance to follow up on entities that fail to file annual financial reports; amending s. 218.38, F.S.; revising authority of the Department of Revenue and the Department of Banking and Finance to follow up on entities that fail to verify or file certain information; amending ss. 28.33 and 219.075, F.S.; providing for application of s. 218.415, F.S., to investment of county funds by clerks of the circuit courts and investment of surplus funds by county officers; amending s. 159.416, F.S.; providing for application of s. 218.415, F.S., to investments made in connection with a pool financing program under the Florida Industrial Development Financing Act; amending s. 236.24, F.S.; deleting provisions that specify requirements with respect to investment of surplus funds by school boards; amending s. 236.49, F.S.; providing for application of s. 218.415(16), F.S., to investment of surplus funds derived from school district bond issues; amending s. 237.211, F.S.; correcting a reference; repealing ss. 125.31, 166.261,

and 218.345, F.S., which specify requirements with respect to investment of surplus funds by counties, municipalities, and special districts, s. 230.23(10)(k), F.S., which provides requirements with respect to adoption of investment policies by school boards, and s. 237.161(5), F.S., which authorizes school boards to invest surplus assets as obligations for a period of 1 year; providing an effective date.

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

Section 1. Subsections (7) and (8) of section 112.625, Florida Statutes, are amended, and subsection (9) is added to said section, to read:

112.625 Definitions.—As used in this act:

(7) "Statement value" means the value of assets in accordance with s. 302(c)(2) of the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury. Assets for which a fair market value is not provided shall be excluded from the assets used in the determination of annual funding cost.

(8) "Named fiduciary," "board," or "board of trustees" means the person or persons so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated.

(9) "Plan sponsor" means the local governmental entity that has established or that may establish a local retirement system or plan.

Section 2. Section 112.661, Florida Statutes, is created to read:

112.661 Investment policies.—Investment of the assets of any local retirement system or plan must be consistent with a written investment policy adopted by the board. Such policies shall be structured to maximize the financial return to the retirement system or plan consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets.

(1) SCOPE.—The investment policy shall apply to funds under the control of the board.

(2) INVESTMENT OBJECTIVES.—The investment policy shall describe the investment objectives of the board.

(3) PERFORMANCE MEASUREMENT.—The investment policy shall specify performance measures as are appropriate for the nature and size of the assets within the board's custody.

(4) INVESTMENT AND FIDUCIARY STANDARDS.—The investment policy shall describe the level of prudence and ethical standards to be followed by the board in carrying out its investment activities with respect to funds described in this section. The board in performing its investment duties shall comply with the fiduciary standards set forth in the Employee

Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this section shall prevail.

(5) AUTHORIZED INVESTMENTS.—

(a) The investment policy shall list investments authorized by the board. Investments not listed in the investment policy are prohibited. Unless otherwise authorized by law or ordinance, the investment of the assets of any local retirement system or plan covered by this part shall be subject to the limitations and conditions set forth in s. 215.47(1), (2), (3), (4), (5), (6), (7), (8), (10), and (16).

(b) If a local retirement system or plan has investments that, on October 1, 2000, either exceed the applicable limit or do not satisfy the applicable investment standard, such excess or investment not in compliance with the policy may be continued until such time as it is economically feasible to dispose of such investment. However, no additional investment may be made in the investment category which exceeds the applicable limit, unless authorized by law or ordinance.

(6) MATURITY AND LIQUIDITY REQUIREMENTS.—The investment policy shall require that the investment portfolio be 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 funds within the custody of the board.

(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 board.

(9) EXPECTED ANNUAL RATE OF RETURN.—The investment policy shall require that, for each actuarial valuation, the board determine the total expected annual rate of return for the current year, for each of the next several years, and for the long term thereafter. This determination must be filed promptly with the Department of Management Services and with the plan's sponsor and the consulting actuary. The department shall use this determination only to notify the board, the plan's sponsor, and consulting actuary of material differences between the total expected annual rate of return and the actuarial assumed rate of return.

(10) THIRD-PARTY CUSTODIAL AGREEMENTS.—The investment policy shall provide appropriate arrangements for the holding of assets of

the board. Securities should be held with a third party, and all securities purchased by, and all collateral obtained by, the board should be properly designated as an asset of the board. No withdrawal of securities, in whole or in part, shall be made from safekeeping except by an authorized member of the board or the board's designee. 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 investment policy 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.—The investment policy shall provide that the board determine the approximate maturity date based on cash-flow needs and market conditions, analyze and select one or more optimal types of investment, and competitively bid the security in question when feasible and appropriate. Except as otherwise required by law, the most economically advantageous bid must be selected.

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

(14) CONTINUING EDUCATION.—The investment policy shall provide for the continuing education of the board members in matters relating to investments and the board's responsibilities.

(15) REPORTING.—The investment policy shall provide for appropriate annual or more frequent reporting of investment activities. To that end, the board shall prepare periodic reports for submission to the governing body of the unit of local government which shall include investments 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.

(16) FILING OF INVESTMENT POLICY.—Upon adoption by the board, the investment policy shall be promptly filed with the Department of Management Services and the plan's sponsor and consulting actuary. The effective date of the investment policy, and any amendment thereto, shall be the 31st calendar day following the filing date with the plan sponsor.

(17) VALUATION OF ILLIQUID INVESTMENTS.—The investment policy shall provide for the valuation of illiquid investments for which a

generally recognized market is not available or for which there is no consistent or generally accepted pricing mechanism. If those investments are utilized, the investment policy must include the criteria set forth in s. 215.47(6), except that submission to the Investment Advisory Council is not required. The investment policy shall require that, for each actuarial valuation, the board must verify the determination of the fair market value for those investments and ascertain that the determination complies with all applicable state and federal requirements. The investment policy shall require that the board disclose to the Department of Management Services and the plan's sponsor each such investment for which the fair market value is not provided.

Section 3. Section 218.415, Florida Statutes, is amended to read:

218.415 Local government investment policies.—Investment activity by a unit of local government 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 (17) ~~(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)-(16) ~~(1)-(14)~~, or shall meet the alternative investment guidelines contained in subsection (17) ~~(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 its ~~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 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 investment policy ~~unit of local government~~ shall specify ~~develop~~ performance measures as are appropriate for the nature and size of the public funds within the ~~its~~ custody of the unit of local government.

(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) LISTING OF AUTHORIZED INVESTMENTS.—The investment policy shall list investments authorized by the governing body of the unit of local government, subject to the provisions of subsection (16) ~~investments~~. Investments not listed in the investment policy are prohibited. If the policy authorizes investments in derivative products, the policy must require that ~~must be specifically authorized in the investment plan and may be considered only if~~ the unit of local government's officials responsible for making investment decisions or chief financial officer have ~~has~~ developed sufficient understanding of the derivative products and have ~~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. If the policy authorizes investments in ~~The use of~~ reverse repurchase agreements or other forms of leverage, the policy must limit the investments ~~shall be prohibited or limited by investment policy~~ to transactions in which ~~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 investment policy ~~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.—The investment policy shall require that the unit of local government's staff determine the approximate maturity date based on cash-flow needs and market conditions, analyze and select one or more optimal types of investment, and competitively bid the security in question when feasible and appropriate. Except as otherwise required by law, the bid deemed to best meet the investment objectives specified in subsection (2) must be selected. ~~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 officials responsible for making investment decisions or 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) CONTINUING EDUCATION.—The investment policy shall provide for the continuing education of the unit of local government's officials responsible for making investment decisions or chief financial officer. Such officials must annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products.

(15)~~(14)~~ REPORTING.—The investment policy shall provide for appropriate annual or more frequent reporting of investment activities. To that end, the governmental entity's officials responsible for making investment decisions or 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.

(16) AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES.—Those units of local government electing to adopt a written investment policy as provided in subsections (1)-(15) may by resolution invest and reinvest any surplus public funds in their control or possession in:

(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) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02.

(d) Direct obligations of the United States Treasury.

(e) Federal agencies and instrumentalities.

(f) Securities of, or other interests in, any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations, and provided that such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.

(g) Other investments authorized by law or by ordinance for a county or a municipality.

(h) Other investments authorized by law or by resolution for a school district or a special district.

(17)~~(15)~~ AUTHORIZED INVESTMENTS; NO WRITTEN INVESTMENT POLICY ~~ALTERNATIVE INVESTMENT GUIDELINES~~.—Those units of local government electing not to adopt a written investment policy in accordance with investment policies developed as provided in subsections (1)-(15) may invest or reinvest any surplus public funds in their control or possession in: ~~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) Interest-bearing time deposits or 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.~~

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

~~(f) Federal agencies and instrumentalities.~~

The securities listed in paragraphs (c) and~~,~~ (d)~~, (e), and (f)~~ shall be invested to provide sufficient liquidity to pay obligations as they come due ~~match investment maturities with current expenses~~.

(18) SECURITIES; DISPOSITION.—

(a) Every security purchased under this section on behalf of the governing body of a unit of local government must be properly earmarked and:

1. If registered with the issuer or its agents, must be immediately placed for safekeeping in a location that protects the governing body's interest in the security;

2. If in book entry form, must be held for the credit of the governing body by a depository chartered by the Federal Government, the state, or any other state or territory of the United States which has a branch or principal place of business in this state as defined in s. 658.12, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in this state, and must be kept by the depository in an account separate and apart from the assets of the financial institution; or

3. If physically issued to the holder but not registered with the issuer or its agents, must be immediately placed for safekeeping in a secured vault.

(b) The unit of local government's governing body may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held, together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the Federal Government, this state, or any other state or territory of the United States which has a branch or principal place of business in this state as defined in s. 658.12, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in this state.

(19) SALE OF SECURITIES.—When the invested funds are needed in whole or in part for the purposes originally intended or for more optimal investments, the unit of local government's governing body may sell such

investments at the then-prevailing market price and place the proceeds into the proper account or fund of the unit of local government.

(20) PREEXISTING CONTRACT.—Any public funds subject to a contract or agreement existing on October 1, 2000, may not be invested contrary to such contract or agreement.

(21) PREEMPTION.—Any provision of any special act, municipal charter, or other law which prohibits or restricts a local governmental entity from complying with this section or any rules adopted under this section is void to the extent of the conflict.

(22) AUDITS.—Certified public accountants conducting audits of units of local government pursuant to s. 11.45 shall report, as part of the audit, whether or not the unit of local government has complied with this section.

(23) AUDITOR GENERAL; REVIEW.—During the Auditor General's review of audit reports of units of local government, the Auditor General shall contact those units of local government not in compliance with this section and request evidence of corrective action. If the unit of local government does not provide the Auditor General with evidence of corrective action within 45 days after the date it is requested, the Auditor General shall then notify the Joint Legislative Auditing Committee of any unit of local government not in compliance with this section. Following notification of failure by a local government to comply with this section, a hearing may be scheduled by the committee. If a hearing is scheduled, the committee shall determine which units of local government will be subjected to further state action. If the committee finds that one or more units of local government should be subjected to further state action, the committee shall:

(a) In the case of a county, municipality, or district school board, request the Department of Revenue and the Department of Banking and Finance to withhold any funds not pledged for bond debt service satisfaction which are payable to such governmental entity. The Department of Revenue and the Department of Banking and Finance are authorized to implement the provisions of this paragraph. The committee, in its request, shall specify the date such action shall begin, and the request must be received by the Department of Revenue and the Department of Banking and Finance 30 days before the date of the distribution mandated by law.

(b) In the case of a special district, notify the Department of Community Affairs that the special district has failed to comply with this section. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to the provisions specified in ss. 189.421 and 189.422.

Section 4. Paragraph (a) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; audits; reports.—

(3)(a)1. The Auditor General shall annually make financial audits of the accounts and records of all state agencies, as defined in this section, of all district school boards in counties with populations of fewer than 125,000,

according to the most recent federal decennial statewide census, and of all district boards of trustees of community colleges. The Auditor General shall, at least every other year, make operational audits of the accounts and records of all state agencies, as defined in this section. The Auditor General shall, at least once every 3 years, make financial audits of the accounts and records of all district school boards in counties with populations of 125,000 or more. For each of the 2 years that the Auditor General does not make the financial audit, each district school board shall contract for an independent certified public accountant to perform a financial audit as defined in paragraph (1)(b). This section does not limit the Auditor General's discretionary authority to conduct performance audits of these governmental entities as authorized in subparagraph 3. A district school board may select an independent certified public accountant to perform a financial audit as defined in paragraph (1)(b) notwithstanding the notification provisions of this section. In addition, a district school board may employ an internal auditor to perform ongoing financial verification of the financial records of a school district, who must report directly to the district school board or its designee. The Auditor General shall, at a minimum, provide to the successor independent certified public accountant of a district school board the prior year's working papers, including documentation of planning, internal control, audit results, and other matters of continuing accounting and auditing significance, such as the working paper analysis of balance sheet accounts and those relating to contingencies.

2. Each charter school established under s. 228.056 shall have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its funds. The independent certified public accountant who is selected to perform an annual financial audit of the charter school shall provide a copy of the audit report to the district school board, the Department of Education, and the Auditor General. A management letter must be prepared and included as a part of each financial audit report. The Auditor General may, pursuant to his or her own authority or at the direction of the Joint Legislative Auditing Committee, conduct an audit of a charter school.

3. The Auditor General may at any time make financial audits and performance audits of the accounts and records of all governmental entities created pursuant to law. The audits referred to in this subparagraph must be made whenever determined by the Auditor General, whenever directed by the Legislative Auditing Committee, or whenever otherwise required by law or concurrent resolution. A district school board, expressway authority, or bridge authority may require that the annual financial audit of its accounts and records be completed within 12 months after the end of its fiscal year. If the Auditor General is unable to meet that requirement, the Auditor General shall notify the school board, the expressway authority, or the bridge authority pursuant to subparagraph 5.

4. The Office of Program Policy Analysis and Government Accountability within the Office of the Auditor General shall maintain a schedule of performance audits of state programs. In conducting a performance audit of a

state program, the Office of Program Policy Analysis and Government Accountability, when appropriate, shall identify and comment upon alternatives for accomplishing the goals of the program being audited. Such alternatives may include funding techniques and, if appropriate, must describe how other states or governmental units accomplish similar goals.

5. If by July 1 in any fiscal year a district school board or local governmental entity has not been notified that a financial audit for that fiscal year will be performed by the Auditor General pursuant to subparagraph 3., each municipality with either revenues or expenditures of more than $100,000, each special district with either revenues or expenditures of more than $50,000, and each county agency shall, and each district school board may, require that an annual financial audit of its accounts and records be completed, within 12 months after the end of its respective fiscal year, by an independent certified public accountant retained by it and paid from its public funds. An independent certified public accountant who is selected to perform an annual financial audit of a school district must report directly to the district school board or its designee. A management letter must be prepared and included as a part of each financial audit report. Each local government finance commission, board, or council, and each municipal power corporation, created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), shall provide the Auditor General, within 12 months after the end of its fiscal year, with an annual financial audit report of its accounts and records and a written statement or explanation or rebuttal concerning the auditor's comments, including corrective action to be taken. The county audit shall be one document that includes a separate audit of each county agency. The county audit must include an audit of the deposits into and expenditures from the Public Records Modernization Trust Fund. The Auditor General shall tabulate the results of the audits of the Public Records Modernization Trust Fund and report a summary of the audits to the Legislature annually.

6. The governing body of a municipality, special district, or charter school must establish an auditor selection committee and competitive auditor selection procedures. The governing board may elect to use its own competitive auditor selection procedures or the procedures outlined in subparagraph 7.

7. The governing body of a noncharter county or district school board that retains a certified public accountant must establish an auditor selection committee and select an independent certified public accountant according to the following procedure:

a. For each noncharter county, the auditor selection committee must consist of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, and one member of the board of county commissioners or its designee.

b. The committee shall publicly announce, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public notice must include a general description of the audit and must indicate how interested certified public accountants can apply for consideration.

c. The committee shall encourage firms engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.

d. Any certified public accountant desiring to provide auditing services must first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

e. The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, results of recent external quality control reviews, and such other factors as may be determined by the committee to be applicable to its particular requirements.

f. The public must not be excluded from the proceedings under this subparagraph.

g. The committee shall evaluate current statements of qualifications and performance data on file with the committee, together with those that may be submitted by other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services.

h. The committee shall select no fewer than three firms deemed to be the most highly qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; willingness to meet time requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. If fewer than three firms desire to perform the services, the committee shall recommend such firms as it determines to be qualified.

i. If the governing board receives more than one proposal for the same engagement, the board may rank, in order of preference, the firms to perform the engagement. The firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. If the board is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition

to considering their scope and complexity. For contracts over $50,000, the board shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

j. If the board is unable to negotiate a satisfactory contract with any of the selected firms, the committee shall select additional firms, and the board shall continue negotiations in accordance with this subsection until an agreement is reached.

8. At the conclusion of the audit field work, the independent certified public accountant shall discuss with the head of each local governmental entity or the chair's designee or with the chair of the district school board or the chair's designee, or with the chair of the board of the charter school or the chair's designee, as appropriate, all of the auditor's comments that will be included in the audit report. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office. The auditor shall notify each member of the governing body of a local governmental entity for which deteriorating financial conditions exist which may cause a condition described in s. 218.503(1) to occur if actions are not taken to address such conditions.

9. The officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, must be filed with the governing body of the local governmental entity, district school board, or charter school within 30 days after the delivery of the financial audit report.

10. The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all financial audits subject to this section and conducted by independent certified public accountants. The Auditor General, in consultation with the Department of Education, shall develop a compliance supplement for the financial audit of a district school board conducted by an independent certified public accountant. The rules for audits of local governmental entities and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Government Financial Emergencies Act as stated in s. 218.501.

11. Any local governmental entity or district school board financial audit report required under subparagraph 5. or charter school financial audit report required under subparagraph 2. and the officer's written statement of explanation or rebuttal concerning the auditor's comments, including corrective action to be taken, must be submitted to the Auditor General within 45 days after delivery of the audit report to the local governmental entity, district school board, or charter school, but no later than 12 months after the end of the fiscal year. If the Auditor General does not receive the financial audit report within the prescribed period, he or she must notify the Legislative Auditing Committee that the governmental entity or charter school has not complied with this subparagraph. Following notification of failure to submit the required audit report or items required by rule adopted by the Auditor General, a hearing must be scheduled by rule of the committee. After the hearing, the committee shall determine which governmental entities or charter schools will be subjected to further state action. If it finds that one or more governmental entities or charter schools should be subjected to further state action, the committee shall:

a. In the case of a local governmental entity, district school board, or charter school, request the Department of Revenue and the Department of Banking and Finance to withhold any funds not pledged for bond debt service satisfaction which are payable to such governmental entity or charter school until the required financial audit is received by the Auditor General. The Department of Revenue and the Department of Banking and Finance are authorized to implement the provisions of this sub-subparagraph. The committee, in its request, shall specify the date such action shall begin, and the request must be received by the Department of Revenue and the Department of Banking and Finance 30 days before the date of the distribution mandated by law.

b. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required audits. Upon receipt of notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

12.a. The Auditor General, in consultation with the Board of Accountancy, shall review all audit reports submitted pursuant to subparagraph 11. The Auditor General shall request any significant items that were omitted in violation of a rule adopted by the Auditor General. The items must be provided within 45 days after the date of the request. If the Auditor General does not receive the requested items, he or she shall notify the Joint Legislative Auditing Committee.

b. The Auditor General shall notify the Governor and the Joint Legislative Auditing Committee of any audit report reviewed by the Auditor General which contains a statement that the local governmental entity or district school board is in a state of financial emergency as provided in s. 218.503. If the Auditor General, in reviewing any audit report, identifies additional information which indicates that the local governmental entity or district school board may be in a state of financial emergency as provided in s. 218.503, the Auditor General shall request appropriate clarification from the local governmental entity or district school board. The requested

clarification must be provided within 45 days after the date of the request. If the Auditor General does not receive the requested clarification, he or she shall notify the Joint Legislative Auditing Committee. If, after obtaining the requested clarification, the Auditor General determines that the local governmental entity or district school board is in a state of financial emergency as provided in s. 218.503, he or she shall notify the Governor and the Joint Legislative Auditing Committee.

c. The Auditor General shall annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Auditing Committee a summary of significant findings and financial trends identified in audits of local governmental entities, district school boards, and charter schools performed by the independent certified public accountants.

13. In conducting a performance audit of any agency, the Auditor General shall use the Agency Strategic Plan of the agency in evaluating the performance of the agency.

Section 5. Paragraph (e) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(e) If the department does not receive a completed annual financial report from a local governmental entity within the required period, it shall notify the Legislative Auditing Committee of the failure to report. Following receipt of notification of failure to report, the committee shall schedule a hearing for the purpose of receiving additional testimony addressing the failure of local governmental entities to comply with the reporting requirements of this section. After the hearing, the committee shall determine which local governmental entities will be subjected to further state action. If it finds that one or more local governmental entities should be subjected to further state action, the committee shall:

1. In the case of a county or municipality, request the Department of Revenue and the Department of Banking and Finance to withhold any funds <u>not pledged for bond debt service satisfaction which are</u> payable to the county or municipality until the required annual financial report is received by the department. <u>The Department of Revenue and the Department of Banking and Finance are authorized to implement the provisions of this subparagraph. The committee, in its request, shall specify the date such action shall begin, and the request must be received by the Department of Revenue and the Department of Banking and Finance 30 days before the date of distribution mandated by law.</u>

2. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required annual financial report. Upon notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

3. In the case of a special district that is a component unit and that did not provide the financial information required by paragraph (b) to the applicable reporting entity, notify the Department of Community Affairs that the special district has failed to provide the required financial information. Upon notification, the Department of Community Affairs shall proceed pursuant to ss. 189.421 and 189.422.

Section 6. Paragraph (a) of subsection (3) of section 218.38, Florida Statutes, is amended to read:

218.38 Notice of bond issues required; verification.—

(3) If a unit of local government fails to verify pursuant to subsection (2) the information held by the division, or fails to provide the information required by subsection (1), the division shall notify the Legislative Auditing Committee of such failure to comply. Following receipt of such notification of failure to comply with these provisions, a hearing shall be scheduled by the committee for the purpose of receiving testimony addressing the failure of units of local government to comply with the requirements of this section. After the hearing, the committee shall determine which units of local government will be subjected to further state action. If it finds that one or more units of local government should be subjected to further state action, the committee shall:

(a) In the case of a unit of local government, request the Department of Revenue and the Department of Banking and Finance to withhold any funds not pledged for bond debt service satisfaction which are payable to such governmental entity. The Department of Revenue and the Department of Banking and Finance are authorized to implement the provisions of this paragraph. The committee, in its request, shall specify the date such action shall begin, and the request must be received by the Department of Revenue and the Department of Banking and Finance 30 days before the date of the distribution mandated by law.

Section 7. Section 28.33, Florida Statutes, is amended to read:

28.33 Investment of county funds by the clerk of the circuit court.—The clerk of the circuit court in each county shall invest county funds in excess of those required to meet expenses as provided in s. 218.415. ~~make an estimate of his or her projected financial needs for the county and shall invest any funds in designated depository banks in interest-bearing certificates or in any direct obligations of the United States in compliance with federal laws relating to receipt of and withdrawal of deposits. All investments shall be open for bid to all qualified depositories in the county. The clerk shall select the highest and best bid for deposit. All bids received by the clerk shall include, but not be limited to, the interest rate to be earned and the total amount of dollar return to be paid to the clerk. In the event of a like bid between two or more banks, the moneys shall be divided and deposited in each bank, so long as the total interest income from the divided deposits will not be less than the total interest income had the deposits not been divided. If at the time of bid the dollar return on direct obligations of the Federal Government is greater than the highest bank return, then the clerk shall invest in the higher return security. Moneys deposited in the~~

~~registry of the court shall be deposited in interest-bearing certificates at the discretion of the clerk, subject to the above guidelines.~~ No clerk investing such funds shall be liable for the loss of any interest when circumstances require the withdrawal of funds placed in a time deposit and needed for immediate payment of county obligations. ~~In any county where local banks refuse to bid on securing such money on interest-bearing certificates, the clerk may request and receive bids from banks in other counties within the state and make such deposits to the successful bidder.~~ Except for interest earned on moneys deposited in the registry of the court, all interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court investing such moneys and shall be deposited in the same account as are other fees and commissions of the clerk's office. The clerk may invest moneys deposited in the registry of the court and shall retain as income of the office of the clerk and as a reasonable investment management fee 10 percent of the interest accruing on those funds with the balance of such interest being allocated in accordance with the interest of the depositors. ~~Each clerk shall, as soon as practicable after the end of the fiscal year, report to the county governing authority the total interest earned on all investments during the preceding year.~~

Section 8. Subsection (9) of section 159.416, Florida Statutes, is amended to read:

159.416 Pool financings.—

(9) Proceeds of bonds and moneys held for the payment of debt service on bonds, including, but not limited to, amounts held in the loan fund, any reserve fund, or debt service fund for the bonds, may be invested in investments authorized by or pursuant to an ordinance or resolution providing for the issuance of the bonds or any trust agreement or trust indenture or other instrument approved by such ordinance or resolution, including, but not limited to, investments described in s. 218.415 ~~ss. 28.33, 125.31, 166.261, 218.345, 219.075, and 236.24 and chapter 280~~. The acquisition of any debt obligation or investment contract or investment agreement of any bank, savings and loan association, insurance company, registered broker-dealer, or other financial institution shall be deemed to be an investment and not a loan and therefore need not meet the criteria of subsections (5), (6), and (7).

Section 9. Section 219.075, Florida Statutes, is amended to read:

219.075 Investment of surplus funds by county officers.—

(1)(a) Except when another procedure is prescribed by law or by ordinance as to particular funds, a tax collector or any other county officer having, receiving, or collecting any money, either for his or her office or on behalf of and subject to subsequent distribution to another officer of state or local government, while such money is in excess of that required to meet current expenses ~~surplus to current needs of his or her office~~ or is pending distribution, shall invest such money, without limitation, as provided in s. 218.415. ~~in:~~

~~1. The Local Government Surplus Funds Trust Fund, as created by s. 218.405;~~

~~2. Bonds, notes, or other obligations of the United States guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends;~~

~~3. Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law; or~~

~~4. Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.~~

(b) These investments shall be planned so as not to slow the normal distribution of the subject funds. The investment earnings shall be reasonably apportioned and allocated and shall be credited to the account of, and paid to, the office or distributee, together with the principal on which such earnings accrued.

(2) Except when another procedure is prescribed by law, ordinance, or court order as to particular funds, the tax collector shall, as soon as feasible after collection, deposit in a bank designated as a depository of public funds, as provided in s. 658.60, all taxes, fees, and other collections received by him or her and held prior to distribution to the appropriate taxing authority. Immediately after such funds have cleared and have been properly credited to the tax collector's ~~his or her~~ account, the tax collector shall invest such funds according to the provisions of s. 218.415 ~~this section~~. The earnings from such investments shall be apportioned at least quarterly on a pro rata basis to the appropriate taxing authorities. However, the tax collector may deduct therefrom such reasonable amounts as are necessary to provide for costs of administration of such investments and deposits.

(3) The State Board of Administration may establish a schedule and guidelines to be followed by tax collectors making deposits ~~and investments~~ under the provisions of subsection (2).

~~(4) The provisions of this section are subject to the provisions of s. 218.415.~~

Section 10. Section 236.24, Florida Statutes, is amended to read:

236.24 Sources of district school fund.—

~~(1)~~ The district school fund shall consist of funds derived from the district school tax levy; state appropriations; appropriations by county commissioners; local, state, and federal school food service funds; any and all other sources for school purposes; national forest trust funds and other federal sources; and gifts and other sources.

~~(2)(a) Unless otherwise authorized by law or by ordinance, each school board shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:~~

~~1. The Local Government Surplus Funds Trust Fund;~~

~~2. Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;~~

~~3. Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02;~~

~~4. Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;~~

~~5. Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or~~

~~6. Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations, and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.~~

~~(b)1. Securities purchased by any such school board under the authority of this law shall be delivered by the seller to the school board or its appointed safekeeper. The safekeeper shall be a qualified bank or trust company chartered to operate as such by the State of Florida, any other state or territory of the United States, or the United States Government, that has a branch or principal place of business in this state as defined in s. 658.12. The safekeeper shall issue documentation for each transaction, and a monthly statement detailing all transactions for the period.~~

~~2. Securities physically delivered to the school board shall be placed in a safe-deposit box in a bank or other institution located within the county~~

~~and duly licensed and insured. Withdrawals from such safe-deposit box shall be only by persons duly authorized by resolution of the school board.~~

~~3. The school board may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government, the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12, or their designated agents.~~

~~(c) When the money invested in such securities is needed in whole or in part for the purposes originally intended, the school board is authorized to sell such security or securities at the then prevailing market price and to pay the proceeds of such sale into the proper account or fund of the school board.~~

~~(d) For the purposes of this law, the term "surplus funds" is defined as funds in any general or special account or fund of the school board, held or controlled by the school board, which funds are not reasonably contemplated to be needed for the purposes intended within a reasonable time from the date of such investment.~~

~~(e) Any surplus public funds subject to a contract or agreement on the date of this enactment shall not be invested contrary to such contract or agreement.~~

~~(f) The provisions of this subsection are supplemental to any and all other laws relating to the legal investments by school boards.~~

~~(3) Investments made pursuant to this section may be in book-entry form and may be under repurchase agreements.~~

~~(4) The provisions of this section are subject to the provisions of s. 218.415.~~

Section 11. Paragraph (a) of subsection (2) of section 236.49, Florida Statutes, is amended to read:

236.49 Proceeds; how expended.—The proceeds derived from the sale of said bonds shall be held by the school board and shall be expended by the board for the purpose for which said bonds were authorized for said school district, and shall be held and expended in the manner following:

(2) All or any part of the fund derived from the proceeds of any such bond issue that in the judgment of the school board is not immediately needed may be placed in the following securities maturing not later than the time when the funds are reasonably expected to be needed:

(a) In investments <u>listed in s. 218.415(16)</u> ~~authorized in s. 236.24(2)(a) for the district school fund~~.

Section 12. Paragraph (b) of subsection (6) of section 237.211, Florida Statutes, is amended to read:

237.211 School depositories; payments into and withdrawals from depositories.—

(6) EXEMPTION FOR SELF-INSURANCE PROGRAMS AND THIRD-PARTY ADMINISTERED EMPLOYEES' FRINGE BENEFIT PROGRAMS.—

(b) The school board is authorized to contract with an insurance company or professional administrator who holds a valid certificate of authority issued by the Department of Insurance to provide any or all services that a third-party administrator is authorized by law to perform. Pursuant to such contract, the school board may advance or remit money to the administrator to be deposited in a designated special checking account for paying claims against the school board under its self-insurance programs, and remitting premiums to the providers of insured benefits on behalf of the school board and the participants in such programs, and otherwise fulfilling the obligations imposed upon the administrator by law and the contractual agreements between the school board and the administrator. The special checking account shall be maintained in a designated district school depository. The school board may replenish such account as often as necessary upon the presentation by the service organization of documentation for claims or premiums due paid equal to the amount of the requested reimbursement. Such replenishment shall be made by a warrant signed by the chair of the board and countersigned by the superintendent. Such replenishment may be made by electronic, telephonic, or other medium, and each transfer shall be confirmed in writing and signed by the superintendent or his or her designee. The provisions of strict accountability of all funds and an annual audit by an independent certified public accountant as provided in s. 230.23(10)(k)~~(l)~~ shall apply to this subsection.

Section 13. Sections 125.31, 166.261, and 218.345, Florida Statutes, paragraph (k) of subsection (10) of section 230.23, Florida Statutes, and subsection (5) of section 237.161, Florida Statutes, are repealed.

Section 14. This act shall take effect October 1, 2000.

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.