

STORAGE NAME: h0661.ca

DATE: March 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 661

RELATING TO: Investment of Public Funds

SPONSOR(S): Representative Livingston

STATUTE(S) AFFECTED: Sections 218.403 and 218.415, F.S.

COMPANION BILL(S): SB 332 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill amends the definitions section of the "Investment of Local Government Surplus Funds Act" by adding definitions for the terms "current expenses" and "short term." "Current expenses" means the expenses to meet the known cash needs and anticipated cash-flow requirements for the short term. "Short term" means a maximum of six months of operation.

The bill also clarifies that investment activity by a unit of local government must either be consistent with a written investment plan or limited to alternative investments allowed by general law.

This bill has no fiscal impact on state government.

This bill may affect the manner in which local governments handle their fiscal affairs, but the bill has no direct fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pursuant to sections 125.31, 166.261, 218.345, 219.075, and 236.24, F.S., counties, cities, special districts, county officers, and district school boards are authorized to invest surplus public funds. All of these statutes specify that the government entities may choose to invest in the Local Government Surplus Funds Trust Fund administered by the State Board of Administration (SBA), or they may invest the funds themselves in certain federal obligations and in specified types of securities.

Under part IV of chapter 218, F.S., the "Investment of Local Government Surplus Funds Act" (the Act), the Local Government Surplus Funds Trust Fund is created to serve as a repository for funds deposited by units of local government to be invested by the SBA, in the same manner and subject to the same restrictions as apply to investment of moneys in the Florida Retirement System Trust Fund (section 215.47, F.S., 1996 Supplement). The SBA is also authorized to provide technical assistance to local governments in investment of surplus funds.

In November 1988, the SBA adopted its first Investment Plan by rule. The following year, the Legislature passed chapter 89-299, Laws of Florida, to enact the rule into law under section 218.475, F.S., requiring the SBA to develop the Florida Retirement System Total Fund Investment Plan and restricting the board from making investments that did not conform to the plan. This plan is reviewed and revised from time to time, with a significant reappraisal completed every two years (following the actuarial valuation of the FRS). Local government entities may establish investment plans at their discretion. Many have such plans, but many do not.

In reaction to the financial difficulties of many local governments across the nation, most notably Orange County, California, which resulted from investment of surplus funds in derivatives and other inflation-sensitive investments, the 1995 Legislature amended the Act by creating section 218.415, F.S. Following reports that Escambia and Sarasota Counties had lost millions after investing in risky derivatives, the Florida Association of Court Clerks & Comptrollers formed the Investment Policies and Procedures Task Force, which held three regular meetings to evaluate county investment practices and make recommendations for improvements in practice and statutory law.

Section 218.415, F.S., is based on many of the task force recommendations. That section requires local governmental entities that have custody of public funds, but which choose not to deposit them in the Local Government Surplus Funds Trust Fund for investment by the SBA, to conduct other investment activity in accordance with a written investment plan, or alternatively, to invest in specified low-risk instruments. According to subsection (15), units of local government without an investment plan are limited to investing in the following:

- The Local Government Surplus Funds Trust Fund, or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act.
- Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency.

- Savings accounts in state-certified qualified public depositories.
- Certificates of deposit in state-certified qualified public depositories.

- Direct obligations of the U.S. Treasury.

- Federal agencies and instrumentalities.

“Federal agencies and instrumentalities” include all securities issued by agencies of the federal government or corporations created by Congress, e.g., obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, etc.

Section 218.415, F.S., provides a blueprint for a written investment plan, spelling out required and recommended investment policies to be developed by units of local government. Sections 125.31, 166.261, 218.345, 219.075, and 236.24, F.S., contain cross-references to section 218.415, F.S., and clarify that they are subject to section 218.415, F.S., and supplemental to any other laws relating to legal investments of local governmental entities.

Upon review of section 218.415, F.S., some local government entities have raised technical concerns with the statute. First, the section uses the term “current expenses” without defining that term, and which may be subject to varying definitions at the local level. Second, the language “to the extent that any unit of local government elects to conduct investment activity outside the framework provided by this part, such activity must be consistent . . .” is ambiguous because the section already contains cross-references to other investment statutes and indicates they are supplemental to the provisions of section 218.415, F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill amends the definitions section of the Investment of Local Government Surplus Funds Act by adding definitions for the terms “current expenses” and “short term.” “Current expenses” means the expenses to meet the known cash needs and anticipated cash-flow requirements for the short term. “Short term” means a maximum of six months of operation.

The bill also clarifies that investment activity by a unit of local government must either be consistent with a written investment plan or limited to alternative investments allowed by general law.

Finally, technical changes are made to section 218.415, F.S., including deleting the October 1, 1995, deadline for local government compliance as that date has already passed, and deleting the phrase “as provided by law or local ordinance” as it describes investments which must be listed in a local governmental entity’s investment policy.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Not Applicable (N/A).

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

N/A

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

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No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 218.403, F.S., (the definitions section of the Act) by adding definitions for “current expenses” and “short term.” “Current expenses” means the expenses to meet the known cash needs and anticipated cash-flow requirements for the short term. “Short term” means a maximum of six months of operation.

Section 2: Amends section 218.415, F.S., by deleting the phrases “to the extent that any unit of local government elects to conduct” and “outside the framework provided by this part, such activity” and clarifying that investment activity by a unit of local government must either be consistent with a written investment plan or limited to the alternative investments set forth in subsection (15). This section also inserts the term “current expenses” where applicable to replace “short term” as used in this section.

Finally, this section makes technical changes to section 218.415, F.S., including deleting the October 1, 1995, deadline for local government compliance as that date has already passed, and deleting the phrase “as provided by law or local ordinance” as it describes investments which must be listed in a local governmental entity’s investment policy.

Section 3: Provides that the act shall take effect July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

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D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the expenditure of funds by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment will be offered by the sponsor. The amendment conforms the bill to its Senate companion, SB 332. The amendment deletes "Federal agencies and instrumentalities" from subsection 218.415 (15), F.S., as an authorized alternative investment available to local governmental units without an investment plan.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Jenny Underwood Dietzel

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