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1 A bill to be entitled
 2 An act relating to the Local Government Surplus Funds
 3 Trust Fund; amending s. 218.401, F.S.; revising the
 4 purpose; amending s. 218.403, F.S.; adding definitions;
 5 amending s. 218.405, F.S.; establishing objectives of the
 6 trust fund; providing for Trustee certification; providing
 7 for distribution of interest with contingent effective
 8 date; restricting use of interest except for distribution;
 9 amending s. 218.407, F.S.; providing for enrollment
 10 materials received by and submitted from local government
 11 to invest in trust fund; requiring funds to be invested in
 12 pooled investment account; amending s. 218.409, F.S.;
 13 revising administration of trust fund; providing standards
 14 of care including level of prudence, ethics and conflicts
 15 of interest, and internal controls; providing for review
 16 and approval of investment policy and controls; providing
 17 for reports; revising use and disclosure of reserves;
 18 requiring investments to be made in pooled account;
 19 requiring establishment and approval of account balance
 20 information system; providing transparency; requiring
 21 monthly reports to certain groups; providing criteria of
 22 the report; requiring marking to market calculation and
 23 reporting; providing criteria; providing for additional
 24 reporting; authorizing limited withdrawals or
 25 contributions to fund under certain circumstances;
 26 providing criteria for use of interest by board; requiring
 27 annual financial audit; requiring audit to be reported to
 28 certain groups; requiring certification report by

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29 Trustees; creating Participant Local Government Advisory
 30 Council; providing for appointments, membership, and
 31 meetings; providing administrative location for Council;
 32 providing powers and limitations of Council; requiring
 33 reports by Council to certain groups; providing an
 34 effective date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Section 218.401, Florida Statutes, is amended
 39 to read:

40 218.401 Purpose.--It is the intent of this part to
 41 promote, through state assistance, the maximization of net
 42 interest earnings on invested surplus funds of local units of
 43 government, based on the principals of investor protection,
 44 mandated transparency, and proper governance, with the goal of
 45 ~~thereby~~ reducing the need for imposing additional taxes.

46 Section 2. Section 218.403, Florida Statutes, is amended
 47 to read:

48 218.403 Definitions.--The following words or terms, when
 49 used in this part, shall have the following meanings:

50 (1) "Board" means the State Board of Administration.

51 (2±) "Chief financial officer" means the mayor, manager,
 52 administrator, clerk, comptroller, treasurer, director of
 53 finance, or other local government official, regardless of the
 54 title of his or her office, charged with administering the
 55 fiscal affairs of a unit of local government.

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56 (~~32~~) "Current expenses" means expenses to meet known cash
57 needs and anticipated cash-flow requirements for the short term.

58 (4) "GASB" means the Governmental Accounting Standards
59 Board.

60 (5) "GFOA" means the Government Finance Officers
61 Association.

62 (~~63~~) "Governing body" means the body or board in which the
63 legislative power of a unit of local government is vested.

64 (~~74~~) "Short term" means a maximum of 6 months of
65 operation.

66 (~~85~~) "Surplus funds" means any funds in any general or
67 special account or fund of a unit of local government, or funds
68 held by an independent trustee on behalf of a unit of local
69 government, which in reasonable contemplation will not be
70 immediately needed for the purposes intended.

71 (~~96~~) "Trust fund" means the pooled investment fund created
72 by s. 218.405 and known as the Local Government Surplus Funds
73 Trust Fund.

74 (10) "Trustees" mean the Trustees of the State Board of
75 Administration.

76 (~~117~~) "Unit of local government" means any governmental
77 entity within the state not part of state government and shall
78 include, but not be limited to, the following and the officers
79 thereof: any county, municipality, school district, special
80 district, clerk of the circuit court, sheriff, property
81 appraiser, tax collector, supervisor of elections, authority,
82 board, public corporations, or any other political subdivision
83 of the state.

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

86 218.405 Local Government Surplus Funds Trust Fund;
87 creation; objectives; certification; interest; rulemaking.—

88 (1) There is hereby created a Local Government Surplus
89 Funds Trust Fund to be administered by the ~~State board of~~
90 Administration or a professional money management firm and to be
91 composed of local government surplus funds deposited therein by
92 units of local government under the procedures established in
93 this part.

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

97 (3) The Trustees shall annually certify to the Joint
98 Legislative Auditing Committee that the trust fund is in
99 compliance with the requirements of this part and has conducted
100 a review of the trust fund and determined that the management of
101 the trust fund is in accord with best investment practices.

102 (4) The board or a professional money management firm
103 shall distribute the cash from the November 2007 interest to the
104 participants owed such funds within 30 days of the passage of HB
105 or similar legislation adopted in the same legislative session
106 or an extension thereof and becomes law. The board or a
107 professional money management firm shall distribute the earnings
108 from the remaining securities that were part of the November
109 2007 interest after the passage of HB or similar legislation
110 adopted in the same legislative session or an extension thereof
111 and becomes law as those securities mature or are sold. In no

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112 event may the board or a professional money management firm use
 113 the November 2007 interest for any other purpose but to be
 114 distributed to the participants owed such interest as described
 115 above.

116 The board may adopt rules to administer the provisions of this
 117 section.

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

120 218.407 Local government investment authority.--

121 (1) Prior to any determination by the governing body that
 122 it is in the interest of the unit of local government to deposit
 123 surplus funds in the trust fund, the board or a professional
 124 money management firm must provide to the governing body
 125 enrollment materials, including a trust fund profile containing
 126 impartial educational information describing the administration
 127 and investment policy of the trust fund including, but not
 128 limited to:

129 (a) Rights and conditions of participation, including
 130 potential restrictions on withdrawals.

131 (b) Historical performance, investment holdings, credit
 132 quality and average maturity of the trust fund investments.

133 (c) Applicable administrative rules.

134 (d) Rate determination processes for any deposit or
 135 withdrawal.

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

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138 (f) Most recently published financial statements or
 139 independent audit, if available, prepared under generally
 140 accepted accounting principles.

141 (g) Disclosure statement for signature by the appropriate
 142 local government official.

143 Upon review of the enrollment materials and upon determination
 144 by the governing body that it is in the interest of the unit of
 145 local government to deposit surplus funds in the trust fund, a
 146 resolution by the governing body and the signed acceptance of
 147 the disclosure statement by the local government official, who
 148 may be the chief financial or administrative officer of the
 149 local government, shall be filed with the ~~State board of~~
 150 ~~Administration~~ and, if appropriate, a copy to a professional
 151 money management firm authorizing investment of its surplus
 152 funds in the trust fund established by this part. The resolution
 153 shall name:

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

156 (b) An independent trustee holding funds on behalf of the
 157 unit of local government, responsible for deposit and withdrawal
 158 of such funds.

159 (2) The ~~State board of Administration~~ or a professional
 160 money management firm shall, upon the filing of the resolution,
 161 invest the moneys in the trust fund in the same manner and
 162 subject to the same restrictions as are set forth in s. 215.47.
 163 ~~Except when authorized by the board,~~ All units of local
 164 government which qualify to be participants in the Local
 165 Government Surplus Funds Trust Fund ~~after January 1, 1982,~~ will

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166 normally have surplus funds deposited into a pooled investment
 167 account.

168 Section 5. Section 218.409, Florida Statutes, is amended
 169 to read:

170 218.409 Administration of the trust fund; creation of
 171 advisory council.--

172 (1) Upon receipt of the itemsresolution specified in s.
 173 218.407, F.S., from the local governing body, the ~~State board of~~
 174 ~~Administration~~ or a professional money management firm shall
 175 accept all wire transfers of funds into the trust fund. The
 176 ~~State board of Administration~~ or a professional money management
 177 firm shall also wire-transfer invested local government funds to
 178 the local government upon request of the local government
 179 official named in the resolution.

180 (2) Standards of Care.

181 (a) Prudence. The Trustees shall insure that the ~~State~~
 182 ~~board of Administration~~ or a professional money management firm
 183 ~~shall administers~~ the investment trust funds on behalf of the
 184 participants. The board or a professional money management firm
 185 ~~and~~ shall have the power to invest such funds in accordance with
 186 a written investment policy. ~~A fee may be charged on any~~
 187 ~~transaction that is not in accord with the close of business as~~
 188 ~~set by the board.~~ The investment policy shall be updated
 189 annually to conform to best investment practices. The standard
 190 of prudence to be used by investment officials shall be the
 191 "prudent person" standard and shall be applied in the context of
 192 managing an overall portfolio. Investment officers acting in
 193 accordance with written procedures and an investment policy and

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194 exercising due diligence shall be relieved of personal
 195 responsibility for an individual security's credit risk or
 196 market price changes, provided deviations from expectations are
 197 reported in a timely fashion and the liquidity and the sale of
 198 securities are carried out in accordance with the terms of this
 199 part. The "prudent person" standard states that, "Investments
 200 shall be made with judgment and care, under circumstances then
 201 prevailing, which persons of prudence, discretion and
 202 intelligence exercise in the management of their own affairs,
 203 not for speculation, but for investment, considering the
 204 probable safety of their capital as well as the probable income
 205 to be derived."

206 (b) Ethics and Conflicts of Interest. Officers and
 207 employees involved in the investment process shall refrain from
 208 personal business activity that could conflict with the proper
 209 execution and management of the investment program, or that
 210 could impair their ability to make impartial decisions.
 211 Employees and investment officials shall disclose any material
 212 interests in financial institutions with which they conduct
 213 business. They shall further disclose any personal
 214 financial/investment positions that could be related to the
 215 performance of the investment portfolio. Employees and officers
 216 shall refrain from undertaking personal investment transactions
 217 with the same individual with whom business is conducted on
 218 behalf of the SBA.

219 (c) Internal Controls. The board or a professional money
 220 management firm and all employees have an affirmative duty to
 221 immediately disclose any material impact to the trust fund to

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222 the participants. To insure such disclosure, a system of
 223 internal controls shall be established by the board, which shall
 224 be documented in writing as part of the investment policy. The
 225 controls shall be designed to prevent the loss of public funds
 226 arising from fraud, employee error, and misrepresentation by
 227 third parties, unanticipated changes in financial markets, or
 228 imprudent actions by employees and officers of the board or a
 229 professional money management firm. The controls shall also
 230 include formal escalation reporting guidelines for all
 231 employees. The guidelines will establish procedures to address
 232 material impacts on the trust fund that require reporting and
 233 action.

234 (d) Approval of Investment Policy. The investment policy
 235 shall be reviewed and approved annually by the Trustees or when
 236 market changes dictate, and in each event the investment policy
 237 shall be reviewed by the Investment Advisory Council and by the
 238 Participant Local Government Advisory Council.

239 (3) The ~~State board of Administration~~ or a professional
 240 money management firm may purchase such surety or other bonds as
 241 may be necessary for its officials in order to protect the trust
 242 fund. A reserve fund may be established to fulfill this purpose.
 243 However, any reserve must be a portion of the management fee and
 244 must fully disclosed, including its purpose, in the enrollment
 245 materials at the time a unit of local government considers
 246 participation. Further, any change in the amount to be charged
 247 for a reserve must have a reasonable notice period to allow any
 248 participant to withdraw from the trust fund prior to the new
 249 reserve charge being imposed.

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250 (4) ~~All investments may be purchased jointly for the~~
 251 ~~participants in the trust fund.~~ The board or a professional
 252 money management firm shall~~may also~~ purchase investments for a
 253 pooled investment account in which all participants ~~may~~ share
 254 pro rata, ~~as determined by rule of the board,~~ in the capital
 255 gain, income, or losses, subject to any penalties for early
 256 withdrawal. Any provisions for penalties, including their
 257 purpose, must be disclosed in the enrollment materials. Any
 258 change in the amount to be charged for a penalty must have a
 259 reasonable notice period to allow any participant to withdraw
 260 from the trust fund prior to the new penalty charge being
 261 imposed. ~~The board shall determine the rate of return for the~~
 262 ~~pooled investment account.~~ A system shall~~may~~ be developed by the
 263 board, and disclosed in the enrollment materials, subject to
 264 annual approval by the Trustees, to keep ~~current~~ account
 265 balances current~~information~~ and to apportion pooled investment
 266 earnings ~~back~~ to individual accounts.

267 (6) (a) Reports. ~~The State board of Administration or a~~
 268 professional money management firm shall provide a report at a
 269 minimum, monthly, semiannually or upon the occurrence of a
 270 material event, ~~request~~ to every participant having a beneficial
 271 interest in the trust fund, the board's executive director, the
 272 Trustees, the Joint Legislative Auditing Committee, the
 273 Investment Advisory Council, and the Participant Local
 274 Government Advisory Council. The report shall include:

275 1. reports of any material impacts on the trust fund, and
 276 any actions or escalations taken by staff to address such
 277 impacts. The Trustees shall provide quarterly a report to the

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278 Joint legislative Auditing Committee that the Trustees have
 279 reviewed and approved the monthly reports and actions taken, if
 280 any, to address any impacts.

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

288 ~~show the changes in investments made during the preceding~~
 289 ~~period. The report shall delineate, in a manner which is in~~
 290 ~~accordance with generally accepted governmental accounting~~
 291 ~~procedures, those funds on deposit, the manner in which the~~
 292 ~~funds are invested, and the interest earnings thereon. The State~~
 293 ~~board of Administration or a professional money management firm~~
 294 ~~shall furnish upon request the details of an investment~~
 295 ~~transaction to any participant, the Trustees, the Investment~~
 296 ~~Advisory Council, and the Participant Local Government Advisory~~
 297 ~~Council.~~

298 (b) Marking to Market Calculation and Reporting. The market
 299 value of the portfolio shall be calculated daily. Withdrawals
 300 from the fund shall be based on a process that is transparent to
 301 participants and will insure that advantages or disadvantages do
 302 not occur to parties making deposits or withdrawals on any
 303 particular day. A statement of the market value and amortized
 304 cost of the portfolio shall be issued to participants in
 305 conjunction with any deposits or withdrawals. In addition, this

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306 information shall be reported monthly with the items in
 307 paragraph (a) to participants, the Trustees, the Investment
 308 Advisory Council, and the Participant Local Government Advisory
 309 Council. The review of the investment portfolio, in terms of
 310 value and price volatility, shall be performed with practices
 311 consistent with the GFOA Recommended Practice on "Mark-to-Market
 312 Practices for State and Local Government Investment Portfolios
 313 and Investment Pools." In defining market value, considerations
 314 should be given to the GASB Statement 31 pronouncement.
 315 Additional reporting may be made to pool participants through
 316 regular and frequent ongoing multi-media educational materials
 317 and communications including, but not limited to, historical
 318 performance, investment holdings, amortized cost and market
 319 value of the trust fund, credit quality and average maturity of
 320 the trust fund investments.

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

332 (8) (a) The principal, and any part thereof, of each and
 333 every account constituting the trust fund shall be subject to

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334 payment at any time from the moneys in the fund. However, the
 335 executive director, may, in good faith, on the occurrence of an
 336 event that has a material impact on liquidity or operations of
 337 the fund, for 48 hours limit contributions to or withdrawals
 338 from the trust fund to ensure that the board can invest monies
 339 entrusted to it in exercising its fiduciary responsibility ~~or as~~
 340 ~~otherwise provided by agreement between the State Board of~~
 341 ~~Administration and the investing unit.~~ Such action shall be
 342 immediately disclosed to all participants, the Trustees, the
 343 Joint Legislative Auditing Committee, the Investment Advisory
 344 Council, and the Local Government Advisory Council. The Trustees
 345 shall convene an emergency meeting as soon as practicable from
 346 the time the executive director has instituted such measures and
 347 review the necessity of those measures. If the Trustees agree
 348 with such measures, the Trustees shall vote to continue the
 349 measures for up to an additional 15 days. The Trustees must
 350 convene and vote to continue any such measures prior to the
 351 expiration of the time limit set, but in no case may the time
 352 limit set by the Trustees exceed 15 days.

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

359 (9) The auditor general shall conduct an annual financial
 360 audit of the trust fund which shall include testing for
 361 compliance with the investment policy. The completed audit shall

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362 be provided to the participants, the board, the Trustees, the
 363 Investment Advisory Council, the Participant Local Government
 364 Advisory Council, and the Joint Legislative Auditing Committee.
 365 As soon as practicable, but no later than 30 days after
 366 completion of the audit, the Trustees shall report to the Joint
 367 Legislative Auditing Committee that the Trustees have reviewed
 368 the audit of the trust fund and shall certify that any necessary
 369 items are being addressed by a corrective action plan which
 370 includes target completion dates.

371 (10) Creation of Participant Local Government Advisory
 372 Council; Membership; Powers and Duties;--

373 (a) The "Participant Local Government Advisory Council" is
 374 created. The Council shall consist of 16 members. The executive
 375 director of the State Board of Administration shall be an ex-
 376 officio member of the Council. The 16 members must be divided as
 377 follows: 13 members must be current participants in the trust
 378 fund; three members must have significant accounting and/or
 379 investment experience. The Governor, the Attorney General, and
 380 the Chief Financial Officer shall each make four appointments,
 381 three from among the trust fund participants, and one with
 382 significant accounting and/or investment experience. The
 383 President of the Senate and the Speaker of the House of
 384 Representatives shall each make two appointments, both from
 385 trust fund participants. In choosing members from trust fund
 386 participants, the appointing official should attempt to choose
 387 participants with differing levels of participation in the trust
 388 fund. The initial appointments to the council must be made
 389 within thirty days from the effective date of this act. Members

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390 shall serve two-year terms; however in order to establish
 391 staggered terms, for the initial appointments, each appointing
 392 official appointing four member shall appoint two members to a
 393 one-year term and two members to a two-year term; each
 394 appointing official appointing two members shall appoint one
 395 member to a one-year term and one member to a two-year term. A
 396 member shall not serve more than three consecutive terms.
 397 Members shall name the chairperson of the Council. A member
 398 whose term has expired shall continue to serve on the Council
 399 until such time as a replacement is appointed. The Council shall
 400 meet quarterly or upon the call of the chairperson. A majority
 401 of the members constitutes a quorum for the conduct of business.
 402 Members of the council shall serve without compensation. The
 403 appointing official may only remove their appointee with cause.
 404 If the entity represented by an appointee ceases to be a
 405 participant in the trust fund, then the appointment is vacated.
 406 Vacancies shall be filled for the remainder of the term and by
 407 the original appointing official.

408 (b) The Council is independent from but administratively
 409 attached to the board. A volunteer Executive Director for the
 410 Council may be chosen by majority vote of the Council.

411 (c) The Council may:

412 1. Provide the board with input regarding proposed
 413 investment policies, internal controls, investment classes,
 414 competitively-bid contracts, and programs that may affect trust
 415 fund participants;

416 2. Consider requests from trust fund participants to
 417 review the board's investment policies, internal controls,

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418 investment classes, competitively-bid contracts, and programs
 419 that may affect trust fund participants; and

420 3. Review rules promulgated by the board. The Council may
 421 provide input on any rule and offer alternatives that the
 422 Council believes reduce the impact on trust fund participants
 423 while meeting the stated objectives of the proposed rule.

424 (d) The Council does not have authority to:

425 1. Interfere with, modify, prevent or delay board action
 426 or investment activities;

427 2. Intervene in legal actions; or

428 3. Subpoena witnesses to testify or to produce documents,
 429 but it may request witnesses to voluntarily testify or produce
 430 documents.

431 (e) The Council shall prepare and submit a written
 432 biennial report to the board, Trustees, the Investment Advisory
 433 Council, and the Joint Legislative Auditing Committee that
 434 describes the activities and recommendations of the Council.

435 Section 6. This act shall take effect upon becoming a law.