

House Bill 1610

By: Representative Williamson of the 115<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,  
2 so as to provide for local government investment policies; to provide scope, investment  
3 objectives, and applicability; to provide for performance measures; to provide of prudence  
4 and ethical standards; to provide for authorized investments; to provide for maturity and  
5 liquidity requirements; to provide for portfolio composition, risk, and diversification  
6 requirements; to authorize third-party custodial agreements; to provide for bid requirements,  
7 internal controls, and continuing education requirements; to provide for reporting; to provide  
8 for authorized investments for written investment policies; to provide for authorized  
9 investments without written investment policies; to provide for securities and deposits; to  
10 authorize sale of securities; to require audits; to authorize certain deposits; to repeal and  
11 reserve existing Code sections relating to relating to authorized investments of funds by  
12 governing bodies, and delegation of governing body's investment authority to financial  
13 officer; to provide for definitions; to amend Code Section 15-6-76.1, relating to investing or  
14 depositing funds and depositing funds paid into court registry, so as to update cross  
15 references; to amend Code Section 15-16-27, relating to deposit of cash bonds and reserves  
16 of professional bondspersons in interest-bearing accounts and disposition of interest, so as  
17 to update cross references; to provide for related matters; to repeal conflicting laws; and for  
18 other purposes.

H. B. 1610

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 SECTION 1.

21 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
22 by enacting a new chapter to read as follows:

23 "CHAPTER 83A

24 36-83A-1.

25 (a) As used in this chapter, the term 'unit of local government' means a county,  
26 municipality, consolidated government, or local authority.

27 (b) This chapter shall apply to funds under the control of units of local government in  
28 excess of those required to meet current expenses. This chapter shall not apply to pension  
29 funds or funds related to the issuance of debt where there are other existing laws, policies,  
30 or indentures in effect for such funds.

31 36-83A-2.

32 Any investment policy made pursuant to this chapter shall describe the investment  
33 objectives of the unit of local government. Investment objectives shall provide for the  
34 following:

35 (1) Safety of capital, with investments shall be managed in a manner that seeks to ensure  
36 preservation of principal in each portfolio of investments;

37 (2) Sufficient liquidity for each portfolio so as to enable the funding of all cash needs  
38 reasonably anticipated given the profile of each respective portfolio;

39 (3) The management of each portfolio shall include the objective of obtaining a market  
40 rate of return taking into consideration cash flow requirements for each respective  
41 portfolio; and

42 (4) The reduction of overall portfolio risks while maintaining market rates of return, by  
43 ensuring that investments in each portfolio are diversified to eliminate risk of loss from  
44 an over concentration in a specific maturity, issuer, including repurchase agreement  
45 dealers, and security or class of securities.

46 36-83A-3.

47 (a) An investment policy shall specify performance measures as are appropriate for the  
48 nature and size of the public funds within the custody of the unit of local government.

49 (b) The investment policy shall describe the level of prudence and ethical standards to be  
50 followed by the unit of local government in carrying out its investment activities with  
51 respect to funds described in this chapter. The unit of local government shall adopt a  
52 Prudent Person Rule, which shall provide that investments shall be made with judgment  
53 and care, under circumstances then prevailing, which persons of prudence, discretion, and  
54 intelligence exercise in the management of their own affairs, not for speculation, but for  
55 investment, considering the probable safety of their capital as well as the probable income  
56 to be derived from the investment.

57 36-83A-4.

58 (a) Investment policies shall list investments authorized by the governing body of the unit  
59 of local government, subject to the provisions of chapter. Investments not listed in the  
60 investment policy are prohibited. If the policy authorizes investments in derivative  
61 products, the policy shall require that the unit of local government's officials responsible  
62 for making investment decisions or chief financial officer have developed sufficient  
63 understanding of the derivative products and have the expertise to manage them. As used  
64 in this subsection, the term 'derivative' means a financial instrument the value of which  
65 depends on, or is derived from, the value of one or more underlying assets or index or asset  
66 values. If the policy authorizes investments in reverse repurchase agreements or other

67 forms of leverage, the policy shall limit the investments to transactions in which the  
68 proceeds are intended to provide liquidity and for which the unit of local government has  
69 sufficient resources and expertise.

70 (b) Investment policies shall require that the investment portfolio is structured in such  
71 manner as to provide sufficient liquidity to pay obligations as they come due. To that end,  
72 the investment policy shall direct that, to the extent possible, an attempt shall be made to  
73 match investment maturities with known cash needs and anticipated cash-flow  
74 requirements.

75 (c) Investment policies shall establish guidelines for investments and limits on security  
76 issues, issuers, and maturities. Such guidelines shall be commensurate with the nature and  
77 size of the public funds within the custody of the unit of local government.

78 (d) Investment policy shall provide for appropriate diversification of the investment  
79 portfolio. Investments held shall be diversified to the extent practicable to control the risk  
80 of loss resulting from overconcentration of assets in a specific maturity, issuer, instrument,  
81 dealer, or bank through which financial instruments are bought and sold. Diversification  
82 strategies within the established guidelines shall be reviewed and revised periodically, as  
83 deemed necessary by the appropriate management staff.

84 (e) Investment policy shall provide appropriate arrangements for the holding of assets of  
85 the unit of local government. Securities shall be held with a third party; and all securities  
86 purchased by, and all collateral obtained by, the unit of local government shall be properly  
87 designated as an asset of the unit of local government. No withdrawal of securities, in  
88 whole or in part, shall be made from safekeeping, except by an authorized staff member  
89 of the unit of local government. Securities transactions between a broker-dealer and the  
90 custodian involving purchase or sale of securities by transfer of money or securities shall  
91 be made on a delivery vs. payment basis, if applicable, to ensure that the custodian shall  
92 have the security or money, as appropriate, in hand at the conclusion of the transaction.

93 36-83A-5.

94 (a) Investment policies shall require that the unit of local government's staff determine the  
95 approximate maturity date based on cash-flow needs and market conditions, analyze and  
96 select one or more optimal types of investment, and competitively bid the security in  
97 question when feasible and appropriate. Except as otherwise required by law, the bid  
98 deemed to best meet the investment objectives specified in Code Section 36-83A-2 shall  
99 be selected.

100 (b) The unit of local government's officials responsible for making investment decisions  
101 with regard to investment policy shall establish a system of internal controls in writing and  
102 made a part of the governmental entity's operational procedures. The internal controls shall  
103 be designed to prevent losses of funds which might arise from fraud, employee error,  
104 misrepresentation by third parties, or imprudent actions by employees of the unit of local  
105 government.

106 (c) Investment policies shall provide for the continuing education of the unit of local  
107 government's officials responsible for making investment decisions or chief financial  
108 officer. Such officials shall annually complete four hours of continuing education in  
109 subjects or courses of study related to investment practices and products.

110 36-83A-6.

111 Investment policies shall provide for appropriate annual or more frequent reporting of  
112 investment activities. The governmental entity's officials responsible for making  
113 investment decisions or chief financial officer shall prepare periodic reports for submission  
114 to the governing body of the unit of local government, which report shall include securities  
115 in the portfolio by class or type, book value, income earned, and market value as of the  
116 report date. Such reports shall be available to the public.

117 36-83A-7.

118 Those units of local government electing to adopt a written investment policy as provided  
119 in this chapter may by resolution invest and reinvest any surplus public funds in their  
120 control or possession in:

121 (1) United States treasury and government guaranteed obligations, and obligations of  
122 principal and interest of which are backed or guaranteed by the full faith and credit of the  
123 government of the United States;

124 (2) Debt obligations, participations or other instruments issued or fully guaranteed by  
125 any agency, instrumentality or government sponsored enterprise of the government of the  
126 United States;

127 (3) Bank deposits held for investment purposes. Such deposit agreements with banks  
128 shall be:

129 (A) Secured by collateral permitted by statute, held by a third-party custodian,  
130 market-to-market daily, and having a market value equal to or exceeding 110 percent  
131 of the deposit;

132 (B) Secured through the Georgia multibank pledging pool program, the Georgia Secure  
133 Deposit Program, with 'required collateral' as such term is defined by the program;

134 (C) Fully secured by a letter-of-credit issued by a Federal Home Loan Bank;

135 (D) Fully secured by a surety bond issued by a financial institution approved by the  
136 State Depository Board;

137 (E) Fully insured by the Federal Deposit Insurance Corporation (FDIC); or

138 (F) Subject to funds being available upon demand, with banks carrying the two highest  
139 short-term rating categories, A-2/P-2 or equivalent, by any nationally recognized  
140 statistical rating organization shall be determined to have adequate capital, with  
141 maximum exposure per institution and adjusted as needed due to the financial condition  
142 of such institutions.

- 143 (4) Commercial paper issued by domestic corporations carrying the highest short-term  
144 rating category, A-1/P-1 or equivalent, by any nationally recognized statistical rating  
145 organization, in an amount, that does not exceed 5 percent of portfolio assets for any  
146 single issuer;
- 147 (5) Obligations issued by this state or any one of the other states of the United States, or  
148 its agencies or other political subdivisions. Such investments shall be rated investment  
149 grade or higher by a nationally recognized rating agency;
- 150 (6) Obligations of domestic corporations including notes, bonds, negotiable certificates  
151 of deposit, and other marketable securities rated investment grade or higher, BBB/Baa  
152 or equivalent, by any nationally recognized statistical rating organization;
- 153 (7) Obligations issued, assumed, or guaranteed by the International Bank for  
154 Reconstruction and Development or the International Financial Corporation in the highest  
155 rating category, AAA/Aaa or equivalent, by any nationally recognized statistical rating  
156 organization, and where the United States is a shareholder and voting member, and the  
157 debt obligation is United States dollar denominated;
- 158 (8) Asset backed securities in the highest rating category, AAA/Aaa or equivalent, by  
159 any nationally recognized statistical rating organization whose underlying collateral  
160 consists of loans, leases or receivables, including but not limited to auto loans and leases,  
161 credit card receivables, student loans, equipment loans/leases, or home equity loans;
- 162 (9) Mortgage backed securities, backed by residential, multifamily or commercial  
163 mortgages, that are issued or fully guaranteed as to principal and interest by an agency  
164 or government sponsored enterprise of the government of the United States, including but  
165 not limited to pass-throughs, collateralized mortgage obligations and real estate mortgage  
166 investment conduits;
- 167 (10) Repurchase agreements that are transacted with authorized institutions that are rated  
168 investment grade by one or more nationally recognized rating agency. Repurchase  
169 agreements shall be collateralized by obligations of the United States and its subsidiary

170 corporations and instrumentalities or entities sanctioned or authorized by the United  
171 States government. Collateral comprising obligations of the United States and its  
172 subsidiary corporations and instrumentalities or entities sanctioned or authorized by the  
173 United States government shall have a market value of at least 102 percent of the  
174 investment and other eligible collateral shall have a market value of 105 percent of the  
175 investment. Collateral shall be held by a third-party custodian and marked to market  
176 daily;

177 (11) Nonnegotiable certificates of deposit, provided that the maximum term of such  
178 certificates shall not exceed five years. All such certificates of deposit shall be fully  
179 insured by the Federal Deposit Insurance Corporation (FDIC) or secured by collateral  
180 permitted by statute. Pledged securities shall be held by a third-party custodian. Pledged  
181 securities shall be marked-to-market at least monthly, and thereafter maintain upon  
182 notification of any shortfall, collateral having a market value equal to 110 percent of  
183 certificates of deposit or be secured through the Georgia multibank pledging pool  
184 program, the Secure Deposit Program, with 'required collateral' as such term is defined  
185 by the program;

186 (12) Negotiable bank certificates of deposit, deposit notes, or other deposit obligations  
187 issued by a nationally or state chartered bank, credit union, or savings association, or by  
188 a federally or state licensed branch of a foreign bank or financial institution;

189 (13) Georgia Fund 1, Georgia Fund 1 Plus, Georgia Extended Asset Pool, Georgia  
190 Extended Asset Pool Plus, and any other funds comprising the local government  
191 investment pool in amounts necessary for prudent diversification, liquidity, and  
192 investment income;

193 (14) Shares in open-end and no-load money market mutual funds, excluding prime  
194 funds, provided that such funds are registered under the Investment Company Act of  
195 1940 and operate in accordance with Rule 2a-7 of such act; or



196 (15) Such other limitations or investments as determined by the local government's  
197 governing body to be necessary for the preservation of principal, liquidity, or  
198 marketability of any of the portfolios.

199 36-83A-8.

200 Those units of local government electing not to adopt a written investment policy in  
201 accordance with this chapter may only invest or reinvest any surplus public funds in their  
202 control or possession in:

203 (1) Georgia Fund 1, Georgia Fund 1 Plus, Georgia Extended Asset Pool, Georgia  
204 Extended Asset Pool Plus, and any other funds comprising the local government  
205 investment pool in amounts necessary for prudent diversification, liquidity, and  
206 investment income;

207 (2) Shares in open-end and no-load money market mutual funds, excluding prime funds,  
208 provided that such funds are registered under the Investment Company Act of 1940 and  
209 operate in accordance with Rule 2a-7 of such act;

210 (3) United States Treasury and obligations the principal and interest of which are backed  
211 or guaranteed by the full faith and credit of the government of the United States; and

212 (4) Bank deposits as provided for in paragraph (3) of Code Section 36-83A-7;  
213 provided, however, that the securities listed in this Code section shall be invested to  
214 provide sufficient liquidity to pay obligations as they come due.

215 36-83A-9.

216 (a) Every security purchased under this chapter on behalf of the governing body of a unit  
217 of local government shall be properly earmarked and:

218 (1) If registered with the issuer or its agents, shall be immediately placed for safekeeping  
219 in a location that protects the governing body's interest in the security;

220 (2) If in book entry form, shall be held for the credit of the governing body by a  
221 depository chartered by the government of the United States, the state, or any other state  
222 or territory of the United States which has a branch or principal place of business in this  
223 state, or by a national association organized and existing under the laws of the United  
224 States which is authorized to accept and execute trusts and which is doing business in this  
225 state, and shall be kept by the depository in an account separate and apart from the assets  
226 of the financial institution; or

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

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

237 36-83A-10.

238 When the invested funds are needed in whole or in part for the purposes originally intended  
239 or for more optimal investments, the unit of local government's governing body may sell  
240 such investments at the then-prevailing market price and place the proceeds into the proper  
241 account or fund of the unit of local government.

242 36-83A-11.  
243 Certified public accountants conducting audits of units of local government pursuant to  
244 Code Section 36-81-7 shall report, as part of such audit, whether or not the unit of local  
245 government has complied with this chapter

246 36-83A-12.  
247 In addition to the investments authorized for local governments in Code Sections 36-83A-7  
248 and 36-83A-8 and notwithstanding any other provisions of this chapter, a unit of local  
249 government may deposit any portion of surplus public funds in its control or possession in  
250 accordance with the following conditions:

251 (1) The funds are initially deposited in a depository, as defined in Code Section 45-8-1,  
252 selected by the unit of local government;

253 (2) The selected depository arranges for depositing the funds in financial deposit  
254 instruments insured by the Federal Deposit Insurance Corporation (FDIC) or more  
255 federally insured banks or savings and loan associations, wherever located, for the  
256 account of the unit of local government;

257 (3) The full amount of the principal and accrued interest of each financial deposit  
258 instrument is insured by the Federal Deposit Insurance Corporation (FDIC); and

259 (4) The selected depository acts as custodian for the unit of local government with  
260 respect to each financial deposit instrument issued for its account."

261 **SECTION 2.**

262 Said title is further amended by repealing and reserving Code Section 36-80-3, relating to  
263 authorized investments of funds by governing bodies, and Code Section 36-80-4, relating to  
264 delegation of governing body's investment authority to financial officer.

265 **SECTION 3.**

266 Code Section 15-6-76.1, relating to investing or depositing funds and depositing funds paid  
267 into court registry, is amended by revising subsection (c) as follows:

268 "(c) When funds are paid into the registry of the court, the clerk shall deposit such funds  
269 in one or more interest-bearing trust accounts in investments authorized by ~~Code Section~~  
270 ~~36-80-3~~ or by Chapter 83 or 83A of Title 36."

271 **SECTION 4.**

272 Code Section 15-16-27, relating to deposit of cash bonds and reserves of professional  
273 bondspersons in interest-bearing accounts and disposition of interest, is amended by revising  
274 subsection (a) as follows:

275 "(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds  
276 held by the sheriff in one or more interest-bearing trust accounts in investments authorized  
277 by ~~Code Section 36-80-3~~ or by Chapter 83 or 83A of Title 36."

278 **SECTION 5.**

279 All laws and parts of laws in conflict with this Act are repealed.