

House Bill 531 (COMMITTEE SUBSTITUTE)

By: Representatives Barrett of the 24th, Williamson of the 112th, Hilton of the 48th, and Seabaugh of the 34th

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 for 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 authorized investments of funds by governing
12 bodies and delegation of governing body's investment authority to financial officer; to
13 provide for definitions; to amend Code Section 15-6-76.1, relating to investing or depositing
14 funds and depositing funds paid into court registry, so as to update cross references; to amend
15 Code Section 15-16-27, relating to deposit of cash bonds and reserves of professional
16 bondspersons in interest-bearing accounts and disposition of interest, so as to update cross
17 references; to amend Code Section 20-2-411, relating to school fund kept separate, use of

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18 funds, separation of school taxes, and investments, so as to authorize additional investment
19 options; to provide for related matters; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

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

24 "CHAPTER 83A

25 36-83A-1.

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

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

33 36-83A-2.

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

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

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

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

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

47 36-83A-3.

48 (a) An investment policy should specify performance measures as are appropriate for the
49 nature and size of the surplus public funds under the supervision of the unit of local
50 government.

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

59 36-83A-4.

60 (a) Investment policies shall list investments authorized by the governing body of the unit
61 of local government, subject to the provisions of this chapter. Investments not listed in the
62 investment policy are prohibited.

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

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

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

77 (e) Investment policies shall provide appropriate arrangements for the holding of assets
78 of the unit of local government. Securities shall be held with a third party; and all
79 securities purchased by, and all collateral obtained by, the unit of local government shall
80 be properly designated as an asset of the unit of local government. No withdrawal of
81 securities, in whole or in part, shall be made from the custody account, except by an
82 authorized staff member of the unit of local government. Securities transactions between
83 a broker-dealer and the custodian involving purchase or sale of securities by transfer of
84 money or securities shall be made on a delivery versus payment basis, if applicable, to
85 ensure that the custodian shall have the security or money, as appropriate, in hand at the
86 conclusion of the transaction.

87 (f) The unit of local government's officials responsible for making investment decisions
88 or finance officer shall maintain a list of authorized securities dealers, issuers, and banks

89 from which the unit of local government may transact securities pursuant to the investment
90 policies required by this chapter.

91 36-83A-5.

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

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

104 36-83A-6.

105 Investment policies shall provide for appropriate annual or more frequent reporting of
106 investment activities. The unit of local government's officials responsible for making
107 investment decisions or finance officer shall prepare periodic reports for submission to the
108 governing body of the unit of local government, which report shall include securities in the
109 portfolio by class or type, book value, income earned, and market value as of the report
110 date. Such reports shall be available to the public.

111 36-83A-7.

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

115 (1) The local government investment pool established by Chapter 83 of Title 36, the
116 'Local Government Investment Pool Act';

117 (2) Any other funds or local government investment pool comprising securities
118 permitted in this Code section;

119 (3) Securities and Exchange Commission registered money market funds and shares in
120 open-end, no-load, stable net asset value government money market mutual funds,
121 provided that such funds are registered under the federal Investment Company Act of
122 1940, as from time to time amended, and operate in accordance with 17 CFR
123 Section 270.2a-7;

124 (4) Direct obligations of the United States Treasury;

125 (5) Federal agency or government sponsored enterprise debt obligations, participations,
126 or other instruments issued or fully guaranteed by any United States federal agency,
127 instrumentality, or government sponsored enterprise;

128 (6) Debt obligations of supranational organizations in the highest rating category,
129 AAA/Aaa or equivalent, by any nationally recognized statistical rating organization,
130 where the United States is a shareholder and voting member and the obligation is
131 denominated in United States dollars;

132 (7) Bank deposits held for investment purposes, provided that such deposit agreements
133 with banks shall be:

134 (A) Secured by collateral as permitted by federal or state law, held by a third-party
135 custodian, under marked-to-market daily accounting practices, and having a market
136 value equal to or exceeding 110 percent of the deposit;

- 137 (B) Secured through the Georgia multibank pledging pool program, also known as the
138 Secure Deposit Program, with 'required collateral' as defined by the program;
- 139 (C) Fully secured by a letter of credit issued by a Federal Home Loan Bank;
- 140 (D) Fully secured by a surety bond issued by a financial institution approved by the
141 State Depository Board established pursuant to Code Section 50-17-50;
- 142 (E) Fully insured by the Federal Deposit Insurance Corporation; or
- 143 (F) Invested in accordance with Code Section 45-8-14.1;
- 144 (8) Nonnegotiable certificates of deposit, provided that the maximum term of such
145 certificates shall not exceed five years. All such certificates of deposit shall be fully
146 insured by the Federal Deposit Insurance Corporation or secured by collateral permitted
147 by statute. Pledged securities shall be held by a third-party custodian. Pledged securities
148 shall be marked-to-market at least monthly and thereafter maintained upon notification
149 of any shortfall, collateral having a market value equal to 110 percent of certificates of
150 deposit or secured through the Georgia multibank pledging pool program, the Secure
151 Deposit Program, with 'required collateral' as such term is defined by the program. Any
152 negotiable certificates of deposit denominated in United States dollars issued by a
153 nationally or state chartered bank or a federally licensed branch of a foreign bank shall
154 be held by a third-party custodian, and the issuer shall have a short-term debt rating in the
155 two highest categories by two or more nationally recognized statistical rating
156 organizations;
- 157 (9) Commercial paper that is issued by domestic corporations carrying a short-term debt
158 rating of A-1/P-1 or higher or equivalent by any nationally recognized statistical rating
159 organization, in an amount that does not exceed 5 percent of portfolio assets for any
160 single issuer;
- 161 (10) Obligations of this state or other states, provided that such investments shall be rated
162 AA or higher by at least two nationally recognized statistical rating organizations at the
163 time of purchase, or obligations of other political subdivisions of this state, provided that

164 such investments shall be rated AA or higher by at least two nationally recognized
165 statistical rating organizations at the time of purchase;

166 (11) Obligations of domestic corporations including notes, bonds, and other marketable
167 securities rated A or higher by any nationally recognized statistical rating organization;

168 (12) Asset-backed securities in the highest rating category, AAA/Aaa or equivalent, by
169 at least two nationally recognized statistical rating organizations whose underlying
170 collateral consists of loans, leases, or receivables, including but not limited to auto loans
171 or leases, credit card receivables, student loans, equipment loans or leases, and home
172 equity loans; or

173 (13) Agency mortgage-backed securities backed by residential, multifamily, or
174 commercial mortgages that are issued or fully guaranteed as to principal and interest by
175 a federal agency or government sponsored enterprise of the United States government,
176 including but not limited to pass-throughs, collateralized mortgage obligations, and real
177 estate mortgage investment conduits.

178 36-83A-8.

179 Those units of local government electing not to adopt a written investment policy in
180 accordance with this chapter shall only invest or reinvest any surplus public funds in their
181 control or possession in:

182 (1) The local government investment pool established by Chapter 83 of Title 36, the
183 'Local Government Investment Pool Act';

184 (2) Any other funds or local government investment pool composed of securities
185 permitted in this Code section;

186 (3) Securities and Exchange Commission registered money market funds and shares in
187 open-end, no-load, stable net asset value government money market mutual funds,
188 provided such funds are registered under the federal Investment Company Act of 1940,
189 as from time to time amended, and operate in accordance with 17 CFR Section 270.2a-7;

190 (4) Direct obligations of the United States Treasury; or
191 (5) Bank deposits held for investment purposes, provided that such deposit agreements
192 with banks shall be:
193 (A) Secured by collateral as permitted by federal or state law, held by a third-party
194 custodian, under marked-to-market daily accounting practices, and having a market
195 value equal to or exceeding 110 percent of the deposit;
196 (B) Secured through the Georgia multibank pledging pool program, also known as the
197 Secure Deposit Program, with 'required collateral' as defined therein;
198 (C) Fully secured by a letter of credit issued by a Federal Home Loan Bank;
199 (D) Fully secured by a surety bond issued by a financial institution approved by the
200 State Depository Board established pursuant to Code Section 50-17-50;
201 (E) Fully insured by the Federal Deposit Insurance Corporation; or
202 (F) Invested in accordance with Code Section 45-8-14.1;
203 provided, however, that the securities listed in paragraphs (4) and (5) of this Code section
204 shall be invested to provide sufficient liquidity to pay obligations as they come due.

205 36-83A-9.

206 Every security purchased under this chapter on behalf of the governing body of a unit of
207 local government shall be properly earmarked and:

208 (1) If registered with the issuer or its agents, shall be immediately placed in a custody
209 account that protects the governing body's interest in the security; or

210 (2) If in book entry form, shall be held for the credit of the governing body by a
211 depository chartered by the government of the United States, this state, or any other state
212 or territory of the United States which has a branch or principal place of business in this
213 state, or by a national association organized and existing under the laws of the United
214 States which is authorized to accept and execute trusts and which is doing business in this

215 state, and shall be kept by the depository in an account separate and apart from the assets
216 of the financial institution.

217 36-83A-10.

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

222 36-83A-11.

223 Certified public accountants conducting audits of units of local government pursuant to
224 Code Section 36-81-7 shall report, as part of such audit, whether or not the unit of local
225 government has complied with this chapter

226 36-83A-12.

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

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

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

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

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

241 36-83A-13.

242 (a) Any investment policy adopted pursuant to this chapter shall have a continuing
243 education requirement and provide that such training must be provided by an entity other
244 than the governmental entity enacting such policy. For a unit of local government to invest
245 funds pursuant to Code Section 36-83A-7, the unit of local government's officials
246 responsible for making investment decisions or finance officer shall annually complete at
247 least eight hours of continuing education related to investment responsibilities and best
248 practices, products, and procedures for investment of governmental funds.

249 (b) The continuing education requirements of subsection (a) of this Code section shall not
250 apply to:

251 (1) Local governments that do not have written investment policies; and

252 (2) Local governments that have hired third-party investment professionals or advisors
253 who are registered with the United States Securities and Exchange Commission to
254 manage surplus public funds. Such investment professional or advisor contracts shall be
255 subject to a competitive bidding process before they are entered into."

256 **SECTION 2.**

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

260 **SECTION 3.**

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

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263 "(c) When funds are paid into the registry of the court, the clerk shall deposit such funds
264 in one or more interest-bearing trust accounts in investments authorized by ~~Code Section~~
265 ~~36-80-3~~ or by Chapter 83 or 83A of Title 36."

266 **SECTION 4.**

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

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

273 **SECTION 5.**

274 Code Section 20-2-411, relating to school fund kept separate, use of funds, separation of
275 school taxes, and investments, is amended as follows:

276 "20-2-411.

277 When the public school fund shall be received and receipted for, it shall be the duty of the
278 officers authorized by law to receive such fund and keep it separate and distinct from other
279 funds. The school funds shall be used for educational purposes and may be used to pay the
280 salaries of personnel and to pay for the utilization of school facilities, including school
281 buses, for extracurricular and interscholastic activities, including literary events, music and
282 athletic programs within individual schools and between schools in the same or in different
283 school systems when such activities are sponsored by local boards of education as an
284 integral part of the total school program, and for no other purpose. When taxes are paid
285 into the state treasury, the comptroller general shall in no case receipt a tax collector for
286 them until that part of the tax so paid in which was raised for school purposes is separated
287 in amount from the gross amount paid in. It shall be lawful to invest school funds in

288 securities of the states, United States, or municipalities of this state; ~~or~~ in certificates of
289 deposit; or as authorized in Chapter 83A of Title 36."

290

SECTION 6.

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