

HOUSE BILL 224

By Haston

AN ACT to amend Tennessee Code Annotated, Title 49,  
relative to capital improvements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 2, is amended by adding  
the following as a new part:

**49-2-901.**

This part is known and may be cited as the "School District Capital Improvements  
Investment Trust Act."

**49-2-902.**

As used in this part, unless the context otherwise requires:

(1) "Capital improvements" means construction, renovations,  
improvements, modernizations, and maintenance of buildings, facilities, and  
grounds owned or operated by a local education agency;

(2) "Capital improvements plan" means a written plan developed by a  
local board of education that details needed capital improvements for a period of  
no less than five (5) years, which may be amended by the LEA;

(3) "General purpose budget" means the primary fund used to cover daily  
operating expenses of an LEA; and

(4) "State funding board" or "funding board" means the board created  
pursuant to § 9-9-101.

**49-2-903.**

A local board of education may establish an investment trust for the purpose of  
prospectively funding capital improvements for the benefit of the local board of

education's LEA. In order for a local board of education to establish and maintain an investment trust pursuant to this part, then local board of education shall:

- (1) Adopt a capital improvements plan;
- (2) Maintain a public school fund balance that is no less than two (2) months of expenditures from the LEA's general purpose budget;
- (3) Adopt, in writing, an investment policy authorizing how assets in the trust may be invested;
- (4) Ensure that the trust conforms to all applicable laws, rules, and regulations of the internal revenue service, if any;
- (5) Ensure that the local board of education's capital improvement plan is reviewed by a third party; and
- (6) Ensure that the trust document is submitted to, and approved by, the state funding board.

**49-2-904.**

(a) A trust created under this part is irrevocable, and the assets thereof must be preserved, invested, and expended solely pursuant to, and for the purposes of, this section and must not be loaned or otherwise transferred or used for any other purpose.

The assets of the trust may only be expended to:

- (1) Make payments for capital improvements in accordance with the terms of the LEA's capital improvements plan; or
  - (2) Pay the costs of administering the trust.
- (b) The department of the treasury may establish investment guidelines for trusts established under this part.
- (c) An investment trust created pursuant to this part has the powers, privileges, and immunities of a corporation, and all of its business must be transacted, all of its

funds must be invested, and all of its cash, securities, and other property must be held in trust for the purpose for which the trust was created.

(d) Notwithstanding another law to the contrary, all assets, income, and distributions of the investment trust must be protected against the claims of creditors of the LEA, including, but not limited to, construction managers, contractors, and sub-contractors. Assets, income, and distributions of the investment trust are not subject to execution, attachment, garnishment, bankruptcy, insolvency laws, or other process whatsoever, and an assignment of any right of any such action is not enforceable against the investment trust in any court.

**49-2-905.**

A local board of education that establishes an investment trust under this part has all powers necessary or convenient to carry out this part and the purposes and objectives of the investment trust, including, but not limited to:

(1) The power to invest funds of the trust in an instrument, obligation, security, or property that constitutes a legal investment, as provided in the investment policy adopted pursuant to § 49-2-903(3);

(2) The power to contract for the provision of a service necessary for the management or operation of the investment trust;

(3) The power to contract with financial consultants, auditors, and other consultants as necessary to carry out the local board of education's responsibilities under this part;

(4) The power to prepare annual financial reports, including financial statements, at the close of each fiscal year relative to the activities of the trust.

The statements and reports must contain the information required by the state

funding board and must be prepared in accordance with the governmental accounting standards board; and

(5) Upon the request of the state funding board, the power to file the annual report and financial statements with the chair of the funding board. The report and statements must be filed with the chair no later than ninety (90) calendar days from the date of the request, unless the chair extends the deadline established in this subdivision (5) in writing.

**49-2-906.**

A local board of education's annual report, including financial statements, and all books, accounts, and financial records of a trust created under this part are subject to audit by the comptroller of the treasury. An LEA that maintains a trust under this part may, with the prior approval of the comptroller of the treasury, engage licensed independent public accountants to perform any required audits. An audit contract between an LEA and an independent public accountant must be on contract forms prescribed by the comptroller of the treasury. The LEA is responsible for the reimbursement of the costs of audits prepared by the comptroller of the treasury and for the payment of fees for audits prepared by licensed independent public accountants.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.