

109TH CONGRESS  
1ST SESSION

# H. R. 3913

To provide for investment and protection of the Social Security surplus.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2005

Mr. KUHLMAN of New York introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Budget and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for investment and protection of the Social  
Security surplus.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Social Security Surplus  
5 Protection Act of 2005”.

1 **SEC. 2. INVESTMENT OF THE ANNUAL SURPLUS OF THE**  
2 **FEDERAL OLD-AGE AND SURVIVORS INSUR-**  
3 **ANCE TRUST FUND AND THE FEDERAL DIS-**  
4 **ABILITY INSURANCE TRUST FUND.**

5 (a) IN GENERAL.—Section 201(d) of the Social Secu-  
6 rity Act (42 U.S.C. 401(d)) is amended—

7 (1) by inserting “(1)” after “(d)”;

8 (2) by striking “Such investments may be made  
9 only” and inserting the following: “Except as pro-  
10 vided in paragraph (2), such investments may be  
11 made only”;

12 (3) by striking the last sentence; and

13 (4) by adding at the end the following new  
14 paragraph:

15 “(2)(A) The Managing Trustee shall, in accordance  
16 with policies prescribed in regulations of the Social Secu-  
17 rity Surplus Investment Board prescribed under sub-  
18 section (o), ensure that amounts in each of the Trust  
19 Funds equivalent to the annual surplus for such Trust  
20 Fund for any calendar year are made available to the  
21 Board on a timely basis for purposes of investment in ac-  
22 cordance with subsection (o). Such amounts shall be made  
23 available in at least monthly installments and shall be de-  
24 termined on the basis of estimates, by the Commissioner  
25 and certified to the Secretary of the Treasury, and proper  
26 adjustments shall be made in amounts subsequently made

1 available to the extent prior estimates were in excess of  
2 or were less than actual amounts.

3 “(B) For purposes of this paragraph, the ‘annual sur-  
4 plus’ for either of the Trust Funds for a calendar year  
5 is the excess (if any) of—

6 “(i) the sum of—

7 “(I) in the case of the Federal Old-Age  
8 and Survivors Insurance Trust Fund, the  
9 amounts appropriated to such Trust Fund  
10 under paragraphs (3) and (4) of subsection (a)  
11 and attributable to such calendar year,

12 “(II) in the case of the Federal Disability  
13 Insurance Trust Fund, the amounts appro-  
14 priated to such Trust Fund under paragraphs  
15 (1) and (2) of subsection (b) and attributable to  
16 such calendar year, and

17 “(III) in either case, the amount appro-  
18 priated to such Trust Fund under section  
19 121(e) of the Social Security Amendments of  
20 1983 and attributable to such calendar year,  
21 and any amounts otherwise credited to or de-  
22 posited in such Trust Fund under this title at-  
23 tributable to such calendar year, over

24 “(ii) the amount estimated by the Commis-  
25 sioner to be the total amount to be paid from such

1 Trust Fund during such calendar year for all pur-  
 2 poses authorized by section 201 (other than pay-  
 3 ments of interest on, and repayments of, loans from  
 4 the Federal Hospital Insurance Trust Fund under  
 5 section 201(l)(1), and excluding any transfer pay-  
 6 ments between the Trust Funds and reducing the  
 7 amount of any transfer from either of the Trust  
 8 Funds to the Railroad Retirement Account by the  
 9 amount of any transfer into such Trust Fund from  
 10 such Account).

11 “(C) Amounts of either Trust Fund made available  
 12 to the Social Security Surplus Investment Board under  
 13 subparagraph (A)(ii) for purposes of investment under  
 14 subsection (o), and any proceeds from such investment,  
 15 shall continue to be treated as assets of such Trust  
 16 Fund.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply with respect to annual surpluses  
 19 for calendar years beginning on or after January 1, 2006.

20 **SEC. 3. SOCIAL SECURITY SURPLUS INVESTMENT BOARD.**

21 Section 201 of the Social Security Act (42 U.S.C.  
 22 401) is amended by adding at the end the following new  
 23 subsection:

24 “(o) SOCIAL SECURITY SURPLUS INVESTMENT  
 25 BOARD.—

1 “(1) ESTABLISHMENT OF THE BOARD.—

2 “(A) ESTABLISHMENT.—There is estab-  
3 lished in the Executive branch of the Govern-  
4 ment a Social Security Surplus Investment  
5 Board.

6 “(B) NUMBER AND APPOINTMENT.—The  
7 Board shall be composed of 7 members as fol-  
8 lows:

9 “(i) 3 members appointed by the  
10 President, of whom 1 shall be designated  
11 by the President as Chairman; and

12 “(ii) 4 members appointed by the  
13 President, of whom—

14 “(I) 2 shall be appointed by the  
15 President after taking into consider-  
16 ation the recommendations made by  
17 the Speaker of the House of Rep-  
18 resentatives in consultation with the  
19 minority leader of the House of Rep-  
20 resentatives; and

21 “(II) 2 shall be appointed by the  
22 President after taking into consider-  
23 ation the recommendations made by  
24 the majority leader of the Senate in

1 consultation with the minority leader  
2 of the Senate.

3 “(C) MEMBERSHIP REQUIREMENTS.—  
4 Members of the Board shall have substantial  
5 experience, training, and expertise in the man-  
6 agement of financial investments and pension  
7 benefit plans. No more than 4 of the members  
8 of the Board may be of the same political party.

9 “(D) TERMS.—Each member of the Board  
10 shall be appointed for a term of 4 years, except  
11 that of the members first appointed—

12 “(i) the Chairman shall be appointed  
13 for a term of 4 years;

14 “(ii) the remaining members ap-  
15 pointed under subsection (B)(i) shall be  
16 appointed for terms of 3 years;

17 “(iii) one of the members appointed  
18 under subsection (B)(ii)(I) shall be ap-  
19 pointed for a term of 4 years and the other  
20 for a term of two years; and

21 “(iv) one of the members appointed  
22 under subsection (B)(ii)(II) shall be ap-  
23 pointed for a term of 4 years and the other  
24 for a term of 2 years.

1           “(E) VACANCIES.—A vacancy on the  
2           Board shall be filled in the manner in which the  
3           original appointment was made and shall be  
4           subject to any conditions which applied with re-  
5           spect to the original appointment. An individual  
6           chosen to fill a vacancy shall be appointed for  
7           the unexpired term of the member replaced.  
8           The term of any member shall not expire before  
9           the date on which the member’s successor takes  
10          office.

11          “(2) POWERS AND DUTIES OF THE BOARD.—

12                 “(A) IN GENERAL.—The Board shall have  
13                 powers and duties solely as provided in this  
14                 subsection. The Board shall by regulation pro-  
15                 vide for investment of amounts in the Federal  
16                 Old-Age and Survivors Insurance Trust Fund  
17                 and the Federal Disability Insurance Trust  
18                 Fund made available to the Board under sub-  
19                 section (d)(2)(A)(ii) for purposes of investment,  
20                 including policies to be followed in allocating in-  
21                 vestments among different forms of investment  
22                 and meeting the requirements of subparagraph  
23                 (F) of this paragraph and of paragraph (4).

24                 “(B) BUDGETARY REQUIREMENTS.—The  
25                 Board shall prepare and submit to the Presi-

1           dent and to the appropriate committees of Con-  
2           gress an annual budget of the expenses and  
3           other items relating to the Board which shall be  
4           included as a separate item in the budget re-  
5           quired to be transmitted to the Congress under  
6           section 1105 of title 31, United States Code.  
7           The Board shall provide for low administrative  
8           costs such that, to the extent practicable, over-  
9           all administrative costs of the Board in connec-  
10          tion with investments made pursuant to sub-  
11          paragraph (A) do not exceed 30 basis points  
12          per year in relation to assets under manage-  
13          ment by the Board.

14               “(C) ADDITIONAL AUTHORITIES OF THE  
15          BOARD.—The Board may—

16                       “(i) adopt, alter, and use a seal;

17                       “(ii) establish policies under this sub-  
18                      section with which the Commissioner shall  
19                      comply; and

20                       “(iii) appoint and remove the Execu-  
21                      tive Director, as provided in paragraph (2).

22               “(D) MEETINGS OF THE BOARD.—The  
23          Board shall meet at the call of the Chairman or  
24          upon the request of a quorum of the Board.  
25          The Board shall perform the functions and ex-



1           ercise the powers of the Board on a majority  
2           vote of a quorum of the Board. Four members  
3           of the Board shall constitute a quorum for the  
4           transaction of business.

5           “(E) COMPENSATION OF BOARD MEM-  
6           BERS.—

7                   “(i) IN GENERAL.—Each member of  
8           the Board who is not an officer or em-  
9           ployee of the Federal Government shall be  
10          compensated at the daily rate of basic pay  
11          for level IV of the Executive Schedule for  
12          each day during which such member is en-  
13          gaged in performing a function of the  
14          Board. Any member who is such an officer  
15          or employee shall not suffer any loss of pay  
16          or deduction from annual leave on the  
17          basis of any time used by such member in  
18          performing such a function.

19                   “(ii) TRAVEL, PER DIEM, AND EX-  
20          PENSES.—A member of the Board shall be  
21          paid travel, per diem, and other necessary  
22          expenses under subchapter I of chapter 57  
23          of title 5, United States Code, while trav-  
24          eling away from such member’s home or

1 regular place of business in the perform-  
2 ance of the duties of the Board.

3 “(F) STANDARD FOR BOARD’S DISCHARGE  
4 OF RESPONSIBILITIES.—The members of the  
5 Board shall discharge their responsibilities sole-  
6 ly in the interest of the Federal Old-Age and  
7 Survivors Insurance Trust Fund and the Fed-  
8 eral Disability Insurance Trust Fund.

9 “(G) ANNUAL REPORT.—The Board shall  
10 submit an annual report to the President, to  
11 each House of the Congress, and to the Board  
12 of Trustees of the Federal Old-Age and Sur-  
13 vivors Insurance Trust Fund and the Federal  
14 Disability Insurance Trust Fund regarding the  
15 exercise of its duties under this subsection.

16 “(H) PUBLIC ACCOUNTANT.—

17 “(i) DEFINITION.—For purposes of  
18 this subparagraph, the term ‘qualified pub-  
19 lic accountant’ shall have the same mean-  
20 ing as provided in section 103(a)(3)(D) of  
21 the Employee Retirement Income Security  
22 Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

23 “(ii) ENGAGEMENT.—The Executive  
24 Director, in consultation with the Board,  
25 shall annually engage an independent

1 qualified public accountant, who shall con-  
2 duct an examination of all records main-  
3 tained in the administration of the require-  
4 ments of this subsection that the public ac-  
5 countant considers necessary.

6 “(iii) DUTIES.—The public account-  
7 ant conducting an examination under  
8 clause (ii) shall determine whether the  
9 records referred to in such clause have  
10 been maintained in conformity with gen-  
11 erally accepted accounting principles. The  
12 public accountant shall transmit to the  
13 Board a report on his examination.

14 “(iv) RELIANCE ON CERTIFIED ACTU-  
15 ARIAL MATTERS.—In making a determina-  
16 tion under clause (iii), a public accountant  
17 may rely on the correctness of any actu-  
18 arial matter certified by an enrolled actu-  
19 ary if the public accountant states his reli-  
20 ance in the report transmitted to the  
21 Board under such clause.

22 “(3) EXECUTIVE DIRECTOR.—

23 “(A) APPOINTMENT AND REMOVAL.—The  
24 Board shall appoint, without regard to the pro-  
25 visions of law governing appointments in the

1 competitive service, an Executive Director by  
2 action agreed to by a majority of the members  
3 of the Board. The Executive Director shall have  
4 substantial experience, training, and expertise  
5 in the management of financial investments and  
6 pension benefit plans. The Board may, with the  
7 concurrence of 4 members of the Board, remove  
8 the Executive Director from office for good  
9 cause shown.

10 “(B) POWERS AND DUTIES OF EXECUTIVE  
11 DIRECTOR.—The Executive Director shall—

12 “(i) carry out the policies established  
13 by the Board,

14 “(ii) administer the provisions of this  
15 subsection in accordance with the policies  
16 of the Board, and

17 “(iii) meet from time to time with the  
18 Board upon request of the Board.

19 “(C) ADMINISTRATIVE AUTHORITIES OF  
20 EXECUTIVE DIRECTOR.—The Executive Direc-  
21 tor may—

22 “(i) appoint such personnel as may be  
23 necessary to carry out the provisions of  
24 this subsection,

1           “(ii) subject to approval by the Board,  
2           procure the services of experts and consult-  
3           ants under section 3109 of title 5, United  
4           States Code,

5           “(iii) secure directly from any agency  
6           or instrumentality of the Federal Govern-  
7           ment on a reimbursable basis any informa-  
8           tion which, in the judgment of the Execu-  
9           tive Director, is necessary to carry out the  
10          provisions of this subsection and the poli-  
11          cies of the Board, and which shall be pro-  
12          vided by such agency or instrumentality  
13          upon the request of the Executive Director,

14          “(iv) pay the compensation, per diem,  
15          and travel expenses of individuals ap-  
16          pointed under clauses (i), (ii), and (v) of  
17          this subparagraph, subject to such limits  
18          as may be established by the Board,

19          “(v) accept and use the services of in-  
20          dividuals employed intermittently in the  
21          Government service and reimburse such in-  
22          dividuals for travel expenses, as authorized  
23          by section 5703 of title 5, United States  
24          Code, including per diem as authorized by  
25          section 5702 of such title, and

1 “(vi) except as otherwise expressly  
2 prohibited by law or the policies of the  
3 Board, delegate any of the Executive Di-  
4 rector’s functions to such employees under  
5 the Board as the Executive Director may  
6 designate and authorize such successive re-  
7 delegations of such functions to such em-  
8 ployees under the Board as the Executive  
9 Director may consider to be necessary or  
10 appropriate.

11 “(4) FIDUCIARY RESPONSIBILITIES.—

12 “(A) IN GENERAL.—Rules similar to the  
13 provisions of section 8477 of title 5, United  
14 States Code (relating to fiduciary responsibil-  
15 ities; liability and penalties) shall apply in con-  
16 nection assets placed under the control of the  
17 Board for purposes of investment, in accord-  
18 ance with regulations which shall be issued by  
19 the Board. The Board shall issue regulations  
20 with respect to the investigative authority of ap-  
21 propriate Federal agencies in cases involving  
22 such assets.

23 “(B) EXCULPATORY PROVISIONS VOID-  
24 ED.—Any provision in an agreement or instru-  
25 ment which purports to relieve a fiduciary from

1 responsibility or liability for any responsibility,  
2 obligation, or duty under this subsection shall  
3 be void.

4 “(5) CIVIL ACTIONS BY BOARD.—If any person  
5 fails to meet any requirement of this subsection or  
6 regulations prescribed thereunder or of any contract  
7 entered into under this subsection, the Board may  
8 bring a civil action in any district court of the  
9 United States within the jurisdiction of which such  
10 person’s assets are located or in which such person  
11 resides or is found, without regard to the amount in  
12 controversy, for appropriate relief to redress the vio-  
13 lation or enforce the requirement, and process in  
14 such an action may be served in any district.

15 “(6) AUTHORIZATION OF APPROPRIATIONS.—  
16 There are authorized to be appropriated to the  
17 Board, for fiscal years beginning on or after October  
18 1, 2005, such sums as are necessary to carry out the  
19 Board’s duties under this subsection.”.

20 **SEC. 4. PROTECTION OF SOCIAL SECURITY SURPLUSES.**

21 (a) PROTECTION OF SOCIAL SECURITY SUR-  
22 PLUSES.—Title III of the Congressional Budget Act of  
23 1974 is amended by adding at the end the following new  
24 section:

25 “SAFEGUARDING SOCIAL SECURITY SURPLUSES

26 “SEC. 316. (a) IN GENERAL.—

1           “(1) CONCURRENT RESOLUTIONS ON THE  
2 BUDGET.—It shall not be in order in the House of  
3 Representatives or the Senate to consider any con-  
4 current resolution on the budget, or an amendment  
5 thereto or conference report thereon, that would set  
6 forth a deficit for any fiscal year for which there is  
7 a projected net surplus in the Federal Old-Age and  
8 Survivors Insurance Trust Fund and the Federal  
9 Disability Insurance Trust Fund.

10           “(2) SPENDING AND TAX LEGISLATION.—It  
11 shall not be in order in the House of Representatives  
12 or the Senate to consider any bill, joint resolution,  
13 amendment, motion, or conference report if—

14               “(A) the enactment of that bill or resolu-  
15 tion, as reported;

16               “(B) the adoption and enactment of that  
17 amendment; or

18               “(C) the enactment of that bill or resolu-  
19 tion in the form recommended in that con-  
20 ference report,

21 would cause a deficit for any fiscal year for which  
22 there is a projected net surplus in the Federal Old-  
23 Age and Survivors Insurance Trust Fund and the  
24 Federal Disability Insurance Trust Fund.

25           “(b) ENFORCEMENT.—



1           “(1) BUDGETARY LEVELS WITH RESPECT TO  
2           CONCURRENT RESOLUTIONS ON THE BUDGET.—For  
3           purposes of enforcing any point of order under sub-  
4           section (a)(1), the extent to which there is a deficit  
5           for any fiscal year shall be determined on the basis  
6           of budgetary aggregates set forth in the later of the  
7           concurrent resolution on the budget, as reported, or  
8           in the conference report on the concurrent resolution  
9           on the budget, adjusted to the maximum extent al-  
10          lowable under all procedures that allow budgetary  
11          aggregates to be adjusted for legislation that would  
12          cause a decrease in any surplus or an increase in  
13          any deficit for any fiscal year covered by the concur-  
14          rent resolution on the budget (other than procedures  
15          described in paragraph (2)(A)(ii)).

16          “(2) CURRENT LEVELS WITH RESPECT TO  
17          SPENDING AND TAX LEGISLATION.—

18                 “(A) IN GENERAL.—For purposes of en-  
19                 forcing subsection (a)(2), the extent to which  
20                 there is a deficit for any fiscal year shall be—

21                         “(i) calculated using the following as-  
22                         sumptions—

23                                 “(I) direct spending and revenue  
24                                 levels at the baseline levels underlying

1 the most recently agreed to concur-  
2 rent resolution on the budget; and

3 “(II) for the budget year, discre-  
4 tionary spending levels at current law  
5 levels and, for outyears, discretionary  
6 spending levels at the baseline levels  
7 underlying the most recently agreed to  
8 concurrent resolution on the budget;  
9 and

10 “(ii) adjusted for changes in the sur-  
11 plus or deficit levels set forth in the most  
12 recently agreed to concurrent resolution on  
13 the budget pursuant to procedures in such  
14 resolution that authorize adjustments in  
15 budgetary aggregates for updated economic  
16 and technical assumptions in the mid-ses-  
17 sion report of the Director of the Congres-  
18 sional Budget Office.

19 Such revisions shall be included in the first cur-  
20 rent level report on the congressional budget  
21 submitted for publication in the Congressional  
22 Record after the release of such mid-session re-  
23 port.

24 “(c) WAIVER AND APPEAL.—Subsection (a) may be  
25 waived or suspended in the Senate only by an affirmative

1 vote of three-fifths of the Members, duly chosen and  
2 sworn. An affirmative vote of three-fifths of the Members  
3 of the Senate, duly chosen and sworn, shall be required  
4 in the Senate to sustain an appeal of the ruling of the  
5 Chair on a point of order raised under this section.”.

6 (b) CONFORMING AMENDMENT.—The item relating  
7 to section 316 in the table of contents set forth in section  
8 1(b) of the Congressional Budget and Impoundment Con-  
9 trol Act of 1974 is amended to read as follows:

“Sec. 316. Safeguarding social security surpluses.”.

