

CHAPTER 939

H.B. No. 1608

AN ACT

relating to the management of certain state and local funds, investments, and obligations.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 404.001(3), Government Code, is amended to read as follows:

(3) "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

- (A) United States government securities;
- (B) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; or
- (C) direct obligations of or obligations guaranteed by *agencies or instrumentalities of the United States government* [~~the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, or the Federal Home Loan Mortgage Corporation~~].

SECTION 2. Section 404.013, Government Code, is amended to read as follows:

Sec. 404.013. RULES. The board may adopt and enforce rules governing the establishment and conduct of state depositories *and*[,] *the investment [handling] of state funds* in the depositories[, *and the investment of state funds*] that the public interest requires and that are not inconsistent with the law governing the depositories [*and investments*]. The rules must be entered in the minutes of the board.

SECTION 3. Section 404.024, Government Code, is amended to read as follows:

Sec. 404.024. AUTHORIZED INVESTMENTS. (a) The board may determine and designate the amount of state funds to be deposited *in time deposits* in state depositories. *The treasurer shall recommend to the board a maximum limit for state funds deposited by the treasurer at approved state depositories. The percentage of state funds to be deposited in state depositories shall be based on the interest rates available in competing investments, the demand for funds from Texas banks, and the state's liquidity requirements. The treasurer shall provide periodic investment reports to the board.*

(b) ~~State[, the amount of those deposits that shall be demand deposits and the amount that shall be time deposits, and the amount of state]~~ funds *not deposited in state depositories* [~~that~~] shall be invested by the treasurer in:

- (1) direct security repurchase agreements;
- (2) reverse security repurchase agreements;
- (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;
- (4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;
- (5) bankers' acceptances that:
 - (A) are eligible for purchase by the Federal Reserve System;
 - (B) do not exceed 270 days to maturity; and
 - (C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;
- (6) commercial paper that:
 - (A) does not exceed 270 days to maturity; and
 - (B) *except as provided by Subsection (j)*, has received the highest short-term credit rating by a nationally recognized investment rating firm;
- (7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading; and

(8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance

Corporation that have received the highest credit rating by a nationally recognized investment rating firm.

(c) ~~[(b) The amount deposited in state depositories at any one time must be at least 25 percent of the average daily balance of all state funds eligible for deposit or investment under this chapter unless the board approves a lower percentage.]~~ Investments in direct security repurchase agreements and reverse security repurchase agreements may be made with state or national banks domiciled in this state or with primary dealers as approved by the Federal Reserve System.

(d) ~~[(e)]~~ The board may contract with a depository for the payment of interest on time or demand deposits at a rate not to exceed a rate that is lawful under an Act of Congress and rules and regulations of the board of governors of the Federal Reserve System, the board of directors of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal Home Loan Banking Board.

(e) ~~[(d)]~~ Not more than 20 percent of the aggregate funds on deposit in financial institutions at any time may be in depository institutions other than banks.

(f) ~~[(e)]~~ The treasurer may invest the gross proceeds from obligations of this state or any agency of this state in:

(1) obligations of a state or an agency, county, city, or other political subdivision of a state; and

(2) mutual funds composed of obligations described by Subdivision (1).

(g) ~~[(f)]~~ To the extent practicable, the treasurer shall give first consideration to Texas banks when investing in direct security repurchase agreements.

(h) ~~[(g)]~~ The treasurer may not use state funds to invest in or purchase obligations of a private corporation or other private business entity doing business in the Republic of South Africa unless the corporation or other entity:

(1) has:

(A) adopted the Statement of Principles for South Africa as they existed in 1987, as described in the Report on the Signatory Companies to the Statement of Principles for South Africa published by Arthur D. Little, Inc., Cambridge, Massachusetts, and has obtained a performance rating in Category 1 or 2 of the Statement of Principles for South Africa rating system as determined by Arthur D. Little, Inc.; or

(B) agreed to the Code of Conduct that is enforced by the United States Department of State under Section 208, Comprehensive Anti-Apartheid Act of 1986 (Pub. L. No. 99-440) and has received a rating of "Making Satisfactory Progress"; and

(2) does not supply strategic products or services for use by the government, military, or police of the Republic of South Africa.

(i) ~~[(h)]~~ For the purposes of Subsection (h) ~~[(g)]~~ of this section:

(1) "Doing business in the Republic of South Africa" means conducting or performing manufacturing, assembly, or warehousing operations within the Republic of South Africa or, if a bank or other financial institution, lending money to the government of the Republic of South Africa or any of its agencies or instrumentalities.

(2) "Strategic products or services" means articles designated as arms, ammunition, or implements of war as provided by 22 Code of Federal Regulations Part 121 or data processing equipment or computers sold for military or police use or for use in connection with restrictions on travel within the Republic of South Africa by residents of that country.

(j) *The treasurer may not use state funds to invest in or purchase obligations of a private corporation or other private business entity doing business in Northern Ireland unless the corporation or other entity:*

(1) *adheres to fair employment practices; and*

(2) *does not discriminate on the basis of race, color, religion, sex, national origin, or disability.*

(k) Notwithstanding Subsection (a)(6)(B), the treasurer may purchase commercial paper with a rating lower than the rating required by that subsection to provide liquidity for commercial paper issued by the treasurer or an agency of the state.

SECTION 4. Section 404.0245, Government Code, is amended to read as follows:

Sec. 404.0245. **CRUDE OIL AND NATURAL GAS FUTURES CONTRACTS.** (a) In this section, "hedging" means the *buying and selling* of crude oil *and natural gas* commodity futures or ~~the buying of~~ options on crude oil *and natural gas* commodity futures as a protection against loss due to price fluctuations. Hedging at all times shall comply with Commodity Futures Trading Commission regulations.

(b) Subject to the limitations of Subsection (c), the board may determine and designate the amount of state funds that shall be invested by the treasurer in hedging transactions in crude oil *and natural gas* futures contracts and options on crude oil *and natural gas* futures contracts that are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(c) The principal amount of state funds invested and outstanding in hedging transactions on any one day may not exceed \$500,000 with a maximum risk of loss of \$5,000,000 [~~\$2,500,000~~]. The total principal amount of state funds that may be invested by the state treasurer in hedging transactions during any one biennium may not exceed the amount of money credited to the unclaimed money fund for that biennium and attributable to the remittance of mineral proceeds under Chapter 75, Property Code. Any premium incurred in connection with hedging transactions may be paid only from funds appropriated for that purpose.

(d) The board by rule shall regulate the investment of state funds in crude oil *and natural gas* futures contracts or options on crude oil *and natural gas* futures contracts. The rules shall provide restrictions and procedures for making the investments that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, would follow in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The investments may be made only for hedging purposes.

(e) This section expires [~~September 1, 1993 or~~] if the total cumulative losses exceed \$5,000,000 [~~\$2,500,000, whichever comes first~~].

(f) Any appropriation made for this program contingent upon S.B. 736, 73rd Legislature, Regular Session, 1993, becoming law is available for purposes of this program under this Act.

SECTION 5. Subchapter C, Chapter 404, Government Code, is amended by adding Section 404.027 to read as follows:

Sec. 404.027. **LIQUIDITY.** (a) *The treasurer may enter into credit agreements or other similar agreements to provide liquidity for obligations issued for governmental purposes by an agency of the state if the agreements do not conflict with the liquidity needs of the treasury. An agency may enter into a credit agreement with the treasurer on the issuance of obligations or at a later date as agreed to by the treasurer and the agency.*

(b) The treasurer may charge reasonable costs to provide services under this section.

(c) In this section:

(1) "Credit agreement" has the meaning assigned by Section 1(6), Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes); and

(2) "Obligations" include commercial paper, variable rate demand obligations, and "bonds" as defined by Section (1)(b), Chapter 845, Acts of the 67th Legislature, Regular Session, 1981 (Article 717k-6, Vernon's Texas Civil Statutes).

SECTION 6. Section 404.032, Government Code, is amended to read as follows:

Sec. 404.032. **DEPOSITS AND INVESTMENTS.** (a) The treasurer shall deposit state funds in depositories that satisfy the security requirements of this chapter or invest the funds in investments authorized by *Section 404.024* ~~the board~~. The treasurer may deposit funds

designated as demand deposits only in banks designated as centrally located depositories and in other depositories authorized by the board.

(b) ~~The treasurer shall monitor the financial stability of state depositories in which state deposits are held and take appropriate action to protect state funds. [A depository may not keep on deposit state funds in an amount in excess of its paid-up capital stock and permanent surplus. A reduction in the capital stock and permanent surplus of a depository reduces correspondingly the amount of state funds that it may retain as a depository, and the treasurer may withdraw from the depository funds in excess of its capital stock and permanent surplus. However, this limitation does not apply if the depository pledges as security for the state funds warrants drawn on the treasury against the general revenue fund. In this case the amount of state funds to be deposited in the depository shall be determined by the board. This subsection does not affect arrangements for clearing checks made by the board with state depositories.]~~

(c) ~~[If a surplus of state funds remains after all depositories are designated, the surplus shall be prorated among the designated banks after collateral and stock and surplus requirements have been met.~~

(d) A state depository shall collect all checks, drafts, and demands for money deposited with it by the treasurer. If the depository uses due diligence, it is not liable for the collections until the proceeds of the collections are duly received by the depository bank. An expense incurred in collection that the depository is not permitted to pay by reason of an Act of Congress or a rule or regulation adopted under such an Act by the board of governors of the Federal Reserve System or the board of directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the treasurer out of money appropriated by the legislature for that purpose.

(d) [(e)] The treasurer shall keep sufficient money on deposit in demand deposit accounts in depositories designated by the board as clearing institutions to meet all current claims on the state. Items received by the treasurer for collection shall be deposited with a clearing institution to be credited to the demand deposit account in the depository. Checks, drafts, or warrants drawn by the treasurer for the payment of obligations due by the state may be drawn on such an account in such a depository or on the demand deposit account in another state depository so that the checks, drafts, or warrants of the state may at all times pass current as cash.

SECTION 7. Sections 404.103(a) and (b), Government Code, are amended to read as follows:

(a) The trust company may receive, transfer, and disburse money and securities as provided by statute or belonging to the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state in a manner that qualifies the trust company for federal reserve services [as a "depository institution" as defined by Section 19, Federal Reserve Act (12 U.S.C. Section 461)].

(b) ~~The [While qualified as a depository institution, the] trust company may enter into contracts and trust agreements or other fiduciary instruments with the treasurer, the Federal Reserve System, and other third parties. The trust company shall be liable under those contracts in accordance with the terms contained in the contracts. Notwithstanding any other statute to the contrary, to the extent permitted by the Texas Constitution and the contracts, trust agreements, or other fiduciary instruments between the trust company and the Federal Reserve System, the trust company's obligations shall be guaranteed by the state, and the state expressly waives all defenses of governmental immunity by and on behalf of the trust company, the treasurer, and the state and expressly consents to sue and be sued in federal court or in any court of competent jurisdiction. However, this provision does not alter or affect the immunity accorded to state officials and employees under state law. The trust company may enter into contracts with the treasurer and the Federal Reserve System to provide any services that the Federal Reserve System makes available, including [the following federal reserve services]:~~

(1) safekeeping book-entry United States Treasury and agency securities owned by the state and its agencies;

(2) using the federal reserve wire transfer system to transfer money and book-entry securities and to settle securities transactions involving book-entry United States Treasury and agency securities owned by the state and its agencies;

(3) collecting, through the Federal Reserve System, checks deposited with the treasury;

(4) receiving payments from and making payments to the federal government on behalf of the state and its agencies;

(5) originating automated clearinghouse transactions or other electronic transfers to make payments on behalf of the state and its agencies, collecting revenues due the state and its agencies, and transferring money between state depositories;

(6) paying warrants drawn on the treasury and presented through the Federal Reserve System for payment; and

(7) safekeeping collateral pledged to secure deposits of public funds.

SECTION 8. Section 2, Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), is amended by amending Subdivision (3) and adding Subdivision (8) to read as follows:

(3) "Capital assets" means:

(A) permanent fixtures, including mechanical or electrical equipment, of an instructional facility; and

(B) other property that constitutes furnishings or equipment of an instructional facility.

(8) "Bonds" includes notes and other obligations.

SECTION 9. Sections 3 and 4, Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3. FINDINGS. The legislature finds that it is appropriate to make loans to qualifying districts and to purchase bonds issued by qualifying districts for the purpose of aiding those districts in the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of qualifying instructional facilities and capital assets, *and for the purpose of aiding qualifying districts in funding their cash-management programs or other short-term borrowing needs for maintenance expenses.*

Sec. 4. PURPOSE. The purpose of this Act is to create funds to be administered by the state treasurer as directed by the board and funded by proceeds from the sale or refunding of bonds. The funds are to be used to determine the needs of *qualifying [qualified]* districts in acquiring, constructing, renovating, *performing major repairs to, remodeling, retrofitting*, or improving qualifying capital assets and instructional facilities and to provide loans and other aid for those purposes, *for paying maintenance expenses, and to aid school districts in the bond issuance process.* This Act shall be construed liberally to effect its purpose.

SECTION 10. Section 5(c), Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board may also from time to time commission or enter into an interagency agreement to undertake a comprehensive study of the needs of school districts in all or part of the state for the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of capital assets and instructional facilities.

SECTION 11. Section 6, Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. CREATION OF SCHOOL FACILITIES AID FUND. (a) The school facilities aid fund is hereby created as a special revolving fund in the state treasury. The fund shall be administered by the state treasurer as directed by the board under this Act and rules adopted by the board. The fund shall be used to provide aid to qualifying districts for the purpose of aiding those districts in the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of capital assets and instructional facilities that meet the board's standards for qualification under this Act, *to provide aid to qualifying districts to fund their cash-management programs or other short-term borrowing needs for maintenance purposes, and to aid school districts in the bond issuance process.* The fund may also be used to pay the costs of a study of the needs of school districts in all or part of the state for the

acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of qualifying capital assets and instructional facilities *or for assistance in paying maintenance expenses*. Money in the fund shall not be commingled or otherwise deposited to the credit of any other fund in the state treasury, except as provided by this Act.

(b) The board shall require to be deposited to the credit of the fund:

(1) the proceeds of bonds, exclusive of the costs of issuance, issued under this Act which are not required to be deposited into the reserve fund;

(2) any federal funds or private funds received and designated for the purposes of the fund;

(3) all repayments, interest, principal, or other amounts received in connection with aid provided under this Act;

(4) any investment securities or bonds purchased by the fund or otherwise held for the purposes of this Act, including interest or other earnings derived from the investment of the amounts described in Subdivisions (1), (2), and (3) of this subsection; and

(5) any amounts transferred for deposit into the fund.

(c) Except as otherwise provided by this Act, the fund shall be available only for:

(1) purchasing the bonds of qualifying districts or otherwise making loans to qualifying districts for expenses related to the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of qualifying capital assets and instructional facilities *or for maintenance expenses*;

(2) *aiding districts in the issuance of bonds*;

(3) ~~for~~ administrative costs relating to the performance of any duties under this Act;

(4) ~~for~~ payment of *issuance costs*, interest, premium, if any, and principal on bonds issued under this Act; ~~and~~

(5) ~~for~~ any transfers to the school facilities aid reserve fund required by resolution of the board.

(d) Except *for aid for maintenance expenses* or to the extent directly related to the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement of qualifying capital assets and instructional facilities, the fund may not be used to pay the general administrative expenses of any school district nor to pay any part of the salary or benefits of an official or employee of any school district receiving aid under this Act.

(e) ~~(d)~~ The board may *direct the state treasurer* to create accounts within the fund as shall seem advisable. Such accounts shall be kept separate from other accounts within the fund and shall receive such amounts as the board shall transfer or dedicate to them. The board may in the resolution authorizing the issuance of bonds dedicate an account or accounts within the fund, including future amounts to be deposited within an account, to the payment of debt service on one or more series of bonds issued under this Act. The board may also direct the state treasurer to pledge such an account or accounts as security for bonds issued under this Act.

SECTION 12. Sections 11 and 12, Public School Facilities Funding Act (Article 717t, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 11. FORM OF AID. (a) The board may provide aid to a qualifying district by *purchasing, at a price determined by the board:*

(1) *bonds of the district issued under Chapter 20, Education Code, including bonds guaranteed by the permanent school fund under Subchapter E of that chapter;*

(2) *other contractual obligations issued by the district under Subchapter A, Chapter 271, Local Government Code; or*

(3) *other bonds of the district issued* ~~[loan. A loan may be made]~~ for the purpose of refunding current outstanding obligations of a qualifying district if the current outstanding obligations or the portion thereof refunded was used in a manner which would qualify for aid under this Act and application is made and approved in the same manner as provided for other aid under this Act.

(b) A qualifying district is authorized to borrow from the fund by *selling its bonds to the board* [~~in the form of a loan which is authorized and secured and subject to the same limitations as a bond issue by that district~~]. *To be sold to the board, bonds of a qualifying district* [~~Any loan made under this Act~~] *must be authorized by the district in accordance with applicable law, including approval* [~~approved~~] *by the voters of the* [~~a qualifying~~] *district if voter approval is required by law* [~~in the same manner as the issuance of bonds by that district~~].

(c) [(b)] The board may purchase all or part of an issue of a qualifying district's bonds, including refunding bonds, *without the district complying with the requirement of Section 20.01, Education Code, that bonds be sold to the highest bidder* [~~if the proceeds of those bonds are to be used in a manner which would qualify for aid under this Act or for providing funds for the acquisition, construction, renovation, or improvement of qualifying capital assets or instructional facilities, and application is made and approved in the same manner as provided for other aid under this Act~~]. Any school district may request from the board an advisory statement as to whether the board will consider purchasing the school district's bonds. Such a request shall contain whatever information shall be reasonably required by the board. Notwithstanding any provision of law to the contrary, the board may acquire bonds issued by a qualifying district in a public or private sale with or without competitive bidding *as provided by resolution or order of the governing body of the district. The resolution or order may designate an officer or employee of the district to act on behalf of the district to set the price, interest rate, and date for the sale of the bonds.*

(d) *The board may require by rule that bonds of qualifying districts to be purchased by the board contain specified terms and provisions.*

(e) [(e)] The board may establish by rule formulas which provide for loans or other aid for the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, and improvement of capital assets *and for cash management and short-term borrowing needs for maintenance expenses*. The board shall consider the type of capital assets for which aid is requested and the needs of the district applying for aid in making its determination. The board may provide by rule for different classes of capital assets and establish different criteria for awarding aid to each class.

(f) [(d)] The board may establish by rule formulas which provide for loans or other aid for the acquisition, construction, renovation, *major repair, remodeling, retrofitting*, and improvement of instructional facilities. The board shall consider the type of facility acquisition, construction, renovation, *major repair, remodeling, retrofitting*, or improvement requested, the use to which the facility or improvement would be put, and the needs of the district applying for aid in making its determination. The board may provide by rule for different classes of facilities or improvements thereto and establish different criteria for awarding aid to each class.

(g) [(e)] The board may condition aid to a qualifying district on that district providing funds for the acquisition, construction, renovation, or improvement applied for in an amount set by the board.

(h) [(f)] The board shall require of all aid recipients that the aid provided and any independent funds required by the board to be provided by the district be spent exclusively on the project for which the aid was originally awarded. The board may by rule provide for a procedure by which an aid recipient may apply to the board for permission to use the aid provided and any required independent funds for a different purpose. The board may grant such permission if it finds that the alternative use proposed would have qualified for at least the same amount and type of aid. The Central Education Agency shall assist the board in monitoring the use of aid provided under this Act.

(i) [(g)] The board may by rule set limits on the amount of aid which any single qualifying district may receive in a specified number of years in a manner calculated to ensure that all qualifying districts are able to be considered for aid.

Sec. 12. REPAYMENT AND SECURITY. (a) *A school district shall make payments of principal and interest on obligations purchased by the board directly to the state treasurer for deposit in the fund* [~~The board shall provide for a loan or other repayment schedule at the time of granting aid to any qualifying district~~].

(b) *If the state treasurer receives notification from a school district that it will not make a timely payment on a loan made under this Act or if a school district fails to make a timely payment of principal or interest due on a loan made [Should a school district be more than 15 days delinquent in any repayment due] under this Act, the state treasurer shall notify [certify that fact to] the board and [to] the commissioner of education and shall notify the local district in writing by certified mail. Except as provided by Subsection (c) of this section, the [The] Central Education Agency shall deduct the total amount due to the board or fund, including interest and any applicable late payment charges as of the date of notification [certification], from the foundation school fund payment next due to that school district, including any allocations to that district under Chapter 16, [of the] Education Code, and shall continue making the deductions from subsequent foundation school fund payments until the total amount then due has been deducted. The Central Education Agency shall credit the full amount of a foundation school fund entitlement to a school district prior to making the deduction. The amount of such a deduction shall then be paid to the fund or to an account within the fund as the board may direct, on behalf of the district. Should the board determine that a deduction or any part thereof which was deposited in the fund was made erroneously, it may authorize payment from the fund of that amount directly to a district against which a deduction was made.*

(c) *If a school district is delinquent in making payments on bonds guaranteed by the permanent school fund under Subchapter E, Chapter 20, Education Code, the amount of the delinquency shall be immediately transferred from the appropriate account in the permanent school fund to the school facilities loan fund.*

SECTION 13. Sections 403.016(c) and 404.103(e), Government Code, are repealed.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1608 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 27, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.