

CHAPTER 946

H.B. No. 1821

AN ACT

relating to the investment of the funds of a local government or an institution of higher education.

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

SECTION 1. Section 2, Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), as amended by Chapters 39, 628, 693, and 750, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 2. AUTHORIZED INVESTMENTS. (a) An incorporated city or town, a county, a public school district, a district or authority created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, an institution of higher education as defined by Section 61.003 of the Education Code, a hospital district, a fresh water supply district, or any nonprofit corporation or public funds investment pool created under *Chapter 791, Government Code*, [~~The Interlocal Cooperation Act (Article 4413(32e), Vernon's Texas Civil Statutes)~~] acting on behalf of any of those entities may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in the following:

- (1) obligations of the United States or its agencies and instrumentalities;
- (2) direct obligations of the State of Texas or its agencies;
- (3) other obligations, the principal of and interest on which are unconditionally guaranteed or insured by, *or backed by the full faith and credit of*, the State of Texas or the United States or its agencies and instrumentalities;
- (4) obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent;
- (5) certificates of deposit issued by state and national banks domiciled in this state that are:

(A) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)–(4) of this subsection, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the investing entities;

(6) certificates of deposit issued by savings and loan associations domiciled in this state that are:

(A) guaranteed or insured by the Federal Savings and Loan Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)–(4) of this subsection, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the investing entities;

(7) prime domestic bankers' acceptances;

(8) commercial paper with a stated maturity of 270 days or less from the date of its issuance that either:

(A) is rated not less than A-1, P-1, or the equivalent by at least two nationally recognized credit rating agencies; or

(B) is rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a

bank organized and existing under the laws of the United States or any state thereof; and

(9) fully collateralized repurchase agreements having a defined termination date, secured by obligations described by Subdivision (1) of this subsection, pledged to the political entity and deposited with a third party selected and ~~or~~ approved by the political entity, and placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in this state.

(b) In addition to the investments ~~[investment in obligations, certificates, or agreements]~~ described by ~~[in]~~ Subsection (a) of this section, an institution of higher education as defined by Section 61.003 of the Education Code may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in the following:

(1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f)), and its subsequent amendments;

(2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and

~~(3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories [bond proceeds of an incorporated city or town, a county, a public school district, or a navigation district, or local revenue of an institution of higher education, may be invested in common trust funds or comparable investment devices owned or administered by banks domiciled in this state and whose assets consist exclusively of all or a combination of the obligations described by Subsection (a) of this section. Common trust funds of banks domiciled in this state may be used if they:~~

~~(1) are available;~~

~~(2) comply with the provisions of the Internal Revenue Code of 1986 and applicable federal regulations governing the investment of bond proceeds; and~~

~~(3) meet the cash flow requirements and the investment needs of the political subdivision or institution].~~

(c) In this section:

(1) "Bond proceeds" includes but is not limited to proceeds from the sale of bonds and reserves and funds maintained for debt service purposes.

(2) "Prime domestic bankers' acceptances" means a bankers' acceptance with a stated maturity of 270 days or less from the date of its issuance that will be, in accordance with its terms, liquidated in full at maturity, that is eligible for collateral for borrowing from a Federal Reserve Bank, and that is accepted by a bank organized and existing under the laws of the United States or any state, the short-term obligations of which (or of a bank holding company of which the bank is the largest subsidiary) are rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency.

(3) "Repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and then sell back at a future date, obligations described by Subsection (a)(1) of this section, the principal and interest of which are guaranteed by the United States or any of its agencies, in market value of not less than the principal amount of the funds disbursed. The term includes direct security repurchase agreements and reverse security repurchase agreements.

(4) "Public funds investment pool" means an entity created to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are: first, safety of principal; second, liquidity; and third, income.

(d) In addition to the investments described by Subsection (a) of this section, an entity listed in that subsection may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in a ~~[an SEC-registered,]~~ no-load money market mutual fund that is regulated by the federal Securities and Exchange Commission with a dollar-weighted

average stated [portfolio] maturity of 90 [120] days or less [whose assets consist exclusively of the obligations that are described by Subsection (a) of this section] and whose investment objectives include seeking to maintain a stable net asset value of \$1 per share. No entity listed in Subsection (a) of this section is authorized by this Act to invest in the aggregate more than 80 percent of its monthly average fund balance, excluding bond proceeds, in money market mutual funds described in this subsection or to invest its funds or funds under its control, excluding bond proceeds, in any one money market mutual fund in an amount that exceeds 10 percent of the total assets of the money market mutual fund.

(e) *An entity listed in Subsection (a) of this section may invest its funds and funds under its control in an eligible public funds investment pool if the governing body of the entity by resolution authorizes investment in the particular pool. A public funds investment pool may invest the funds it receives from entities listed in Subsection (a) of this section in any investment described by that subsection. A public funds investment pool shall establish an advisory board composed of participants in the pool and other persons who are qualified to advise the pool.*

(f) *To become eligible to receive funds from and invest funds on behalf of an entity listed in Subsection (a) of this section, a public funds investment pool must furnish to the chief financial officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:*

- (1) *the types of investments in which money is allowed to be invested;*
- (2) *the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;*
- (3) *the maximum stated maturity date any investment security within the portfolio may have;*
- (4) *the objectives of the pool;*
- (5) *the size of the pool;*
- (6) *the names of the members of the advisory board of the pool and the dates their terms expire;*
- (7) *the custodian bank that will safekeep the pool's assets;*
- (8) *whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;*
- (9) *whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;*
- (10) *the name and address of the independent auditor of the pool;*
- (11) *the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and*
- (12) *the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.*

(g) *To maintain eligibility to receive funds from and invest funds on behalf of an entity listed in Subsection (a) of this section, a public funds investment pool must furnish to the chief financial officer or other authorized representative of the entity:*

- (1) *investment transaction confirmations; and*
- (2) *a monthly report that contains, at a minimum, the following information:*
 - (A) *the types and percentage breakdown of securities in which the pool is invested;*
 - (B) *the current average dollar-weighted maturity, based on the stated maturity date, of the pool;*
 - (C) *the current percentage of the pool's portfolio in investments that have stated maturities of greater than one year;*
 - (D) *the carrying value versus the market value of the pool's portfolio, using amortized cost valuation;*

- (E) the size of the pool;*
- (F) the number of participants in the pool;*
- (G) the custodian bank that is safekeeping the assets of the pool;*
- (H) a listing of daily transaction activity of the entity participating in the pool;*
- (I) the yield and expense ratio of the pool;*
- (J) the portfolio managers of the pool; and*
- (K) any changes or addenda to the offering circular.*

SECTION 2. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 11, 1993, by a non-record vote; passed by the Senate on May 30, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

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