

CHAPTER 889

H.B. No. 1488

AN ACT

relating to the investment of public funds.

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

SECTION 1. SHORT TITLE. This Act may be cited as the Public Funds Investment Act of 1987.

SECTION 2. AUTHORIZED INVESTMENTS. (a) An incorporated city or town, a county, a public school district, an institution of higher education as defined by Section 61.003 of the Education Code, or any nonprofit corporation 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 the State of Texas or the United States;
- (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 agency or instrumentality issued mortgage backed securities rated AAA by a nationally recognized rating agency, or by Chapter 726, Acts of the 67th Legislature, Regular Session, 1981 (Article 2529b-1, Vernon's Texas Civil Statutes), and that have a market value of not less than the principal amount of the certificates; and
- (6) fully collateralized direct repurchase agreements having a defined termination date, secured by obligations described by Subdivision (1) of this subsection, pledged with a third party selected 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 investment in obligations, certificates, or agreements described in Subsection (a) of this section, bond proceeds of an incorporated city or town, a county, or a public school 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 Subdivisions (1)-(4) and (6) of 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 Tax Reform Act 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) "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.

SECTION 3. BIDS. (a) Investments under Section 2(b) of this Act may be made only after competitive bids are solicited from at least three banks as provided by this section. The bids may be solicited orally.

(b) An incorporated city or town or a public school district must attempt to solicit bids initially from banks located within its boundaries. If there are not three banks available for the investments within the city's, town's, or public school district's boundaries, the city, town, or public school district may solicit bids from banks located within the county or counties in which the city, town, or public school district is located in addition to those banks, if any, that are located within the boundaries of the city, town, or public school district. If there are not three banks available for the investments within the boundaries of the city, town, or public school district, or of the county or counties in which it is located, the city, town, or public school district may solicit bids from any bank within the state in addition to those banks, if any, that are located within the boundaries of the city, town, public school district, county, or counties.

(c) A county must attempt to solicit bids initially from banks located within its boundaries. If there are not three banks available for the investments within the county, the county may solicit bids from any bank within the state in addition to those banks, if any, that are located within the boundaries of the county.

(d) An institution of higher education as defined by Section 61.003 of the Education Code must solicit bids from at least three banks located within the state.

(e) A nonprofit corporation acting on behalf of an incorporated city or town, a county, a public school district, or an institution of higher education as defined by Section 61.003 of the Education Code shall follow the procedures identified in Subsection (b), (c), or (d) of this section, as applicable to the entity on behalf of which the nonprofit corporation is acting.

(f) If a bank has notified a governmental entity or nonprofit corporation that it is unable or unwilling to bid for investments under Section 2(b) of this Act, the governmental entity or nonprofit corporation that receives the notification may presume that the bank is unable or unwilling to bid for the investments until the bank notifies the governmental entity or nonprofit corporation otherwise in writing.

SECTION 4. STANDARD OF CARE. Investments shall be made with judgment and care, under circumstances then prevailing, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

SECTION 5. WRITTEN POLICIES. Investments shall be made in accordance with written policies approved by the governing body. The investment policies must address liquidity, diversification, safety of principal, yield, maturity, and quality and capability of investment management, with primary emphasis on safety and liquidity.

SECTION 6. NONAPPLICATION TO RETIREMENT FUNDS. This Act does not apply to the investment of funds under the control of a public retirement system, as defined by Section 12.001(2), Title 110B, Revised Statutes.

SECTION 7. AUTHORITY IS ADDITIONAL. The authority granted by this Act is in addition to that granted by other law.

SECTION 8. AMENDMENT. Section 51.003(b), Education Code, is amended to read as follows:

(b) The funds shall *either* be deposited in the depository bank or banks *or invested as authorized by the Public Funds Investment Act of 1987. Funds that are to be deposited in the depository bank or banks must be deposited* within seven days from the date of collection.

SECTION 9. EMERGENCY. 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 18, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1488 on May 27, 1987, by a

non-record vote. Passed by the Senate, with amendments, on May 25, 1987, by the following vote: Yeas 29, Nays 0.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.