

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 1762

4
5 By: Representative Summers
6 By: Senator Rapert

For An Act To Be Entitled

9 AN ACT TO REGULATE THE INVESTMENT OF PUBLIC FUNDS;
10 AND FOR OTHER PURPOSES.

Subtitle

14 TO REGULATE THE INVESTMENT OF PUBLIC
15 FUNDS.

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code Title 19, Chapter 1, Subchapter 5 is amended
21 to read as follows:

22 Subchapter 5 – Investment of Public Funds

23 19-1-501. ~~Definition~~ Eligible investment securities.

24 As used in this subchapter, ~~the term “bonds of the United States of~~
25 ~~America” means direct obligations of the United States of America and~~
26 ~~obligations, the principal and interest on which are fully guaranteed by the~~
27 ~~United States of America.~~ “eligible investment securities” means:

28 (1) A direct or guaranteed obligation of the United States that
29 is backed by the full faith and credit of the United States Government;

30 (2) A direct obligation of an agency, instrumentality, or
31 government-sponsored enterprise created by act of the United States Congress
32 and authorized to issue securities or evidences of indebtedness, regardless
33 of whether the securities or evidences of indebtedness are guaranteed for
34 repayment by the United States Government; and

35 (3) A bond or other debt of the state, a school district, a
36 county government, a municipal government, or an authority of a governmental



1 entity that:

2 (A) Is issued for an essential governmental purpose or is
 3 guaranteed by a state agency; and

4 (B) Has a debt rating from a nationally recognized credit
 5 rating agency of "A" or better at the time of purchase.

6
 7 19-1-502. Provisions supplemental.

8 This subchapter ~~shall not be construed as repealing~~ does not repeal any
 9 prior legislation or ~~as affecting~~ affect any statute ~~enacted by the Fifty-~~
 10 ~~fourth General Assembly~~ pertaining to the conversion of funds of public
 11 officials and agencies into ~~bonds of the United States of America~~ investments
 12 authorized under this subchapter but ~~shall be considered as being~~ is
 13 supplemental ~~thereto~~ to present law and ~~as conferring~~ confers additional
 14 powers.

15
 16 19-1-503. Construction.

17 (a) ~~Nothing in this~~ This subchapter ~~shall be construed to~~ does not
 18 affect the power of counties, municipalities, improvement districts, and
 19 other public bodies to make ~~deposits~~ a deposit of funds in the form of
 20 ~~certificates of deposit~~ a demand deposit, a savings deposit, or a time
 21 deposit as authorized by law.

22 (b) The adoption of this subchapter ~~shall not be construed to~~ does not
 23 affect or impair the power of counties, municipalities, improvement
 24 districts, and other public bodies to make investments of funds in their
 25 possession or under their control as authorized by other laws.

26
 27 19-1-504. Investments permitted.

28 (a)(1)~~(A)~~ With the approval of the county or municipal depository
 29 board, a ~~county~~ treasurer may convert any funds in ~~his or her~~ the treasurer's
 30 possession or under ~~his or her~~ the treasurer's control and not presently
 31 needed for other purposes into one (1) or more of the following investments:

32 ~~(i) Bonds of the United States of America, as defined in §~~
 33 ~~19-1-501~~ (A) Eligible investment securities having a maturity of not longer
 34 than five (5) years from the date of acquisition unless, as documented at the
 35 time of acquisition, the investment is to fund or support a specific purpose
 36 and there are no expectations that the investment will be sold before

1 maturity;

2 ~~(ii) (B) An Arkansas bank ~~certificates~~ certificate of~~
 3 ~~deposit or a certificate of deposit authorized under § 19-8-111; or~~

4 ~~(iii) (C) An account established by a local government~~
 5 ~~joint investment trust authorized under the Local Government Joint Investment~~
 6 ~~Trust Act, § 19-8-301 et seq.; or~~

7 ~~(D) An Arkansas financial institution repurchase~~
 8 ~~agreements, defined as the purchase of permitted government securities as~~
 9 ~~agreement for eligible investment securities in which the seller agrees to~~
 10 ~~repurchase the investment at face value plus a price including interest~~
 11 ~~earned during the holding period as determined by the repurchase agreement.~~

12 ~~(B) All of the (2) The following entities may convert funds that~~
 13 ~~are in their the possession of the entity or under their the control of the~~
 14 ~~entity and that are not presently needed for other purposes into ~~bonds of the~~~~
 15 ~~United States of America an investment listed in subdivision (a)(1) of this~~
 16 ~~section:~~

17 ~~(i) County boards and commissions of every kind (A) A~~
 18 ~~county board or commission;~~

19 ~~(ii) With the approval of the governing body, cities of~~
 20 ~~the first class, cities of the second class, and incorporated towns, and the~~
 21 ~~treasurers and collectors of cities of the first class, cities of the second~~
 22 ~~class, and incorporated towns;~~

23 ~~(iii) Municipal boards and commissions of every kind (B) A~~
 24 ~~municipal board or commission, including, but without limitation, boards a~~
 25 ~~board of trustees of a policemen's pension and relief funds fund, boards a~~
 26 ~~board of trustees of a firemen's relief and pension funds fund, a waterworks~~
 27 ~~commissions commission, and a sewer committees committee; and~~

28 ~~(iv) (C) Drainage districts, levee districts, road~~
 29 ~~improvement districts, waterworks districts, electric light districts,~~
 30 ~~municipal improvement districts, and suburban improvement districts A~~
 31 ~~drainage district, levee district, and improvement district, including~~
 32 ~~without limitation a waterworks district, electric light district, municipal~~
 33 ~~improvement district, and suburban improvement district.~~

34 ~~(2) The provisions of this (3) This subsection shall does not~~
 35 ~~apply to funds of a school district.~~

36 (b)(1) Unless otherwise provided by a signed written agreement between

1 the school district or districts and the county treasurer, funds of a school
 2 district shall be invested by the:

3 (A) School district treasurer when the school district has
 4 a treasurer; or

5 (B) County treasurer when the school district does not
 6 have a treasurer.

7 (2) To the extent directed by the board of directors of the
 8 school district, ~~these~~ investments shall be in:

9 (A) General obligation bonds of the United States;

10 (B) Bonds, notes, debentures, or other obligations issued
 11 by an agency of the United States Government;

12 (C) General obligation bonds of the ~~State of Arkansas~~
 13 state; or

14 (D) Bank certificates of deposit.

15 (c) A school district may invest moneys held for the repayment of a
 16 federally recognized ~~Qualified Zone Academy Bond~~ qualified zone academy bond
 17 under 26 U.S.C. § 1397E, as it existed on January 1, 2005, in a guaranteed
 18 investment contract or forward delivery agreement in which the school
 19 district is guaranteed a certain rate of interest on its investment if the
 20 guaranteed investment contract or the forward delivery agreement is entered
 21 into between the school district and the purchaser of the ~~Qualified Zone~~
 22 ~~Academy Bond~~ qualified zone academy bond.

23 (d) A treasurer or other custodian of public funds who is authorized
 24 to purchase and hold eligible investment securities may use a brokerage
 25 account to acquire, sell, and hold the investment if the investment is
 26 established with a broker-dealer that:

27 (1) Has offices in the state;

28 (2) Is registered with the State Securities Department;

29 (3) Is a member of the Financial Industry Regulatory Authority;

30 and

31 (4) Is a member of the Securities Investor Protection
 32 Corporation.

33 (e) Unless restrictions are established by the donor, a private
 34 donation to a city of the first class, a city of the second class, or an
 35 incorporated town may be invested in accordance with the "prudent man rule"
 36 established under § 28-71-105.

19-1-505. Additional authority of certain cities.

(a)(1) A city that has real property assessed valuation in excess of three hundred million dollars (\$300,000,000) may invest the city's funds in securities under § 23-47-401 and according to the investment policy adopted by the governing body of the city.

(2) The investment policy adopted by the city's governing body may authorize a maturity term exceeding the term stated in § 19-1-504(a)(1)(A).

(b)(1) Each investment shall be made with the judgment and care under prevailing circumstances that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation but for investment, considering the probable safety of the capital and the probable income to be derived.

(2) Investment of funds shall be governed by the following investment objectives in order of priority:

(A) Preservation and safety of the principal;

(B) Liquidity; and

(C) Yield.

(c) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

(1) The investment of city funds and funds under the officer's control and over which the officer had responsibility, rather than a consideration as to the prudence of a single investment; and

(2) Whether the investment decision is consistent with the written investment policy of the city.

SECTION 2. Arkansas Code § 19-8-104 is amended to read as follows:

19-8-104. Investment of public funds.

(a) Except as provided in ~~subsections~~ subsection (b) ~~and (e)~~ of this section, all public funds as defined in § 19-8-101 shall be deposited into banks located in the ~~State of Arkansas~~ state.

(b) A school district may seek a hardship waiver from the Legislative Joint Auditing Committee from ~~the provisions of~~ this section and deposit ~~state public funds in~~ public funds in ~~into~~ an out-of-state bank ~~under the following~~

1 conditions if:

2 (1) The school district is designated as an isolated school
3 district under §§ 6-20-601 and 6-20-602 [repealed];

4 (2) The school district lies on the borders of the state line;

5 (3) The nearest Arkansas bank is located at least eighteen (18)
6 miles from the administrative offices of the district;

7 (4) The administrative offices of the district are located
8 within six (6) miles from an out-of-state bank; and

9 (5) The out-of-state bank meets all other requirements
10 concerning collateralization of state funds.

11 ~~(c) Any private donations to cities of the first class or the second~~
12 ~~class or incorporated towns, unless restrictions are established by the~~
13 ~~donor, may be invested in accordance with the "prudent man rule" established~~
14 ~~by § 28-71-105.~~

15
16 SECTION 3. Arkansas Code § 19-8-308 is amended to read as follows:

17 19-8-308. Authorized common trust fund investments.

18 A trust created pursuant to under this subchapter ~~shall invest~~ may
19 invest moneys held for the credit of a common trust fund ~~only in the~~
20 ~~following authorized investments:~~ in the same manner as cities under §§ 19-1-
21 504 and 19-1-505 and according to the investment policy adopted by the board
22 of directors of the trust.

23 ~~(1) Direct obligations of, or obligations on which the timely~~
24 ~~payment of principal of and interest on is fully guaranteed by, any agency or~~
25 ~~instrumentality of the United States;~~

26 ~~(2) Certificates of deposit or time deposits of a bank or~~
27 ~~savings and loan whose principal office is located in the State of Arkansas,~~
28 ~~to the extent that such deposits and the interest thereon are either:~~

29 ~~(A) Insured by the Federal Deposit Insurance Corporation;~~

30 ~~or~~

31 ~~(B)(i) Secured by a perfected first security interest in~~
32 ~~collateral consisting of obligations of the type described in subdivision (1)~~
33 ~~or (2) of this section, and having a fair market value equal to not less than~~
34 ~~one hundred ten percent (110%) of the amount secured.~~

35 ~~(ii) The collateral securing the deposit must be~~
36 ~~held by the trust or by an independent third party acting solely as agent for~~

1 the trust, the collateral must be held free of any lien or claim by a third
 2 party, other than a party acting as agent for the trust, and the securities
 3 must be held pursuant to an agreement providing that the trust will value the
 4 collateral no less frequently than monthly and will liquidate the collateral
 5 if any deficiency in its required market value is not restored within two (2)
 6 business days of such valuation; and

7 (3) ~~Securities of the type described in subdivision (1) or (2)~~
 8 ~~of this section purchased under agreements to resell such securities,~~
 9 ~~provided:~~

10 (A) ~~A specific written repurchase agreement governs the~~
 11 ~~transaction;~~

12 (B) ~~The securities are held by the trust or an independent~~
 13 ~~third party acting solely as agent for the trust;~~

14 (C) ~~The securities are held free and clear of any lien or~~
 15 ~~claim by a third party, other than a party acting as agent for the trust;~~

16 (D) ~~The trust is the holder of a perfected first security~~
 17 ~~interest in the securities;~~

18 (E) ~~The fair market value of the securities in relation to~~
 19 ~~the amount of the repurchase obligation, including principal and interest, is~~
 20 ~~equal to at least one hundred two percent (102%); and~~

21 (F) ~~The repurchase agreement provides that the trust will~~
 22 ~~value the securities no less frequently than monthly and will liquidate the~~
 23 ~~securities if any deficiency in their required market value is not restored~~
 24 ~~within two (2) business days of such valuation.~~

25
 26 SECTION 4. Arkansas Code § 14-58-309 is repealed.

27 ~~14-58-309. Legislative findings.~~

28 (a) ~~The State of Arkansas has investment policies which allow the~~
 29 ~~Treasurer of State and others to prudently invest cash funds in low risk~~
 30 ~~investments which outperform those investments currently permitted by law for~~
 31 ~~municipalities. Larger municipalities and groups of municipalities having in~~
 32 ~~excess of one billion dollars (\$1,000,000,000) in real property valuation~~
 33 ~~have the ability to hire employees with expertise to direct investments~~
 34 ~~pursuant to state investment policy, which is the same authority as~~
 35 ~~investments authorized by state banks. If similar authority were given to~~
 36 ~~larger municipalities or groups of municipalities having in excess of one~~

1 billion dollars (\$1,000,000,000) in real property valuation, it would assist
2 them to balance their budgets without a tax increase. It is hereby found and
3 determined that larger municipalities or groups of municipalities having in
4 excess of one billion dollars (\$1,000,000,000) in real property valuation
5 should be given authority to invest pursuant to state laws governing
6 permissible investments by the State of Arkansas, which would allow them to
7 improve their rate of return over the return on investments currently
8 authorized and would assist them in balancing their budgets without a tax
9 increase.

10 (b)(1) ~~Cities of the first class which have real property valuation in~~
11 ~~excess of four hundred million dollars (\$400,000,000) or groups of~~
12 ~~municipalities having in excess of one billion dollars (\$1,000,000,000) in~~
13 ~~real property valuation may invest cash funds in securities as outlined in §~~
14 ~~23-47-401 pursuant to an investment policy adopted by its governing body.~~

15 (2)(A) ~~Investments shall be made with the judgment and care~~
16 ~~under prevailing circumstances that a person of prudence, discretion, and~~
17 ~~intelligence would exercise in the management of the person's own affairs,~~
18 ~~not for speculation but for investment, considering the probable safety of~~
19 ~~the capital and the probable income to be derived.~~

20 (B) ~~Investment of funds shall be governed by the following~~
21 ~~investment objectives, in order of priority:~~

22 (i) ~~Preservation and safety of the principal;~~

23 (ii) ~~Liquidity; and~~

24 (iii) ~~Yield.~~

25 (3) ~~In determining whether an investment officer has exercised~~
26 ~~prudence with respect to an investment decision, the determination shall be~~
27 ~~made taking into consideration:~~

28 (A) ~~The investment of all city funds or funds under the~~
29 ~~officer's control over which the officer had responsibility, rather than a~~
30 ~~consideration as to the prudence of a single investment; and~~

31 (B) ~~Whether the investment decision was consistent with~~
32 ~~the city's or group's written investment policy.~~

33
34
35 **APPROVED: 3/23/2011**