Senate Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
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CHAPTER 53

SENATE BILL 1216

AN ACT

AMENDING SECTIONS 9-492, 15-1025, 35-313 AND 35-323, ARIZONA REVISED STATUTES; AMENDING TITLE 35, CHAPTER 2, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 35-323.01; RELATING TO STATE MANAGEMENT OF PUBLIC MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-492, Arizona Revised Statutes, is amended to read:

9-492. Investment of sinking funds and surplus or idle funds of municipality

A. The governing body of a municipality may invest its sinking funds in United States, state, or county bonds or in bonds, debentures or other obligations issued by the federal land banks, the federal intermediate credit banks or the banks for cooperatives.

B. In addition to the provisions of subsection A of this section, the governing body of a municipality may invest its surplus or idle funds in United States treasury bills, notes or bonds which have a maturity date of not more than one year from the date of investment and in accounts of any savings and loan association insured by an agency of the government of the United States, up to the amount of such insurance.

C. IN ADDITION TO THE PROVISIONS OF SUBSECTIONS A AND B OF THIS SECTION, THE GOVERNING BODY OF A MUNICIPALITY MAY INVEST ITS SURPLUS OR IDLE FUNDS IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN SECTION 35-323.01.

Sec. 2. Section 15-1025, Arizona Revised Statutes, is amended to read:

15-1025. Investment and reinvestment of debt service fund

A. The governing board of a school district may invest and reinvest all monies belonging or credited to the school district as a debt service fund. Consent may be requested prior to the beginning of any fiscal year for the adoption of a resolution of continuing effect. The investment shall be made for the best interests of the school district.

B. The funds may be invested and reinvested in any of the following:

1. Bonds or other evidences of indebtedness of the United States of America or any of its agencies or instrumentalities when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof.

2. Bonds or other evidences of indebtedness of this state, or of any of the counties or incorporated cities, towns or school districts of this state.

3. Bonds, notes or evidences of indebtedness of any county, municipality or municipal district utility within this state, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on such obligations, and for the payment of which a lawful debt service fund or reserve fund has been established and is being maintained, but only if no default in payment of principal or interest on the obligations to be purchased has occurred within five years of the date of investment therein or, if such obligations were issued less than five years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased, nor on any other obligations of the issuer within five years of such investment.

4. Bonds, notes or evidences of indebtedness issued by any municipal improvement district in this state to finance local improvements authorized by law, if the principal and interest of such obligations are payable from assessments on real property within such local improvement district. No such investment shall be made if the face value of all such obligations and similar obligations outstanding exceeds fifty per cent of the market value of the real property and improvements upon which such bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes. Such investment shall be made only if no default in payment of principal or interest on the obligations to be purchased has occurred within five years of the date of investment therein or, if such obligations were issued less than five years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased, nor on any other obligation of the issuer within five years of such investment.

5. Interest bearing savings accounts or certificates of deposit insured in banks or savings and loan associations doing business in Arizona by the federal deposit insurance corporation, but only if they are secured by the depository to the same extent and in the same manner as required by the general depository law of this state. Security shall not be required for that portion of any deposit that is insured under any law of the United States.

6. Bonds, debentures or other obligations issued by the federal land banks, the federal intermediate credit banks or the banks for cooperatives.

7. INTEREST BEARING CERTIFICATES OF DEPOSIT PURCHASED IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN SECTION 35-323.01.

C. The purchase of the securities shall be made by the county treasurer or the treasurer's designated agent upon authority of a resolution of the governing board. The county treasurer shall be the custodian of all securities so purchased. The securities may be sold upon an order of the governing board.

D. All monies earned as interest or otherwise derived by virtue of the provisions of this section shall be credited to the debt service fund.

Sec. 3. Section 35-313, Arizona Revised Statutes, is amended to read:

35-313. <u>Investment of trust and treasury monies; loan of securities</u>

A. The state treasurer shall invest and reinvest trust and treasury monies in any of the following items:

1. Obligations issued or guaranteed by the United States or any of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.

2. Collateralized repurchase agreements purchased from securities dealers that make markets in those securities listed in paragraph 1 OF THIS SUBSECTION.

3. Bonds or other evidences of indebtedness of this state or any of the counties or incorporated cities, towns or duly organized school districts.

4. Commercial paper whose issuer is rated in one of the two highest rating categories for short-term obligations by any two nationally recognized statistical rating organizations.

5. Bills of exchange or time drafts known as bankers acceptances which are drawn on and accepted by a commercial bank.

6. Negotiable certificates of deposit issued by a nationally or state chartered bank or savings and loan association.

7. Bonds, debentures, notes or other evidences of indebtedness which are issued by entities organized and doing business in the United States and which carry as a minimum one of the Baa ratings of Moody's investors service or one of the BBB ratings of Standard and Poor's rating service or their successors.

8. Securities of or any other interests in any open-end or closed-end management type investment company or investment trust registered under the investment company act of 1940 (54 Stat. 789; 15 United States Code sections 80a-1 through 80a-64), as amended, if both of the following apply:

(a) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(b) The investment policy of the investment company or investment trust includes seeking to maintain a constant share price.

9. Certificates of deferred property taxes as provided by section 42-17309.

10. Treasurer's warrant notes issued pursuant to section 35-185.01 or registered warrants of a county issued pursuant to section 11-605, if the yield is equal to or greater than yields on eligible investment instruments of comparable maturities.

11. Shares in the treasurer's local government investment pools provided that investment policies of the pool seek to maintain a constant share price.

12. Subject to subsection D of this section, state transportation board funding obligations delivered pursuant to section 28-7678.

13. CERTIFICATES OF DEPOSIT PURCHASED IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN SECTION 35-323.01.

B. In case of default or failure to honor a county treasurer's warrant, the state treasurer may withhold the first state shared revenues that would otherwise be distributed to the defaulting county in the amount necessary to honor the note including accrued interest to and beyond the date of default.

C. The state treasurer may contract to loan securities owned by the trust funds and operating monies deposited in the investment pools pursuant to section 35-316, subsection B to the financial or dealer community through

one or more of the entities listed in section 35-317, subsection A, or authorized by the board of investment pursuant to section 35-311, subsection E, if the borrower transfers collateral to the state treasurer or acting agent of the state in the form of cash or securities specified in subsection A of this section. Collateral posted in the form of cash shall be in an amount equal to at least one hundred per cent of the market value of the loaned securities as agreed. Collateral posted in the form of securities shall be in an amount of no more than one hundred ten per cent of the market value of the loaned securities as established from time to time by the board of investment. The loaned securities shall be valued as to market value daily, and, if necessary, the borrower shall post additional collateral, as agreed, to ensure that the required margin is maintained. The state treasurer may collect from the borrower all dividends, interest, premiums, rights and other distributions to which the lender of securities would otherwise be entitled. The state treasurer may terminate the contract on not less than five business days' notice, as agreed, and the borrower may terminate the contract on not less than two business days' notice, as agreed.

D. The state treasurer shall invest operating monies in state transportation board funding obligations delivered pursuant to section 28-7678 pursuant to the following:

1. The state treasurer shall liquidate investments of operating monies if necessary in order to invest in state transportation board funding obligations, except that if operating monies in the state general fund fall below an eight hundred million dollar average over the previous twelve consecutive months, the state treasurer is not required to purchase state transportation board funding obligations pursuant to this subsection.

2. Each series of state transportation board funding obligations shall bear interest at a fixed interest rate equal to the mean bid-ask price of the United States treasury obligation with a maturity date closest to the maturity date of the state transportation board funding obligation as published most recently in the Wall Street Journal before the date the state treasurer receives a certificate from the state transportation board that states the board's determination to deliver an obligation to the state treasurer and the anticipated delivery date of the obligation. The delivery date shall be between fifteen and sixty days after the day the state treasurer receives the certificate.

3. The state treasurer shall provide written notice to the state transportation board and the director of the department of transportation when the operating monies fall below four hundred million dollars. If operating monies fall below two hundred million dollars, the state treasurer may call the investment in the state transportation board funding obligations in twenty-five million dollar increments up to the amount that the operating monies are below two hundred million dollars. The state treasurer shall give the state transportation board and the director of the department of transportation at least fifteen days' notice of the call.

Sec. 4. Section 35-323, Arizona Revised Statutes, is amended to read:

35-323. Investing public monies; bidding; security and other requirements

A. The treasurer shall invest and reinvest public monies in securities and deposits with a maximum maturity of five years. All public monies shall be invested in eligible investments. Eligible investments are:

1. Certificates of deposit in eligible depositories.

2. CERTIFICATES OF DEPOSIT IN ONE OR MORE FEDERALLY INSURED BANKS OR SAVINGS AND LOAN ASSOCIATIONS IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN SECTION 35-323.01.

~~2.~~ 3. Interest bearing savings accounts in banks and savings and loan institutions doing business in this state whose accounts are insured by federal deposit insurance for their industry, but only if deposits in excess of the insured amount are secured by the eligible depository to the same extent and in the same manner as required under this article.

~~3.~~ 4. Repurchase agreements with a maximum maturity of one hundred eighty days.

~~4.~~ 5. The pooled investment funds established by the state treasurer pursuant to section 35-326.

~~5.~~ 6. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.

~~6.~~ 7. Bonds or other evidences of indebtedness of this state or any of its counties, incorporated cities or towns or school districts.

~~7.~~ 8. Bonds, notes or evidences of indebtedness of any county, municipal district, municipal utility or special taxing district within this state that are payable from revenues, earnings or a special tax specifically pledged for the payment of the principal and interest on the obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained, but only if no default in payment on principal or interest on the obligations to be purchased has occurred within five years of the date of investment, or, if such obligations were issued less than five years before the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased nor any other obligations of the issuer within five years of the investment.

~~8.~~ 9. Bonds, notes or evidences of indebtedness issued by any county improvement district or municipal improvement district in this state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the improvement district. An investment shall not be made if:

(a) The face value of all such obligations, and similar obligations outstanding, exceeds fifty per cent of the market value of the real property, and if improvements on which the bonds or the assessments for the payment of principal and interest on the bonds are liens inferior only to the liens for general ad valorem taxes.

(b) A default in payment of principal or interest on the obligations to be purchased has occurred within five years of the date of investment, or, if the obligations were issued less than five years before the date of investment, a default in the payment of principal or interest has occurred on the obligations to be purchased or on any other obligation of the issuer within five years of the investment.

~~9.~~ 10. Commercial paper of prime quality that is rated "P1" by Moody's investors service or rated "A1" or better by Standard and Poor's rating service or their successors. All commercial paper must be issued by corporations organized and doing business in the United States.

~~10.~~ 11. Bonds, debentures and notes that are issued by corporations organized and doing business in the United States and that are rated "A" or better by Moody's investor service or Standard and Poor's rating service or their successors.

B. Certificates of deposit shall be purchased from the eligible depository bidding the highest permissible rate of interest. No monies over one hundred thousand dollars may be awarded at any interest rate less than one hundred three per cent of the equivalent bond yield of the offer side of United States treasury bills having a similar term. If the eligible depository offering to pay the highest rate of interest has bid only for a portion of the monies to be awarded, the remainder of the monies shall be awarded to eligible depositories bidding the next highest rates of interest.

C. An eligible depository is not eligible to receive total aggregate deposits from this state and all its subdivisions in an amount exceeding twice its capital structure as outlined in the last call of condition of the superintendent of financial institutions.

D. If two or more eligible depositories submit bids of an identical rate of interest for all or any portion of the monies to be deposited, the award of the deposit of the monies shall be made to the eligible depository among those submitting identical bids having, at the time of the bid opening, the lowest ratio of total public deposits in relation to its capital structure.

E. Each bid submitted, and not withdrawn prior to the time specified, constitutes an irrevocable offer to pay interest as specified in the bid on the deposit, or portion bid for, and the award of a deposit in accordance with this section obligates the depository to accept the deposit and pay interest as specified in the bid pursuant to which the deposit is awarded.

F. The treasurer shall maintain a record of all bids received and shall make available to the board of deposit at its next regularly scheduled meeting a correct list showing the bidders, the bids received and the amount awarded. These records shall be available to the public and shall be kept in the possession of the treasurer for not less than two years from the date of the report.

G. Any eligible depository, before receiving a deposit in excess of the insured amount under this article, shall deliver collateral for the

purposes of this subsection equal to at least one hundred one per cent of the deposit. The collateral shall be any of the following:

1. A bond executed by a surety company that is approved by the treasury department of the United States and authorized to do business in this state. The bond shall be approved as to form by the legal advisor of the treasurer.

2. Securities or instruments of the following character:

(a) United States government or agency obligations.

(b) State, county, school district and other district municipal bonds.

(c) Registered warrants of this state, a county or other political subdivisions of this state, when offered as security for monies of the state, county or political subdivision by which they are issued.

(d) First mortgages and trust deeds on improved, unencumbered real estate located in this state. No single first mortgages or trust deeds may represent more than ten per cent of the total collateral. The treasurer may require that the first mortgages or trust deeds comprising the total collateral security be twice the amount the eligible depository receives on deposit. First mortgages or trust deeds qualify as collateral subject to the following limitations:

(i) The promissory note or other evidences of indebtedness secured by such first mortgage or trust deed shall have been in existence for at least three years and shall not have been in default during this period.

(ii) An eligible depository shall at its own expense execute, deposit with the treasurer and record with the appropriate county recorder a complete sale and assignment with recourse in a form approved by the attorney general, together with an unconditional assumption of obligation to promptly pay to the entitled parties public monies in its custody upon lawful demand and tender of resale and assignment.

Eligible depositories may deposit the security described in this subdivision with the state treasurer, and county, city or town treasurers may accept the security described in this subdivision at their option.

3. The safekeeping receipt of a federal reserve bank or any bank located in a reserve city, or any bank authorized to do business in this state, whose combined capital, surplus and outstanding capital notes and debentures on the date of the safekeeping receipt are ten million dollars or more, evidencing the deposit therein of any securities or instruments described in this section. A safekeeping receipt shall not qualify as security, if issued by a bank to secure its own public deposits, unless issued directly through its trust department. The safekeeping receipt shall show upon its face that it is issued for the account of the treasurer and shall be delivered to the treasurer. The safekeeping receipt may provide for the substitution of securities or instruments which qualify under this section with the affirmative act of the treasurer.

H. The securities, instruments or safekeeping receipt for the securities, instruments or warrants shall be accepted at market value if not

above par, and, if at any time their market value becomes less than the deposit liability to that treasurer, additional securities or instruments required to guarantee deposits shall be deposited immediately with the treasurer who made the deposit and deposited by the eligible depository in which the deposit was made.

I. The condition of the surety bond, or the deposit of securities, instruments or a safekeeping receipt, must be such that the eligible depository will promptly pay to the parties entitled public monies in its custody, upon lawful demand, and will, when required by law, pay the monies to the treasurer making the deposit.

J. Notwithstanding the requirements of this section, any institution qualifying as an eligible depository may accept deposits of public monies to the total then authorized insurance of accounts, insured by federal deposit insurance, without depositing a surety bond or securities in lieu of the surety bond.

K. An eligible depository shall report monthly to the treasurer the total deposits of that treasurer and the par value and the market value of any pledged collateral securing those deposits.

L. When a security or instrument pledged as collateral matures or is called for redemption, the cash received for the security or instrument shall be held in place of the security until the depository has obtained a written release or provided substitute securities or instruments.

M. The surety bond, securities, instruments or safekeeping receipt of an eligible depository shall be deposited with the treasurer making the deposit, and he shall be the custodian of the bond, securities, instruments or safekeeping receipt. The treasurer may then deposit with the depository public monies then in his possession in accordance with this article, but not in an amount in excess of the surety bond, securities, instruments or safekeeping receipt deposited, except for federal deposit insurance.

N. The following restrictions on investments are applicable:

1. An investment of public operating fund monies shall not be invested for a duration of longer than three years.

2. The board of deposit may order the treasurer to sell any of the securities, and any order shall specifically describe the securities and fix the date upon which they are to be sold. Securities so ordered to be sold shall be sold for cash by the treasurer on the date fixed in the order, at the then current market price. The treasurer and the members of the board are not accountable for any loss occasioned by sales of securities at prices lower than their cost. Any loss or expense shall be charged against earnings received from investment of public funds.

O. If the total amount of subdivision monies available for deposit at any time is less than one hundred thousand dollars, the subdivision board of deposit shall award the deposit of the funds to an eligible depository in accordance with an ordinance or resolution of the governing body of the subdivision.

Sec. 5. Title 35, chapter 2, article 2.1, Arizona Revised Statutes, is amended by adding section 35-323.01, to read:

35-323.01. Investment of government monies; authority; definition

A. IF AN INVESTING ENTITY INVESTS IN CERTIFICATES OF DEPOSIT PURSUANT TO SECTION 9-492, SUBSECTION C, SECTION 15-1025, SUBSECTION B, PARAGRAPH 7, SECTION 35-313, SUBSECTION A, PARAGRAPH 13 OR SECTION 35-323, SUBSECTION A, PARAGRAPH 2, THE INVESTING ENTITY IN EACH CASE SHALL INVEST THOSE MONIES IN ACCORDANCE WITH ALL OF THE FOLLOWING CONDITIONS:

1. THE MONIES ARE INITIALLY INVESTED THROUGH AN ELIGIBLE DEPOSITORY IN THIS STATE SELECTED BY THE INVESTING ENTITY.

2. THE SELECTED ELIGIBLE DEPOSITORY ARRANGES FOR THE DEPOSIT OF THE MONIES IN CERTIFICATES OF DEPOSIT IN ONE OR MORE FEDERALLY INSURED BANKS OR SAVINGS AND LOAN ASSOCIATIONS WHEREVER LOCATED, FOR THE ACCOUNT OF THE INVESTING ENTITY.

3. THE FULL AMOUNT OF PRINCIPAL AND ANY ACCRUED INTEREST OF EACH CERTIFICATE OF DEPOSIT IS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

4. THE SELECTED ELIGIBLE DEPOSITORY ACTS AS CUSTODIAN FOR THE INVESTING ENTITY WITH RESPECT TO THE CERTIFICATES OF DEPOSIT ISSUED FOR ITS ACCOUNT.

5. AT THE SAME TIME THAT THE INVESTING ENTITY'S MONIES ARE DEPOSITED AND THE CERTIFICATES OF DEPOSIT ARE ISSUED, THE SELECTED ELIGIBLE DEPOSITORY RECEIVES AN AMOUNT OF DEPOSITS FROM CUSTOMERS OF OTHER FEDERALLY INSURED FINANCIAL INSTITUTIONS EQUAL TO OR GREATER THAN THE AMOUNT OF THE MONIES INITIALLY INVESTED BY THE INVESTING ENTITY THROUGH THE SELECTED ELIGIBLE DEPOSITORY.

6. MONIES INVESTED IN ACCORDANCE WITH ALL OF THE CONDITIONS PRESCRIBED IN THIS SECTION ARE NOT SUBJECT TO ANY SECURITY OR COLLATERAL REQUIREMENTS.

B. FOR THE PURPOSES OF THIS SECTION "INVESTING ENTITY" MEANS THE STATE, A POLITICAL SUBDIVISION, THE GOVERNING BODY OF A MUNICIPALITY, OR THE GOVERNING BODY OF A SCHOOL DISTRICT.

APPROVED BY THE GOVERNOR APRIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.