

1322

2009-2010 Regular Sessions

I N   S E N A T E

January 28, 2009

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Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the general municipal law, in relation to the adoption by the state comptroller of investment guidelines to be disseminated to local government entities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     Section 1. Section 8 of the state finance law is amended by adding a  
2     new subdivision 21 to read as follows:
- 3     21. A. ADOPT RULES AND REGULATIONS NOT LATER THAN APRIL FIRST IN THE  
4     YEAR NEXT SUCCEEDING THE YEAR IN WHICH THIS SUBDIVISION TAKES EFFECT,  
5     WITH RESPECT TO COMPREHENSIVE INVESTMENT GUIDELINES AND PROCEDURES WHICH  
6     SHALL INCLUDE THE INVESTING, MONITORING AND REPORTING OF FUNDS OF EACH  
7     LOCAL GOVERNMENT ENTITY. FOR PURPOSES OF THIS SECTION, "LOCAL GOVERNMENT  
8     ENTITY" SHALL INCLUDE COUNTIES, CITIES, TOWNS, VILLAGES, SCHOOL  
9     DISTRICTS INCLUDING BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND  
10    DISTRICT CORPORATIONS, WITHIN THE MEANING OF THAT TERM AS SET OUT IN  
11    SUBDIVISION THREE OF SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW,  
12    OR ANY OTHER GOVERNMENT SUBDIVISION OF THE STATE. SUCH INVESTMENT GUIDE-  
13    LINES AND PROCEDURES SHALL BE REVIEWED BY THE COMPTROLLER AT LEAST ANNU-  
14    ALLY.
- 15    B. FUNDS OF THE LOCAL GOVERNMENT ENTITY, FOR PURPOSES OF THIS SUBDIVI-  
16    SION, SHALL CONSIST OF ALL MONEYS AND OTHER FINANCIAL RESOURCES AVAIL-  
17    ABLE FOR INVESTMENT BY SUCH ENTITY ON ITS OWN BEHALF OR ON BEHALF OF ANY  
18    OTHER LOCAL GOVERNMENT ENTITY.
- 19    C. SUCH INVESTMENT GUIDELINES AND PROCEDURES SHALL INCLUDE, BUT NOT BE  
20    LIMITED TO THE FOLLOWING:
- 21    (1) A DETAILED LIST OF THE PERMITTED INVESTMENTS OF THE LOCAL GOVERN-  
22    MENT ENTITY, WHICH SHALL BE CONSISTENT WITH THE APPROPRIATE PROVISIONS  
23    OF LAW RELATING TO THE APPLICABLE LOCAL GOVERNMENT ENTITY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (2) PROCEDURES AND PROVISIONS TO FULLY SECURE THE LOCAL GOVERNMENT  
2 ENTITY'S FINANCIAL INTEREST IN INVESTMENTS.

3 (3) A REQUIREMENT THAT THE LOCAL GOVERNMENT ENTITY ENTER INTO WRITTEN  
4 CONTRACTS PURSUANT TO WHICH INVESTMENTS ARE MADE. SUCH CONTRACTS SHALL  
5 INCLUDE, BUT NOT NECESSARILY BE LIMITED TO PROVISIONS:

6 (I) DEEMED NECESSARY AND SUFFICIENT TO SECURE IN A SATISFACTORY MANNER  
7 THE LOCAL GOVERNMENT ENTITY'S FINANCIAL INTEREST IN EACH INVESTMENT;

8 (II) COVERING THE USE, TYPE AND AMOUNT OF COLLATERAL OR INSURANCE FOR  
9 EACH INVESTMENT AND ESTABLISHING THE CONDITIONS, IF ANY, UPON WHICH THE  
10 SUBSTITUTION OF TYPES OR AMOUNTS OF COLLATERAL MAY BE MADE FOR EACH  
11 INVESTMENT;

12 (III) ESTABLISHING A METHOD FOR VALUATION OF COLLATERAL, AND PROCE-  
13 DURES FOR MONITORING AND ADJUSTING WHEN NECESSARY THE VALUATION OF SUCH  
14 COLLATERAL ON A REGULAR BASIS;

15 (IV) REQUIRING THAT THE OBLIGATIONS BE DELIVERED TO THE LOCAL GOVERN-  
16 MENT ENTITY OR TO THE LOCAL GOVERNMENT ENTITY'S ACCOUNT AT A BANK OR  
17 TRUST COMPANY WITH WHICH THE LOCAL GOVERNMENT ENTITY HAS EXECUTED A  
18 WRITTEN CONTRACT FOR THE CUSTODY OF OBLIGATIONS AND COLLATERAL. IN THE  
19 CASE OF OBLIGATIONS OF THE TYPE THE OWNERSHIP OF WHICH IS RECORDED  
20 THROUGH A BOOK ENTRY MAINTAINED BY THE FEDERAL RESERVE SYSTEM, DELIVERY  
21 OF SUCH OBLIGATIONS SHALL BE MADE BY TRANSFER THROUGH THE FEDERAL  
22 RESERVE SYSTEM'S "BOOK-ENTRY SYSTEM" TO THE BANK OR TRUST COMPANY TO AN  
23 ACCOUNT DESIGNATED BY THE LOCAL GOVERNMENT ENTITY. SUCH BANK OR TRUST  
24 COMPANY SHALL NOT BE AN AGENT OF THE PARTY WITH WHOM THE LOCAL GOVERN-  
25 MENT ENTITY ENTERS INTO SUCH INVESTMENT CONTRACT TO PURCHASE SUCH OBLI-  
26 GATIONS;

27 (V) REQUIRING THAT OBLIGATIONS ARE NOT SUBJECT TO ANY LIEN OR SECURITY  
28 INTEREST.

29 (4) PROCEDURES FOR THE MONITORING, CONTROL, DEPOSIT AND RETENTION OF  
30 INVESTMENTS AND COLLATERAL.

31 (5) A REQUIREMENT THAT THE LOCAL GOVERNMENT ENTITY ENTER INTO WRITTEN  
32 CONTRACTS WITH BANKS OR TRUST COMPANIES, PURSUANT TO WHICH OBLIGATIONS  
33 AND COLLATERAL ARE HELD BY SUCH BANKS OR TRUST COMPANIES FOR THE LOCAL  
34 GOVERNMENT ENTITY. SUCH CONTRACTS SHALL INCLUDE, BUT NOT NECESSARILY BE  
35 LIMITED TO PROVISIONS:

36 (I) ESTABLISHING A METHOD FOR VALUATION OF COLLATERAL, AND PROCEDURES  
37 FOR MONITORING AND ADJUSTING WHEN NECESSARY THE VALUATION OF SUCH COLLA-  
38 TERAL ON A REGULAR BASIS;

39 (II) REQUIRING SUCH BANK OR TRUST COMPANY TO CERTIFY TO THE LOCAL  
40 GOVERNMENT ENTITY THAT SUCH BANK OR TRUST COMPANY ASSERTS NO RIGHT,  
41 TITLE OR INTEREST IN SUCH OBLIGATIONS;

42 (III) PRESCRIBING THE MANNER IN WHICH RECEIPT OF THE OBLIGATIONS BY  
43 THE BANK OR TRUST COMPANY SHALL BE CONFIRMED, AND THE CONDITIONS UNDER  
44 WHICH THE OBLIGATIONS HELD MAY BE SOLD, PRESENTED FOR PAYMENT, SUBSTI-  
45 TUTED OR RELEASED. EACH SUCH TRANSACTION SHALL BE CONFIRMED IN WRITING  
46 TO THE LOCAL GOVERNMENT ENTITY.

47 (6) STANDARDS FOR THE DIVERSIFICATION OF INVESTMENTS, INCLUDING DIVER-  
48 SIFICATION WITH RESPECT TO TYPES OF INVESTMENTS AND FIRMS WITH WHICH THE  
49 LOCAL GOVERNMENT ENTITY TRANSACTS INVESTMENT BUSINESS.

50 (7) STANDARDS FOR THE QUALIFICATION OF INVESTMENT AGENTS WHICH TRANS-  
51 ACT BUSINESS WITH THE LOCAL GOVERNMENT ENTITY, SUCH AS CRITERIA COVERING  
52 CREDITWORTHINESS, EXPERIENCE, CAPITALIZATION, SIZE AND ANY OTHER FACTORS  
53 THAT, IN THE JUDGMENT OF THE COMPTROLLER, MAKE A FIRM CAPABLE AND QUALI-  
54 FIED TO TRANSACT BUSINESS WITH THE LOCAL GOVERNMENT ENTITY.

55 (8) REQUIREMENTS FOR THE LOCAL GOVERNMENT ENTITY TO REPORT ON ITS  
56 INVESTMENTS, INCLUDING PROVISIONS FOR AN ANNUAL INDEPENDENT AUDIT OF ALL

1 INVESTMENTS AND INVESTMENT PRACTICES. SUCH REPORTING SHALL ALSO INCLUDE  
2 ANNUAL REPORTS, OR REPORTS COVERING SUCH OTHER PERIOD AS MAY BE APPROVED  
3 BY THE COMPTROLLER, FROM THE CHIEF FISCAL OFFICER OF THE LOCAL GOVERN-  
4 MENT ENTITY, REGARDING THE INVENTORY OF EXISTING INVESTMENTS, FIRMS WITH  
5 WHICH INVESTMENT CONTRACTS WERE MADE, THE INVESTMENT INCOME RECORD FOR  
6 SUCH ENTITY AND A LIST OF TOTAL FEES, COMMISSIONS OR OTHER CHARGES PAID  
7 TO ANY BANK OR INVESTMENT AGENT RENDERING INVESTMENT ASSOCIATED SERVICES  
8 TO THE ENTITY SINCE THE LAST REPORT. SUCH REPORT AND THE INDEPENDENT  
9 AUDIT REPORT SHALL BE SUBMITTED TO THE COMPTROLLER OF THE STATE OF NEW  
10 YORK AND SHALL BE AVAILABLE TO THE PUBLIC UPON REASONABLE REQUEST THERE-  
11 FOR.

12 D. THE PROPOSED COMPREHENSIVE INVESTMENT GUIDELINES AND PROCEDURES  
13 SHALL BE SUBMITTED BY THE COMPTROLLER TO THE TEMPORARY PRESIDENT OF THE  
14 SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHAIRMAN OF THE SENATE FINANCE  
15 COMMITTEE, THE CHAIRMAN OF THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE  
16 DIRECTOR OF THE BUDGET NOT LATER THAN JANUARY FIRST IN THE YEAR NEXT  
17 SUCCEEDING THE YEAR IN WHICH THIS SUBDIVISION TAKES EFFECT. IN ADDITION,  
18 THE COMPTROLLER SHALL SUBMIT ANNUALLY IN HIS STATISTICAL REPORT REQUIRED  
19 BY SECTION THIRTY-SEVEN OF THE GENERAL MUNICIPAL LAW A SUMMARY OF LOCAL  
20 GOVERNMENT INVESTMENT PRACTICES AS DISCLOSED BY THE INVESTMENT REPORTS  
21 SUBMITTED TO THE COMPTROLLER PURSUANT TO SUBPARAGRAPH EIGHT OF PARAGRAPH  
22 C OF THIS SUBDIVISION.

23 SUCH SUMMARY SHALL INCLUDE TOTAL INVESTMENT INCOME OF LOCAL GOVERNMENT  
24 ENTITIES, AN INVENTORY OF EXISTING LOCAL GOVERNMENT ENTITY INVESTMENTS  
25 BY INVESTMENT TYPE, AND THE TOTAL FEES, COMMISSIONS, OR OTHER CHARGES  
26 PAID TO BANKS OR INVESTMENT AGENTS RENDERING INVESTMENT ASSOCIATED  
27 SERVICES TO LOCAL GOVERNMENT ENTITIES.

28 S 2. The general municipal law is amended by adding a new section 40  
29 to read as follows:

30 S 40. INVESTMENT GUIDELINES FOR LOCAL GOVERNMENT ENTITIES. 1. EACH  
31 LOCAL GOVERNMENT, WHICH FOR PURPOSES OF THIS SECTION SHALL INCLUDE COUN-  
32 TIES, CITIES, TOWNS, VILLAGES, SCHOOL DISTRICTS INCLUDING BOARDS OF  
33 COOPERATIVE EDUCATIONAL SERVICES AND DISTRICT CORPORATIONS, WITHIN THE  
34 MEANING OF THAT TERM AS SET OUT IN SUBDIVISION THREE OF SECTION  
35 SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, OR ANY OTHER GOVERNMENTAL  
36 SUBDIVISION OF THE STATE, SHALL BY RESOLUTION ADOPT A COMPREHENSIVE  
37 INVESTMENT POLICY WHICH DETAILS THE LOCAL GOVERNMENT ENTITY'S OPERATIVE  
38 POLICY AND INSTRUCTIONS TO OFFICERS AND STAFF REGARDING THE INVESTING,  
39 MONITORING AND REPORTING OF FUNDS OF THE LOCAL GOVERNMENT ENTITY. SUCH  
40 INVESTMENT POLICY SHALL BE IN COMPLIANCE WITH THE COMPREHENSIVE INVEST-  
41 MENT GUIDELINES PROMULGATED BY THE STATE COMPTROLLER. THE INVESTMENT  
42 POLICY SHALL BE ADOPTED BY THE LOCAL GOVERNMENT ENTITY BY JANUARY FIRST  
43 IN THE SECOND YEAR NEXT SUCCEEDING THE YEAR IN WHICH THIS SECTION TAKES  
44 EFFECT AND SHALL BE ANNUALLY REVIEWED BY THE LOCAL GOVERNMENT ENTITY.

45 2. FUNDS OF THE LOCAL GOVERNMENT ENTITY, FOR PURPOSES OF THIS SECTION,  
46 SHALL CONSIST OF ALL MONEYS AND OTHER FINANCIAL RESOURCES AVAILABLE FOR  
47 INVESTMENT BY THE LOCAL GOVERNMENT ENTITY ON ITS OWN BEHALF OR ON BEHALF  
48 OF ANY OTHER ENTITY OR INDIVIDUAL.

49 3. THE INVESTMENT POLICY ADOPTED BY THE LOCAL GOVERNMENT ENTITY,  
50 SUBJECT TO THE COMPTROLLER'S GUIDELINES, SHALL INCLUDE, BUT NOT BE  
51 LIMITED TO THE FOLLOWING:

52 (A) A DETAILED LIST OF THE PERMITTED INVESTMENTS OF THE LOCAL GOVERN-  
53 MENT ENTITY, WHICH SHALL BE CONSISTENT WITH THE APPROPRIATE PROVISIONS  
54 OF LAW RELATING TO THE LOCAL GOVERNMENT ENTITY AND ANY ADDITIONAL  
55 REQUIREMENTS PURSUANT TO ANY CONTRACT WITH BONDHOLDERS AND NOTEHOLDERS.

(B) PROCEDURES AND PROVISIONS TO FULLY SECURE THE LOCAL GOVERNMENT ENTITY'S FINANCIAL INTEREST IN INVESTMENTS.

(C) A REQUIREMENT THAT THE LOCAL GOVERNMENT ENTER INTO WRITTEN CONTRACTS PURSUANT TO WHICH INVESTMENTS ARE MADE. SUCH CONTRACTS SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO PROVISIONS:

(I) DEEMED NECESSARY AND SUFFICIENT TO SECURE IN A SATISFACTORY MANNER THE LOCAL GOVERNMENT ENTITY'S FINANCIAL INTEREST IN EACH INVESTMENT;

(II) COVERING THE USE, TYPE AND AMOUNT OF COLLATERAL OR INSURANCE FOR EACH INVESTMENT AND ESTABLISHING THE CONDITIONS, IF ANY, UPON WHICH THE SUBSTITUTION OF TYPES OR AMOUNTS OF COLLATERAL MAY BE MADE FOR EACH INVESTMENT;

(III) ESTABLISHING A METHOD FOR VALUATION OF COLLATERAL, AND PROCEDURES FOR MONITORING AND ADJUSTING WHEN NECESSARY THE VALUATION OF SUCH COLLATERAL ON A REGULAR BASIS;

(IV) REQUIRING THAT THE OBLIGATIONS BE DELIVERED TO THE LOCAL GOVERNMENT ENTITY OR TO THE LOCAL GOVERNMENT ENTITY'S ACCOUNT AT A BANK OR TRUST COMPANY WITH WHICH THE LOCAL GOVERNMENT ENTITY HAS EXECUTED A WRITTEN CONTRACT FOR THE CUSTODY OF OBLIGATIONS AND COLLATERAL. IN THE CASE OF OBLIGATIONS OF THE TYPE THE OWNERSHIP OF WHICH IS RECORDED THROUGH A BOOK ENTRY MAINTAINED BY THE FEDERAL RESERVE SYSTEM, DELIVERY OF SUCH OBLIGATIONS SHALL BE MADE BY TRANSFER THROUGH THE FEDERAL RESERVE SYSTEM'S "BOOK-ENTRY SYSTEM" TO THE BANK OR TRUST COMPANY TO AN ACCOUNT DESIGNATED BY THE LOCAL GOVERNMENT ENTITY. SUCH BANK OR TRUST COMPANY SHALL NOT BE AN AGENT OF THE PARTY WITH WHOM THE LOCAL GOVERNMENT ENTITY ENTERS INTO SUCH INVESTMENT CONTRACT TO PURCHASE SUCH OBLIGATIONS;

(V) REQUIRING THAT OBLIGATIONS ARE NOT SUBJECT TO ANY LIEN OR SECURITY INTEREST.

(D) PROCEDURES FOR THE MONITORING, CONTROL, DEPOSIT AND RETENTION OF INVESTMENTS AND COLLATERAL.

(E) A REQUIREMENT THAT THE LOCAL GOVERNMENT ENTITY ENTER INTO WRITTEN CONTRACTS WITH BANKS OR TRUST COMPANIES, PURSUANT TO WHICH OBLIGATIONS AND COLLATERAL ARE HELD BY SUCH BANKS OR TRUST COMPANIES FOR THE LOCAL GOVERNMENT ENTITY. SUCH CONTRACTS SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO PROVISIONS:

(I) ESTABLISHING A METHOD FOR VALUATION OF COLLATERAL, AND PROCEDURES FOR MONITORING AND ADJUSTING WHEN NECESSARY THE VALUATION OF SUCH COLLATERAL ON A REGULAR BASIS;

(II) REQUIRING SUCH BANK OR TRUST COMPANY TO CERTIFY TO THE LOCAL GOVERNMENT ENTITY THAT SUCH BANK OR TRUST COMPANY ASSERTS NO RIGHT, TITLE OR INTEREST IN SUCH OBLIGATIONS;

(III) PRESCRIBING THE MANNER IN WHICH RECEIPT OF THE OBLIGATIONS BY THE BANK OR TRUST COMPANY SHALL BE CONFIRMED, AND THE CONDITIONS UNDER WHICH THE OBLIGATIONS HELD MAY BE SOLD, PRESENTED FOR PAYMENT, SUBSTITUTED OR RELEASED. EACH SUCH TRANSACTION SHALL BE CONFIRMED IN WRITING TO THE LOCAL GOVERNMENT ENTITY.

(F) STANDARDS FOR THE DIVERSIFICATION OF INVESTMENTS, INCLUDING DIVERSIFICATION WITH RESPECT TO TYPES OF INVESTMENTS AND FIRMS WITH WHOM THE LOCAL GOVERNMENT ENTITY TRANSACTS BUSINESS.

(G) STANDARDS FOR THE QUALIFICATION OF INVESTMENT AGENTS WHICH TRANSACT BUSINESS WITH THE LOCAL GOVERNMENT ENTITY, SUCH AS CRITERIA COVERING CREDITWORTHINESS, EXPERIENCE, CAPITALIZATION, SIZE AND ANY OTHER FACTORS THAT MAKE A FIRM CAPABLE AND QUALIFIED TO TRANSACT BUSINESS WITH THE LOCAL GOVERNMENT ENTITY.

4. EACH LOCAL GOVERNMENT ENTITY SHALL HAVE THE POWER TO AMEND ITS INVESTMENT POLICY FROM TIME TO TIME IN ACCORDANCE WITH THE PROVISIONS OF

1 THIS SECTION AND THE COMPREHENSIVE INVESTMENT GUIDELINES OF THE STATE  
2 COMPTROLLER.  
3 S 3. This act shall take effect immediately.