S T A T E O F N E W Y O R K

1322

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

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:

Section 1. Section 8 of the state finance law is amended by adding a new subdivision 21 to read as follows:

21. A. ADOPT RULES AND REGULATIONS NOT LATER THAN APRIL FIRST IN THE YEAR NEXT SUCCEEDING THE YEAR IN WHICH THIS SUBDIVISION TAKES EFFECT, WITH RESPECT TO COMPREHENSIVE INVESTMENT GUIDELINES AND PROCEDURES WHICH SHALL INCLUDE THE INVESTING, MONITORING AND REPORTING OF FUNDS OF EACH LOCAL GOVERNMENT ENTITY. FOR PURPOSES OF THIS SECTION, "LOCAL GOVERNMENT ENTITY" SHALL INCLUDE COUNTIES, CITIES, TOWNS, VILLAGES, SCHOOL DISTRICTS INCLUDING BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND DISTRICT CORPORATIONS, WITHIN THE MEANING OF THAT TERM AS SET OUT IN SUBDIVISION THREE OF SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, OR ANY OTHER GOVERNMENT SUBDIVISION OF THE STATE. SUCH INVESTMENT GUIDELINES AND PROCEDURES SHALL BE REVIEWED BY THE COMPTROLLER AT LEAST ANNUALLY.

B. FUNDS OF THE LOCAL GOVERNMENT ENTITY, FOR PURPOSES OF THIS SUBDIVISION, SHALL CONSIST OF ALL MONEYS AND OTHER FINANCIAL RESOURCES AVAILABLE FOR INVESTMENT BY SUCH ENTITY ON ITS OWN BEHALF OR ON BEHALF OF ANY OTHER LOCAL GOVERNMENT ENTITY.

C. SUCH INVESTMENT GUIDELINES AND PROCEDURES SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

(1) A DETAILED LIST OF THE PERMITTED INVESTMENTS OF THE LOCAL GOVERNMENT ENTITY, WHICH SHALL BE CONSISTENT WITH THE APPROPRIATE PROVISIONS 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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(2) PROCEDURES AND PROVISIONS TO FULLY SECURE THE LOCAL GOVERNMENT ENTITY'S FINANCIAL INTEREST IN INVESTMENTS.

(3) A REQUIREMENT THAT THE LOCAL GOVERNMENT ENTITY 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.

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

(5) 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.

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

(7) 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, IN THE JUDGMENT OF THE COMPTROLLER, MAKE A FIRM CAPABLE AND QUALIFIED TO TRANSACT BUSINESS WITH THE LOCAL GOVERNMENT ENTITY.

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

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

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

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

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

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

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

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

(A) A DETAILED LIST OF THE PERMITTED INVESTMENTS OF THE LOCAL GOVERNMENT ENTITY, WHICH SHALL BE CONSISTENT WITH THE APPROPRIATE PROVISIONS OF LAW RELATING TO THE LOCAL GOVERNMENT ENTITY AND ANY ADDITIONAL 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

THIS SECTION AND THE COMPREHENSIVE INVESTMENT GUIDELINES OF THE STATE COMPTROLLER.

S 3. This act shall take effect immediately.