

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:

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.

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

3 (C) A REQUIREMENT THAT THE LOCAL GOVERNMENT 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 (D) PROCEDURES FOR THE MONITORING, CONTROL, DEPOSIT AND RETENTION OF
30 INVESTMENTS AND COLLATERAL.

31 (E) 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 (F) STANDARDS FOR THE DIVERSIFICATION OF INVESTMENTS, INCLUDING DIVER-
48 SIFICATION WITH RESPECT TO TYPES OF INVESTMENTS AND FIRMS WITH WHOM THE
49 LOCAL GOVERNMENT ENTITY TRANSACTS BUSINESS.

50 (G) 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 MAKE A FIRM CAPABLE AND QUALIFIED TO TRANSACT BUSINESS WITH THE
54 LOCAL GOVERNMENT ENTITY.

55 4. EACH LOCAL GOVERNMENT ENTITY SHALL HAVE THE POWER TO AMEND ITS
56 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.