

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 64
SENATE BILL 1135

AN ACT

AMENDING SECTIONS 15-1025, 35-313, 35-323 AND 35-323.01, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC FUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-1025, Arizona Revised Statutes, is amended to
3 read:

4 15-1025. Investment and reinvestment of debt service fund

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

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

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

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

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

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

1 traded funds whose underlying investments are invested in securities allowed
2 by state law, registered under the investment company act of 1940 (54 Stat.
3 789; 15 United States Code sections 80a-1 through 80a-64), as amended. For
4 any treasurer investment pool that seeks to maintain a constant share price,
5 both of the following apply:

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

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

11 9. Certificates of deferred property taxes as provided by section
12 42-17309.

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

17 11. Shares in the treasurer's local government investment pools
18 pursuant to section 35-326 provided that investment policies of the pool seek
19 to maintain a constant share price.

20 12. Shares in the treasurer's long-term local government investment
21 pools, which terms are determined by the state board of investment, pursuant
22 to section 35-326.01.

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

25 14. ~~Certificates of deposit purchased~~ DEPOSITS PLACED in accordance
26 with the procedures prescribed in section 35-323.01.

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

32 C. The state treasurer may contract to loan securities owned by the
33 trust funds and operating monies deposited in the investment pools pursuant
34 to section 35-316, subsection B to the financial or dealer community through
35 one or more of the entities listed in section 35-317, subsection A, or
36 authorized by the board of investment pursuant to section 35-311, subsection
37 E, if the borrower transfers collateral to the state treasurer or acting
38 agent of the state in the form of cash or securities specified in subsection
39 A of this section. Collateral posted in the form of cash shall be in an
40 amount equal to at least one hundred per cent of the market value of the
41 loaned securities as agreed. Collateral posted in the form of securities
42 shall be in an amount of no more than one hundred ten per cent of the market
43 value of the loaned securities as established from time to time by the board
44 of investment. The loaned securities shall be valued as to market value
45 daily, and, if necessary, the borrower shall post additional collateral, as
46 agreed, to ensure that the required margin is maintained. The state

1 treasurer may collect from the borrower all dividends, interest, premiums,
2 rights and other distributions to which the lender of securities would
3 otherwise be entitled. The state treasurer may terminate the contract on not
4 less than five business days' notice, as agreed, and the borrower may
5 terminate the contract on not less than two business days' notice, as agreed.

6 D. The state treasurer shall invest operating monies in state
7 transportation board funding obligations delivered pursuant to section
8 28-7678 pursuant to the following:

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

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

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

34 Sec. 3. Section 35-323, Arizona Revised Statutes, is amended to read:

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

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

40 1. Certificates of deposit in eligible depositories.

41 2. ~~Certificates of deposit~~ DEPOSITS in one or more federally insured
42 banks or savings and loan associations PLACED in accordance with the
43 procedures prescribed in section 35-323.01.

44 3. Interest bearing savings accounts in banks and savings and loan
45 institutions doing business in this state whose accounts are insured by
46 federal deposit insurance for their industry, but only if deposits in excess

1 of the insured amount are secured by the eligible depository to the same
2 extent and in the same manner as required under this article.

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

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

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

10 7. Bonds, notes or other evidences of indebtedness of this state or
11 any of its counties, incorporated cities or towns or school districts.

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

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

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

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

39 10. Commercial paper of prime quality that is rated within the top two
40 ratings by a nationally recognized rating agency. All commercial paper must
41 be issued by corporations organized and doing business in the United States.

42 11. Bonds, debentures and notes that are issued by corporations
43 organized and doing business in the United States and that are rated within
44 the top three ratings by a nationally recognized rating agency.

45 12. Negotiable or brokered certificates of deposit issued by a
46 nationally or state chartered bank or savings and loan association.

1 13. Securities of or any other interests in any open-end or closed-end
2 management type investment company or investment trust, including exchange
3 traded funds whose underlying investments are invested in securities allowed
4 by state law, registered under the investment company act of 1940 (54 Stat.
5 789; 15 United States Code sections 80a-1 through 80a-64), as amended.

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

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

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

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

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

35 G. Any eligible depository, before receiving a deposit in excess of
36 the insured amount under this article, shall deliver collateral for the
37 purposes of this subsection equal to at least one hundred one per cent of the
38 deposit. The collateral shall be any of the following:

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

43 2. Securities or instruments of the following character:

44 (a) United States government or agency obligations.

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

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

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

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

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

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

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

35 H. The securities, instruments or safekeeping receipt for the
36 securities, instruments or warrants shall be accepted at market value if not
37 above par, and, if at any time their market value becomes less than the
38 deposit liability to that treasurer, additional securities or instruments
39 required to guarantee deposits shall be deposited immediately with the
40 treasurer who made the deposit and deposited by the eligible depository in
41 which the deposit was made.

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

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

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

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

13 M. The surety bond, securities, instruments or safekeeping receipt of
14 an eligible depository shall be deposited with the treasurer making the
15 deposit, and the treasurer shall be the custodian of the bond, securities,
16 instruments or safekeeping receipt. The treasurer may then deposit with the
17 depository public monies then in the treasurer's possession in accordance
18 with this article, but not in an amount in excess of the surety bond,
19 securities, instruments or safekeeping receipt deposited, except for federal
20 deposit insurance.

21 N. The following restrictions on investments are applicable:

22 1. An investment of public operating fund monies shall not be invested
23 for a maturity of longer than five years.

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

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

37 Sec. 4. Section 35-323.01, Arizona Revised Statutes, is amended to
38 read:

39 35-323.01. Investment of government monies in deposits;
40 conditions; definition

41 A. If an investing entity invests in ~~certificates of deposit~~ DEPOSITS
42 pursuant to section 9-492, subsection C, section 15-1025, subsection B,
43 paragraph 7, section 35-313, subsection A, paragraph 14 or section 35-323,
44 subsection A, paragraph 2, the investing entity in each case shall invest
45 those monies in accordance with all of the following conditions:

- 1 1. The monies are initially invested through an eligible depository in
2 this state selected by the investing entity.
- 3 2. The selected eligible depository arranges for the deposit of the
4 monies in ~~certificates of deposit in~~ one or more federally insured banks or
5 savings and loan associations wherever located, for the account of the
6 investing entity.
- 7 3. The full amount of principal and any accrued interest of each
8 ~~certificate of~~ SUCH deposit is insured by the federal deposit insurance
9 corporation.
- 10 4. The selected eligible depository acts as custodian for the
11 investing entity with respect to ~~the certificates of deposit issued for its~~
12 ~~account~~ SUCH DEPOSITS.
- 13 5. ~~At the same time~~ ON THE SAME DATE that the investing entity's
14 monies are deposited ~~and the certificates of deposit are issued~~ PURSUANT TO
15 PARAGRAPH 2 OF THIS SUBSECTION, the selected eligible depository receives an
16 amount of **FEDERALLY INSURED** deposits from customers of other ~~federally~~
17 ~~insured~~ financial institutions equal to or greater than the amount of the
18 monies initially invested by the investing entity through the selected
19 eligible depository.
- 20 B. Monies invested in accordance with all of the conditions prescribed
21 in this section are not subject to any security or collateral requirements.
- 22 C. For the purposes of this section, "investing entity" means this
23 state, a political subdivision, the governing body of a municipality or the
24 governing body of a school district.

APPROVED BY THE GOVERNOR MARCH 21, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 22, 2012.