

REFERENCE TITLE: public monies; investment; pooled collateral

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SB 1449

Introduced by
Senator Farnsworth D

AN ACT

AMENDING SECTIONS 35-323, 35-1201 AND 35-1207, ARIZONA REVISED STATUTES;
RELATING TO THE HANDLING OF 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 35-323, Arizona Revised Statutes, is amended to
3 read:

4 35-323. Investing public monies; bidding; security and other
5 requirements

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

9 1. Certificates of deposit in eligible depositories.

10 2. Deposits in one or more federally insured banks or savings and loan
11 associations placed in accordance with the procedures prescribed in section
12 35-323.01.

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

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

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

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

25 7. Bonds, notes or other evidences of indebtedness of this state or
26 any of its counties, incorporated cities or towns, school districts or
27 special taxing districts, including registered warrants that shall bear
28 interest pursuant to section 11-635.

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

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

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

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

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

15 11. Bonds, debentures, notes or other evidences of indebtedness that
16 are denominated in United States dollars and that carry at a minimum an "A"
17 or better rating, at the time of purchase, from at least two nationally
18 recognized rating agencies.

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

21 13. Securities of or any other interests in any open-end or closed-end
22 management type investment company or investment trust, including exchange
23 traded funds whose underlying investments are invested in securities allowed
24 by state law, registered under the investment company act of 1940 (54 Stat.
25 789; 15 United States Code sections 80a-1 through 80a-64), as amended.

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

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

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

44 E. Each bid submitted, and not withdrawn prior to the time specified,
45 constitutes an irrevocable offer to pay interest as specified in the bid on

1 the deposit, or portion bid for, and the award of a deposit in accordance
2 with this section obligates the depository to accept the deposit and pay
3 interest as specified in the bid pursuant to which the deposit is awarded.

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

10 G. Any eligible depository, before receiving a deposit in excess of
11 the insured amount under this article, shall deliver collateral for the
12 purposes of this subsection equal to at least one hundred ~~one per cent~~ **TWO**
13 **PERCENT** of the deposit. The collateral shall be any of the following:

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

18 2. Securities or instruments of the following character:

19 (a) United States government or agency obligations.

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

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

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

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

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

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

43 3. The safekeeping receipt of a federal reserve bank or any bank
44 located in a reserve city, or any bank authorized to do business in this
45 state, whose combined capital, surplus and outstanding capital notes and

1 debentures on the date of the safekeeping receipt are ten million dollars or
2 more, evidencing the deposit therein of any securities or instruments
3 described in this section. A safekeeping receipt shall not qualify as
4 security, if issued by a bank to secure its own public deposits, unless
5 issued directly through its trust department. The safekeeping receipt shall
6 show upon its face that it is issued for the account of the treasurer and
7 shall be delivered to the treasurer. The safekeeping receipt may provide for
8 the substitution of securities or instruments which qualify under this
9 section with the affirmative act of the treasurer.

10 4. Letters of credit issued by a federal home loan bank if:

11 (a) The letter of credit has been delivered pursuant to this section
12 or chapter 10, article 1 of this title to the statewide collateral pool
13 administrator.

14 (b) The letter of credit meets the required conditions of:

15 (i) Being irrevocable.

16 (ii) Being issued, presentable and payable at a federal home loan bank
17 in United States dollars. Presentation may be made by the beneficiary
18 submitting the original letter of credit, including any amendments, and the
19 demand in writing, by overnight delivery.

20 (iii) If the letter of credit is for purposes of chapter 10, article 1
21 of this title, containing a statement that identifies the statewide
22 collateral pool administrator as the beneficiary.

23 (iv) Containing an issue date and a date of expiration.

24 (c) For the purposes of chapter 10, article 1 of this title, the
25 eligible depository, if notified by the statewide collateral pool
26 administrator, is not allowed to use new letters of credit issued by a
27 federal home loan bank if that federal home loan bank fails to pay a draw
28 request as provided for in the letters of credit or fails to properly
29 complete a confirmation of such letters of credit.

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

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

42 J. Notwithstanding the requirements of this section, any institution
43 qualifying as an eligible depository may accept deposits of public monies to
44 the total then authorized insurance of accounts, insured by federal deposit

1 insurance, without depositing a surety bond or securities in lieu of the
2 surety bond.

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

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

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

18 N. The following restrictions on investments are applicable:

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

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

29 3. Investments **SHALL NOT BE MADE** in companies identified ~~in~~ **PURSUANT**
30 **TO** section 35-392, subsection A, paragraph 1.

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

36 Sec. 2. Section 35-1201, Arizona Revised Statutes, is amended to read:

37 **35-1201. Definitions**

38 In this chapter, unless the context otherwise requires:

39 1. "Administrator" means the statewide collateral pool administrator.

40 2. "Default or insolvency" includes the failure or refusal of any
41 eligible depository to return any public deposit on demand or at maturity and
42 the issuance of an order of supervisory authority restraining that depository
43 from making payments of deposit liabilities or the appointment of a receiver
44 for that depository.

1 3. "Defaulting depository" means any eligible depository determined to
2 be in default or insolvent.

3 4. "Eligible collateral" means any collateral that is authorized
4 pursuant to section 35-323.

5 5. "Eligible depository" has the same meaning prescribed in section
6 35-321.

7 ~~6. "Located in this state" means having a main office or branch office
8 in this state where deposits are accepted, checks are paid and money is lent.~~

9 ~~7.~~ 6. "Public deposit":

10 (a) Means public monies deposited in an eligible depository pursuant
11 to this chapter.

12 (b) DOES NOT INCLUDE MONIES THAT HAVE BEEN COLLATERALIZED PURSUANT TO
13 REGULATIONS ADOPTED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
14 DEVELOPMENT.

15 ~~8.~~ 7. "Public depositor":

16 (a) Means this state or any county, city, town or other political
17 subdivision of this state, including any commission, institution, committee,
18 board or officer and any state court.

19 (b) DOES NOT INCLUDE A CHARTER SCHOOL, TRIBAL ENTITY OR FEDERAL
20 AGENCY.

21 ~~9.~~ 8. "Qualified escrow agent" means any bank or trust company that
22 is qualified to hold collateral pledged to secure public deposits.

23 ~~10.~~ 9. "Required collateral" means the amount of eligible collateral
24 required for an eligible depository to secure public deposits set by the
25 policies and procedures of the administrator.

26 Sec. 3. Section 35-1207, Arizona Revised Statutes, is amended to read:

27 35-1207. Collateral for public deposits

28 A. An eligible depository shall not accept or retain any public
29 deposit that is required to be secured unless the eligible depository has
30 deposited the required collateral with a qualified escrow agent or the
31 administrator, if required. Every eligible depository shall deposit with a
32 qualified escrow agent eligible collateral equal to or in excess of the
33 required collateral. Required collateral shall be one hundred two ~~per cent~~
34 PERCENT of public deposits less any applicable deposit insurance. Eligible
35 collateral shall be valued at current market value. Substitutions and
36 withdrawals of eligible collateral may be made WITH THE WRITTEN CONSENT OF
37 THE ADMINISTRATOR AND without prior notification or consent by the public
38 depositor.

39 B. Notwithstanding any other provisions of law, an eligible depository
40 shall not be required to give bond or pledge securities or instruments in the
41 manner provided in this section for the purpose of securing deposits that are
42 received or held in the trust department of the depository and that are
43 secured pursuant to 12 United States Code section ~~92(a)~~ 92a.