State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2637

AN ACT

AMENDING SECTIONS 35-323 AND 35-392, ARIZONA REVISED STATUTES; RELATING TO THE DIVESTMENT OF STATE MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 35-323, Arizona Revised Statutes, is amended to read:

35-323. Investment of public monies; bidding; security and other requirements

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

1. Certificates of deposit in eligible depositories.
2. Deposits in one or more federally insured banks or savings and loan associations placed in accordance with the procedures prescribed in section 35-323.01.
3. Interest-bearing savings accounts in banks and savings and loan institutions doing business in this state whose accounts are insured by federal deposit insurance for their industry, but only if deposits of more than the insured amount are secured by the eligible depository to the same extent and in the same manner as required under this article.
4. Repurchase agreements with a maximum maturity of one hundred eighty days.
5. The pooled investment funds established by the state treasurer pursuant to section 35-326.
6. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.
7. Bonds, notes or other evidences of indebtedness of this state or any of its counties, incorporated cities or towns, school districts or special taxing districts, including registered warrants, substitute checks, and electronic funds transfer vouchers that bear interest pursuant to section 11-635.
8. Bonds, notes or evidences of indebtedness of any county, municipal district, municipal utility or special taxing district of any state that are payable from revenues, earnings or a special tax specifically pledged for the payment of the principal of and interest on the obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained, but only if a default in payment of principal or interest on the obligations to be purchased has not occurred within five years after the date of investment, or, if such obligations were issued less than five years before the date of investment, a default in payment of principal or interest has not occurred on the obligations to be purchased or any other obligations of the issuer within five years after the investment.
9. Bonds, notes or evidences of indebtedness issued by any county improvement district or municipal improvement district of any state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the improvement district. An investment shall not be made if:

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

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

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

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

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

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

B. Certificates of deposit shall be purchased from the eligible depository bidding the highest permissible rate of interest. Monies over $100,000 may not be awarded at any interest rate less than one hundred three percent of the equivalent bond yield of the offer side of United States treasury bills having a similar term. If the eligible depository offering to pay the highest rate of interest has bid only for a portion of the monies to be awarded, the remainder of the monies shall be awarded to eligible depositories bidding the next highest rates of interest.

C. An eligible depository is not eligible to receive total aggregate deposits from this state and all its subdivisions in an amount exceeding twice its capital structure as outlined in the last call of condition of the deputy director of the financial institutions division of the department of insurance and financial institutions.
D. If two or more eligible depositories submit bids of an identical rate of interest for all or any portion of the monies to be deposited, the award of the deposit of the monies shall be made to the eligible depository among those submitting identical bids having, at the time of the bid opening, the lowest ratio of total public deposits in relation to its capital structure.

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

F. The treasurer shall maintain a record of all bids received and shall make available to the board of deposit at its next regularly scheduled meeting a correct list showing the bidders, the bids received and the amount awarded. These records shall be available to the public and shall be kept in the possession of the treasurer for at least two years after the date of the report.

G. Any eligible depository, before receiving a deposit of more than the insured amount under this article, shall deliver collateral for the purposes of this subsection equal to at least one hundred two percent of the deposit. The collateral shall be any of the following:

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

2. Securities or instruments of the following character:
   (a) United States government or agency obligations.
   (b) State, county, school district and other district municipal bonds.

3. The safekeeping receipt of a federal reserve bank or any bank located in a reserve city, or any bank authorized to do business in this state, whose combined capital, surplus and outstanding capital notes and debentures on the date of the safekeeping receipt are $10,000,000 or more, evidencing the deposit therein of any securities or instruments described in this section. A safekeeping receipt shall not qualify as security, if issued by a bank to secure its own public deposits, unless issued directly through its trust department. The safekeeping receipt shall show on its face that it is issued for the account of the treasurer and shall be delivered to the treasurer. The safekeeping receipt may provide for the substitution of securities or instruments that qualify under this section with the affirmative act of the treasurer.
4. Letters of credit issued by a federal home loan bank if:
   (a) The letter of credit has been delivered pursuant to this
   section or chapter 10, article 1 of this title to the statewide collateral
   pool administrator.
   (b) The letter of credit meets the required conditions of:
       (i) Being irrevocable.
       (ii) Being issued, presentable and payable at a federal home loan
           bank in United States dollars. Presentation may be made by the
           beneficiary submitting the original letter of credit, including any
           amendments, and the demand in writing, by overnight delivery.
       (iii) If the letter of credit is for purposes of chapter 10, article 1
           of this title, containing a statement that identifies the
           statewide collateral pool administrator as the beneficiary.
       (iv) Containing an issue date and a date of expiration.
   (c) For the purposes of chapter 10, article 1 of this title, the
       eligible depository, if notified by the statewide collateral pool
       administrator, is not allowed to use new letters of credit issued by a
       federal home loan bank if that federal home loan bank fails to pay a draw
       request as provided for in the letters of credit or fails to properly
       complete a confirmation of such letters of credit.

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

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

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

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

L. When a security or instrument pledged as collateral matures or
is called for redemption, the cash received for the security or instrument
shall be held in place of the security until the depository has obtained a
written release or provided substitute securities or instruments.
M. The surety bond, securities, instruments or safekeeping receipt of an eligible depository shall be deposited with the treasurer making the deposit, and the treasurer is the custodian of the bond, securities, instruments or safekeeping receipt. The treasurer may then deposit with the depository public monies then in the treasurer's possession in accordance with this article, but not in an amount of more than the surety bond, securities, instruments or safekeeping receipt deposited, except for federal deposit insurance.

N. The following restrictions on investments apply:
1. Public operating fund monies shall not be invested for a maturity of longer than five years.
2. The board of deposit may order the treasurer to sell any of the securities, and any order shall specifically describe the securities and fix the date on which they are to be sold. Securities so ordered to be sold shall be sold for cash by the treasurer on the date fixed in the order, at the then-current market price. The treasurer and the members of the board are not accountable for any loss occasioned by sales of securities at prices lower than their cost. Any loss or expense shall be charged against earnings received from investment of public monies.
3. Investments shall not be made in companies identified pursuant to section 35-392, subsection B, paragraph 1.

O. If the total amount of subdivision monies available for deposit at any time is less than the maximum coverage amount of the federal deposit insurance corporation, the subdivision board of deposit shall award the deposit of the monies to an eligible depository in accordance with an ordinance or resolution of the governing body of the subdivision. Deposits of less than the maximum coverage amount of the federal deposit insurance corporation are not subject to the requirements of this chapter.

Sec. 2. Heading change
The article heading of title 35, chapter 2, article 8, Arizona Revised Statutes, is changed from "TERRORISM COUNTRY DIVESTMENTS" to "STATE TREASURER AND RETIREMENT SYSTEM DIVESTMENTS".

Sec. 3. Section 35-392, Arizona Revised Statutes, is amended to read:

35-392. State treasurer and retirement system divestments; policy notices; definition

A. The state board of investment, the Arizona state retirement system board and the board of trustees of the public safety personnel retirement system shall each adopt a policy, and submit a copy of the policy to the president of the senate and the speaker of the house of representatives, regarding the countries identified as those countries currently designated by the United States department of state as state sponsors of terrorism. The policy shall include:
1. The procedure to identify United States companies that are in violation of section 6(j) of the export administration act.
2. The process for communicating with the companies and appropriate federal officials, including this state's congressional delegation, in regard to its findings pursuant to this section.

3. The process for divestment from the companies that are identified pursuant to paragraph 1 of this subsection.

B. The state board of investment shall adopt a policy, and submit a copy of the policy to the president of the senate and the speaker of the house of representatives, regarding companies that donate to or invest in organizations that promote, facilitate or advocate for abortions for minors or for the inclusion of, or the referral of students to, sexually explicit material in kindergarten programs or any of grades one through twelve. The policy shall include:

1. The procedure to identify United States companies that do any of the following:
   (a) Donate to or invest in organizations that promote, facilitate or advocate for abortions for minors.
   (b) Donate to or invest in organizations that promote, facilitate or advocate for the inclusion of, or the referral of students to, sexually explicit material in kindergarten programs or any of grades one through twelve.

2. A process for communicating with the companies and appropriate federal officials, including this state's congressional findings delegation, in regard to its findings pursuant to this section.

3. A process for divestment from the companies that are identified pursuant to paragraph 1 of this subsection.

B. C. The state treasurer, the Arizona state retirement system board and the board of trustees of the public safety personnel retirement system shall divest from those companies, based on public information, that are identified pursuant to subsection A, paragraph 1 of this section.

The state treasurer shall divest from those companies, based on public information, that are identified pursuant to subsection B, paragraph 1 of this section.

B. D. The state treasurer, the Arizona state retirement system board and the board of trustees of the public safety personnel retirement system shall notify the governor, the president of the senate, the speaker of the house of representatives, the director of the department of administration and each other of any divestments and the reasons for the divestments.

B. E. Within fourteen days after receipt of the notice pursuant to subsection D of this section, the director of the department of administration shall send notice to the company indicating that this state and its political subdivisions are prohibited from purchasing any product or service from the company until the company is no longer identified pursuant to subsection A, paragraph 1 or subsection B, paragraph 1 of this section.
E. F. The prohibition in subsection E OF THIS SECTION does not apply to any existing contract but does apply to any renewal of a contract.

F. G. This section applies to all affiliated companies and subsidiaries of the company.

H. FOR THE PURPOSES OF THIS SECTION, “SEXUALLY EXPLICIT MATERIAL” INCLUDES TEXTUAL, VISUAL OR AUDIO MATERIALS OR MATERIALS ACCESSED VIA ANY OTHER MEDIUM THAT DEPICT ANY OF THE FOLLOWING:

1. SEXUAL CONDUCT. FOR THE PURPOSES OF THIS PARAGRAPH, “SEXUAL CONDUCT” MEANS ACTS OF MASTURBATION, SEXUAL INTERCOURSE OR PHYSICAL CONTACT WITH A PERSON’S CLOTHED OR UNCLOTHED GENITALS, PUBIC AREA, BUTTOCKS OR, IF SUCH PERSON IS A FEMALE, BREAST.

2. SEXUAL EXCITEMENT. FOR THE PURPOSES OF THIS PARAGRAPH, “SEXUAL EXCITEMENT” MEANS THE CONDITION OF HUMAN MALE OR FEMALE GENITALS WHEN IN A STATE OF SEXUAL STIMULATION OR AROUSAL.

3. ULTIMATE SEXUAL ACTS. FOR THE PURPOSES OF THIS PARAGRAPH, “ULTIMATE SEXUAL ACTS” MEANS SEXUAL INTERCOURSE, VAGINAL OR ANAL, FELLATIO, CUNNILINGUS, BESTIALITY OR SODOMY. A SEXUAL ACT IS SIMULATED WHEN IT DEPICTS EXPlicit SEXUAL ACTIVITY THAT GIVES THE APPEARANCE OF CONSUMMATION OF ULTIMATE SEXUAL ACTS.