

CHAPTER 264

FINANCIAL INSTITUTIONS

HOUSE BILL 04-1404

BY REPRESENTATIVE(S) Fairbank;
also SENATOR(S) Kester.

AN ACT

CONCERNING INVESTMENTS BY LOCAL GOVERNMENTS, AND, IN CONNECTION THEREWITH, AMENDING PROVISIONS GOVERNING THE ISSUANCE OF SECURITIES AND INCREASING THE RANGE OF INVESTMENT VEHICLES AVAILABLE TO LOCAL GOVERNMENTAL ENTITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 11-57-203 (1) and (3), Colorado Revised Statutes, are amended to read:

11-57-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Act of issuance" means an ordinance, resolution, or decision to issue a security pursuant to delegated authority adopted by the issuing authority or officer of a public entity for the purpose of issuing a security OR AN AMENDMENT TO SUCH ORDINANCE, RESOLUTION, OR DECISION ADOPTED BY THE ISSUING AUTHORITY AFTER THE ISSUANCE OF A SECURITY.

(3) "Public entity" means any state agency, state department, political subdivision, quasi-governmental entity, or any entity that is created by the constitution or statute of this state that is authorized to issue securities. Such entities include the following:

(a) The state treasurer;

(b) Any state educational institution, or other state institution, its governing board, or other issuing authority of such institution constituting a body corporate;

(c) Any county or city and county;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

- (d) Any municipality;
- (e) Any school district;
- (f) Any district organized or acting pursuant to the provisions of title 32, C.R.S.;
- (g) Any district or authority organized or acting pursuant to the provisions of title 29, 30, or 31, C.R.S.;
- (h) Any water conservancy district; ~~or~~
- (i) Any other political subdivision or governmental or quasi-governmental entity of this state;
- (j) ANY OTHER PUBLIC ENTITY AS DEFINED IN 24-75-601 (1); OR
- (k) A NONPROFIT CORPORATION ORGANIZED UNDER THE LAW OF THIS STATE AND CREATED SOLELY FOR THE PURPOSE OF ISSUING SECURITIES ON BEHALF OF AN ENTITY LISTED IN PARAGRAPHS (a) TO (i) OF THIS SUBSECTION (3).

SECTION 2. 11-57-205 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

11-57-205. Delegation of authority. (1) The issuing authority of a public entity may, in the act of issuance, at any time, delegate to any member of the issuing authority, chief executive officer, or chief financial officer of the public entity the authority to sign a contract for the purchase of the securities or to accept a binding bid for the securities. Such delegation shall be effective for sixty days after adoption of the act of issuance. In addition to any determinations that may be delegated in accordance with other provisions of state law, the following determinations may be delegated to such member or officer without any requirement that the issuing authority approve such determinations:

- (h) THE SECURITIES TO BE REFUNDED, IF ANY; AND
- (i) WHETHER THE SECURITIES WILL BE SECURED BY AN ASSURANCE OF PAYMENT AS DESCRIBED IN SECTION 11-57-207 (2) AND THE TERMS OF ANY AGREEMENT WITH THE THIRD PARTY PROVIDING THE ASSURANCE OF PAYMENT.

SECTION 3. 11-57-212, Colorado Revised Statutes, is amended to read:

11-57-212. Limitation of actions. No legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of securities by a public entity shall be commenced more than thirty days after the ~~issuance or~~ authorization of such securities. ~~whichever occurs later.~~

SECTION 4. 11-57-214, Colorado Revised Statutes, is amended to read:

11-57-214. Investments. ~~A public entity may invest proceeds of any securities and revenues pledged to the payment of any securities in any guaranteed investment contract, guaranteed interest contract, annuity contract, forward delivery contract, or~~

~~funding agreement issued by an entity. The long term debt obligations of such entity shall be rated in one of the two highest rating categories by one or more nationally recognized organizations that regularly rate such obligations. Income received from any legal investment may be deposited by the public entity in any fund or account that the public entity maintains.~~

SECTION 5. 11-58-103 (4), Colorado Revised Statutes, is amended to read:

11-58-103. Definitions. As used in this article, unless the context otherwise requires:

(4) "Issued to the public" means offers and sales of nonrated public securities by an issuer except to the extent such securities have been offered and sold in accordance with federal rule 15c 2-12 ~~(c)~~ (d) (1) of the federal "Securities Exchange Act of 1934".

SECTION 6. 11-59.3-102 (3), Colorado Revised Statutes, is amended to read:

11-59.3-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Public securities" means bonds, notes, debentures, interim certificates, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or certificates of participation therein, issued by or on behalf of a public entity. ~~except that such term shall not include any such instruments which are secured by a pledge of ad valorem tax revenues.~~

SECTION 7. 25-75-601.1 (1) (j) (I) and (1) (l), Colorado Revised Statutes, are amended to read:

24-75-601.1. Legal investments of public funds. (1) It is lawful to invest public funds in any of the following securities if the period from the date of purchase of such security to its maturity date is five years or less or if the governing body of the public entity authorizes investment for such period in excess of five years:

(j) Any repurchase agreement concerning any securities referred to in paragraph (a) or (b) of this subsection (1) that can otherwise be purchased under this section if all of the conditions of subparagraphs (I) to (IV) of this paragraph (j) are met:

(I) ~~Except for investments by the state treasurer,~~ The securities subject to the repurchase agreement must ~~have a coupon rate that is fixed from the time of settlement until its maturity date, and must~~ be marketable.

(l) (I) Any guaranteed investment contract, guaranteed interest contract, annuity contract, or funding agreement ~~issued by an insurance company, either domestic or foreign, as defined in section 10-1-102 (8) and (9), C.R.S., that holds a certificate of authority issued pursuant to section 10-3-105, C.R.S.~~ IF, AT THE TIME THE CONTRACT OR AGREEMENT IS ENTERED INTO, THE LONG-TERM CREDIT RATING, FINANCIAL OBLIGATIONS RATING, CLAIMS PAYING ABILITY RATING, OR FINANCIAL STRENGTH RATING OF THE PARTY, OR OF THE GUARANTOR OF THE PARTY, WITH WHOM THE PUBLIC ENTITY ENTERS THE CONTRACT OR AGREEMENT IS, AT THE TIME OF ISSUANCE,

RATED IN ONE OF THE TWO HIGHEST RATING CATEGORIES BY ONE OR MORE NATIONALLY RECOGNIZED SECURITIES RATING AGENCIES THAT REGULARLY ISSUE SUCH RATINGS.

~~(II) No contract or agreement may be purchased under this paragraph (I) unless, at the time of purchase, the issuing company's ability to pay claims is rated in its highest rating category by one or more nationally recognized organizations which regularly rate the abilities of insurance companies to pay claims.~~

(III) A contract or agreement may be purchased under this paragraph (I) only if such contract or agreement is purchased with proceeds of the sale of securities of a public entity and proceeds of certificates of participation or other securities evidencing rights in payments to be made by a public entity under a lease, lease-purchase agreement, or other similar arrangement OR IF PURCHASED BY REVENUES PLEDGED TO THE PAYMENT OF SUCH SECURITIES OR CERTIFICATES; except that no contract or agreement may be purchased pursuant to this paragraph (I) with the proceeds of any of the foregoing ~~which~~ THAT are held in an escrow or otherwise for the purpose of refunding bonds or other obligations of a public entity.

SECTION 8. 24-75-603, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-75-603. Depositories. (4) IN LIEU OF OR IN ADDITION TO OTHER STATUTORY AUTHORIZATION FOR THE INVESTMENT OF PUBLIC FUNDS, ANY PUBLIC FUNDS THAT ARE NOT NEEDED FOR CURRENT OPERATING EXPENSES MAY BE INVESTED IN ACCORDANCE WITH THE FOLLOWING CONDITIONS:

(a) THE PUBLIC FUNDS SHALL INITIALLY BE PLACED BY THE PUBLIC ENTITY IN A BANK OR SAVINGS AND LOAN ASSOCIATION LOCATED IN THIS STATE THAT IS AN ELIGIBLE PUBLIC DEPOSITORY CERTIFIED BY THE STATE BANKING BOARD OR THE STATE FINANCIAL SERVICES BOARD THAT OFFERS FEDERAL DEPOSIT INSURANCE CORPORATION INSURANCE ON ITS DEPOSITS;

(b) THE SELECTED ELIGIBLE PUBLIC DEPOSITORY SIMULTANEOUSLY SHALL ARRANGE FOR THE DEPOSIT OF ANY PUBLIC FUNDS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS IN CERTIFICATES OF DEPOSIT OF ONE HUNDRED THOUSAND DOLLARS OR LESS IN ONE OR MORE OTHER BANKS OR SAVINGS AND LOAN ASSOCIATIONS WHEREVER LOCATED IN THE UNITED STATES, FOR THE ACCOUNT OF THE PUBLIC ENTITY;

(c) AT THE SAME TIME THE PUBLIC FUNDS ARE DEPOSITED AND THE CERTIFICATES OF DEPOSIT ARE ISSUED FOR THE BENEFIT OF THE PUBLIC ENTITY, THE ELIGIBLE PUBLIC DEPOSITORY SHALL RECEIVE AN AMOUNT OF DEPOSITS FROM CUSTOMERS OF OTHER BANKS OR SAVINGS AND LOAN ASSOCIATIONS EQUAL TO THE AMOUNT OF THE PUBLIC FUNDS INITIALLY PLACED BY THE PUBLIC ENTITY;

(d) EACH SUCH CERTIFICATE OF DEPOSIT SHALL BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION;

(e) THE SELECTED ELIGIBLE PUBLIC DEPOSITORY SHALL ACT AS CUSTODIAN FOR THE PUBLIC ENTITY WITH RESPECT TO THE CERTIFICATES OF DEPOSIT ISSUED FOR THE

PUBLIC ENTITY'S ACCOUNT;

(f) PUBLIC FUNDS INVESTED IN ACCORDANCE WITH PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (4) ARE NOT SUBJECT TO THE COLLATERALIZATION, REQUIREMENTS, OR RESTRICTIONS OF ARTICLE 10.5 OF TITLE 11, C.R.S., EXCEPT FOR CERTIFICATION AS AN ELIGIBLE PUBLIC DEPOSITORY AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (4); AND

(g) BANKS AND SAVINGS AND LOAN ASSOCIATIONS THAT ACCEPT PUBLIC FUNDS FOR THE PURPOSES OF INVESTING THEM IN ACCORDANCE WITH PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (4) ARE NOT SUBJECT TO THE ADDITIONAL REQUIREMENTS OR RESTRICTIONS OF ARTICLE 10.5 OF TITLE 11, C.R.S., EXCEPT FOR CERTIFICATION AS AN ELIGIBLE PUBLIC DEPOSITORY AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (4).

SECTION 9. 31-25-611 (1) (f), Colorado Revised Statutes, is amended to read:

31-25-611. General powers of district. (1) The district has the following limited powers:

(f) To acquire, construct, install, operate, and maintain the improvements or provide the services contemplated by this part 6, AS DESCRIBED IN THE PETITION OR AS LATER AUTHORIZED BY THE VOTERS OF THE DISTRICT, including improvements located outside the boundaries of the district, and all property, rights, or interests incidental or appurtenant thereto and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith;

SECTION 10. Applicability. This act shall apply to transactions entered into by a public entity on or after the effective date of this act.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 21, 2004