CHAPTER 5

Investment of Funds by Political Subdivisions

**SECTION 6‑5‑10.** Authorized investments by political subdivisions.

 (a) The governing body of any municipality, county, school district, or other local government unit or political subdivision and county treasurers may invest money subject to their control and jurisdiction in:

 (1) Obligations of the United States and its agencies, the principal and interest of which is fully guaranteed by the United States.

 (2) Obligations issued by the Federal Financing Bank, Federal Farm Credit Bank, the Bank of Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, and the Farmers Home Administration, if, at the time of investment, the obligor has a long‑term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations.

 (3)(i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long‑term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations.

 (4) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government.

 (5) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.

 (6) Repurchase agreements when collateralized by securities as set forth in this section.

 (7) No load open‑end or closed‑end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), (3), and (6) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.

 (8) A political subdivision receiving Medicaid funds appropriated by the General Assembly in the annual general appropriations act may utilize appropriated funds and other monies generated by hospital operations to participate in principal protected investments in the form of notes, bonds, guaranteed investment contracts, debentures, or other contracts issued by a bank chartered in the United States or agency of a bank if chartered in the United States, financial institution, insurance company, or other entity which provides for full principal payment at the end of a contract term not to exceed twelve years if the issuer has received a rating in one of three highest general rating categories issued by no fewer than two nationally recognized credit rating organizations. No more than forty percent of the appropriated funds and other monies generated by hospital operations may be invested in the manner provided in this item. Revenue realized pursuant to these investments must be expended on health care services.

 (b) The provisions of this chapter shall not impair the power of a municipality, county, school district or other local governmental unit or political subdivision or county treasurer to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

 (c) Such investments shall have maturities consistent with the time or times when the invested moneys will be needed in cash.

 (d) For purposes of subsection (a), in the case of a defeased obligation, an obligation shall be treated as the obligation of the issuer of the obligation included in the qualifying defeasance escrow for the defeased obligation. A “defeased obligation” means any obligation the payment of which is secured and payable solely from a qualifying defeasance escrow and the terms of which may not be amended or modified without the consent of each of the holders of the defeased obligation. A “qualifying defeasance escrow” means a deposit of securities, including defeasance obligations, with a trustee or similar fiduciary under the terms of an agreement that requires the trustee or fiduciary to apply the proceeds of any interest payments or maturity of the defeasance obligation to the payment of the defeased obligation and when the trustee or fiduciary has received verification from a certified public accountant that the payments will be sufficient to pay the defeased obligation timely. A defeasance obligation must not be callable or subject to prepayment by the issuer and it must be a direct general obligation of the United States and its agencies, or an obligation the payment of principal and interest on which is fully and unconditionally guaranteed by the United States.

HISTORY: 1962 Code Section 1‑67; 1967 (55) 625; 1977 Act No. 222; 1988 Act No. 518; 1990 Act No. 326, Section 1; 2000 Act No. 387, Part II, Section 50; 2007 Act No. 110, Section 56, eff June 21, 2007; 2007 Act No. 116, Section 61, eff June 28, 2007, applicable for tax years beginning after 2007; 2008 Act No. 231, Section 3, eff upon approval (became law without the Governor’s signature on May 22, 2008).

Effect of Amendment

The first 2007 amendment, in subsection (a), in paragraph (1) substituted “, the principal and interest of which is fully guaranteed by the United States” for “thereof”, added paragraph (2), redesignated paragraph (2) as paragraph (3) designating (i) and adding (ii), and redesignated paragraphs (3) to (7) as paragraphs (4) to (8).

The second 2007 amendment made the same changes as the first.

The 2008 amendment added subsection (d) regarding defeased obligations.

CROSS REFERENCES

Authority of the treasurer to make investments under Chapter 6, see Sections 6‑6‑20, 6‑6‑30.

Bonds issued under State Education Assistance Act, see Section 59‑115‑100.

Defeasance of outstanding public obligation, deposit in special trust fund, see Section 11‑14‑110.

Investment of monies of the South Carolina Infrastructure Facilities Authority in obligations declared to be legal obligations by this chapter, see Section 11‑40‑230.

Trident Economic Development Finance Authority in accordance with this section, see Section 13‑12‑30.

LIBRARY REFERENCES

Counties 155.

Municipal Corporations 884.

Westlaw Key Number Searches: 104k155; 268k884.

C.J.S. Counties Section 197.

C.J.S. Municipal Corporations Section 1624.

Attorney General’s Opinions

County treasurer may invest funds not needed for current expenses in bond anticipation note of the county. 1991 Op Atty Gen, No. 91‑18 p 63.

A County Treasurer is not authorized by Section 6‑5‑10 or Section 12‑45‑220 to invest surplus funds in mutual funds. Such is the case whether or not the mutual fund has invested in government securities. 1987 Op Atty Gen, No. 87‑35, p 97.

County funds may be invested in a certificate of deposit that is collaterally secured by the bonds or debentures of a federal home loan bank. The County Treasurer is not the proper party to hold securities used to secure a certificate of deposit purchased with county funds as authorized by Section 6‑5‑10(a)(4). 1986 Op Atty Gen, No. 86‑91, p 279.

Commission of Public Works of political subdivision may invest public funds in certificates of deposit issued by savings and loan associations as long as requirements of Section 6‑5‑10(a)(4) concerning collateral security of such funds are met. 1985 Op Atty Gen, No. 85‑19, p 67.

The North Charleston Sewer District is not authorized to loan its funds, however, the same may be invested in general obligations of the State and its political units. 1981 Op Atty Gen, No 81‑27, p 46.

A county treasurer may invest excess funds in a savings or building and loan association in an amount not to exceed $100,000. 1979 Op Atty Gen, No 79‑88, p 122.

**SECTION 6‑5‑15.** Securing deposits of funds by local entities.

 (A) As used in this section, “local entity” means the governing body of a municipality, county, school district, other local government unit or political subdivision, or a county treasurer.

 (B) A qualified public depository, as defined in subsection (G), upon the deposit of funds by a local entity, must secure these deposits by deposit insurance, surety bonds, investment securities, or letters of credit to protect the local entity against loss in the event of insolvency or liquidation of the institution or for any other cause.

 (C) To the extent that these deposits exceed the amount of insurance coverage provided by the Federal Deposit Insurance Corporation, the qualified public depository at the time of deposit must:

 (1) furnish an indemnity bond in a responsible surety company authorized to do business in this State; or

 (2) pledge as collateral:

 (a) obligations of the United States;

 (b) obligations fully guaranteed both as to principal and interest by the United States;

 (c) general obligations of this State or any political subdivision of this State; or

 (d) obligations of the Federal National Mortgage Association, the Federal Home Loan Bank, Federal Farm Credit Bank, or the Federal Home Loan Mortgage Corporation; or

 (3) provide an irrevocable letter of credit issued by the Federal National Mortgage Association, the Federal Home Loan Bank, Federal Farm Credit Bank, or the Federal Home Loan Mortgage Corporation, in which the local entity is named as beneficiary and the letter of credit otherwise meets the criteria established and prescribed by the local entity.

 (D) The local entity must exercise prudence in accepting collateral securities or other forms of deposit security.

 (E)(1) A qualified public depository has the following options:

 (a) to secure all or a portion of uninsured funds under the Dedicated Method where all or a portion of the uninsured funds are secured separately. The qualified public depository shall maintain a record of all securities pledged, with the record being an official record of the qualified public depository and made available to examiners or representatives of all regulatory agencies. The local entity shall maintain a record of the securities pledged for monitoring purposes;

 (b) to secure all or the remainder of uninsured funds under the Pooling Method where a pool of collateral is established by the qualified public depository under the direction of the State Treasurer for the benefit of local entities. The depository shall obtain written approval from each entity before pooling an entity’s collateral. The depository shall maintain a record of all securities pledged, with the record being an official record of the qualified public depository and made available to examiners or representatives of all regulatory agencies. The State Treasurer shall determine the requirements and operating procedures for this pool. The State Treasurer is responsible for monitoring and ensuring a depository’s compliance and providing monthly reports to each local entity in the pool.

 (2) Notwithstanding the provisions of item (1), the local entity, when other federal or state law applies, may require a qualified public depository to secure all uninsured funds separately under the Dedicated Method.

 (F) A qualified public depository shall not accept or retain any funds that are required to be secured unless it has deposited eligible collateral equal to its required collateral with some proper depository pursuant to this chapter.

 (G) “Qualified public depository” means a national banking association, state banking association, federal savings and loan association, or federal savings bank located in this State and a bank, trust company, or savings institution organized under the law of this State that receives or holds funds that are secured pursuant to this chapter.

 (H) In addition to the investments authorized for local entities in Section 6‑5‑10 and notwithstanding another provision of law, a local entity may deposit all or a portion of surplus public funds in its control or possession in accordance with the following conditions:

 (1) the funds are initially deposited in a qualified public depository selected by the local entity;

 (2) the selected qualified public depository arranges for depositing the funds in one or more federally insured banks or savings and loan associations, wherever located, for the account of the local entity;

 (3) the full amount of the principal and accrued interest of each deposit is insured by the Federal Deposit Insurance Corporation; and

 (4) the selected qualified public depository acts as custodian for the local entity with respect to each deposit.

HISTORY: 2004 Act No. 270, Section 1, eff July 16, 2004; 2008 Act No. 231, Section 1, eff January 1, 2009; 2015 Act No. 28 (S.375), Section 1, eff June 1, 2015.

Effect of Amendment

The 2008 amendment in subsection (B) substituted “qualified public depository, as defined in subsection (G) of this section” for “bank or savings loan association”, in subsection (C) substituted “qualified public depository” for “bank or saving and loan association”, and added subsections (E) to (G) regarding qualified public depositories.

2015 Act No. 28, Section 1, added (H); and made nonsubstantive changes in (B), (E), and (G).

CROSS REFERENCES

Securing deposits of state funds, see Section 11‑13‑60.

**SECTION 6‑5‑20.** Delegation of investment authority.

 The governing body may delegate the investment authority provided by Section 6‑5‑10 to the treasurer or other financial officer or any fiscal agent or corporate trustee charged with custody of the funds of the local government, who shall thereafter assume full responsibility for such investment transaction until the delegation of authority terminates or is revoked.

HISTORY: 1962 Code Section 1‑68; 1967 (55) 625.

LIBRARY REFERENCES

Municipal Corporations 880.

Westlaw Key Number Search: 268k880.

C.J.S. Municipal Corporations Section 1623.

**SECTION 6‑5‑30.** Assistance of State Treasurer.

 The State Treasurer is authorized to assist local governments in investing funds that are temporarily in excess of operating needs by:

 (1) Explaining investment opportunities to such local governments through publication and other appropriate means;

 (2) Acquainting such local governments with the State’s practice and experience in investing short‑term funds; and

 (3) Providing technical assistance in investment of idle funds to local governments that request such assistance.

HISTORY: 1962 Code Section 1‑69; 1967 (55) 625.

CROSS REFERENCES

State treasurer, generally, see Sections 11‑5‑10 et seq.

LIBRARY REFERENCES

States 73.

Westlaw Key Number Search: 360k73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 6‑5‑40.** Chapter shall be supplementary to other statutes.

 The provisions of this chapter are not in lieu of, but are supplementary to, existing analogous statutory authorizations relating to investments, all of which shall remain in full force and effect.

HISTORY: 1962 Code Section 1‑70; 1967 (55) 625.