

## **Chapter 135: UNIFORM DEPOSITORY ACT**

### **135.341 County investment advisory committee**

(A) There shall be a county investment advisory committee consisting of three members: two county commissioners to be designated by the board of county commissioners, and the county treasurer.

Notwithstanding the preceding sentence, the board of county commissioners may declare that all three county commissioners shall serve on the county investment advisory committee. If the board so declares, the county investment advisory committee shall consist of five members: the three county commissioners, the county treasurer, and the clerk of the court of common pleas of the county.

(B) The committee shall elect its own chairperson, and committee members shall receive no additional compensation for the performance of their duties as committee members.

(C) The committee shall establish written county investment policies and shall meet at least once every three months, to review or revise its policies and to advise the investing authority on the county investments in order to ensure the best and safest return of funds available to the county for deposit or investment. Any member of the county investment advisory committee, upon giving five days' notice, may call a meeting of the committee. The committee's policies may establish a limit on the period of time that moneys may be invested in any particular type of investment.

(D) The committee is authorized to retain the services of an investment advisor, provided that the advisor is licensed by the division of securities under section 1707.141 of the Revised Code or is registered with the securities and exchange commission, and possesses public funds investment management experience, specifically in the area of state and local government investment portfolios, or the advisor is an eligible institution mentioned in section 135.03 of the Revised Code.

(E) The committee shall act as the investing authority in place of the treasurer for purposes of investing county funds and managing the county portfolio when this authority is transferred to it pursuant to divisions (E)(1) and (F)(2) of section 321.46 of the Revised Code or when ordered to do so by a court pursuant to section 321.47 of the Revised Code. For these purposes, the committee shall retain the services of an investment advisor described in division (D) of this section.

(F) Nothing in this section affects the authority of any of the officers mentioned in section 325.27 of the Revised Code to contract for the services of fiscal and management consultants pursuant to section 325.17 of the Revised Code.

(G) The committee of a county in which a county land reutilization corporation is organized under Chapter 1724. of the Revised Code may enter into a current unpaid or delinquent tax line of credit with the county treasurer for the purposes set forth in section 321.36 of the Revised Code if all of the following apply:

(1) The county treasurer requests in writing that the committee enter into a current unpaid or delinquent tax line of credit with the county treasurer.

(2) The committee approves, by affirmative vote of the two county commissioners designated to sit on the committee, the form of the current unpaid or delinquent tax line of credit and the execution of the current unpaid or delinquent tax line of credit.

(3) The maximum aggregate available amount under the current unpaid or delinquent tax line of credit shall not exceed fifteen per cent of the county's total average portfolio of inactive moneys as of the date of execution and delivery of the line of credit.

(4) The maximum term during which draws on the line of credit can be made shall be five years; provided, however, that nothing in this division prohibits the execution and delivery of another current unpaid or delinquent tax line of credit at the end of the term of a line of credit, if at that time no unreimbursed draws, plus accrued but unpaid interest thereon, have been outstanding beyond the last day of the second year immediately following the year in which the draw was made.

(5) Repayment in full of each draw on the line of credit, plus any accrued and unpaid interest thereon, shall be made not later than the last day of the second calendar year after the year in which the draw is made.

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### **135.35 County inactive moneys**

(A) The investing authority shall deposit or invest any part or all of the county's inactive moneys and shall invest all of the money in the county public library fund when required by section 135.352 of the Revised Code. The following classifications of securities and obligations are eligible for such deposit or investment:

(1) United States treasury bills, notes, bonds, or any other obligation or security issued by the United States treasury, any other obligation guaranteed as to principal or interest by the United States, or any book entry, zero-coupon United States treasury security that is a direct obligation of the United States.

Nothing in the classification of eligible securities and obligations set forth in divisions (A)(2) to (11) of this section shall be construed to authorize any investment in stripped principal or interest obligations of such eligible securities and obligations.

(2) Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality, including but not limited to, the federal national mortgage association, federal home loan bank, federal farm credit bank, federal home loan mortgage corporation, government national mortgage association, and student loan marketing association. All federal agency securities shall be direct issuances of federal government agencies or instrumentalities.

(3) Time certificates of deposit or savings or deposit accounts, including, but not limited to, passbook accounts, in any eligible institution mentioned in section 135.32 of the Revised Code;

(4) Bonds and other obligations of this state or the political subdivisions of this state, provided that such political subdivisions are located wholly or partly within the same county as the investing authority;

(5) No-load money market mutual funds consisting exclusively of obligations described in division (A)(1) or (2) of this section and repurchase agreements secured by such obligations, provided that investments in securities described in this division are made only through eligible institutions mentioned in section 135.32 of the Revised Code;

(6) The Ohio subdivision's fund as provided in section 135.45 of the Revised Code;

(7) Securities lending agreements with any eligible institution mentioned in section 135.32 of the Revised Code that is a member of the federal reserve system or federal home loan bank or with any recognized United States government securities dealer meeting the description in division (J)(1) of this section, under the terms of which agreements the investing authority lends securities and the eligible institution or dealer agrees to simultaneously exchange similar securities or cash, equal value for equal value.

Securities and cash received as collateral for a securities lending agreement are not inactive moneys of the county or moneys of a county public library fund. The investment of cash collateral received pursuant to a securities lending agreement may be invested only in instruments specified by the investing authority in the written investment policy described in division (K) of this section.

(8) Up to twenty-five per cent of the county's total average portfolio in either of the following investments:

(a) Commercial paper notes issued by an entity that is defined in division (D) of section 1705.01 of the Revised Code and that has assets exceeding five hundred million dollars, to which notes all of the following apply:

(i) The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized standard rating services.

(ii) The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.

(iii) The notes mature not later than two hundred seventy days after purchase.

(b) Bankers acceptances of banks that are insured by the federal deposit insurance corporation and to which both of the following apply:

(i) The obligations are eligible for purchase by the federal reserve system.

(ii) The obligations mature not later than one hundred eighty days after purchase.

No investment shall be made pursuant to division (A)(8) of this section unless the investing authority has completed additional training for making the investments authorized by division (A)(8) of this section. The type and amount of additional training shall be approved by the auditor of state and may be conducted by or provided under the supervision of the auditor of state.

(9) Up to fifteen per cent of the county's total average portfolio in notes issued by corporations that are incorporated under the laws of the United States and that are operating within the United States, or by depository institutions that are doing business under authority granted by the United States or any state and that are operating within the United States, provided both of the following apply:

(a) The notes are rated in the second highest or higher category by at least two nationally recognized standard rating services at the time of purchase.

(b) The notes mature not later than two years after purchase.

(10) No-load money market mutual funds rated in the highest category at the time of purchase by at least one nationally recognized standard rating service and consisting exclusively of obligations described in division (A)(1), (2), or (6) of section 135.143 of the Revised Code;

(11) Debt interests rated at the time of purchase in the three highest categories by two nationally recognized standard rating services and issued by foreign nations diplomatically recognized by the United States government. All interest and principal shall be denominated and payable in United States funds. The investments made under division (A)(11) of this section shall not exceed in the aggregate one per cent of a county's total average portfolio.

The investing authority shall invest under division (A)(11) of this section in a debt interest issued by a foreign nation only if the debt interest is backed by the full faith and credit of that foreign nation, there is no prior history of default, and the debt interest matures not later than five years after purchase. For purposes of division (A)(11) of this section, a debt interest is rated in the three highest categories by two nationally recognized standard

rating services if either the debt interest itself or the issuer of the debt interest is rated, or is implicitly rated, at the time of purchase in the three highest categories by two nationally recognized standard rating services.

(12) A current unpaid or delinquent tax line of credit authorized under division (G) of section 135.341 of the Revised Code, provided that all of the conditions for entering into such a line of credit under that division are satisfied, or bonds and other obligations of a county land reutilization corporation organized under Chapter 1724. of the Revised Code, if the county land reutilization corporation is located wholly or partly within the same county as the investing authority.

(B) Nothing in the classifications of eligible obligations and securities set forth in divisions (A)(1) to (11) of this section shall be construed to authorize investment in a derivative, and no investing authority shall invest any county inactive moneys or any moneys in a county public library fund in a derivative. For purposes of this division, "derivative" means a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself. Any security, obligation, trust account, or other instrument that is created from an issue of the United States treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative instrument. An eligible investment described in this section with a variable interest rate payment, based upon a single interest payment or single index comprised of other eligible investments provided for in division (A)(1) or (2) of this section, is not a derivative, provided that such variable rate investment has a maximum maturity of two years. A treasury inflation-protected security shall not be considered a derivative, provided the security matures not later than five years after purchase.

(C) Except as provided in division (D) of this section, any investment made pursuant to this section must mature within five years from the date of settlement, unless the investment is matched to a specific obligation or debt of the county or to a specific obligation or debt of a political subdivision of this state located wholly or partly within the county, and the investment is specifically approved by the investment advisory committee.

(D) The investing authority may also enter into a written repurchase agreement with any eligible institution mentioned in section 135.32 of the Revised Code or any eligible securities dealer pursuant to division (J) of this section, under the terms of which agreement the investing authority purchases and the eligible institution or dealer agrees unconditionally to repurchase any of the securities listed in divisions (B)(1) to (5), except letters of credit described in division (B)(2), of section 135.18 of the Revised Code. The market value of securities subject to an overnight written repurchase agreement must exceed the principal value of the overnight written repurchase agreement by at least two per cent. A written repurchase agreement must exceed the principal value of the overnight written repurchase agreement, by at least two per cent. A written repurchase agreement shall not exceed thirty days, and the market value of securities subject to a written repurchase agreement must exceed the principal value of the written repurchase agreement by at least two per cent and be marked to market daily. All securities purchased

pursuant to this division shall be delivered into the custody of the investing authority or the qualified custodian of the investing authority or an agent designated by the investing authority. A written repurchase agreement with an eligible securities dealer shall be transacted on a delivery versus payment basis. The agreement shall contain the requirement that for each transaction pursuant to the agreement the participating institution shall provide all of the following information:

(1) The par value of the securities;

(2) The type, rate, and maturity date of the securities;

(3) A numerical identifier generally accepted in the securities industry that designates the securities.

No investing authority shall enter into a written repurchase agreement under the terms of which the investing authority agrees to sell securities owned by the county to a purchaser and agrees with that purchaser to unconditionally repurchase those securities.

(E) No investing authority shall make an investment under this section, unless the investing authority, at the time of making the investment, reasonably expects that the investment can be held until its maturity. The investing authority's written investment policy shall specify the conditions under which an investment may be redeemed or sold prior to maturity.

(F) No investing authority shall pay a county's inactive moneys or moneys of a county public library fund into a fund established by another subdivision, treasurer, governing board, or investing authority, if that fund was established by the subdivision, treasurer, governing board, or investing authority for the purpose of investing or depositing the public moneys of other subdivisions. This division does not apply to the payment of public moneys into either of the following:

(1) The Ohio subdivision's fund pursuant to division (A)(6) of this section;

(2) A fund created solely for the purpose of acquiring, constructing, owning, leasing, or operating municipal utilities pursuant to the authority provided under section 715.02 of the Revised Code or Section 4 of Article XVIII, Ohio Constitution.

For purposes of division (F) of this section, "subdivision" includes a county.

(G) The use of leverage, in which the county uses its current investment assets as collateral for the purpose of purchasing other assets, is prohibited. The issuance of taxable notes for the purpose of arbitrage is prohibited. Contracting to sell securities not owned by the county, for the purpose of purchasing such securities on the speculation that bond prices will decline, is prohibited.

(H) Any securities, certificates of deposit, deposit accounts, or any other documents evidencing deposits or investments made under authority of this section shall be issued in the name of the county with the county treasurer or investing authority as the designated payee. If any such deposits or investments are registrable either as to principal or interest, or both, they shall be registered in the name of the treasurer.

(I) The investing authority shall be responsible for the safekeeping of all documents evidencing a deposit or investment acquired under this section, including, but not limited to, safekeeping receipts evidencing securities deposited with a qualified trustee, as provided in section 135.37 of the Revised Code, and documents confirming the purchase of securities under any repurchase agreement under this section shall be deposited with a qualified trustee, provided, however, that the qualified trustee shall be required to report to the investing authority, auditor of state, or an authorized outside auditor at any time upon request as to the identity, market value, and location of the document evidencing each security, and that if the participating institution is a designated depository of the county for the current period of designation, the securities that are the subject of the repurchase agreement may be delivered to the treasurer or held in trust by the participating institution on behalf of the investing authority.

Upon the expiration of the term of office of an investing authority or in the event of a vacancy in the office for any reason, the officer or the officer's legal representative shall transfer and deliver to the officer's successor all documents mentioned in this division for which the officer has been responsible for safekeeping. For all such documents transferred and delivered, the officer shall be credited with, and the officer's successor shall be charged with, the amount of moneys evidenced by such documents.

(J)(1) All investments, except for investments in securities described in divisions (A)(5) , (6), and (12) of this section, shall be made only through a member of the national association of securities dealers, through a bank, savings bank, or savings and loan association regulated by the superintendent of financial institutions, or through an institution regulated by the comptroller of the currency, federal deposit insurance corporation, or board of governors of the federal reserve system.

(2) Payment for investments shall be made only upon the delivery of securities representing such investments to the treasurer, investing authority, or qualified trustee. If the securities transferred are not represented by a certificate, payment shall be made only upon receipt of confirmation of transfer from the custodian by the treasurer, governing board, or qualified trustee.

(K)(1) Except as otherwise provided in division (K)(2) of this section, no investing authority shall make an investment or deposit under this section, unless there is on file with the auditor of state a written investment policy approved by the investing authority. The policy shall require that all entities conducting investment business with the investing authority shall sign the investment policy of that investing authority. All brokers, dealers, and financial institutions, described in division (J)(1) of this section, initiating transactions with the investing authority by giving advice or making investment recommendations shall

sign the investing authority's investment policy thereby acknowledging their agreement to abide by the policy's contents. All brokers, dealers, and financial institutions, described in division (J)(1) of this section, executing transactions initiated by the investing authority, having read the policy's contents, shall sign the investment policy thereby acknowledging their comprehension and receipt.

(2) If a written investment policy described in division (K)(1) of this section is not filed on behalf of the county with the auditor of state, the investing authority of that county shall invest the county's inactive moneys and moneys of the county public library fund only in time certificates of deposits or savings or deposit accounts pursuant to division (A)(3) of this section, no-load money market mutual funds pursuant to division (A)(5) of this section, or the Ohio subdivision's fund pursuant to division (A)(6) of this section.

(L)(1) The investing authority shall establish and maintain an inventory of all obligations and securities acquired by the investing authority pursuant to this section. The inventory shall include a description of each obligation or security, including type, cost, par value, maturity date, settlement date, and any coupon rate.

(2) The investing authority shall also keep a complete record of all purchases and sales of the obligations and securities made pursuant to this section.

(3) The investing authority shall maintain a monthly portfolio report and issue a copy of the monthly portfolio report describing such investments to the county investment advisory committee, detailing the current inventory of all obligations and securities, all transactions during the month that affected the inventory, any income received from the obligations and securities, and any investment expenses paid, and stating the names of any persons effecting transactions on behalf of the investing authority.

(4) The monthly portfolio report shall be a public record and available for inspection under section 149.43 of the Revised Code.

(5) The inventory and the monthly portfolio report shall be filed with the board of county commissioners.

(M) An investing authority may enter into a written investment or deposit agreement that includes a provision under which the parties agree to submit to nonbinding arbitration to settle any controversy that may arise out of the agreement, including any controversy pertaining to losses of public moneys resulting from investment or deposit. The arbitration provision shall be set forth entirely in the agreement, and the agreement shall include a conspicuous notice to the parties that any party to the arbitration may apply to the court of common pleas of the county in which the arbitration was held for an order to vacate, modify, or correct the award. Any such party may also apply to the court for an order to change venue to a court of common pleas located more than one hundred miles from the county in which the investing authority is located.

For purposes of this division, "investment or deposit agreement" means any agreement between an investing authority and a person, under which agreement the person agrees to invest, deposit, or otherwise manage, on behalf of the investing authority, a county's inactive moneys or moneys in a county public library fund, or agrees to provide investment advice to the investing authority.

(N) An investment held in the county portfolio on September 27, 1996, that was a legal investment under the law as it existed before September 27, 1996, may be held until maturity, or if the investment does not have a maturity date the investment may be held until five years from September 27, 1996, regardless of whether the investment would qualify as a legal investment under the terms of this section as amended.

Amended by 128th General Assembly File No. 31, HB 313, § 1, eff. 7/7/2010.

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### **135.351 Crediting interest**

(A) Except as provided in sections 135.352 and 1545.22 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county.

(B) Unless otherwise provided by law, with respect to moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county, the county shall pay and distribute such moneys in accordance with division (B)(1), (2), or (3) of this section, as appropriate:

(1) On or before the tenth day of the month following the month in which the county received such moneys or on or before such later date authorized by the legislative authority or other governing body of the other political subdivision or district, pay and distribute all such moneys to the treasurer or other appropriate officer of the other political subdivision or district.

(2) With respect to moneys due to boards and subdivisions under section 321.31 of the Revised Code, pay and distribute such moneys within five business days after the final date prescribed by law for such settlement, or if the settlement date is lawfully extended, within five business days after the date of such lawful extension.

(3) With respect to moneys for which any advance authorized by section 321.34 or 321.342 of the Revised Code has been requested, pay and distribute such moneys within five business days after the request for the advance is delivered to the county auditor.

(C) If the county fails to make any payment and distribution required by division (B) of this section within the time periods prescribed by that division, the county shall pay to the

appropriate other political subdivision, taxing district, or special district any interest that the county has received or will receive on any moneys or advance described in that division which accrues after the date such moneys or advance should have been distributed, together with the principal amount of such moneys or advance. The county shall make this payment of principal and interest within five business days after the treasurer or other appropriate officer of such other political subdivision or district files a written demand for payment with the county auditor.

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