

ASSEMBLY BILL

No. 1933

Introduced by Assembly Member Levine

February 19, 2014

An act to amend Section 53601 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1933, as introduced, Levine. Local government: investments.

Existing law authorizes the legislative body of a local agency having money in a sinking fund or money in its treasury not required for immediate needs to invest any portion of the money that it deems wise or expedient in specified securities and financial instruments.

This bill would authorize the legislative body of a local agency to also invest in United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by certain banks, as specified, and would require these investments to be rated "AA" or better and to not exceed 30% of the agency's moneys that may be invested.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53601 of the Government Code is
2 amended to read:
3 53601. This section shall apply to a local agency that is a city,
4 a district, or other local agency that does not pool money in
5 deposits or investments with other local agencies, other than local

1 agencies that have the same governing body. However, Section
2 53635 shall apply to all local agencies that pool money in deposits
3 or investments with other local agencies that have separate
4 governing bodies. The legislative body of a local agency having
5 moneys in a sinking fund or moneys in its treasury not required
6 for the immediate needs of the local agency may invest any portion
7 of the moneys that it deems wise or expedient in those investments
8 set forth below. A local agency purchasing or obtaining any
9 securities prescribed in this section, in a negotiable, bearer,
10 registered, or nonregistered format, shall require delivery of the
11 securities to the local agency, including those purchased for the
12 agency by financial advisers, consultants, or managers using the
13 agency’s funds, by book entry, physical delivery, or by third-party
14 custodial agreement. The transfer of securities to the counterparty
15 bank’s customer book entry account may be used for book entry
16 delivery.

17 For purposes of this section, “counterparty” means the other
18 party to the transaction. A counterparty bank’s trust department
19 or separate safekeeping department may be used for the physical
20 delivery of the security if the security is held in the name of the
21 local agency. Where this section specifies a percentage limitation
22 for a particular category of investment, that percentage is applicable
23 only at the date of purchase. Where this section does not specify
24 a limitation on the term or remaining maturity at the time of the
25 investment, no investment shall be made in any security, other
26 than a security underlying a repurchase or reverse repurchase
27 agreement or securities lending agreement authorized by this
28 section, that at the time of the investment has a term remaining to
29 maturity in excess of five years, unless the legislative body has
30 granted express authority to make that investment either
31 specifically or as a part of an investment program approved by the
32 legislative body no less than three months prior to the investment:

33 (a) Bonds issued by the local agency, including bonds payable
34 solely out of the revenues from a revenue-producing property
35 owned, controlled, or operated by the local agency or by a
36 department, board, agency, or authority of the local agency.

37 (b) United States Treasury notes, bonds, bills, or certificates of
38 indebtedness, or those for which the faith and credit of the United
39 States are pledged for the payment of principal and interest.

1 (c) Registered state warrants or treasury notes or bonds of this
2 state, including bonds payable solely out of the revenues from a
3 revenue-producing property owned, controlled, or operated by the
4 state or by a department, board, agency, or authority of the state.

5 (d) Registered treasury notes or bonds of any of the other 49
6 states in addition to California, including bonds payable solely out
7 of the revenues from a revenue-producing property owned,
8 controlled, or operated by a state or by a department, board, agency,
9 or authority of any of the other 49 states, in addition to California.

10 (e) Bonds, notes, warrants, or other evidences of indebtedness
11 of a local agency within this state, including bonds payable solely
12 out of the revenues from a revenue-producing property owned,
13 controlled, or operated by the local agency, or by a department,
14 board, agency, or authority of the local agency.

15 (f) Federal agency or United States government-sponsored
16 enterprise obligations, participations, or other instruments,
17 including those issued by or fully guaranteed as to principal and
18 interest by federal agencies or United States government-sponsored
19 enterprises.

20 (g) Bankers' acceptances otherwise known as bills of exchange
21 or time drafts that are drawn on and accepted by a commercial
22 bank. Purchases of bankers' acceptances shall not exceed 180
23 days' maturity or 40 percent of the agency's moneys that may be
24 invested pursuant to this section. However, no more than 30 percent
25 of the agency's moneys may be invested in the bankers'
26 acceptances of any one commercial bank pursuant to this section.

27 This subdivision does not preclude a municipal utility district
28 from investing moneys in its treasury in a manner authorized by
29 the Municipal Utility District Act (Division 6 (commencing with
30 Section 11501) of the Public Utilities Code).

31 (h) Commercial paper of "prime" quality of the highest ranking
32 or of the highest letter and number rating as provided for by a
33 nationally recognized statistical rating organization (NRSRO).
34 The entity that issues the commercial paper shall meet all of the
35 following conditions in either paragraph (1) or (2):

36 (1) The entity meets the following criteria:

37 (A) Is organized and operating in the United States as a general
38 corporation.

39 (B) Has total assets in excess of five hundred million dollars
40 (\$500,000,000).

1 (C) Has debt other than commercial paper, if any, that is rated
2 “A” or higher by an NRSRO.

3 (2) The entity meets the following criteria:

4 (A) Is organized within the United States as a special purpose
5 corporation, trust, or limited liability company.

6 (B) Has programwide credit enhancements including, but not
7 limited to, overcollateralization, letters of credit, or a surety bond.

8 (C) Has commercial paper that is rated “A-1” or higher, or the
9 equivalent, by an NRSRO.

10 Eligible commercial paper shall have a maximum maturity of
11 270 days or less. Local agencies, other than counties or a city and
12 county, may invest no more than 25 percent of their moneys in
13 eligible commercial paper. Local agencies, other than counties or
14 a city and county, may purchase no more than 10 percent of the
15 outstanding commercial paper of any single issuer. Counties or a
16 city and county may invest in commercial paper pursuant to the
17 concentration limits in subdivision (a) of Section 53635.

18 (i) Negotiable certificates of deposit issued by a nationally or
19 state-chartered bank, a savings association or a federal association
20 (as defined by Section 5102 of the Financial Code), a state or
21 federal credit union, or by a federally licensed or state-licensed
22 branch of a foreign bank. Purchases of negotiable certificates of
23 deposit shall not exceed 30 percent of the agency’s moneys that
24 may be invested pursuant to this section. For purposes of this
25 section, negotiable certificates of deposit do not come within
26 Article 2 (commencing with Section 53630), except that the amount
27 so invested shall be subject to the limitations of Section 53638.
28 The legislative body of a local agency and the treasurer or other
29 official of the local agency having legal custody of the moneys
30 are prohibited from investing local agency funds, or funds in the
31 custody of the local agency, in negotiable certificates of deposit
32 issued by a state or federal credit union if a member of the
33 legislative body of the local agency, or a person with investment
34 decisionmaking authority in the administrative office manager’s
35 office, budget office, auditor-controller’s office, or treasurer’s
36 office of the local agency also serves on the board of directors, or
37 any committee appointed by the board of directors, or the credit
38 committee or the supervisory committee of the state or federal
39 credit union issuing the negotiable certificates of deposit.

1 (j) (1) Investments in repurchase agreements or reverse
2 repurchase agreements or securities lending agreements of
3 securities authorized by this section, as long as the agreements are
4 subject to this subdivision, including the delivery requirements
5 specified in this section.

6 (2) Investments in repurchase agreements may be made, on an
7 investment authorized in this section, when the term of the
8 agreement does not exceed one year. The market value of securities
9 that underlie a repurchase agreement shall be valued at 102 percent
10 or greater of the funds borrowed against those securities and the
11 value shall be adjusted no less than quarterly. Since the market
12 value of the underlying securities is subject to daily market
13 fluctuations, the investments in repurchase agreements shall be in
14 compliance if the value of the underlying securities is brought back
15 up to 102 percent no later than the next business day.

16 (3) Reverse repurchase agreements or securities lending
17 agreements may be utilized only when all of the following
18 conditions are met:

19 (A) The security to be sold using a reverse repurchase agreement
20 or securities lending agreement has been owned and fully paid for
21 by the local agency for a minimum of 30 days prior to sale.

22 (B) The total of all reverse repurchase agreements and securities
23 lending agreements on investments owned by the local agency
24 does not exceed 20 percent of the base value of the portfolio.

25 (C) The agreement does not exceed a term of 92 days, unless
26 the agreement includes a written codicil guaranteeing a minimum
27 earning or spread for the entire period between the sale of a security
28 using a reverse repurchase agreement or securities lending
29 agreement and the final maturity date of the same security.

30 (D) Funds obtained or funds within the pool of an equivalent
31 amount to that obtained from selling a security to a counterparty
32 using a reverse repurchase agreement or securities lending
33 agreement shall not be used to purchase another security with a
34 maturity longer than 92 days from the initial settlement date of the
35 reverse repurchase agreement or securities lending agreement,
36 unless the reverse repurchase agreement or securities lending
37 agreement includes a written codicil guaranteeing a minimum
38 earning or spread for the entire period between the sale of a security
39 using a reverse repurchase agreement or securities lending
40 agreement and the final maturity date of the same security.

1 (4) (A) Investments in reverse repurchase agreements, securities
2 lending agreements, or similar investments in which the local
3 agency sells securities prior to purchase with a simultaneous
4 agreement to repurchase the security may be made only upon prior
5 approval of the governing body of the local agency and shall be
6 made only with primary dealers of the Federal Reserve Bank of
7 New York or with a nationally or state-chartered bank that has or
8 has had a significant banking relationship with a local agency.

9 (B) For purposes of this chapter, “significant banking
10 relationship” means any of the following activities of a bank:

11 (i) Involvement in the creation, sale, purchase, or retirement of
12 a local agency’s bonds, warrants, notes, or other evidence of
13 indebtedness.

14 (ii) Financing of a local agency’s activities.

15 (iii) Acceptance of a local agency’s securities or funds as
16 deposits.

17 (5) (A) “Repurchase agreement” means a purchase of securities
18 by the local agency pursuant to an agreement by which the
19 counterparty seller will repurchase the securities on or before a
20 specified date and for a specified amount and the counterparty will
21 deliver the underlying securities to the local agency by book entry,
22 physical delivery, or by third-party custodial agreement. The
23 transfer of underlying securities to the counterparty bank’s
24 customer book-entry account may be used for book-entry delivery.

25 (B) “Securities,” for purposes of repurchase under this
26 subdivision, means securities of the same issuer, description, issue
27 date, and maturity.

28 (C) “Reverse repurchase agreement” means a sale of securities
29 by the local agency pursuant to an agreement by which the local
30 agency will repurchase the securities on or before a specified date
31 and includes other comparable agreements.

32 (D) “Securities lending agreement” means an agreement under
33 which a local agency agrees to transfer securities to a borrower
34 who, in turn, agrees to provide collateral to the local agency.
35 During the term of the agreement, both the securities and the
36 collateral are held by a third party. At the conclusion of the
37 agreement, the securities are transferred back to the local agency
38 in return for the collateral.

39 (E) For purposes of this section, the base value of the local
40 agency’s pool portfolio shall be that dollar amount obtained by

1 totaling all cash balances placed in the pool by all pool participants,
2 excluding any amounts obtained through selling securities by way
3 of reverse repurchase agreements, securities lending agreements,
4 or other similar borrowing methods.

5 (F) For purposes of this section, the spread is the difference
6 between the cost of funds obtained using the reverse repurchase
7 agreement and the earnings obtained on the reinvestment of the
8 funds.

9 (k) Medium-term notes, defined as all corporate and depository
10 institution debt securities with a maximum remaining maturity of
11 five years or less, issued by corporations organized and operating
12 within the United States or by depository institutions licensed by
13 the United States or any state and operating within the United
14 States. Notes eligible for investment under this subdivision shall
15 be rated “A” or better by an NRSRO. Purchases of medium-term
16 notes shall not include other instruments authorized by this section
17 and ~~may~~ shall not exceed 30 percent of the agency’s moneys that
18 may be invested pursuant to this section.

19 (l) (1) Shares of beneficial interest issued by diversified
20 management companies that invest in the securities and obligations
21 as authorized by subdivisions (a) to (k), inclusive, and subdivisions
22 (m) to (o), inclusive, and that comply with the investment
23 restrictions of this article and Article 2 (commencing with Section
24 53630). However, notwithstanding these restrictions, a counterparty
25 to a reverse repurchase agreement or securities lending agreement
26 is not required to be a primary dealer of the Federal Reserve Bank
27 of New York if the company’s board of directors finds that the
28 counterparty presents a minimal risk of default, and the value of
29 the securities underlying a repurchase agreement or securities
30 lending agreement may be 100 percent of the sales price if the
31 securities are marked to market daily.

32 (2) Shares of beneficial interest issued by diversified
33 management companies that are money market funds registered
34 with the Securities and Exchange Commission under the
35 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

36 (3) If investment is in shares issued pursuant to paragraph (1),
37 the company shall have met either of the following criteria:

38 (A) Attained the highest ranking or the highest letter and
39 numerical rating provided by not less than two NRSROs.

1 (B) Retained an investment adviser registered or exempt from
2 registration with the Securities and Exchange Commission with
3 not less than five years' experience investing in the securities and
4 obligations authorized by subdivisions (a) to (k), inclusive, and
5 subdivisions (m) to (o), inclusive, and with assets under
6 management in excess of five hundred million dollars
7 (\$500,000,000).

8 (4) If investment is in shares issued pursuant to paragraph (2),
9 the company shall have met either of the following criteria:

10 (A) Attained the highest ranking or the highest letter and
11 numerical rating provided by not less than two NRSROs.

12 (B) Retained an investment adviser registered or exempt from
13 registration with the Securities and Exchange Commission with
14 not less than five years' experience managing money market
15 mutual funds with assets under management in excess of five
16 hundred million dollars (\$500,000,000).

17 (5) The purchase price of shares of beneficial interest purchased
18 pursuant to this subdivision shall not include commission that the
19 companies may charge and shall not exceed 20 percent of the
20 agency's moneys that may be invested pursuant to this section.
21 However, no more than 10 percent of the agency's funds may be
22 invested in shares of beneficial interest of any one mutual fund
23 pursuant to paragraph (1).

24 (m) Moneys held by a trustee or fiscal agent and pledged to the
25 payment or security of bonds or other indebtedness, or obligations
26 under a lease, installment sale, or other agreement of a local
27 agency, or certificates of participation in those bonds, indebtedness,
28 or lease installment sale, or other agreements, may be invested in
29 accordance with the statutory provisions governing the issuance
30 of those bonds, indebtedness, or lease installment sale, or other
31 agreement, or to the extent not inconsistent therewith or if there
32 are no specific statutory provisions, in accordance with the
33 ordinance, resolution, indenture, or agreement of the local agency
34 providing for the issuance.

35 (n) Notes, bonds, or other obligations that are at all times secured
36 by a valid first priority security interest in securities of the types
37 listed by Section 53651 as eligible securities for the purpose of
38 securing local agency deposits having a market value at least equal
39 to that required by Section 53652 for the purpose of securing local
40 agency deposits. The securities serving as collateral shall be placed

1 by delivery or book entry into the custody of a trust company or
2 the trust department of a bank that is not affiliated with the issuer
3 of the secured obligation, and the security interest shall be perfected
4 in accordance with the requirements of the Uniform Commercial
5 Code or federal regulations applicable to the types of securities in
6 which the security interest is granted.

7 (o) A mortgage passthrough security, collateralized mortgage
8 obligation, mortgage-backed or other pay-through bond, equipment
9 lease-backed certificate, consumer receivable passthrough
10 certificate, or consumer receivable-backed bond of a maximum of
11 five years' maturity. Securities eligible for investment under this
12 subdivision shall be issued by an issuer having an "A" or higher
13 rating for the issuer's debt as provided by an NRSRO and rated in
14 a rating category of "AA" or its equivalent or better by an NRSRO.
15 Purchase of securities authorized by this subdivision ~~may~~ shall
16 not exceed 20 percent of the agency's surplus moneys that may
17 be invested pursuant to this section.

18 (p) Shares of beneficial interest issued by a joint powers
19 authority organized pursuant to Section 6509.7 that invests in the
20 securities and obligations authorized in subdivisions (a) to (o),
21 inclusive. Each share shall represent an equal proportional interest
22 in the underlying pool of securities owned by the joint powers
23 authority. To be eligible under this section, the joint powers
24 authority issuing the shares shall have retained an investment
25 adviser that meets all of the following criteria:

26 (1) The adviser is registered or exempt from registration with
27 the Securities and Exchange Commission.

28 (2) The adviser has not less than five years of experience
29 investing in the securities and obligations authorized in
30 subdivisions (a) to (o), inclusive.

31 (3) The adviser has assets under management in excess of five
32 hundred million dollars (\$500,000,000).

33 (q) *United States dollar denominated senior unsecured*
34 *unsubordinated obligations issued or unconditionally guaranteed*
35 *by the International Bank for Reconstruction and Development,*
36 *International Finance Corporation, or Inter-American*
37 *Development Bank, with a maximum remaining maturity of five*
38 *years or less, and eligible for purchase and sale within the United*
39 *States. Investments under this subdivision shall be rated "AA" or*

- 1 *better by an NRSRO and shall not exceed 30 percent of the*
- 2 *agency's moneys that may be invested pursuant to this section.*

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