

## Assembly Bill No. 1794

### CHAPTER 164

An act to amend Section 53635 of, and to amend and repeal Section 53601.7 of, the Government Code, relating to local agencies.

[Approved by Governor August 28, 2006. Filed with  
Secretary of State August 28, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1794, DeVore. Local government: investments.

(1) Existing law, until January 1, 2007, authorizes a county or a city and county to invest its funds pursuant to specified criteria, including authority to invest its funds in short-term unsecured promissory notes issued by corporations for maturities of 270 days or less. These commercial paper investments are further limited to maturities for eligible commercial paper not exceeding 270 days and not representing more than 10 percent of the outstanding paper of any one issuing corporation.

This bill would eliminate the 10% maximum on this investment and would extend the repeal date to January 1, 2011, for the overall investment authorization.

(2) Existing law provides that a county, a city and county, or other local agency that pools money with other agencies may invest in commercial paper. No more than 10% of the local agency's money may be invested in any single issuer.

This bill would limit the investment in any single issuer of commercial paper to no more than 10% of the total assets of the investments held by a local entity.

(3) Existing law provides that no more than 10% of the outstanding commercial paper of a single issuer may be purchased by the local agency.

This bill would eliminate this limitation.

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

SECTION 1. Section 53601.7 of the Government Code is amended to read:

53601.7. Notwithstanding the investment parameters of Sections 53601 and 53635, a local agency that is a county or a city and county may invest any portion of the funds that it deems wise or expedient, using the following criteria:

(a) No investment shall be made in any security, other than a security underlying a repurchase agreement, reverse repurchase agreement, or a securities lending agreement, that, at the time of purchase, has a term

remaining to maturity in excess of 397 days, and that would cause the dollar-weighted average maturity of the funds in the investment pool to exceed 90 days.

(b) All corporate and depository institution investments shall meet or exceed the following credit rating criteria at time of purchase:

(1) Short-term debt shall be rated at least “A-1” by Standard & Poor’s Corporation, “P-1” by Moody’s Investors Service, Inc., or “F-1” by Fitch Ratings. If the issuer of short-term debt has also issued long-term debt, this long-term debt rating shall be rated at least “A,” without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor’s Corporation, Moody’s Investors Service, Inc., or Fitch Ratings.

(2) Long-term debt shall be rated at least “A,” without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor’s Corporation, Moody’s Investors Service, Inc., or Fitch Ratings.

(c) (1) No more than 5 percent of the total assets of the investments held by a local agency may be invested in the securities of any one issuer, except the obligations of the United States government, United States government agencies, and United States government-sponsored enterprises.

(2) Up to 25 percent of the total assets of the investments held by a local agency may be invested in the first tier securities of a single issuer for a period of up to three business days after acquisition. The securities of no more than one issuer may be invested pursuant to this paragraph at a time.

(3) No more than 10 percent of the total assets of the investments held by a local agency may be invested in any one mutual fund.

(d) Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. A later increase or decrease in a percentage resulting from a change in values or assets shall not constitute a violation of that restriction. If subsequent to purchase, securities are downgraded below the minimum acceptable rating level, the securities shall be reviewed for possible sale within a reasonable amount of time after the downgrade.

(e) Within the limitations set forth in this section, a local agency electing to invest its funds pursuant to this section may invest in the following securities:

(1) Direct obligations of the United States Treasury or any other obligation guaranteed as to principal and interest by the United States government.

(2) Bonds, notes, debentures, or any other obligations of, or securities issued by, any federal government agency, instrumentality, or government-sponsored enterprise.

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

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

(5) Bankers acceptance, otherwise known as bills of exchange or time drafts drawn on and accepted by a commercial bank, primarily used to finance international trade. Purchases of bankers acceptances may not exceed 180 days to maturity.

(6) Short-term unsecured promissory notes issued by corporations for maturities of 270 days or less. Eligible commercial paper is further limited to the following:

(A) Issuing corporations that are organized and operating within the United States, having total assets in excess of five hundred million dollars (\$500,000,000).

(B) Maturities for eligible commercial paper that may not exceed 270 days.

(7) A certificate representing a deposit of funds at a commercial bank for a specified period of time and for a specified return at maturity. Eligible certificates of deposit shall be issued by a nationally or state-chartered bank or a state or federal association, as defined in Section 5102 of the Financial Code, or by a state-licensed branch of a foreign bank. For purposes of this subdivision, certificates of deposits shall not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money may not invest local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, other credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificate of deposit.

(8) Repurchase agreements, reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, if the agreements meet the requirements of this paragraph and the delivery requirements specified in Section 53601. Investments in repurchase agreements may be made, on any investment authorized by this section, when the term of the agreement does not exceed one year. The market value of the securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities, and the value shall be adjusted no less than quarterly. Because the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in

compliance with this section if the value of the underlying securities is brought back to 102 percent no later than the next business day. Reverse repurchase agreements may be utilized only when all of the following criteria are met:

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

(B) The total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase does not exceed 20 percent of the market value of the portfolio.

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

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, may not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

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

“Securities,” for purposes of this paragraph, means securities of the same issuer, description, issue date, and maturity.

(9) All debt securities issued by a corporation or depository institution with a remaining maturity of not more than 397 days, including securities specified as “medium-term notes,” as well as other debt instruments originally issued with maturities longer than 397 days, but which, at time of purchase, have a final maturity of 397 days or less. Eligible medium-term notes shall be issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

(10) (A) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations described in this subdivision and that comply with the investment restrictions of this section. However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement shall not be required to be a primary dealer of the Federal Reserve Bank of New York if the company’s board of directors finds that the counterparty presents a minimal risk of default. The

value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

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

(C) All shares of beneficial interest described in this paragraph shall have met either of the following criteria:

(i) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(ii) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission and who has not less than five years' experience investing in money market instruments and with assets under management in excess of five hundred million dollars (\$500,000,000).

(11) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other paythrough bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond.

Securities eligible for investment under this paragraph shall be issued by an issuer having an "A" or higher rating from the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating.

(12) Contracts issued by insurance companies that provide the policyholder with the right to receive a fixed or variable rate of interest and the full return of principal at the maturity date.

(13) Any investments that would qualify under SEC Rule 2a-7 of the Investment Company Act of 1940 guidelines. These investments shall also meet the limitations detailed in this section.

(f) For purposes of this section, all of the following definitions shall apply:

(1) "Repurchase agreement" means a purchase of securities pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement.

(2) "Significant banking relationship" means any of the following activities of a bank:

(A) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(B) Financing of a local agency's securities or funds as deposits.

(C) Acceptance of a local agency's securities or funds as deposits.

(3) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(4) “Securities lending agreement” means an agreement with a local agency that agrees to transfer securities to a borrower who, in turn agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(5) “First tier security” has the same meaning as that phrase is defined by SEC Rule 2a-7 of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq).

(6) “Local agency” means a county or city and county.

(g) For purposes of this section, the base value of the local agency’s pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, or other similar borrowing methods.

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

(i) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 53635 of the Government Code is amended to read:

53635. (a) This section shall apply to a local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a pooled basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

A local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other agencies may invest in commercial paper pursuant to subdivision (g) of Section 53601, except that the local agency shall be subject to the following concentration limits:

(1) No more than 40 percent of the local agency’s money may be invested in eligible commercial paper.

(2) No more than 10 percent of the total assets of the investments held by a local agency may be invested in any one issuer’s commercial paper.

(b) Notwithstanding Section 53601, the City of Los Angeles shall be subject to the concentration limits of this section for counties and for cities and counties with regard to the investment of money in eligible commercial paper.