

## **Texas Legislature Amends Public Funds Investment Act**

In 1994, Orange County, California, went bankrupt attempting to leverage its finances through exotic, interest-rate-sensitive investments. To ensure that what happened in California would not happen here, the Texas Legislature revised the Texas Public Funds Investment Act to place new safeguards on the investment of public funds by governmental agencies.

After the passage in 1995 of the Public Funds Investment Act revisions, local governments – such as municipalities, water districts, housing authorities, counties and school districts – had to modify substantially their investment policies to conform to the new act.

This legislative session, HB 2799 was introduced to clarify further and amend the Public Funds Investment Act. As finally passed and sent to the governor. HB 2799 will require local governments once again to amend their investment policies.

The bill contains several technical modifications, but the most substantial revision of the act can be summarized as follows:

The current Public Funds Investment Act requires the governing body of an investing entity to adopt a written investment policy.

In addition to the existing provisions that are required in the written investment policy, HB 2799 adds two provisions that now must be included. They are (1) a method to monitor the market price of investments acquired with public funds, and (2) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery vs. payment date basis.

Another substantive change relates to the annual review of a governmental entity's investment policy and strategies.

The existing act requires this annual review, and HB 2799 strengthens this provision by stating that the governing body of the local government must adopt a written instrument declaring that it has conducted such review and setting forth any changes made to either the investment policy or the investment strategies.

Additionally, this legislation clarifies the section of the Public Funds Investment Act dealing with potential personal\business interest conflicts. The act had provided that an investment officer who had a personal business relationship with an entity and was seeking to sell an investment to the local government would be required to file a statement disclosing that personal business interest.

However, the act previously did not contain any definition explaining what was meant by the term “personal business interest.” The amendments contained in HB 2799 clarify and define this term.

Specifically, a “personal business relationship” now is defined as (1) ownership of 10 percent or more of the voting stock or shares of the business organization or ownership of \$5,000 or more of the fair market value of the business organization, (2) receipt of funds from the business organization exceeding 10 percent of the investment officer’s gross income for the previous year, or (3) acquisition from the business organization, during the previous year, of investments with a book value of \$2,500 or more for the personal account of the investment officer.

In an apparent response to complaints by the banking and investment community, HB 2799 also revised the requirements for a written acknowledgement from persons attempting to sell investments to local governments to the effect that such persons had received and reviewed the local government’s investment policies and that their business organization has in place procedures and controls to preclude imprudent investment activities.

While maintaining the general requirement for a written acknowledgement of receipt and review of the local government’s investment policies, HB 2799 substantially amends the language required to be contained in such acknowledgments.

### **Additional Training**

Further, the bill imposes additional training requirements on investment officers. While each governmental entity’s investment officer has been required to receive formal training, the prior act did not set forth any conditions of the training, nor did it require any subsequent training after attendance at one initial course.

As amended by HB 2799, the act now requires that each investment officer attend at least one course every two years, covering not less than 10 hours of instruction relating to his/her investment responsibilities.

This training must be by an independent source approved by the governing body of the local government or by a designated investment committee advising the investment officer, as provided for in the investment policy of the local government.

In addition, the act contains an extra oversight provision relating to the duties of the local government’s independent auditor. Specifically, HB 2799 states, “if the local government invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificate of deposit, or money market accounts or similar accounts, the reports prepared by the Investment Officer must be formally reviewed at least annually by an independent auditor and the results of the review must be reported to the governing body.”

HB 2799 also contains numerous other technical modifications and clarifications, any one of which may impact a particular governmental entity’s investment policy. Accordingly, all governmental entities should have their investment policies thoroughly reviewed by their attorneys and financial advisors to ensure compliance with the new act.

HB 2799 ADDS TWO PROVISIONS THAT NOW MUST BE INCLUDED. THEY ARE (1) A METHOD TO MONITOR THE MARKET PRICE OF INVESTMENTS ACQUIRED WITH PUBLIC FUNDS, AND (2) A REQUIREMENT FOR SETTLEMENT OF ALL TRANSACTIONS, EXCEPT INVESTMENT POOL FUNDS AND MUTUAL, ON A DELIVERY VS. PAYMENT DATE BASIS.

THE ACT PREVIOUSLY DID NOT CONTAIN ANY DEFINITION EXPLAINING WHAT WAS MEANT BY THE TERM 'PERSONAL BUSINESS INTEREST.' THE AMENDMENTS CONTAINED IN HB 2799 CLARIFY AND DEFINE THIS TERM.