

Municipal Investments¹

Municipalities are authorized to invest all funds of the municipality. They are required to invest funds consistent with sound business practice. The governing body can adopt rules and regulations to govern the investment of municipal funds.

There is no single set of authorized investments for all local governments in Pennsylvania, so it is essential that the applicable statutory provisions be followed. The respective municipal codes (i.e., the First Class Township Code,² Second Class Township Code,³ Borough Code,⁴ Third Class City Code,⁵ County Code,⁶ Second Class County Code,⁷ and the Public School Code of 1949⁸) each authorize at least six types of investments. Act 53 of 1973, amended by Act 10 of 2016, authorizes seven types of investments for “public corporations” and municipal authorities, a few of which the municipal codes also authorize. Act 53 defines a “public corporation” to include any county, city, borough, township, school district, or other municipality or incorporated district of this Commonwealth. For purposes of pension or retirement funds, the municipal codes authorize additional investment options.⁹

Investment Products Authorized by the Municipal Codes

Each municipal code authorizes six types of investments. Additionally, the County Code and Second Class County Code authorize investment in commercial paper:

- (1) Treasury bills, which are investment instruments issued by the United States (U.S.) Treasury. Treasury bills are backed by the full faith and credit of the U.S. government's ability to levy and collect taxes.
- (2) Short-term obligations of the U.S. government or its agencies or instrumentalities, which are typically considered to be any U.S. government-issued investment instrument. Short-term obligations usually refer to financing instruments of less than 13 months maturity. However, these may or may not include those backed by the full faith and credit of the

¹ *Fiscal Management Handbook*, 10th ed., Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, Pa., 2016 at <https://dced.pa.gov/download/fiscal-management-handbook/> (November 22, 2017).

² Act 331 of 1931 (53 P.S. § 55101 et seq.), § 1705.1.

³ Act 69 of 1933 (53 P.S. § 65101 et seq.), § 3204.

⁴ 8 Pa.C.S. § 101 et seq., § 1316.

⁵ 11 Pa.C.S. §10101 et seq., §11804.1.

⁶ Act 130 of 1955 (16 P.S. § 101 et seq.), § 1706.

⁷ Act 230 of 1953 (16 P.S. § 3101 et. seq.), § 1964.

⁸ Act 14 of 1949 (24 P.S. § 1-101 et seq.), § 440.1.

⁹ See footnotes 2-7; 20 Pa.C.S. Ch. 73 (relating to municipal investments).

federal government. Many instruments of the U.S. government do not have the full faith and credit backing (i.e., Federal National Mortgage Association [FNMA or Fannie Mae] and Federal Home Loan Mortgage Corporation [FHLMC or Freddie Mac] bonds). Full faith and credit backing has been granted to Government National Mortgage Association (GNMA or Ginnie Mae) bonds.

- (3) Deposit accounts, which include savings accounts and certificates of deposit as well as other time deposit type accounts available at banks, savings and loan associations, or credit unions. These must be insured by one of the federal deposit insurance organizations. When the value of the taxing district's deposits exceeds the insurable limits, the additional sums must be secured by collateral pledged by the depository pursuant to Act 72 of 1971.¹⁰
- (4) Obligations of the U.S. government (other than Treasury bills) or its agencies or instrumentalities backed by full faith and credit. As previously discussed, Ginnie Mae investments have been determined to have such backing. Other similar instruments, such as Fannie Mae and Freddie Mac bonds, do not.
- (5) Obligations of the Commonwealth of Pennsylvania or its agencies or instrumentalities backed by the full faith and credit of the Commonwealth or its political subdivisions, which include any bonds issued by the Commonwealth of Pennsylvania, a municipality or a school district. These issues must carry the backing of the taxation powers of the governmental unit issuing the debt.
- (6) Shares of an investment company registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, provided that the only investments of that company are in the authorized investments for municipal funds.

Investment Products Authorized by Act 53 of 1973¹¹

Under Act 53, in addition to products otherwise authorized by law, a public corporation or municipal authority may invest and reinvest money of the public corporation or municipal authority in any of the following financial products:

- (1) Obligations, participations or other instruments of any Federal agency, instrumentality or United States government-sponsored enterprise, including those issued or fully guaranteed as the principal and interest by Federal agencies, instrumentalities or United States government-sponsored enterprises, if the debt obligations are rated at least "A" or its equivalent by at least two nationally recognized statistical ratings organizations.
- (2) Repurchase agreements with respect to United States Treasury bills or obligations, participations or other instruments of or guaranteed by the United States or any Federal agency, instrumentality or United States government-sponsored enterprise.

¹⁰ Standardizing the Procedures for Pledges of Assets.

¹¹ As amended by Act 10 of 2016.

- (3) Negotiable certificates of deposit or other evidences of deposit, with a remaining maturity of three years or less, issued by a nationally or State-chartered bank, a Federal or State savings and loan association or a State-licensed branch of a foreign bank. For obligations with a maturity of one year or less, the debt obligations of the issuing institution or its parent must be rated in the top short-term rating category by at least two nationally recognized statistical ratings organizations. For obligations with a maturity in excess of one year, the senior debt obligations of the issuing institution or its parent must be rated at least “A” or its equivalent by at least two nationally recognized statistical ratings organizations.
- (4) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers’ acceptances, if the bankers’ acceptances do not exceed 180 days’ maturity and the accepting bank is rated in the top short-term category by at least two nationally recognized statistical ratings organizations.
- (5) Commercial paper issued by corporations or other business entities organized in accordance with Federal or State law, with a maturity not to exceed two hundred seventy days, if the issuing corporation or business entity is rated in the top short-term category by at least two nationally recognized statistical ratings organizations.
- (6) Shares of an investment company registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) whose shares are registered under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), if all of the following conditions are met:
 - (i) The investments of the company are the authorized investments under this subsection.
 - (ii) The investment company is managed in accordance with 17 CFR 270.2a-7 (relating to money market funds).
 - (iii) The investment company is rated in the highest category by a nationally recognized rating agency.
- (7) Savings or demand deposits placed in accordance with the following conditions:
 - (i) The money is initially deposited and invested through a federally insured institution having a place of business in the Commonwealth, which is selected by the public corporation or municipal authority.
 - (ii) The selected institution arranges for the redeposit of the money in savings or demand deposits in one or more financial institutions insured by the Federal Deposit Insurance Corporation, for the account of the public corporation or municipal authority.
 - (iii) The full amount of principal and any accrued interest of each such deposit is insured by the Federal Deposit Insurance Corporation.
 - (iv) On the same date that the money is redeposited pursuant to paragraph (ii), the selected institution receives an amount of deposits from customers of other financial

institutions equal to or greater than the amount of money initially invested through the selected institution by the public corporation or municipal authority.¹²

Act 53 further stipulates that the provisions authorizing investment or reinvestment of money in certain financial products, as delineated in the act, shall not be construed to supersede or preempt other investment powers of public corporations or municipal authorities as authorized by law.¹³

Additional Investment Authorizations and Considerations

In addition to investments authorized by the municipal codes and Act 53 of 1973, the Local Government Unit Debt Act provides for the investment of bond proceeds in sinking funds by local governments (except municipal authorities).¹⁴ Moneys in sinking funds may be invested in accounts and certificates of deposit in banks and savings and loan associations. Deposits and certificates above the limit of federal deposit insurance agencies must be secured by collateral. Sinking fund moneys can also be invested in any security the Commonwealth is using for investment at the time of the investment.

Monies from more than one fund may be combined to purchase a single investment, provided money of each of the funds is accounted for separately and earnings are separately computed, recorded and credited to each of the funds. Municipalities may also join with other political subdivisions and municipal authorities for joint investments, provided separate accounting, recording and crediting are maintained for each unit's funds. Furthermore, the Intergovernmental Cooperation Act¹⁵ permits cooperative investment pools, such as the Pennsylvania School District Liquid Asset Fund, the Pennsylvania Local Government Investment Trust, and the State Treasurer's Invest Program.¹⁶

Thus, it is imperative that municipal investors utilize only those investments that comprise allowable investment options. Public investors should be aware of all of the investment options available to them and avoid purchasing any securities that may be questionable.

However, when evaluating investment options, municipal investors must be aware of other criteria to ensure that they achieve their investment goals. Specifically, to make the most effective use of idle funds, public investors must try to earn the best returns possible without sacrificing the safety of their funds or subjecting their portfolios to undue risks. Investors must achieve this goal within the constraints of applicable laws, investment policies and other internal practices. In addition, investors must make their decisions within the overriding principles of safety, liquidity and yield.

¹² Act 53 of 1973 (53 P.S. § 5410.1), § 1.1.

¹³ *Id.*

¹⁴ 53 Pa.C.S. § 8001 et seq., § 8224.

¹⁵ 53 Pa.C.S. Ch. 23.

¹⁶ For more info about the Pennsylvania Treasurer's INVEST Program for Local Governments, see <http://www.painvest.gov/pages/index.asp> (accessed April 6, 2020).