

# STATE OF COLORADO

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**Department of Regulatory Agencies**

M. Michael Cooke  
Executive Director



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Bill Owens  
Governor

**DIVISION OF BANKING**

Richard Fulkerson  
State Bank Commissioner

**OPERATING MEMO**

TO: Division of Banking Staff  
FROM: James T. Dillon, Deputy Commissioner  
DATE: April 17, 1989  
RE: Investments by Regulated Industries

C.R.S. 11-7-106(1)(h) and C.R.S. 11-22-107(1)(a) allow banks to invest in obligations designated as legal investments for public funds. Upon passage of our proposed legislation, trust companies will have the same power. The governor just signed a bill which expands legal investments for public funds. A copy of the pertinent statute is attached. It becomes effective 7-1-89.

Read the entire section but pay special attention to C.R.S. 24-75-601.1(k) which allows investment in money market funds with certain restrictions.

Distributed to:

Commercial Banks Yes\_\_ No X Industrial Banks Yes\_\_ No X Trust Companies Yes\_\_ No X

24-75-601.1. Legal investments of public funds. (1) It is lawful to invest public funds in any of the following securities if the period from the date of purchase of such security to its maturity date is five years or less or if the governing body of the public entity authorizes investment for such period in excess of five years:

(a) Any security issued by, guaranteed by, or for which the credit of any of the following is pledged for payment: The United States, a federal farm credit bank, the federal land bank, a federal home loan bank, the federal home loan mortgage corporation, the federal national mortgage association, the export-import bank, or the government national mortgage association;

(b) (I) Any security issued by, guaranteed by, or for which the credit of the following is pledged for payment: An entity or organization which is not listed in paragraph (a) of this subsection (1) but which is created by, or the creation of which is authorized by, legislation enacted by the United States congress and which is subject to control by the federal government which is at least as extensive as that which governs an entity or organization listed in paragraph (a) of this subsection (1).

(II) No security may be purchased pursuant to this paragraph (b) unless, at the time of purchase, the security is rated in its highest rating category by one or more nationally recognized organizations which regularly rate such obligations.

(c) (I) Any security issued by, guaranteed by, or for which the credit of any of the following is pledged for payment: The world bank, the inter-American development bank, the Asian development bank, or the African development bank.

(II) No security may be purchased pursuant to this paragraph (c) unless, at the time of purchase, the security is rated in one of its two highest rating categories by one or more nationally recognized organizations which regularly rate such obligations.

(d) (I) Any security that is a general obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (d) unless, at the time of purchase, the security is rated in one of its three highest rating categories by one or more nationally recognized organizations which regularly rate such obligations.

(e) (I) Any security that is a revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (e) unless, at the time of purchase, the security is rated in one of its two highest rating categories by one or more nationally recognized organizations which regularly rate such obligations.

(f) (I) Any banker's acceptance that is issued by a state or national bank which has a combined capital and surplus of at least two hundred fifty million dollars.

(II) No security may be purchased pursuant to this paragraph (f) unless:

(A) The deposits of such bank are insured by the federal deposit insurance corporation;  
and

(B) At the time the security is purchased, the long-term debt of such bank or the holding company of such bank is rated in one of its three highest rating categories by one or more nationally recognized organizations which regularly rate such obligations.

(g) Commercial paper that, at the time of purchase, is rated in its highest rating category by one or more nationally recognized organizations which regularly rate such obligations;

(h) Any security of the investing public entity or any certificate of participation or other security evidencing rights in payments to be made by the investing public entity under' a lease, lease-purchase agreement, or similar arrangement;

(i) Any interest in any local government investment pool organized pursuant to part 7 of this article;

(j) Any written repurchase agreement providing for the simultaneous sale by the investing public entity and repurchase by another person at a future date of any securities referred to in paragraph (a) or (b) of this subsection (1) if all of the conditions of subparagraphs (I) to (IV) of this paragraph (j) are met:

- (I) The securities subject to the repurchase agreement must be marketable.
  - (II) The market value of such securities must be at all times at least equal to the funds invested by the investing public entity.
  - (III) The title to or a perfected security interest in such securities along with any necessary transfer documents must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity.
  - (IV) Such securities must be actually delivered to the public entity or to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity.
  - (k) Any money market fund that is registered as an investment company under the federal "Investment Company Act of 1940", as amended, if, at the time the investing public entity invests in such fund:
    - (I) The investment policies of the fund include seeking to maintain a constant share price;
    - (II) No sales or load fee is added to the purchase price or deducted from the redemption price of the investments in the fund; and
    - (III) The investments of the fund consist only of securities with a maximum maturity of one year or less and an average maturity of one hundred twenty days or less which are one of the following:
      - (A) Securities listed in paragraphs (a) to (j) of this subsection (1); or
      - (B) Perfected reverse repurchase agreements which mature within thirty days and which provide for the simultaneous sale and repurchase by the fund at a future date of securities listed in paragraphs (a) to (i) of this subsection (1); or
      - (C) Any securities not listed in paragraphs (a) to (j) of this subsection (1) the interest on which is not includable in gross income for federal income tax purposes if such securities do not exceed fifteen percent of the investments of the fund, based on the purchase price of all securities held by the fund;
        - (1) (I) any guaranteed investment contract guaranteed interest contract, annuity contract, or funding agreement issued by an insurance company, either domestic or foreign, as defined in section 10-1-102 (5), C.R.S., which holds a certificate of authority issued pursuant to section 10-3-105, C.R.S.
        - (II) No contract or agreement may be purchased under this paragraph (1) unless, at the time of purchase, the issuing company's ability to pay claims is rated in its highest rating category by one or more nationally recognized organizations which regularly rate the abilities of insurance companies to pay claims.
        - (III) A contract or agreement may be purchased under this paragraph (1) only if such contract or agreement is purchased with proceeds of the sale of securities of a public entity and proceeds of certificates of participation or other securities evidencing rights in payments to be made by a public entity under a lease, lease-purchase agreement, or other similar arrangement; except that, no contract or agreement may be purchased pursuant to this paragraph (1) with the proceeds of any of the foregoing which are held in an escrow or otherwise for the purpose of refunding bonds or other obligations of a public entity.
  - (2) Investments made pursuant to this section shall be made in conformance with the standard set forth in section 15-1-304, C.R.S.
  - (3) Nothing in this section is intended to limit:
    - (a) The power of any public entity to invest any public funds in any security or other investment permitted to such public entities under any other valid law of the state; or
    - (b) The power of any home rule city, city and county, town, or county to invest any public funds in any security or other investment permitted under the charter or ordinance of such home rule city, city and county, town, or county; or
    - (c) The authority of the state board of regents to invest any funds available to the board in any security or other investment provided by law.
  - (4) Nothing in this section is intended to apply to public funds held or invested as part of any pension plan, full or supplemental retirement plan, or deferral compensation plan.
- 24-75-601.2. Prior investments valid. Nothing in this article shall be construed so as to invalidate any legal investment made prior to July 1, 1989. Such investments shall continue to be authorized through their dates of maturity.

24-75-601.3. Remedial actions – investments not made in conformance with statute. The audit of the financial statements of public entities required by part 6 of article 1 of title 29, C.R.S., shall, in addition to all other requirements, include a supplemental listing of all investments held by the public entity at the date of the financial statement. The public entity shall divest itself of any investment which is not included as a lawful investment in section 24-75-601.1 or other statutory authority within six months of the initial disclosure of the existence of such investment.

24-75-601.4. Liability of officials of public entities. Elected or appointed officials or employees of public entities who, in the good faith performance of their duties as public officials, comply with the standards established in this part 6 for the investment of public funds in securities shall not be liable for any loss of public funds resulting from such investment.

24-75-601.5. Liability for sale of unlawful investments to public entities. (1) Any person who sells or causes to be sold to a public entity and investment which is not a lawful investment for such public entity pursuant to section 24-75-601.1 or other authority, and who knew or should have known that said investment was not a lawful investment, shall be liable to such public entity for any loss of investment principal resulting from such investment and, in addition, shall be liable for any reasonably foreseeable costs resulting from such loss, including but not limited to:

- (a) Attorney fees; and
- (b) Interest on the principal which would have resulted from the investment of said principal on the day the unlawful investment was made in one-year United States treasury bills at the market yield on such bills on such day.