

As Re-Referred by the House Rules and Reference Committee

132nd General Assembly

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S. B. No. 163

Senator Wilson

Cosponsors: Senators Terhar, Beagle, Williams, Eklund, Huffman, Hackett, Coley, Uecker, Brown, Bacon, Balderson, Burke, Dolan, Gardner, Hite, Hoagland, Hottinger, Jordan, Kunze, Lehner, Manning, Obhof, O'Brien, Oelslager, Schiavoni, Skindell, Tavares, Thomas Representatives Dever, Hughes, Brenner

A BILL

To amend section 135.35 of the Revised Code to 1
modify the qualifications regarding notes 2
eligible for investment of county inactive 3
moneys. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 135.35 of the Revised Code be 5
amended to read as follows: 6

Sec. 135.35. (A) The investing authority shall deposit or 7
invest any part or all of the county's inactive moneys and shall 8
invest all of the money in the county public library fund when 9
required by section 135.352 of the Revised Code. The following 10
classifications of securities and obligations are eligible for 11
such deposit or investment: 12

(1) United States treasury bills, notes, bonds, or any 13
other obligation or security issued by the United States 14
treasury, any other obligation guaranteed as to principal or 15
interest by the United States, or any book entry, zero-coupon 16

United States treasury security that is a direct obligation of 17
the United States. 18

Nothing in the classification of eligible securities and 19
obligations set forth in divisions (A) (2) to (10) of this 20
section shall be construed to authorize any investment in 21
stripped principal or interest obligations of such eligible 22
securities and obligations. 23

(2) Bonds, notes, debentures, or any other obligations or 24
securities issued by any federal government agency or 25
instrumentality, including, but not limited to, the federal 26
national mortgage association, federal home loan bank, federal 27
farm credit bank, federal home loan mortgage corporation, and 28
government national mortgage association. All federal agency 29
securities shall be direct issuances of federal government 30
agencies or instrumentalities. 31

(3) Time certificates of deposit or savings or deposit 32
accounts, including, but not limited to, passbook accounts, in 33
any eligible institution mentioned in section 135.32 of the 34
Revised Code; 35

(4) Bonds and other obligations of this state or the 36
political subdivisions of this state; 37

(5) No-load money market mutual funds rated in the highest 38
category at the time of purchase by at least one nationally 39
recognized standard rating service or consisting exclusively of 40
obligations described in division (A) (1), (2), or (6) of section 41
135.143 of the Revised Code and repurchase agreements secured by 42
such obligations, provided that investments in securities 43
described in this division are made only through eligible 44
institutions mentioned in section 135.32 of the Revised Code; 45

(6) The Ohio subdivision's fund as provided in section 46
135.45 of the Revised Code; 47

(7) Securities lending agreements with any eligible 48
institution mentioned in section 135.32 of the Revised Code that 49
is a member of the federal reserve system or federal home loan 50
bank or with any recognized United States government securities 51
dealer meeting the description in division (J) (1) of this 52
section, under the terms of which agreements the investing 53
authority lends securities and the eligible institution or 54
dealer agrees to simultaneously exchange similar securities or 55
cash, equal value for equal value. 56

Securities and cash received as collateral for a 57
securities lending agreement are not inactive moneys of the 58
county or moneys of a county public library fund. The investment 59
of cash collateral received pursuant to a securities lending 60
agreement may be invested only in instruments specified by the 61
investing authority in the written investment policy described 62
in division (K) of this section. 63

(8) Up to twenty-five per cent of the county's total 64
average portfolio in either of the following investments: 65

(a) Commercial paper notes issued by an entity that is 66
defined in division (D) of section 1705.01 of the Revised Code 67
and that has assets exceeding five hundred million dollars, to 68
which notes all of the following apply: 69

(i) The notes are rated at the time of purchase in the 70
highest classification established by at least two nationally 71
recognized standard rating services. 72

(ii) The aggregate value of the notes does not exceed ten 73
per cent of the aggregate value of the outstanding commercial 74

paper of the issuing corporation.	75
(iii) The notes mature not later than two hundred seventy days after purchase.	76 77
(b) Bankers acceptances of banks that are insured by the federal deposit insurance corporation and that mature not later than one hundred eighty days after purchase.	78 79 80
No investment shall be made pursuant to division (A) (8) of this section unless the investing authority has completed additional training for making the investments authorized by division (A) (8) of this section. The type and amount of additional training shall be approved by the treasurer of state and may be conducted by or provided under the supervision of the treasurer of state.	81 82 83 84 85 86 87
(9) Up to fifteen per cent of the county's total average portfolio in notes issued by corporations that are incorporated under the laws of the United States and that are operating within the United States, or by depository institutions that are doing business under authority granted by the United States or any state and that are operating within the United States, provided both of the following apply:	88 89 90 91 92 93 94
(a) The notes are rated in the second <u>three</u> highest or higher category categories by at least two nationally recognized standard rating services at the time of purchase.	95 96 97
(b) The notes mature not later than two <u>three</u> years after purchase.	98 99
(10) Debt interests rated at the time of purchase in the three highest categories by two nationally recognized standard rating services and issued by foreign nations diplomatically recognized by the United States government. All interest and	100 101 102 103

principal shall be denominated and payable in United States 104
funds. The investments made under division (A) (10) of this 105
section shall not exceed in the aggregate two per cent of a 106
county's total average portfolio. 107

The investing authority shall invest under division (A) 108
(10) of this section in a debt interest issued by a foreign 109
nation only if the debt interest is backed by the full faith and 110
credit of that foreign nation, there is no prior history of 111
default, and the debt interest matures not later than five years 112
after purchase. For purposes of division (A) (10) of this 113
section, a debt interest is rated in the three highest 114
categories by two nationally recognized standard rating services 115
if either the debt interest itself or the issuer of the debt 116
interest is rated, or is implicitly rated, at the time of 117
purchase in the three highest categories by two nationally 118
recognized standard rating services. 119

(11) A current unpaid or delinquent tax line of credit 120
authorized under division (G) of section 135.341 of the Revised 121
Code, provided that all of the conditions for entering into such 122
a line of credit under that division are satisfied, or bonds and 123
other obligations of a county land reutilization corporation 124
organized under Chapter 1724. of the Revised Code, if the county 125
land reutilization corporation is located wholly or partly 126
within the same county as the investing authority. 127

(B) Nothing in the classifications of eligible obligations 128
and securities set forth in divisions (A) (1) to (10) of this 129
section shall be construed to authorize investment in a 130
derivative, and no investing authority shall invest any county 131
inactive moneys or any moneys in a county public library fund in 132
a derivative. For purposes of this division, "derivative" means 133

a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself. Any security, obligation, trust account, or other instrument that is created from an issue of the United States treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative instrument. An eligible investment described in this section with a variable interest rate payment, based upon a single interest payment or single index comprised of other eligible investments provided for in division (A) (1) or (2) of this section, is not a derivative, provided that such variable rate investment has a maximum maturity of two years. A treasury inflation-protected security shall not be considered a derivative, provided the security matures not later than five years after purchase.

(C) Except as provided in division (D) of this section, any investment made pursuant to this section must mature within five years from the date of settlement, unless the investment is matched to a specific obligation or debt of the county or to a specific obligation or debt of a political subdivision of this state, and the investment is specifically approved by the investment advisory committee.

(D) The investing authority may also enter into a written repurchase agreement with any eligible institution mentioned in section 135.32 of the Revised Code or any eligible securities dealer pursuant to division (J) of this section, under the terms of which agreement the investing authority purchases and the eligible institution or dealer agrees unconditionally to repurchase any of the securities listed in divisions (D) (1) to (5), except letters of credit described in division (D) (2), of

section 135.18 of the Revised Code. The market value of 165
securities subject to an overnight written repurchase agreement 166
must exceed the principal value of the overnight written 167
repurchase agreement by at least two per cent. A written 168
repurchase agreement must exceed the principal value of the 169
overnight written repurchase agreement, by at least two per 170
cent. A written repurchase agreement shall not exceed thirty 171
days, and the market value of securities subject to a written 172
repurchase agreement must exceed the principal value of the 173
written repurchase agreement by at least two per cent and be 174
marked to market daily. All securities purchased pursuant to 175
this division shall be delivered into the custody of the 176
investing authority or the qualified custodian of the investing 177
authority or an agent designated by the investing authority. A 178
written repurchase agreement with an eligible securities dealer 179
shall be transacted on a delivery versus payment basis. The 180
agreement shall contain the requirement that for each 181
transaction pursuant to the agreement the participating 182
institution shall provide all of the following information: 183

- (1) The par value of the securities; 184
- (2) The type, rate, and maturity date of the securities; 185
- (3) A numerical identifier generally accepted in the 186
securities industry that designates the securities. 187

No investing authority shall enter into a written 188
repurchase agreement under the terms of which the investing 189
authority agrees to sell securities owned by the county to a 190
purchaser and agrees with that purchaser to unconditionally 191
repurchase those securities. 192

- (E) No investing authority shall make an investment under 193

this section, unless the investing authority, at the time of 194
making the investment, reasonably expects that the investment 195
can be held until its maturity. The investing authority's 196
written investment policy shall specify the conditions under 197
which an investment may be redeemed or sold prior to maturity. 198

(F) No investing authority shall pay a county's inactive 199
moneys or moneys of a county public library fund into a fund 200
established by another subdivision, treasurer, governing board, 201
or investing authority, if that fund was established by the 202
subdivision, treasurer, governing board, or investing authority 203
for the purpose of investing or depositing the public moneys of 204
other subdivisions. This division does not apply to the payment 205
of public moneys into either of the following: 206

(1) The Ohio subdivision's fund pursuant to division (A) 207
(6) of this section; 208

(2) A fund created solely for the purpose of acquiring, 209
constructing, owning, leasing, or operating municipal utilities 210
pursuant to the authority provided under section 715.02 of the 211
Revised Code or Section 4 of Article XVIII, Ohio Constitution. 212

For purposes of division (F) of this section, 213
"subdivision" includes a county. 214

(G) The use of leverage, in which the county uses its 215
current investment assets as collateral for the purpose of 216
purchasing other assets, is prohibited. The issuance of taxable 217
notes for the purpose of arbitrage is prohibited. Contracting to 218
sell securities not owned by the county, for the purpose of 219
purchasing such securities on the speculation that bond prices 220
will decline, is prohibited. 221

(H) Any securities, certificates of deposit, deposit 222

accounts, or any other documents evidencing deposits or 223
investments made under authority of this section shall be issued 224
in the name of the county with the county treasurer or investing 225
authority as the designated payee. If any such deposits or 226
investments are registrable either as to principal or interest, 227
or both, they shall be registered in the name of the treasurer. 228

(I) The investing authority shall be responsible for the 229
safekeeping of all documents evidencing a deposit or investment 230
acquired under this section, including, but not limited to, 231
safekeeping receipts evidencing securities deposited with a 232
qualified trustee, as provided in section 135.37 of the Revised 233
Code, and documents confirming the purchase of securities under 234
any repurchase agreement under this section shall be deposited 235
with a qualified trustee, provided, however, that the qualified 236
trustee shall be required to report to the investing authority, 237
auditor of state, or an authorized outside auditor at any time 238
upon request as to the identity, market value, and location of 239
the document evidencing each security, and that if the 240
participating institution is a designated depository of the 241
county for the current period of designation, the securities 242
that are the subject of the repurchase agreement may be 243
delivered to the treasurer or held in trust by the participating 244
institution on behalf of the investing authority. 245

Upon the expiration of the term of office of an investing 246
authority or in the event of a vacancy in the office for any 247
reason, the officer or the officer's legal representative shall 248
transfer and deliver to the officer's successor all documents 249
mentioned in this division for which the officer has been 250
responsible for safekeeping. For all such documents transferred 251
and delivered, the officer shall be credited with, and the 252
officer's successor shall be charged with, the amount of moneys 253

evidenced by such documents. 254

(J) (1) All investments, except for investments in 255
securities described in divisions (A) (5), (6), and (11) of this 256
section, shall be made only through a member of the financial 257
industry regulatory authority (FINRA), through a bank, savings 258
bank, or savings and loan association regulated by the 259
superintendent of financial institutions, or through an 260
institution regulated by the comptroller of the currency, 261
federal deposit insurance corporation, or board of governors of 262
the federal reserve system. 263

(2) Payment for investments shall be made only upon the 264
delivery of securities representing such investments to the 265
treasurer, investing authority, or qualified trustee. If the 266
securities transferred are not represented by a certificate, 267
payment shall be made only upon receipt of confirmation of 268
transfer from the custodian by the treasurer, governing board, 269
or qualified trustee. 270

(K) (1) Except as otherwise provided in division (K) (2) of 271
this section, no investing authority shall make an investment or 272
deposit under this section, unless there is on file with the 273
auditor of state a written investment policy approved by the 274
investing authority. The policy shall require that all entities 275
conducting investment business with the investing authority 276
shall sign the investment policy of that investing authority. 277
All brokers, dealers, and financial institutions, described in 278
division (J) (1) of this section, initiating transactions with 279
the investing authority by giving advice or making investment 280
recommendations shall sign the investing authority's investment 281
policy thereby acknowledging their agreement to abide by the 282
policy's contents. All brokers, dealers, and financial 283

institutions, described in division (J) (1) of this section, 284
executing transactions initiated by the investing authority, 285
having read the policy's contents, shall sign the investment 286
policy thereby acknowledging their comprehension and receipt. 287

(2) If a written investment policy described in division 288
(K) (1) of this section is not filed on behalf of the county with 289
the auditor of state, the investing authority of that county 290
shall invest the county's inactive moneys and moneys of the 291
county public library fund only in time certificates of deposits 292
or savings or deposit accounts pursuant to division (A) (3) of 293
this section, no-load money market mutual funds pursuant to 294
division (A) (5) of this section, or the Ohio subdivision's fund 295
pursuant to division (A) (6) of this section. 296

(L) (1) The investing authority shall establish and 297
maintain an inventory of all obligations and securities acquired 298
by the investing authority pursuant to this section. The 299
inventory shall include a description of each obligation or 300
security, including type, cost, par value, maturity date, 301
settlement date, and any coupon rate. 302

(2) The investing authority shall also keep a complete 303
record of all purchases and sales of the obligations and 304
securities made pursuant to this section. 305

(3) The investing authority shall maintain a monthly 306
portfolio report and issue a copy of the monthly portfolio 307
report describing such investments to the county investment 308
advisory committee, detailing the current inventory of all 309
obligations and securities, all transactions during the month 310
that affected the inventory, any income received from the 311
obligations and securities, and any investment expenses paid, 312
and stating the names of any persons effecting transactions on 313

behalf of the investing authority. 314

(4) The monthly portfolio report shall be a public record 315
and available for inspection under section 149.43 of the Revised 316
Code. 317

(5) The inventory and the monthly portfolio report shall 318
be filed with the board of county commissioners. The monthly 319
portfolio report also shall be filed with the treasurer of 320
state. 321

(M) An investing authority may enter into a written 322
investment or deposit agreement that includes a provision under 323
which the parties agree to submit to nonbinding arbitration to 324
settle any controversy that may arise out of the agreement, 325
including any controversy pertaining to losses of public moneys 326
resulting from investment or deposit. The arbitration provision 327
shall be set forth entirely in the agreement, and the agreement 328
shall include a conspicuous notice to the parties that any party 329
to the arbitration may apply to the court of common pleas of the 330
county in which the arbitration was held for an order to vacate, 331
modify, or correct the award. Any such party may also apply to 332
the court for an order to change venue to a court of common 333
pleas located more than one hundred miles from the county in 334
which the investing authority is located. 335

For purposes of this division, "investment or deposit 336
agreement" means any agreement between an investing authority 337
and a person, under which agreement the person agrees to invest, 338
deposit, or otherwise manage, on behalf of the investing 339
authority, a county's inactive moneys or moneys in a county 340
public library fund, or agrees to provide investment advice to 341
the investing authority. 342

(N) (1) An investment held in the county portfolio on 343
September 27, 1996, that was a legal investment under the law as 344
it existed before September 27, 1996, may be held until 345
maturity. 346

(2) An investment held in the county portfolio on 347
September 10, 2012, that was a legal investment under the law as 348
it existed before September 10, 2012, may be held until 349
maturity. 350

Section 2. That existing section 135.35 of the Revised 351
Code is hereby repealed. 352