

**As Re-Referred by the House Rules and Reference Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**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**

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**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 <del>second</del> <u>three</u> highest <del>or higher category categories</del> by at least two nationally recognized standard rating services at the time of purchase.	95 96 97
(b) The notes mature not later than <del>two</del> <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