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*Final Analysis*  
Legislative Service Commission

**Am. Sub. S.B. 193**  
124th General Assembly  
(As Passed by the General Assembly)

**Sens. White, Spada, Carnes, Roberts, Harris, Oelslager**

**Reps. Flowers, Clancy, Webster, Kearns, Cates, Young, Seitz, Schmidt, G. Smith, Coates, Grendell, Carey, Schneider, Peterson, Core, Calvert, Collier, Setzer, Britton, Niehaus, Aslanides**

**Effective date: June 13, 2002**

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**ACT SUMMARY**

- Expands the investment authority of the Treasurer of State under the Uniform Depository Act.
- Increases the amount that may be invested in agricultural linked deposits.
- Repeals the Depressed Economic Area Linked Deposit Program.
- Establishes the Housing Linked Deposit Program under which the Treasurer of State (1) may partner with a municipal corporation or county that has established a housing linked deposit program or (2) may establish, in the absence of such a linked deposit program, requirements for participation in a housing linked deposit program.
- Modifies the authority of the State Board of Deposit to designate public depositories.
- Modifies the vendor reporting requirements of county auditors.

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**CONTENT AND OPERATION**

**Investment authority of the Treasurer of State**

Under the Uniform Depository Act (Chapter 135. of the Revised Code), the Treasurer of State is authorized to invest the interim funds of the state in specified classifications of obligations. The act modifies that authority, as follows:

(1) The Treasurer of State formerly could invest in bonds and other obligations of the state sinking fund and of the Ohio Public Facilities Commission. Under the act, this investment instead may be made in bonds and other *direct* obligations "of the state of Ohio issued by the Treasurer of State" and of the Ohio Public Facilities Commission. (Sec. 135.143(A)(3).)

(2) Under continuing law, the Treasurer of State may invest in written repurchase agreements with eligible Ohio financial institutions or any recognized United States government securities dealer. Under the terms of these agreements, the Treasurer of State purchases and the financial institution or dealer agrees to repurchase specified securities. The Treasurer of State is also permitted to sell any of those securities under the same terms and conditions for repurchase. (Sec. 135.143(A)(4).)

The act expands the types of securities eligible for these agreements and these sales to include the commercial paper described in (3), below (sec. 135.143(A)(4)).

(3) The Treasurer of State formerly could invest in commercial paper issued by any corporation incorporated under the laws of the United States or any state, if the notes were rated in the two highest categories by two nationally recognized rating agencies. The total amount invested in commercial paper at any time could not exceed 5% of the state's total average portfolio. (Sec. 135.143(A)(6).)

The act generally continues this investment authority but specifies that the notes must be rated in the two highest categories "at the time of purchase." In addition, it increases the maximum investment amount to 25% of the state's total average portfolio, and specifies that this maximum only applies to commercial paper invested in "under this section." (Sec. 135.143(A)(6).)

(4) Under continuing law, the Treasurer of State currently may invest in certificates of deposit in eligible institutions applying for interim moneys under the Uniform Depository Act. The act specifies that these investments include (among others specified in continuing law) housing linked deposits (see below). (Sec. 135.143(A)(8).)

(5) The Treasurer of State formerly could invest in debt interests rated investment grade by a nationally recognized rating agency and issued by corporations that are incorporated under the laws of the United States or a state or by foreign nations diplomatically recognized by the United States. The total amount of these investments could not exceed 5% of the state's total average portfolio. (Secs. 135.143(A)(10) and 3770.06(C).)

The act specifies that these debt interests (a) do *not* include the commercial paper described in (3), above, and (b) must be rated "at the time of purchase in the three highest categories" by "two" nationally recognized rating agencies. The maximum investment amount also is increased to 25% of the state's total average portfolio. In addition, the act clarifies that the maximum investment amounts provided by continuing law for the debt interests issued by foreign nations, and for the debt interests of a single issuer, are to be "as determined and calculated by the Treasurer of State." (Secs. 135.143(A)(10) and 3770.06(C).)

(6) Under continuing law, the Treasurer of State may invest in no-load money market mutual funds consisting exclusively of specified obligations. The act expands the types of eligible obligations to include the commercial paper described in (3), above. (Sec. 135.143(A)(11).)

### **Linked deposit programs**

#### **Investment authority and amount**

Under continuing law in the Uniform Depository Act, the Treasurer of State is also permitted to invest in specified linked deposits if, at the time of placement of any linked deposit, the combined amount of investments in the linked deposits is not more than 12% of the state's total average investment portfolio. Under former law, the Treasurer of State had to attempt to place up to \$100 million of this amount in agricultural linked deposits. (Secs. 135.63 and 135.631.)

Under the act, the linked deposits eligible for investment include (among others specified in continuing law) housing linked deposits (see below). In addition, the amount the Treasurer of State is required to attempt to place in agricultural linked deposits is increased to \$125 million. (Secs. 135.63 and 135.631.)

#### **Depressed economic area linked deposits**

Under former law repealed by the act, the Treasurer of State could invest in depressed economic area linked deposits, subject to specified limitations. A "depressed economic area linked deposit" was a certificate of deposit in any amount placed by the Treasurer of State with an eligible lending institution at up to 3% below current market rates, provided the institution agreed either to (1) lend the value of the deposit to eligible businesses at up to 3% below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution or (2) enter into an agreement with an eligible government to provide that government with an above-market investment in the value of the depressed economic area linked deposit. "Eligible business" was defined as an eligible steel company or any person that (1) maintained or, because

of the depressed economic area linked deposit loan, would maintain offices and operating facilities in an eligible Ohio county and transact business in that county and (2) was organized for profit. "Eligible county" was defined as any Ohio county with a rate of unemployment as determined by the Director of Job and Family Services that was at least 1% higher than the statewide average. (Secs. 135.81 and 135.83.)

The stated purpose of the Depressed Economic Area Linked Deposit Program was "to create an availability of lower cost funds to inject needed capital into the business community, sustain or improve business profitability, preserve existing employment and create new job opportunities, and thereby enhance the economic prosperity of the affected areas" (sec. 135.82(A)).

The act repeals this program (Section 2--outright repeal of secs. 135.81 to 135.88; sec. 122.011(B)).

### **Housing linked deposits**

**Overview; purpose.** The act establishes the Housing Linked Deposit Program. In doing so, it states the findings of the General Assembly that

there exists in . . . [Ohio] a lack of affordable financing options to promote solutions to a number of housing issues, including, but not limited to, home improvement, home restoration, energy efficiency, retention of historic significance, controlling urban sprawl, neighborhood revitalization, affordable housing, home ownership for persons unable to secure conventional financing, urban development, and economic revitalization of a residential area as a result of a natural disaster or other catastrophic occurrence.

Consequently, the act declares it to be the public policy of the state through housing linked deposits to create an availability of lower cost funds to inject needed capital into local residential communities. (Sec. 135.82(A).)

The act authorizes housing linked deposits under which the state partners with eligible governmental subdivisions to provide an availability of lower cost funds for lending purposes that materially will contribute to the solutions addressing housing issues across the state. In the absence of an eligible governmental subdivision linked deposit program, the Treasurer of State is permitted to develop an application process and procedures and eligibility requirements for participation in a housing linked deposit program that provides an availability of lower cost funds for similar lending purposes. (Sec. 135.82(B).)

**Definitions.** For purposes of the act, "housing linked deposit" means a certificate of deposit or other financial institution instrument placed by the Treasurer of State with an eligible lending institution, provided the institution agrees to lend the value of the deposit to eligible housing linked deposit participants at a fixed interest rate of 300 basis points below the present borrowing rate applicable to each participant in the absence of approval to participate in the program. "Eligible housing linked deposit participant" means any person or small business that (1) meets the requirements set forth in an eligible governmental subdivision housing linked deposit program or set forth by the Treasurer of State and (2) is an Ohio resident. (Sec. 135.81(C) and (E).)

"Eligible governmental subdivision housing linked deposit program" is defined as any program established under continuing law by the legislative authority of a municipal corporation or a board of county commissioners, in which the program goals address specific housing issues relative to the geographic boundaries of that municipal corporation or county. These program goals include, but are not limited to, home improvement, home restoration, energy efficiency, retention of historic significance, controlling urban sprawl, neighborhood revitalization, affordable housing, home ownership for persons unable to secure conventional financing, urban development, or economic revitalization of a residential area as a result of a natural disaster or other catastrophic occurrence. "Eligible governmental subdivision" means a municipal corporation or county in Ohio. (Sec. 135.81(A) and (B).)

"Eligible lending institution" is defined as a financial institution that (1) is eligible to make commercial loans or residential loans, (2) is a public depository of state funds under the Uniform Depository Act, *and* (3) agrees to participate in a program to provide housing linked deposits. "Other financial institution instrument" means a fully collateralized product that otherwise would pay market rates of interest approved by the Treasurer of State, for the purpose of providing eligible housing linked deposit participants with the benefits of a housing linked deposit. (Sec. 135.81(D) and (F).)

**Formation of a partnership with the state.** An eligible governmental subdivision that has established an eligible governmental subdivision housing linked deposit program may apply to the Treasurer of State for consideration of the formation of a partnership with the Treasurer of State for the purpose of providing additional funding for that housing linked deposit program (sec. 135.83(A)). Application is to be made in the form and manner prescribed by the Treasurer of State and must include any information the Treasurer of State requires, including all of the following with respect to the housing linked deposit program (sec. 135.83(B)):

- (1) A copy of the eligible governmental subdivision's application for participation in the program;
- (2) Eligibility requirements for participation in the program;
- (3) The total eligible governmental subdivision deposit commitment or allocation limits of the subdivision in the program.

The Treasurer of State may accept or reject any application for the formation of a partnership for reasons including, but not limited to, the cash flow needs of the state, the level of participation by any or all eligible governmental subdivisions, and the criteria set forth by the Treasurer of State (sec. 135.83(C)).

**Approval of participants; loans.** The Treasurer of State may accept or reject a housing linked deposit application based on the Treasurer of State's evaluation of the applicant and the amount of state funds to be deposited. If an eligible governmental subdivision has formed a partnership with the Treasurer of State, the Treasurer of State must give consideration to the criteria for acceptance or rejection of an application set forth by the eligible governmental subdivision in the eligible governmental subdivision housing linked deposit program; however, the Treasurer of State has final approval. A fee cannot be charged for the preparation, processing, reporting, or monitoring of any application. (Secs. 135.83(D) and 135.84(A).)

Upon acceptance of an application, the Treasurer of State may place certificates of deposit or other financial institution instruments with an eligible lending institution at up to 300 basis points below current market rates. These certificates of deposit or instruments must not have a maturity exceeding five years. The lending institution must enter into a deposit agreement with the Treasurer of State, and must lend funds in accordance with that agreement to each participant approved by the Treasurer of State. A loan is to be made at a fixed rate of 300 basis points below the present borrowing rate that would apply to the participant in the absence of approval to participate in the program. (Secs. 135.84(B) and 135.85(A) and (C).)

Any delay in payments or default on the part of the participant does not in any manner affect the deposit agreement between the lending institution and the Treasurer of State. If an eligible lending institution changes the terms of a loan to a participant because of a delay in payments or default, the lending institution must return the housing linked deposit amount to the Treasurer of State. (Sec. 135.85(E).)

**Compliance.** The Treasurer of State is required to take any steps necessary to monitor compliance with the act by eligible lending institutions, eligible

housing linked deposit participants, and eligible governmental subdivisions to which partnerships with the Treasurer of State have been approved. The Treasurer of State is authorized to develop guidelines to carry out that duty. (Secs. 135.83(D)(2), 135.85(D) and (F), and 135.86.)

**Liability for payment of loans.** The act provides that the state and the Treasurer of State are not liable to any eligible lending institution in any manner for payment of principal or interest on a loan to an eligible housing linked deposit participant (sec. 135.87).

**Designation of public depositories by the State Board of Deposit**

The Uniform Depository Law formerly required the State Board of Deposit to meet on the third Monday of June in the even-numbered years for the purpose of designating the public depositories of the public moneys of the state. The act changes that meeting date, beginning in 2004, to the third Monday of March. (Sec. 135.12(A).)

Continuing law permits the governing board of a political subdivision to meet *during* a designation period to (1) designate a different public depository of the public moneys of the subdivision, if the governing board determines that the designated public depository is insolvent or operating in an unsound or unsafe manner or (2) designate one or more additional public depositories of the public moneys of the subdivision, if the governing board determines that it is necessary and in the subdivision's best interests. The act grants the same authority to the State Board of Deposit. (Sec. 135.12(C) and (D).)

**Vendor reporting requirements of county auditors**

Under continuing law, each county auditor is required to prepare weekly a list of the names of all vendors that were licensed in the auditor's county during the preceding week (pursuant to the Sales Tax Law). The list formerly had to be made in triplicate and certified to the Tax Commissioner, the Treasurer of State, and the county treasurer. (Sec. 5739.18.)

The act removes the requirement that a list of vendors be certified to the Treasurer of State and, in conformance with this change, requires that the list be made in duplicate rather than triplicate (sec. 5739.18).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-14-01	p. 1126
Reported, S. Finance & Financial Institutions	01-16-02	pp. 1318-1319
Passed Senate (33-0)	01-16-02	p. 1321
Reported, H. State Gov't	02-13-02	pp. 1398-1399
Passed House (94-0)	02-20-02	pp. 1427-1428
Concurrence (33-0)	02-26-02	p. 1505

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