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## HOUSE BILL No. 1336

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DIGEST OF HB 1336 (Updated February 1, 2010 5:34 pm - DI 58)

**Citations Affected:** IC 5-10.2; IC 5-13; IC 28-1; IC 34-30.

**Synopsis:** State investment in aggressive lenders. Defines an "aggressive lender" as a financial institution that engages in a practice of making consumer loans in Indiana at rates of interest that exceed the maximum finance charge allowed for supervised loans under the Uniform Consumer Credit Code. Exempts from the definition of aggressive lending: (1) small loans by pay-day lenders; (2) credit cards that are offered, but not issued, by a financial institution; and (3) credit cards issued to a person that is not a resident of Indiana; regardless of whether the finance charge would otherwise make it an aggressive loan. Provides that charges permitted by Indiana financial institutions, transaction fees on cash advances no greater than a total of 4%, and any portion of a penalty interest rate that pertains to balances on accounts that are more than sixty-five days delinquent are not to be considered in calculating whether the interest rate constitutes aggressive lending. Requires consideration of any interest rate or fee attributable to a universal default provision. Requires the department of financial institutions to determine whether a financial institution is an aggressive lender. Provides that a financial institution determined to be an aggressive lender is ineligible to serve as a depository for public funds. Provides that public funds be withdrawn from an aggressive lender and reallocated to other public depositories in a secure and prudent manner as directed by the state treasurer in consultation with the director of the department of financial institutions. Provides that the public employees' retirement fund (PERF) and the teachers' retirement fund (TRF) must divest themselves of direct holdings in financial institutions determined to be aggressive lenders. Provides an exemption from divestiture if divesting would cost more than 5% of the value of the holding.  
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**Effective:** Upon passage; July 1, 2010.

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### Bardon, Grubb

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January 13, 2010, read first time and referred to Committee on Financial Institutions.  
January 28, 2010, amended, reported — Do Pass.  
February 1, 2010, read second time, amended, ordered engrossed.

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HB 1336—LS 6423/DI 113+



Establishes an advisory board to determine whether the divestment of PERF or TRF's direct holdings in an aggressive lender would cause brokerage liquidation costs to exceed 0.5% of the value of the holding and permits the board to set a new divestment schedule in such a case. Limits the divestment schedule for such a holding to ten years. Prohibits a financial institution from imposing a service charge on a political subdivision or the state for the purchase of a United States Treasury Note. Permits local government investment officers to invest in municipal securities issued by an Indiana local governmental entity, a quasi-governmental entity related to the state, or a unit of government, municipal corporation, or special taxing district in Indiana so long as the issuer has not defaulted on an obligation within the 20 years preceding the date of the purchase. Replaces the requirement that money be invested in transaction accounts and certificates of deposit with the depository quoting the highest interest rate with the authority to invest in a depository offering any one of the top three interest rates so long as the reason for choosing the alternate depository is noted in the memorandum of quotes. Provides that a unit may not invest more than 50% of the unit's total public funds that are invested at any point in time in nonfederally insured deposit accounts. Requires the board for public depositories to meet at least once each calendar quarter. Provides for geographical representation on the board for public depositories. Requires the four governor appointments to include a chief executive officer or a chief financial officer of a depository and that each appointment represent a different segment of the financial institutions industry based on total assets. Specifies that the terms of the appointed member is four years and that a member's term does not extend beyond the appointed term. Permits the governor to reappoint a member if the individual meets the requirements at the time of reappointment. Provides that a simple majority of the board members voting is required to approve an action by the board instead of a unanimous vote. Changes the notice requirement for meeting notices from ten days to two days. Allows the board to fix the assessment rate at the times the board determines are necessary instead of twice each year. Provides that the board for depositories may consider capital adequacy, liquidity, and asset quality in addition to any study by actuaries in establishing any change in the reserve for losses. Increases the amount of anticipatory warrants the board may issue to pay immediate claims when the assets in the public deposit insurance fund are not sufficient to pay claims from \$1,500,000 to \$300,000,000. Permits the board to accept as collateral bonds or other obligations that the board could not invest in if the board determines the obligations are acceptable collateral. Permits the board to determine whether a depository may withdraw collateral when the amount of public funds on deposit is at least 10% less than the market value of securities pledged as collateral. Allows the board to determine the amount and type of substituted securities a depository may provide to insure the insurance fund's solvency. Provides that the market value of the substituted securities as of the date of delivery may be less than, but not exceed, the amount determined by the board. Provides that a joint investment fund may be invested or reinvested only in investments that are permitted for political subdivisions. Limits the maximum deposit of state and local public funds a public depository may have at any time to 100% of the balance in the public deposit insurance fund unless the depository secures the excess amount of the deposit with assets of the depository. Eliminates a report by the public employees' retirement fund to the board for depositories' secretary-investment manager and an interest calculation concerning the coverage of local police and firefighter pension funds. Requires a semi-annual report for every financial institution that has public funds on deposit. Requires the department of financial institutions to review the report and compare public deposits and risks in relation to the depository's statement of condition and to communicate any concerns to the treasurer of state.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1336

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A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-10.2-11 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]:

4 **Chapter 11. Divestment From Aggressive Lenders**

5 **Sec. 1. As used in this chapter, "aggressive lender" has the**  
6 **meaning set forth in IC 28-1-2-40(b).**

7 **Sec. 2. As used in this chapter, "board" refers to the following:**

8 (1) **The board of trustees of the Indiana state teachers'**  
9 **retirement fund.**

10 (2) **The board of trustees of the public employees' retirement**  
11 **fund.**

12 **Sec. 3. As used in this chapter, "cost of divestment" means the**  
13 **sum of the following:**

14 (1) **The costs associated with the sale, redemption, divestment,**  
15 **or withdrawal of an investment.**

16 (2) **The costs associated with the acquisition and maintenance**  
17 **of a replacement investment.**

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1 (3) A cost not described in subdivision (1) or (2) that is  
2 incurred by the fund in connection with a divestment  
3 transaction.

4 Sec. 4. As used in this chapter, "direct holdings" means all  
5 securities of a company held directly by a fund or in an account in  
6 which the fund owns all shares or interests.

7 Sec. 5. As used in this chapter, "fund" refers to the following:

- 8 (1) The Indiana state teachers' retirement fund.
- 9 (2) The public employees' retirement fund.

10 Sec. 6. As used in this chapter, "indirect holdings" means all  
11 securities of a company that are:

- 12 (1) held in an account or a fund in which the fund owns shares  
13 or interests together with other investors not subject to this  
14 chapter; and
- 15 (2) managed by one (1) or more persons who are not  
16 employed by the fund.

17 Sec. 7. As used in this chapter, "private market fund" means  
18 any:

- 19 (1) private equity fund;
- 20 (2) private equity fund of funds;
- 21 (3) venture capital fund;
- 22 (4) hedge fund;
- 23 (5) hedge fund of funds;
- 24 (6) real estate fund; or
- 25 (7) investment vehicle;

26 that is not publicly traded.

27 Sec. 8. Each calendar quarter, after the department of financial  
28 institutions publishes its quarterly update of the aggressive lender  
29 list in the Indiana Register under IC 28-1-2-40(f), the board shall  
30 immediately identify the companies on the aggressive lender list in  
31 which the fund administered by the board has direct holdings.

32 Sec. 9. (a) Except as provided in section 11 of this chapter, if a  
33 lender appears on the aggressive lender list under IC 28-1-2-40(f)  
34 for a continuous period of one hundred eighty (180) days, and  
35 continues to remain on the aggressive lender list for the time  
36 periods specified in subdivisions (1) through (3), the fund shall sell,  
37 redeem, divest, or withdraw all publicly traded securities of the  
38 lender that are held as direct holdings by the fund, as follows:

- 39 (1) At least fifty percent (50%) of the securities shall be  
40 removed from the fund's assets under management within  
41 three (3) years after the lender's appearance on the aggressive  
42 lender list.

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1 (2) At least seventy-five percent (75%) of the securities shall  
2 be removed from the fund's assets under management within  
3 four (4) years after the lender's appearance on the aggressive  
4 lender list.

5 (3) One hundred percent (100%) of the securities shall be  
6 removed from the fund's assets under management within five  
7 (5) years after the lender's appearance on the aggressive  
8 lender list.

9 (b) A board is not required to divest the board's direct holdings  
10 in an aggressive lender under subsection (a) if the estimated cost of  
11 divestment is greater than five percent (5%) of the total value of  
12 the board's direct holdings in the aggressive lender. A board is not  
13 required to divest the board's direct holdings in an aggressive  
14 lender according to the schedule set forth in subsection (a) if the  
15 divestment would cause brokerage liquidation costs to exceed  
16 five-tenths percent (0.5%) of the value of the direct holding. This  
17 determination shall be made by an advisory board comprised of  
18 the treasurer of state, the director of the department of financial  
19 institutions, the director of the public employees' retirement fund,  
20 and the director of the teachers' retirement fund. The treasurer of  
21 state shall serve as chairperson of this advisory board. The  
22 chairperson shall hold a public meeting at which the members of  
23 the advisory board shall vote on whether the divestment would  
24 cause brokerage liquidation costs to exceed five-tenths percent  
25 (0.5%) of the value of the direct holding if the divestment were to  
26 occur according to the schedule set forth in subsection (a). If the  
27 advisory board determines that it will create such a negative  
28 financial impact, the board shall establish an alternate divestment  
29 schedule that permits an orderly divestment of the board's direct  
30 holdings in an aggressive lender. The alternative schedule may not  
31 exceed ten (10) years. The board shall include any direct holdings  
32 in an aggressive lender that are exempted from divestment under  
33 this subsection in the board's report submitted to the legislative  
34 council under section 12 of this chapter.

35 Sec. 10. Except as provided in section 11, a fund shall not  
36 acquire securities of lenders on the aggressive lender list.

37 Sec. 11. Notwithstanding any provision to the contrary, sections  
38 9 and 10 of this chapter do not apply to indirect holdings in:

- 39 (1) a private market fund; or
  - 40 (2) an actively managed investment fund;
- 41 that includes a lender on the aggressive lender list.

42 Sec. 12. (a) On or before November 1, 2011, and as directed by

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1 the legislative council, each board shall submit a report in an  
2 electronic format under IC 5-14-6 to the legislative council.  
3 Notwithstanding IC 5-14-6-4(b)(2), the submission of a report  
4 under this subsection to the executive director of the legislative  
5 services agency fulfills the board's requirement to send a copy of  
6 the report to each member of the general assembly using the  
7 member's senate or house of representatives electronic mail  
8 address.

9 (b) A report submitted by the board of a fund under this section  
10 must include at least the following information, as of the date of the  
11 report:

- 12 (1) All investments sold, redeemed, divested, or withdrawn by
- 13 the fund in compliance with section 9(a) of this chapter.
- 14 (2) All direct holdings in an aggressive lender that are
- 15 exempted from divestment under section 9(b) of this chapter.
- 16 (3) A copy of the most recently published aggressive lender
- 17 list under IC 28-1-2-40(f).

18 Sec. 13. With respect to actions taken in compliance with this  
19 chapter, a fund is exempt from any conflicting statutory or  
20 common law obligations, including any obligations with respect to  
21 choice of asset managers, investment funds, or investments for  
22 fund securities portfolios.

23 Sec. 14. (a) Both:  
24 (1) the state and its officers, agents, and employees; and  
25 (2) each fund and its board members, executive director,  
26 officers, agents, and employees;  
27 are immune from civil liability for any act or omission related to  
28 the removal of an asset from the fund under this chapter.

29 (b) In addition to the immunity provided under subsection (a),  
30 both:

- 31 (1) the officers, agents, and employees of the state; and
- 32 (2) the board members, executive director, officers, agents,  
33 and employees of a fund;
- 34 are entitled to indemnification from the fund for all losses, costs,  
35 and expenses, including reasonable attorney's fees, associated with  
36 defending against any claim or suit relating to an act authorized  
37 under this chapter.

38 SECTION 2. IC 5-13-9-4 IS AMENDED TO READ AS FOLLOWS  
39 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Each officer designated  
40 in section 1 of this chapter may deposit, invest, or reinvest any funds  
41 that are held by the officer and available for investment in transaction  
42 accounts issued or offered by a designated depository of a political

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1 subdivision for the rates and terms agreed upon periodically by the  
2 officer making the investment and the designated depository.

3 (b) The investing officer making a deposit in a certificate of deposit  
4 shall obtain quotes of the specific rates of interest for the term of that  
5 certificate of deposit that each designated depository will pay on the  
6 certificate of deposit. Quotes may be solicited and taken by telephone.  
7 A memorandum of all quotes solicited and taken shall be retained by  
8 the investing officer as a public record of the political subdivision  
9 under IC 5-14-3. ~~A deposit made under this subsection shall be~~ **If the**  
10 **deposit is not** placed in the designated depository quoting the highest  
11 rate of interest, ~~if more than one (1) depository submits a quote of the~~  
12 ~~highest interest rate quoted for the investment, the deposit may be~~  
13 ~~placed in any or all of the designated depositories quoting the highest~~  
14 ~~rate in the amount or amounts determined by the investing officer, in~~  
15 ~~the investing officer's discretion.~~ **the investing officer shall:**

- 16 **(1) place the deposit in the depository quoting the second or**
- 17 **third highest rate of interest; and**
- 18 **(2) note the reason for placing the deposit on the**
- 19 **memorandum of quotes.**

20 (c) If all of the designated depositories of a political subdivision  
21 decline to issue or receive any deposit account, or to issue or receive  
22 the deposit account at a rate of interest equal to the highest rate being  
23 offered other investors, investments may be made in the deposit  
24 accounts of any financial institution designated for state deposits as a  
25 depository by the state board of finance under IC 5-13-9.5.

26 SECTION 3. IC 5-13-9-5 IS AMENDED TO READ AS FOLLOWS  
27 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The board of county  
28 commissioners of each county, and the fiscal body of each political  
29 subdivision other than a county, may by ordinance or resolution  
30 authorize the investing officer of each, respectively, to invest in  
31 certificates of deposit of depositories that have not been designated by  
32 the local board of finance of either but have been designated by the  
33 state board of finance as a depository for state deposits under  
34 IC 5-13-9.5. An ordinance or a resolution adopted under this subsection  
35 must provide that the authority granted in the ordinance or resolution  
36 expires on a date that is not later than two (2) years after the date the  
37 ordinance or resolution is adopted.

38 (b) With respect to any money to be invested in a deposit account  
39 under subsection (a), the investing officer shall solicit quotes for the  
40 certificates of deposit from at least three (3) depositories. If only one  
41 (1) depository has been designated for the political subdivision by its  
42 local board of finance, a quote must be solicited from that depository.

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1 If two (2) or more depositories have been designated for the political  
2 subdivision by its local board of finance, at least two (2) quotes must  
3 be solicited from the depositories thus designated. The quotes may be  
4 solicited and taken by telephone. A memorandum of all quotes solicited  
5 and taken shall be retained by the investing officer as a public record  
6 of the political subdivision under IC 5-14-3.

7 (c) Investments in any certificates of deposit to which this section  
8 applies shall be placed in the depository quoting the highest rate of  
9 interest under subsection (b); as determined after deducting any fee  
10 charged by the depository. If two (2) or more depositories submit the  
11 same highest quote, the investment shall be placed as follows:

12 (1) If only one (1) of the highest quoters is a depository  
13 designated for the political subdivision by its local board of  
14 finance, the investment shall be placed in that depository.

15 (2) If more than one (1) of the highest quoters are depositories  
16 designated for the political subdivision by its local board of  
17 finance, the investment shall be placed by the investing officer in  
18 any or all of these depositories in the amount or amounts  
19 determined by the investing officer, in the investing officer's  
20 discretion.

21 (3) If none of the highest quoters is a depository designated for  
22 the political subdivision by its local board of finance, the  
23 investment shall be placed by the investing officer in one (1) of  
24 the depositories submitting the highest quote.

25 (c) If a deposit is not placed in the designated depository quoting  
26 the highest rate of interest, the investing officer shall follow the  
27 procedures and priority for placing deposits that are set forth in  
28 section 4 of this chapter and note the reason for placing the deposit  
29 on the memorandum of quotes.

30 SECTION 4. IC 5-13-9-8 IS AMENDED TO READ AS FOLLOWS  
31 [EFFECTIVE JULY 1, 2010]: Sec. 8. Any investing officer of a  
32 political subdivision that makes a deposit in any deposit or other  
33 account may be required to pay a service charge to the depository in  
34 which the funds are deposited, if the depository requires all customers  
35 to pay the charge for providing that service. However, the service  
36 charge imposed must be considered in the computation of the interest  
37 rate for determining which depositories are entitled to investments as  
38 prescribed by sections 4 and 5 of this chapter. If the total service charge  
39 cannot be computed before the investment, the investing officer shall  
40 estimate the service charge and adjust the interest rate based on this  
41 estimate. The service charge may be paid by direct charge to the  
42 deposit or other account or in any other manner mutually agreed upon

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1 by the investing officer and the depository. **A service charge may not**  
2 **be imposed on a political subdivision for the purchase of a United**  
3 **States Treasury Note.**

4 SECTION 5. IC 5-13-9-9 IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE UPON PASSAGE]: Sec. 9. An officer designated in  
6 section 1 of this chapter may not do the following:

- 7 (1) Purchase securities on margin.
- 8 (2) Open a securities margin account for the investment of public  
9 funds.
- 10 **(3) Invest more than fifty percent (50%) of the unit of**  
11 **government's total public funds that are invested at any point**  
12 **in time in nonfederally insured deposit accounts under this**  
13 **chapter.**

14 SECTION 6. IC 5-13-9-10, AS AMENDED BY P.L.3-2008,  
15 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2010]: Sec. 10. (a) The investing officers of two (2) or more  
17 political subdivisions located within a county may establish a joint  
18 investment fund by entering into a written master agreement that  
19 defines the rights and obligations of the participating political  
20 subdivisions.

21 (b) An investing officer of a political subdivision that enters into a  
22 written master agreement under subsection (a) may pay funds that are  
23 held by the investing officer and that are available for investment into  
24 the joint investment fund.

25 (c) The fund shall be administered by a board, which must be  
26 comprised of the investing officer of each of the participating political  
27 subdivisions and which must be an instrumentality of the participating  
28 political subdivisions. Each officer of a political subdivision located  
29 within the county who is designated in section 1 of this chapter may  
30 pay funds that are held by the officer and available for investment into  
31 a joint fund known as a joint investment fund. The fund is administered  
32 by a board comprised of the investing officer of each of the  
33 participating political subdivisions and is an instrumentality of the  
34 participating political subdivisions.

35 (d) A joint investment fund must be invested and reinvested as a  
36 separate and individual fund. **A joint investment fund may be**  
37 **invested or reinvested only in investments that are permitted for**  
38 **political subdivisions by this chapter.**

39 (e) A written master agreement under subsection (a) must provide  
40 the following:

- 41 (1) A political subdivision may participate in a joint investment  
42 fund only with the written authorization of its local board of

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- 1 finance.
- 2 (2) A political subdivision may participate in a joint investment
- 3 fund only if its legislative body approves the written master
- 4 agreement.
- 5 (3) The board of a joint investment fund shall establish written
- 6 policies for the investment and reinvestment of joint investment
- 7 funds in the manner provided by IC 30-4-3-3.
- 8 (4) A fund shall be invested and reinvested as prescribed in
- 9 subdivision (3).
- 10 (5) A custodian bank or trust company located in Indiana must:
- 11 (A) be selected and contracted by the board of a joint
- 12 investment fund to hold the securities and other investments
- 13 of the joint investment fund;
- 14 (B) collect the income and other receipts from the securities
- 15 and other investments; and
- 16 (C) provide any other services appropriate and customary for
- 17 a custodian;
- 18 subject to the direction of the board of a joint investment fund.
- 19 (6) The board of a joint investment fund may select and contract
- 20 with a fund administrator to provide investment advice to the
- 21 board and any other services determined by the board to be
- 22 appropriate and necessary for the efficient administration and
- 23 accounting of the joint investment fund. The fund administrator
- 24 shall agree to recommend only securities and other investments
- 25 as prescribed in the written policies established by the board in
- 26 rendering investment advice to the board and shall agree to be
- 27 responsible, accountable, and liable for any breach of this
- 28 provision. The fund administrator must have experience in the
- 29 investment of public funds for governmental entities and must be
- 30 either of the following:
- 31 (A) A financial institution located in Indiana.
- 32 (B) Registered as an investment adviser with the United States
- 33 Securities and Exchange Commission under the Investment
- 34 Advisers Act of 1940, as amended (15 U.S.C. 80a-9 et seq.),
- 35 with public funds under management in the amount of at least
- 36 one hundred million dollars (\$100,000,000).
- 37 (7) A joint investment fund must be audited at least annually by
- 38 an independent auditing firm, with a copy of the audit provided to
- 39 each participating political subdivision.
- 40 (8) The administrative expenses of a joint investment fund,
- 41 including fees for the fund administrator, custodian, auditor, and
- 42 other professional services, must be paid from the fund's interest

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earnings.

(9) The interest earnings that exceed the administrative expenses of a joint investment fund must be credited to each political subdivision participating in the joint investment fund in a manner that equitably reflects the differing amounts and terms of the political subdivision's investment in the joint investment fund.

(10) Each participating political subdivision shall receive reports, including a daily transaction confirmation reflecting any activity in the political subdivision's account and monthly reports reflecting its investment activity in the joint investment fund and the performance and composition of the joint investment fund itself.

(11) The board of a joint investment fund shall meet at least annually to review the operation and performance of the joint investment fund, the custodian, the fund administrator, the auditor, and any other professional retained by the board.

(12) The board of a joint investment fund shall provide for any other policies that are necessary for the efficient administration and accounting of the joint investment fund and are consistent with the law governing the investment, management, deposit, and safekeeping of public funds of political subdivisions.

SECTION 7. IC 5-13-9.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) A financial institution may at any time file an application to become a depository and receive public funds of the state on deposit. Except as provided in IC 5-13-8-1 and IC 5-13-8-7, designation of a depository to receive public funds of the state qualifies a depository to receive public funds of a political subdivision. Applications for the state board of finance must be filed with the treasurer of state. The treasurer shall submit each application to the board.

(b) An application must:

- (1) be made in writing on forms prescribed under section 8 of this chapter;
- (2) contain terms and conditions as required and authorized by this chapter; and
- (3) offer to:
  - (A) receive public funds of the state on deposit; and
  - (B) provide the security required by IC 5-13-13-7 for the safekeeping and prompt payment of the deposited funds.

(c) A financial institution is ineligible to become a depository and receive public funds of the state if the institution fails to maintain a capital ratio in excess of the minimum required by the governmental

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1 supervisory body of the institution. If the financial institution is already  
 2 a depository, the institution may continue to hold the public funds until  
 3 maturity to avoid the imposition of a penalty upon the depositor,  
 4 although the financial institution may not accept the public funds for  
 5 reinvestment and may not accept additional public funds. A  
 6 determination of the ratio described in this subsection must be based  
 7 on the institution's most recent periodic statement of condition filed  
 8 with the institution's governmental supervisory body under the  
 9 regulatory accounting principles as prescribed by the supervisory body.

10 **(d) A financial institution is ineligible to become a depository**  
 11 **and receive public funds of the state during any period in which the**  
 12 **institution is determined to be an aggressive lender by the**  
 13 **department of financial institutions under IC 28-1-2-40. If the**  
 14 **financial institution is already a depository, the institution may**  
 15 **continue to hold the public funds until maturity to avoid the**  
 16 **imposition of a penalty upon the depositor, although the financial**  
 17 **institution may not accept the public funds for reinvestment and**  
 18 **may not accept additional public funds. In addition, any**  
 19 **reallocation of public funds due to a withdrawal from an**  
 20 **aggressive lender is to be done in a secure and prudent manner, as**  
 21 **directed by the treasurer of state, in consultation with the director**  
 22 **of the department of financial institutions.**

23 ~~(d)~~ **(e)** A financial institution shall furnish to the board a certificate  
 24 executed by an officer of the institution signifying that the institution:  
 25 ~~satisfies:~~

26 (1) ~~satisfies~~ the requirements of subsection (c); ~~and~~

27 **(2) is not an aggressive lender as determined by the**  
 28 **department of financial institutions under IC 28-1-2-40; and**  
 29 ~~(2)~~ **(3) satisfies** the requirement in section 6(b) of this chapter that  
 30 the sum of:

31 (A) the total principal amount of the depository's outstanding  
 32 loans to Indiana residents; plus

33 (B) the total value of the depository's investments in Indiana  
 34 residents;

35 is at least equal to the total amount of public funds of the state and  
 36 political subdivisions of the state that are on deposit in the  
 37 depository.

38 The board may rely on a certificate furnished under this subsection in  
 39 determining whether to deposit public funds or reinvest public funds  
 40 in the institution.

41 SECTION 8. IC 5-13-9.5-6 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) The board for

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1 depositories regarding depositories of public funds of the state may  
2 revoke the commission of any depository at any time for any cause  
3 considered sufficient by the board for depositories.

4 (b) The causes for which the board for depositories may revoke the  
5 commission of a depository under subsection (a) include:

6 (1) the failure of the depository to conduct lending activities in  
7 Indiana to such an extent that, at the end of each quarter, pursuant  
8 to the depository's certification, the sum of:

9 ~~(1)~~ (A) the total principal amount of the depository's  
10 outstanding loans to Indiana residents (as defined in  
11 IC 5-13-8-7); plus

12 ~~(2)~~ (B) the total value of the depository's investments in  
13 Indiana residents (as defined in IC 5-13-8-7);

14 is at least equal to the total amount of public funds of the state and  
15 political subdivisions of the state that are on deposit in the  
16 depository; or

17 (2) the determination by the department of financial  
18 institutions under IC 28-1-2-40 that the depository is an  
19 aggressive lender.

20 (c) Upon revocation, the depository shall immediately render an  
21 accounting and make settlement for all public funds deposited with the  
22 depository.

23 SECTION 9. IC 5-13-10-3 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The treasurer of  
25 state may not deposit aggregate funds in deposit accounts in any one  
26 (1) designated depository in an amount aggregating at any one (1) time  
27 more than **the lesser of:**

28 (1) fifty percent (50%) of the combined capital, surplus, and  
29 undivided profits of that depository, as determined by its last  
30 published statement of condition filed with the treasurer of state;  
31 or

32 (2) the amount that would cause the total investments and  
33 deposit accounts of public funds in the designated depository  
34 to exceed one hundred percent (100%) of the balance in the  
35 public deposit insurance fund as of the end of the preceding  
36 calendar quarter, unless the depository securitizes the excess  
37 amount of the deposit with assets of the depository.

38 (b) A deposit that is not prohibited by subsection (a)(2) when the  
39 deposit is made in a depository remains legal even if a subsequent  
40 decrease in the balance in the public deposit insurance fund causes  
41 the investments and deposit accounts of public funds in the  
42 depository to exceed one hundred percent (100%) of the balance in

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1 **the public deposit insurance fund.**

2 (c) Each depository shall file with the treasurer of state each  
3 periodic statement of condition required to be filed by it with its  
4 governmental supervisory body. If the state board for depositories finds  
5 that excess cash of the state is substantially more than that which had  
6 been anticipated, it may increase that maximum percentage in any  
7 depository, and the treasurer of the state may invest the additional  
8 funds in deposit accounts distributed among the depositories  
9 substantially in proportion to their respective capital, surplus, and  
10 undivided profits.

11 SECTION 10. IC 5-13-10.5-17 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17. Any public officer  
13 of the state that makes a deposit in any deposit or other account may be  
14 required to pay a service charge to the depository in which the funds  
15 are deposited, if the depository requires all customers to pay the charge  
16 for providing that service. If the total service charge cannot be  
17 computed before the investment, the investing officer of the state shall  
18 estimate the service charge and adjust the interest rate based on this  
19 estimate. The service charge may be paid by direct charge to the  
20 deposit or other account or in any other manner mutually agreed upon  
21 by the investing officer and the depository. **A service charge may not  
22 be imposed on the state for the purchase of a United States  
23 Treasury Note.**

24 SECTION 11. IC 5-13-12-2 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board for  
26 depositories consists of the governor, the treasurer of state, the auditor  
27 of state, the chairman of the commission for financial institutions, the  
28 chief examiner of the state board of accounts, and four (4) members  
29 appointed by the governor all of whom must be residents of Indiana  
30 and have had substantial expertise in commercial **bank management  
31 and** lending with depositories. No more than two (2) of the four (4)  
32 appointees may identify with the same political party. **For  
33 appointments after June 30, 2010, all four (4) appointees must be  
34 a chief executive officer or a chief financial officer of a depository  
35 at the time of the appointment. In making these appointments, the  
36 governor shall provide for geographic representation of all regions  
37 of Indiana, including both urban and rural communities. In  
38 addition, the appointees must, at the time of the appointment, be  
39 employed by the following depositories:**

- 40 (1) One (1) must be employed by a depository that has total  
41 assets of less than five hundred million dollars (\$500,000,000).  
42 (2) One (1) must be employed by a depository that has total

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- 1            **assets of less than one billion dollars (\$1,000,000,000).**
- 2            **(3) One (1) must be employed by a depository that has total**
- 3            **assets of at least one billion dollars (\$1,000,000,000) but less**
- 4            **than five billion dollars (\$5,000,000,000).**
- 5            **(4) One (1) must be employed by a depository that has total**
- 6            **assets of at least five billion dollars (\$5,000,000,000).**

7            **Total assets shall be determined using the depository's most recent**  
 8            **statement of condition.** The terms of the appointed members ~~extend~~  
 9            ~~for are~~ **four (4) year periods: years from the effective date of the**  
 10           **member's appointment.** Each appointed member holds office for the  
 11           term of this appointment. ~~and serves after the expiration of that~~  
 12           ~~appointment until the member's successor is appointed and qualified:~~  
 13           **An appointed member may be reappointed if the individual**  
 14           **satisfies the requirements of this subsection at the time of the**  
 15           **reappointment.** Any appointed member may be removed from office  
 16           by, and at the pleasure of, the governor.

17           (b) The officers of the board consist of a chairman, a  
 18           secretary-investment manager, a vice chairman, and other officers the  
 19           board determines to be necessary. The governor shall name a member  
 20           of the board to serve as its chairman. The treasurer of state shall serve  
 21           as the secretary-investment manager of the board. The board, by  
 22           majority vote, shall elect the other officers. Officers, except the  
 23           secretary-investment manager, shall be named or elected for one (1)  
 24           year terms in January of each year. The members and officers of the  
 25           board are not entitled to any compensation for their services but are  
 26           entitled to reimbursement for actual and necessary expenses on the  
 27           same basis as state employees.

28           (c) Five (5) members of the board constitute a quorum for the  
 29           transaction of business, and all actions of the board must be approved  
 30           by at least ~~five (5)~~ **a simple majority of those members voting on**  
 31           **each individual business issue.** The board may adopt, amend, or  
 32           repeal bylaws and rules for the conduct of its meetings and the number  
 33           and times of its meetings, and shall **hold a regular meeting at least**  
 34           **once each calendar quarter, and may hold other** regular and special  
 35           meetings as prescribed in its rules. All meetings of the board are open  
 36           to the public under IC 5-14-1.5. All records of the board are subject to  
 37           public inspection under IC 5-14-3.

38           (d) ~~Ten (10)~~ **Two (2)** days notice of the time and place of all  
 39           meetings to determine and fix the assessment rate to be paid by  
 40           depositories on account of insurance on public funds or the  
 41           establishment or redetermination of the reserve for losses of the  
 42           insurance fund shall be given by one (1) publication in a newspaper of

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1 general circulation printed and published in the city of Indianapolis.  
 2 The time, place, notice, and waiver requirements for the members of  
 3 the board for all meetings shall be determined by its rules. The  
 4 secretary-investment manager of the board shall enter its proceedings  
 5 at length in a record provided for that purpose, and the records of the  
 6 proceedings shall be approved and signed respectively by the chairman  
 7 or vice chairman and attested by the secretary-investment manager.

8 SECTION 12. IC 5-13-12-4, AS AMENDED BY P.L.146-2008,  
 9 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2010]: Sec. 4. (a) The secretary-investment manager shall  
 11 administer, manage, and direct the affairs and activities of the board  
 12 under the policies and under the control and direction of the board. In  
 13 carrying out these duties, the secretary-investment manager has the  
 14 power to do the following:

15 (1) Approve all accounts for salaries and allowable expenses of  
 16 the board, including, but not limited to:

17 (A) the employment of general or special attorneys,  
 18 consultants, and employees and agents as may be necessary to  
 19 assist the secretary-investment manager in carrying out the  
 20 duties of that office and to assist the board in its consideration  
 21 of applications for a guarantee of an industrial development  
 22 obligation or credit enhancement obligation guarantee; and

23 (B) the setting of compensation of persons employed under  
 24 clause (A).

25 (2) Approve all expenses incidental to the operation of the public  
 26 deposit insurance fund.

27 (3) Perform other duties and functions that may be delegated to  
 28 the secretary-investment manager by the board or that are  
 29 necessary to carry out the duties of the secretary-investment  
 30 manager under this chapter.

31 (b) The secretary-investment manager shall keep a record of the  
 32 proceedings of the board, and shall maintain and be custodian of all  
 33 books, documents, and papers filed with the board, and its official seal.  
 34 The secretary-investment manager may make copies of all minutes and  
 35 other records and documents of the board, and may give certificates  
 36 under seal of the board to the effect that the copies are true copies. All  
 37 persons dealing with the board may rely upon the certificates.

38 (c) Each year, beginning in 2001 and ending in 2021, after the  
 39 treasurer of state prepares the annual report required by IC 4-8.1-2-14,  
 40 the secretary-investment manager shall determine:

41 (1) the amount of interest earned by the public deposit insurance  
 42 fund during the state fiscal year ending on the preceding June 30,

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after deducting:

(A) all expenses and other costs of the board for depositories that were not paid from other sources during that state fiscal year; and

(B) all expenses and other costs associated with the Indiana education savings authority that were not paid from other sources during that state fiscal year; and

(2) the amount of interest earned during the state fiscal year ending on the preceding June 30 by the pension distribution fund established by subsection (g): (e).

(d) On or before November 1 of each year, beginning in 2001 and ending in 2021, the public employees' retirement fund shall provide a report to the secretary-investment manager concerning the individual and aggregate payments made by all units of local government (as defined in IC 5-10.3-11-3) during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(e) On or before the last business day of November of each year, beginning in 2001 and ending in 2021, the secretary-investment manager shall compute the amount of earned interest to be distributed under this section to each unit of local government (as defined in IC 5-10.3-11-3) in accordance with subsection (h) according to the following formula:

STEP ONE: Add the amount determined under subsection (c)(1) to the amount determined under subsection (c)(2):

STEP TWO: Divide the STEP ONE sum by the aggregate amount of payments made by all units of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection (d):

STEP THREE: Multiply the STEP TWO quotient by the amount of payments made by each unit of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection (d):

(f) (d) Subject to subsection (j); (g), on or before the last business day of December of each year, beginning in 2001 and ending in 2021, the secretary-investment manager shall provide to the auditor of state

(1) a report setting forth the amounts to be distributed to units of local government, as determined under subsection (e); and

(2) a check payable from the public deposit insurance fund to the pension distribution fund established by subsection (g) (e) in an

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1 amount equal to the amount determined under subsection ~~(e)(1)~~.  
2 (c).  
3 ~~(g)~~ (e) The pension distribution fund is established. The pension  
4 distribution fund shall be administered by the treasurer of state. The  
5 treasurer of state shall invest money in the pension distribution fund  
6 not currently needed to meet the obligations of the pension distribution  
7 fund in the same manner as other public money may be invested.  
8 Interest that accrues from these investments shall be deposited in the  
9 pension distribution fund. Money in the pension distribution fund at the  
10 end of a state fiscal year does not revert to the state general fund.  
11 ~~(h)~~ (f) Subject to subsection ~~(j)~~; (g), on June 30 and October 1 of  
12 each year, beginning in 2002 and ending in 2022, the auditor of state  
13 shall distribute in two (2) equal installments from the pension  
14 distribution fund to the ~~fiscal officer of each unit of local government~~  
15 ~~identified under subsection (d)~~ the amount computed for that unit under  
16 subsection (e) in November of the preceding year.  
17 (i) Each unit of local government shall deposit distributions received  
18 under subsection (h) in the pension fund or funds identified by the  
19 secretary-investment manager and shall use those distributions to pay  
20 a portion of the obligations with respect to the pension fund or funds:  
21 **public employees' retirement fund for the benefit of the police and**  
22 **firefighter pension funds established by IC 36-8-6, IC 36-8-7, and**  
23 **IC 36-8-7.5 the amount deposited in the pension relief fund in**  
24 **December of the preceding year under subsection (d).**  
25 ~~(j)~~ (g) Before providing a check to the auditor of state under  
26 subsection ~~(f)(2)~~ (d) in December of any year, the secretary-investment  
27 manager shall determine:  
28 (1) the total amount of payments made from the public deposit  
29 insurance fund under IC 5-13-13-3 after June 30, 2001;  
30 (2) the total amount of payments received by the board for  
31 depositories and deposited in the public deposit insurance fund  
32 under IC 5-13-13-3 after June 30, 2001; and  
33 (3) the total amount of interest earned by the public deposit  
34 insurance fund after the first of the payments described in  
35 subdivision (1).  
36 If the total amount of payments determined under subdivision (1) less  
37 the total amount of payments determined under subdivision (2)  
38 (referred to in this subsection as the "net draw on the fund") exceeds  
39 ten million dollars (\$10,000,000) and also exceeds the total amount of  
40 interest determined under subdivision (3), the secretary-investment  
41 manager may not provide a check to the auditor of state under  
42 subsection ~~(f)(2)~~ (d) and a distribution may not be made from the

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1 pension distribution fund under subsection ~~(f)~~ (f) in the following  
 2 calendar year until the total amount of interest earned by the public  
 3 deposit insurance fund equals the net draw on the fund. A check may  
 4 not be provided under subsection ~~(f)(2)~~ (d) and a distribution may not  
 5 be made under subsection ~~(f)~~ (d) in any subsequent calendar year if a  
 6 study conducted by the board under section 7(b) of this chapter  
 7 demonstrates that payment of the distribution would reduce the balance  
 8 of the public deposit insurance fund to a level insufficient to ensure the  
 9 safekeeping and prompt payment of public funds to the extent they are  
 10 not covered by insurance of any federal deposit insurance agency.

11 SECTION 13. IC 5-13-12-5 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Subject to the  
 13 limitations prescribed in this chapter, the board for depositories may fix  
 14 the assessment rate to provide assets in the fund sufficient to equal the  
 15 reserve for losses of the fund for the insurance of public funds on  
 16 deposit in depositories. Effective on July 1, and January 1, of each year,  
 17 **and from time to time as the board determines necessary**, the board  
 18 shall determine and fix the fair and reasonable assessment rate for each  
 19 classification of deposit, if any, to be used by depositories in  
 20 determining the assessments payable during the succeeding six (6)  
 21 month period. This determination shall be made by the board before or  
 22 as soon as practicable after the applicable July 1, ~~or~~ January 1, **or other**  
 23 **date established by the board**. In fixing the rate, if any, the board  
 24 shall consider the amount of public funds currently on deposit, the  
 25 liabilities of the insurance fund, contingent and accrued, and the  
 26 determination of the board on the amount of the reserve for losses of  
 27 the insurance fund as set out in section 7(b) of this chapter. For any six  
 28 (6) month period the maximum assessment rate that may be fixed by  
 29 the board is two percent (2%). The board may lower or waive the  
 30 assessment on any or all classifications of deposit if in its discretion it  
 31 determines that a lower rate or waiver will not prevent the fund from  
 32 attaining sufficient assets to equal the reserve for losses. **Subject to the**  
 33 **board's power to implement an assessment at any time by action**  
 34 **by the board**, if, at the beginning of any six (6) month period, no  
 35 action has been taken by the board for depositories fixing the  
 36 assessment rate, if any, on public funds for the succeeding six (6)  
 37 month period, the assessment rate is the same rate, if any, in effect  
 38 during the preceding six (6) month period. Whenever as of July 1, or  
 39 January 1, the value of the assets in the fund equals or exceeds the  
 40 reserve for losses, the board shall eliminate the assessment requirement  
 41 for the succeeding six (6) month period for each classification of  
 42 deposit.

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1 (b) During any period when an assessment rate is in effect, the  
 2 assessment base for each depository of public funds shall be  
 3 determined monthly. The assessment base must be equal to the sum  
 4 total of all the minimum balances of each classification of public funds  
 5 on deposit in each and all accounts during the month, the minimum  
 6 balance of each account being taken respectively as of the date on  
 7 which it occurs. On or before the second day of each month in which  
 8 an assessment rate is in effect, each depository shall compute the  
 9 amount of the assessment due from it to the insurance fund on account  
 10 of public funds on deposit with it during the preceding month. The  
 11 amount of the monthly assessment, if any, is the product obtained by  
 12 multiplying one-twelfth (1/12) times the assessment base for the month  
 13 for which the assessment is being computed.

14 (c) During the time the assessment rate on public funds has been  
 15 waived or eliminated by the board for depositories, the respective  
 16 depositories are not obligated to pay any assessment but shall continue  
 17 to prepare and file the reports that would otherwise be required to be  
 18 prepared and filed under this chapter.

19 SECTION 14. IC 5-13-12-7, AS AMENDED BY P.L.1-2006,  
 20 SECTION 100, IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The board for  
 22 depositories shall manage and operate the insurance fund. All expenses  
 23 incident to the administration of the fund shall be paid out of the money  
 24 accumulated in it subject to the direction of the board for depositories.

25 (b) Effective January 1 and July 1 in each year, the board shall  
 26 before those dates redetermine the amount of the reserve to be  
 27 maintained by the insurance fund. The establishment or any change in  
 28 the reserve for losses shall be determined by the board based on  
 29 **information the board considers, including but not limited to**  
 30 **capital adequacy, liquidity, and asset quality, and** a study to be  
 31 made or updated by actuaries, economists, or other consultants based  
 32 on the history of losses, earnings on the funds, conditions of the  
 33 depositories, economic conditions affecting particular depositories or  
 34 depositories in general, and any other factors that the board considers  
 35 relevant in making its determination. The reserve determined by the  
 36 board must be sufficient to ensure the safekeeping and prompt payment  
 37 of public funds to the extent they are not covered by insurance of any  
 38 federal deposit insurance agency.

39 (c) At the end of each biennial period during which depositories  
 40 have had public funds on deposit under this chapter and paid the  
 41 assessments levied by the board, the board shall compute its receipts  
 42 from assessments and all other sources and its expenses and losses and

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1 determine the profit derived from the operation of the fund for the  
 2 period. Until the amount of the reserve for losses has been  
 3 accumulated, all assessments levied for a biennial period shall be  
 4 retained by the fund. The amount of the assessments, if any, levied by  
 5 the board shall, to the extent the fund exceeds the reserve for losses at  
 6 the end of a biennial period commencing July 1 of each odd-numbered  
 7 year, be distributed to the depositories that had public funds on deposit  
 8 during the biennial period in which the assessments were paid. The  
 9 distribution shall be made to the respective depositories in the  
 10 proportion that the total assessments paid by each depository during  
 11 that period bears to the total assessments then paid by all depositories.  
 12 A distribution to which any closed depository would otherwise be  
 13 entitled shall be set off against any claim that the insurance fund may  
 14 have against the closed depository.

15 (d) The board may invest, reinvest, and exchange investments of the  
 16 insurance fund in excess of the cash working balance in any of the  
 17 following:

18 (1) In bonds, notes, certificates, and other valid obligations of the  
 19 United States, either directly or, subject to the limitations in  
 20 subsection (e), in the form of securities of or other interests in an  
 21 open-end no-load management-type investment company or  
 22 investment trust registered under the provisions of the Investment  
 23 Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

24 (2) In bonds, notes, debentures, and other securities issued by a  
 25 federal agency or a federal instrumentality and fully guaranteed  
 26 by the United States either directly or, subject to the limitations  
 27 in subsection (e), in the form of securities of or other interests in  
 28 an open-end no-load management-type investment company or  
 29 investment trust registered under the provisions of the Investment  
 30 Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

31 (3) In bonds, notes, certificates, and other valid obligations of a  
 32 state or of an Indiana political subdivision that are issued under  
 33 law, the issuers of which, for five (5) years before the date of the  
 34 investment, have promptly paid the principal and interest on their  
 35 bonds and other legal obligations.

36 (4) In bonds or other obligations of the Indiana finance authority  
 37 issued under IC 4-13.5.

38 (5) In investments permitted the state under IC 5-13-10.5.

39 (6) In guarantees of industrial development obligations or credit  
 40 enhancement obligations, or both, for the purposes of retaining  
 41 and increasing employment in enterprises in Indiana, subject to  
 42 the limitations and conditions set out in this subdivision,

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subsection (e), and section 8 of this chapter. An individual guarantee of the board under this subdivision must not exceed eight million dollars (\$8,000,000).

(7) In guarantees of bonds or notes issued under IC 5-1.5-4-1, subject to the limitations and conditions set out in subsection (e) and section 8 of this chapter.

(8) In bonds, notes, or other valid obligations of the Indiana finance authority that have been issued in conjunction with the authority's acquisition, development, or improvement of property or other interests for an industrial development project (as defined in IC 4-4-10.9-11) that the authority has undertaken for the purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(9) In notes or other debt obligations of counties, cities, and towns that have been issued under IC 6-1.1-39 for borrowings from the industrial development fund under IC 5-28-9 for purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(10) In bonds or other obligations of the Indiana housing and community development authority.

(e) The investment authority of the board under subsection (d) is subject to the following limitations:

(1) For investments under subsection (d)(1) and (d)(2), the portfolio of an open-end no-load management-type investment company or investment trust must be limited to:

(A) direct obligations of the United States and obligations of a federal agency or a federal instrumentality that are fully guaranteed by the United States; and

(B) repurchase agreements fully collateralized by obligations described in clause (A), of which the company or trust takes delivery either directly or through an authorized custodian.

(2) Total outstanding investments in guarantees of industrial development obligations and credit enhancement obligations under subsection (d)(6) must not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) fourteen million dollars (\$14,000,000).

(3) Total outstanding investments in guarantees of bond bank obligations under subsection (d)(7) must not exceed the greater of:

(A) twenty percent (20%) of the available balance of the insurance fund; or

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1 (B) twenty-four million dollars (\$24,000,000).  
 2 (4) Total outstanding investments in bonds, notes, or other  
 3 obligations of the Indiana finance authority under subsection  
 4 (d)(8) may not exceed the greater of:  
 5 (A) fifteen percent (15%) of the available balance of the  
 6 insurance fund; or  
 7 (B) twenty million dollars (\$20,000,000).  
 8 However, after June 30, 1988, the board may not make any  
 9 additional investment in bonds, notes, or other obligations of the  
 10 Indiana finance authority issued under IC 4-4-11, and the board  
 11 may invest an amount equal to the remainder, if any, of:  
 12 (i) fifteen percent (15%) of the available balance of the  
 13 insurance fund; minus  
 14 (ii) the board's total outstanding investments in bonds, notes,  
 15 or other obligations of the Indiana finance authority issued  
 16 under IC 4-4-11;  
 17 in guarantees of industrial development obligations or credit  
 18 enhancement obligations, or both, as authorized by subsection  
 19 (d)(6). In such a case, the outstanding investments, as authorized  
 20 by subsection (d)(6) and (d)(8), may not exceed in total the  
 21 greater of twenty-five percent (25%) of the available balance of  
 22 the insurance fund or thirty-four million dollars (\$34,000,000).  
 23 (5) Total outstanding investments in notes or other debt  
 24 obligations of counties, cities, and towns under subsection (d)(9)  
 25 may not exceed the greater of:  
 26 (A) ten percent (10%) of the available balance of the insurance  
 27 fund; or  
 28 (B) twelve million dollars (\$12,000,000).  
 29 (f) For purposes of subsection (e), the available balance of the  
 30 insurance fund does not include the outstanding principal amount of  
 31 any fund investment in a corporate note or obligation or the part of the  
 32 fund that has been established as a reserve for losses.  
 33 (g) Except as provided in section 4 of this chapter, all interest and  
 34 other income earned on investments of the insurance fund and all  
 35 amounts collected by the board accrue to the fund.  
 36 (h) Members of the board and any officers or employees of the  
 37 board are not subject to personal liability or accountability by reason  
 38 of any investment in any of the obligations listed in subsection (d).  
 39 (i) The board shall, when directed by the state board of finance  
 40 constituted by IC 4-9.1-1-1, purchase the loan made by the state board  
 41 of finance under IC 4-10-18-10(i). The loan shall be purchased by the  
 42 board at a purchase price equal to the total of:

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- 1 (1) the principal amount of the loan;
- 2 (2) the deferred interest payable on the loan; and
- 3 (3) accrued interest to the date of purchase by the board.

4 Members of the board and any officers or employees of the board are  
 5 not subject to personal liability or accountability by reason of the  
 6 purchase of the loan under this subsection.

7 SECTION 15. IC 5-13-13-4 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Whenever  
 9 the assets in the insurance fund are not sufficient to pay the claims of  
 10 any kind that have been finally determined and have become payable,  
 11 the board for depositories shall issue anticipatory warrants for the  
 12 purpose of raising money for the immediate payment of the claims. The  
 13 warrants outstanding and unpaid must not at any time exceed the sum  
 14 of ~~one million five hundred thousand dollars (\$1,500,000)~~: **three**  
 15 **hundred million dollars (\$300,000,000)**. Interest may be paid upon  
 16 the warrants from the date the rate was established by the board for  
 17 depositories. Interest is payable at the end of each year or for a shorter  
 18 period as the warrants remain unpaid.

19 (b) The warrants are the obligation of the board for depositories  
 20 payable out of the public deposit insurance fund only and do not  
 21 constitute a debt, liability, or obligation of the state or a pledge of the  
 22 faith and credit of the state. Each warrant must have printed on its face  
 23 the words, "This warrant is an obligation of the board for depositories  
 24 payable solely out of the public deposits insurance fund, and neither the  
 25 faith and credit nor the taxing power of the state is pledged to the  
 26 payment of the principal, the interest, or any other amount owed on the  
 27 warrants."

28 (c) Subject to the limitations in subsections (a) through (b), the  
 29 warrants shall be issued in the individual and gross amounts and in the  
 30 form and at the rate of interest approved by the board for depositories.

31 SECTION 16. IC 5-13-13-7 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) At any time  
 33 when the board for depositories determines that the assets of the  
 34 insurance fund are insufficient to pay its liabilities, accrued or  
 35 contingent, or determines that the assessments due or to become due  
 36 will not be sufficient to maintain the insurance fund in a solvent  
 37 condition and insure the safekeeping and prompt payment of public  
 38 funds, the board may enter an order requiring **any or all** then  
 39 constituted depositories to substitute other security **in the amount and**  
 40 **type, as determined by the board from time to time**, to secure the  
 41 safekeeping and prompt payment of public funds.

42 (b) The board may require **any or all** then constituted depositories

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1 to deliver and pledge to the proper local board of finance or to the state  
 2 board of finance, under the conditions for joint control of the collateral  
 3 by the depositories as may be approved by the board for depositories,  
 4 bonds or other obligations of like character as those in which that the  
 5 board is authorized to invest the excess funds of the insurance fund  
 6 under IC 5-13-12-7(d); **determines are acceptable collateral.** The  
 7 market value of these securities, at the time of delivery, must ~~equal~~ be  
 8 **an amount determined by the board, which may not exceed** the  
 9 amount of public funds then on deposit with the respective  
 10 depositories. The board may require depositories to pledge acceptable  
 11 securities to such an extent that the market value of the pledge will at  
 12 all times be substantially equal to the amount of public funds on  
 13 deposit in the respective depositories.

14 (c) Whenever an order is in force and the amount of public funds on  
 15 deposit is at least ten percent (10%) less than the market value of  
 16 securities pledged to secure the payment, **as required by the board,**  
 17 the depository may withdraw the excess amount of pledged collateral.

18 (d) Any order of the board for depositories ~~applies equally to all~~  
 19 ~~depositories and~~ becomes effective within the time fixed by the board.  
 20 However, the time of effectiveness must not be earlier than thirty (30)  
 21 days from the date of entry of the order by the board. The order  
 22 continues in force until rescinded by the board. Upon the entry of any  
 23 order by the board for depositories, all then constituted depositories  
 24 **affected by the order** shall comply with the order. Upon compliance,  
 25 and full payment of all its liabilities by the insurance fund, depositories  
 26 are not required to pay any further assessments for insurance under this  
 27 chapter until the order requiring collateral has been revoked or  
 28 rescinded and the collateral returned to the respective depositories.

29 SECTION 17. IC 28-1-2-40 IS ADDED TO THE INDIANA CODE  
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 31 1, 2010]: **Sec. 40. (a) The definitions in IC 24-4.5-3-103 apply**  
 32 **throughout this section.**

33 (b) **As used in this chapter, "aggressive lender" means a lender**  
 34 **determined by the department under this section to be engaged in**  
 35 **the practice of aggressive lending.**

36 (c) **As used in this section, "aggressive lending" means making**  
 37 **consumer loans in Indiana that provide for a loan finance charge**  
 38 **that exceeds the limits on loan finance charges for supervised loans**  
 39 **specified in IC 24-4.5-3-508, as adjusted in accordance with**  
 40 **IC 24-4.5-1-106. For purposes of this subsection, permissible**  
 41 **additional charges in the amounts set forth in IC 24-4.5-3-202, plus**  
 42 **a transaction fee on a cash advance that may not exceed a total of**

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1 four (4%), and any portion of a penalty interest rate that pertains  
 2 to balances on accounts that are more than sixty-five (65) days  
 3 delinquent may not be considered in calculating whether a lender  
 4 is exceeding the limits on loan finance charges for supervised loans.  
 5 However, any interest rate or fee attributable to a universal default  
 6 provision must be considered in calculating whether a lender is  
 7 exceeding the limits on loan finance charges for supervised loans.  
 8 The term does not include:

9 (1) small loans as defined in IC 24-4.5-7-104; or

10 (2) the:

11 (A) offering of a credit card by a financial institution to the  
 12 financial institution's customers if the financial institution  
 13 is not the card issuer (as defined in 15 U.S.C. 1602(n)),  
 14 other than as an agent of the card issuer; or

15 (B) issuing of a credit card to a person that is not a resident  
 16 of Indiana;

17 regardless of whether the finance charge that applies to the  
 18 credit card offered or issued exceeds the limits on loan finance  
 19 charges for supervised loans specified in IC 24-4.5-3-508, as  
 20 adjusted in accordance with IC 24-4.5-1-106.

21 (d) If the department receives credible evidence from any source  
 22 that a lender is engaged in the practice of aggressive lending, the  
 23 department shall send a notice of the evidence by certified mail to  
 24 the lender's agent for service of process. The notice must:

25 (1) set forth the definition of an aggressive lender;

26 (2) describe the department's evidence that the lender meets  
 27 the definition of an aggressive lender;

28 (3) describe the consequences under IC 5-10.2-11 and  
 29 IC 5-13-9.5 of a finding that the lender is an aggressive  
 30 lender; and

31 (4) invite a reply that affirms or denies whether the lender is  
 32 engaged in the practice of aggressive lending.

33 If a lender disputes its designation as an aggressive lender under  
 34 this section, the lender may, within twenty (20) days of the date of  
 35 the notice, request a hearing on the determination. If a hearing is  
 36 requested, the department shall schedule the hearing not earlier  
 37 than twenty (20) days after the date of the request. If no hearing is  
 38 requested, the department's determination that the lender is an  
 39 aggressive lender is final.

40 (e) Except as otherwise provided in this section, any hearing  
 41 requested by a lender under subsection (d) and the determination  
 42 by the department are subject to IC 4-21.5-3. Judicial review of the

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1 department's final determination may be had in accordance with  
2 IC 4-21.5-5.

3 (f) Subject to subsections (g) and (h), at the beginning of each  
4 calendar quarter, the department shall publish in the Indiana  
5 Register:

6 (1) a list of those lenders determined by the department to be  
7 aggressive lenders during the preceding calendar quarter;  
8 and

9 (2) a cumulative list of lenders determined by the department  
10 to be aggressive lenders.

11 (g) The department shall not place a lender that has made a  
12 timely petition for judicial review under IC 4-21.5-5 of the  
13 department's determination on the lists described in subsection (f)  
14 until a final judgment affirming the department's determination is  
15 made.

16 (h) A lender that has been determined by the department to be  
17 an aggressive lender under this section may petition the  
18 department for a hearing to demonstrate that the lender is no  
19 longer engaged in the practice of aggressive lending. The hearing  
20 and the determination by the department are subject to  
21 IC 4-21.5-3. Judicial review of the department's final  
22 determination may be had in accordance with IC 4-21.5-5. Upon  
23 final determination by the department, or a final judgment in the  
24 case of pending judicial review, that the lender is no longer an  
25 aggressive lender, the department shall remove the lender's name  
26 from the list required to be published under subsection (f)(2).

27 SECTION 18. IC 28-1-15-5 IS ADDED TO THE INDIANA CODE  
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
29 1, 2010]: Sec. 5. (a) Before the last day in January and before the  
30 last day in July, every financial institution that had public funds on  
31 deposit under IC 5-13 during the preceding six (6) months shall file  
32 with the department a certified report under oath showing for each  
33 of the preceding six (6) months the amount of public funds on  
34 deposit on the last day of each month. The state board of accounts,  
35 with the approval of the attorney general, shall prepare and  
36 prescribe the forms of the report required by this section.

37 (b) The department shall review the report of each financial  
38 institution that is submitted under this section and the statement of  
39 condition of the financial institution and compare public deposits  
40 and risks in relation to the financial institution's statement of  
41 condition. If the department determines that there is a concern  
42 regarding the safety of public deposits and the financial

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1 **institution's soundness, the concern shall be communicated to the**  
2 **treasurer of state.**

3 SECTION 19. IC 34-30-2-11.6 IS ADDED TO THE INDIANA  
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2010]: **Sec. 11.6. IC 5-10.2-11-11 (Concerning**  
6 **the state and certain public pension funds for divestment of funds**  
7 **authorized by law).**

8 SECTION 20. **An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1336, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 4, after "4." and insert "(a)".

Page 2, between lines 6 and 7, begin a new paragraph and insert:

**"(b) The term does not include securities of a company that are:**

**(1) held in an account or a fund; and**

**(2) managed by one (1) or more persons:**

**(A) who are not employed by the fund; and**

**(B) in which the fund owns shares or interests together with other investors not subject to this chapter."**

Page 2, delete lines 10 through 26.

Page 2, line 27, delete "8." and insert "6."

Page 2, line 29, after "Register" insert "**under IC 28-1-2-40(f)**".

Page 2, line 31, delete "or indirect".

Page 2, line 32, delete "9. (a) Except as provided in section 11 of this chapter, if" and insert "**7. (a) If**".

Page 2, line 38, after "held" insert "**as direct holdings**".

Page 3, delete lines 9 through 17, begin a new paragraph and insert:

**"(b) A board is not required to divest the board's direct holdings in an aggressive lender under subsection (a) if the estimated cost of divestment is greater than ten percent (10%) of the total value of the board's direct holdings in the aggressive lender. The board shall include any direct holdings in an aggressive lender that are exempted from divestment under this subsection in the board's report submitted to the legislative council under section 9 of this chapter."**

Page 3, line 18, delete "10. Except as provided in section 11 of this chapter, a" and insert "**8. A**".

Page 3, delete lines 20 through 23.

Page 3, line 24, delete "12." and insert "**9**".

Page 3, line 37, delete "9" and insert "**7(a)**".

Page 3, line 38, delete "commingled funds" and insert "**direct holdings in an aggressive lender**".

Page 3, line 39, delete "9" and insert "**7(b)**".

Page 3, line 42, delete "13." and insert "**10**".

Page 4, line 5, delete "14." and insert "**11**".

Page 4, between lines 19 and 20, begin a new paragraph and insert:

**"SECTION 2. IC 5-13-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. "Financial**

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institution" means any of the following:

- (1) A bank, trust company, or mutual savings bank that:
  - (A) was incorporated under the law of Indiana or any other state; and
  - (B) has its principal office or a branch in Indiana.
- (2) A national banking association with its principal office or a branch in Indiana.
- (3) A savings association operating as a deposit association incorporated under Indiana law.
- (4) A federally chartered savings association with its principal office or a branch in Indiana.
- (5) A federally chartered savings bank with its principal office or a branch in Indiana.
- (6) A state chartered credit union in Indiana that is federally insured or privately insured and that has assets of three million dollars (\$3,000,000) or more.
- (7) A federally chartered credit union that has assets of three million dollars (\$3,000,000) or more and with its principal office or a branch in Indiana.**

SECTION 3. IC 5-13-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) All public funds of all political subdivisions shall be deposited in the designated depositories located in the respective territorial limits of the political subdivisions, except as provided in this section.

(b) Each board of finance of a political subdivision:

- (1) that is not a city, town, or school corporation; and
- (2) whose jurisdiction crosses one (1) or more county lines;

may limit its boundaries for the purpose of this section to that portion of the political subdivision within the county where its principal office is located.

(c) If there is no principal office or branch of a financial institution located in the county or political subdivision, or if no financial institution with a principal office or branch in the county or political subdivision will accept public funds under this chapter, the board of finance of the county and the boards of finance of the political subdivisions in the county shall designate one (1) or more financial institutions with a principal office or branch outside of the county or political subdivision, and in the state, as a depository or depositories.

(d) The board of trustees for a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1 may invest any money in the hospital fund anywhere in the state with any financial institution designated by the state board of finance as depositories for state

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deposits.

(e) If only one (1) financial institution that has a branch or principal office in a county or political subdivision is willing to accept public funds, the board of finance for the county or political subdivision may:

- (1) treat the financial institution that is located within the county or political subdivision as if the financial institution were not located within the county or political subdivision; and
- (2) designate one (1) or more financial institutions to receive public funds under the requirements of subsection (c).

(f) The investing officer shall maintain the deposits as follows:

- (1) In one (1) or more depositories designated for the political subdivision, if the sum of the monthly average balances of all the transaction accounts for the political subdivision does not exceed one hundred thousand dollars (\$100,000).
- (2) In each depository designated for the political subdivision, if subdivision (1) does not apply and fewer than three (3) financial institutions are designated by the local board of finance as a depository.
- (3) In at least two (2) depositories designated for the political subdivision, if subdivision (1) does not apply and at least three (3) financial institutions are designated by the local board of finance as a depository.

**(g) This subsection applies to a depository that is a federally chartered credit union. An investing officer may not make a deposit and the federally chartered credit union may not accept a deposit of public funds if the deposit would cause the federally chartered credit union to have total deposit accounts and investments of public funds that exceed twenty percent (20%) of the total shares of the federally chartered credit union as of the end of the preceding calendar quarter. However, a deposit that complies with this subsection when the deposit is made remains legal even if a subsequent decrease in the value of the total shares of the federally chartered credit union causes the percentage of investments and deposit accounts of public funds to exceed twenty percent (20%) of the total shares of the federally chartered credit union.**

SECTION 4. IC 5-13-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Each officer designated in section 1 of this chapter may deposit, invest, or reinvest any funds that are held by the officer and available for investment in transaction accounts issued or offered by a designated depository of a political subdivision for the rates and terms agreed upon periodically by the

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officer making the investment and the designated depository.

(b) The investing officer making a deposit in a certificate of deposit shall obtain quotes of the specific rates of interest for the term of that certificate of deposit that each designated depository will pay on the certificate of deposit. Quotes may be solicited and taken by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3. ~~A deposit made under this subsection shall be~~ **If the deposit is not** placed in the designated depository quoting the highest rate of interest, ~~if more than one (1) depository submits a quote of the highest interest rate quoted for the investment; the deposit may be placed in any or all of the designated depositories quoting the highest rate in the amount or amounts determined by the investing officer; in the investing officer's discretion:~~ **the investing officer shall:**

- (1) place the deposit in the depository quoting the second or third highest rate of interest; and**
- (2) note the reason for placing the deposit on the memorandum of quotes.**

(c) If all of the designated depositories of a political subdivision decline to issue or receive any deposit account, or to issue or receive the deposit account at a rate of interest equal to the highest rate being offered other investors, investments may be made in the deposit accounts of any financial institution designated for state deposits as a depository by the state board of finance under IC 5-13-9.5.

SECTION 5. IC 5-13-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The board of county commissioners of each county, and the fiscal body of each political subdivision other than a county, may by ordinance or resolution authorize the investing officer of each, respectively, to invest in certificates of deposit of depositories that have not been designated by the local board of finance of either but have been designated by the state board of finance as a depository for state deposits under IC 5-13-9.5. An ordinance or a resolution adopted under this subsection must provide that the authority granted in the ordinance or resolution expires on a date that is not later than two (2) years after the date the ordinance or resolution is adopted.

(b) With respect to any money to be invested in a deposit account under subsection (a), the investing officer shall solicit quotes for the certificates of deposit from at least three (3) depositories. If only one (1) depository has been designated for the political subdivision by its local board of finance, a quote must be solicited from that depository. If two (2) or more depositories have been designated for the political

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subdivision by its local board of finance, at least two (2) quotes must be solicited from the depositories thus designated. The quotes may be solicited and taken by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3.

(c) Investments in any certificates of deposit to which this section applies shall be placed in the depository quoting the highest rate of interest under subsection (b); as determined after deducting any fee charged by the depository; if two (2) or more depositories submit the same highest quote, the investment shall be placed as follows:

(1) If only one (1) of the highest quoters is a depository designated for the political subdivision by its local board of finance, the investment shall be placed in that depository.

(2) If more than one (1) of the highest quoters are depositories designated for the political subdivision by its local board of finance, the investment shall be placed by the investing officer in any or all of these depositories in the amount or amounts determined by the investing officer, in the investing officer's discretion.

(3) If none of the highest quoters is a depository designated for the political subdivision by its local board of finance, the investment shall be placed by the investing officer in one (1) of the depositories submitting the highest quote.

**(c) If a deposit is not placed in the designated depository quoting the highest rate of interest, the investing officer shall follow the procedures and priority for placing deposits that are set forth in section 4 of this chapter and note the reason for placing the deposit on the memorandum of quotes.**

SECTION 6. IC 5-13-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. Any investing officer of a political subdivision that makes a deposit in any deposit or other account may be required to pay a service charge to the depository in which the funds are deposited, if the depository requires all customers to pay the charge for providing that service. However, the service charge imposed must be considered in the computation of the interest rate for determining which depositories are entitled to investments as prescribed by sections 4 and 5 of this chapter. If the total service charge cannot be computed before the investment, the investing officer shall estimate the service charge and adjust the interest rate based on this estimate. The service charge may be paid by direct charge to the deposit or other account or in any other manner mutually agreed upon by the investing officer and the depository. **A service charge may not**

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**be imposed on a political subdivision for the purchase of a United States Treasury Note.**

SECTION 7. IC 5-13-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. An officer designated in section 1 of this chapter may not do the following:

- (1) Purchase securities on margin.
- (2) Open a securities margin account for the investment of public funds.
- (3) Invest more than fifty percent (50%) of the unit of government's total public funds that are invested at any point in time in nonfederally insured deposit accounts under this chapter.**

SECTION 8. IC 5-13-9-10, AS AMENDED BY P.L.3-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The investing officers of two (2) or more political subdivisions located within a county may establish a joint investment fund by entering into a written master agreement that defines the rights and obligations of the participating political subdivisions.

(b) An investing officer of a political subdivision that enters into a written master agreement under subsection (a) may pay funds that are held by the investing officer and that are available for investment into the joint investment fund.

(c) The fund shall be administered by a board, which must be comprised of the investing officer of each of the participating political subdivisions and which must be an instrumentality of the participating political subdivisions. Each officer of a political subdivision located within the county who is designated in section 1 of this chapter may pay funds that are held by the officer and available for investment into a joint fund known as a joint investment fund. The fund is administered by a board comprised of the investing officer of each of the participating political subdivisions and is an instrumentality of the participating political subdivisions.

(d) A joint investment fund must be invested and reinvested as a separate and individual fund. **A joint investment fund may be invested or reinvested only in investments that are permitted for political subdivisions by this chapter.**

(e) A written master agreement under subsection (a) must provide the following:

- (1) A political subdivision may participate in a joint investment fund only with the written authorization of its local board of finance.

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- (2) A political subdivision may participate in a joint investment fund only if its legislative body approves the written master agreement.
- (3) The board of a joint investment fund shall establish written policies for the investment and reinvestment of joint investment funds in the manner provided by IC 30-4-3-3.
- (4) A fund shall be invested and reinvested as prescribed in subdivision (3).
- (5) A custodian bank or trust company located in Indiana must:
  - (A) be selected and contracted by the board of a joint investment fund to hold the securities and other investments of the joint investment fund;
  - (B) collect the income and other receipts from the securities and other investments; and
  - (C) provide any other services appropriate and customary for a custodian;subject to the direction of the board of a joint investment fund.
- (6) The board of a joint investment fund may select and contract with a fund administrator to provide investment advice to the board and any other services determined by the board to be appropriate and necessary for the efficient administration and accounting of the joint investment fund. The fund administrator shall agree to recommend only securities and other investments as prescribed in the written policies established by the board in rendering investment advice to the board and shall agree to be responsible, accountable, and liable for any breach of this provision. The fund administrator must have experience in the investment of public funds for governmental entities and must be either of the following:
  - (A) A financial institution located in Indiana.
  - (B) Registered as an investment adviser with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended (15 U.S.C. 80a-9 et seq.), with public funds under management in the amount of at least one hundred million dollars (\$100,000,000).
- (7) A joint investment fund must be audited at least annually by an independent auditing firm, with a copy of the audit provided to each participating political subdivision.
- (8) The administrative expenses of a joint investment fund, including fees for the fund administrator, custodian, auditor, and other professional services, must be paid from the fund's interest earnings.

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(9) The interest earnings that exceed the administrative expenses of a joint investment fund must be credited to each political subdivision participating in the joint investment fund in a manner that equitably reflects the differing amounts and terms of the political subdivision's investment in the joint investment fund.

(10) Each participating political subdivision shall receive reports, including a daily transaction confirmation reflecting any activity in the political subdivision's account and monthly reports reflecting its investment activity in the joint investment fund and the performance and composition of the joint investment fund itself.

(11) The board of a joint investment fund shall meet at least annually to review the operation and performance of the joint investment fund, the custodian, the fund administrator, the auditor, and any other professional retained by the board.

(12) The board of a joint investment fund shall provide for any other policies that are necessary for the efficient administration and accounting of the joint investment fund and are consistent with the law governing the investment, management, deposit, and safekeeping of public funds of political subdivisions."

Page 6, between lines 16 and 17, begin a new paragraph and insert:  
"SECTION 11. IC 5-13-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The treasurer of state may not deposit aggregate funds in deposit accounts in any one (1) designated depository in an amount aggregating at any one (1) time more than:

**(1) the lesser of the following:**

**(A)** fifty percent (50%) of the combined capital, surplus, and undivided profits of that depository, as determined by its last published statement of condition filed with the treasurer of state; **or**

**(B)** the amount that would cause the total investments and deposit accounts of public funds in the designated depository to exceed one hundred percent (100%) of the balance in the public deposit insurance fund as of the end of the preceding calendar quarter, unless the depository securitizes the excess amount of the deposit with assets of the depository; **or**

**(2)** in the case of a federally chartered credit union, twenty percent (20%) of the total shares of the federally chartered credit union.

**(b)** A deposit that is not prohibited by subsection (a)(1)(B) when

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**the deposit is made in a depository remains legal even if a subsequent decrease in the balance in the public deposit insurance fund causes the investments and deposit accounts of public funds in the depository to exceed one hundred percent (100%) of the balance in the public deposit insurance fund.**

(c) Each depository shall file with the treasurer of state each periodic statement of condition required to be filed by it with its governmental supervisory body. If the state board for depositories finds that excess cash of the state is substantially more than that which had been anticipated, it may increase that maximum percentage in any depository, and the treasurer of the state may invest the additional funds in deposit accounts distributed among the depositories substantially in proportion to their respective capital, surplus, and undivided profits.

SECTION 12. IC 5-13-10.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17. Any public officer of the state that makes a deposit in any deposit or other account may be required to pay a service charge to the depository in which the funds are deposited, if the depository requires all customers to pay the charge for providing that service. If the total service charge cannot be computed before the investment, the investing officer of the state shall estimate the service charge and adjust the interest rate based on this estimate. The service charge may be paid by direct charge to the deposit or other account or in any other manner mutually agreed upon by the investing officer and the depository. **A service charge may not be imposed on the state for the purchase of a United States Treasury Note.**

SECTION 13. IC 5-13-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board for depositories consists of the governor, the treasurer of state, the auditor of state, the chairman of the commission for financial institutions, the chief examiner of the state board of accounts, and four (4) members appointed by the governor all of whom must be residents of Indiana and have had substantial expertise in commercial **bank management and** lending with depositories. No more than two (2) of the four (4) appointees may identify with the same political party. **For appointments after June 30, 2010, all four (4) appointees must be a chief executive officer or a chief financial officer of a depository at the time of the appointment. In making these appointments, the governor shall provide for geographic representation of all regions of Indiana, including both urban and rural communities. In addition, the appointees must, at the time of the appointment, be**

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employed by the following depositories:

- (1) **One (1) must be employed by a depository that has total assets of less than five hundred million dollars (\$500,000,000).**
- (2) **One (1) must be employed by a depository that has total assets of less than one billion dollars (\$1,000,000,000).**
- (3) **One (1) must be employed by a depository that has total assets of at least one billion dollars (\$1,000,000,000) but less than five billion dollars (\$5,000,000,000).**
- (4) **One (1) must be employed by a depository that has total assets of at least five billion dollars (\$5,000,000,000).**

**Total assets shall be determined using the depository's most recent statement of condition.** The terms of the appointed members ~~extend for are~~ **four (4) year periods: years from the effective date of the member's appointment.** Each appointed member holds office for the term of this appointment. ~~and serves after the expiration of that appointment until the member's successor is appointed and qualified:~~ **An appointed member may be reappointed if the individual satisfies the requirements of this subsection at the time of the reappointment.** Any appointed member may be removed from office by, and at the pleasure of, the governor.

(b) The officers of the board consist of a chairman, a secretary-investment manager, a vice chairman, and other officers the board determines to be necessary. The governor shall name a member of the board to serve as its chairman. The treasurer of state shall serve as the secretary-investment manager of the board. The board, by majority vote, shall elect the other officers. Officers, except the secretary-investment manager, shall be named or elected for one (1) year terms in January of each year. The members and officers of the board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

(c) Five (5) members of the board constitute a quorum for the transaction of business, and all actions of the board must be approved by at least ~~five (5)~~ **a simple majority of those members voting on each individual business issue.** The board may adopt, amend, or repeal bylaws and rules for the conduct of its meetings and the number and times of its meetings, and shall **hold a regular meeting at least once each calendar quarter, and may hold other** regular and special meetings as prescribed in its rules. All meetings of the board are open to the public under IC 5-14-1.5. All records of the board are subject to public inspection under IC 5-14-3.

(d) ~~Ten (10)~~ **Two (2)** days notice of the time and place of all

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meetings to determine and fix the assessment rate to be paid by depositories on account of insurance on public funds or the establishment or redetermination of the reserve for losses of the insurance fund shall be given by one (1) publication in a newspaper of general circulation printed and published in the city of Indianapolis. The time, place, notice, and waiver requirements for the members of the board for all meetings shall be determined by its rules. The secretary-investment manager of the board shall enter its proceedings at length in a record provided for that purpose, and the records of the proceedings shall be approved and signed respectively by the chairman or vice chairman and attested by the secretary-investment manager.

SECTION 14. IC 5-13-12-4, AS AMENDED BY P.L.146-2008, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) The secretary-investment manager shall administer, manage, and direct the affairs and activities of the board under the policies and under the control and direction of the board. In carrying out these duties, the secretary-investment manager has the power to do the following:

(1) Approve all accounts for salaries and allowable expenses of the board, including, but not limited to:

(A) the employment of general or special attorneys, consultants, and employees and agents as may be necessary to assist the secretary-investment manager in carrying out the duties of that office and to assist the board in its consideration of applications for a guarantee of an industrial development obligation or credit enhancement obligation guarantee; and

(B) the setting of compensation of persons employed under clause (A).

(2) Approve all expenses incidental to the operation of the public deposit insurance fund.

(3) Perform other duties and functions that may be delegated to the secretary-investment manager by the board or that are necessary to carry out the duties of the secretary-investment manager under this chapter.

(b) The secretary-investment manager shall keep a record of the proceedings of the board, and shall maintain and be custodian of all books, documents, and papers filed with the board, and its official seal. The secretary-investment manager may make copies of all minutes and other records and documents of the board, and may give certificates under seal of the board to the effect that the copies are true copies. All persons dealing with the board may rely upon the certificates.

(c) Each year, beginning in 2001 and ending in 2021, after the

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treasurer of state prepares the annual report required by IC 4-8.1-2-14, the secretary-investment manager shall determine:

(1) the amount of interest earned by the public deposit insurance fund during the state fiscal year ending on the preceding June 30, after deducting:

(A) all expenses and other costs of the board for depositories that were not paid from other sources during that state fiscal year; and

(B) all expenses and other costs associated with the Indiana education savings authority that were not paid from other sources during that state fiscal year; and

(2) the amount of interest earned during the state fiscal year ending on the preceding June 30 by the pension distribution fund established by subsection ~~(g)~~: **(e)**.

~~(d)~~ On or before November 1 of each year, beginning in 2001 and ending in 2021, the public employees' retirement fund shall provide a report to the secretary-investment manager concerning the individual and aggregate payments made by all units of local government (as defined in IC 5-10.3-11-3) during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

~~(e)~~ On or before the last business day of November of each year, beginning in 2001 and ending in 2021, the secretary-investment manager shall compute the amount of earned interest to be distributed under this section to each unit of local government (as defined in IC 5-10.3-11-3) in accordance with subsection ~~(h)~~ according to the following formula:

STEP ONE: Add the amount determined under subsection ~~(c)~~(1) to the amount determined under subsection ~~(c)~~(2):

STEP TWO: Divide the STEP ONE sum by the aggregate amount of payments made by all units of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection ~~(d)~~:

STEP THREE: Multiply the STEP TWO quotient by the amount of payments made by each unit of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection ~~(d)~~:

~~(f)~~ **(d)** Subject to subsection ~~(j)~~; **(g)**, on or before the last business day of December of each year, beginning in 2001 and ending in 2021, the secretary-investment manager shall provide to the auditor of state

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- ~~(1)~~ a report setting forth the amounts to be distributed to units of local government; as determined under subsection ~~(e)~~; and
- ~~(2)~~ a check payable from the public deposit insurance fund to the pension distribution fund established by subsection ~~(g)~~ **(e)** in an amount equal to the amount determined under subsection ~~(c)~~~~(1)~~.
- (c).**

~~(g)~~ **(e)** The pension distribution fund is established. The pension distribution fund shall be administered by the treasurer of state. The treasurer of state shall invest money in the pension distribution fund not currently needed to meet the obligations of the pension distribution fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the pension distribution fund. Money in the pension distribution fund at the end of a state fiscal year does not revert to the state general fund.

~~(h)~~ **(f)** Subject to subsection ~~(j)~~; **(g)**, on June 30 and October 1 of each year, beginning in 2002 and ending in 2022, the auditor of state shall distribute in two (2) equal installments from the pension distribution fund to the fiscal officer of each unit of local government identified under subsection ~~(d)~~ the amount computed for that unit under subsection ~~(e)~~ in November of the preceding year.

**(i)** Each unit of local government shall deposit distributions received under subsection ~~(h)~~ in the pension fund or funds identified by the secretary-investment manager and shall use those distributions to pay a portion of the obligations with respect to the pension fund or funds: **public employees' retirement fund for the benefit of the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5 the amount deposited in the pension relief fund in December of the preceding year under subsection (d).**

~~(j)~~ **(g)** Before providing a check to the auditor of state under subsection ~~(f)~~~~(2)~~ **(d)** in December of any year, the secretary-investment manager shall determine:

- (1) the total amount of payments made from the public deposit insurance fund under IC 5-13-13-3 after June 30, 2001;
- (2) the total amount of payments received by the board for depositories and deposited in the public deposit insurance fund under IC 5-13-13-3 after June 30, 2001; and
- (3) the total amount of interest earned by the public deposit insurance fund after the first of the payments described in subdivision (1).

If the total amount of payments determined under subdivision (1) less the total amount of payments determined under subdivision (2) (referred to in this subsection as the "net draw on the fund") exceeds

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ten million dollars (\$10,000,000) and also exceeds the total amount of interest determined under subdivision (3), the secretary-investment manager may not provide a check to the auditor of state under subsection ~~(f)(2)~~ **(d)** and a distribution may not be made from the pension distribution fund under subsection ~~(f)~~ **(f)** in the following calendar year until the total amount of interest earned by the public deposit insurance fund equals the net draw on the fund. A check may not be provided under subsection ~~(f)(2)~~ **(d)** and a distribution may not be made under subsection ~~(f)~~ **(d)** in any subsequent calendar year if a study conducted by the board under section 7(b) of this chapter demonstrates that payment of the distribution would reduce the balance of the public deposit insurance fund to a level insufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.

SECTION 15. IC 5-13-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Subject to the limitations prescribed in this chapter, the board for depositories may fix the assessment rate to provide assets in the fund sufficient to equal the reserve for losses of the fund for the insurance of public funds on deposit in depositories. Effective on July 1, and January 1, of each year, **and from time to time as the board determines necessary**, the board shall determine and fix the fair and reasonable assessment rate for each classification of deposit, if any, to be used by depositories in determining the assessments payable during the succeeding six (6) month period. This determination shall be made by the board before or as soon as practicable after the applicable July 1, ~~or~~ January 1, **or other date established by the board**. In fixing the rate, if any, the board shall consider the amount of public funds currently on deposit, the liabilities of the insurance fund, contingent and accrued, and the determination of the board on the amount of the reserve for losses of the insurance fund as set out in section 7(b) of this chapter. For any six (6) month period the maximum assessment rate that may be fixed by the board is two percent (2%). The board may lower or waive the assessment on any or all classifications of deposit if in its discretion it determines that a lower rate or waiver will not prevent the fund from attaining sufficient assets to equal the reserve for losses. **Subject to the board's power to implement an assessment at any time by action by the board**, if, at the beginning of any six (6) month period, no action has been taken by the board for depositories fixing the assessment rate, if any, on public funds for the succeeding six (6) month period, the assessment rate is the same rate, if any, in effect during the preceding six (6) month period. Whenever as of July 1, or

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January 1, the value of the assets in the fund equals or exceeds the reserve for losses, the board shall eliminate the assessment requirement for the succeeding six (6) month period for each classification of deposit.

(b) During any period when an assessment rate is in effect, the assessment base for each depository of public funds shall be determined monthly. The assessment base must be equal to the sum total of all the minimum balances of each classification of public funds on deposit in each and all accounts during the month, the minimum balance of each account being taken respectively as of the date on which it occurs. On or before the second day of each month in which an assessment rate is in effect, each depository shall compute the amount of the assessment due from it to the insurance fund on account of public funds on deposit with it during the preceding month. The amount of the monthly assessment, if any, is the product obtained by multiplying one-twelfth (1/12) times the assessment base for the month for which the assessment is being computed.

(c) During the time the assessment rate on public funds has been waived or eliminated by the board for depositories, the respective depositories are not obligated to pay any assessment but shall continue to prepare and file the reports that would otherwise be required to be prepared and filed under this chapter.

SECTION 16. IC 5-13-12-7, AS AMENDED BY P.L.1-2006, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The board for depositories shall manage and operate the insurance fund. All expenses incident to the administration of the fund shall be paid out of the money accumulated in it subject to the direction of the board for depositories.

(b) Effective January 1 and July 1 in each year, the board shall before those dates redetermine the amount of the reserve to be maintained by the insurance fund. The establishment or any change in the reserve for losses shall be determined by the board based on **information the board considers, including but not limited to capital adequacy, liquidity, and asset quality,** and a study to be made or updated by actuaries, economists, or other consultants based on the history of losses, earnings on the funds, conditions of the depositories, economic conditions affecting particular depositories or depositories in general, and any other factors that the board considers relevant in making its determination. The reserve determined by the board must be sufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.

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(c) At the end of each biennial period during which depositories have had public funds on deposit under this chapter and paid the assessments levied by the board, the board shall compute its receipts from assessments and all other sources and its expenses and losses and determine the profit derived from the operation of the fund for the period. Until the amount of the reserve for losses has been accumulated, all assessments levied for a biennial period shall be retained by the fund. The amount of the assessments, if any, levied by the board shall, to the extent the fund exceeds the reserve for losses at the end of a biennial period commencing July 1 of each odd-numbered year, be distributed to the depositories that had public funds on deposit during the biennial period in which the assessments were paid. The distribution shall be made to the respective depositories in the proportion that the total assessments paid by each depository during that period bears to the total assessments then paid by all depositories. A distribution to which any closed depository would otherwise be entitled shall be set off against any claim that the insurance fund may have against the closed depository.

(d) The board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in any of the following:

- (1) In bonds, notes, certificates, and other valid obligations of the United States, either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).
- (2) In bonds, notes, debentures, and other securities issued by a federal agency or a federal instrumentality and fully guaranteed by the United States either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).
- (3) In bonds, notes, certificates, and other valid obligations of a state or of an Indiana political subdivision that are issued under law, the issuers of which, for five (5) years before the date of the investment, have promptly paid the principal and interest on their bonds and other legal obligations.
- (4) In bonds or other obligations of the Indiana finance authority issued under IC 4-13.5.
- (5) In investments permitted the state under IC 5-13-10.5.

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(6) In guarantees of industrial development obligations or credit enhancement obligations, or both, for the purposes of retaining and increasing employment in enterprises in Indiana, subject to the limitations and conditions set out in this subdivision, subsection (e), and section 8 of this chapter. An individual guarantee of the board under this subdivision must not exceed eight million dollars (\$8,000,000).

(7) In guarantees of bonds or notes issued under IC 5-1.5-4-1, subject to the limitations and conditions set out in subsection (e) and section 8 of this chapter.

(8) In bonds, notes, or other valid obligations of the Indiana finance authority that have been issued in conjunction with the authority's acquisition, development, or improvement of property or other interests for an industrial development project (as defined in IC 4-4-10.9-11) that the authority has undertaken for the purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(9) In notes or other debt obligations of counties, cities, and towns that have been issued under IC 6-1.1-39 for borrowings from the industrial development fund under IC 5-28-9 for purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(10) In bonds or other obligations of the Indiana housing and community development authority.

(e) The investment authority of the board under subsection (d) is subject to the following limitations:

(1) For investments under subsection (d)(1) and (d)(2), the portfolio of an open-end no-load management-type investment company or investment trust must be limited to:

(A) direct obligations of the United States and obligations of a federal agency or a federal instrumentality that are fully guaranteed by the United States; and

(B) repurchase agreements fully collateralized by obligations described in clause (A), of which the company or trust takes delivery either directly or through an authorized custodian.

(2) Total outstanding investments in guarantees of industrial development obligations and credit enhancement obligations under subsection (d)(6) must not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) fourteen million dollars (\$14,000,000).

(3) Total outstanding investments in guarantees of bond bank

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obligations under subsection (d)(7) must not exceed the greater of:

- (A) twenty percent (20%) of the available balance of the insurance fund; or
  - (B) twenty-four million dollars (\$24,000,000).
- (4) Total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority under subsection (d)(8) may not exceed the greater of:

- (A) fifteen percent (15%) of the available balance of the insurance fund; or
- (B) twenty million dollars (\$20,000,000).

However, after June 30, 1988, the board may not make any additional investment in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11, and the board may invest an amount equal to the remainder, if any, of:

- (i) fifteen percent (15%) of the available balance of the insurance fund; minus
- (ii) the board's total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11;

in guarantees of industrial development obligations or credit enhancement obligations, or both, as authorized by subsection (d)(6). In such a case, the outstanding investments, as authorized by subsection (d)(6) and (d)(8), may not exceed in total the greater of twenty-five percent (25%) of the available balance of the insurance fund or thirty-four million dollars (\$34,000,000).

(5) Total outstanding investments in notes or other debt obligations of counties, cities, and towns under subsection (d)(9) may not exceed the greater of:

- (A) ten percent (10%) of the available balance of the insurance fund; or
- (B) twelve million dollars (\$12,000,000).

(f) For purposes of subsection (e), the available balance of the insurance fund does not include the outstanding principal amount of any fund investment in a corporate note or obligation or the part of the fund that has been established as a reserve for losses.

(g) Except as provided in section 4 of this chapter, all interest and other income earned on investments of the insurance fund and all amounts collected by the board accrue to the fund.

(h) Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of any investment in any of the obligations listed in subsection (d).

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(i) The board shall, when directed by the state board of finance constituted by IC 4-9.1-1-1, purchase the loan made by the state board of finance under IC 4-10-18-10(i). The loan shall be purchased by the board at a purchase price equal to the total of:

- (1) the principal amount of the loan;
- (2) the deferred interest payable on the loan; and
- (3) accrued interest to the date of purchase by the board.

Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of the purchase of the loan under this subsection.

SECTION 17. IC 5-13-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Whenever the assets in the insurance fund are not sufficient to pay the claims of any kind that have been finally determined and have become payable, the board for depositories shall issue anticipatory warrants for the purpose of raising money for the immediate payment of the claims. The warrants outstanding and unpaid must not at any time exceed the sum of ~~one million five hundred thousand dollars (\$1,500,000)~~: **three hundred million dollars (\$300,000,000)**. Interest may be paid upon the warrants from the date the rate was established by the board for depositories. Interest is payable at the end of each year or for a shorter period as the warrants remain unpaid.

(b) The warrants are the obligation of the board for depositories payable out of the public deposit insurance fund only and do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. Each warrant must have printed on its face the words, "This warrant is an obligation of the board for depositories payable solely out of the public deposits insurance fund, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal, the interest, or any other amount owed on the warrants."

(c) Subject to the limitations in subsections (a) through (b), the warrants shall be issued in the individual and gross amounts and in the form and at the rate of interest approved by the board for depositories.

SECTION 18. IC 5-13-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) At any time when the board for depositories determines that the assets of the insurance fund are insufficient to pay its liabilities, accrued or contingent, or determines that the assessments due or to become due will not be sufficient to maintain the insurance fund in a solvent condition and insure the safekeeping and prompt payment of public funds, the board may enter an order requiring **any or** all then

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constituted depositories to substitute other security **in the amount and type, as determined by the board from time to time**, to secure the safekeeping and prompt payment of public funds.

(b) The board may require **any or** all then constituted depositories to deliver and pledge to the proper local board of finance or to the state board of finance, under the conditions for joint control of the collateral by the depositories as may be approved by the board for depositories, bonds or other obligations ~~of like character as those in which that~~ the board is authorized to invest the excess funds of the insurance fund under ~~IC 5-13-12-7(d)~~: **determines are acceptable collateral**. The market value of these securities, at the time of delivery, must ~~equal be~~ **an amount determined by the board, which may not exceed** the amount of public funds then on deposit with the respective depositories. The board may require depositories to pledge acceptable securities to such an extent that the market value of the pledge will at all times be substantially equal to the amount of public funds on deposit in the respective depositories.

(c) Whenever an order is in force and the amount of public funds on deposit is at least ten percent (10%) less than the market value of securities pledged to secure the payment, **as required by the board**, the depository may withdraw the excess amount of pledged collateral.

(d) Any order of the board for depositories ~~applies equally to all depositories and~~ becomes effective within the time fixed by the board. However, the time of effectiveness must not be earlier than thirty (30) days from the date of entry of the order by the board. The order continues in force until rescinded by the board. Upon the entry of any order by the board for depositories, all then constituted depositories **affected by the order** shall comply with the order. Upon compliance, and full payment of all its liabilities by the insurance fund, depositories are not required to pay any further assessments for insurance under this chapter until the order requiring collateral has been revoked or rescinded and the collateral returned to the respective depositories."

Page 6, line 28, after "IC 24-4.5-1-106." insert "**The term does not include:**

- (1) **small loans as defined in IC 24-4.5-7-104; or**
- (2) **the:**
  - (A) **offering of a credit card by a financial institution to the financial institution's customers if the financial institution is not the card issuer (as defined in 15 U.S.C. 1602(n)), other than as an agent of the card issuer; or**
  - (B) **issuing of a credit card to a person that is not a resident of Indiana;**

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**regardless of whether the finance charge that applies to the credit card offered or issued exceeds the limits on loan finance charges for supervised loans specified in IC 24-4.5-3-508, as adjusted in accordance with IC 24-4.5-1-106."**

Page 6, line 31, delete "hearing" and insert "**the evidence**".

Page 6, line 32, delete "for a hearing scheduled not" and insert ".".

Page 6, delete line 33.

Page 6, line 34, delete "mailed."

Page 6, line 34, delete "of hearing".

Page 6, delete line 35.

Page 6, line 36, delete "(2)" and insert "(1)".

Page 6, between lines 36 and 37, begin a new line block indented and insert:

**"(2) describe the department's evidence that the lender meets the definition of an aggressive lender;"**

Page 6, between lines 41 and 42, begin a new line blocked left and insert:

**"If a lender disputes its designation as an aggressive lender under this section, the lender may, within twenty (20) days of the date of the notice, request a hearing on the determination. If a hearing is requested, the department shall schedule the hearing not earlier than twenty (20) days after the date of the request. If no hearing is requested, the department's determination that the lender is an aggressive lender is final."**

Page 6, line 42, delete "the hearing" and insert "**any hearing requested by a lender under subsection (d)**".

Page 7, line 30, delete "IC 5-10.2-11-14" and insert "**IC 5-10.2-11-11**".

Page 7, after line 32, begin a new paragraph and insert:

**"SECTION 19. An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1336 as introduced.)

RIECKEN, Acting Chairperson

Committee Vote: yeas 7, nays 4.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1336 be amended to read as follows:

Page 2, line 4, delete "(a)".

Page 2, delete lines 7 through 12.

Page 2, between lines 15 and 16, begin a new paragraph and insert:

**"Sec. 6. As used in this chapter, "indirect holdings" means all securities of a company that are:**

**(1) held in an account or a fund in which the fund owns shares or interests together with other investors not subject to this chapter; and**

**(2) managed by one (1) or more persons who are not employed by the fund.**

**Sec. 7. As used in this chapter, "private market fund" means any:**

**(1) private equity fund;**

**(2) private equity fund of funds;**

**(3) venture capital fund;**

**(4) hedge fund;**

**(5) hedge fund of funds;**

**(6) real estate fund; or**

**(7) investment vehicle;**

**that is not publicly traded."**

Page 2, line 16, delete "6." and insert "8."

Page 2, line 21, delete "7. (a) If" and insert **"9. (a) Except as provided in section 11 of this chapter, if"**.

Page 2, line 41, delete "ten percent (10%)" and insert **"five percent (5%)"**.

Page 2, line 42, after "lender." insert **"A board is not required to divest the board's direct holdings in an aggressive lender according to the schedule set forth in subsection (a) if the divestment would cause brokerage liquidation costs to exceed five-tenths percent (0.5%) of the value of the direct holding. This determination shall be made by an advisory board comprised of the treasurer of state, the director of the department of financial institutions, the director of the public employees' retirement fund, and the director of the teachers' retirement fund. The treasurer of state shall serve as chairperson of this advisory board. The chairperson shall hold a public meeting at which the members of the advisory board shall vote on whether the divestment would cause brokerage liquidation costs to exceed five-tenths percent (0.5%) of the value of the direct holding if the divestment were to occur according to the schedule**

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set forth in subsection (a). If the advisory board determines that it will create such a negative financial impact, the board shall establish an alternate divestment schedule that permits an orderly divestment of the board's direct holdings in an aggressive lender. **The alternative schedule may not exceed ten (10) years."**

Page 3, line 3, delete "9" and insert "12".

Page 3, line 5, delete "8. A" and insert "**10. Except as provided in section 11, a**".

Page 3, between lines 6 and 7, begin a new paragraph and insert:

**"Sec. 11. Notwithstanding any provision to the contrary, sections 9 and 10 of this chapter do not apply to indirect holdings in:**

- (1) a private market fund; or**
- (2) an actively managed investment fund;**

**that includes a lender on the aggressive lender list."**

Page 3, line 7, delete "9." and insert "**12."**

Page 3, line 20, delete "7(a)" and insert "**9(a)"**."

Page 3, line 22, delete "7(b)" and insert "**9(b)"**."

Page 3, line 25, delete "10." and insert "**13."**

Page 3, line 30, delete "11." and insert "**14."**

Page 11, line 21, after "funds." insert "**In addition, any reallocation of public funds due to a withdrawal from an aggressive lender is to be done in a secure and prudent manner, as directed by the treasurer of state, in consultation with the director of the department of financial institutions."**

Page 25, line 2, after "IC 24-4.5-1-106." insert "**For purposes of this subsection, permissible additional charges in the amounts set forth in IC 24-4.5-3-202, plus a transaction fee on a cash advance that may not exceed a total of four (4%), and any portion of a penalty interest rate that pertains to balances on accounts that are more than sixty-five (65) days delinquent may not be considered in calculating whether a lender is exceeding the limits on loan finance charges for supervised loans. However, any interest rate or fee attributable to a universal default provision must be considered in calculating whether a lender is exceeding the limits on loan finance charges for supervised loans."**

Page 26, between lines 20 and 21, begin a new paragraph and insert:

**"SECTION 20. IC 28-1-15-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Before the last day in January and before the last day in July, every financial institution that had public funds on deposit under IC 5-13 during the preceding six (6) months shall file with the department a certified report under oath showing for each**

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of the preceding six (6) months the amount of public funds on deposit on the last day of each month. The state board of accounts, with the approval of the attorney general, shall prepare and prescribe the forms of the report required by this section.

(b) The department shall review the report of each financial institution that is submitted under this section and the statement of condition of the financial institution and compare public deposits and risks in relation to the financial institution's statement of condition. If the department determines that there is a concern regarding the safety of public deposits and the financial institution's soundness, the concern shall be communicated to the treasurer of state."

Renumber all SECTIONS consecutively.

(Reference is to HB 1336 as printed January 29, 2010.)

GRUBB

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1336 be amended to read as follows:

Page 4, delete lines 3 through 42.

Page 5, delete lines 1 through 40.

Page 12, line 26, after "than" delete ":" and insert "**the lesser of:**".

Page 12, delete line 27.

Page 12, line 28, delete "(A)", begin a new line block indented and insert:

"(1)".

Page 12, line 32, delete "(B)", begin a new line block indented and insert:

"(2)".

Page 12, line 38, delete "; or" and insert ".".

Page 12, delete line 39 through 41.

Page 12, line 42, delete "(a)(1)(B)" and insert "(a)(2)".

Renumber all SECTIONS consecutively.

(Reference is to HB 1336 as printed January 29, 2010.)

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