

House Engrossed

divestment; K-12; abortion; explicit material

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

# HOUSE BILL 2637

AN ACT

AMENDING SECTIONS 35-323 AND 35-392, ARIZONA REVISED STATUTES; RELATING TO  
THE DIVESTMENT OF STATE MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section. 1. Section 35-323, Arizona Revised Statutes, is amended to  
3 read:

4 35-323. Investment of public monies; bidding; security and  
5 other requirements

6 A. The treasurer shall invest and reinvest public monies in  
7 securities and deposits with a maximum maturity of five years. All public  
8 monies shall be invested in eligible investments. Eligible investments  
9 are:

10 1. Certificates of deposit in eligible depositories.

11 2. Deposits in one or more federally insured banks or savings and  
12 loan associations placed in accordance with the procedures prescribed in  
13 section 35-323.01.

14 3. ~~Interest-bearing~~ INTEREST-BEARING savings accounts in banks and  
15 savings and loan institutions doing business in this state whose accounts  
16 are insured by federal deposit insurance for their industry, but only if  
17 deposits of more than the insured amount are secured by the eligible  
18 depository to the same extent and in the same manner as required under  
19 this article.

20 4. Repurchase agreements with a maximum maturity of one hundred  
21 eighty days.

22 5. The pooled investment funds established by the state treasurer  
23 pursuant to section 35-326.

24 6. Obligations issued or guaranteed by the United States or any of  
25 the senior debt of its agencies, sponsored agencies, corporations,  
26 sponsored corporations or instrumentalities.

27 7. Bonds, notes or other evidences of indebtedness of this state or  
28 any of its counties, incorporated cities or towns, school districts or  
29 special taxing districts, including registered warrants, substitute  
30 checks, and electronic funds transfer vouchers that bear interest pursuant  
31 to section 11-635.

32 8. Bonds, notes or evidences of indebtedness of any county,  
33 municipal district, municipal utility or special taxing district of any  
34 state that are payable from revenues, earnings or a special tax  
35 specifically pledged for the payment of the principal of and interest on  
36 the obligations, and for the payment of which a lawful sinking fund or  
37 reserve fund has been established and is being maintained, but only if a  
38 default in payment on principal or interest on the obligations to be  
39 purchased has not occurred within five years after the date of investment,  
40 or, if such obligations were issued ~~less~~ FEWER than five years before the  
41 date of investment, a default in payment of principal or interest has not  
42 occurred on the obligations to be purchased or any other obligations of  
43 the issuer within five years after the investment.

1           9. Bonds, notes or evidences of indebtedness issued by any county  
2 improvement district or municipal improvement district of any state to  
3 finance local improvements authorized by law, if the principal and  
4 interest of the obligations are payable from assessments on real property  
5 within the improvement district. An investment shall not be made if:

6           (a) The face value of all such obligations, and similar obligations  
7 outstanding, exceeds fifty percent of the market value of the real  
8 property, and if improvements on which the bonds or the assessments for  
9 the payment of principal ~~OF~~ and interest on the bonds are liens inferior  
10 only to the liens for general ad valorem taxes.

11           (b) A default in payment of principal ~~OF~~ or interest on the  
12 obligations to be purchased has occurred within five years after the date  
13 of investment, or, if the obligations were issued ~~less~~ FEWER than five  
14 years before the date of investment, a default in the payment of principal  
15 or interest has occurred on the obligations to be purchased or on any  
16 other obligation of the issuer within five years after the investment.

17           10. Commercial paper of prime quality that is rated within the top  
18 two ratings by a nationally recognized rating agency. All commercial  
19 paper must be issued by corporations organized and doing business in the  
20 United States.

21           11. Bonds, debentures, notes or other evidences of indebtedness  
22 that are denominated in United States dollars and that carry at a minimum  
23 an "A" or better rating, at the time of purchase, from at least two  
24 nationally recognized rating agencies.

25           12. Negotiable or brokered certificates of deposit issued by a  
26 nationally or state-chartered bank or savings and loan association.

27           13. Securities of or any other interests in any open-end or  
28 closed-end management type investment company or investment trust,  
29 including exchange traded funds whose underlying investments are invested  
30 in securities allowed by state law, registered under the investment  
31 company act of 1940 (54 Stat. 789; 15 United States Code sections 80a-1  
32 through 80a-64), as amended.

33           B. Certificates of deposit shall be purchased from the eligible  
34 depository bidding the highest permissible rate of interest. Monies over  
35 \$100,000 may not be awarded at any interest rate less than one hundred  
36 three percent of the equivalent bond yield of the offer side of United  
37 States treasury bills having a similar term. If the eligible depository  
38 offering to pay the highest rate of interest has bid only for a portion of  
39 the monies to be awarded, the remainder of the monies shall be awarded to  
40 eligible depositories bidding the next highest rates of interest.

41           C. An eligible depository is not eligible to receive total  
42 aggregate deposits from this state and all its subdivisions in an amount  
43 exceeding twice its capital structure as outlined in the last call of  
44 condition of the deputy director of the financial institutions division of  
45 the department of insurance and financial institutions.

1           D. If two or more eligible depositories submit bids of an identical  
2 rate of interest for all or any portion of the monies to be deposited, the  
3 award of the deposit of the monies shall be made to the eligible  
4 depository among those submitting identical bids having, at the time of  
5 the bid opening, the lowest ratio of total public deposits in relation to  
6 its capital structure.

7           E. Each bid that is submitted and not withdrawn before the time  
8 specified constitutes an irrevocable offer to pay interest as specified in  
9 the bid on the deposit, or portion bid for, and the award of a deposit in  
10 accordance with this section obligates the depository to accept the  
11 deposit and pay interest as specified in the bid pursuant to which the  
12 deposit is awarded.

13           F. The treasurer shall maintain a record of all bids received and  
14 shall make available to the board of deposit at its next regularly  
15 scheduled meeting a correct list showing the bidders, the bids received  
16 and the amount awarded. These records shall be available to the public  
17 and shall be kept in the possession of the treasurer for at least two  
18 years after the date of the report.

19           G. Any eligible depository, before receiving a deposit of more than  
20 the insured amount under this article, shall deliver collateral for the  
21 purposes of this subsection equal to at least one hundred two percent of  
22 the deposit. The collateral shall be any of the following:

23           1. A bond executed by a surety company that is approved by the  
24 treasury department of the United States and authorized to do business in  
25 this state. The bond shall be approved as to form by the legal advisor of  
26 the treasurer.

27           2. Securities or instruments of the following character:

28           (a) United States government or agency obligations.

29           (b) State, county, school district and other district municipal  
30 bonds.

31           3. The safekeeping receipt of a federal reserve bank or any bank  
32 located in a reserve city, or any bank authorized to do business in this  
33 state, whose combined capital, surplus and outstanding capital notes and  
34 debentures on the date of the safekeeping receipt are \$10,000,000 or more,  
35 evidencing the deposit therein of any securities or instruments described  
36 in this section. A safekeeping receipt shall not qualify as security, if  
37 issued by a bank to secure its own public deposits, unless issued directly  
38 through its trust department. The safekeeping receipt shall show on its  
39 face that it is issued for the account of the treasurer and shall be  
40 delivered to the treasurer. The safekeeping receipt may provide for the  
41 substitution of securities or instruments that qualify under this section  
42 with the affirmative act of the treasurer.

1           4. Letters of credit issued by a federal home loan bank if:

2           (a) The letter of credit has been delivered pursuant to this  
3 section or chapter 10, article 1 of this title to the statewide collateral  
4 pool administrator.

5           (b) The letter of credit meets the required conditions of:

6           (i) Being irrevocable.

7           (ii) Being issued, presentable and payable at a federal home loan  
8 bank in United States dollars. Presentation may be made by the  
9 beneficiary submitting the original letter of credit, including any  
10 amendments, and the demand in writing, by overnight delivery.

11           (iii) If the letter of credit is for purposes of chapter 10,  
12 article 1 of this title, containing a statement that identifies the  
13 statewide collateral pool administrator as the beneficiary.

14           (iv) Containing an issue date and a date of expiration.

15           (c) For the purposes of chapter 10, article 1 of this title, the  
16 eligible depository, if notified by the statewide collateral pool  
17 administrator, is not allowed to use new letters of credit issued by a  
18 federal home loan bank if that federal home loan bank fails to pay a draw  
19 request as provided for in the letters of credit or fails to properly  
20 complete a confirmation of such letters of credit.

21           H. The securities, instruments or safekeeping receipt for the  
22 securities and instruments shall be accepted at market value if not above  
23 par, and, if at any time their market value becomes less than the deposit  
24 liability to that treasurer, additional securities or instruments required  
25 to guarantee deposits shall be deposited immediately with the treasurer  
26 who made the deposit and deposited by the eligible depository in which the  
27 deposit was made.

28           I. The condition of the surety bond, or the deposit of securities,  
29 instruments or a safekeeping receipt, must be such that the eligible  
30 depository will promptly pay to the parties entitled public monies in its  
31 custody, on lawful demand, and will, when required by law, pay the monies  
32 to the treasurer making the deposit.

33           J. Notwithstanding the requirements of this section, any  
34 institution qualifying as an eligible depository may accept deposits of  
35 public monies to the total then authorized insurance of accounts, insured  
36 by federal deposit insurance, without depositing a surety bond or  
37 securities in lieu of the surety bond.

38           K. An eligible depository shall report monthly to the treasurer the  
39 total deposits of that treasurer and the par value and the market value of  
40 any pledged collateral securing those deposits.

41           L. When a security or instrument pledged as collateral matures or  
42 is called for redemption, the cash received for the security or instrument  
43 shall be held in place of the security until the depository has obtained a  
44 written release or provided substitute securities or instruments.

1 M. The surety bond, securities, instruments or safekeeping receipt  
2 of an eligible depository shall be deposited with the treasurer making the  
3 deposit, and the treasurer is the custodian of the bond, securities,  
4 instruments or safekeeping receipt. The treasurer may then deposit with  
5 the depository public monies then in the treasurer's possession in  
6 accordance with this article, but not in an amount of more than the surety  
7 bond, securities, instruments or safekeeping receipt deposited, except for  
8 federal deposit insurance.

9 N. The following restrictions on investments apply:

10 1. Public operating fund monies shall not be invested for a  
11 maturity of longer than five years.

12 2. The board of deposit may order the treasurer to sell any of the  
13 securities, and any order shall specifically describe the securities and  
14 fix the date on which they are to be sold. Securities so ordered to be  
15 sold shall be sold for cash by the treasurer on the date fixed in the  
16 order, at the then-current market price. The treasurer and the members of  
17 the board are not accountable for any loss occasioned by sales of  
18 securities at prices lower than their cost. Any loss or expense shall be  
19 charged against earnings received from investment of public monies.

20 3. Investments shall not be made in companies identified pursuant  
21 to section 35-392, subsection ~~A~~ B, paragraph 1.

22 0. If the total amount of subdivision monies available for deposit  
23 at any time is less than the maximum coverage amount of the federal  
24 deposit insurance corporation, the subdivision board of deposit shall  
25 award the deposit of the monies to an eligible depository in accordance  
26 with an ordinance or resolution of the governing body of the subdivision.  
27 Deposits of less than the maximum coverage amount of the federal deposit  
28 insurance corporation are not subject to the requirements of this chapter.

29 Sec. 2. Heading change

30 The article heading of title 35, chapter 2, article 8, Arizona  
31 Revised Statutes, is changed from "TERRORISM COUNTRY DIVESTMENTS" to  
32 "STATE TREASURER AND RETIREMENT SYSTEM DIVESTMENTS".

33 Sec. 3. Section 35-392, Arizona Revised Statutes, is amended to  
34 read:

35 35-392. State treasurer and retirement system divestments;  
36 policy notices; definition

37 A. The state board of investment, the Arizona state retirement  
38 system board and the board of trustees of the public safety personnel  
39 retirement system shall each adopt a policy, and submit a copy of the  
40 policy to the president of the senate and the speaker of the house of  
41 representatives, regarding the countries identified as those countries  
42 currently designated by the United States department of state as state  
43 sponsors of terrorism. The policy shall include:

44 1. The procedure to identify United States companies that ~~are in~~  
45 ~~violation of~~ VIOLATE section 6(j) of the export administration act.

1           2. The process for communicating with the companies and appropriate  
2 federal officials, including this state's congressional delegation, in  
3 regard to its findings pursuant to this section.

4           3. The process for divestment from the companies that are  
5 identified pursuant to paragraph 1 OF THIS SUBSECTION.

6           B. THE STATE BOARD OF INVESTMENT SHALL ADOPT A POLICY, AND SUBMIT A  
7 COPY OF THE POLICY TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE  
8 HOUSE OF REPRESENTATIVES, REGARDING COMPANIES THAT DONATE TO OR INVEST IN  
9 ORGANIZATIONS THAT PROMOTE, FACILITATE OR ADVOCATE FOR ABORTIONS FOR  
10 MINORS OR FOR THE INCLUSION OF, OR THE REFERRAL OF STUDENTS TO, SEXUALLY  
11 EXPLICIT MATERIAL IN KINDERGARTEN PROGRAMS OR ANY OF GRADES ONE THROUGH  
12 TWELVE. THE POLICY SHALL INCLUDE:

13           1. THE PROCEDURE TO IDENTIFY UNITED STATES COMPANIES THAT DO ANY OF  
14 THE FOLLOWING:

15           (a) DONATE TO OR INVEST IN ORGANIZATIONS THAT PROMOTE, FACILITATE  
16 OR ADVOCATE FOR ABORTIONS FOR MINORS.

17           (b) DONATE TO OR INVEST IN ORGANIZATIONS THAT PROMOTE, FACILITATE  
18 OR ADVOCATE FOR THE INCLUSION OF, OR THE REFERRAL OF STUDENTS TO, SEXUALLY  
19 EXPLICIT MATERIAL IN KINDERGARTEN PROGRAMS OR ANY OF GRADES ONE THROUGH  
20 TWELVE.

21           2. A PROCESS FOR COMMUNICATING WITH THE COMPANIES AND APPROPRIATE  
22 FEDERAL OFFICIALS, INCLUDING THIS STATE'S CONGRESSIONAL DELEGATION, IN  
23 REGARD TO ITS FINDINGS PURSUANT TO THIS SECTION.

24           3. A PROCESS FOR DIVESTMENT FROM THE COMPANIES THAT ARE IDENTIFIED  
25 PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION.

26           ~~B.~~ C. The state treasurer, the Arizona state retirement system  
27 board and the board of trustees of the public safety personnel retirement  
28 system shall divest from those companies, based on public information,  
29 THAT ARE identified pursuant to subsection A, paragraph 1 OF THIS SECTION.  
30 THE STATE TREASURER SHALL DIVEST FROM THOSE COMPANIES, BASED ON PUBLIC  
31 INFORMATION, THAT ARE IDENTIFIED PURSUANT TO SUBSECTION B, PARAGRAPH 1 OF  
32 THIS SECTION.

33           ~~C.~~ D. The state treasurer, the Arizona state retirement system  
34 board and the board of trustees of the public safety personnel retirement  
35 system shall notify the governor, the president of the senate, the speaker  
36 of the house of representatives, the director of the department of  
37 administration and each other of any divestments and the reasons for the  
38 divestments.

39           ~~D.~~ E. Within fourteen days after receipt of the notice pursuant to  
40 subsection ~~C~~ D OF THIS SECTION, the director of the department of  
41 administration shall send notice to the company indicating that this state  
42 and its political subdivisions are prohibited from purchasing any product  
43 or service from the company until the company is no longer identified  
44 pursuant to SUBSECTION A, PARAGRAPH 1 OR subsection ~~A~~ B, paragraph 1 OF  
45 THIS SECTION.

1           ~~F.~~ F. The prohibition in subsection ~~D~~ E OF THIS SECTION does not  
2 apply to any existing contract but does apply to any renewal of a  
3 contract.

4           ~~F.~~ G. This section applies to all affiliated companies and  
5 subsidiaries of the company.

6           H. FOR THE PURPOSES OF THIS SECTION, "SEXUALLY EXPLICIT MATERIAL"  
7 INCLUDES TEXTUAL, VISUAL OR AUDIO MATERIALS OR MATERIALS ACCESSED VIA ANY  
8 OTHER MEDIUM THAT DEPICT ANY OF THE FOLLOWING:

9           1. SEXUAL CONDUCT. FOR THE PURPOSES OF THIS PARAGRAPH, "SEXUAL  
10 CONDUCT" MEANS ACTS OF MASTURBATION, SEXUAL INTERCOURSE OR PHYSICAL  
11 CONTACT WITH A PERSON'S CLOTHED OR UNCLOTHED GENITALS, PUBIC AREA,  
12 BUTTOCKS OR, IF SUCH PERSON IS A FEMALE, BREAST.

13           2. SEXUAL EXCITEMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "SEXUAL  
14 EXCITEMENT" MEANS THE CONDITION OF HUMAN MALE OR FEMALE GENITALS WHEN IN A  
15 STATE OF SEXUAL STIMULATION OR AROUSAL.

16           3. ULTIMATE SEXUAL ACTS. FOR THE PURPOSES OF THIS PARAGRAPH,  
17 "ULTIMATE SEXUAL ACTS" MEANS SEXUAL INTERCOURSE, VAGINAL OR ANAL,  
18 FELLATIO, CUNNILINGUS, BESTIALITY OR SODOMY. A SEXUAL ACT IS SIMULATED  
19 WHEN IT DEPICTS EXPLICIT SEXUAL ACTIVITY THAT GIVES THE APPEARANCE OF  
20 CONSUMMATION OF ULTIMATE SEXUAL ACTS.