



Public Funds Investment Act (PFIA) 85th Legislative Update



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PFIA Bills that Passed at the 85th Legislative Session

- HB 1003 signed June 14, 2017 – effective September 1, 2017
- HB 1238 signed June 15, 2017 – effective September 1, 2017
- HB 1701 signed June 15, 2017 – effective September 1, 2017
- HB 2647 signed June 15, 2017 – effective immediately
- HB 2928 signed June 17, 2017 – effective September 1, 2017

PFIA Bills that Failed at the 85th Legislative Session

- HB 2648
- HB 3082

HB 1003 PFIA 2256.004 / 2256.009 / 2256.04(a)

- 2256.004: Raising the required level of endowments that would be exempt institutions of higher learning from 95MM to 150MM.
- 2256.009: Clarifying that interest bearing bank deposits insured by the FDIC or the National Credit Union Share Insurance Fund are authorized investments. Same language is also in HB 2647.
- 2256.014(a): Removing the 90-day weighted average maturity limit and \$1 NAV requirement for **money market mutual funds**. PFIA will instead require money market funds to comply with SEC Rule 2a-7. The result is that prime funds money market funds will once again be authorized investments (floating NAV, potential liquidity fees, and redemption gates).

HB 1003 – PFIA 2256.014(b)

- 2256.014(b): Adding language that authorizes so-called ultra-short bonds funds that have a duration of less than one year and whose investments are limited to investment grade securities excluding asset-backed securities.
 - The exclusion of asset-backed securities was an intentional measure designed to reduce the risk of price volatility in these funds. While bond funds were authorized previously, their portfolios were limited to securities authorized in other sections of the PFIA, a restriction that effectively eliminated most of them.
 - In the wake money market reform, several of the large fund companies have created ultra-short bond funds as an alternative to prime money market funds. Subject to several restrictions, many of these will now be authorized investments under PFIA.

2256.014 – Mutual Funds

- For non-load money market mutual funds (a MMKT):
 - (a) (3): Replaces the 90-day (or less) weighted average maturity guideline with the requirement to comply with the SEC Rule 2a-7.
 - (a) (4): Eliminates the requirement to maintain a stable NAV of \$1/share.
- For no-load mutual funds (Bond Funds):
 - (b) (3): Replaces requirement to hold only securities otherwise permitted under PFIA with:
 - (A) - A fund that has a duration of one year or more and is invested exclusively in obligations approved by PFIA or
 - (B) - a fund that has a duration of less than one year and invests in investment grade securities excluding asset-backed securities.
 - (b) (4): Eliminates the requirement for the fund to have 'AAA' or equivalent rating.
 - (b) (5): Eliminates the requirement for the fund to specifically comply with certain reporting and disclosure requirements that govern investment pools (2256.016).

2256.014 – Mutual Funds – Questions?

- Questions for your consideration?
 - Do you invest in MMKTs?
 - Do you invest in Prime MMKTs?
 - Have you ever invested in SEC registered bond fund?
 - Would you consider investing in a bond fund that has portfolios holding in:
 - Variable rate negotiable CDs that
 - (a) matures in 2 years
 - (b) has an interest rate linked to LIBOR
 - (c) the interest rate resets every quarter
 - (d) has a credit rating 'Aa2'
 - Corporate notes with a credit rating of 'BBB' that matures in nine months.
 - Asian development bank notes that mature in one year.
 - Read the prospectus, understand the risks and the fees, be able to explain it to interested parties, and no not immediately the trust sales people.

HB 1003 – PFIA 2256.016

- 2256.016: Includes a number of tweaks to the reporting, accounting, and disclosure requirements for LGIPs.
 - The bill decouples the pools from money market funds in light of the SEC money market reforms by removing any references to money market funds.
 - The revision recognizes both amortized cost and fair value accounting methods as valid for eligible investment pools and requires pools to disclose their policy for holding deposits in cash.
 - The bill also directs a pool's governing body to take appropriate action if the net asset value (NAV) of the portfolio falls outside of the prescribed range 0.995 to 1.005.

HB 1003 – PFIA 2256.0206

- 2256.0206 (added): This new section authorizes certain entities (generally those with at least \$250MM of outstanding debt) to enter into a hedging agreements in order to “protect against economic loss due to fluctuation of a commodity or related investment...”
- Eligible entities would be allowed to lock in cost for fuel, energy, and construction expenses.
 - Examples: bus fleet gasoline, electricity cost, steel cost, etc.

HB 1238 – PFIA 2256.008

- HB 1238: Revises the investment training requirements in Section 2256.008 and further complicates these requirements by creating another carve out, this one for housing authorities created under Chapter 392.
 - Investment officers of these housing authorities will still need to obtain ten hours of investment training within the first twelve months of assuming duties.
 - In every subsequent two year period, they will need just **five hours**, unless they invest only in interest-bearing deposits or CDs in which case they will be exempt from the subsequent training provisions.

HB 1701 – PFIA 2256.005 (k) and (l)

- This bill makes significant revisions to the policy certification requirements found in Section 2256.005 (k) and (l).
 - Currently, any person offering to engage in an investment transaction must be provided a copy of the entity's investment policy, sign a certification that acknowledges they have received it, and implement procedures to preclude imprudent transactions.
 - HB 1701 changes “person” to “business organization” and narrowly defines business organization as either an investment pool or an investment management firm under contract to manage the entity's portfolio with discretionary authority. Very few investment management contracts for public funds grant such discretion, meaning investment pools will generally be the only organizations still required to sign this certification.
 - **This bill has all but killed the legal requirement for the policy certification.**

HB 1701 – PFIA 2256.005 (k) and (l)

- Public entities may wish to revise their investment policy as it seems likely that brokers, absolved of this legal requirement, may no longer be willing to sign those certifications.
- In our view, public entities should still provide their investment policy to their brokers, who in fact should be asking for it. Among other things, FINRA's "Know Your Customer" rules (largely established by the suitability requirements of FINRA Rule 2111) require that brokers "have a reasonable basis to believe that a recommendation is suitable for a particular customer based on that customer's investment profile."
- Providing the broker with your investment policy should very clearly describe your investment profile, particularly with regard to the primary objective of safety of principal.

HB 2647 – PFIA 2256.009 (a)

- HB 2647 modifies Section 2256.009(a) clarifying that interest bearing bank deposits insured by the FDIC or National Credit Union Share Insurance Fund are authorized investments.
- In addition, HB 2647 lays out specific language authorizing the shared deposit programs in a manner very similar to that already in the PFIA for shared certificates of deposit.

HB 2928 – PFIA 2256.009(a) and 2256.010(a)

- HB 2928 makes two minor revisions.
 - The first, to Section 2256.009(a), specifically includes obligations of the **Federal Home Loan Banks** (FHLB) as authorized investments.
 - This solves a potential problem created by the Attorney General's opinion #KP-0128 that questioned whether the FHLB would be considered a U.S. agency or instrumentality for purposes of the PFIA.
 - HB 2928 also modifies Section 2256.010(a) by adding a reference to Chapter 2257 (the Public Funds Collateral Act) in the section that describes the means for securing a certificate of deposit.
 - This clarifies that certificates of deposit can be secured by an FHLB letter of credit.

Two Bills that Failed

- HB 2648: This bill did not make it out of committee but much of the same language is included in HB 2928 that did pass.
 - HB 2648 would have specifically included obligations of the Federal Home Loan Banks as authorized investments.
- HB 3082: This bill did not make it out of committee and was not passed.
 - It would have revised the investment training requirements found in Section 2256.008. The initial ten hours required within the first twelve months of taking office or assuming duties would remain.
 - Subsequently, county treasurers would be required to attend ten hours of training every two years while any other investment officers' training requirement would have been reduced to five hours every two years.
 - With this bill failing, the requirement for most investment officers remains at ten hours: counties need **ten** hours, school districts and other municipalities **eight** hours, and housing authorities **five** hours.

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