

## ***DEPOSITING AND INVESTING PUBLIC MONIES: THE 1992 AMENDMENTS REVISITED***

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This year marks the tenth anniversary of the adoption of Chapter 708 of the Laws of 1992, which significantly revised the statutes governing the deposit and investment of public monies by local governments. Today, statutory provisions relative to municipal deposits and investments are set forth, primarily, in sections 10, 11 and 39 of the General Municipal Law (“GML”), each of which was enacted, essentially in its present form, as part of the 1992 amendments.<sup>1</sup> This article summarizes the rationale behind the statutory amendments of 1992 and the major issues addressed by those amendments.

The 1992 amendments were comprehensive in scope, entailing changes to and consolidation of eleven different statutes. These amendments, which were introduced at the request of the State Comptroller, represented the first substantial revision of this area of law in over thirty years, and reflected input from local government groups (including the Government Finance Officers Association), as well as the banking industry.

The enactment of the 1992 amendments was intended to address four main concerns. First, prior to 1992, there were many separate statutes governing the deposit and investment of public monies for various local governments. The statutory provisions were, in many cases, similar but not identical, and the differences often caused confusion. Second, as a result of changes in the federal tax law in 1986, limitations were placed on the benefits banks and trust companies could obtain through the purchase of certain municipal bonds and notes. Since such bonds and notes were typically used to secure municipal deposits and investments, as bank purchases of these instruments decreased, a reduction in the availability of eligible collateral was anticipated. Third, there was recognition of the need for uniform and strengthened security and custodial requirements for municipal investments, especially following the bankruptcies of two government securities firms and the resulting losses experienced by affected local governments. And, fourth, prior to the amendments, although local governments were required by statute to secure their deposits and investments, banks and trust companies were under no similar statutory obligation to provide such security.

In addressing these concerns, the amendments consolidated a number of separate statutes containing deposit and investment provisions tailored to specific local governmental units into two new statutes – GML sections 10 and 11, which still govern this area of law. For purposes of sections 10 and 11, the definition of “local government” was broadly drafted to encompass “any municipal corporation, school district, board of cooperative educational services, district corporation, special improvement district governed by a separate board of commissioners, or a public library” (industrial development agencies were later added to this list). Other affected statutes were amended to cross-reference the new sections with regard to deposit and investment requirements.

<sup>1</sup> The full text of these sections, including amendments subsequent to 1992, as well as other investment statutes (see, e.g., GML, Article 3-A, relating to cooperative investments) is available at [www.assembly.state.ny.us](http://www.assembly.state.ny.us) or [www.senate.state.ny.us](http://www.senate.state.ny.us). Also, further information concerning municipal deposits and investments is available in the State Comptroller’s Financial Management Guide for Local Governments.

The legislation expanded the list of eligible securities acceptable by local governments to secure their deposits and investments, and authorized the use of surety bonds, which had been allowed by some, but not all statutes in the past, and eligible letters of credit, which were newly added by the statute, to secure deposits and investments.<sup>2</sup> GML §10 set forth a list of the types of eligible securities and specified the percentage of market value assigned to certain types. The new list of eligible securities, in part, was derived from and almost

identical to the list of those eligible to secure the U.S. Treasury's deposits under the Code of Federal Regulations.

In addition, the amendments established uniform, strengthened procedures for securing municipal deposits and investments in excess of the amounts covered by the Federal Deposit Insurance Corporation. Under the amendments, procedures for securing investments in time deposits and certificates of deposit were conformed to those for securing demand deposits with banks and trust companies. Written security and custodial agreements were required, and the statute specified, among other things, that the custodial agreement must provide that eligible securities pledged as collateral had to be kept separate and apart from the general assets of the custodial bank or trust company and could not be commingled with or become part of the backing for any other deposits or liabilities (GML §10[3][a]). With regard to the purchase of permitted securities as direct investments by local governments outside of New York City, the amendments continued the requirement that if the obligations are not registered or inscribed in the name of the local government, then they must be purchased through, delivered to and held in the custody of a bank or trust company, and added the requirement that all such obligations be held by the bank or trust company pursuant to a written custodial agreement (GML §11[3][b]).

The 1992 amendments also added GML §39, addressing investment policies for local governments. This section requires local governments to “adopt a comprehensive investment policy which details the local government's operative policy and instructions to officers and staff regarding the investing, monitoring, and reporting of funds of the local government”. The investment policy must comply with specific requirements contained in section 39 and must be reviewed annually by the local government. The legislation also requires the State Comptroller's Office to provide local governments with a model investment policy, as well as a model security agreement and a model custodial agreement.

In addition, the amendments added a new section 107-a to the Banking Law to ensure compliance by banks and trust companies with the new statutory requirements. This section imposed an obligation on banks and trust companies that accept public deposits to secure such deposits in the manner required by statute, provided that the local government has entered into a written agreement with the depository relating to such public deposits and notifies the depository of such public deposits in the manner required by the agreement.

<sup>2</sup> This expanded list of securities was enacted in 1992 and extended until June 1997, at which time the list expired. The same list was restored and made permanent by Chapter 623 of the Laws of 1998.

In sum, the 1992 amendments revised existing statutes pertaining to the deposit and investment of monies by local governments to make these provisions more consistent and workable. They struck a balance between providing greater flexibility as to the type of collateral that may be used to secure deposits and investments and strengthening pertinent procedures. The amendments established the primary legal framework that continues to govern this area of municipal law ten years later.