

**CHAPTER 1155**

## UTILITIES — CUSTOMER CONTRIBUTION FUND

*H.F. 2424*

**AN ACT** relating to the limitations on the use of the customer contribution fund.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 476.66, subsection 1, Code 1991, is amended to read as follows:

1. The utilities board shall adopt rules which shall require each electric and gas public utility to establish a fund whose purposes shall include the receiving of contributions to assist the utility's low-income customers with weatherization measures to improve energy efficiency related to winter heating and summer cooling, and to supplement the energy assistance received under the federal low-income heating energy assistance program for the payment of winter heating electric or gas utility bills.

Approved April 27, 1992

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**CHAPTER 1156**

## INVESTMENT OF PUBLIC FUNDS

*S.F. 2036*

**AN ACT** relating to regulating the investment of public funds and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 11.2, Code 1991, is amended to read as follows:

**11.2 ANNUAL SETTLEMENTS.**

1. The auditor of state shall annually, and ~~often~~ more often if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state.

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the director of revenue and finance as required by section 421.31, subsection 4 and that a final audit of such state agencies shall be made at the close of each fiscal year.

2. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents' investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents' investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board.

All contracts or agreements with an investment entity or investment professional employed by an institution governed by the state board of regents shall require the investment entity or investment professional employed by an institution governed by the state board of regents

to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by an institution governed by the state board of regents are reviewed by the auditor of state.

The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

As used in this subsection, "investment entity" and "investment professional" exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 453.

Sec. 2. Section 11.6, subsection 1, Code Supplement 1991, is amended to read as follows:

1. a. The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided in section 257.11. Examinations of community colleges shall include an audit of eligible and noneligible contact hours as defined in section 286A.2. Eligible and noneligible contact hours and the certified enrollment shall be certified to the department of management.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph "c", examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

b. (1) In conjunction with the audit of the governmental subdivision required under this section, the person performing the audit shall also perform tests for compliance with the investment policy of a reasonable number of investment transactions in relation to the total investments and quantity of transactions in the period audited. The results of the compliance testing shall be reported in accordance with generally accepted auditing standards. The person performing the audit may also make recommendations for changes to investment policy or practices. The governmental subdivision is responsible for the remedy of reported noncompliance with its policy or practices.

(2) As part of its audit, the governmental subdivision is responsible for obtaining and providing to the person performing the audit the audited financial statements and related report on internal control structure of outside persons, performing any of the following during the period under audit for the governmental subdivision:

(a) Investing public funds.

(b) Advising on the investment of public funds.

(c) Directing the deposit or investment of public funds.

(d) Acting in a fiduciary capacity for the governmental subdivision.

The audit under this section shall not be certified until all material information required by this subparagraph is reviewed by the person performing the audit.

(3) The review by the person performing the audit of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

(4) All contracts or agreements with outside persons performing any of the functions listed in subparagraph (2) shall require the outside person to notify in writing the governmental subdivision within thirty days of receipt of all communication from the person performing the audit or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the outside person, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

(5) As used in this subsection, "outside person" excludes a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 453.

(6) A joint investment trust organized pursuant to chapter 28E shall file the audit reports required by this chapter with the administrator of the securities bureau of the insurance division of the department of commerce within ten days of receipt from the auditor. The auditor of a joint investment trust shall provide written notice to the administrator of the time of delivery of the reports to the joint investment trust.

(7) If during the course of an audit of a joint investment trust organized pursuant to chapter 28E, the auditor determines the existence of a material weakness in the internal control structure or a material violation of the internal control structure, the auditor shall report the determination to the joint investment trust which shall notify the administrator in writing within twenty-four hours, and provide a copy of the notification to the auditor. The auditor shall provide, within twenty-four hours of the receipt of the copy of the notice, written acknowledgement of the receipt to the administrator. If the joint investment trust does not make the notification within twenty-four hours, or the auditor does not receive a copy of the notification within twenty-four hours, the auditor shall immediately notify the administrator in writing of the material weakness in the internal control structure or the material violation of the internal control structure.

Sec. 3. Section 11.6, subsection 4, Code Supplement 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An examination under this subsection shall include a determination of whether investments by the governmental subdivision are authorized by state law.

Sec. 4. Section 11.6, subsection 7, Code Supplement 1991, is amended to read as follows:

7. The auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and legal compliance programs to be applied in the examination of the governmental subdivisions of the state, which shall require a review of the internal control structure and specify testing of transactions for compliance. The guidelines shall include a requirement that the certified public accountant immediately notify the auditor of state regarding any suspected embezzlement or theft. The auditor shall also provide standard reporting formats for use in reporting the results of an examination of a governmental subdivision.

Sec. 5. **NEW SECTION. 12.62 INVESTMENTS BY AGENCIES AND POLITICAL SUBDIVISIONS — TECHNICAL INFORMATION AND ASSISTANCE.**

The treasurer of state shall adopt rules pursuant to chapter 17A for providing technical information and assistance to political subdivisions, the state board of regents, instrumentalities, and agencies of the state authorized to invest funds which are seeking to invest public funds. The treasurer or the treasurer's designee shall provide technical information and assistance to a political subdivision, the state board of regents, instrumentality, or agency of the state authorized to invest funds at the request of the political subdivision, the state board of regents, instrumentality, or agency of the state authorized to invest funds, including but not limited to technical information regarding the statutory requirements for investments by the political subdivision, the state board of regents, instrumentality, or agency and technical assistance to enable the political subdivision, the state board of regents, instrumentality, or agency to invest funds in accordance with state law. However, the fact that information and assistance are provided under this section to a political subdivision, the state board of regents, instrumentality, or agency authorized to invest funds shall not make the state, the treasurer of state, or the treasurer's designee liable to a political subdivision, the state board of regents, instrumentality, or agency of the state in any manner for any loss, damage, or expense incurred by the political subdivision, the state board of regents, instrumentality, or agency as a result of an investment.

Sec. 6. Section 22.1, unnumbered paragraph 1, Code Supplement 1991, is amended to read as follows:

As used in this chapter, "public records" includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

"Public records" also includes all records relating to the investment of public funds including but not limited to investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party.

Sec. 7. Section 22.1, unnumbered paragraph 3, Code Supplement 1991, is amended to read as follows:

The term "lawful custodian" means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. The records relating to the investment of public funds are the property of the public body responsible for the public funds. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. "Lawful custodian" does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

Sec. 8. **NEW SECTION. 22.13 PUBLIC FUNDS INVESTMENT RECORDS IN CUSTODY OF THIRD PARTIES.**

1. The records of investment transactions made by or on behalf of a public body are public records and are the property of the public body whether in the custody of the public body or in the custody of a fiduciary or other third party.

2. If such records of public investment transactions are in the custody of a fiduciary or other third party, the public body shall obtain from the fiduciary or other third party records requested pursuant to section 22.2.

3. If a fiduciary or other third party with custody of public investment transactions records fails to produce public records within a reasonable period of time as requested by the public body, the public body shall make no new investments with or through the fiduciary or other third party and shall not renew existing investments upon their maturity with or through the fiduciary or other third party. The fiduciary or other third party shall be liable for the penalties imposed under section 22.6 due to the acts or omissions of the fiduciary or other third party and any other remedies available under statute, common law, or contract.

Sec. 9. Section 28E.5, subsection 2, Code 1991, is amended to read as follows:

2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 452.10 and 452.10A through 452.10C and other applicable law.

Sec. 10. Section 262.14, subsection 3, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The board shall have a written investment policy, the goal of which is to provide for the financial health of the institutions governed by the board. The board shall establish investment practices that preserve principal, provide for liquidity sufficient for anticipated needs, and maintain purchasing power of investable assets of the board and its institutions. The policy shall also include a list of authorized investments, maturity guidelines, procedures for selecting and approving investment managers and other investment professionals as described in section 11.2, subsection 2, and provisions for regular and frequent oversight of investment decisions by the board, including audit. The board shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board. The investment policy shall cover investments of endowment and nonendowment funds.

Sec. 11. Section 279.29, unnumbered paragraph 2, Code 1991, is amended to read as follows:

Pending audit and allowance of claims under this section, the board shall invest moneys of the corporation to the extent practicable, and the board may provide for the joint investment of moneys with one or more school corporations pursuant to a joint investment agreement. All investments of funds shall be subject to sections 452.10 and 452.10A and other applicable law.

Sec. 12. Section 302.11, Code 1991, is amended to read as follows:

**302.11 SCHOOL FUND ACCOUNTS – AUDIT OF LOSSES.**

The director of revenue and finance shall keep the permanent school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit losses to the permanent school or university fund caused by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the fund. The auditor of state shall adopt rules pursuant to chapter 17A for those officers as necessary to ascertain the losses.

Sec. 13. Section 331.303, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 8A. Approve the written investment policy for the county required under section 452.10B.

Sec. 14. Section 331.555, subsection 6, Code 1991, is amended to read as follows:

6. The treasurer shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, or city utilities pursuant to a joint investment agreement. All investments of funds shall be subject to sections 452.10 and 452.10A and other applicable law.

Sec. 15. Section 384.21, Code 1991, is amended to read as follows:

**384.21 JOINT INVESTMENT OF FUNDS.**

A city or a city utility board shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more cities, utility boards, judicial district departments of correctional services, or counties pursuant to a joint investment agreement. All investments of funds shall be subject to sections 452.10 and 452.10A and other applicable law.

Sec. 16. Section 452.10, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

**452.10 PUBLIC FUNDS INVESTMENT STANDARDS.**

1. In addition to investment standards and requirements otherwise provided by law, the investment of public funds by the treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, shall comply with this section, except where otherwise provided by another statute specifically referring to this section.

The treasurer of state and the treasurer of each political subdivision shall at all times keep funds coming into their possession as public money in a vault or safe to be provided for that purpose or in one or more depositories approved pursuant to chapter 453. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any public funds not currently needed in investments authorized by this section.

2. The treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, when investing or depositing public funds, shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of this subsection. This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of this subsection. The primary goals of investment prudence shall be based in the following order of priority:

- a. Safety of principal is the first priority.
- b. Maintaining the necessary liquidity to match expected liabilities is the second priority.
- c. Obtaining a reasonable return is the third priority.

3. Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out in subsection 2 and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management.

The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited.

Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency.

4. The treasurer of state and all other state agencies authorized to invest funds shall only purchase and invest in the following:

- a. Obligations of the United States government, its agencies and instrumentalities.
- b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 453.
- c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.
- d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested

in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraphs "a" through "d" if the treasurer of state or state agency takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. Investments authorized for the Iowa public employee retirement system in section 97B.7, subsection 2, paragraph "b", except that investment in common stocks is not permitted.

g. An open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

Futures and options contracts are not permissible investments.

5. Political subdivisions of this state, including entities organized pursuant to chapter 28E whose primary function is other than to jointly invest public funds, shall purchase and invest only in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 453.

c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraph "a" if the political subdivision takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. An open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

g. A joint investment trust organized pursuant to chapter 28E prior to and existing in good standing on the effective date of this Act or a joint investment trust organized pursuant to chapter 28E after the effective date of this Act, provided that the joint investment trust shall either be rated within the two highest classifications by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A and operated in accordance with 17 C.F.R. § 270.2a-7, or be registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7. The manager or investment advisor of the joint investment trust shall be registered with the federal securities and exchange commission under the Investment Advisor Act of 1940, 15 U.S.C. § 80(b).

Futures and options contracts are not permissible investments.

6. The following investments are not subject to this section:
  - a. Investments by the public safety peace officers' retirement system governed by chapter 97A.
  - b. Investments by the Iowa public employees' retirement system governed by chapter 97B.
  - c. Investments by the Iowa finance authority governed by chapter 220.
  - d. Investments by the state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:
    - (1) Those investments set out in section 452.10, subsection 4.
    - (2) The common fund for nonprofit organizations.
    - (3) Common stocks.
    - (4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.
  - e. Investments by the statewide fire and police retirement system governed by chapter 411.
  - f. Investments by the judicial retirement system governed by chapter 602, article 9.

Sec. 17. NEW SECTION. 452.10A PUBLIC INVESTMENT MATURITY AND PROCEDURAL LIMITATIONS.

1. The investment of public funds which are operating funds by a political subdivision shall be subject to the following:
  - a. As used in this section, "operating funds" means those funds which are reasonably expected to be expended during a current budget year or within fifteen months of receipt.
  - b. Operating funds must be identified and distinguished from all other funds available for investment.
  - c. Operating funds may only be invested in investments which mature within three hundred ninety-seven days or less and which are authorized by law for the investing public entity.
2. All investments of public funds by political subdivisions shall be subject to the following:
  - a. Each investment must be authorized by applicable law and the written investment policy of the political subdivision.
  - b. Each political subdivision whose investments involve the use of a public funds custodial agreement, as defined in section 452.10C, shall comply with rules adopted pursuant to section 452.10C relating to those investments. All contracts providing for the investment of public funds shall be in writing and shall contain a provision requiring that all investments shall be made in accordance with the laws of this state.
  - c. A contract for the investment or deposit of public funds shall not provide for compensation of an agent or fiduciary based upon investment performance.
3. A treasurer of a political subdivision may invest funds of the political subdivision or agency that are not operating funds in investments having maturities longer than three hundred and ninety-seven days.
4. As used in this section, "public funds" means all funds that are public funds within the meaning of section 453.1, subsection 2, paragraph "b", except state funds invested by the treasurer of state.
5. This section shall not be construed to supersede any provision of this chapter or of chapter 453.
6. The following entities are not subject to this section:
  - a. The public safety peace officers' retirement system governed by chapter 97A.
  - b. The Iowa public employees' retirement system governed by chapter 97B.
  - c. The Iowa finance authority governed by chapter 220.
  - d. The state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:
    - (1) Those investments set out in section 452.10, subsection 4.
    - (2) The common fund for nonprofit organizations.
    - (3) Common stocks.
    - (4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.



- e. The statewide fire and police retirement system governed by chapter 411.
- f. The judicial retirement system governed by chapter 602, article 9.

7. A joint investment trust organized pursuant to chapter 28E whose primary function is to invest public funds shall report to the general assembly not later than January 1 of each year the amount of any trust royalty, residual payment, administrative or service fee, or other fee paid by the trust, the services performed for the fee, and the person receiving the fee.

Sec. 18. NEW SECTION. 452.10B WRITTEN INVESTMENT POLICIES.

1. Political subdivisions shall approve written investment policies which incorporate the guidelines specified in section 452.10, sections 452.10A through 452.10C, and any other provisions deemed necessary to adequately safeguard invested public funds.

2. The written investment policy required by section 452.10 shall be delivered to all of the following:

- a. The governing body or officer of the public entity to which the policy applies.
- b. All depository institutions or fiduciaries for public funds of the public entity.
- c. The auditor of the public entity.

3. The following entities are not subject to this section:

- a. The public safety peace officers' retirement system governed by chapter 97A.
- b. The Iowa public employees' retirement system governed by chapter 97B.
- c. The Iowa finance authority governed by chapter 220.
- d. The state board of regents governed by chapter 262.
- e. The statewide fire and police retirement system governed by chapter 411.
- f. The judicial retirement system governed by chapter 602, article 9.

Sec. 19. NEW SECTION. 452.10C REGULATION OF PUBLIC FUNDS CUSTODIAL AGREEMENTS.

The treasurer of state, in consultation with the attorney general, shall adopt rules under chapter 17A requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds.

As used in this section, "public funds custodial agreement" means any contractual arrangement pursuant to which one or more persons, including but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments other than custodial agreements between an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and a custodian bank.

As used in this section "public funds" means public funds as defined in section 453.1. However, this section does not apply to public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness. To the extent that a provision of this section conflicts with federal law, it shall be construed to avoid the conflict.

The following entities are not subject to this section:

- 1. The public safety peace officers' retirement system governed by chapter 97A.
- 2. The Iowa public employees' retirement system governed by chapter 97B.
- 3. Investments by the Iowa finance authority governed by chapter 220.
- 4. The statewide fire and police retirement system governed by chapter 411.
- 5. The judicial retirement system governed by chapter 602, article 9.

Sec. 20. Section 453.1, subsection 2, paragraph a, Code 1991, is amended to read as follows:

a. "Depository" means a bank or any office of a bank whose accounts are insured by the federal deposit insurance corporation, or, a savings and loan association or a savings bank or any branch of a savings and loan association or savings bank whose accounts are insured by the federal savings and loan insurance corporation, or a credit union insured by the national credit union administration in which public funds are deposited under this chapter.

Sec. 21. Section 453.1, subsection 2, Code 1991, is amended by adding the following new paragraphs:

NEW PARAGRAPH. c. "Bank" means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund of the federal deposit insurance corporation and includes any office of a bank.

NEW PARAGRAPH. d. "Savings and loan" means a corporation authorized to operate under chapter 534 or the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

NEW PARAGRAPH. e. "Credit union" means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit union administration and includes an office of a credit union.

NEW PARAGRAPH. f. "Financial institution" means a bank, savings and loan, or a credit union.

Sec. 22. Section 453.1, subsection 3, Code 1991, is amended to read as follows:

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a savings and loan association, a savings bank, or an office of a savings and loan association or savings bank or a credit union, then the public deposits in those depositories the savings and loan or credit union shall be secured pursuant to sections 453.16 through 453.19 and sections 453.23 and 453.24.

b. If a depository is a bank, credit union, or an office of a bank or credit union, then the public deposits in those depositories the bank shall be secured pursuant to sections 453.22 through 453.21, 453.23, and 453.24.

Sec. 23. Section 453.9, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

#### 453.9 INVESTMENT OF SINKING FUNDS – BOND PROCEEDS.

The treasurer of state and all other state agencies authorized to invest funds and the treasurer or other designated financial officer of each political subdivision may invest the proceeds of public bonds or obligations and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 452.10, subsection 4, paragraphs "a" through "g", section 452.10, subsection 5, paragraphs "a" through "g", an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations under that section. An investment contract or tax exempt bonds shall be rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.

Sec. 24. Section 453.15, Code 1991, is amended to read as follows:

#### 453.15 RESTRICTION ON REQUIRING COLLATERAL.

A local government shall not require a pledge of collateral for that portion of the local government's deposits in a depository institution savings and loan or credit union that is covered by insurance of a federal agency or instrumentality including the federal deposit insurance corporation, the federal savings and loan insurance corporation, or the national credit union administration.

Sec. 25. Section 453.16, subsection 1, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Before a deposit of public funds is made by a public officer with a depository institution savings and loan or credit union in excess of the amount federally insured by federal deposit insurance or federal savings and loan insurance, and before the investment of public funds in investments authorized in section 452.10 which either are not obligations of or guaranteed by the United States government or any of its agencies, are in excess of the amount insured

by federal deposit insurance or federal savings and loan insurance, or are investments by the treasurer of state specifically authorized by section 452.10 to be made as additional investments under section 97B.7, subsection 2, paragraph "b", the public officer shall obtain security for the deposit or investment by one or more of the following:

Sec. 26. Section 453.16, subsection 1, paragraph a, Code 1991, is amended to read as follows:

a. ~~The depository institution savings and loan or credit union~~ may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

Sec. 27. Section 453.16, subsection 1, paragraph b, unnumbered paragraph 1, Code 1991, is amended to read as follows:

~~The depository institution savings and loan or credit union~~ may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the ~~depository institution savings and loan or credit union~~. The securities shall consist of any of the following:

Sec. 28. Section 453.16, subsection 1, paragraph b, subparagraph (4), Code 1991, is amended to read as follows:

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the U.S. central credit union, and the rating of the U.S. central credit union remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

Sec. 29. Section 453.16, subsection 1, paragraph b, Code 1991, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Sec. 30. Section 453.16, subsection 2, Code 1991, is amended to read as follows:

2. If public funds are secured by both the assets of a ~~depository institution savings and loan or credit union~~ and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

Sec. 31. Section 453.17, subsection 1, unnumbered paragraph 1, Code 1991, is amended to read as follows:

~~A depository institution savings and loan or credit union~~ which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

Sec. 32. Section 453.17, subsection 1, paragraph c, Code 1991, is amended to read as follows:

c. The securities shall be deposited with the federal reserve bank of Chicago, Illinois, ~~or the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union~~ pursuant to a bailment agreement or a pledge custody agreement.

Sec. 33. Section 453.17, subsections 3 and 4, Code 1991, are amended to read as follows:

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the ~~depository institution savings and loan or credit~~

union. A depository institution savings and loan or credit union pledging securities with a public officer may cause the securities to be examined in the officer's office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than quarterly, a depository institution savings and loan or credit union shall report the par value and the market value of any pledged collateral and the total deposits of public funds of that officer in the depository institution savings and loan or credit union.

Sec. 34. Section 453.18, Code 1991, is amended to read as follows:

453.18 CONDITION OF SECURITY.

The condition of the surety bond or the deposit of securities, instruments, or a joint custody receipt, must be that the depository institution savings and loan or credit union will promptly pay to the parties entitled public funds, including any interest on the funds, in its custody upon lawful demand and, when required by law, pay the funds to the public officer who made the deposit.

Sec. 35. Section 453.19, subsections 3 and 4, Code 1991, are amended to read as follows:

3. In the event of substitution or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by certified mail, return receipt requested, to the public officer and the depository institution savings and loan or credit union, a receipt specifically describing and identifying both the substituted securities and those released and returned to the depository institution savings and loan or credit union.

4. The public officer which deposits public funds with a depository institution savings and loan or credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the depository savings and loan or credit union.

Sec. 36. NEW SECTION. 453.21 REQUIRED COLLATERAL — BANKS.

1. A depository that is a bank shall pledge the required collateral securities to the treasurer of state by depositing before January 31 of each year the collateral securities in restricted accounts of the treasurer of state, including but not limited to pledge-custody accounts, at a federal reserve bank, a trust department of another commercial bank, or with another financial institution which has been designated by the treasurer of state that is not owned or controlled directly or indirectly by the same depository or holding company. The bank shall deliver to the treasurer of state a security agreement which provides the treasurer of state with a valid and perfected security interest in the required collateral. The market value of the required collateral shall be at least ten percent of the average amount of the excess of total public funds over total federally insured public funds on deposit in the bank during the preceding year. The average amount of the excess shall be determined by adding the amounts of excess if any for all public funds deposit accounts as they existed on the date in each calendar quarter used in preparing the report of condition and income for submission to the federal government, adding the subtotals for the four calendar quarters, and dividing that total by four. The calculation of the minimum market value of required collateral shall be made before January 31 of each year.

2. The treasurer of state shall adopt the following rules pursuant to chapter 17A:

- a. Providing for valuation of collateral if the market value of a security is not readily determinable.
- b. Establishing reporting requirements.
- c. Establishing procedures for substituting different securities consistent with subsection 3.
- d. Establishing administrative procedures necessary to implement this chapter and other rules as may be necessary to accomplish the purposes of this chapter.
- e. Designating financial institutions eligible to be custodian of pledged collateral.

f. Establishing fee schedules to cover costs incurred for opening and closing accounts and substitution of collateral.

3. The securities used to secure public deposits shall be acceptable to the treasurer of state and shall be one or more of the following:

a. Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

b. Public bonds or obligations of this state or a political subdivision of this state.

c. Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

d. To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America.

e. First lien mortgages which are valued according to practices acceptable to the treasurer of state.

f. Corporate bonds rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

g. A bond of a surety company approved by the United States treasury department.

h. Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure public deposits under paragraph "a", include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), the portfolio of which is limited to the United States government obligations described in paragraph "a", if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

4. A bank may borrow collateral used for a pledge if the collateral is free of any liens, security interests, claims, or encumbrances.

Sec. 37. Section 453.23, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The acceptance of public funds by a depository pursuant to this chapter constitutes consent by the depository to assessments by the treasurer of state in accordance with this chapter.

Sec. 38. Section 453.23, subsection 2, Code 1991, is amended to read as follows:

2. The depository and the security given for the public funds in its hands are liable for payment if the depository fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if in failing to pay the depository acts contrary to the terms of an agreement between the depository and the public body treasurer or, if the depository fails to pay an assessment, by the treasurer of state when due.

Sec. 39. Section 453.23, subsection 3, paragraph d, subparagraph (1), Code 1991, is amended to read as follows:

(1) If the loss was incurred in a bank, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the funds are balance in that sinking fund is inadequate to cover pay the entire loss, then the treasurer shall make obtain the additional amount needed by making an assessment against other banks who hold whose public funds deposits exceed deposit insurance coverage. The A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors by a

percentage that represents ~~the~~ that bank's proportional share of the average of uninsured public funds deposits held by all banks during the preceding twelve month period ending on the last day of the month immediately preceding the month as of the reporting date under section 453.21 immediately preceding the date the depository was closed. Each bank shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a bank fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that bank. If the securities pledged by that bank are inadequate to pay the assessment, the treasurer of state shall make additional assessments as may be necessary against other banks which hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment. If a bank fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a bank is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state. Idle balances in the fund ~~are to~~ shall be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter ~~will~~ shall be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

Sec. 40. Section 453.23, subsection 3, paragraph d, subparagraph (2), Code 1991, is amended to read as follows:

(2) If the loss was incurred in a credit union, then any further payments to cover the loss will come from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve month period ending on the last day of the month immediately preceding the month the depository was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that credit union. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

Sec. 41. NEW SECTION. 502.701 PUBLIC JOINT INVESTMENT TRUSTS.

1. A joint investment trust organized pursuant to chapter 28E for the purposes of joint investment of public funds is subject to the jurisdiction and authority of the administrator, including all requirements of this chapter, except the registration provisions of section 502.201 and 502.218.

2. The administrator may make examinations within or without the state, of the business and records of each joint investment trust, at the times and in the scope as the administrator determines. The administrator shall have the authority to contract for outside professional services in the conduct of examinations. The examinations may be made without prior notice to the joint investment trust or the trust's investment advisor. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to the examination shall be paid by the joint investment trusts whose business is examined. For the purpose of avoiding unnecessary duplication of examinations, the administrator may cooperate with other regulatory authorities.

Sec. 42. Section 453.22, Code 1991, is repealed.

Sec. 43. The guidelines under section 4 of this Act shall be made available by February 1, 1993.

Sec. 44. **EFFECTIVE DATE.** This Act, being deemed of immediate importance, takes effect upon enactment. The requirements for adoption of rules, written investment policies, audit standards, and other administrative duties shall be implemented as soon as possible but not later than September 1, 1992.

Section 16 of this Act does not apply to an investment made prior to the effective date of this Act. A joint investment trust organized pursuant to chapter 28E existing prior to the effective date of this Act, shall fully comply with this Act, on and after the effective date of this Act, including but not limited to complying with the requirement in section 452.10, subsection 5, paragraph "g", that it be operated in accordance with 17 C.F.R. § 270.2a-7, except that such a joint investment trust shall have until July 1, 1993, to become rated or registered as required by section 452.10, subsection 5, paragraph "g".

Approved April 28, 1992

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## CHAPTER 1157

### VIOLATIONS OF INDIVIDUAL'S RIGHTS — HATE CRIMES

*S.F. 2065*

**AN ACT** relating to violations of an individual's rights, and establishing additional criminal offenses.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 80B.11, subsection 3, Code Supplement 1991, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** In-service training under this subsection shall include the requirement that by December 31, 1994, all law enforcement officers complete a course on investigation, identification, and reporting of public offenses based on the race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability of the victim. The director shall consult with the civil rights commission, the department of public safety, and the prosecuting attorneys training coordinator in developing the requirements for this course and may contract with outside providers for this course.

Sec. 2. Section 692.15, Code 1991, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

Sec. 3. **NEW SECTION.** 708.2C ASSAULT IN VIOLATION OF INDIVIDUAL RIGHTS — PENALTIES.

1. For the purposes of this chapter, "assault in violation of individual rights" means an assault, as defined in section 708.1, which is a hate crime as defined in section 729A.2.

2. A person who commits an assault in violation of individual rights, with the intent to inflict a serious injury upon another, is guilty of a class "D" felony.

3. A person who commits an assault in violation of individual rights without the intent to inflict a serious injury upon another, and who causes bodily injury or disabling mental illness, is guilty of an aggravated misdemeanor.

4. A person who commits an assault in violation of individual rights and uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.