

INVESTING BOND PROCEEDS

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Three Sets of Legal Requirements

1. The state law governing the investment of public funds, if applicable
2. The indenture's "permitted investments" provisions
3. The federal tax law governing the investment of tax-exempt bond proceeds---arbitrage rules

§ 2.2-4410. **Liability of treasurers or public depositors.** — When deposits are made in accordance with this chapter no treasurer or public depositor shall be liable for any loss thereof resulting from the failure or default of any depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees. (1973, c. 172, § 2.1-370; 2001, c. 844.)

§ 2.2-4411. **Reports of public depositories.** — Within ten days after the end of each calendar month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board a written report, under oath, indicating (i) the total amount of public deposits held by it at the close of business on the last banking day in the month, (ii) the average daily balance for the month of all secured public deposits held by it during the month, (iii) a detailed schedule of pledged collateral at its current asset value for purposes of collateral at the close of business on the last banking day in the month, and (iv) any other information with respect to its secured public deposits that may be required by the Treasury Board.

Each qualified public depository shall also furnish at the same time to each public depositor for which it holds deposits and that makes a written request therefor a schedule of the secured public deposits to the credit of such depositor as of the close of business on the last banking day in the month and the total amount of all secured public deposits held by it upon such date. (1973, c. 172, § 2.1-369; 1979, c. 154; 2001, c. 844.)

STATE LAW

CHAPTER 45.

INVESTMENT OF PUBLIC FUNDS ACT.

Sec.	Sec.
2.2-4500. Legal investments for public sinking funds.	2.2-4509. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes.
2.2-4501. Legal investments for other public funds.	2.2-4510. Investment of funds in corporate notes.
2.2-4502. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper.	2.2-4511. Investment of funds in asset-backed securities.
2.2-4503. [Not set out.]	2.2-4512. Investment of funds by State Treasurer in obligations of foreign sovereign governments.
2.2-4504. Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances.	2.2-4513. Investments by transportation commissions.
2.2-4505. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods.	2.2-4514. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds.
2.2-4506. Securities lending.	2.2-4515. Collateral and safekeeping arrangements.
2.2-4507. Investment of funds in overnight, term and open repurchase agreements.	2.2-4516. Liability of treasurers or public depositors.
2.2-4508. Investment of certain public moneys in certain mutual funds.	

§ 2.2-4500. **Legal investments for public sinking funds.** — The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

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securities:

1. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.

4. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.

5. Savings accounts or time deposits in any bank or savings institution within the Commonwealth provided the bank or savings institution is approved for the deposit of other funds of the Commonwealth or other political subdivision of the Commonwealth. (1956, c. 184, § 2-297; 1958, c. 102; 1966, c. 677, § 2.1-327; 1970, c. 75; 1974, c. 288; 1986, c. 270; 1988, cc. 526, 834; 1996, cc. 77, 508; 2001, c. 844.)

Cross references. — As to the purpose of the Local Government Investment Pool Act, see § 2.2-4601. As to the creation of the local government investment pool, see § 2.2-4602.
Effective date. — This title is effective October 1, 2001.

§ 2.2-4501. Legal investments for other public funds. — A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

1. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collater-

alized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that within the twenty fiscal years next preceding the making of such investment, such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default; provided, that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in Article 2 (§ 26-45.3 et seq.) of Chapter 3 of Title 26, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed by the provisions of this section without limitation.

5. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that (i) within the twenty fiscal years next preceding the making of such investment, such city, county, town or district has not been in default for more than ninety days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town or district shall have been in continuous existence for at least twenty years; (iii) such city, county, town or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town or district issuing the same; (v) the city, county, town or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed ten percent of the value of the taxable property in such city, county, town or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

B. This section shall not apply to retirement funds and deferred compensation plans to be invested pursuant to §§ 51.1-124.30, through 51.1-124.35 or § 51.1-601.

C. Investments made prior to July 1, 1991, pursuant to § 51.1-601 are ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 (§ 51.1-600 et seq.) of

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Title 51.1. (1956, c. 184, § 2-298; 1966, c. 677, § 2.1-328; 1980, c. 596; 1988, c. 834; 1991, c. 379; 1992, c. 810; 1996, c. 508; 1999, c. 772; 2001, c. 844.)

§ 2.2-4502. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper. — A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in "prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by at least two of the following: Moody's Investors Service, Inc., within its NCO/Moody's rating of prime 1, by Standard & Poor's, Inc., within its rating of A-1, by Fitch Investor's Services, Inc., within its rating of F-1, by Duff and Phelps, Inc., within its rating of D-1, or by their corporate successors, provided that at the time of any such investment:

1. The issuing corporation, or its guarantor, has a net worth of at least fifty million dollars; and

2. The net income of the issuing corporation, or its guarantor, has averaged three million dollars per year for the previous five years; and

3. All existing senior bonded indebtedness of the issuer, or its guarantor, is rated "A" or better or the equivalent rating by at least two of the following: Moody's Investors Service, Inc., Standard & Poor's, Inc., Fitch Investor's Services, Inc., or Duff and Phelps, Inc.

Not more than thirty-five percent of the total funds available for investment may be invested in commercial paper, and not more than five percent of the total funds available for investment may be invested in commercial paper of any one issuing corporation.

B. Notwithstanding subsection A, the Commonwealth, municipal corporations, other political subdivisions and public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, except for sinking funds, in commercial paper other than "prime quality" commercial paper as defined in this section provided that:

1. Prior written approval is obtained from the governing board, committee or other entity that determines investment policy. The Treasury Board shall be the governing body for the Commonwealth; and

2. A written internal credit review justifying the creditworthiness of the issuing corporation is prepared in advance and made part of the purchase file. (1973, c. 232, § 2.1-328.1; 1974, c. 295; 1976, c. 665; 1986, c. 170; 1987, c. 73; 1988, c. 834; 1992, c. 769; 2001, c. 844.)

§ 2.2-4503: Not set out.

Editor's note. — This section, relating to investment of public funds of Fairfax County, was enacted by Acts 2001, c. 844 (formerly by Acts 1980, c. 50 as § 2.1-328.2). In furtherance of the general policy of the Commission to

include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 2.2-4504. Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances. — Notwithstanding any provisions of law to the contrary, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking

funds in bankers' acceptances. (1981, c. 18, § 2.1-328.3; 1988, c. 834; 2001, c. 844.)

§ 2.2-4505. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods. — Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, in certificates representing ownership of either treasury bond principal at maturity or its coupons for accrued periods. The underlying United States Treasury bonds or coupons shall be held by a third-party independent of the seller of such certificates. (1983, c. 117, § 2.1-328.5; 1985, c. 352; 1988, c. 834; 2001, c. 844.)

§ 2.2-4506. Securities lending. — Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, political subdivisions and all public bodies of the Commonwealth may engage in securities lending from the portfolio of investments of which they have custody and control, other than sinking funds. The Treasury Board shall develop guidelines with which such securities lending shall fully comply. Such guidelines shall ensure that the state treasury is at all times fully collateralized by the borrowing institution. (1983, c. 268, § 2.1-328.6; 2001, c. 844.)

§ 2.2-4507. Investment of funds in overnight, term and open repurchase agreements. — Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth, may invest any and all moneys belonging to them or within their control in overnight, term and open repurchase agreements that are collateralized with securities that are approved for direct investment. (1985, c. 352, § 2.1-328.8; 1988, c. 834; 2001, c. 844.)

§ 2.2-4508. Investment of certain public moneys in certain mutual funds. — Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds that are governed by the provisions of § 2.2-4500, in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ 13.1-501 et seq.) of the Commonwealth or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted. (1986, c. 170, § 2.1-328.9; 1988, c. 834; 1996, c. 508; 2001, c. 844.)

§ 2.2-4509. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes. — Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, and other political subdivisions and all other public bodies of the Commonwealth may invest any or all of the moneys belonging to them or within their control, other than sinking funds, in negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by Standard & Poor's and P-1 by Moody's Investor Service, Inc., for maturities of one year or less, and a rating of at least AA by Standard & Poor's and Aa by Moody's Investor Service,

38, c. 834; 2001, c.

g ownership of or accrued perary, the Common- itical subdivisions vest any and all ates representing or its coupons for bonds or coupons such certificates. 2. 844.)

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Inc., for maturities over one year and not exceeding five years. (1998, cc. 20, 21, § 2.1-328.15; 2001, c. 844.)

~~§ 2.2-4510. Investment of funds in corporate securities.~~

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least A by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poors, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a duration of no more than five years and a rating of at least A by two rating agencies, one of which shall be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities. (1987, c. 187, § 2.1-328.10, 1988, c. 834, 1994, c. 145, 2001, c. 844.)

§ 2.2-4511. Investment of funds in asset-backed securities. — Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in asset-backed securities with a duration of no more than five years and a rating of no less than AAA by two rating agencies, one of which must be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency, institution of the Commonwealth or statewide authority created under the laws of the Commonwealth having an internal or external public funds manager with professional investment management capabilities. (1994, c. 145, § 2.1-328.13; 1997, c. 29; 2001, c. 844.)

§ 2.2-4512. Investment of funds by State Treasurer in obligations of foreign sovereign governments. — Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account over which he has custody and control, other than sinking funds, in fully hedged debt obligations of sovereign governments and companies that are fully guaranteed by such sovereign governments, with a rating of at least AAA by Moody's Investors Service, Inc., and a rating of at least AAA by Standard and Poors, Inc., and a maturity of no more than five years.

Not more than ten percent of the total funds of the Commonwealth available for investment may be invested in the manner described in this section. (1988, c. 461, § 2.1-328.11; 2001, c. 844.)

§ 2.2-4513. Investments by transportation commissions. — Transportation commissions that provide rail service may invest in, if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies that insure railroad operations. (1988, c. 834, § 2.1-328.12; 2001, c. 844.)

§ 2.2-4514. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds. — Public

funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of the citizens of the Commonwealth and with 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 in the conduct of an enterprise of a like character and with like aims. (1996, c. 437, § 2.1-328.14; 2001, c. 844.)

§ 2.2-4515. Collateral and safekeeping arrangements. — Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement that shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction.

As used in this section, "counterparty" means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than thirty-one calendar days or (ii) the State Treasurer, who shall comply with safekeeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform Investment of Institutional Funds Act, Article 1.1 (§ 55-268.1 et seq.) of Chapter 15 of Title 55. (1988, c. 834, § 2.1-329.01; 2001, c. 844.)

§ 2.2-4516. Liability of treasurers or public depositors. — When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees. (1979, c. 135, § 2.1-329.1; 2001, c. 844.)

Editor's note. — Acts 1997, ch. 73, cl. 1 provides: "§ 1. Notwithstanding any other provision of law to the contrary, in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees, no treasurer or public officer shall be liable for any loss resulting from retaining the common stock in Trigon Healthcare received as a result of the demutualization of Blue Cross and Blue Shield of Virginia, a mutual company doing business as Trigon Blue Cross Blue Shield, and the issuance of common stock to the holders of policies of insurance with Blue Cross and Blue Shield of Virginia."

"§ 2. The protection against potential liability provided by this act to treasurers and public officers for any loss resulting from retaining the

common stock in Trigon Healthcare extends only to the common stock received as a result of the demutualization of Blue Cross and Blue Shield of Virginia, a mutual company doing business as Trigon Blue Cross Blue Shield, retained by treasurers and public officers after the expiration of any initial lockup period.

"§ 3. The protection against potential liability provided by this act shall expire (i) with respect to one-third of the number of shares of such common stock on the first anniversary of the expiration of the initial lockup period, (ii) with respect to an additional one-third of the number of shares on the second anniversary of the expiration of the initial lockup period, and (iii) with respect to all remaining shares on the third anniversary of the expiration of the initial lockup period."

d to be date payment is made.

OPINIONS

6 (Charlottesville 2002).

Postmark evidence. — Under former § 11-6 (see now § 2.2-4353), the date of the stamp was the date a payment under a contract was made, and where the evidence relating to the postmark showed that the contractor's payment to the subcontractor was not made within the seven days specified in the contract, the subcontractor was entitled to relief and the contractor was not entitled to judgment relief. *Shen Valley Masonry, Inc. v. S.P. Cahill & Assocs.*, 58 Va. Cir. 396, 2002 Va. LEXIS 156 (Charlottesville 2002).

6.

Contracting.

by public employees in procurement may be specifically allowed by subcontracting to a public employee having official responsibility to participate in that transaction on which the contractor knows that:

- 1. is employed by a bidder, offeror or contractor in connection with the transaction;
- 2. is, or any member of the employee's family, a bidder, offeror or contractor such as a subcontractor, or is employed in a capacity of participation in the procurement transaction more than five percent;
- 3. is, or any member of the employee's family, a subcontractor arising from the procurement transaction;
- 4. is, or any member of the employee's family, a subcontractor in an arrangement concerning, prospective or existing, a contractor. (1982, c. 647, § 11-74; 1983, c. 83; 2001, c. 844; 2003, c. 694.)

2, 3 and 4 of "for "subdivisions A. 2. and A. 3. in the introductory paragraph.

44.

PUBLIC DEPOSITS ACT.

of intent; applicability.

account in Qatar for the purpose of receiving funds directly from sources within Qatar and for University accounts for expenditure within Qatar in connection with the VCU Qatar campus. The local bank account is exempt from

the Virginia Security for Public Deposits Act, Title 2.2, Chapter 44 of the Code of Virginia."

Acts 2002, c. 899, as amended by Acts 2003, c. 1042, in Item 291 G provides: "The State Treasurer shall report to the Secretary of Finance on the feasibility of implementing an administrative fee to charge public depositories that are required to collateralize public deposits pursuant to the Security for Public Deposits

Act. The report shall include the costs of administering the Security for Public Deposits Act and a justification for the amount of any fee, if such a fee is recommended. The State Treasurer shall develop the report in cooperation with the banking industry. The Secretary of Finance shall make a final report to the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2003."

CHAPTER 45.

INVESTMENT OF PUBLIC FUNDS ACT.

Sec.

2.2-4510. Investment of funds in corporate notes.

Sec.

2.2-4517. Contracts on interest rates, currency, cash flow or on other basis.

§ 2.2-4510. Investment of funds in corporate notes. —

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least Aa by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poors, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least A by two rating agencies, one of which shall be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities. (1987, c. 187, § 2.1-328.10; 1988, c. 834; 1994, c. 145; 2001, c. 844; 2002, cc. 18, 438.)

The 2002 amendments. — The 2002 amendments by cc. 18 and 438 are identical to the amendments by cc. 18 and 438 in the 2001 amendments and deleted "a duration of no more than five years and" following "corporate notes with" in subsection B.

§ 2.2-4517. Contracts on interest rates, currency, cash flow or on other basis. —

A. Any state entity may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the state entity, as represented by bonds or investments, in whole or in part, on the interest rate cash flow or other basis desired by the state entity. Such contract or other arrangement may include contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the state entity in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the state entity, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by a nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be

made by the Treasury Board, the governing body of the state entity or any public funds manager with professional investment capabilities duly authorized by the Treasury Board or the governing body of any state entity authorized to issue such obligations to make such determinations.

As used in this section, "state entity" means the Commonwealth and all agencies, authorities, boards and institutions of the Commonwealth.

B. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section may be invested in accordance with this chapter and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to this section. (2002, c. 407.)

CHAPTER 50.

INTEREST ON CERTAIN OBLIGATIONS OF GOVERNMENT INSTRUMENTALITIES.

§ 2.2-5001. Manner of exercising authority.

Editor's note. — In the second line of the section, as set out in the 2001 Replacement Volume 1, the "§" symbol should be deleted.

CHAPTER 51.

VIRGINIA INVESTMENT PARTNERSHIP ACT

Sec.	Sec.
2.2-5100. Short title; definitions.	2.2-5102. Performance grant for major eligible manufacturers.
2.2-5101. Virginia Investment Performance Grants.	

§ 2.2-5100. Short title; definitions. — A. This chapter shall be known and may be cited as the "Virginia Investment Partnership Act."

B. As used in this chapter, unless the context requires a different meaning: "Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

"Average nonmanufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid nonmanufacturing workers in basic employment in a locality or region of the Commonwealth.

"Basic employment" means employment that brings new or additional income into Virginia and adds to the gross state product.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product; or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be inengore for budgetation

Section 4.06 Fund Subaccounts. The Trustee is hereby authorized and directed to create such subaccounts in the funds created in Sections 4.01 through 4.05 above as may be appropriate to accommodate Additional Bonds or otherwise.

Section 4.07 Completion of a Project and Disposition of Project Fund Balance. The completion of each Project and payment or provision made for payment of the Costs of a Project shall be evidenced by the filing with the Trustee of the certificate required by Section 3.3 of the Loan Agreement. As soon as practicable and in any event not later than the earliest of 60 days from the date of the certificate referred to in the preceding sentence or the third anniversary of the date of closing of the issuance and sale of the Bonds relating to such Project, the balance remaining in the applicable Project Fund from proceeds of Bonds deposited for use in connection with such Project (except amounts the Borrower shall have directed the Trustee to retain for any Costs of the Project not then due and payable or being reasonably contested in good faith or the Trustee has pursuant to Section 4.05 hereof transferred to the applicable Interest Account) shall without further authorization be transferred by the Trustee from the applicable Project Fund for deposit in the Bond Fund and used in the manner provided in Section 4.04(b) hereof.

Section 4.08 Moneys to be Held in Trust. All money that the Trustee shall have withdrawn from the Bond Fund or shall have received from any other source and set aside for the purpose of paying any of the Bonds, either at the maturity thereof or by purchase (other than as provided in Section 3.08) or call for redemption or for the purpose of paying any interest on the Bonds, shall be held in trust for the respective Holders. Moneys received by the Tender Agent or the Trustee from the sale of a Bond under Section 3.08 or from the purchase of any Bond shall be held segregated from other funds held by the Tender Agent or the Trustee in trust for the benefit of the Person from whom such Bond was purchased and shall not be invested while so held. Any money that is so set aside or transferred and that remains unclaimed by the Holders for a period of five (5) years (or such period of time as is then specified by Virginia law governing unclaimed or abandoned property) after the date on which such Bonds have become payable, shall be paid immediately to the Borrower.

Section 4.09 Payment to Borrower from Bond Fund or Project Fund. Any amounts remaining in the applicable sub-accounts of the Bond Fund or, subject to the provisions contained in Section 4.07, the applicable Project Fund after payment in full of the principal of, premium, if any, and interest on all Outstanding Bonds, the fees, charges and expenses of the Authority, the Trustee, the Tender Agent, the Auction Agent and the applicable Remarketing Agent or Broker-Dealer (including without limitation the fees and expenses of their respective counsel) and all other amounts required to be paid hereunder, including payments of rebatable arbitrage payable to the United States, shall be paid immediately to the Borrower.

Section 4.10 Investment of Moneys. To the extent permitted by law and if directed in writing (including facsimile) by a Borrower Representative and except as otherwise provided herein, the Trustee shall invest and reinvest moneys on deposit in the Bond Fund representing proceeds of Bonds only in Investment Securities specified in (a) or (e) (provided that such money market fund(s) invests solely in Investment Securities described as of the date of investment in (a)) below, maturing at such times as such amounts shall be needed for the purposes thereof and as directed in writing by a Borrower Representative. Unclaimed moneys held by the Trustee or the Tender Agent shall be held uninvested by the Trustee or the Tender

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Agent, as the case may be. Moneys held by the Trustee representing proceeds of the initial sale of Bonds (except for any proceeds described in the first sentence of this Section) shall be invested and reinvested by the Trustee, to the extent permitted by law, in any of the following (the "Investment Securities") of which neither the Borrower nor any of its subsidiaries is the obligor, as directed in writing (including facsimile) by a Borrower Representative:

(a) Defeasance Obligations;

(b) obligations rated at the time of purchase "AAA" by S&P and "Aaa" by Moody's issued by Fannie Mae, the Federal Home Loan Mortgage Corporation, the Resolution Funding Corporation (REFCORP), the Federal Home Loan Bank System of any similar entity;

(c) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings of holding companies are not considered as the rating of the bank);

(d) commercial paper which is rated at the time of purchase "A-1" or "A-1+" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;

(e) investments in money market funds rated at the time of purchase "AAAm" or "AAAm-G" or better by S&P including those administered by the Trustee;

(f) investments with any financial institution or other entity either (i) with debt rated at the time of purchase of at least "A2" by Moody's and "A" or better by S&P or (ii) if an institution has only a short-term rating, a rating at the time of purchase of not less than "A-1" by S&P and "P-1" by Moody's;

(g) general obligations of states with a rating at the time of purchase of at least "A2/A" or higher by Moody's and S&P;

(h) interest bearing time or demand deposits, certificates of deposit of other similar banking arrangements with banks (which may include the Trustee) which are members of the Federal Deposit Insurance Corporation and which have at the time of purchase a long term debt rating in one of the two highest rating categories by Moody's and S&P, provided that, to the extent such deposits exceed available federal deposit insurance, such deposits are fully collateralized and secured by obligations described in clauses (a) or (b) in the definition of Defeasance Obligations which have a market value (exclusive of accrued interest) at least equal to such deposits so secured including interest;

(i) contracts for the purchase and sale of obligations described in clauses (a) through (h) of this definition, provided that: (i) if the parties with which such contracts are made are not members of the Federal Reserve System or if such parties (including members of the Federal Reserve System) are not required to set aside and otherwise identify obligations described in clauses (a) through (g) above to such contracts as security or reserve therefor, such obligations are to be delivered to and held by a third-party during the term of such contracts, (ii)

such obligations are to be continuously maintained at market value at least equal to 100% of the face value of each such contract, and (iii) the provider of such contract will not adversely affect the rating on the Bonds then in effect; and

(j) investments in any mutual fund the portfolio of which is limited to Investment Securities, including any proprietary mutual fund of the Trustee for which the Trustee or an affiliate is investment advisor or provides other services to such mutual fund and receives reasonable compensation for such services.

The value of the above investments shall be determined by their market value. To the extent that the Trustee has not received written directions from the Borrower regarding investment of moneys, the Trustee shall, until such directions are received, invest such moneys pursuant to standing written instructions delivered to the Trustee by the Borrower upon the original issuance of the Bonds, as such instructions may be amended from time to time.

The Trustee may make investments permitted by this Article through or from its own bond department or the department of any bank or trust company under common control with the Trustee. Investments will be made so as to mature or be subject to redemption at the option of the holder on or before the date or dates that the Trustee or the Borrower, as appropriate, anticipates that moneys from the investments will be required. Investments shall be registered in the name of the Trustee or its nominee and held by or under the control of the Trustee. The Trustee shall sell and reduce to cash a sufficient amount of investments whenever the cash held by the Trustee is insufficient for its purposes, regardless of the loss on liquidation. The Authority certifies to the Trustee for the benefit of the Bondholders that moneys held by the Trustee in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds, shall not be used in a manner which shall cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. Pursuant to the Tax Certificate, the Authority covenants that it shall comply with the requirements of Section 148 of the Code.

All such investments shall be held by or under the control of the Trustee and while so held shall be deemed a part of the particular fund in which held. The interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investments shall be charged to such fund. The Trustee shall not be responsible for any losses on investments made in accordance with this section or the tax consequences thereof.

~~Section 4.11 - Creation of Rebate Fund~~

(a) There is hereby created by the Authority and ordered established with the Trustee a fund to be designated as "~~Virginia Multi-Medium Revenue Bonds (Series 2000) Rebate Fund~~". Moneys held in the Rebate Fund are hereby pledged to secure payments to the United States of America as provided in subsection (e) below, and neither the Authority nor the owner of any Bonds shall have any right in or claim to such moneys.

including, with respect to the Series 2003 Project, those items set forth in Exhibit B to the Loan Agreement and, with respect to a Project financed with proceeds of Additional Bonds, those items set forth in an exhibit to the Supplemental Loan Agreement, including capitalized interest and taxes and costs of issuance.

"Counsel" means an attorney, or firm thereof, admitted to practice law before the highest court of any state in the United States of America or of the District of Columbia.

"Current Mode" has the meaning specified in Section 2.02(g)(2) of the Indenture.

"Daily Mode" means the Mode during which the Bonds bear interest at a Daily Rate.

"Daily Rate" means an interest rate determined pursuant to Section 2.02(b) of the Indenture.

"Default" or "Event of Default" means with respect to any Default or Event of Default under the Indenture, any occurrence or event specified in Section 8.01 of the Indenture or with respect to any default or event of default under the Loan Agreement, any occurrence or event specified under Section 6.1 of the Loan Agreement.

"Defeasance Obligations" means any of the following:

- (a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (b) below);
- (b) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series - "SLGS");
- (c) Pre-Refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or the District of Columbia or of any agency, instrumentality or local governmental unit of any such state or the District of Columbia which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on a date on which proceeds of such obligations are available to pay the redemption price of any Bond;
 - (i) which are rated, based on an irrevocable escrow account of funds (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or
 - (ii) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (b) of the definition of Defeasance Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified

public accountant or verification agent, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; and

(d) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export - Import Bank
- Farm Credit System Financial Assistance Corporation
- Rural Economic Community Development Administration (formerly the Farmers Home Administration)
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration
- Federal Financing Bank
- Resolution Trust Funding Corp.

~~"Defaced Bonds" shall mean all Bonds, or any portion of Bonds in Authorized Denominations then Outstanding, which are deemed paid for and discharged pursuant to Article VII of the Indenture.~~

"DTC" means The Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

"DTC Participant" or "DTC Participants" means securities brokers and dealers, banks, trust companies and clearing corporations which have access, as participants or otherwise (directly or indirectly) to the DTC system.

"Eastern Time" means New York City time.

"Electronic Means" means telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

~~"Facility" or "Facilities" means the Borrower's research and training facilities located at the intersection of State Street and Elm Boulevards in the Town of Southbury, Connecticut, of which the Series 2003 Project is a part.~~

"Favorable Opinion of Bond Counsel" shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Act and the Indenture and will not impair the exclusion from gross income for purposes of federal income taxation of

Arbitrage Rules, generally

1. IRS prefers that proceeds be spent as quickly as possible on qualified projects
2. Purpose of the arbitrage rules is to prevent issuers from earning a yield on bond proceeds that is “materially higher” than the bond yield
3. Proceeds may be invested without restriction as to yield if they qualify for a “temporary period”
4. However, unless the proceeds are also exempt from rebate, any arbitrage earned must be rebated to the federal government

Types of Proceeds

Must first identify the bond proceeds to determine what arbitrage rules apply:

- **Sale Proceeds**—Amount paid for the bonds by the bond purchasers
- **Replacement Proceeds**— Amounts held in a sinking fund or pledged fund
- **Transferred Proceeds**— Proceeds transferred from a prior issue in a refunding
- **Investment Proceeds**—Amounts earned from investing proceeds of the issue

Each type of proceeds has a different set of arbitrage rules

Construction Fund Arbitrage Rules

1. Three year temporary period available if there is a reasonable expectation on the date of issue that:
 - a. There will be a substantial binding obligation to a third party to spend at least 5% of the proceeds within 6 months on the project;
 - b. 85% of proceeds will be spent within 3 years; and
 - c. Work of the project will proceed with due diligence
2. Three year temporary period may be extended to five years for construction projects where the issuer and a licensed architect or engineer certify that more than 3 years is required to complete the project

Construction Fund Arbitrage Rules (cont.)

3. Earnings are subject to rebate unless a “spend down” exception to rebate is met.
 - a. 6 month spend down exception: 100% of gross proceeds spent in 6 months
 - b. 18 month spend down exception: 15% of gross proceeds spent in 6 months, 60% spent in 12 months, and 100% spent in 18 months
 - c. 24 month spend down exception for certain construction projects: 10% of Available Construction Proceeds spent in 6 months, 45% in 12 months, 75% in 18 months, and 100% in 24 months.
 - d. “reasonable retainage” exception to final spending requirement: Met for 24 month spend down requirement if no more than 5% of proceeds remains and spent within 3 years. Met for 18 month spend down if no more than 5% remains and spent within 30 months.

(Bona Fide) Debt Service Fund

1. May be invested without yield restriction for 13 months if it:
 - a. is used primarily to achieve a proper matching of revenues with debt service within each bond year; and
 - b. is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of:
 - (i) the earnings on the fund for the immediately preceding bond year, or
 - (ii) one-twelfth of the debt service for such year
2. Earnings are not subject to rebate for fixed yield governmental bonds with an average maturity of at least 5 years. Earnings are not subject to rebate for other bonds if the earnings for the bond year are less than \$100,000 or average annual debt service is not in excess of \$2.5 million.

“Reasonably Required”
Debt Service Reserve Fund

1. Proceeds held in a reserve fund may be invested without yield restriction if they don't exceed 10% of the amount of the bond issue

2. A fund is “reasonably required” if the amount in the fund is not greater than the least of:
 - a. the maximum annual debt service on the issue;
 - b. 10% of the stated principal amount of the issue; and
 - c. 125% of the average annual debt service on the issue

3. Earnings in debt service reserve fund are subject to rebate

Minor Portion Exception

1. Notwithstanding amounts held in the reserve fund, up to the lesser of 5% of the proceeds of an issue or \$100,000 may be invested without yield restriction
2. The minor portion is subject to rebate

Fair Market Value Requirement for Purchase Price of Investments

1. The yield on an investment must generally be based on a purchase price for the investment that does not exceed its “fair market value”
2. Fair market value is defined generally as the price a willing buyer would pay a willing seller in a bona fide arm’s-length transaction
3. The concern is that an artificially high purchase price will lower the investment yield and reduce rebate owed—this is a form of “yield burning”

Example of yield burning

1. Assume bond yield is 5%
2. No yield burning: Assume construction fund is invested at a yield of 5.05%. The purchase price of the investment is its fair market value. The difference between 5.05% and 5% must be rebated to the federal government.
3. Yield burning: Now assume that the purchase price of the investment is artificially increased when the issuer and a provider make a deal to inflate the purchase price. Increasing the purchase price lowers the yield on the investment to 4.95%. Now the issuer does not have to rebate any arbitrage to the federal government because the investment yield is lower than the bond yield. Instead the arbitrage has been diverted from the government to the investment provider

General rule for establishing fair market value

1. For investments not traded on an established securities market there is a rebuttable presumption that the price paid is NOT fair market value
2. Must establish fair market value another way

Safe Harbor for Treasuries and CDs

1. The fair market value of a US Treasury obligation that is purchased directly from the US Treasury is its purchase price
2. The purchase price of a CD is its fair market value as long as its yield is not less than
 - a. The yield on reasonably comparable direct obligations of the US; and
 - b. The highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable CDs offered to the public
2. Safe harbor for CDs only applies to CDs that have a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal

Safe Harbor for Guaranteed Investment Contracts

1. GICs allow an issuer to invest money at a fixed rate for a specified period of time while having the flexibility to draw money for a governmental purpose under a flexible draw schedule. GIC rate is usually less than a fixed rate investment rate because GIC provide takes risk of early or late draws.

2. The purchase price of a GIC will be treated as its fair market value if it meets the following requirements:
 - a. The bid specifications must be in writing and timely forwarded to potential providers
 - (i) Must include all material terms of the bid, including all terms that may directly or indirectly affect the yield or cost of the investment

 - (ii) Must include a statement that the potential providers may not consult with any other potential providers about its bid, that the bid was determined without regard to any other agreement, and that the bid is not a courtesy bid

 - (iii) The terms of the bid must be commercially reasonable

- (iv) Bid takes into account draw schedule
 - (v) No bidder gets “last look”
 - (vi) At least three competitive providers are solicited
- b. Actual bids must meet the following requirements
 - (i) At least three bids received from providers that do not have a material financial interest in the bond issue (usually can’t be the underwriter)
 - (ii) At least one of the three bids actually received is from a reasonably competitive bidder
 - (iii) The bidding agent must not be a bidder
- c. The winning bidder must be the highest yielding bona fide bid (can’t give preferred party the contract if lower bid)
- d. If the winning bidder is paying administrative costs to third parties in connection with supplying the investment (e.g., the bidding agent), it must disclose the costs.

e. In determining payments made or received “qualified administrative costs” are taken into account—that is, they will affect the yield on the investment. Qualified administrative costs are reasonable, direct costs, such as selling commissions. General overhead costs are not qualified administrative costs.

(i) Safe harbor for a broker’s commission: fee does not exceed the lesser of \$33,000 or 0.2% of the amount of proceeds deposited into the GIC

“Bid-Rigging”—Criminal Investigations

1. Justice Department and SEC are actively investigating bid-rigging of GICs
2. Investigations stem from IRS audits that have uncovered shady practices with respect to investment yields—diversion of arbitrage from the federal government to investment professionals
3. Dozens of firms have been subpoenaed, including broker-dealers, investment and derivative brokers and providers, bond insurers, etc.
4. In December the FBI raided 3 firms
5. Examples: SEC has settled cases that involving “last looks” by providers and courtesy bids
6. Current investigation is serious because it involves criminal charges---IRS can also pursue participants under section 6700 of the tax code, which can be used to apply penalties to participants in abusive transactions

How should issuers protect themselves?

1. Research the backgrounds of the professionals they use.
2. Seek out more than three bids
3. Be wary of brokers and advisers who also do work for the providers—their judgment will be clouded
4. Be wary of providers who have another role in the bond transaction
5. Work closely with bond counsel from the beginning to review the bid process—review bid specs, provider certificate, drawdown schedule
 - a. Bond counsel require many certifications from provider, FA, brokers, etc. to make sure rules are met
 - b. Because a lot of the problems are happening behind the scenes it is very difficult for bond counsel or issuers to know what is going on. Bond counsel should create a paper trail of all of their due diligence.
 - c. FAs role is to get a good deal for the client—they won't necessarily keep a close eye on the tax rules

Yield Burning

1. Artificially reducing investment yield to reduce rebate payments
2. Global settlement with SEC in 2000---17 broker-dealers agreed to pay more than \$138 million to resolve yield-burning concerns in restricted escrows
3. The Commission claimed the firms overcharged issuers for Treasuries for refunding escrows such that the markups “burned” the investment yield so that it was below the bond yield and it would not generate arbitrage
4. IRS continues to pursue yield burning cases in refunding escrow cases

CERTIFICATE OF BIDDING AGENT

The undersigned, [Name], hereby certifies as follows:

1. That he is the [Title] of [Name] (the "Bidding Agent").
2. That on [Date], the Bidding Agent, acting on behalf of the [Issuer's Name] (the "Issuer"), made a bona fide solicitation of at least 3 bids for the investment of proceeds in the amount of \$_____ of the Issuer's [Name of Bond Issue] (the "Bonds"), deposited into the [Name of Account] established and maintained under the Trust Agreement dated as of [date], between the Issuer and [Trustee Name], as trustee (the "Trustee"). The Bidding Agent made the solicitation using the bid specifications (the "Request for Bids") attached hereto as Attachment 1. As the result of the bidding process, such amounts will be invested pursuant to an Investment Agreement dated as of [date] (the "Agreement"), between _____ (the "Provider"), and the Trustee.
3. That the Request for Bids was in writing and was timely forwarded to potential providers, including to the Provider.
4. That the Request for Bids included all material terms and conditions of the bid. For purposes of this paragraph and paragraphs 8 and 14 below, a term or condition is "material" if its presence or absence or any change thereto may directly or indirectly affect the yield or the cost of the investment.
5. That the terms and conditions of the Request for Bids were commercially reasonable. For purposes of this paragraph, a term or condition is "commercially reasonable" if there is a legitimate business purpose for the term or condition other than to increase the purchase price or reduce the yield of the investment.
6. That the terms of the solicitation took into account the Issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested.
7. That at least three reasonably competitive providers were solicited for bids. For purposes of this paragraph, a "reasonably competitive provider" is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.
8. That (i) at least 3 qualifying bids were received from providers other than those with a material financial interest in the issuance of the Bonds (e.g., as underwriters or brokers) or related parties thereto to the best knowledge of the undersigned and (ii) the Provider's bid was a qualifying bid. For purposes of this paragraph, a bid is not "qualifying" if it contains any term or condition that deviates in any material respect from the terms and conditions specified in the Request for Bids. A bid summary is attached hereto as Attachment 2.
9. That at least one of the three bids described was from a reasonably competitive provider.

10. That the Bidding Agent did not bid pursuant to the Request for Bids.

11. That the bids were solicited on a competitive basis. All bidders had an equal opportunity to bid and no bidder was given the opportunity to review the other bids (a last look) before bidding.

12. That in connection with the Agreement, the Provider will pay the Bidding Agent a bidding agent fee or selling commission in one payment of \$33,000 (the "Fee"). The Fee does not exceed a reasonable administrative cost to be paid for the services provided by the Bidding Agent. An administrative cost is not a "reasonable administrative cost" unless it is comparable to administrative costs that would be charged for the same investment as or a reasonably comparable investment to the Agreement if acquired with a source of funds other than gross proceeds of tax-exempt bonds. In addition, the Fee is not in excess of the "safe harbor" amount for treating a broker's commission or similar fee as a "qualified administrative cost" under Treas. Regs. §1.148-5(e)(2) in that the Fee does not exceed the lesser of (A) \$33,000 and (B) 0.2% of the computational base with respect to the Agreement. The "computational base" is the amount that the Issuer reasonably expects, as of the date hereof, to be invested under the Agreement over the term thereof. The Issuer has advised that the Issuer reasonably expects such amount of gross proceeds to be \$ _____ 0.2% of \$ _____ is \$ _____.

13. That the Agreement is the highest-yielding investment agreement for which a qualifying bid was received (determined net of broker's or similar fees). The interest rate on the Agreement is at least equal to the interest rate that would be offered on similar obligations under similar investment agreements with which the undersigned is familiar.

14. That the terms and conditions of the Agreement do not deviate in any material respect from the terms and conditions specified in the Request for Bids.

15. IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed as of the ____th day of _____, 2007.

[Name]

By: _____
[Name], [Title]

CERTIFICATE OF PROVIDER

1. The Provider is a reasonably competitive provider.
2. The Provider (i) was not given the opportunity to review other offers to provide the Investment Agreement before making its offer, (ii) did not consult with any other provider or potential provider about its offer, (iii) made its bid without regard to any other formal or informal agreement that it has with any person (whether or not in connection with the Bonds), and (iv) did not submit its offer solely as a courtesy to any person for purposes of satisfying the requirements of the relevant provisions of the Treasury Regulations relating to establishing the fair market value for guaranteed investment contracts.
3. The terms of our offer to provide the Investment Agreement took into account the reasonably expected deposit and drawdown schedule for the proceeds to be invested included in the request for offers.
4. Other than any amounts described in paragraph 5 below, the Provider has not paid and does expect to pay any administrative costs to third parties in connection with supplying the Investment Agreement. For purposes of this paragraph, an "administrative cost" is any cost or expense paid, directly or indirectly, to purchase, carry, sell or retire an investment.
5. A single payment in the amount of \$_____ will be made by the Provider to _____ as a broker's commission/bidding agent fee.
6. The yield on the Investment Agreement is not less than the yield available from the Provider at the time the Investment Agreement was entered into on reasonably comparable investment contracts offered to other persons, if any, from a source of funds other than gross proceeds of an issue of tax-exempt bonds.
7. The undersigned understands that the foregoing information will be relied upon by the issuer of the Bonds and the Borrower for the purposes of compliance with the arbitrage yield restriction and rebate requirements applicable to the Bonds. Such reliance for only such purposes is authorized.

Date: _____

By: _____

Name: _____

Title: _____