

AMENDMENTS TO LB1074

(Amendments to Standing Committee Amendments, AM2560)

Introduced by Dungan, 26.

1           1. Insert the following new sections:

2           Sec. 31. Sections 31 to 36 of this act shall be known and may be  
3 cited as the Public Entities Pooled Investment Act.

4           Sec. 32. For purposes of the Public Entities Pooled Investment Act:

5           (1) Bank means a state-chartered or federally chartered bank which  
6 has a main chartered office in this state, any branch thereof in this  
7 state, or any branch in this state of a state-chartered or federally  
8 chartered bank which maintained a main chartered office in this state  
9 prior to becoming a branch of such state-chartered or federally chartered  
10 bank;

11           (2) Capital stock financial institution means a capital stock state  
12 building and loan association, a capital stock federal savings and loan  
13 association, a capital stock federal savings bank, or a capital stock  
14 state savings bank, which has a main chartered office in this state, any  
15 branch thereof in this state, or any branch in this state of a capital  
16 stock financial institution which maintained a main chartered office in  
17 this state prior to becoming a branch of such capital stock financial  
18 institution;

19           (3) Eligible entity means any governmental, public, or quasi-public  
20 entity, joint public agency created pursuant to the Joint Public Agency  
21 Act, or joint entity created pursuant to the Interlocal Cooperation Act,  
22 located in the state, including, but not limited to, an entity designated  
23 as a political subdivision, vested with taxing authority, or whose  
24 membership is wholly comprised by such entities and funds created by such  
25 entities. Eligible entity does not include the State of Nebraska or any  
26 department, division, office, board, commission, or other agency of the

1 state, or any court, constitutional office, or elected or appointed  
2 officer of the state;

3 (4) Eligible investment means:

4 (a) Obligations, including letters of credit, of any agency or  
5 instrumentality of the United States, including bonds, debentures, or  
6 notes issued by the Federal Home Loan Bank System;

7 (b) Direct obligations of or other obligations the principal of and  
8 interest on which are guaranteed by the United States or its agencies or  
9 instrumentalities, including collateralized mortgage obligations and  
10 obligations that are fully guaranteed or insured by the Federal Deposit  
11 Insurance Corporation or by the full faith and credit of the United  
12 States;

13 (c) Direct obligations of the state, its agencies, and its  
14 instrumentalities receiving an investment quality rating by a nationally  
15 recognized investment rating firm not less than A or its equivalent at  
16 the time of purchase;

17 (d) Obligations of other states, agencies, counties, cities, and  
18 political subdivisions of any state receiving an investment quality  
19 rating by a nationally recognized investment rating firm not less than A  
20 or its equivalent at the time of purchase;

21 (e) Commercial paper, if such commercial paper:

22 (i) Is issued by a United States corporation;

23 (ii) Has a stated maturity of two hundred seventy days or fewer from  
24 its date of issuance;

25 (iii) Is rated in the highest short-term rating quality category by  
26 at least two nationally recognized statistical rating organizations at  
27 the time of purchase;

28 (iv) Is limited to no more than fifty percent of the total funds  
29 available for investment by a local government investment pool at the  
30 time of purchase; and

31 (v) Is limited to no more than five percent of the total funds

1 available for investment by a local government investment pool being  
2 invested in the commercial paper of a single issuer;

3 (f) Money market mutual funds whose shares are sold without  
4 commissions or other sales charges unrelated to fund expenses, that have  
5 a fixed net asset value of one dollar, and that are comprised of  
6 obligations of the United States, its agencies, or its instrumentalities;

7 (g) Fully collateralized repurchase agreements if such agreements:

8 (i) Have a defined termination date;

9 (ii) Are secured by a combination of cash and obligations of the  
10 United States, its agencies, or its instrumentalities;

11 (iii) Require securities purchased by the trust or cash held by the  
12 trust to be pledged to the trust, held in the trust's name, and deposited  
13 at the time the investment is made with the trust or with a third party  
14 selected and approved by the trust; and

15 (iv) Are invested through a primary government securities dealer, as  
16 defined by the Board of Governors of the Federal Reserve System, or a  
17 financial institution; and

18 (h) Certificates of deposit and time deposit open accounts in banks,  
19 capital stock financial institutions, or qualifying mutual financial  
20 institutions;

21 (5) Local government investment pool means an investment pool or  
22 trust created pursuant to the laws of this state, including, but not  
23 limited to, the Interlocal Cooperation Act, for the purpose of pooling  
24 and investing the funds of two or more eligible entities; and

25 (6) Qualifying mutual financial institution has the same meaning as  
26 in section 77-2365.01.

27 Sec. 33. An eligible entity may invest its funds and funds under  
28 its control through a local government investment pool if the governing  
29 body of the eligible entity by ordinance or resolution authorizes  
30 investment in the pool. A local government investment pool may only  
31 invest the funds it receives from eligible entities in eligible

1 investments.

2       Sec. 34. A local government investment pool shall display and  
3 include in all advertising, in all marketing materials, and on any  
4 Internet website or mobile application it maintains the following  
5 conspicuous statements:

6       (1) Investments in a local government investment pool are not  
7 insured or guaranteed by the Federal Deposit Insurance Corporation or any  
8 other government agency; and

9       (2) Investments in a local government investment pool are subject to  
10 liquidity risk, which may impact the pool's ability to sell investments  
11 in a timely fashion or at near face value in order to fulfill a  
12 participant's redemption request. Such investments are also subject to  
13 market risk, issuer risk, and default risk. Participants may lose money  
14 by investing in a local government investment pool.

15       Sec. 35. The general investment strategy for a local government  
16 investment pool shall be to invest all funds of eligible entities to  
17 accomplish the following objectives, which are listed in order of  
18 priority:

- 19       (1) Preservation and safety of principal;  
20       (2) Liquidity; and  
21       (3) Yield.

22       Sec. 36. Any agent, employee, or representative of an investment  
23 advisor acting on behalf of a local government investment pool who  
24 solicits, purchases, or sells securities or eligible investments on  
25 behalf of the local government investment pool shall hold and maintain  
26 any license or registration required by federal or state law to solicit,  
27 purchase, or sell securities or eligible investments on behalf of a local  
28 government investment pool.

29       Sec. 74. Section 30-3801, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31       30-3801 (UTC 101) Sections 30-3801 to 30-38,110 and sections 75 to

1 79 of this act shall be known and may be cited as the Nebraska Uniform  
2 Trust Code.

3 Sec. 75. It is the policy of the State of Nebraska to encourage the  
4 use of a special needs trust by an individual with disabilities to  
5 preserve funds to provide for the needs of the individual that are not  
6 met by governmental benefits and that enhance such individual's quality  
7 of life.

8 Sec. 76. For purposes of sections 75 to 79 of this act:

9 (1) Beneficiary with a disability means a beneficiary of a trust,  
10 who a special needs fiduciary believes may qualify for governmental  
11 benefits based on disability whether or not the beneficiary currently  
12 receives those benefits, or who is an individual who has been adjudicated  
13 to be disabled;

14 (2) Governmental benefits means financial aid or services from a  
15 state, federal, or other public agency;

16 (3) Pooled special needs trust means a trust which combines assets  
17 and is managed by a nonprofit association providing a separate account  
18 maintained for each beneficiary with a disability;

19 (4) Self-settled special needs trust means a trust which has been  
20 funded with the assets of a beneficiary with a disability and includes a  
21 first party special needs trust;

22 (5) Special needs fiduciary means a trustee or other fiduciary,  
23 other than a settlor, that has discretion to distribute, or is required  
24 to distribute, part or all of the principal of a trust to a current  
25 beneficiary with a disability;

26 (6) Special needs trust means a trust the trustee believes would not  
27 be considered a resource for purposes of determining whether a  
28 beneficiary with a disability is eligible for governmental benefits and  
29 includes a supplemental needs trust; and

30 (7) Third-party special needs trust means a trust which has been  
31 funded with the assets of an individual other than the beneficiary with a

1 disability.

2 Sec. 77. (1) Each state agency that provides governmental benefits  
3 to individuals of any age with disabilities through means-tested  
4 programs, including the medical assistance program, shall adopt and  
5 promulgate rules and regulations that:

6 (a) Are not more restrictive than existing federal law, regulations,  
7 or policies with regard to the treatment of a special needs trust,  
8 including a trust defined in 42 U.S.C. 1396p(c)(2) and 42 U.S.C. 1396p(d)  
9 (4);

10 (b) Are not more restrictive than any state law regarding trusts,  
11 including any state law relating to the reasonable exercise of discretion  
12 by a trustee, guardian, or conservator in the best interests of the  
13 beneficiary;

14 (c) Do not require disclosure of a beneficiary's personal or  
15 confidential information without the consent of the beneficiary;

16 (d) Allow an individual account in a pooled special needs trust to  
17 be funded without financial limit;

18 (e) Allow an individual to establish or fund an individual account  
19 in a pooled special needs trust without an age limit or a transfer  
20 penalty;

21 (f) Allow an individual to fund a special needs trust for the  
22 individual's child with disabilities without a transfer penalty and  
23 regardless of the child's age; and

24 (g) Allow all legally assignable income or resources to be assigned  
25 to any special needs trust without limit.

26 (2) Nothing in this section may be interpreted to require a court  
27 order to authorize the funding of, or a disbursement from, a special  
28 needs trust.

29 Sec. 78. (1) A determination by the Internal Revenue Service  
30 regarding the nonprofit status of a nonprofit organization operating a  
31 pooled special needs trust shall be sufficient to satisfy the nonprofit

1 requirement of 42 U.S.C. 1396p(d)(4)(C).

2 (2) A state agency may not impose additional requirements on an  
3 organization described in subsection (1) of this section for the purpose  
4 of qualifying or disqualifying the organization from offering a pooled  
5 special needs trust.

6 Sec. 79. Any rule or regulation adopted and promulgated by a state  
7 agency regarding pooled special needs trusts shall apply only to those  
8 trust beneficiaries who are residents of the state or who receive  
9 governmental benefits funded by the state.

10 Sec. 96. Section 77-2341, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 77-2341 (1) Whenever any county, city, village, or other  
13 governmental subdivision, other than a school district, of the State of  
14 Nebraska has accumulated a surplus of any fund in excess of its current  
15 needs or has accumulated a sinking fund for the payment of its bonds and  
16 the money in such sinking fund exceeds the amount necessary to pay the  
17 principal and interest of any such bonds which become due during the  
18 current year, the governing body of such county, city, village, or other  
19 governmental subdivision may invest any such surplus in excess of current  
20 needs or such excess in its sinking fund in certificates of deposit, in  
21 time deposits, and in any securities in which the state investment  
22 officer is authorized to invest pursuant to the Nebraska Capital  
23 Expansion Act and the Nebraska State Funds Investment Act and as provided  
24 in the authorized investment guidelines of the Nebraska Investment  
25 Council in effect on the date the investment is made. The state  
26 investment officer shall upon request furnish a copy of current  
27 authorized investment guidelines of the Nebraska Investment Council.

28 (2) Whenever any school district of the State of Nebraska has  
29 accumulated a surplus of any fund in excess of its current needs or has  
30 accumulated a fund for the payment of bonds and the money in such fund  
31 exceeds the amount necessary to pay the principal and interest of any

1 such bonds which become due during the current year, the board of  
2 education of such school district may invest any such surplus in excess  
3 of current needs or such excess in the bond fund in securities in which  
4 such board of education is authorized to invest pursuant to section  
5 79-1043.

6 (3) Nothing in subsection (1) of this section shall be construed to  
7 restrict investments authorized pursuant to section 14-563.

8 (4) Nothing in subsections (1), (2), and (3) of this section shall  
9 be construed to authorize investments in venture capital or to expand the  
10 investment authority of a local government investment pool under the  
11 Public Entities Pooled Investment Act.

12 2. Correct the operative date and repealer sections so that the  
13 sections added by this amendment become operative three calendar months  
14 after the adjournment of this legislative session.

15 3. Renumber the remaining sections and correct internal references  
16 accordingly.