

MEMO

TO: Director Bret Afdahl
FROM: Brock Jensen
DATE: July 19, 2019
RE: SDCL Chapters 4-5 and 4-6A

SDCL 4-5-5 defines public funds, as referenced in SDCL 4-5-6 to SDCL 4-5-11, to include "all general, special, and other funds, regardless of source or purpose, that may now or hereafter be owned, held, or administered by any political subdivision of this state, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the political subdivision."

In general, SDCL 4-5-6 provides that any public funds which will not be needed for current operating expenses (excess public funds) may be invested in:

1. Securities of the United States and securities guaranteed by the United States government either directly or indirectly.
2. Repurchase agreements fully collateralized by securities described in 1. and meeting the requirements of SDCL 4-5-9.
3. Shares of an open-end, no-load fund administered by an investment company registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933 and whose only investments are in securities described in 1. and repurchase agreements described in 2.

Similarly, SDCL 4-5-6.2 provides that excess public funds may be invested in:

1. Direct obligations of any county, municipality, or school district in the state.
2. Bonds issued by the South Dakota Housing Development Authority, the South Dakota Health and Educational Facilities Authority, or the South Dakota Building Authority.

In addition to the excess public fund investment options provided in SDCL 4-5-6 and SDCL 4-5-6.2, SDCL 4-5-6.1 provides that excess public funds may be deposited in banks located in South Dakota subject to certain conditions, including a requirement that the deposits be fully insured by the FDIC. SDCL 4-5-6.1.

SDCL 4-5-11 provides the following related to the investment of excess public funds: "Sections 4-5-5 to 4-5-10, inclusive, are supplemental to any other laws relating to the investment, deposit, or administration of the public funds therein specified, and shall supersede the provisions thereof only to the extent that such other laws may restrict or prohibit investments in accordance with the provisions thereof." Accordingly, it appears that the provisions of SDCL Chapter 4-5 supplement the provisions of SDCL Chapter 4-6A related to the deposit of excess public funds in banks in South Dakota. SDCL Chapter 4-6A allows for the acceptance of public funds as public deposits by qualified public depositories subject to certain conditions, including insurance and pledging requirements. SDCL 4-6A-3.

SDCL 4-6A-1 provides the following definitions:

- (6) "Public deposit," all general, special, and other funds held or administered by this state or any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the state or political subdivision or any tribal government funds, and which public deposit is insured, in whole or in part, by deposit insurance. Deposits placed in banks by the Value Added Finance Authority created pursuant to chapter 1-16E are not public deposits.
- (7) "Qualified public depository," a state bank, national bank, federal savings and loan association, or a federally chartered credit union located in this state which receives or holds public deposits; and segregates eligible collateral for public deposits as described in § 4-6A-3.