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To: Chief Fiscal Officers

From: Division of Local Government Services and Economic Development

Subject: Advisory – Changes to Law Governing Temporary Investments

Please give copies of this bulletin to others who may need this information.

Recently enacted legislation amends the General Municipal Law to authorize an additional option for securing deposits and temporary investments of local government monies.

Currently, municipalities depositing funds with banks in excess of FDIC insurance limits must receive a pledge of specific securities having a market value greater than or equal to their deposits. Under the new law, localities now have the option to accept a pledge of a pro rata portion of a collateral "pool" as security for their deposits and investments.

Local governments that choose to utilize the new pooled collateral option must take the necessary steps to ensure that their deposits and investment are properly secure, and should seek the advice of their legal counsel. The State Comptroller will be providing revised model security agreements for local governments to assist them with this change. **We strongly suggest that local governments proceed with utmost caution until these revised model agreements are available.**

The attached legal memorandum provides more details on this change.

POOLED COLLATERAL LEGISLATION

Legislation recently signed into law by the Governor (Chapter 545 of the Laws of 2005, effective August 23, 2005) amends the General Municipal Law to authorize an additional option to secure deposits and temporary investment of local government monies.

Prior to this amendment, local governments were required to secure their deposits and investments, to the extent in excess of FDIC coverage and not secured by an eligible letter of credit or surety bond, by a pledge of specific eligible securities having an aggregate market value at least equal to aggregate amounts of their deposits and investments. Under the new law, local governments now have the option to accept as security for deposits and investments a pledge of a pro rata portion of a "pool" of eligible securities ("pooling method"). In order to accommodate the new pooling method, the legislation also repealed important provisions that formerly expressly required pledged securities to be in a form suitable for transfer and prohibited the pledged securities from being commingled with or becoming part of the backing of any other bank liability.

The new law requires that the local government's security agreement with the depository bank or trust company include all provisions deemed "necessary and sufficient to secure in a satisfactory manner the local government's interest" in the pool. **Local governments that choose to utilize the new pooling method must take the necessary steps to ensure that their security interests in the pooled collateral are proper and adequate. In this regard, it is important that they seek the advice of their legal counsel.**

The State Comptroller is charged with providing model security and custodial agreements, and a model investment policy, for local governments to assist and guide them in formulating their own agreements and policies. In response to the new legislation, OSC is in the process of revising our current model agreements and policies, as necessary, to accommodate the new pooling method. **In the interim, we strongly advise that local governments that intend to utilize this option proceed with utmost caution.**

Included among the areas we expect to address in the revised model documents are the following: (1) how a local government obtains a security interest in an undivided share of the pool in proportion to the total amount of the local government's deposits and investments with the depositary bank or trust company; and (2) requiring the depositary bank or trust company to maintain eligible securities of sufficient market value in the pool to cover the total public deposits and investments of all participants.

OSC expects to issue the revised model agreements and any associated guidance in the near future. Questions can be directed to Mitchell Morris, Associate Counsel, OSC Division of Legal Services, (518) 474-5586.