

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1773

S. P. 690

In Senate, January 17, 1966

The Committee on State Government suggested.

EDWIN H. PERT, Secretary

Presented by Senator Harding of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SIX

AN ACT Creating the Investment of State Funds Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, c. 7, sub-c. II, additional. Chapter 7 of Title 5 of the Revised Statutes is amended by adding a new subchapter II to read as follows:

‘SUBCHAPTER II

INVESTMENT OF STATE FUNDS LAW

Article 1. General Provisions

§ 152. Short title

This subchapter may be cited as the “Investment of State Funds Law.”

§ 153. Subchapter controlling

To the extent that the provisions of this subchapter are inconsistent with any other law, this subchapter shall be controlling.

§ 154. Establishment

There is established in the Treasury Department a State Investment Council.

§ 155. Membership

The Investment Council shall consist of 6 voting members: Three public members, both political parties to be represented, appointed by the Governor, 3 representatives of the state fund which owns the largest total investment assets,

and the Treasurer of State who shall vote only in case of a tie. The State Investment Officer shall be a nonvoting member of the Investment Council. Actions shall be by majority vote and 4 members shall constitute a quorum for the transaction of any business.

§ 156. Term of appointments

Each of the public members of the Investment Council shall be appointed by the Governor for a term of 5 years, except that for the first appointments the terms shall be for 3, 4 and 5 years, respectively. The Governor shall appoint the representatives of the fund from the membership of the fund-governing body. Such representatives shall serve on the Investment Council during their term of office on the governing body of the fund. All members shall serve until their respective successors are appointed and have qualified.

§ 157. Qualifications

The public members of the Investment Council shall be qualified by training and experience in the field of investment or finance. During his tenure, a member of the Investment Council or his firm shall not be engaged in the sale of securities to the State or to any fund thereof, nor shall any such member benefit directly or indirectly from any transaction made by the State Investment Officer, nor shall he hold any office, position or employment in any political party.

§ 158. Removal; vacancy

A public or fund member of the Investment Council may be removed from office by the Governor for cause, upon notice and opportunity to be heard at a public hearing. Any vacancy in the membership of the Investment Council occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

§ 159. Chairman

The chairman and presiding officer of the Investment Council shall be the Treasurer of State.

§ 160. Necessary expenses

The members of the Investment Council shall receive \$20 per day for each meeting attended and shall be reimbursed for necessary expenses incurred in the performance of their duties as approved by the Investment Council.

Article 2. Division of Investment; State Investment Officer

§ 161. Establishment

There is established in the Treasury Department a Division of Investment, which shall be under the immediate supervision and direction of a person who shall be designated the "State Investment Officer."

§ 162. State Investment Officer

The State Investment Officer shall devote his entire time and attention to the duties of his office, shall not be engaged in any other occupation or profes-

sion, nor shall he hold any other public office, appointive or elective. He shall be a person qualified, by training and investment experience, to direct the work of such division. He shall receive a salary of not less than \$10,000 annually.

§ 163. Appointment

The State Investment Officer shall be appointed by the Treasurer of State with the approval of the Governor. Recommendations as to appointments shall be made to the Treasurer of State and to the Governor by the Investment Council together with the detailed qualifications of each person recommended. If within 60 days after the effective date of this Act, or after any vacancy, an appointment has not been made, the power of appointment shall vest in the Investment Council.

§ 164. Term; removal from office

The State Investment Officer so appointed shall serve without term but may be removed from office for cause, upon notice and opportunity to be heard at a public hearing by the Governor, if a majority of the Investment Council recommends his removal.

§ 165. Bonding for protection to State

Before the State Investment Officer, or other responsible employee of the Division of Investment shall enter upon his duties, the Treasurer of State shall require an individual bond, or shall include him under a blanket bond, for such an amount and for such coverage as deemed best to protect the State's interest. The premium thereon shall not be chargeable to such officer or employee.

§ 166. Staff and budget

The State Investment Officer shall biennially prepare a budget subject to the approval of the Investment Council for presentation to the Legislature; and, subject to the Personnel Law, shall appoint all employees of the division. During the first 2 fiscal years funds needed to operate said division, in addition to those appropriated herewith, shall be allocated from the appropriations to the various funds represented and the Treasurer of State shall bill the governing body of these funds on a pro rata basis and the amount so billed shall be deducted from the appropriations, subject to the approval of the governing authority of the funds. The first budget shall be for the period covering the remainder of the fiscal year during which the Investment Officer is first appointed. Before the end of that fiscal year he shall prepare a budget for the 2nd year of the biennium.

Article 3. Investment Powers and Duties

§ 167. Powers and duties of investment officer

Subject to any limitations, conditions and restrictions contained in policy-making resolutions or regulations formulated by the Investment Council and those set forth in sections 173 and 174, the State Investment Officer shall have the power, under the direction of the Investment Council, to make purchases, sales, exchanges, investments and reinvestments, for or on behalf of all per-

manent trust funds of the State; and it shall be his duty to see that moneys invested under this subchapter are at all times handled to the best interests of the State.

The investments need not be segregated to the separate trust funds, except the funds of the Maine State Retirement System, and the earnings of the investments shall be prorated according to the principal amounts of the several trusts. The identity of each separate trust fund shall be maintained.

§ 168. Sales or exchanges of investments

Securities or investments purchased or held under this subchapter may be sold or exchanged for other securities or investments, provided, that no sale or exchange shall be at a price less than the market price of the securities or investments to be sold or exchanged.

§ 169. Legal opinions

In the purchase of bonds with which approving legal opinions ordinarily are furnished, the State Investment Officer may require an original or certified copy of the written opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General, certifying to the legality of such bonds.

§ 170. Powers and duties of Investment Council

The Investment Council shall formulate, consistent with the accountant procedures set forth by the Commissioner of Finance and Administration, any investment policy regulations or resolutions pertaining to the kind or nature of investment of any of the moneys, and any limitations, conditions or restrictions upon the methods, practices, or procedures for investment, reinvestment, purchase, sale or exchange transactions which, in the majority opinion of the Investment Council, should govern the State Investment Officer.

The Board of Trustees of the Maine State Retirement System shall meet with the Investment Council and the Investment Officer as soon after this Act becomes effective as is practicable and at least once in each fiscal year thereafter for the purpose of determining a schedule of investments which will insure the availability of funds to service the demands of the retirement system.

§ 171. Same; consultation and post review

The Investment Council shall meet at least once each month to consult with the State Investment Officer with respect to the work of the division, and, when required, with the Commissioner of Finance and Administration. It shall have access to all files and records of any department or bureau falling under the jurisdiction of the Commissioner of Finance and Administration and may require any officer or employee therein to provide such information as it may deem necessary in the performance of its functions. The Investment Council shall inspect and review the respective accounts and funds administered through the division.

§ 172. Defaults; power to compromise

In the event of default in the payment of principal of, or interest on, any investments made, the Treasurer of State is authorized to institute the proper

proceedings to collect such matured principal or interest, and may, after consultation with the Commissioner of Finance and Administration, and upon approval of the Investment Council, accept for exchange purposes refunding bonds or other evidence of indebtedness at interest rates to be agreed upon with the obligor.

The Treasurer of State, after consultation with the Commissioner of Finance and Administration and with the approval of the Investment Council is further authorized to make such compromises, adjustments or disposition of the past-due interest or principal as are in default, or to make such compromises or adjustments as to future payments of interest or principal as deemed advisable for the purpose of protecting the funds invested; and such adjustments or compromises made and approved are hereby ratified and confirmed.

Article 4. Eligibility of Securities and Other Assets for Investment

§ 173. Classes of securities and investments

Moneys made available for investment for a period in excess of one year may be invested in the following classes of securities and investments, and not otherwise:

1. United States. Bonds, notes or other obligations of the United States, or those guaranteed by, or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof;

2. States. Bonds or other evidences of indebtedness of this State; and full faith and credit obligations of, or obligations unconditionally guaranteed as to principal and interest by this or any other state of the United States and the Commonwealth of Puerto Rico;

3. Provinces of Canada. Bonds, debentures, notes or other full faith and credit obligations issued, guaranteed or assumed as to both principal and interest by the Government of the Dominion of Canada, or by any province of Canada, provided, that the principal and interest thereof shall be payable in United States funds, either unconditionally or at the option of the holder;

4. Subdivisions of Maine. Bonds, notes or obligations of any municipal or political subdivision of this State, issued pursuant to a law of this State, provided the issuer has not, within 10 years prior to the making of the investment, been in default for more than 3 months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided if the bonds are city or county utility, or utility-district revenue bonds, the revenues of such utility, other than for payment of operation and maintenance expenses, are pledged wholly to the payment of the interest on and principal of such indebtedness, and the utility project has been completely self-supporting for a period of 5 years next preceding the date of investment;

5. Subdivisions of other states. Bonds, notes or other obligations issued, guaranteed, or assumed by any municipal or political subdivision of any other state of the United States, provided that any such municipal or political subdivision, or the total of its component parts, shall have a population as shown by the last preceding Federal Census of not less than 10,000, and the issuer,

guarantor, or assumer of such bonds, notes or other obligations: Shall have pledged its faith and credit for the payment of the principal and interest of such bonds, notes or other obligations, shall have the power to levy taxes on the taxable real property therein for the payment of both principal and interest of such bonds, notes or other obligations without limitation of rate or amount, shall not within 10 years prior to the making of the investment have defaulted in payment of principal or interest of any debt evidenced by its bonds, notes or other obligations for more than 90 days;

6. Cities of Canada. Bonds, debentures, notes or other obligations issued, guaranteed or assumed as to both principal and interest by any City of Canada which has a population of not less than 100,000 inhabitants, provided the principal and interest thereof shall be payable in United States funds, either unconditionally or at the option of the holder, and all the conditions, except population, as prescribed in subsection 5 have likewise been met;

7. International Bank for Reconstruction and Development. Bonds, notes or other obligations issued, assumed or unconditionally guaranteed by the International Bank for Reconstruction and Development;

8. Federal Land Bank. Bonds, debentures or other obligations issued by a Federal Land Bank, or by a Federal Intermediate Credit Bank, under the Act of Congress of July 17, 1916, known as the "Federal Farm Loan Act," as amended or supplemented from time to time;

9. National Mortgage Association. Bonds, debentures or other obligations issued by any national mortgage association under the Act of Congress of June 27, 1934, known as the "National Housing Act," as amended or supplemented from time to time;

10. Port of New York Authority. Bonds, notes or other obligations issued, amended or unconditionally guaranteed by The Port of New York Authority;

11. Public housing authority. Obligations of any public housing authority or urban redevelopment authority issued pursuant to the laws of this State relating to the creation or operation of a public housing or urban redevelopment authority;

12. Authorities. Obligations of any state or municipal authority issued pursuant to the laws of this State, provided for each of the 5 years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than $1 \frac{1}{5}$ times its average annual fixed charges requirements over the life of such obligations;

13. Mortgages. First mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of 50% or more of the loan made, in the event of default, by the United States or any agency of the United States Government;

14. Corporations. Bonds, notes, debentures, car-trust certificates, preferred stock or common stock of any corporation organized and operating within the United States, provided, it shall have minimum assets of \$10,000,000 and securities listed on one or more national stock exchanges, and provided the combined

funds of the State shall not at any one time own more than 10% of the voting stock of any such company, and provided in the investment of moneys not more than 20% book value of the funds of the Maine State Retirement System and not more than 20% book value of the total funds of all other permanent trust funds shall be invested in common and preferred stocks under the prudent man theory as defined in section 175;

15. Financial institutions. Deposits in financial institutions regulated by the Department of Banks and Banking of this State or by the Federal Government;

16. Limitations. All limitations set forth in subsections 1 to 15 shall expire on September 15, 1969 and the Investment Council shall be limited in its investments by section 175.

§ 174. Investment for short-term periods

All surplus cash certified by the Treasurer of State for short-term investment, one year or less, or other moneys the principal of which shall be required within a 24-month period, may be invested in the following classes of securities, and not otherwise:

1. United States. Certificates or other obligations of the United States, or for which the full faith and credit of the United States is pledged, which mature on such dates as will make available such amount of cash as required;

2. Savings banks. Any certificates or other evidences of indebtedness in which savings banks may legally invest, provided such obligations mature on such dates as will make available without discount such amounts of cash as required;

3. United States obligations redeemable. Obligations of the United States which are redeemable by the U. S. Treasury at the owner's option at fixed redemption values within 2 years from the date of such investment;

4. Evidences of indebtedness. Evidences of indebtedness issued by any corporation which meet the requirements of section 173, subsection 14, provided such obligations are not in default as to either principal or interest when acquired, and have a maturity of not more than 12 months from the date of purchase.

5. Financial institutions. Deposits in financial institutions regulated by the Department of Banks and Banking of this State or by the Federal Government.

§ 175. General proviso

Any investments under this Article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Article 5. Available Funds; Custody of Securities; Collections

§ 176. Funds for investment

It shall be the duty of each board, commission, department, official or agency charged with the custody or administration of any state fund to make moneys

available for investment as fully as is consistent with the cash requirements of said fund. Monthly, and more often as circumstances require, such official or agency shall notify the State Investment Officer of the amount available for investment, and the investment shall be made and paid for by warrant drawn by said officer against such fund. Such notification shall include the name and number of the fund for which the investments are to be made, and of the life of the investment if the principal sum is subsequently to be required for meeting obligations.

§ 177. Surplus cash in the treasury

The Treasurer of State shall likewise declare as funds available for investment any money in the General Fund or special funds of the treasury deemed unnecessary for operating purposes during the next succeeding 3 or more months.

§ 178. Custody of securities

All securities purchased or held shall be in the physical custody of the Treasurer of State who may, after consultation with the Commissioner of Finance and Administration, and approval of the Investment Council, deposit with a fiscal agent in any of the financial centers, or with a local bank or trust company, such of said securities as he shall consider advisable to be held in safekeeping by said agent or bank for collection of principal and interest, or of the proceeds of sale thereof.

§ 179. Collection of income and principal

It shall be the duty of the Treasurer of State to collect the interest, or other income on, and the principal of such securities in his custody as the said sums become due and payable, and to pay the same, when so collected, into the fund to which the investments belong.

§ 180. Availability of income for investment

Interest or other income received from the investment of surplus cash in the State Treasury shall be transferred for credit to the General Fund, or the appropriate special fund. All other interest, premium and income in any form derived from investments, shall be retained by the Treasurer of State and currently reinvested by the State Investment Officer on behalf of the fund holding said investments, unless and until the appropriate fund administrative board or head shall issue instructions to the Treasurer of State as to the transfer or other disposition of such income receipts. Whenever a given investment is owned by 2 or more funds, the income received shall be prorated in accordance with the ownership of the respective funds.

Article 6. Records and Reports

§ 181. Records of investments

The Division of Investments shall keep, for each fund for which investments are made, a separate account, to be designated by name and number, which shall record the individual amounts and the totals of all investments belonging to such fund. Every receipt and collection or disbursement when received or made

shall be immediately notified to the division for recording to the particular fund to which it belongs.

§ 182. Notification of investments made

The Division of Investments shall report monthly to each and every interested state official or agency the changes in investments made during the preceding month for their respective fund or funds, and, in addition, shall furnish the details on the investment transactions of any fund as requested by the administrative body or head thereof.

§ 183. Monthly reports

Not later than 15 days after the close of each month, the State Investment Officer shall submit to the Commissioner of Finance and Administration, the Treasurer of State and the Investment Council a report of the operations of the Division of Investments during said month. Each report shall include a detailed summary of investment, reinvestment, purchase, sale and exchange transactions, setting forth, among other things, the investments bought, sold and exchanged, the dates thereof, the prices paid and obtained, the names of the dealers involved, and a statement of the funds or accounts referred to herein. Such reports shall be circulated to a mailing list of investment bankers and brokers recommended by the Investment Council, and shall, in addition, be open for inspection to the public and the press in the office of the State Investment Officer.

Article 7. Audit and Review

§ 184. Post-audit

The State Auditor shall be responsible for conducting a continuous post-audit of the investment transactions of the State, and shall submit annually a special report on his findings to the Investment Council, the Governor and to the appropriate legislative committee.

§ 185. Annual report

On or before January 1st of each year, and at such other times as it may deem in the public interest, the Investment Council shall report to the Governor and to the Legislature with respect to its review of the work of the Division of Investment.'

Sec. 2. R. S., T. 5, § 138, amended. The first 2 paragraphs of section 138 of Title 5 of the Revised Statutes are repealed.

Sec. 3. R. S., T. 5, § 1031, sub-§§ 15, 16, amended. Subsections 15 and 16 of section 1031 of Title 5 of the Revised Statutes are amended to read as follows:

'15. Investment and other counsel. The board of trustees shall employ ~~investment counsel or advice and~~ may employ or engage such ~~other~~ expert, professional or other assistance as may be necessary or appropriate to aid in carrying out its functions.

The Investment Council has the right to employ such professional investment services as to, but not limited to, investment consultants, fiduciary banks, other

fiduciaries or advisors, or such other professional assistance as it may deem necessary to perform its functions. Any expenses resulting therefrom shall be a charge against the income of the fund, provided that such expenditures shall not exceed \$25,000 in either the fiscal years of 1965-66 or 1966-67.

16. **Custodial care and servicing of negotiable securities.** The ~~board of trustees~~ **Investment Council** shall have power to enter into a contract or agreement with any national bank, trust company or safe deposit company located in New England or New York City for custodial care and servicing of the negotiable securities belonging to any fund of the retirement system. Such services shall consist of the safekeeping of said negotiable securities in the vaults of the bank or safe deposit company, preparation of coupons for collection, the actual collection of such coupons, periodical checks of the portfolio deposited for safekeeping to determine all calls for redemption, in whole or in part, of any bonds owned by the retirement system, and any other fiscal service which is normally covered in a custodial contract or agreement.

The said ~~board of trustees~~ **Investment Council** is empowered to arrange for the payment for such services, either by cash payments to be charged pro rata to the income of the several funds of the system, or by an agreement for a compensating deposit balance with the bank in question, in lieu of such cash payment, or by some combination of both methods of payment. The contracting bank shall give assurance of proper internal safeguards, which are usual to such contracts, and shall furnish insurance protection satisfactory to both parties.

The said ~~board of trustees~~ **Investment Council** shall be empowered to withdraw or deposit securities from or with the custodian as circumstances may require. The ~~finance committee~~ **Investment Council** shall be empowered to withdraw or deposit securities from or with the custodian as circumstances may require, except that all withdrawal orders or delivery instructions shall bear the approval in writing over the signatures of 2 persons duly authorized by a resolution of the ~~board of trustees~~ **Investment Council**, and at least one of the signatures must be that of a member of the ~~finance committee~~ **Investment Council**. ~~All contracts or agreements entered into between the said board of trustees and the custodian bank or safe deposit company selected by them shall have the approval of the Governor and Executive Council.~~

Sec. 4. R. S., T. 5, § 1061, sub-§ 1, repealed and replaced. Subsection 1 of section 1061 of Title 5 of the Revised Statutes is repealed and the following enacted in place thereof:

'1. **Duties of board of trustees.** The members of the board of trustees shall be the trustees of the several funds created by this chapter.'

Sec. 5. R. S., T. 5, § 1061, sub-§ 5, amended. Subsection 5 of section 1061 of Title 5 of the Revised Statutes is amended to read as follows:

'5. **Trustees and employees not to have interest in investments.** Except as otherwise provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made ~~by the board for the retirement system~~; nor shall any trustee or employee of the board, directly or indirectly, for himself or as an agent, in any manner use the same

except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an indorser or surety; or in any manner an obligor, for moneys loaned to or borrowed from the board.'

Sec. 6. Appropriation. There is appropriated from the General Fund to the Treasury Department, Division of Investment the sum of \$21,100 for the fiscal year ending June 30, 1966 and the sum of \$21,100 for the fiscal year ending June 30, 1967 to carry out the purposes of this Act. The breakdown shall be as follows:

	1965-66		1966-67
TREASURY DEPARTMENT			
Division of Investment			
Personal Services	(2) \$15,000	(2)	\$15,000
All Other	1,700		1,700
Capital Expenditures	400		400
Collection Agent			
Personal Services	(1) 4,000	(1)	4,000
	\$21,100		\$21,100