

MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 335

H.P. 275

House of Representatives, January 31, 1983

Reference to the Committee on Business Legislation, sent up for
concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsors: Senator Sewall of Lincoln, Representative Racine of
Biddeford and Representative Perkins of Brooksville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Revise the Law Concerning the
Investment of Municipal Funds.

Emergency preamble. Whereas, Acts of the Legis-
lature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

Whereas, Maine municipalities need to invest
their funds in institutions and instruments which
provide the highest possible yield while retaining
the security necessary for the investment of public
funds; and

Whereas, existing authority for investment is
unduly restrictive and fails to recognize new and
generally accepted forms of investment; and

Whereas, these limitations result in substantial
loss of potential return on the investment of municip-
al funds; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

9 Sec. 1. 30 MRSA §5051, as amended by PL 1981, c.
10 421, is repealed.

11 Sec. 2. 30 MRSA §5051-A is enacted to read:

12 §5051-A. Deposit or investment of funds

13 All municipal funds, including reserve funds and
14 trust funds to the extent that the terms of the
15 instrument, order or article creating the fund do not
16 prohibit, shall be invested by the treasurer, by
17 direction of the municipal officers, as follows:

18 1. Financial institutions. In savings accounts or
19 time deposits or share accounts of institutions
20 insured by the Federal Deposit Insurance Corporation,
21 the Federal Savings and Loan Insurance Corporation or
22 the National Credit Union Share Insurance Fund.

23 A. Accounts and deposits exceeding an amount
24 equal to 25% of the capital, surplus and
25 undivided profits of any trust company or
26 national bank or a sum exceeding an amount equal
27 to 25% of the reserve fund and undivided profit
28 account of a mutual savings bank or state or fed-
29 eral savings and loan association on deposit at
30 any one time shall be secured by the pledge of
31 certain securities as collateral, or fully cov-
32 ered by insurance. The collateral shall be in an
33 amount equal to the excess deposit. The value
34 of the securities so pledged shall be determined
35 by the municipal officers on the basis of market
36 value. The municipal officers shall review the
37 value of these securities pledged on the first
38 business day of January and July of each year.

1 The collateral shall only consist of securities
2 in which savings banks may invest as provided in
3 Title 9-B, sections 551 to 559. The securities
4 shall be held in a depository institution
5 approved by the municipal officers and pledged to
6 indemnify the municipalities against any loss.
7 Notice of the hypothecation at the time of
8 deposit shall be given to the municipal officers
9 by the depository institution and a copy of the
10 notice shall be mailed to the Department of
11 Audit;

12 2. Savings bank investments. Invested according
13 to the law governing the investment of funds of
14 savings banks in Title 9-B, chapter 55.

15 A. For the purpose of this subsection, the words
16 "deposits of a bank" or their equivalent, as used
17 in Title 9-B, chapter 55, mean the total assets
18 of the permanent reserve fund, permanent trust
19 fund or other permanent fund being invested, but
20 the limitation concerning the maximum amount
21 which may be invested in a security or type of
22 security under Title 9-B, chapter 55, applies
23 only to an investment in that security or type of
24 security which exceeds \$20,000;

25 3. Repurchase agreements. In repurchase agree-
26 ments secured by obligations of the United States or
27 any of its agencies or instrumentalities, provided
28 that the market value of the underlying obligation is
29 equal to or greater than the amount of the
30 municipality's investment and that the duration of
31 the agreement does not exceed 21 days;

32 4. Mutual funds. In the shares of an investment
33 company registered under the United States Investment
34 Company Act of 1940, whose shares are registered
35 under the United States Securities Act of 1933, pro-
36 vided that the investments of the fund are limited to
37 obligations of the United States or any of its agen-
38 cies or instrumentalities; or repurchase agreements
39 secured by obligations of the United States or any of
40 its agencies or instrumentalities; or

41 5. Safekeeping and investment management agree-
42 ments. The municipal officers may enter into an

1 chapter 55, only apply to an investment in a security
2 or type of security which exceeds \$20,000. The cur-
3 rent \$2,000 rule has been in effect for many years
4 and has become unduly limiting.

5 Title 30, section 5051-A, subsection 3, allows
6 municipalities to invest in repurchase agreements
7 secured by specified Federal Government, federal gov-
8 ernment agency or instrumentality obligations. Clear
9 authority to invest in repurchase agreements is
10 necessary due to recent court decisions which have
11 found repurchase agreements to be secured loans
12 rather than ownership interests in the underlying
13 instruments. Securities and Exch. Com'n. v. Miller,
14 495 F.Supp. 465 (1980). The 21-day duration limita-
15 tion is related to the period for which a security
16 interest is perfected without filing or the taking of
17 possession under Title 11, section 9-304. This
18 limitation is also intended to protect the municipal-
19 ity from fluctuations in the market value of the
20 underlying obligation.

21 Title 30, section 5051-A, subsection 4, author-
22 izes a municipality to invest in a money market fund
23 or other mutual fund, provided the fund is limited to
24 Federal Government and federal government agency and
25 instrumentality obligations or repurchase agreements
26 secured by the same. Title 30, section 5051, subsec-
27 tion 7 limited investments to trusts organized under
28 the laws of this State. No such trust currently
29 exists.

30 Title 30, section 5051-A, subsection 5, allows a
31 municipality to designate a national bank or trust
32 company located within the State for the purposes of
33 managing the municipality's long-term funds. If the
34 municipal officers choose to secure professional
35 investment services, the institution may exercise the
36 broader "Rule of Prudence" investment authority set
37 forth in Title 18-A, section 7-302. It differs from
38 Title 30, section 5051, subsection 4, in that the
39 institution is not limited to investing the funds in
40 a common trust fund.

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