

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1245

H.P. 892

House of Representatives, April 11, 1995

An Act Limiting the Types of Municipal Investments.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, reading "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative RICHARDSON of Portland.

Cosponsored by Representatives: CAMERON of Rumford, DORE of Auburn, DUNN of Gray, GERRY of Auburn, KERR of Old Orchard Beach, KILKELLY of Wiscasset, ROWE of Portland, Senators: CLEVELAND of Androscoggin, LORD of York.

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

Sec. 1. 30-A MRSA §5706 and 5712, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, are further amended to read:

§5706. Deposit or investment of funds

As directed by the municipal officers, the treasurer shall invest all municipal funds, including reserve funds and trust funds, to the extent that the terms of the instrument, order or article creating the fund do not prohibit the investment, as follows:

1. Financial institutions. In accounts or deposits of institutions insured by the Federal Deposit Insurance Corporation, ~~the Federal Savings and Loan Insurance Corporation,~~ the National Credit Union Share Insurance Fund or the successors to these federal agencies.

A. Accounts and deposits exceeding an amount equal to 25% of the capital, surplus and undivided profits of any trust company or national bank or a sum exceeding an amount equal to 25% of the reserve fund and undivided profit account of a mutual savings bank or state or federal savings and loan association on deposit at any one time shall must be secured by the pledge of certain securities as collateral, or fully covered by insurance.

(1) The collateral shall must be in an amount equal to the excess deposit. The municipal officers shall determine the value of the pledged securities on the basis of market value and shall review the value of the pledged securities on the first business day of January and July of each year.

(2) The collateral shall ~~only~~ may consist only of securities in which municipalities may invest, as provided in article 2. The securities shall must be held in a depository institution approved by the municipal officers and pledged to indemnify the municipalities against any loss. The depository institution shall notify the municipal officers of the pledging when the securities are deposited and shall mail a copy of the notice to the Department of Audit;

2. Repurchase agreements. In repurchase agreements secured by obligations of the Federal United States Government, as defined in section 5712, subsection 1, provided that the market value of the underlying obligation is equal to or greater than the amount of the municipality's investment and that the municipality's security interest is perfected under the terms of Title 11, article 9 except, however, if the term of the

repurchase transaction is not in excess of 72 hours, the municipality's interest in the underlying security need not be perfected so long as an executed Public Securities Association form of master repurchase agreement is on file with the counterparty prior to the date of the transaction;

3. **Mutual funds.** In the shares of an investment company registered under the United States Investment Company Act of 1940, Public Law 76-768, whose shares are registered under the United States Securities Act of 1933, Public Law 73-22, provided that the investments of the fund are limited to bonds and other direct obligations of the Federal United States Government, as defined in section 5712, subsection 1 or repurchase agreements secured by bonds and other direct obligations of the Federal United States Government, as defined in section 5712, subsection 1; or

4. **Safekeeping and investment management agreements.** The municipal officers may enter into an agreement with any financial institution with trust powers authorized to do business in the State for the safekeeping and investment of the reserve funds, as defined in section 5801, or trust funds, as defined by section 5653, of the municipality. Services ~~shall~~ must consist of the safekeeping and investment management of the funds, collection of interest and dividends, ~~periodic review of the portfolio~~ investments and any other fiscal service ~~which that~~ that is normally covered in a safekeeping and investment agreement. ~~In performing services under any contract or agreement, the contracting bank has all the powers and duties prescribed for trust companies by Title 9-B, section 623, and the authority to invest~~ Investment of reserve funds or trust funds deposited under a safekeeping agreement may be managed either by the financial institution with which the funds are deposited or by an investment advisor registered with the National Association of Securities Dealers, federal Securities and Exchange Commission or other governmental agency or instrumentality with jurisdiction over investment advisors, to act in such capacity pursuant to an investment advisory agreement providing for investment management and periodic review of portfolio investments. Investment of funds on behalf of the municipality under this section are governed by the rule of prudence, Title 18-A, section 7-302. The contracting bank parties shall give assurance of proper safeguards, which that are usual to these contracts, and shall furnish insurance protection satisfactory to both parties.

§5712. Government unit bonds

Municipalities may invest in:

1. **United States and instrumentalities.** The bonds and other direct obligations of the United States, or the bonds and other direct obligations or participation certificates issued by

any agency, association, authority or instrumentality created by the United States Congress or any executive order;

2. States. The bonds and other direct obligations issued or guaranteed by any state or by any instrumentality or agency of any state, or by any political subdivision of any state, provided that the securities are rated within the 3 highest grades by any rating service approved by the Superintendent of Banking;

3. Maine. The bonds and other direct obligations issued or guaranteed by this State, or issued by any instrumentality or agency of this State, or any political subdivision of the State ~~which that~~ is not in default on any of its outstanding funded obligations;-and

4. Canada. The bonds and other direct obligations issued or guaranteed by the Dominion of Canada, or issued or guaranteed by any province, or political subdivision of a province, provided that the securities are rated within the 3 highest grades by any rating service approved by the Superintendent of Banking and are payable in United States funds.; and

5. Short-term obligations. Prime bankers' acceptances and prime commercial paper.

Investments made pursuant to this section are limited to direct obligations of the issuer in which the municipality directly owns the underlying security. Obligations created from, or whose value depends on or is derived from the value of one or more underlying assets or indexes of asset values in which the municipality owns no direct interest do not qualify as investments under this section.

Sec. 2. 30-A MRSA §5718 and 5719 are enacted to read:

§5718. Standard of prudence

All investments made under this subchapter must be made with the judgment and care that persons of prudence, discretion and intelligence, under circumstances then prevailing, exercise in the management of their own affairs, not for speculation but for investment, considering:

1. Safety. The safety of principal and preservation of capital in the overall portfolio;

2. Maintenance of liquidity. Maintenance of sufficient liquidity to meet all operating and other cash requirements with which a fund is charged that are reasonably anticipated; and

2 3. Income. The income to be derived throughout budgetary
3 and economic cycles, taking into account prudent investment risk
4 constraints and the cash-flow characteristics of the portfolio.

5 This standard must be applied to the overall investment
6 portfolio of the municipality and not to individual items within
7 a diversified portfolio.

8 **§5719. Limitations on Investments.**

9 A municipality's authority to invest municipal funds is
10 limited to investments permitted under this subchapter and a
11 municipality has no authority under home rule authority or
12 otherwise to make any investments other than those permitted this
13 subchapter.

14 **Sec. 3. Application.** This Act applies only to investments
15 purchased after the effective date of this Act.

16
17 **STATEMENT OF FACT**

18 This bill has 3 basic purposes: (1) to restrict
19 municipalities' authority to invest in certain types of so-called
20 derivative securities; (2) to introduce a new, more rigorous
21 standard of prudence to municipal investment practices; and (3)
22 to make certain technical corrections to accommodate current
23 prudent municipal investment practices regarding repurchase
24 agreements and investment management agreements.

25 The revisions to the Maine Revised Statutes, Title 30-A,
26 sections 5706 and 5712 and the introduction of the new, more
27 rigorous, standard of prudence through the enactment of section
28 5718, together with the express limitation on investment
29 authority set forth in the new section 5719, are all designed to
30 limit municipalities' ability to invest in derivative securities,
31 except to the extent specifically allowed under the statutes.