

MAINE STATE LEGISLATURE

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SMOY
R.O.E.S

L.D. 759

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ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 539, L.D. 759, Bill, "An Act To Clarify the Financial Authority of Sewer and Sanitary Districts"

Amend the bill by striking out all of sections 5 and 6 and inserting the following:

'Sec. 5. 38 MRSA §1055, as enacted by PL 2013, c. 555, §6, is amended to read:

§1055. Investments

A sewer district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the term of any instrument creating the funds does not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States in accordance with this section. This section is in addition to, and not in limitation of, any power of a sewer district to invest its funds.

1. Deposit or investment of funds. A sewer district may invest all district funds, including reserve funds and trust funds, if the terms of the instrument, order or article creating the fund do not prohibit the investment, as follows:

A. In accounts or deposits of institutions insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the successors to these federal programs.

(1) 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 must be secured by the pledge of certain securities as collateral or fully covered by insurance.

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(a) The collateral must be in an amount equal to the excess deposit. The trustees 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.

(b) The collateral may consist only of securities in corporate bond and Maine corporate bond. The securities must be held in a depository institution approved by the trustees and pledged to indemnify the sewer district against any loss. The depository institution shall notify the trustees of the pledging when the securities are deposited;

B. In repurchase agreements with respect to obligations of the United States Government, as described in Title 30-A, section 5712, subsection 1, as long as the market value of the underlying obligation is equal to or greater than the amount of the sewer district's investment and either the sewer district's security entitlement with respect to the underlying obligation is created pursuant to the provisions of Title 11, Article 8-A and other applicable law or the sewer district's security interest is perfected pursuant to Title 11, Article 9-A and other applicable law, except that, if the term of the repurchase agreement is not in excess of 96 hours, the sewer district's security interest with respect to the underlying obligation need not be perfected as 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;

C. 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, if the investments of the fund are limited to bonds and other direct obligations of the United States Government, as described in Title 30-A, section 5712, subsection 1, or repurchase agreements secured by bonds and other direct obligations of the United States Government, as described in Title 30-A, section 5712, subsection 1; or

D. The trustees may enter into an agreement with any financial institution with trust powers authorized to do business in the State for the safekeeping of the reserve funds, or trust funds, of the sewer district. Services must consist of the safekeeping of the funds, collection of interest and dividends and any other fiscal service that is normally covered in a safekeeping agreement. 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 district under this paragraph is governed by the rule of prudence, according to Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. The contracting parties shall give assurance of proper safeguards that are usual to these contracts and shall furnish insurance protection satisfactory to both parties.

2. Government unit bonds. A sewer district may invest in:

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1 A. The bonds and other direct obligations of the United States, or the bonds and
2 other direct obligations or participation certificates issued by any agency, association,
3 authority or instrumentality created by the United States Congress or any executive
4 order;

5 B. The bonds and other direct obligations issued or guaranteed by any state or by any
6 political subdivision, instrumentality or agency of any state, if the securities are rated
7 within the 3 highest grades by any rating service approved by the Superintendent of
8 Financial Institutions;

9 C. The bonds and other direct obligations issued or guaranteed by this State, or
10 issued by any instrumentality or agency of this State, or any political subdivision of
11 the State that is not in default on any of its outstanding funded obligations; or

12 D. Prime bankers' acceptances and prime commercial paper.

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

18 **3. Corporate securities. A sewer district may invest in:**

19 A. The bonds and other obligations of any United States or Canadian corporation if
20 the securities are rated within the 3 highest grades by any rating service approved by
21 the Superintendent of Financial Institutions and are payable in United States funds.
22 Not more than 2% of the total assets of the permanent reserve fund, permanent trust
23 fund or other permanent fund being invested may be invested in the securities of any
24 one such corporation; and

25 B. The bonds and other obligations of any Maine corporation, actually conducting in
26 this State the business for which that corporation was created, that, for a period of 3
27 successive fiscal years or for a period of 3 years immediately preceding the
28 investment, has earned or received an average net income of not less than 2 times the
29 interest on the obligations in question and all prior liens or, in the case of water
30 companies subject to the jurisdiction of the Public Utilities Commission, an average
31 net income of not less than 1 1/2 times the interest on the obligations in question and
32 all prior liens. Not more than 20% of the total assets of the permanent reserve fund,
33 permanent trust fund or other permanent fund being invested may be invested in these
34 securities of Maine corporations and not more than 2% of that fund may be invested
35 in the securities of any single corporation.

36 **4. Retention of unauthorized securities.** Sewer districts may acquire and hold
37 securities not authorized by law but that have been acquired in settlements,
38 reorganizations, recapitalizations, mergers or consolidations or by receipt of stock
39 dividends or the exercise of rights applicable to securities held by sewer districts and may
40 continue to hold these securities at the discretion of the trustees. Sewer districts may
41 continue to hold at the discretion of the trustees securities under authorization of law.

42 **5. Standard of prudence.** All investments made under this section must be made
43 with the judgment and care that persons of prudence, discretion and intelligence, under

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1 circumstances then prevailing, exercise in the management of their own affairs, not for
2 speculation but for investment, considering:

3 A. The safety of principal and preservation of capital in the overall portfolio;

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

6 C. The income to be derived throughout budgetary and economic cycles, taking into
7 account prudent investment risk constraints and the cash flow characteristics of the
8 portfolio.

9 This standard must be applied to the overall investment portfolio of the sewer district and
10 not to individual items within a diversified portfolio.

11 **Sec. 6. 38 MRSA §1164**, as enacted by PL 1993, c. 651, §7, is amended to read:

12 **§1164. Investments**

13 A sanitary district may invest its funds, including sinking funds, reserve funds and
14 trust funds, ~~to the extent that the terms of any instrument creating the funds do not~~
15 ~~prohibit the investment, in shares of an investment company registered under the federal~~
16 ~~Investment Company Act of 1940, whose shares are registered under the United States~~
17 ~~Securities Act of 1933, only if the investments of the investment company are limited to~~
18 ~~obligations of the United States or any agency or instrumentality, corporate or otherwise,~~
19 ~~of the United States or repurchase agreements secured by obligations of the United States~~
20 ~~or any agency or instrumentality, corporate or otherwise, of the United States in~~
21 accordance with this section. This section is in addition to, and not in limitation of, any
22 power of a sanitary district to invest its funds.

23 **1. Deposit or investment of funds.** A sanitary district may invest all district funds,
24 including reserve funds and trust funds, if the terms of the instrument, order or article
25 creating the fund do not prohibit the investment, as follows:

26 A. In accounts or deposits of institutions insured by the Federal Deposit Insurance
27 Corporation, the National Credit Union Share Insurance Fund or the successors to
28 these federal programs.

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

35 (a) The collateral must be in an amount equal to the excess deposit. The
36 trustees shall determine the value of the pledged securities on the basis of
37 market value and shall review the value of the pledged securities on the first
38 business day of January and July of each year.

39 (b) The collateral may consist only of securities in corporate bond and Maine
40 corporate bond. The securities must be held in a depository institution
41 approved by the trustees and pledged to indemnify the sanitary district

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1 against any loss. The depository institution shall notify the trustees of the
2 pledging when the securities are deposited;

3 B. In repurchase agreements with respect to obligations of the United States
4 Government, as described in Title 30-A, section 5712, subsection 1, as long as the
5 market value of the underlying obligation is equal to or greater than the amount of the
6 sanitary district's investment and either the sanitary district's security entitlement
7 with respect to the underlying obligation is created pursuant to the provisions of Title
8 11, Article 8-A and other applicable law or the sanitary district's security interest is
9 perfected pursuant to Title 11, Article 9-A and other applicable law, except that, if the
10 term of the repurchase agreement is not in excess of 96 hours, the sanitary district's
11 security interest with respect to the underlying obligation need not be perfected as
12 long as an executed Public Securities Association form of master repurchase
13 agreement is on file with the counterparty prior to the date of the transaction;

14 C. In the shares of an investment company registered under the United States
15 Investment Company Act of 1940, Public Law 76-768, whose shares are registered
16 under the United States Securities Act of 1933, Public Law 73-22, if the investments
17 of the fund are limited to bonds and other direct obligations of the United States
18 Government, as described in Title 30-A, section 5712, subsection 1, or repurchase
19 agreements secured by bonds and other direct obligations of the United States
20 Government, as described in Title 30-A, section 5712, subsection 1; or

21 D. The trustees may enter into an agreement with any financial institution with trust
22 powers authorized to do business in the State for the safekeeping of the reserve funds,
23 or trust funds, of the sanitary district. Services must consist of the safekeeping of the
24 funds, collection of interest and dividends and any other fiscal service that is
25 normally covered in a safekeeping agreement. Investment of reserve funds or trust
26 funds deposited under a safekeeping agreement may be managed either by the
27 financial institution with which the funds are deposited or by an investment advisor
28 registered with the National Association of Securities Dealers, federal Securities and
29 Exchange Commission or other governmental agency or instrumentality with
30 jurisdiction over investment advisors, to act in such capacity pursuant to an
31 investment advisory agreement providing for investment management and periodic
32 review of portfolio investments. Investment of funds on behalf of the district under
33 this paragraph is governed by the rule of prudence, according to Title 18-B, sections
34 802 to 807 and Title 18-B, chapter 9. The contracting parties shall give assurance of
35 proper safeguards that are usual to these contracts and shall furnish insurance
36 protection satisfactory to both parties.

37 **2. Government unit bonds. A sanitary district may invest in:**

38 A. The bonds and other direct obligations of the United States, or the bonds and
39 other direct obligations or participation certificates issued by any agency, association,
40 authority or instrumentality created by the United States Congress or any executive
41 order;

42 B. The bonds and other direct obligations issued or guaranteed by any state or by any
43 political subdivision, instrumentality or agency of any state, if the securities are rated

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1 within the 3 highest grades by any rating service approved by the Superintendent of
2 Financial Institutions;

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

6 D. Prime bankers' acceptances and prime commercial paper.

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

12 **3. Corporate securities.** A sanitary district may invest in:

13 A. The bonds and other obligations of any United States or Canadian corporation if
14 the securities are rated within the 3 highest grades by any rating service approved by
15 the Superintendent of Financial Institutions and are payable in United States funds.
16 Not more than 2% of the total assets of the permanent reserve fund, permanent trust
17 fund or other permanent fund being invested may be invested in the securities of any
18 one such corporation; and

19 B. The bonds and other obligations of any Maine corporation, actually conducting in
20 this State the business for which that corporation was created, that, for a period of 3
21 successive fiscal years or for a period of 3 years immediately preceding the
22 investment, has earned or received an average net income of not less than 2 times the
23 interest on the obligations in question and all prior liens or, in the case of water
24 companies subject to the jurisdiction of the Public Utilities Commission, an average
25 net income of not less than 1 1/2 times the interest on the obligations in question and
26 all prior liens. Not more than 20% of the total assets of the permanent reserve fund,
27 permanent trust fund or other permanent fund being invested may be invested in these
28 securities of Maine corporations and not more than 2% of that fund may be invested
29 in the securities of any single corporation.

30 **4. Retention of unauthorized securities.** Sanitary districts may acquire and hold
31 securities not authorized by law but that have been acquired in settlements,
32 reorganizations, recapitalizations, mergers or consolidations or by receipt of stock
33 dividends or the exercise of rights applicable to securities held by sanitary districts and
34 may continue to hold these securities at the discretion of the trustees. Sanitary districts
35 may continue to hold at the discretion of the trustees securities under authorization of
36 law.

37 **5. Standard of prudence.** All investments made under this section must be made
38 with the judgment and care that persons of prudence, discretion and intelligence, under
39 circumstances then prevailing, exercise in the management of their own affairs, not for
40 speculation but for investment, considering:

41 A. The safety of principal and preservation of capital in the overall portfolio;

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

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

4 This standard must be applied to the overall investment portfolio of the sanitary district
5 and not to individual items within a diversified portfolio.'

6 **SUMMARY**

7 Instead of simply stating that a sewer or sanitary district may invest its funds to the
8 same extent as a municipality, this amendment includes the applicable provisions from
9 the Maine Revised Statutes, Title 30-A, chapter 223, subchapter 3-A in the statutes
10 governing sewer and sanitary districts.

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