

STATE OF MAINE

—

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—

H.P. 539 - L.D. 759

An Act To Clarify the Financial Authority of Sewer and Sanitary Districts

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

Sec. 1. 38 MRSA §1033, sub-§1, ¶¶G and H, as enacted by PL 2013, c. 555, §6, are amended to read:

G. Section 1048, subsection 1, paragraph B and subsection 5; ~~and~~

H. Section ~~4054~~. 1050; ~~and~~

Sec. 2. 38 MRSA §1033, sub-§1, ¶I is enacted to read:

I. Section 1051.

Sec. 3. 38 MRSA §1033, sub-§2, ¶C, as enacted by PL 2013, c. 555, §6, is repealed.

Sec. 4. 38 MRSA §1050, sub-§3, as enacted by PL 2013, c. 555, §6, is amended to read:

3. Collection. The treasurer of the qualified sewer district ~~may~~ has full and complete authority and power to collect rates and all rates must be committed to the treasurer fees established under section 1048 or otherwise authorized by law. The treasurer may, after demand for payment, sue in the name of the qualified sewer district in a civil action in any court of competent jurisdiction for any rates remaining unpaid. In addition to other methods established by law for the collection of rates and without waiver of the right to sue for the collection of rates, the lien created under subsection 2 may be enforced in the following manner.

A. ~~When rates have been committed to the treasurer of the qualified sewer district for collection, the~~ The treasurer may, after the expiration of 3 months and within one year after the date when the rates became due and payable, give to the owner of the real estate served, leave at the owner's last and usual place of abode or send by certified mail, return receipt requested, to the owner's last known address a notice in writing signed by the treasurer or bearing the treasurer's facsimile signature, stating

the amount of the rates due, describing the real estate upon which the lien is claimed and stating that a lien is claimed on the real estate to secure the payment of the rates and demanding the payment of the rates within 30 days after service or mailing, with \$1 added to the demanded rate for the treasurer and an additional fee to cover mailing the notice by certified mail, return receipt requested. The notice must contain a statement that the qualified sewer district is willing to arrange installment payments of the outstanding debt.

B. After the expiration of 30 days and within one year after giving notice pursuant to paragraph A, the treasurer of the qualified sewer district shall record in the registry of deeds of the county in which the property of the person is located a certificate signed by the treasurer setting forth the amount of the rates due, describing the real estate on which the lien is claimed and stating that a lien is claimed on the real estate to secure payment of the rates and that a notice and demand for payment has been given or made in accordance with this section and stating further that the rates remain unpaid. At the time of the recording of the certificate in the registry of deeds, the treasurer shall file in the office of the qualified sewer district a true copy of the certificate and shall mail a true copy of the certificate by certified mail, return receipt requested, to each record holder of any mortgage on the real estate, addressed to the record holder at the record holder's last and usual place of abode.

C. The filing of the certificate in the registry of deeds creates a mortgage held by the qualified sewer district on the real estate described in the certificate that has priority over all other mortgages, liens, attachments and encumbrances of any nature, except liens, attachments and claims for taxes, and gives to the qualified sewer district all the rights usually possessed by mortgagees, except that the qualified sewer district as mortgagee does not have any right to possession of that real estate until the right of redemption has expired.

D. If the mortgage created under paragraph C, together with interest and costs, has not been paid within 18 months after the date of filing the certificate in the registry of deeds in accordance with paragraph B, the mortgage is foreclosed and the right of redemption expires. The filing of the certificate in the registry of deeds is sufficient notice of the existence of the mortgage. In the event that the rate, with interest and costs, is paid within the period of redemption, the treasurer of the qualified sewer district shall discharge the mortgage in the same manner as provided for discharge of real estate mortgages.

E. The owner of the real estate shall pay the sum of the fees for receiving, recording and indexing the lien, or its discharge, as established by Title 33, section 751, plus \$13, plus all certified mail, return receipt requested, fees.

F. Not more than 45 days or less than 30 days before the foreclosing date of the mortgage created under paragraph C, the treasurer of the qualified sewer district shall notify the party named on the mortgage and each record holder of a mortgage on the real estate in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address of the impending automatic foreclosure and indicating the exact date of foreclosure. For sending this notice, the qualified sewer district is entitled to receive \$3 plus all certified mail,

return receipt requested, fees, which must be added to and become a part of the amount due under paragraph E. If notice is not given in the time period specified in this paragraph, the person not receiving timely notice has up to 30 days after the treasurer provides notice as specified in this paragraph in which to redeem the mortgage. The notice of impending automatic foreclosure must be substantially in the following form:

STATE OF MAINE
..... SEWER DISTRICT
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
SEWER LIEN
M.R.S.A., Title 38, section 1050
IMPORTANT: DO NOT DISREGARD THIS NOTICE
YOU WILL LOSE YOUR PROPERTY UNLESS
YOU PAY THE CHARGES, COSTS AND INTEREST FOR WHICH
A LIEN ON YOUR PROPERTY HAS BEEN CREATED BY THE
..... SEWER DISTRICT.

TO:

IF THE LIEN FORECLOSES,
THE SEWER DISTRICT WILL OWN
YOUR PROPERTY, SUBJECT ONLY TO
MUNICIPAL TAX LIENS.

.....

District Treasurer

G. The qualified sewer district shall pay the treasurer \$1 for the notice, \$1 for filing the lien certificate and the amount paid for certified mail, return receipt requested, fees. The fees for recording the lien certificate must be paid by the qualified sewer district to the register of deeds.

H. A discharge of the certificate given after the right of redemption has expired, which discharge has been recorded in the registry of deeds for more than one year, terminates all title of the qualified sewer district derived from that certificate or any other recorded certificate for which the right of redemption expired 10 years or more prior to the foreclosure date of this discharge lien, unless the qualified sewer district has conveyed any interest based upon the title acquired from any of the affected liens.

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.

(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:

A. 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;

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

C. 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 that is not in default on any of its outstanding funded obligations; or

D. Prime bankers' acceptances and prime commercial paper.

Investments made pursuant to this subsection are limited to direct obligations of the issuer in which the sewer district 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 sewer district owns no direct interest do not qualify as investments under this subsection.

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

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

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

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

5. Standard of prudence. All investments made under this section 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:

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

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

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

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

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

§1164. Investments

A sanitary district may invest its funds, including sinking funds, reserve funds and trust funds, ~~to the extent that the terms of any instrument creating the funds do 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 sanitary district to invest its funds.

1. Deposit or investment of funds. A sanitary 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.

(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 sanitary 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 sanitary district's investment and either the sanitary 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 sanitary 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 sanitary 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 sanitary 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 sanitary district may invest in:

A. 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;

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

C. 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 that is not in default on any of its outstanding funded obligations; or

D. Prime bankers' acceptances and prime commercial paper.

Investments made pursuant to this subsection are limited to direct obligations of the issuer in which the sanitary district 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 sanitary district owns no direct interest do not qualify as investments under this subsection.

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

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

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

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

5. Standard of prudence. All investments made under this section 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:

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

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

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

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