

Town of Brunswick Investment Policy

I. Introduction

The intent of the Investment Policy of the Town of Brunswick (“Town”) is to define the parameters within which funds are to be managed. In methods, procedures and practices, the policy formalizes the framework for the Town’s investment activities that must be exercised to ensure effective and judicious fiscal and investment management of the Town’s funds. The guidelines are intended to be broad enough to allow the investment officer to function properly within the parameters of responsibility and authority, yet specific enough to adequately safeguard the investment assets.

II. Governing Authority

The investment program shall be operated in conformance with federal, state, and other legal requirements, including the State of Maine Title 30-A M.R.S.A. section 5706, and 5711-5719.

III. Scope

This policy applies to activities of the Town of Brunswick with regard to investing the financial assets of all funds. Funds held by the Town as trustee or fiscal agent are excluded from these rules; however, all funds are subject to regulations established by the State of Maine. The covered funds, and any new funds created by the Town unless specifically exempted by the oversight board and this policy, are defined in the Town of Brunswick’s Comprehensive Annual Financial Report.

Proceeds from certain bond issues, and separate endowment assets are covered by separate policies. For bond proceeds, investment earnings are governed by arbitrage rules. Endowment assets, specifically the trust funds held by the Town both as permanent funds and private purpose funds, are invested in accordance with the policies and procedures developed by the Trust Fund Advisory Committee.

Except for funds in certain restricted and special funds, the Town commingles its funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. Investment income may be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

IV. General Objectives

The primary objectives, in priority order, of investment activities shall be:

1. Safety

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The goal will be to mitigate credit risk and interest rate risk.

a. Credit Risk

The Town of Brunswick will minimize credit risk, which is the risk of loss due to the failure of the security issuer or backer, by:

- Limiting investments to the types of securities listed in Section VIII of this Investment Policy
- Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisers with which the Town will do business in accordance with Section VI, and

- Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.

b. Interest Rate Risk

The Town of Brunswick will minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and
- Investing operating funds primarily in shorter-term securities, money market mutual funds, or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy (see Section IX).

2. *Liquidity*

The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in money market mutual funds or local government investment pools which offer same-day liquidity for short-term funds.

3. *Yield*

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints of safety and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

4. *Special Considerations*

Where possible, funds may be invested for the betterment of the local economy or that of local entities within the State. The Town may accept a proposal from an eligible institution which provides for a reduced rate of interest provided that such institution documents the use of deposited funds for community and economic development projects.

V. Standards of Care

1. *Prudence*

The standard of prudence to be used by investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal liability for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

The "prudent person" standard states that,

“Investments shall be made with judgment and care, under circumstances then prevailing, which persons 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.”

2. *Ethics and Conflicts of Interest*

Officers and employees involved in the investment process shall refrain from personal activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. Disclosure shall be made to the governing body. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the Town of Brunswick.

3. Delegation of Authority and Responsibilities

Authority to manage the investment program is granted to the Treasurer, hereinafter referred to as investment officer and derived from the following: Brunswick Town Charter, Article V, Section 507. Responsibility for the operation of the investment program is hereby delegated to the investment officer, who shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this Investment Policy. All participants in the investment process shall seek to act responsibly as custodians of the public trust. No officer or designee may engage in an investment transaction except as provided under the terms of this policy and supporting procedures.

VI. Authorized Financial Institutions, Depositories, and Broker/Dealers

1. Authorized Financial Institutions, Depositories, and Broker/Dealers

A list will be maintained of financial institutions and depositories authorized to provide investment services. In addition, a list will be maintained of approved security broker/dealers selected by conducting a process of due diligence. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule).

All broker/dealers who desire to become qualified for investment transactions must supply the following as appropriate:

- Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines
- Proof of FINRA certification
- Proof of state registration
- Certification of having read and understood and agreeing to comply with the Town of Brunswick's investment policy.
- Evidence of adequate insurance coverage.

A periodic review, at least once every five years, of the financial condition and registration of all qualified financial institutions and broker/dealers will be conducted by the investment officer.

2. Minority, Emerging and Community Financial Institutions

From time to time, the investment officer may choose to invest in instruments offered by minority, emerging and community financial institutions. All terms and relationships will be fully disclosed prior to purchase, and will be reported to the appropriate entity on a consistent basis and should be consistent with state or local law.

VII. Safekeeping and Custody

1. Delivery vs. Payment

All trades of marketable securities will be executed (cleared and settled) on a delivery vs. payment

(DVP) basis to ensure that securities are deposited in the Town of Brunswick's safekeeping institution prior to the release of funds.

2. *Third-Party Safekeeping*

Securities will be held by an independent third-party custodian selected by the Town. All securities will be evidenced by safekeeping receipts in the Town's name.

3. *Internal Controls*

The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the Town are protected from loss, theft or misuse. Specifics for the internal controls shall be documented in written procedures that shall be reviewed and updated annually.

The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management. The internal controls shall address the following points at a minimum:

- Control of collusion
- Separation of transaction authority from accounting and recordkeeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Dual authorizations of wire transfers
- Staff training and
- Review, maintenance and monitoring of security procedures both manual and automated.

The external auditor shall provide an annual independent review to assure compliance with state law, policies and procedures.

VIII. Suitable and Authorized Investments

1. *Investment Types and Credit Guidelines*

Consistent with the GFOA Policy Statement on State and Local Laws Concerning Investment Practices, the following investments will be permitted by this policy and are those defined by state and local law where applicable. Typical types of securities include:

- U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States for the payment of principal and interest;
- Federal Agency or U.S. government sponsored enterprises (GSE) obligations, participations or other instruments;
- Certificates of Deposit;
- Bankers' acceptances;
- Commercial paper, rated in the highest tier (e.g., A-1, P-1, F-1, or D-1 or higher) by a nationally recognized rating agency;
- Investment-grade obligations of state, provincial and local governments and public authorities;
- Fully collateralized Repurchase agreements collateralized in compliance with this Policy, governed by a SIFMA Master Repurchase Agreement and with a maximum maturity;
- SEC registered money market mutual funds; and

- Local government investment pools.

2. *Collateralization*

Where allowed or required by state law and in accordance with the GFOA Recommended Practices on Collateralizing Public Deposits, full collateralization will be required on all demand deposit accounts, including checking accounts and non-negotiable certificates of deposit.

IX. Investment Parameters

1. *Diversification*

It is the policy of the Town of Brunswick to diversify its investment portfolios. To eliminate risk of loss resulting from the over-concentration of assets in a specific maturity, issuer, or class of securities, assets in all Town funds shall be diversified by maturity, issuer, and class of security. Diversification strategies shall be determined and revised periodically by the investment officer for all funds.

2. *Maximum Maturities*

To the extent possible, the Town of Brunswick shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Town will not directly invest in securities maturing more than five (5) years from the date of purchase or in accordance with state and local statutes and ordinances. The Town shall adopt weighted average maturity limitations consistent with the investment objectives.

Reserve funds and other funds with longer-term investment horizons may be invested in securities exceeding five (5) years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds. The intent to invest in securities with longer maturities shall be disclosed in writing to the legislative body.

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds such as collateralized deposit accounts, local government investment pools, money market funds, or overnight repurchase agreements to ensure that appropriate liquidity is maintained to meet ongoing obligations.

X. Reporting

1. *Annual report*

The investment officer shall prepare an investment report at least annually, including a management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last year. The report should be provided to the Town's Finance Committee. The report will include, at a minimum, the following:

- a. An asset listing showing cost and market value of each security, type of investment, issuer, and interest rate;
- b. Maturity distribution of the portfolio;
- c. Average portfolio credit quality; and,
- d. Distribution by type of investment.

2. *Annual audit*

The Town's external auditor shall conduct an annual process of independent review to assure compliance with internal controls, and to verify the accuracy of management's reporting. Such audit will include tests deemed appropriate by the auditor, and reports of any findings will be made as part of

the auditor's annual report to Council.

XI. Policy Considerations

1. Exemption

Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.

2. Amendments

This policy shall be reviewed on an annual basis. Any changes must be approved by the investment officer and any other appropriate authority, as well as the individuals charged with maintaining internal controls.

XII Approval of Investment Policy

The investment policy and any modifications to that policy shall be formally approved and adopted by the Town Council, and shall be reviewed annually by the Finance Committee

XIII. Attachments

The following documents, as applicable, are attached to this policy:

Glossary

State of Maine Title 30-A M.R.S.A. section 5706, and 5711-5719

GFOA Best Practices and Advisories: Collateralizing Public Deposits (2007 – GFOA TIM Committee)

Adopted by Town Council: October 3, 2016

Glossary

US Treasury Obligation

Direct obligations of the United States Treasury whose payment is guaranteed by the United States.

GSE – Agency Obligations

US Government Agencies, Government Sponsored Enterprises (*GSEs*), Corporations or Instrumentalities of the US Government – Federal Instrumentality Securities include, but are not limited to Federal National Mortgage Association (*FNMA*), the Federal Home Loan Mortgage Corporation (*FHLMC*), Federal Home Loan Banks (*FHLB*), and the Federal Farm Credit Bureau (*FFCB*).

Commercial Paper

Commercial Paper* that is rated A1/P1 and has long term bonds which have a minimum rating of AA- by Standard and Poor's and Aa3 by Moody's

Bankers' Acceptances

Bankers' acceptances, if the bankers' acceptances are: (i) Guaranteed by, and carried on the books of, a qualified financial institution; (ii) Eligible for discount by the Federal Reserve System; and (iii) Issued by a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations. For the purposes of this paragraph, "qualified financial institution" means: (i) A financial institution that is located and licensed to do banking business in the State; or (ii) A financial institution that is wholly owned by a financial holding company or a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Maine.

Repurchase Agreements

An agreement with a approved broker/dealer that provides for sell and simultaneous purchase of a allowable collateral security. The difference in the sales and purchase price is the earning rate on the agreement. A master repurchase agreement must be in place with the approved broker/dealer or financial institution.

Local Government Investment Pool

State treasurer's local short-term investment fund, up to the statutory limit per state statute.

Certificates of Deposit/Bank Deposit/Savings Accounts

Time deposit open accounts, certificates of deposit and savings accounts in insured institutions as defined in State Statute, in credit unions as defined in State statute or in federal credit unions, if the institution or credit union maintains a head office or a branch in this State of Maine.

Municipal Obligations

Lawfully issued debt obligations of the agencies and instrumentalities of the State of Maine and its political subdivisions that have a long-term rating of A or an equivalent rating or better, or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.

Maine Revised Statutes

Title 30-A: MUNICIPALITIES AND COUNTIES HEADING: PL 1987, c. 737, Pt. A, §2 (new)

Chapter 223: MUNICIPAL FINANCES HEADING: PL 1987, c. 737, Pt. A, §2 (new)

§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: [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

1. Financial institutions. 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 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 must be secured by the pledge of certain securities as collateral, or fully covered by insurance.

(1) The collateral 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 may consist only of securities in which municipalities may invest, as provided in article 2. The securities 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; [2015, c. 44, §9 (AMD) .]

[2015, c. 44, §9 (AMD) .]

2. Repurchase agreements. In repurchase agreements with respect to obligations of the United States Government, as defined in section 5712, subsection 1, as long as the market value of the underlying obligation is equal to or greater than the amount of the municipality's investment and either the municipality'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 municipality's security interest is perfected pursuant to the provisions of 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 municipality'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;

[1999, c. 699, Pt. D, §19 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

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 United States Government, as defined in section 5712, subsection 1 or repurchase agreements secured by bonds and other direct obligations of the United States Government, as defined in section 5712, subsection 1;

[1997, c. 367, §1 (AMD) .]

3-A. Mutual funds for trusts governed by the United States Internal Revenue Code, Section 501(c)(3). In the case of a trust fund that is governed by the United States Internal Revenue Code, Section 501 (c) (3) (1997), in the

shares of any 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, as long as:

A. The investment is approved by the municipal officers at a public meeting; and [2003, c. 8, §1 (AMD) .]

B. No more than 50% of the assets of the trust are invested in mutual funds under this subsection; or [2003, c. 8, §1 (AMD) .]

C. [2003, c. 8, §1 (RP) .]

[2003, c. 8, §1 (AMD) .]

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 of the reserve funds, as defined in section 5801, or trust funds, as defined by section 5653, of the municipality. 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 municipality under this section is governed by the rule of prudence, according to Title 18-B, sections 802 to 807 and 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.

[2003, c. 618, Pt. B, §17 (AMD); 2003, c. 618, Pt. B, §20 (AFF) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1995, c. 206, §1 (AMD). 1995, c. 664, §2 (AMD). 1997, c. 367, §§1,2 (AMD). 1997, c. 429, §C35 (AMD). 1999, c. 699, §D19 (AMD). 1999, c. 699, §D30 (AFF). 2003, c. 8, §1 (AMD). 2003, c. 618, §B17 (AMD). 2003, c. 618, §B20 (AFF). 2013, c. 16, §10 (REV). 2015, c. 44, §9 (AMD) .

§5711. INVESTMENTS IN GENERAL

Municipalities may hereafter invest their funds in securities in accordance with this article, subject to the conditions and limitations set forth in this article or the terms of the instrument, order or article creating the fund being invested. Limitations set forth in this article concerning the maximum amount which may be invested in a security or type of security shall apply only to an investment in that security or type of security which exceeds \$20,000.

Investments made under this article shall be made by the treasurer upon direction of the municipal officers.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD) .

§5712. GOVERNMENT UNIT BONDS

Municipalities may invest in: [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

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;

[1995, c. 206, §1 (AMD) .]

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 Financial Institutions;

[1995, c. 206, §1 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

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

[1995, c. 206, §1 (AMD) .]

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 Financial Institutions and are payable in United States funds; and

[1995, c. 206, §1 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

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

[1995, c. 206, §1 (NEW) .]

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. [1995, c. 206, §1 (NEW) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD).
1989, c. 104, §§C8,10 (AMD). 1995, c. 206, §1 (AMD). 2001, c. 44, §11 (AMD).
2001, c. 44, §14 (AFF) .

§5713. CORPORATE SECURITIES

Municipalities may invest in: [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

1. Corporate bonds. The bonds and other obligations of any United States or Canadian corporation, provided that 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;

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

2. Maine corporate bonds. The bonds and other obligations of any Maine corporation, actually conducting in this State the business for which that corporation was created, which, 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 in the securities of any single corporation; and

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Maine corporate stocks. Maine corporate stocks which have the following characteristics.

A. The stock of any Maine corporation, other than stock of a financial institution, actually conducting in this State the business for which that corporation was created, provided that the corporation has, for a period of 3 years immediately preceding the investment, earned and received an average net income after taxes equivalent to at least 6% upon the entire outstanding issue of the stock in question. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. Not more than 10% of the deposits of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested under this section in stocks of Maine corporations and not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be so invested in the stock of any single corporation. The fund shall be invested in no more than 20% of the capital stock of any corporation. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF) .

§5714. FINANCIAL INSTITUTION STOCK AND OTHER OBLIGATIONS

1. Municipalities may invest in:

A. The debentures of any financial institution authorized to do business within this State, incorporated under the laws of this State or the United States and of any financial institution holding company, provided that the holding company is registered under the United States Bank Holding Company Act of 1956, as amended, or the National Housing Act, Section 408, as amended; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. The capital stock, preferred stock, debentures and acceptances of any insured bank not having an office in this State which has total capital and reserves of at least \$50,000,000 and of any bank holding company whose subsidiary banks have total capital and reserves of at least \$50,000,000, provided that the holding company is registered under the United States Bank Holding Company Act of 1956; [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

C. Capital notes or debentures issued by any municipalities chartered under the laws of any state, or of the United States, or of the Commonwealth of Puerto Rico, notwithstanding the fact that these notes or debentures may be subordinate to the claims of depositors or other creditors of the issuing institution. Not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be so invested; and [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

D. Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development or the Inter-American Development Bank or the African Development Bank. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Limitations. A municipality shall not acquire or hold stock and obligations described in subsection 1 in excess of 30% of the total assets of the reserve fund, permanent trust fund or other permanent fund being invested; nor shall it acquire or hold stock and obligations of any one bank or holding company not operating in this State in excess of 5% of the total assets of the reserve fund, permanent trust fund or other permanent fund being invested; nor shall any such fund be invested in that stock in excess of 10% of the capital stock of any one bank or holding company.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD).

§5715. OTHER STOCK INVESTMENTS

Municipalities may invest in: [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Preferred stock of public utilities. The preferred stock of any public corporation if all of the publicly issued bonds of the corporation qualify as legal investments under section 5713, subsection 1 or 2. Not more than 10% of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in preferred stocks of public utilities, and not more than 1% of any such fund may be invested in the preferred stocks of any one corporation;

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Bonds of nonprofit organizations. The bonds or other interest-bearing obligations of any religious, charitable, educational or fraternal association or corporation. Not more than 10% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities coming within the coverage of this subsection, and not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities of any one such association or corporation;

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Small business investment companies. The stock of small business investment companies licensed under the United States Small Business Investment Act of 1958, as amended, and commercially domiciled in Maine and doing business primarily in Maine. Not more than 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in the stock of small business investment companies and any such fund shall not be invested in more than 10% of the stock of any one small business investment company; and

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Maine Capital Corporation. The stock of the Maine Capital Corporation, established under Title 10, chapter 108, in an amount not to exceed 1% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD).

§5716. OTHER PRUDENT SECURITIES

Municipalities may invest in such securities as the municipal officers consider to be sound, prudent investments, the making of which would not otherwise be legal but for this section. Not more than 10% of the total assets of the permanent reserve fund, permanent trust fund or other permanent fund being invested may be invested in securities within the coverage of this section and investments in the stock of the State's financial institutions shall not be considered within this section. This section does not limit the authority of municipalities to invest in securities specifically regulated by this article; rather, this section gives additional authority to invest 10% in any type of prudent security. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD).

§5717. RETENTION OF UNAUTHORIZED SECURITIES

Municipalities may acquire and hold securities not authorized by law, but which have been acquired in settlements, reorganizations, recapitalizations, mergers, consolidations, by receipt of stock dividends or the exercise of rights applicable to securities held by the municipalities and may continue to hold these securities at the discretion of the municipal officers. Municipalities may continue to hold at the discretion of the municipal officers securities under authorization of law. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD).

§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: [1995, c. 206, §2 (NEW) .]

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

[1995, c. 206, §2 (NEW) .]

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

[1995, c. 206, §2 (NEW) .]

3. Income. 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.

[1995, c. 206, §2 (NEW) .]

This standard must be applied to the overall investment portfolio of the municipality and not to individual items within a diversified portfolio. [1995, c. 206, §2 (NEW) .]

SECTION HISTORY
1995, c. 206, §2 (NEW) .

§5719. LIMITATIONS ON INVESTMENTS

A municipality's authority to invest municipal funds is limited to investments permitted under this subchapter and a municipality has no authority under home rule authority or otherwise to make any investments other than those permitted under this subchapter. [1995, c. 206, §2 (NEW) .]

SECTION HISTORY
1995, c. 206, §2 (NEW) .



GFOA Best Practice

Collateralizing Public Deposits

Background. The safety of public funds should be the foremost objective in public fund management. Collateralization of public deposits through the pledging of appropriate securities or other instruments (i.e. surety bonds or letters of credit) by depositories is an important safeguard for such deposits. The amount of pledged collateral is determined by a governmental entity's deposit level and the policy or legal required collateral margin. Some states have established programs for the pooling of collateral for deposit of public funds.

Federal law imposes certain limitations on collateral agreements between financial institutions and public entities in order to secure governmental entity deposits. Under certain circumstances, as are discussed in recommendations below, the Federal Deposit Insurance Corporation (FDIC) may void an otherwise perfected security interest and leave the governmental depositor with only the right to share with other creditors in the pro rata distribution of the assets of a failed institution for the amount of deposits that exceed the FDIC coverage. Separate governmental "corporations" such as economic development corporations or water supply corporations, etc., do not fulfill the FDIC's definition of "public unit"¹ and therefore even accurately completed collateral definition may not be honored by the FDIC on a bankruptcy.

Recommendation. GFOA recommends the use of a written agreement with pledging requirements as protection for state or local government's deposits. GFOA encourages governmental entities to establish adequate and efficient administrative systems to monitor such pledged collateral, including state or locally administered collateral pledging or collateral pools. To accomplish these goals, GFOA recommends the following:

1. Governmental entities should implement programs of prudent risk control. Such programs could include a formal depository risk policy, credit analysis, and use of fully secured investments. In the absence of a state program for pooling collateral, public entities should establish and implement collateralization procedures, including procedures to monitor their collateral positions. Monitoring informs a public entity of undercollateralization, which may threaten the safety of an entity's deposits, and overcollateralization, which may increase the cost of banking services. Governmental entities however can not and should not accept the liability for maintaining collateral levels which liability must fall to the financial institution.
2. Governmental entities/depositors should take all possible actions to comply with state and federal requirements in order to ensure that their security interests in collateral pledged to secure deposits are enforceable against the

receiver of a failed financial institution. Federal law provides that a depositor's security agreement, which tends to diminish or defeat the interest of the FDIC in an asset acquired by it as receiver of an insured depository, shall not be valid against the FDIC unless the agreement:

- is in writing;
 - was approved by the board of directors of the depository or its loan committee and²
 - has been, continuously, from the time of its execution, an official record of the depository institution.³
- 3.** Governmental entities should have all pledged collateral held at an independent third-party institution outside the holding company of their bank, and evidenced by a written agreement in an effort to satisfy the Uniform Commercial Code (UCC) requirement for control. The UCC states that the depositor does not have a perfected interest in a security unless the depositor controls it. Control means that swaps, sales, and transfers cannot occur without the depositor's written approval.
- The value of the pledged collateral should be marked to market monthly, or more frequently depending on the volatility of the collateral pledged. Some state statutes do dictate a minimum margin level for collateral based on deposit levels (e.g., Georgia and Minnesota statutes require 110 percent). If not, the margin levels should be at least 102 percent, depending on the liquidity and volatility of the collateral pledged. State statutes also govern whether minimum margin levels apply to principal only or to accrued interest as well. On a sale, accrued interest would be received. Governmental entities should review applicable state statutes and confirm compliance.
 - Substitutions of collateral should meet the requirements of the collateral agreement, be approved, by the entity in writing prior to release, and the collateral should not be released until the replacement collateral has been received.
 - The public entity should require reporting directly from the custodian. The custodian should warrant and be signatory to the agreement
 - Reporting by the third party institution should at a minimum be monthly.
- 4.** The pledge of collateral should comply with the investment policy or state statute, whichever is more restrictive. Governmental entities should know and understand securities pledged as collateral.
- 5.** Governmental entities that use surety bonds in lieu of collateral should limit the insurers to those of the highest credit quality as determined by a nationally recognized insurance rating agency. A thorough review of the terms of the bond is required.
- 6.** The governmental entity should thoroughly review the terms and conditions of any letters of credit, including those issued by a federal agency or government sponsored enterprise.

7. The governmental entity should establish and follow procedures for on-going review of collateral.

Note: As a result of the court case North Arkansas Medical Center v. Barrett, 963 F.2d 780 (8th Cir. 1992), the FDIC issued a policy statement in March 1993 indicating that it would not seek to void a security interest of a federal, state, or local public unit solely because the security agreement did not comply with the contemporaneous execution requirement set forth in Section 13(e) of the Federal Deposit Insurance Act 12 U.S.C.1823(e). The policy statement was officially enacted by Section 317 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325).

References.

GFOA Sample Security Agreement (long and short versions), www.gfoa.org, 2009.

GFOA Sample Custodial Trust Agreement, www.gfoa.org, 2006.

An Introduction to Collateralizing Public Deposits for State and Local Governments, Second Edition, M. Corinne Larson, GFOA, 2006.

Investing Public Funds, Second Edition, Girard Miller with M. Corinne Larson and W. Paul Zorn, GFOA, 1998.

FDIC Act (12 U.S.C. 1811 et seq. and 12 C.F.R. Part 330.330.15 Public Unit Accounts (www.FDIC.gov))

NOTES:

¹ For deposit insurance purposes, the term "public unit" includes a state, county, municipality, or "political subdivision" thereof. Governments should review Section 330.15 of the FDIC's regulations (12 C.F.R. 330.15) to identify if they fall within the FDIC's definition of 'public unit' and to determine whether they are public entity qualifying for collateral protection under the definition. This information can be found at <http://www.fdic.gov/deposit/deposits/FactSheet.html>

² The FDIC does not require every transaction to be reviewed by the board of directors. The board may fulfill this function by setting parameters and authorizing a particular officer to carry out its wishes. The officer would be performing ministerial acts on behalf of the board. (FDIC Interpretive Letters)

³ Corporate resolutions that list specific officers who are authorized by the board of directors to execute agreements securing public deposits will meet this requirement.

Approved by the GFOA's Executive Board, October, 2007.