

HOUSE No. 891

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the list of legal investments prepared by the Commissioner of Banks.

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 891

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 891) of Michael A. Costello relative to the list of legal investments prepared by the Commissioner of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

HOUSE
 , NO. 4301 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the list of legal investments prepared by the Commissioner of Banks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 54 of chapter 44 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out the first sentence and inserting in place
3 thereof the following sentence:

4
5 Trust funds, including cemetery perpetual care funds, unless otherwise provided or
6 directed by the donor thereof, shall be deposited in a trust company, co-operative bank or savings
7 bank, if such bank or trust company is organized or exists under the laws of the commonwealth
8 or any other state of the United States or is otherwise authorized to transact business in the
9 commonwealth and has its main office or a branch office in the commonwealth; a national bank,
10 federal savings bank, federal savings and loan association, if such bank is authorized to transact
11 business and has it main office or a branch office in the commonwealth; provided that any such
12 state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance
13 Corporation or its successor; or invested by cities and towns in participation units in a combined
14 investment fund under section 38A of chapter 29 in an amount not exceeding \$100,000, or in
15 bonds or notes which are legal investments for savings banks.

16

17 SECTION 2. Chapter 44 of the General Laws is hereby amended by striking out section 55A,
18 as so appearing, and inserting in place thereof the following section:—

19

20 Section 55A. A city, town, district or regional school district officer receiving public money
21 and lawfully and in good faith and in the exercise of due care depositing the same in a trust
22 company, co-operative bank or savings bank, if such bank or trust company is organized or
23 exists under the laws of the commonwealth or any other state of the United States or is otherwise
24 authorized to transact business in the commonwealth and has its main office or a branch office in
25 the commonwealth; a national bank, federal savings bank or federal savings and loan association,
26 if such bank or association is authorized to transact business and has its main office or branch
27 office in the commonwealth; or in participation units in a combined investment fund under
28 section 38A of chapter 29, or, in the case of the city of Boston, in accordance with the provisions
29 of section 55 in a national bank or trust company in the city of New York, provided that any such
30 state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance
31 Corporation or its successor; shall not be personally liable to the city, town, district or regional
32 school district for any loss of such money by reason of the closing or liquidation of any such
33 depository institution described above.

34

35 SECTION 3. Chapter 167 of the General Laws is hereby amended by striking out section 15A,
36 as so appearing, and inserting in place thereof the following 11 sections:—

37

38 Section 15A. (a) As used in sections 15A to 15K, inclusive, the term "legal list" or "legal
39 investments" shall mean the list of securities approved for investment by the commissioner.

40

41 (b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks, bonds,
42 notes and other interest-bearing obligations which are then legal investments under any provision
43 of sections 15B through 15K, inclusive, provided that all privately placed or held issues may, in
44 the discretion of the commissioner, be omitted. An entity issuing such an instrument shall
45 identify itself directly to the commissioner as being eligible to be included on such list under the
46 authorities specified in section 15E through 15K, inclusive, provided however that the
47 commissioner shall have the discretion as to whether to add any such entity and instrument to the
48 list. Such list shall include the name of any investment fund, approved by the commissioner,
49 which invests only in such stocks, bonds, notes and other interest bearing obligations. The shares
50 of any such investment fund so approved shall be legal investments pursuant to this section to the
51 same extent as any such stocks, bonds, notes and other interest bearing obligations. Said list shall
52 at all times be public. In the preparation of any list hereunder which the commissioner is required
53 to prepare or furnish, he may employ such expert assistance as he deems proper or may rely upon
54 information contained in publications which he deems authoritative in reference to such matters,
55 and he shall be in no way held responsible or liable for the omission from such list of the name
56 of any state or political subdivision or authority thereof or of any corporation or association the

57 stocks, bonds, notes or other interest bearing obligations of which conform or any investment
58 fund which conforms to this chapter, or for the omission of any investment funds, stocks, bonds,
59 notes or other interest bearing obligations which so conform; nor shall he be held responsible or
60 liable for the inclusions in such list of any such names or of any investment funds, stocks, bonds,
61 notes or other interest bearing obligations which do not so conform.

62 (c) Officers and members of a board of a bank or credit union may rely upon the legal list
63 referred to in this section as representing an accurate listing of investment funds, stocks, bonds,
64 notes and other interest bearing obligations eligible for investment by it; and no such officer or
65 member shall be personally liable for any loss incurred by such bank arising from the purchase in
66 good faith of any shares in an investment fund or security appearing on said list at the time of
67 such purchase.

68 (d) Subsequent to the annual preparation of such list, the commissioner may add the name of
69 any investment fund which meets the requirements of this section.

70

71 (e) Before making any such investment under this section an entity shall conduct an
72 appropriate level of due diligence to determine if an investment is both permissible and
73 appropriate. This may include both internal as well as external analysis. For debt instruments,
74 such analysis shall not rely solely on one or more credit rating agencies and such entity shall
75 determine that such instrument has both a low risk of default by the obligor and that the full and
76 timely repayment is expected over the expected life of the investment.

77

78 Section 15B. (a) The list of legal investments prepared pursuant to section 15A may include
79 securities that are approved for investment in accordance with this section.

80

81 (b) The securities eligible for approval for investment under this section may include:
82 (1) interest bearing obligations of any state, county, city, town or district or any subdivision or
83 instrumentality thereof, and of any authority established under the laws of the United States or
84 any state, county, town or district, including obligations of any of the foregoing payable from
85 specified revenues; (2) interest bearing obligations of any corporation organized under the laws
86 of the United States or any state and of any association, the business of which is conducted or
87 transacted by trustees under a written instrument or declaration of trust, having its principal place
88 of business in the commonwealth, and (3) preferred and common stock of any corporation
89 described in the foregoing clause (2). Obligations to be eligible pursuant to clauses (1) and (2)
90 shall have an initial offering of at least \$50,000,000 and be rated at least a single A.

91 (c) Upon application by 3 credit unions which have been chartered pursuant to chapter
92 171, which have submitted in such form and under such conditions as the commissioner may
93 require, requesting authority to invest their deposits and the income derived therefrom in any of
94 the interest bearing obligations or stocks referred to in paragraph 1 of this section, said credit
95 unions may request the commissioner, in such form and under such conditions as in his
96 discretion he may require, authorize, notwithstanding any general or special law to the contrary,

97 the investment in any such interest bearing obligations or stock.

98

99 (d) If the commissioner grants such authority he shall forthwith add the name of such
100 investment to the list provided for in section 15A. At any time thereafter the commissioner may,
101 on his own initiative, revoke such authority.

102

103 (e) If the commissioner shall have authorized investment in an issue of bonds in
104 accordance with any of the provisions of this section, and if thereafter but before such
105 authorization shall have been revoked the issuer shall issue bonds the proceeds of which are to be
106 used solely to refund the issue previously authorized for investment or another issue of equal or
107 shorter maturity and of equal or prior security and if such new bonds shall be of equal security
108 with the previously authorized issue and of equal or shorter maturity the commissioner may
109 authorize investment in such refunding bonds, and thereafter may revoke such authority on his
110 own initiative. If the commissioner shall have authorized investment in an issue of bonds in
111 accordance with any of the provisions of this section, and if thereafter but before such
112 authorization shall have been revoked the issuer shall issue bonds of which at least 90 per cent of
113 the proceeds are to be used to refund the issue previously authorized for investment or another
114 issue of equal or prior security, the security for the new bonds is not less than that for the
115 previously authorized issue then the commissioner may authorize investment in such new bonds
116 and thereafter may revoke such authority on his own initiative.

117

118 (f) In determining that any investments authorized under the provisions of this section
119 should be included in the list of legal investments or deleted from said list, the commissioner
120 may employ such expert assistance as he deems proper or may rely upon information contained
121 in publications which he deems authoritative in reference to such matters.

122

123 (g) Not more than 10 per cent of the assets of such entity shall be invested in investments
124 authorized under this section.

125

126 Section 15C. An entity authorized to invest pursuant to section 15A or the legal list may invest
127 in bonds, notes or other interest bearing obligations of the following classes:

128

129 (1) direct obligations of the United States, or in such obligations as are unconditionally
130 guaranteed as to the payment of principal and interest by the United States;

131 (2) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest
132 bearing obligations of the commonwealth, including legally issued bonds, notes or other
133 indebtedness of an entity established as a public instrumentality by general or special law;

134 (3) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest
135 bearing obligations of any state of the United States other than this commonwealth, which has,
136 not within the 20 years prior to the making of such investment, defaulted for a period of more

137 than 120 days in the payment of any part of either principal or interest of any legally issued or
138 assumed obligation; provided, that the full faith and credit of such state is pledged for the
139 payment of the principal and interest of such obligations;

140 □(4) bonds, notes or other obligations issued or guaranteed as to both principal and interest by
141 the Dominion of Canada or any of its provinces provided, (a) that such bonds, notes or
142 obligations shall be payable in United States funds either unconditionally or at the option of the
143 holder thereof, and (b) that at the date of investment the said Dominion of Canada or the
144 applicable province of Canada shall not have been in default in the payment of interest or
145 principal of any of its obligations for a period in excess of 31 days at any time within the 20
146 years preceding such date of investment. Not more than 5 per cent of the assets of an entity
147 authorized to invest pursuant to section 15A or the legal list, so called, may be invested in
148 obligations authorized under this paragraph;

149 □(5) bonds, notes or obligations issued, assumed or guaranteed by the International Bank for
150 Reconstruction and Development, the Inter-American Development Bank or the Asian
151 Development Bank containing an unconditional promise to pay, or an unconditional guarantee of
152 the payment of, the interest thereon regularly, and the principal thereof on or before a specified
153 date, in lawful currency of the United States; provided, that not more than 3 per cent of the assets
154 of an entity authorized to invest pursuant to section 15A or the legal list, so called, shall be
155 invested in such bonds, notes or obligations; and provided, further, that the commissioner may at
156 any time on his own initiative suspend the authorization granted by this paragraph for such
157 period or periods as he may determine;

158 □(6) obligations of, or instruments issued by and fully guaranteed as to principal and interest
159 by, the Federal National Mortgage Association, established under the National Housing Act, as
160 amended;

161 □(7) debentures, bonds or other obligations issued by any federal home loan bank or
162 consolidated federal home loan bank debentures or bonds issued by the federal home loan bank
163 board under the Federal Home Loan Bank Act, as amended;

164 □(8) debentures issued by the central bank for co-operatives or consolidated debentures issued
165 by said central bank and the 12 regional banks for co-operatives under the Farm Credit Act of
166 1933, as amended;

167 □(9) collateral trust debentures or other similar obligations issued by any federal intermediate
168 credit bank or consolidated debentures or other similar obligations issued by the federal
169 intermediate credit banks under the Federal Farm Loan Act, as amended;

170 □(10) farm loan bonds issued by any federal land bank under the Federal Farm Loan Act, as
171 amended;

172 □(11) promissory notes representing domestic farm labor housing loans authorized by federal
173 law when such notes are fully guaranteed as to principal and interest by the Farmers Home
174 Administration of the United States Department of Agriculture;

175 □(12) bonds, notes or obligations issued, assumed or guaranteed by the Export-Import Bank of
176 the United States;

177 (13) obligations of any person, including any form of mortgage backed security, as to which
178 the payment of principal and interest according to the terms of such obligations is guaranteed by
179 the Government National Mortgage Association under the provisions of the National Housing
180 Act, as amended;

181 (14) certificates issued by the Federal Home Loan Mortgage Corporation representing
182 interests in mortgage loans made, acquired or participated in by the said Federal Home Loan
183 Mortgage Corporation; and

184 (15) system-wide obligations issued under the provisions of the Farm Credit Act of 1971, as
185 amended, by institutions included in the federal farm credit system.

186

187 Section 15D. An entity authorized to invest pursuant to section 15A or the legal list may invest
188 in bond, notes or other interest bearing obligations of the following classes:

189

190 (1) legally issued or assumed bonds, notes or other interest bearing obligation of a county, city
191 town or legally established district of this commonwealth; and

192

193 (2) legally issued or assumed bonds, notes or other interest bearing obligation of a county city
194 town or legally established district of this commonwealth; provided, however, that this provision
195 shall not authorize investments in obligations of any city or town situated outside the
196 commonwealth which has been in default for more than 120 days in the payment of any part of
197 principal and interest of all bonds notes or other interest bearing obligations legal for investment
198 under any provision of this section.

199

200 The full faith and credit of the county, city, town or district shall be pledged for the full
201 payment of principal and interest of all bonds, notes or other interest bearing obligations legal for
202 investment under any provision of this section.

203

204 Section 15E. (a) An entity authorized to invest pursuant to section 15A or the legal list may
205 invest in bonds, notes or other interest bearing obligations of railroad corporations subject to the
206 conditions, limitations and requirements of this section.

207

208 (b) With respect to bonds, such obligations shall be those of a railroad incorporated in the
209 United States or any state thereof and which is doing business principally within the United
210 States and shall contain an unconditional promise to pay the interest thereon regularly and to pay
211 the principal at a specified date, which promise may be modified, if at all, only by vote of
212 holders of at least 75 per cent in amount of such bonds.

213

214 Not more than 20 per cent of the assets of such entity shall be invested in such railroad
215 obligations.

216

217 (c) Investments in railroad equipment obligations shall be those of, or guaranteed by, a railroad
218 incorporated in the United States or any state thereof and which is doing business principally
219 within the United States.

220

221 Section 15F. (a) As used in section 15F and 15G, the term "bond" includes a note or debenture.

222 (b) An entity authorized to invest pursuant to section 15A or the legal list may invest in the
223 bonds of any company which at the time of such investment is incorporated under the laws of
224 the United States or any state thereof, or the District of Columbia, and authorized to engage, and
225 engaging, in the business of furnishing telephone service in the United States, subject to the
226 following conditions: (1) The bonds shall be part of an original issue of not less than \$25,000,000
227 in principal amount when the company is not incorporated in the commonwealth; and (2) not
228 more than 20 per cent of the assets of such entity shall be invested in the bonds of telephone
229 companies.

230

231 Section 15G. (a) An entity authorized to invest pursuant to section 15A or the legal list may
232 invest in bonds, notes or other interest bearing obligations of a gas, electric light or water
233 company incorporated or doing business in this commonwealth and subject to the control and
234 supervision thereof.

235 (b) An entity authorized to invest pursuant to section 15A or the legal list, so called, may invest
236 in the bonds of any company which at the time of such investment is incorporated under the laws
237 of the United States or any state thereof, or the District of Columbia, and transacting the business
238 of supplying electrical energy or artificial gas, or natural gas purchased from another company
239 and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power and other
240 purposes, or transacting any or all of such business. The bonds shall be part of an original issue
241 of not less than \$25,000,000 in principal amount.

242 (c) Not more than 25 per cent of the assets of such entity shall be invested in obligations under
243 this section, nor shall more than 4 per cent be invested in the obligations of any one such
244 company.

245

246 Section 15H. (a) An entity authorized to invest pursuant to section 15A or the legal list may
247 invest in the common stock of the following banking corporations and bank holding companies
248 subject to the conditions, limitations and requirements of this section.

249

250 (b) In the common stock, provided there is no preferred stock outstanding, of a bank in stock
251 form incorporated under the laws of and doing business within the commonwealth, or in the
252 common stock, provided there is no preferred stock outstanding, of a federally chartered bank in
253 stock form doing business within the commonwealth. Such state-chartered or federally-chartered
254 bank shall be well capitalized under bank regulatory criteria.

255

256 (c) In the common stock of a state-chartered bank or federally chartered bank doing business

257 anywhere within the United States, which is a member of the federal reserve system and is well
258 capitalized under bank regulatory criteria.

259 (d)(1) In the common stock of a bank holding company, as defined in chapter 167A, provided
260 such stock is received pursuant to an offer made by such bank holding company to exchange
261 shares of its common stock for shares of a bank in stock form incorporated under the laws of the
262 commonwealth or for shares of a federally-chartered bank doing business in the commonwealth,
263 or provided that such stock is received pursuant to a plan for the merger or consolidation of any
264 such bank with or into, or the transfer, sale or exchange of property or of assets of such bank or
265 with a bank in stock form incorporated under the laws of this commonwealth or a federally-
266 chartered bank doing business in this commonwealth the stock of such bank, as the case may be,
267 is at the time owned by such bank holding company.

268 (2) In the common stock of a bank holding company, as defined in chapter 167A, acquired
269 otherwise than as set forth in the foregoing provisions of clause (a), or in the common stock of a
270 bank holding company, as defined in the federal Bank Holding Company Act of 1956. The
271 holding company shall own 80 per cent or more of the voting stock of the qualifying bank. If at
272 any time after an investment in the common stock of any such bank holding company, no bank
273 of such holding company meets the requirements of paragraph 1 or 2, such holding company's
274 stock shall be disposed of within such reasonable time as the commissioner shall determine.

275 (e) In the common stock of a company as defined in chapter one hundred and sixty-seven A or
276 in the federal Bank Holding Company Act of 1956, provided such banking institution or bank is
277 of the kind referred to in paragraph 1 or 2 and such stock of such banking institution or bank
278 represents at least 50 per cent of such company's assets at book value at the end of its fiscal year
279 immediately preceding the date of investment or at the date of investment in the case of a newly
280 formed company.

281 Section 15I. Subject to applicable banking law, an entity authorized to invest pursuant to
282 section 15A or the legal list, so called, may purchase the whole or any part of the stock of a
283 savings bank, co-operative bank, federal savings and loan association or federal savings bank
284 provided that any such bank or association is well capitalized under bank regulatory criteria.

285

286 Section 15J. An entity authorized to invest pursuant to section 15A or the legal list, so called,
287 may invest in the capital stock of any insurance company authorized to conduct a fire and
288 casualty insurance business in the commonwealth, subject to the conditions, limitations and
289 requirements of this section.

290 No insurance stock shall be purchased if the cost thereof added to the cost of insurance stocks
291 and bank stocks already owned shall exceed $66 \frac{2}{3}$ per cent of the total of the assets of such
292 entity.

293

294 Section 15K. An entity authorized to invest pursuant to section 15A or the legal list, so called,
295 may invest in securities of any of the classes described below in this section.

296

297 Debentures, convertible debentures, notes or other evidences of indebtedness of (a) a banking
298 corporation in the common stock of which such corporation may invest pursuant to paragraph 1
299 of section 15H; provided, that such entity authorized to invest pursuant to section 15A or the
300 legal list, so called, is well capitalized under regulatory criteria, (b) a banking corporation in the
301 common stock of which such corporation may invest pursuant to paragraph 2 of said section 15H
302 is well capitalized under regulatory criteria.

303

304 SECTION 4. Chapter 171 of the General Laws is hereby amended by adding after section 67A
305 the following section:—

306 Section 67B. Upon a two-thirds vote of its board of directors, a credit union which has strong
307 management, is well-capitalized and has at least a satisfactory rating at the most recent
308 community reinvestment examination conducted by the commissioner pursuant to section 14 of
309 chapter 167 may apply to the commissioner to invest in shares of stock registered on a national
310 securities exchange as provided in the Securities Exchange Act of 1934, 15 USC 78a or for
311 which quotations are available through the Financial Industry Regulatory Authority or any
312 comparable service designated by the commissioner; provided that such investment shall be
313 made in the exercise of the judgment and care consistent with the “Prudent Man” rule, so-called
314 and as provided herein. In making such application to the commissioner for “Prudent Man”
315 authority, so-called, as provided herein, such credit union shall also have adequate policies and
316 procedures governing the performance of such activity by the credit union and its employees, to
317 minimize any credit, market, liquidity, operational, legal and reputational risks to the credit
318 union. A credit union shall submit such other information the commissioner may deem necessary
319 to properly evaluate an application. The commissioner may consider any other information
320 available to the division of banks in determining whether to approve or reject an application. Any
321 such approval granted by the commissioner shall be subject to such conditions and limitations as
322 he may impose.

323

324 A credit union may apply to invest up to 20 per cent of its assets under the authority of this
325 section. The percentage of such assets authorized shall be determined by the commissioner. The
326 commissioner may increase, modify, curtail or rescind or otherwise limit a credit union’s
327 authority to make such investments.

328

329 Before making any such investment under this section a credit union shall conduct an
330 appropriate level of due diligence to determine if an investment is both permissible and
331 appropriate. This may include both internal as well as external analysis. For debt instruments,
332 such analysis shall not rely solely on 1 or more credit rating agencies and such credit union shall
333 determine that such instrument has both a low risk of default by the obligor and that the full and
334 timely repayment is expected over the expected life of the investment.

335 A credit union shall take into consideration the following:

336

337 (1) when considering the purposes, terms, and other circumstances of the credit union,
338 including those set forth in this section, whether the investment would meet the “prudent man”
339 standard whereby the credit union shall exercise reasonable care, skill, and caution in making its
340 investments and management decisions;

341 (2) whether the investment or management decision is consistent with an overall investment
342 strategy reasonably suited to the credit union;

343 (3) consideration of circumstances relevant to the credit union in investing and managing its
344 assets, including: (i) general economic conditions; (ii) the possible effect of inflation or deflation;
345 (ii) the role that each investment or course of action plays within the overall credit union
346 investment philosophy; (iv) the expected total return from income and the appreciation of
347 capital; (v) other resources of the credit union; (vi) needs for liquidity, regularity of income, and
348 preservation or appreciation of capital; and (vii) an asset’s special relationship or special value, if
349 any, to the purposes of the credit union;

350 (4) whether facts relevant to the investment and management of its assets can be reasonably
351 verified;

352 (5) whether the investment or management decision would reasonably diversify the
353 investments of the credit union in order to bring the credit union’s portfolio into compliance with
354 the purposes, terms, and the other circumstances of the credit union, and with the requirements of
355 this section; (6) the costs of any decision in investing and managing credit union assets and
356 whether such costs are appropriate and reasonable in relation to its assets.

357 The investments under this section shall not exceed 20 per cent of the credit union’s assets.

358 Such investments shall be subject to annual review by the board of directors of the credit union
359 and shall be subject to periodic review by the division of banks during the course of
360 examinations pursuant to section 2 of chapter 167.

361

362 SECTION 5. Chapter 294 of the acts of 1961, as most recently amended by chapter 253 of the
363 acts of 2010, is hereby amended by inserting after section 12 the following section:—

364

365 Section 12A. Upon a two-thirds vote of its board of directors, and having established that such
366 activity will not adversely affect its safety and soundness; and having adequate policies and
367 procedures to ensure such investments governing the performance of the corporation and its
368 employees, to minimize any credit, market, liquidity, operations, legal and reputational risks to
369 the corporation, it may apply to the commissioner to make investments under the “Prudent Man”
370 authority, so-called, authorized to state-chartered credit unions pursuant to section 67B of
371 chapter 171 of the General Laws. Any such approval granted by the commissioner shall be
372 subject to such conditions and limitations as he may impose.

373

374 The corporation may apply to invest up to 20 per cent of its assets under the authority of said
375 section 67B. The percentage of such assets authorized shall be determined by the commissioner.
376 The commissioner may increase, modify, curtail or rescind or otherwise limit the corporation’s

377 authority make such investments under the authority of said section 67B.

378