FILED ON: 3/12/2014

HOUSE . . . . . No. 3954

Substituted by the House, on motion of Mr. Dempsey of Haverhill, for a Bill with the same title (House, No. 891, amended). March 12, 2014.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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:

SECTION 1. Section 54 of chapter 44 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor thereof, shall be deposited in a trust company, co-operative bank or savings bank, if such bank or trust company is organized or exists under the laws of the commonwealth or any other state or is otherwise authorized to transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank, federal savings and loan association, if such bank is authorized to transact business and has it main office or a branch office in the commonwealth; provided that any such state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; or invested by cities and towns in participation units in a combined investment fund under section 38A of chapter 29, or in bonds or notes which are legal investments for savings banks.

SECTION 2. Said chapter 44 is hereby further amended by striking out section 55A, as so appearing, and inserting in place thereof the following section:—

Section 55A. A city, town, district or regional school district officer receiving public money and lawfully and in good faith and in the exercise of due care depositing the same in a trust company, co-operative bank or savings bank, if such bank or trust company is organized or exists under the laws of the commonwealth or any other state or is otherwise authorized to transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if such bank or association is authorized to transact business and has its main office or branch

office in the commonwealth; or in participation units in a combined investment fund under section 38A of chapter 29, or, in the case of the city of Boston, in accordance with the provisions of section 55 in a national bank or trust company in the city of New York; provided, however, that any such state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; shall not be personally liable to the city, town, district or regional school district for any loss of such money by reason of the closing or liquidation of any such depository institution described above.

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

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

(b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks, bonds, notes and other interest-bearing obligations which are then legal investments under any provision of sections 15B to15K, inclusive, provided that all privately placed or held issues may, in the discretion of the commissioner, be omitted. An entity issuing such an instrument shall identify itself directly to the commissioner as being eligible to be included on such list under the authorities specified in section 15E to 15K, inclusive; provided, however, that the commissioner shall have the discretion as to whether to add any such entity and instrument to the list. Such list shall include the name of any investment fund, approved by the commissioner, which invests only in such stocks, bonds, notes and other interest bearing obligations. The shares of any such investment fund so approved shall be legal investments pursuant to this section to the same extent as any such stocks, bonds, notes and other interest bearing obligations. Said list shall at all times be public. In the preparation of any such list which the commissioner is required to prepare or furnish, the commissioner may employ such expert assistance as the commissioner believes proper or may rely upon information contained in publications which the commissioner believes authoritative in reference to such matters, and the commissioner shall not be held responsible or liable for the omission from such list of the name of any state or political subdivision or authority thereof or of any corporation or association the stocks, bonds, notes or other interest bearing obligations of which conform or any investment fund which conforms to this chapter, or for the omission of any investment funds, stocks, bonds, notes or other interest bearing obligations which so conform; nor shall the commissioner be held responsible or liable for the inclusions in such list of any such names or of nonconforming investment funds, stocks, bonds, notes or other interest bearing obligations..

(c) Officers and members of a board of a bank or credit union may rely upon the legal list referred to in this section as representing an accurate listing of investment funds, stocks, bonds, notes and other interest bearing obligations eligible for investment by it; and no such officer or member shall be personally liable for any loss incurred by such bank arising from the purchase in

60 good faith of any shares in an investment fund or security appearing on the list at the time of
61 such purchase.

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

64 (e) Before making an investment under this section, an entity shall conduct an appropriate
65 level of due diligence to determine if an investment is both permissible and appropriate. This
66 may include both internal as well as external analysis. For debt instruments, such analysis shall
67 not rely solely on 1 or more credit rating agencies and such entity shall determine that such
68 instrument has both a low risk of default by the obligor and that the full and timely repayment is
69 expected over the expected life of the investment.

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

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

82 (c) Upon application by 3 credit unions which have been chartered pursuant to
83 chapter 171, which have submitted in such form and under such conditions as the commissioner
84 may require, requesting authority to invest their deposits and the income derived therefrom in
85 any of the interest bearing obligations or stocks referred to in subsection (b) said credit unions
86 may request that the commissioner, in such form and under such conditions as in the
87 commissioner's discretion may require, authorize, notwithstanding any general or special law to
88 the contrary, the investment in any such interest bearing obligations or stock.

89 (d) If the commissioner grants such authority the commissioner shall immediately
90 add the name of such investment to the list provided for in section 15A. At any time thereafter
91 the commissioner may, on the commissioner's own initiative, revoke such authority.

92 (e) If the commissioner authorized investment in an issue of bonds in accordance
93 with this section, and if thereafter but before such authorization is revoked the issuer shall issue
94 bonds, the proceeds of which are to be used solely to refund the issue previously authorized for
95 investment or another issue of equal or shorter maturity and of equal or prior security, and if such

new bonds shall be of equal security with the previously authorized issue and of equal or shorter maturity the commissioner may authorize investment in such refunding bonds, and thereafter may revoke such authority on the commissioner's own initiative. If the commissioner authorized investment in an issue of bonds in accordance with this section, and if thereafter but before such authorization is revoked the issuer shall issue bonds of which at least 90 per cent of the proceeds are to be used to refund the issue previously authorized for investment or another issue of equal or prior security, the security for the new bonds is not less than that for the previously authorized issue then the commissioner may authorize investment in such new bonds and thereafter may revoke such authority on the commissioner's own initiative.

(f) In determining that any investments authorized under this section should be included in the list of legal investments or deleted from said list, the commissioner may employ such expert assistance as the commissioner believes proper or may rely upon information contained in publications which the commissioner believes authoritative.

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

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

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

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

(3) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest bearing obligations of any state other than this commonwealth, which has, not within the 20 years prior to the making of such investment, defaulted for a period of more than 120 days in the payment of any part of either principal or interest of any legally issued or assumed obligation; provided, that the full faith and credit of such state is pledged for the payment of the principal and interest of such obligations;

(4) bonds, notes or other obligations issued or guaranteed as to both principal and interest by the Dominion of Canada or any of its provinces: provided; (a) that such bonds, notes or obligations shall be payable in United States funds either unconditionally or at the option of the holder thereof; and (b) that at the date of investment the said Dominion of Canada or the applicable province of Canada shall not have been in default in the payment of interest or principal of any of its obligations for a period in excess of 31 days at any time within the 20 years preceding such date of investment. Not more than 5 per cent of the assets of an entity

131 authorized to invest pursuant to section 15A or the legal list, so called, may be invested in
132 obligations authorized under this paragraph;

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

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

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

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

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

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

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

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

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

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

168 (15) system-wide obligations issued under the provisions of the Farm Credit Act of
169 1971, as amended, by institutions included in the federal farm credit system.

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

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

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

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

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

186 (b) With respect to bonds, such obligations shall be those of a railroad incorporated in the
187 United States or any statedoing business principally within the United States and shall contain an
188 unconditional promise to pay the interest thereon regularly and to pay the principal at a specified
189 date, which promise may be modified, if at all, only by vote of holders of at least 75 per cent in
190 amount of such bonds.

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

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

196 Section 15F. (a) As used in sections 15F and 15G, the term “bond” includes a note or
197 debenture.

198 (b) An entity authorized to invest pursuant to section 15A or the legal list may invest in
199 the bonds of any company which at the time of such investment is incorporated under the laws of
200 the United States or any state and authorized to engage, and engaging, in the business of
201 furnishing telephone service in the United States, subject to the following: (1)the bonds shall be
202 part of an original issue of not less than $25,000,000 in principal amount when the company is
203 not incorporated in the commonwealth; and (2) not more than 20 per cent of the assets of such
204 entity shall be invested in the bonds of telephone companies.

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

209 (b) An entity authorized to invest pursuant to section 15A or the legal list may invest in
210 the bonds of any company which at the time of such investment is incorporated under the laws of
211 the United States or any state and transacting the business of supplying electrical energy or
212 artificial gas, or natural gas purchased from another company and supplied in substitution for, or
213 in mixture with, artificial gas, for light, heat, power and other purposes, or transacting any or all
214 of such business. The bonds shall be part of an original issue of not less than $25,000,000 in
215 principal amount.

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

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

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

227 (c)In the common stock of a state-chartered bank or federally chartered bank doing
228 business anywhere within the United States, which is a member of the federal reserve system
229 and is well capitalized under bank regulatory criteria.

230 (d)(1) In the common stock of a bank holding company, as defined in chapter 167A,
231 provided such stock is received pursuant to an offer made by such bank holding company to
232 exchange shares of its common stock for shares of a bank in stock form incorporated under the
233 laws of the commonwealth or for shares of a federally-chartered bank doing business in the

234 commonwealth, or provided that such stock is received pursuant to a plan for the merger or
235 consolidation of any such bank with or into, or the transfer, sale or exchange of property or of
236 assets of such bank or with a bank in stock form incorporated under the laws of the
237 commonwealth or a federally-chartered bank doing business in the commonwealth the stock of
238 such bank, as the case may be, is at the time owned by such bank holding company.

239 (2) In the common stock of a bank holding company, as defined in chapter 167A,
240 acquired otherwise than as set forth in the foregoing provisions of subsection (a), or in the
241 common stock of a bank holding company, as defined in the federal Bank Holding Company Act
242 of 1956. The holding company shall own 80 per cent or more of the voting stock of the
243 qualifying bank. If at any time after an investment in the common stock of any such bank
244 holding company, no bank of such holding company meets the requirements of paragraph (1) or
245 (2), such holding company's stock shall be disposed of within such reasonable time as the
246 commissioner shall determine.

247 (e) In the common stock of a company as defined in chapter 167A or in the federal Bank
248 Holding Company Act of 1956, provided such banking institution or bank is of the kind referred
249 to in paragraph (1) or (2) and such stock of such banking institution or bank represents at least 50
250 per cent of such company's assets at book value at the end of its fiscal year immediately
251 preceding the date of investment or at the date of investment in the case of a newly formed
252 company.

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

257 Section 15J. An entity authorized to invest pursuant to section 15A or the legal listmay
258 invest in the capital stock of any insurance company authorized to conduct a fire and casualty
259 insurance business in the commonwealth; provided, thatno insurance stock shall be purchased if
260 the cost thereof added to the cost of insurance stocks and bank stocks already owned shall exceed
261 66 2/3 per cent of the total of the assets of such entity.

262 Section 15K. An entity authorized to invest pursuant to section 15A or the legal list, so
263 called, may invest in securities of any of the following classes: debentures, convertible
264 debentures, notes or other evidences of indebtedness of: (a) a banking corporation in the
265 common stock of which such corporation may invest pursuant to paragraph 1 of section 15H;
266 provided, however, that such entity authorized to invest pursuant to section 15A or the legal list,
267 so called, is well capitalized under regulatory criteria; or (b) a banking corporation in the
268 common stock of which such corporation may invest pursuant to paragraph 2 of said section 15H
269 is well capitalized under regulatory criteria.

270 SECTION 4. Chapter 171 of the General Laws is hereby amended by adding after section
271 67A the following section:—

272 Section 67B. Upon a two-thirds vote of its board of directors, a credit union which has
273 strong management, is well-capitalized and has at least a satisfactory rating at the most recent
274 community reinvestment examination conducted by the commissioner pursuant to section 14 of
275 chapter 167 may apply to the commissioner to invest in shares of stock registered on a national
276 securities exchange as provided in the Securities Exchange Act of 1934, 15 USC 78a or for
277 which quotations are available through the Financial Industry Regulatory Authority, Inc. or any
278 comparable service designated by the commissioner; provided that such investment shall be
279 made in the exercise of the judgment and care consistent with the "prudent person" rule, so-
280 called and as provided herein. In making such application to the commissioner for "prudent
281 person" authority, so-called, as provided herein, such credit union shall also have adequate
282 policies and procedures governing the performance of such activity by the credit union and its
283 employees, to minimize any credit, market, liquidity, operational, legal and reputational risks to
284 the credit union. A credit union shall submit such other information the commissioner may deem
285 necessary to properly evaluate an application. The commissioner may consider any other
286 information available to the division of banks in determining whether to approve or reject an
287 application. Any such approval granted by the commissioner shall be subject to such conditions
288 and limitations as the commissioner may impose.

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

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

299 A credit union shall take into consideration the following:

300 (1) when considering the purposes, terms, and other circumstances of the credit union,
301 including those set forth in this section, whether the investment would meet the "prudent
302 person" standard whereby the credit union shall exercise reasonable care, skill, and caution in
303 making its investments and management decisions;

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

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

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

315 (5) whether the investment or management decision would reasonably diversify the
316 investments of the credit union in order to bring the credit union's portfolio into compliance with
317 the purposes, terms, and the other circumstances of the credit union, and with the requirements of
318 this section;

319 (6) the costs of any decision in investing and managing credit union assets and whether
320 such costs are appropriate and reasonable in relation to its assets.

321 The investments pursuant to this section shall not exceed 20 per cent of the credit union's
322 assets.

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

326 SECTION 5. Section 1 of chapter 294 of the acts of 1961 is hereby amended by adding
327 the following section:—

328 Section 12A. Upon a two-thirds vote of its board of directors, and having established that
329 such activity will not adversely affect its safety and soundness; and having adequate policies and
330 procedures to ensure such investments governing the performance of the corporation and its
331 employees, to minimize any credit, market, liquidity, operations, legal and reputational risks to
332 the corporation, it may apply to the commissioner to make investments under the "prudent
333 person" authority, so-called, authorized to credit unions pursuant to section 67B of chapter 171
334 of the General Laws. Any such approval granted by the commissioner shall be subject to such
335 conditions and limitations as the commissioner may impose.

336 The corporation may apply to invest up to 20 per cent of its assets under the authority of
337 said section 67B. The percentage of such assets authorized shall be determined by the
338 commissioner. The commissioner may increase, modify, curtail or rescind or otherwise limit the
339 corporation's authority make such investments under the authority of said section 67B.