

SB 243 – AS AMENDED BY THE HOUSE

03/07/12 0804s
16May2012... 2071h

2012 SESSION

12-2912
04/03

SENATE BILL **243**

AN ACT relative to the management of trust funds and capital reserve funds.

SPONSORS: Sen. Stiles, Dist 24; Sen. Lambert, Dist 13; Sen. Boutin, Dist 16; Rep. Nevins, Rock 15; Rep. Waddell, Rock 15; Rep. Pilotte, Hills 16

COMMITTEE: Public and Municipal Affairs

ANALYSIS

This bill amends the statutes relating to the management and investment of trust funds and capital reserve funds of cities and towns.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the management of trust funds and capital reserve funds.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Trust Funds; Records. Amend RSA 31:34 to read as follows:

2 31:34 Records. The trustees shall keep a record of all trusts in a record book[-] **or maintained**
3 **in electronic format** which shall be open to the inspection of all persons in their town. **Such**
4 **records shall be maintained and retained pursuant to RSA 91-A:4.**

5 2 Trust Funds; Professional Banking and Brokerage Assistance. Amend RSA 31:38-a, II-c to
6 read as follows:

7 II-c. "Investment advisor" in this section means a qualified investment advisory firm
8 registered with the appropriate regulatory authorities **and licensed pursuant to RSA 421-B:7.**
9 Such firm may or may not be associated with a brokerage firm as defined in paragraph II-a.

10 3 Trust Funds; Professional Banking and Brokerage Assistance. Amend RSA 31:38-a, III to
11 read as follows:

12 III. Any trustee or trustees of trust funds authorized by this chapter may hire or employ the
13 trust department or departments of a bank or banks or a brokerage firm **or an investment advisor**
14 to assist in the management and investment of trust fund resources or to provide bookkeeping
15 services in connection therewith or to do both. [~~They may also place securities in the nominee name~~
16 ~~of a trust department or departments or a brokerage firm to facilitate transfers for such securities.]~~
17 Trust fund records maintained by any bank or brokerage firm [~~must~~] **or investment advisor shall**
18 be available at all times for examination by local auditors, by independent accountants or auditors
19 retained by a municipality, or by the auditors of the department of revenue administration; and such
20 records shall be municipal records and property. In employing such trust departments, portfolio
21 management departments, or investment advisors, the trustees may enter into contracts or
22 agreements delegating the management of such trust funds to those departments subject to
23 investment guidelines adopted by the trustees under applicable statutes and subject to at least
24 quarterly review and approval of such management by the trustees.

25 4 Capital Reserve Funds of Counties; Trustees of Funds. Amend RSA 35:10 to read as follows:

26 35:10 Trustees of Funds. The trustees of trust funds of a town or city shall have custody of any
27 capital reserve of a town, district or water departments therein, the trustees of trust funds as
28 provided in RSA 35:2 shall have custody of such capital reserve of a school district, and the county
29 treasurer of a county shall have custody of any capital reserve of his county. Said trustees or

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1 treasurer shall give bond in such amount and in such form as the commissioner of revenue
2 administration shall prescribe, and any such trustee or treasurer who shall make any payment of
3 income or principal from any such capital reserve fund before the approval of his bond in writing by
4 the commissioner of revenue administration shall be personally liable to the town, district,
5 department or county for any loss resulting from such payment, to be recovered for the town, district,
6 department or county at the suit of any citizen. The expenses of said trustees or treasurer in said
7 capacity and the expense of their bonds shall be charged as incidental town, district, department or
8 county charges, *except that investment management expenses may be charged as provided in*
9 *RSA 35:19.*

10 5 New Sections; Capital Reserve Funds of Counties, Towns, Districts, and Water Departments;
11 Professional Banking or Brokerage Assistance. Amend RSA 35 by inserting after section 18 the
12 following new sections:

13 35:19 Professional Banking or Brokerage Assistance.

14 I. In this section:

15 (a) “Bank” means a savings bank, national bank or trust company in this state, any
16 building and loan association or cooperative bank, incorporated and doing business under the laws of
17 this state, or any federal savings and loan association located and doing business in this state.

18 (b) “Brokerage firm” means a firm registered under the securities law effecting
19 transactions in securities for the accounts of others.

20 (c) “Portfolio management department” means the department of a brokerage firm
21 responsible for investment management of client accounts.

22 (d) “Investment advisor” means a qualified investment advisory firm registered with the
23 appropriate regulatory authorities and licensed pursuant to RSA 421-B:7. Such firm may or may not
24 be associated with a brokerage firm.

25 II. Any trustee or trustees of capital reserve funds authorized by this chapter may hire or
26 employ the trust department or departments of a bank or banks or a brokerage firm or investment
27 advisor to assist in the management and investment of capital reserve fund resources or to provide
28 bookkeeping services in connection therewith or to do both. ~~[They may also place securities in the~~
29 ~~nominee name of a trust department or departments or a brokerage firm or investment advisor to~~
30 ~~facilitate transfers for such securities.]~~ Capital reserve fund records maintained by any bank or
31 brokerage firm or investment advisor shall be available at all times for examination by local
32 auditors, by independent accountants or auditors retained by a municipality, or by the auditors of
33 the department of revenue administration; and such records shall be municipal records and
34 property. In employing such trust departments, portfolio management departments, or investment
35 advisors, the trustees may enter into contracts or agreements delegating the management of such
36 capital reserve funds to those departments subject to investment guidelines adopted by the trustees
37 under applicable statutes and subject to at least quarterly review and approval of such management

1 by the trustees.

2 III. Any expenses incurred pursuant to paragraph II of this section by a trustee or trustees
3 of trust funds authorized by this chapter may, with the annual approval of the governing body, be
4 charged against the income of the capital reserve funds involved and shall be identified and reported
5 in the annual report of the trustee or trustees as expenditures out of capital reserve funds made
6 pursuant to paragraph II.

7 35:20 Capital Gains. Notwithstanding any statute or rule to the contrary, trustees of trust
8 funds in towns, school districts, and village districts shall treat realized capital gains and capital
9 gain distributions earned on principal balances and income balances in capital reserve funds as
10 principal.

11 6 Capital Reserve Funds for Cities; Trustees of Funds. Amend RSA 34:6 to read as follows:

12 34:6 Trustees of Funds. The trustees of trust funds of the city shall have custody of all capital
13 reserves. Said trustees shall give bond in such amount and in such form as the city council or board
14 of aldermen shall prescribe, and any trustee who shall make payment of income or principal from
15 any such capital reserve fund before the approval of his *or her* bond in writing by the city council or
16 board of aldermen shall be personally liable to the city for any loss resulting from such payment, to
17 be recovered by the city at the suit of any citizen. The expenses of said trustees in said capacity and
18 the expense of their bonds shall be charged as incidental city charges *except that investment*
19 *management expenses may be charged as provided in RSA 34:16.*

20 7 New Sections; Capital Reserve Funds for Cities; Professional Banking or Brokerage
21 Assistance; Capital Gains. Amend RSA 34 by inserting after section 15 the following new sections:

22 34:16 Professional Banking or Brokerage Assistance.

23 I. In this section:

24 (a) "Bank" means a savings bank, national bank or trust company in this state, any
25 building and loan association or cooperative bank, incorporated and doing business under the laws of
26 this state, or any federal savings and loan association located and doing business in this state.

27 (b) "Brokerage firm" means a firm registered under the securities law effecting
28 transactions in securities for the accounts of others.

29 (c) "Portfolio management department" means the department of a brokerage firm
30 responsible for investment management of client accounts.

31 (d) "Investment advisor" means a qualified investment advisory firm registered with the
32 appropriate regulatory authorities and licensed pursuant to RSA 421-B:7. Such firm may or may not
33 be associated with a brokerage firm.

34 II. Any trustee or trustees of capital reserve funds authorized by this chapter may hire or
35 employ the trust department or departments of a bank or banks or a brokerage firm or investment
36 advisor to assist in the management and investment of capital reserve fund resources or to provide
37 bookkeeping services in connection therewith or to do both. [~~They may also place securities in the~~

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1 ~~nominee name of a trust department or departments or a brokerage firm or investment advisor to~~
2 ~~facilitate transfers for such securities.]~~ Capital reserve fund records maintained by any bank or
3 brokerage firm or investment advisor shall be available at all times for examination by local
4 auditors, by independent accountants or auditors retained by a municipality, or by the auditors of
5 the department of revenue administration; and such records shall be municipal records and
6 property. In employing such trust departments, portfolio management departments, or
7 investment advisors, the trustees may enter into contracts or agreements delegating the
8 management of such capital reserve funds to those departments subject to investment guidelines
9 adopted by the trustees under applicable statutes and subject to at least quarterly review and
10 approval of such management by the trustees.

11 III. Any expenses incurred pursuant to paragraph II of this section by a trustee or trustees
12 of trust funds authorized by this chapter may, with the annual approval of the governing body, be
13 charged against the income of the capital reserve funds involved and shall be identified and reported
14 in the annual report of the trustee or trustees as expenditures out of capital reserve funds made
15 pursuant to paragraph II.

16 34:17 Capital Gains. Notwithstanding any statute or rule to the contrary, trustees of trust
17 funds in cities shall treat realized capital gains and capital gain distributions earned on principal
18 balances and income balances in capital reserve funds as principal.

19 8 Effective Date. This act shall take effect 60 days after its passage.