

MAINE STATE LEGISLATURE

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1 (After Deadline)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 1963

7
8 S. P. 840 In Senate, February 11, 1982
Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 27.

Referred to the Committee on Business Legislation and ordered
printed. Sent down for concurrence.

9 MAY M. ROSS, Secretary of the Senate
Presented by Senator Devoe of Penobscot.

10
11 STATE OF MAINE
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 AN ACT to Revise the State Takeover
17 Bid Law.
18

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

20 Sec. 1. 13 MRSA §802, sub-§11-A is enacted to read:

21 11-A. Purchase program. "Purchase program" means an
22 offer of cash or securities, or both, made by an offeror
23 directly or through an agent by advertisement or any other
24 written or oral communication to offerees to acquire, or the
25 acquisition or the purchase in open market or in privately
26 negotiated transactions, or both, of shares of any class of
27 the outstanding equity securities of a target company with
28 the purpose or effect of acquiring, directly or indirectly,
29 beneficial ownership of more than 5% of the outstanding
30 shares of that class. The term does not include:

31 A. Any offer to acquire or any acquisition or purchase
32 of any equity security of a target company either:

1 (1) Directly from the target company; or

2 (2) By any institutional investor, including any
3 bank, savings institution, trust company, insur-
4 ance company, investment company, employee benefit
5 plan, or charitable foundation or trust;

6 B. An offer made by an issuer to purchase its own
7 shares or shares of a subsidiary;

8 C. An offer to purchase shares of a class not regis-
9 tered pursuant to the United States Securities Exchange
10 Act of 1934, Section 12;

11 D. An offer, if the acquisition by the offeror, in the
12 instant transactions and in all acquisitions of equity
13 securities of the same class during the preceding 12
14 months, does not exceed 2% of that class of outstanding
15 equity securities of the target company; or

16 E. An offer to purchase shares of a company whose
17 assets do not exceed \$5,000,000.

18 Sec. 2. 13 MRSA §802, sub-§13-A is enacted to read:

19 13-A. Subsidiary. A "subsidiary" of a specified
20 person is a corporation or other issuer of securities, 50%
21 or more of whose outstanding shares entitled in the ordinary
22 course to vote for the election of directors are owned
23 directly or indirectly by the person specified.

24 Sec. 3. 13 MRSA §802, sub-§16, as enacted by PL 1977,
25 c. 669, is repealed and the following enacted in its place:

26 16. Takeover bid or takeover offer. A "takeover bid
27 or takeover offer" means a tender offer or a purchase pro-
28 gram. Takeover offer and takeover bid shall be wholly syn-
29 onymous and interchangeable terms.

30 Sec. 4. 13 MRSA §802, sub-§18 is enacted to read:

31 18. Tender offer. A "tender offer:"

32 A. Is an offer of cash or securities, or both, made by
33 an offeror directly or through an agent by advertise-
34 ment or any other written or oral communication to
35 offerees to purchase the number of shares of any class
36 of equity securities of the target company that:

1 (1) Together with the offeror's presently owned
2 shares of that class, will in the aggregate exceed
3 5% of the outstanding shares of the class; or

4 (2) Together with an offeror's presently owned
5 shares of all classes of equity securities of the
6 target company, will in the aggregate, after
7 giving effect to all conversion and purchase
8 rights held and to be acquired by the offeror,
9 exceed 5% of the number of shares of stock or a
10 similar security of the target company which will
11 be outstanding; and

12 B. Does not include, with respect to any class of
13 equity securities of a target company:

14 (1) An isolated offer to purchase shares from not
15 more than 10 individual shareholders during any
16 period of 12 consecutive months, not made to
17 shareholders generally;

18 (2) An offer made by an issuer to purchase its
19 own shares or shares of a subsidiary;

20 (3) An offer to purchase shares of a class not
21 registered pursuant to the United States Securi-
22 ties Exchange Act of 1934, Section 12;

23 (4) An offer, if the acquisition by the offeror,
24 in the instant transactions and in all acquisi-
25 tions of equity securities of the same class
26 during the preceding 12 months, does not exceed 2%
27 of that class of outstanding equity securities of
28 the target company; or

29 (5) An offer to purchase shares of a company
30 whose assets do not exceed \$5,000,000.

31 Sec. 5. 13 MRSA §803, sub-§1, first sentence, as
32 enacted by PL 1977, c. 669, is amended to read:

33 No offeror shall make a takeover bid unless, at least 20
34 days before the takeover bid is made, the offeror has filed
35 with the superintendent and has sent by certified mail to
36 the target company at its principal office a statement con-
37 taining the information required by this section and the
38 takeover bid has been permitted to proceed by order of the
39 superintendent in the manner hereinafter prescribed in this
40 chapter, provided that a tender offer made in full compli-
41 ance with the United State Securities Exchange Act of 1934,

1 Section 14, United States Code, Title 15, Section 78n, and
2 the regulations promulgated thereunder, may commence 5 days
3 after the filing required hereby, but no shares may be pur-
4 chased or accepted for payment pursuant to a tender offer
5 until the superintendent has completed any hearing held pur-
6 suant to section 804 or has determined not to schedule such
7 a hearing.

8 **Sec. 6.** 13 MRSA §804, sub-§1, first sentence, as
9 enacted by PL 1977, c. 669, is amended to read:

10 The superintendent shall by order permit any ~~takeover bid~~
11 purchase program referred to in section 803, subsection 1,
12 to proceed and permit purchases to be made pursuant to a
13 tender offer referred to in the proviso thereto, unless,
14 after a public hearing thereon referred to in subsection 2,
15 he finds that:

16 **Sec. 7.** 13 MRSA §804, sub-§2, first sentence, as
17 enacted by PL 1977, c. 669, is amended to read:

18 A public hearing shall be held at a time and place fixed by
19 the superintendent if, within ~~20~~ 10 days after the filing of
20 the statement referred to in section 803, subsection 1, he
21 shall determine that such a public hearing is necessary and
22 if, within 20 days after the filing of the statement, he
23 shall schedule a date for such public hearing.

24 **Sec. 8.** 13 MRSA 808, sub-§1, as enacted by PL 1977, c.
25 669, is amended to read:

26 1. Solicitation for acceptance or rejection. Solicitation
27 of any offeree for acceptance or rejection of a takeover
28 offer, or acquisition of any equity security of a target
29 company, pursuant to a takeover offer which has not been
30 permitted to proceed or which is not exempt under this chap-
31 ter;

32 **Sec. 9.** 13 MRSA §808, sub-§4, as enacted by PL 1977,
33 c. 669, is amended to read:

34 4. Acquisition. Acquisition by ~~the~~ a tender offeror,
35 after announcement of the ~~takeover tender~~ offer and prior to
36 its termination, of equity securities of the target company
37 otherwise than pursuant to the takeover offer.

38 **Sec. 10.** 13 MRSA §809, as enacted by PL 1977, c. 669,
39 is amended to read:

40 §809. Limitations on tender offers

1 1. Offer, withdrawal. An A tender offer shall provide
2 that any equity securities of a target company deposited or
3 tendered pursuant to a takeover tender offer may be with-
4 drawn by or on behalf of any offeree at any time up to the
5 3rd day prior to the announced termination date, except as
6 the superintendent may otherwise prescribe by rule or order
7 for the protection of the offerees. An A tender offer shall
8 remain open for a minimum time period of 20 days.

9 2. Limited offers. If an a tender offeror makes a
10 takeover tender offer for less than all the outstanding
11 equity securities of any class, and if the number of securi-
12 ties deposited or tendered pursuant thereto is greater than
13 the number the offeror has offered to accept and pay for,
14 the securities shall be accepted pro rata, disregarding
15 fractions, according to the number of securities deposited
16 or tendered by each offeree.

17 3. Tender offeror; terms varied. If an a tender
18 offeror varies the terms of a takeover tender offer before
19 its expiration date by increasing the consideration offered
20 to the offerees, the offeror shall pay the increased consid-
21 eration for all equity securities accepted, whether the
22 securities have been accepted by the offeror before or after
23 the variation in the terms of the offer.

24 4. Injunctive proceeding. No offeror shall make or
25 continue a takeover offer at any time when an administrative
26 or injunctive proceeding has been brought by the superinten-
27 dent against the offeror for violation of this chapter that
28 has not been finally determined.

29 5. Target company. An A tender offeror may not make a
30 takeover tender offer involving a target company which is
31 not made to all the owners of equity securities of the
32 target company.

33 Sec. 11. 13 MRSA §812, sub-§3 is enacted to read:

34 3. Injunctive proceeding. No offeror may make or con-
35 tinue a takeover offer at any time when an administrative or
36 injunctive proceeding has been brought by the superintendent
37 against the offeror for violation of this chapter that has
38 not been finally determined.

39 Sec. 12. 13 MRSA §817, sub-§3, as enacted by PL 1977,
40 c. 669, is amended to read:

41 3. Vote; exception. This chapter shall not apply to
42 any offer involving a class vote by shareholders of the

1 target company, pursuant to its articles of incorporation or
2 the applicable corporation statute, on a merger, consolida-
3 tion or sale of corporate assets in consideration of the
4 issuance of securities of another corporation, or sale of
5 its securities in exchange for cash or securities of another
6 corporation.

7 STATEMENT OF FACT

8 At least 35 states now have so-called "state takeover
9 bid laws" designed to regulate tender offers or takeover
10 bids. These laws generally require certain disclosures to
11 be made and set certain time limitations and conditions for
12 a "tender offeror" to meet before actually making an offer
13 seeking ownership of significant percentages of any class of
14 equity security of a corporation. Maine's law is one of the
15 best.

16 Recently, these laws have come under attack as being
17 unconstitutional in certain aspects because of conflicting
18 or inconsistent federal regulations of the same subject mat-
19 ter. As a result, many states are now making adjustments in
20 their laws to meet some of the constitutional challenges
21 while maintaining state control.

22 This bill makes needed changes in the Maine Takeover
23 Bid Disclosure Law and updates our law to cover additional
24 programs of similar intent.

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