

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1880

S.P. 728

In Senate, February 26, 2004

An Act To Amend the Laws Governing the Loring Development Authority of Maine

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Representative YOUNG of Limestone and
Senators: KNEELAND of Aroostook, STANLEY of Penobscot, Representatives:
CHURCHILL of Orland, FISCHER of Presque Isle, JACKSON of Fort Kent, PARADIS of
Frenchville, SMITH of Van Buren, WOTTON of Littleton.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 **Whereas,** Loring Development Authority of Maine is
6 considering several projects in 2004; and

8 **Whereas,** one of these projects must commence construction in
2004; and

10 **Whereas,** the financing of this project must be completed as
12 soon as possible; and

14 **Whereas,** there have been many changes to federal and state
law dealing with bonding powers; and

16 **Whereas,** the Loring Development Authority of Maine's
18 enabling statute was adopted in 1993; and

20 **Whereas,** it is imperative that the changes in this bill take
effect immediately to have the Loring Development Authority of
22 Maine's bonding powers be updated and conform to the bonding
powers of other state agencies and federal law; and

24 **Whereas,** in the judgment of the Legislature, these facts
26 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
28 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

32 **Sec. 1. 5 MRSA §13080-A, sub-§6,** as corrected by RR 1997, c.
34 2, §19, is amended to read:

36 **6. Loring Air Force Base.** "Loring Air Force Base" or
"base" means those properties and facilities within the
38 geographic boundaries of the United States Department of Defense
air force base at Limestone existing on July 13, 1993. "Base"
40 also includes the Madawaska dam site, the Loring Water System,
the Loring #3 communications site in Limestone, the pipeline from
42 Searsport to Limestone and other geographically separate property
that the authority determines should be ~~deemed~~ considered part of
44 the base, if the municipality in which the property is located
has chosen not to accept the property and utilize it for other
46 purposes.

48 **Sec. 2. 5 MRSA §13080-B, sub-§1, ¶¶G, J and K,** as enacted by PL
1993, c. 474, §1, are amended to read:

50

2 G. Contract with the Federal Government or its
instrumentalities or agencies, this State or its agencies,
4 instrumentalities or municipalities, public bodies, private
corporations, partnerships, associations and, individuals
6 and other persons to carry out the purposes of this
article;

8 J. Borrow money, make, issue and sell at public or private
sale negotiable notes, bonds and other evidences of
10 indebtedness or obligation of the authority for the purposes
under this article and secure the payment of that obligation
12 or any part of that obligation by pledge of all or any part
of the operating revenues or other revenues or property of
14 the authority;

16 K. Enter into loan or security agreements with borrowers or
one or more lending institutions, including, but not limited
18 to, banks, insurance companies and pension funds, or
trustees for those institutions for the purposes for which
20 bonds may be issued and exercise with respect to those loan
or security agreements all of the powers delineated in this
22 article for the issuance of bonds;

24 **Sec. 3. 5 MRSA §13080-G, sub-§1**, as enacted by PL 1993, c.
474, §1, is amended to read:

26 **1. Hearing required.** The authority may issue bonds to
28 finance its activities only after giving notice of the proposed
issuance ~~and its terms~~ at least twice in a newspaper of general
30 circulation in the county and holding a duly advertised public
hearing on the issuance.

32 **Sec. 4. 5 MRSA §13080-G, sub-§2**, as amended by PL 1995, c.
34 495, §§6 and 7, is further amended to read:

36 **2. Authority.** In addition to the authority provided in
subsection 1-A, the authority may issue bonds from time to time
38 in its discretion to finance the undertaking of an authorized
activity under this article, including but not limited to the
40 payment of costs of acquisition, construction, reconstruction,
renovation, equipping, start-up, testing, capitalized interest,
42 reserves, reuse or improvement within the base undertaken by a
person and the payment of principal and interest upon advances
44 for surveys and plans, and may issue refunding bonds for the
payment or retirement of bonds previously issued.

46 **A.** The principal and, interest ~~of~~ and all other amounts
48 that may at any time become due and payable under the bonds
must be made payable solely from the income, proceeds,
50 revenues and funds of the authority derived from or held for

2 activities under this article. Payment of the principal and
3 interest of bonds may be further secured by a pledge of a
4 loan, grant or contribution from the Federal Government or
5 other source in aid of activities of the authority under
6 this article or solely from income, proceeds, revenues, loan
7 repayments, funds and other property, real or personal,
8 pledged, assigned or mortgaged by or to the authority in
9 connection with the provision of financial assistance by the
10 authority to any person or any combination of the foregoing
11 and by a mortgage of an urban activity or a project or part
12 of a project, title to which is in the authority.

13
14 B. Bonds issued under this section and paragraph do not
15 constitute an indebtedness within the meaning of any
16 constitutional or statutory debt limitation or restriction
17 and are not subject to other laws or charters relating to
18 the authorization, issuance or sale of bonds.
19 Notwithstanding this paragraph, the authority may issue
20 bonds in an original principal amount not to exceed
21 \$100,000,000 to which the authority may designate section
22 13080-N to apply. Bonds issued under this article are
23 declared to be issued for an essential public and
24 governmental purpose and, together with interest on and
income from the bonds, are exempt from all taxes.

25
26 C. Bonds may not be issued by the authority until the
27 authority has received a certificate of approval from the
28 Finance Authority of Maine authorizing issuance of bonds.
29 Before issuing a certificate of approval under this section,
30 the authority Finance Authority of Maine shall determine
31 that there is a reasonable likelihood that the income,
32 proceeds, revenues and funds of the authority derived from
33 or held for activities under this article or otherwise
34 pledged to payment of the bonds will be sufficient to pay
35 principal, interest and all other amounts that may at any
36 time become due and payable under the bonds. In making this
37 determination, the Finance Authority of Maine must consider
38 the authority's analysis of the proposed bond issue and the
39 revenues to make payments on the bond and may require such
40 information, projections, studies and independent analyses
41 as it considers necessary or desirable and may charge the
42 authority reasonable fees and expenses. The issuance by the
43 Finance Authority of Maine of a certificate of approval
44 under this section does not constitute an endorsement of the
45 bonds or the projects or purposes for which those bonds are
46 issued and neither the authority nor any other person or
47 entity, including, without limitation, any holders of bonds
48 of the authority, have any cause of action against the
49 Finance Authority of Maine with respect to any such
50 certificate of approval. The Finance Authority of Maine may

2 require that it be indemnified, defended and held harmless
by the authority for any liability or cause of action
arising out of or with respect to the bonds.

4
6 **Sec. 5. 5 MRSA §13080-G, sub-§4, §A**, as enacted by PL 1993, c.
474, §1, is amended to read:

8 ~~A. Sold at not less than par at public sales held after~~
~~notice has been published in a newspaper of general~~
10 ~~circulation in the area of operation and in any other medium~~
~~of publication that the authority designates to any person~~
12 on such terms as the authority may negotiate;

14 **Sec. 6. 5 MRSA §13080-G, sub-§§7 and 9**, as enacted by PL 1993,
c. 474, §1, are amended to read:

16 **7. No personal liability; not debt of State or**
18 **municipality.** Neither the trustees of the authority nor the
person executing the bonds is liable personally on the bonds by
20 reason of the issuance of the bonds. The bonds and other
obligations of the authority must have stated on their face that
22 they are not a debt of the State and that the State is not liable
on the bonds. The bonds or obligations may not be payable out of
24 funds or properties other than those of the authority acquired
for the purposes of this article or otherwise pledged therefor.

26 **9. Investment of funds; redemption of bonds.** The authority
28 may:

30 A. Invest, in property or securities in which savings banks
may legally invest funds subject to their control, funds
32 held in reserves, sinking funds or funds not required for
immediate disbursement; and

34 B. Cancel its bonds by redeeming them at the redemption
36 price established in the bonds or by purchasing them at less
than redemption price; and

38 C. Invest funds in accordance with Title 30-A, chapter 223,
40 subchapter 3-A.

42 **Sec. 7. 5 MRSA §13080-G, sub-§§10 and 11** are enacted to read:

44 10. Issue of bonds. With respect to all or any portion of
46 any issue of any bonds or any series of bonds that the authority
may issue in accordance with this article, the authority may
48 convenant and consent that the interest on the bonds is
includable, under the United States Internal Revenue Code of 1986
or any subsequent corresponding internal revenue law of the

2 United States, in the gross income of the holders of the bonds to
3 the same extent and in the same manner that the interest on the
4 bills, bonds, notes or other obligations of the United States is
5 includable in the gross income of the holders under the United
6 States Internal Revenue Code of 1986 or any subsequent law.

7 **11. Pledge of security interests.** Any pledge or assignment
8 of revenue or collateral or other security interests under this
9 article is valid and binding and perfected from the time when the
10 pledge is made. All the revenues or collateral pledged by the
11 authority is subject immediately to the lien of the pledge or
12 assignment without any physical delivery or further action under
13 the Uniform Commercial Code or otherwise. The lien of any pledge
14 or assignment and perfection is valid and binding against all
15 parties having claims of any kind in tort, contract or otherwise
16 against the authority, whether the parties have notice of the
17 pledge or assignment.

18 **Sec. 8. 5 MRSA §13080-I, sub-§2, ¶B,** as enacted by PL 1993, c.
19 474, §1, is amended to read:

20 B. Apply to or limit the right of an obligee to foreclose
21 or otherwise enforce a mortgage of the authority or to
22 pursue remedies for the enforcement of a pledge or lien
23 given by the authority on its rents, fees, grants or
24 revenues or any other sources pledged by the authority to
25 the payment of its bonds.

26 **Sec. 9. 5 MRSA §13080-K, sub-§2,** as enacted by PL 1993, c.
27 474, §1, is amended to read:

28 **2. Payment of bonds, premiums and interest.** The bonds,
29 premium, if any, and interest have been paid or a sufficient
30 amount for the payment of the bonds and interest to maturity or a
31 prior redemption date have been irrevocably set aside in trust
32 for the benefit of the bondholders in accordance with agreements
33 with the bondholders.

34 **Sec. 10. 5 MRSA §13080-N, sub-§5,** as enacted by PL 1993, c.
35 729, §10, is amended to read:

36 **5. Appropriation.** On or before December 1st, annually, the
37 authority shall certify to the Governor the amount, if any,
38 necessary to restore the amount in any capital reserve fund. In
39 trust agreements or other pertinent documents ~~between--the~~
40 ~~authority--and--the--Governor,~~ it must be clearly stated that this
41 subsection applies to the capital reserve requirement. The
42 Governor shall pay from the Contingent Account to that fund as
43 much of the amount as is available in the Contingent Account and
44 shall transmit to the Legislature a certification and a statement
45

of the amount, if any, remaining to be paid and the amount certified must be appropriated and paid to the authority during the then current state fiscal year.

Sec. 11. 5 MRSA §13080-N, sub-§7 is enacted to read:

7. Other capital reserve funds. This section, including subsection 5, may not be construed to require that each capital reserve fund established under this section have the benefit described in subsection 5.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

SUMMARY

This bill conforms the Loring Development Authority of Maine's bonding powers to those bonding powers of other agencies of the State and makes the authority's enabling statute consistent with federal law by incorporating the changes that have been made to federal and state law since the adoption of the Loring Development Authority of Maine's enabling statute in 1993.