

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

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J.S. McCarthy Company
Augusta, Maine
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CHAPTER 443

S.P. 417 - L.D. 1206

**An Act to Provide for the 1999 and
2000 Allocations of the State Ceiling
on Private Activity Bonds**

Preamble. The Constitution of Maine, Article V, Part First, Section 8 provides that certain statutes enacted relating to confirmation procedures for gubernatorial nominees require a 2/3 vote of the members of each House present and voting.

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

Whereas, the Maine Revised Statutes, Title 10, section 363 and Private and Special Law 1997, chapter 65 make a partial allocation of the state ceiling on private activity bonds to some issuers for calendar year 1999, but leave a portion of the state ceiling unallocated and do not provide sufficient allocations for certain types of private activity bonds that may require an allocation before the effective date of this Act if not enacted on an emergency basis; and

Whereas, if these bond issues must be delayed due to lack of available state ceiling, the rates and terms under which these bonds may be issued may be adversely affected, resulting in increased costs to beneficiaries or even unavailability of financing for certain projects; and

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

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

Sec. 1. 10 MRSA §363, sub-§1-A, as amended by PL 1989, c. 812, §1, is further amended to read:

1-A. Procedure. For ~~calendar year 1987 and each subsequent~~ calendar year, the Legislature may establish a procedure for allocation of the entire amount of the state ceiling by allocating an amount of the state ceiling to the specific issuers designated in this section for further allocation by each specific issuer to itself or to other issuers for specific bond issues requiring an allocation of the state ceiling or for carryforward. This procedure supersedes the federal formula to the full extent that the United States Code, Title 26, authorizes the Legislature to vary the federal formula. Allocations may be reviewed by the

Legislature periodically and unused allocations may be reallocated to other issuers, ~~provided that;~~ however, notwithstanding the existence of legislation allocating or reallocating all or any portion of the state ceiling, at any time during the period from September 1st to and including December 31st of any calendar year, and at any other time that the Legislature is not in session, a group consisting of a representative of each of the issuers specifically identified in subsections 4 to § 7; a representative of a corporation created pursuant to Title 20, section 2237 and Title 20-A, section 11407; and a representative of the Governor designated each year by the Governor may, by ~~unanimous~~ written agreement executed by no fewer than 5 of the 6 representatives of each of the issuers, allocate amounts not previously allocated and reallocate unused allocations from one of the specific issuers designated in this section to another specific issuer for further allocation or carryforward, with respect to the state ceiling for that calendar year only.

Sec. 2. 10 MRSA §363, sub-§8, as amended by PL 1989, c. 502, Pt. A, §27, is further amended to read:

8. Allocations for educational bonds. That portion of the state ceiling allocated to the categories of bonds providing funds for the purposes of a corporation created pursuant to Title 20, section 2237, and Title 20-A, section 11407, or of the Maine Educational Loan Authority ~~shall~~ must be allocated to that corporation or to the Maine Educational Loan Authority, or both, and each may further allocate the portion of the state ceiling allocated to it to bonds requiring an allocation to qualify as tax-exempt bonds. That portion of the state ceiling allocated to the issuance of bonds for education loans for the Loans to Lenders Pilot Program must be allocated to the Finance Authority of Maine.

A. Prior to receiving an allocation of the state ceiling for the issuance of education loans, an issuer or lender must provide to the appropriate agency within the Department of Professional and Financial Regulation examples of the disclosures to be made to loan recipients or obligors. The information must be provided to the Bureau of Banking if the issuer or lender is a financial institution or credit union established pursuant to state or federal law or to the Office of Consumer Credit Regulation for all other issuers or lenders. This information must be provided to the appropriate agency within the Department of Professional and Financial Regulation upon request, or in the course of an examination of the issuer or lender by the agency, and must include a description of any interest rate or other discounts offered that clearly identifies all of the terms and conditions of obtaining any discount, a projection of the approximate number or percentage of

loan obligors who are likely to benefit from the discounts and any other disclosures pursuant to guidelines established by the Bureau of Banking and the Office of Consumer Credit Regulation for the issuance of education loans that would benefit from an allocation of the state ceiling. The Bureau of Banking and the Office of Consumer Credit Regulation shall jointly adopt, to the extent allowed by law, rules to carry out the provisions of this paragraph by establishing uniform disclosure requirements and sanctions for noncompliance. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter II-A. All information provided to the appropriate agencies within the Department of Professional and Financial Regulation must include the source of the information and the basis for any projections.

B. All education loans made under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 that are purchased or originated with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter I, provided that this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter I shall use its best efforts to provide competitive rates for the guarantee function. This paragraph is repealed on July 15, 2000.

Sec. 3. 10 MRSA §363, sub-§9, as amended by PL 1989, c. 224, §2, is further amended to read:

9. Use of carryforward. In the event that any issuer has made a ~~carry forward~~ carryforward election under the United States Code, Title 26, Section 146(f), as amended, the issuer shall use, to the extent possible and consistent with the purpose for which the ~~carry forward~~ carryforward was elected, the ~~carry forward~~ carryforward for issues subject to the state ceiling prior to allocating any portion of the state ceiling for the applicable calendar year to the issue. To the extent permitted by federal law, a group consisting of a representative of each of the issuers specifically identified in subsections 4 to & 7; a representative of a corporation created pursuant to Title 20, section 2237 and Title 20-A, section 11407; and a representative of the Governor designated each year by the Governor may reallocate, by unanimous written agreement executed by no fewer than 5 of the 6 representatives of

~~each of the issuers, carry forward~~ carryforward amounts from one of the specific issuers designated in this section to another specific issuer.

Sec. 4. 10 MRSA §363, sub-§§10 and 11 are enacted to read:

10. Allocation for benefit of State. All of the allocation of the state ceiling must be used for a purpose that benefits individuals, communities or businesses in this State. For purposes of this subsection, a bond issuance is presumed to benefit individuals, communities or businesses in this State if it benefits business operations located in this State, residents of this State, students attending institutions of higher education in this State, residents of this State attending institutions of higher education outside this State or municipalities in this State. An allocation of the state ceiling may only be used to purchase student loans if the borrower is a resident of this State or is a student attending an institution of higher education in this State or if the borrower has previously obtained a student loan while a resident of this State or while attending an institution of higher education in this State. A student eligible to receive the benefit of a portion of the state ceiling remains eligible for student loans notwithstanding any changes in residency or institution attended.

11. Annual review. By March 15th of each year, each issuer identified in subsections 4 to 8 shall deliver a report to the Governor and the joint standing committee of the Legislature having jurisdiction over business and economic development matters. Each report must include, without limitation, a review of what bonds have been issued in the most recent year, how the state ceiling was allocated or carried forward and who has benefited from the proceeds of the tax-exempt bonds in that year. In addition, each report must be accompanied by a letter from an independent accountant addressing the savings attributable to the use of tax-exempt financing and how that savings was passed on to the entities or individuals benefiting from the bond proceeds.

Sec. 5. 20-A MRSA §11407, as amended by PL 1989, c. 812, §3, is further amended to read:

§11407. Authorization for Governor to request organizations of corporations to acquire loan notes

To the extent and for the purposes contemplated by the federal Internal Revenue Code of 1954, Section 103(e), as amended, and successor provisions thereto, including without limitation the federal Internal Revenue Code of 1986, Section 150(d), as amended, the Governor may on behalf of the State request the organization of one or more nonprofit corporations to operate exclusively for the purpose of acquiring student loan notes incurred under the federal Higher

Education Act of 1965, 20 United States Code, Chapter 28, Title IV, Part B, as amended. A nonprofit corporation formed under this section shall report annually on its activities during the previous fiscal year to the joint standing committee of the Legislature having jurisdiction over economic development matters, the joint standing committee of the Legislature having jurisdiction over appropriation matters and the joint standing committee of the Legislature having jurisdiction over education matters. That report must include a listing of the current directors and officers of the corporation, a summary of the corporation's purchases of loans in the secondary market during the previous fiscal year, a listing of the institutions from which loans were purchased during the previous fiscal year, a summary of the organization's direct student loans and a complete financial statement of the corporation's operations for the previous fiscal year, including a breakdown of income and costs, a breakdown of the administrative and operating costs of the corporation, a breakdown of the assets and liabilities of the corporation, total excess revenues over expenditures for the previous fiscal year and the total accumulation of these revenues, total income derived from investments during the previous fiscal year and a breakdown showing the disposition and use of excess revenues and the proceeds from investments. That report must include similar information on all affiliated entities. That report must be provided annually in writing to the committee by December 1st.

All education loan notes incurred under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 by a nonprofit corporation formed under this section that are acquired with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter I, provided that this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter I shall use its best efforts to provide competitive rates for the guarantee function. This paragraph is repealed on July 15, 2000.

Sec. 6. 20-A MRSA §11415, sub-§1, as amended by PL 1995, c. 519, §6, is further amended to read:

1. Composition. There are 7 voting members of the authority, 5 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over

economic development matters and confirmation by the Legislature.

Sec. 7. Allocation to Treasurer of State.

No portion of the state ceiling for calendar year 1999 was previously allocated to the Treasurer of State. No portion of the state ceiling for calendar year 2000 is allocated to the Treasurer of State.

Sec. 8. Allocation to Finance Authority of Maine.

The \$25,000,000 of the state ceiling for calendar year 1999 previously allocated to the Finance Authority of Maine remains allocated to the Finance Authority of Maine to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 6. Ten million dollars of the state ceiling for calendar year 1999 previously unallocated is now allocated to the Finance Authority of Maine to be used for higher education loans under the Loans to Lenders Pilot Program in accordance with that section of this Act that establishes the Loans to Lenders Pilot Program. Twenty-five million dollars of the state ceiling for calendar year 2000 is allocated to the Finance Authority of Maine to be used or reallocated in accordance with Title 10, section 363, subsection 6.

Sec. 9. Allocation to Maine Municipal Bond Bank.

The \$10,000,000 of the state ceiling for calendar year 1999 previously allocated to the Maine Municipal Bond Bank remains allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 7. Ten million dollars of the state ceiling for calendar year 2000 is allocated to the Maine Municipal Bond Bank to be used or reallocated in accordance with Title 10, section 363, subsection 7.

Sec. 10. Allocation to Maine Educational Loan Authority.

The \$20,000,000 of the state ceiling for calendar year 1999 previously allocated to the Maine Educational Loan Authority remains allocated to the Maine Educational Loan Authority to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 8.

Sec. 11. Allocation to Maine Educational Loan Marketing Corporation.

The \$20,000,000 of the state ceiling for calendar year 1999 previously allocated to the Maine Educational Loan Marketing Corporation remains allocated to the Maine Educational Loan Marketing Corporation to be used or reallocated in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 8.

Sec. 12. Allocation to Maine State Housing Authority.

The \$40,000,000 of the state ceiling for calendar year 1999 previously allocated to the Maine State Housing Authority remains allocated to the Maine State Housing Authority to be used or reallocated in accordance with the Maine Revised

Statutes, Title 10, section 363, subsection 4. Forty million dollars of the state ceiling for calendar year 2000 is allocated to the Maine State Housing Authority for the same uses.

Sec. 13. Unallocated state ceiling. Twenty-five million dollars of the state ceiling for calendar year 1999 remains unallocated and must be reserved for future allocation in accordance with applicable laws. Seventy-five million dollars of the state ceiling for calendar year 2000 is unallocated and must be reserved for future allocation in accordance with applicable laws.

Sec. 14. Pilot program established. The Loans to Lenders Pilot Program is established within the Finance Authority of Maine to study the feasibility of and implement a pilot program by which lending institutions may access a portion of the proceeds of bonds issued using an allocation of the state ceiling allocated to the Finance Authority of Maine for education loans.

1. Issuance; purpose; payment; authorization; interim receipts or certificates. Pursuant to the Loans to Lenders Pilot Program, the Finance Authority of Maine may issue bonds without limitation for the purpose of making loans to credit unions and financial institutions that make loans for educational purposes and are authorized to do business in the State as defined in the Maine Revised Statutes, Title 9-B, section 131, subsections 12-A and 17-A. The bonds of each issue must be payable from those sources specified in the agreement with bondholders, including without limitation: principal and interest on loans; guarantee payments or any payments received from the Federal Government with respect to loans for educational purposes; payments by institutions, banks, insurance companies or others pursuant to letters of credit or purchase agreements; investment earnings from funds or accounts maintained pursuant to a trust agreement or other document; insurance proceeds; loan funding deposits; proceeds from sales of education loans; proceeds from refunding bonds; and other fees, charges or revenues of the authority.

A. The Finance Authority of Maine is responsible for administering the Loans to Lenders Pilot Program and the administration of the Loans to Lenders Pilot Program is a purpose of the Finance Authority of Maine pursuant to Title 10, section 1013.

B. The Loans to Lenders Pilot Program is a program authorized pursuant to Title 20-A, chapter 417-B, to which sections 11442 to 11457 apply, except as expressly stated in paragraph C.

C. Notwithstanding paragraph B, for purposes of the Loans to Lenders Pilot Program:

(1) The term "education loan series portfolio" means all education loans made by a specific institution that are funded from or acquired by the proceeds of a Finance Authority of Maine loan to the institution out of the proceeds of a specific related bond issue through the authority;

(2) The term "institution" includes a financial institution described in this subsection; and

(3) All references in Title 20-A, chapter 417-B to the Student Financial Aid Supplemental Loan Program that are determined by the Finance Authority of Maine to be required for the implementation and administration of the Loans to Lenders Pilot Program are considered references to the Loans to Lenders Pilot Program.

2. Rules. The Finance Authority of Maine shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, setting forth a process for the distribution of the proceeds of bonds issued under the Loans to Lenders Pilot Program. The process established must have a goal of providing the greatest possible benefit to education loan borrowers. As part of its rulemaking, the Finance Authority of Maine shall develop criteria for determining whether a financial institution is qualified to participate in the Loans to Lenders Pilot Program. Such criteria must include, at a minimum, the ability to demonstrate how the student will benefit from the loan program.

3. Interim report. The Finance Authority of Maine shall submit an interim report to the Joint Standing Committee on Business and Economic Development by January 14, 2000. The report must outline the elements of the Loans to Lenders Pilot Program, including rules adopted to implement the program. The report must also include an assessment of the effectiveness of the Loans to Lenders Pilot Program and whether the program should continue.

4. Unused funds. If a determination is made by the Finance Authority of Maine that institutions are not eligible to receive bond proceeds issued by the Finance Authority of Maine under the Loans to Lenders Pilot Program, any unused bond allocation allocated to the Finance Authority of Maine for education loans pursuant to that section of this Act that makes allocation to the Finance Authority of Maine must be reallocated to the unallocated portion of the state ceiling by December 15, 1999. If bonds can be issued under the Loans to Lenders Pilot Program but have not been issued by December 31, 1999, the unused bond allocation must be carried forward. The Finance Authority of Maine has the authority to carry forward that portion of the state

ceiling allocated to the Finance Authority of Maine for education loans.

5. Termination. The authority of the Finance Authority of Maine to issue bonds under the Loans to Lenders Pilot Program terminates on March 1, 2000.

Sec. 15. Commission on the State Ceiling on Tax-exempt Bonds.

1. Establishment. The Commission on the State Ceiling on Tax-exempt Bonds, referred to in this section as the "commission," is established to study the allocation of the state ceiling on tax-exempt bonds.

2. Membership. The commission consists of 7 members having a broad range of expertise in areas including accounting, business, banking, law and higher education who are not involved with the state ceiling allocation, appointed as follows: Three members appointed by the Governor, 2 members appointed by the President of the Senate and 2 members appointed by the Speaker of the House.

3. Appointments; chair. All appointments must be made no later than 45 days following the effective date of this Act. Upon making their appointments, the appointing authorities shall notify the Executive Director of the Legislative Council. The Governor, the President of the Senate and the Speaker of the House shall designate one member to serve as chair of the commission, who shall call and convene the first meeting of the commission no later than July 30, 1999.

4. Duties. The commission shall study issues related to the allocation of the state ceiling on tax-exempt bonds, including, but not limited to, the following:

A. The current bond allocation and reallocation process, the purposes for using the state ceiling on tax-exempt bonds, the public benefits derived from the use of the state ceiling, the composition of the bond issuers group authorized to allocate and reallocate the state ceiling and appropriate accountability mechanisms for the use of the state ceiling;

B. The history of and current structure for use of state resources for delivery of student loans;

C. The need for and appropriate role for a state-designated guarantee agency, the services and resources a guarantee agency should provide, the required use of a state-designated guarantee agency for student loans and a survey of alternative guarantors with an analysis of advantages and disadvantages to borrowers and the State;

D. The need for allocation of a portion of the state ceiling on private activity bonds to student loans, the savings attributable to the use of the state ceiling and how the savings can best be passed on to borrowers;

E. The current structure of higher education finance in this State, including analysis of the secondary loan market and the supplemental loan market, how entities involved in higher education lending provide loans and other services to students and parents in this State and whether there are appropriate accountability mechanisms for the use of the state ceiling and other public resources by the entities;

F. Whether there is sufficient access to student loans, the benefits and disadvantages of various student loan discount programs and how those benefits and disadvantages should be disclosed to borrowers; and

G. Whether tax-exempt bond proceeds can be used to fund student loans by private lenders and, if so, what the advantages and disadvantages would be and how to implement such a program.

5. Report. No later than January 14, 2000, the commission shall submit a report of its findings, together with any necessary implementing legislation, to the Joint Standing Committee on Business and Economic Development. The report must include recommendations with respect to the required use of the state-designated guarantee agency for student loans and the continuation of the Loans to Lenders Pilot Program. The Joint Standing Committee on Business and Economic Development may report out any legislation during the Second Regular Session of the 119th Legislature concerning the findings and recommendations of the commission.

6. Funding. The costs of the commission's activities, not to exceed \$50,000, must be borne equally by the Maine Educational Loan Authority and the Finance Authority of Maine. Within 45 days of its first meeting, the commission shall prepare a budget and work plan and provide them to the Executive Director of the Legislative Council. The commission shall administer the commission's budget and shall include an accounting of its funding and expenditures as part of its report.

7. Staffing. The commission may contract with a consultant or expert to provide primary staff support. The Commissioner of Professional and Financial Regulation, the Commissioner of Education, the Executive Director of the Maine Educational Loan Authority and the Chief Executive Officer of the Finance Authority of Maine shall be available to provide technical assistance to the commission.

8. Compensation. Public members not otherwise compensated by their employers or other entities whom they represent are entitled to receive reimbursement of necessary expenses and a per diem equal to the legislative per diem for their attendance at authorized meetings of the commission.

9. Commission meetings. Meetings of the commission are public proceedings and records of the commission are public records as defined in the laws governing freedom of access, Maine Revised Statutes, Title 1, chapter 13.

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

Effective June 9, 1999.

CHAPTER 444

H.P. 1116 - L.D. 1575

An Act to Criminalize Internet Dissemination of Child Pornography

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

Sec. 1. 17 MRSA §2921, sub-§2, as enacted by PL 1977, c. 628, §1, is amended to read:

2. Disseminate. "Disseminate" means, ~~for consideration,~~ to manufacture, publish, send, promulgate, distribute, exhibit, ~~print~~ issue, furnish, sell or transfer possession or to offer or agree to do any of these acts.

Sec. 2. 17 MRSA §2921, sub-§4, as enacted by PL 1977, c. 628, §1, is amended to read:

4. Photograph. "Photograph" means to make, capture, generate or save a print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material.

Sec. 3. 17 MRSA §2923, sub-§1, as repealed and replaced by PL 1983, c. 223, is amended to read:

1. Offense. A person is guilty of dissemination of sexually explicit material if ~~he~~ the person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material ~~which~~ that depicts any minor, who the person knows or has reason to know is a minor, engaging in sexually explicit conduct.

Sec. 4. 17 MRSA §2923, sub-§2, as enacted by PL 1977, c. 628, §1, is amended to read:

2. Presumption. For the purposes of this section, possession of 10 or more copies of the same book, magazine, newspaper, print, negative, slide, motion picture, videotape or other mechanically, electronically or chemically reproduced visual image or material ~~shall give~~ gives rise to a presumption that the person possesses those items with intent to disseminate.

Sec. 5. 17 MRSA §2925 is enacted to read:

§2925. Forfeiture of equipment used to facilitate violations

1. Motion; notice. Upon a finding of guilt of any violation of this chapter, but prior to sentencing, an attorney for the State may, in writing, move the court for an order requiring the forfeiture to the State of any equipment, including computers, that may have facilitated the commission of the offense. Notice of the motion may be made by the State to the defendant and any party of interest by registered mail.

2. In rem forfeiture proceeding. If contesting the forfeiture, the defendant or other party-in-interest in the in rem civil forfeiture proceeding may request a jury trial. Absent that request, the proceeding must be before the court.

3. Burden of proof. At the jury trial or court hearing, the State has the burden of proving to the fact finder by a preponderance of the evidence that the equipment was used in violation of this chapter.

4. Order of forfeiture; distribution. Upon a finding by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation of this chapter, the court shall order the equipment forfeited and may, upon the written recommendation of the attorney for the State, provide in its order for the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.

5. Rules. The Attorney General may adopt by rule guidelines regulating the disposition and use of property forfeited or sought for forfeiture under this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.
