

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 622

H. P. 481

House of Representatives, February 5, 1971

Referred to Committee on Education. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lawry of Fairfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to Financing Maine Education Buildings.

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

R. S., T. 5, c. 154, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 154, to read as follows:

CHAPTER 154

EDUCATIONAL BUILDINGS FINANCING AGENCY

§ 1791. Purpose

The intent and purpose of the Legislature is to promote the welfare of the people of the State of Maine; create the Maine Educational Buildings Financing Agency as a body corporate and politic with power to acquire, construct, reconstruct, improve, equip, furnish and operate facilities; to lease them and to fix fees, rentals and charges for the use thereof; authorize and regulate the issuance of bonds of the agency, and provide for their payment and the rights of the holders thereof; authorize the agency to enter into agreements with the United States of America or any federal agency thereof; empower the agency to acquire, sell, convey and mortgage property; and provide that no debt of the State of Maine may be incurred in the exercise of any of the powers authorized by this chapter.

§ 1792. Definitions

As used in this chapter unless the context requires otherwise:

1. Agency. "Agency" means the Maine Educational Buildings Financing Agency.

2. **Bond.** "Bond" means bonds or notes issued by the agency under this chapter.

3. **Eligible institution.** "Eligible institution" means any private or public university, college or vocational school in the State and the University of Maine and the Maine Maritime Academy.

4. **Facilities.** "Facilities" means buildings and associated facilities of eligible institutions.

§ 1793. Maine Educational Buildings Financing Agency

1. **Membership.** A board of 12 members known as the "Maine Educational Buildings Financing Agency" is created. It is a body corporate and politic constituting a public instrumentality of the State. The Commissioner of Education, the Treasurer of State and the Commissioner of Finance and Administration shall be members ex officio. The Governor shall appoint 7 members for 6-year terms. The members appointed by the Governor shall appoint 2 additional members whose term of office shall be 2 years.

2. **Officers.** The board shall select its chairman and a vice-chairman, a treasurer and a secretary. The term of the vice-chairman, treasurer and secretary shall be one year, and they shall be elected at the first meeting of the board each fiscal year. All members of the board, except those ex officio, shall be entitled to reimbursement of their necessary expenses incurred in the performance of their official duties.

3. **Initial appointments.** When making the appointments to the first board the Governor shall appoint 2 members to serve until June 30, 1973, 2 members to serve until June 30, 1975 and 3 members to serve until June 30, 1977, and the additional members to be appointed by the members appointed by the Governor shall serve until June 30, 1973.

§ 1794. Powers of the agency

The agency may:

1. **Sue.** Sue and be sued;
2. **Seal.** Have a seal and alter it at pleasure;
3. **Real and personal estate.** Acquire real estate in the name of the agency on terms necessary or convenient for its corporate purposes; acquire, hold, mortgage and dispose of, including selling and leasing, all property, both real and personal;
4. **Bylaws.** Make bylaws for the management and regulation of its affairs;
5. **Appointments.** Appoint officers, agents, consultants and employees and fix their compensation;
6. **Contracts.** Make contracts and execute all instruments necessary or convenient;
7. **Facilities.** Prepare plans, specifications, designs and estimates of costs for the acquisition, construction, reconstruction and equipment of facilities and modify them, and by contract with an eligible institution or its own em-

ployees construct, reconstruct and equip the facilities; maintain, reconstruct, improve and operate facilities; fix and collect rentals and other charges for the use of facilities, contract with holders of its bonds to fix rentals and charges at rates at least sufficient to pay for all costs and operation, maintenance and repairs of the facilities, and the interest on, amortization of, and reserve for its bonds; and provide by contract for the promulgation, by the appropriate officer or body, in relation to any facilities described in this chapter, of such reasonable and proper rules and regulations as may be necessary to assure the maximum use of the facilities at all times;

8. Borrow. Borrow money and issue negotiable bonds or notes and provide for the rights of the holders thereof;

9. Other. Do all things necessary or convenient to carry out the purposes of the agency.

§ 1795. Operation and management of facilities

1. Operate and manage facilities. The agency may itself operate and manage any facility under this chapter or may lease any facility to any eligible institution located in the State of Maine.

2. Establish fees. The agency, in its sole discretion, shall establish fees, rates, rents or other charges for services or products derived from facilities owned by it and no state, county, local agency or municipality may exercise regulatory power over them.

3. Provisions of leases. Any lease of a facility authorized by this chapter shall be a general obligation of the lessee and may contain provisions, which may be a part of the contract with the holders of the bonds of the agency, as to:

A. Pledging all or any part of the moneys, earnings, income and revenues derived by the lessee from the facility or any part or parts thereof, or other real or personal property or revenues or money of the lessee, to secure payments required under the terms of the lease;

B. The rates, rental fees and other charges to be fixed and collected by the lessee, the amounts to be raised in each year thereby, and the use and disposition of those moneys, earnings, income and revenues;

C. The setting aside of reserves and the creation of special funds and the regulation and disposition thereof;

D. The procedure, if any, by which the terms of the lease may be amended, the amount of bonds the holders of which must consent thereto and the manner in which the consent may be given;

E. Vesting in a trustee or trustees such specified properties, rights, powers and duties as shall be deemed necessary or desirable for the security of the holders of the bonds of the agency issued for the facility;

F. The obligations of the lessee with respect to the replacement, reconstruction, maintenance, operation, repairs and insurance of the facility;

G. Defining the acts or omissions to act constituting a default in the obli-

gations and duties of the lessee, and providing for the rights and remedies of the agency and of its bondholders if default occurs;

H. Providing for disposition of the facility at the end of the lease term and after liabilities of the agency incurred for the facility have been met and the bonds of the agency issued therefor or secured by the revenues thereof have been paid or otherwise satisfied;

I. Any other matters of like or different character, which may be deemed necessary or desirable for the security or protection of the agency or the holders of its bonds.

4. Responsibility of lessee. Whenever the agency provides a facility and leases it to any eligible institution, the lessee shall be responsible for the operation, maintenance and replacement costs thereof, and the covenant to pay rent shall be absolute and unconditional. Only if the agency operates and manages a facility may it assume responsibility for costs of operation and maintenance.

5. Issuance of bonds. To obtain funds for construction under this section, the agency may from time to time issue negotiable bonds or notes.

§ 1796. Trust funds

1. Bank to act as trustee. All moneys received under the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, those moneys are deposited shall act as trustee of them and shall hold and apply them for the purposes hereof, subject to such regulations as this chapter and the resolution authorizing the bonds of any issue or the trust indenture securing the bonds may provide.

2. Payment of funds. All moneys of the agency derived from state, local or federal appropriations or the sale of bonds, and all moneys constituting reserve funds, shall be paid to the treasurer of the agency or to the trustee under the trust indenture securing the bonds or designated in the resolution authorizing the bonds, who shall not commingle them with other moneys. The moneys in those funds or accounts shall be paid out on requisition of the chairman of the agency or such other person or persons as the agency may authorize to requisition them. All deposits of the moneys shall, if required by the treasurer of the agency, be secured by obligations of the United States of America or of the State of Maine of the market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for the deposits.

3. State Auditor. The State Auditor and his legally authorized representatives may at any time examine the accounts and books of the agency including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial standing.

§ 1797. Bonds of the agency

1. Issuance of bonds. The agency may, for the purposes authorized by this chapter, from time to time issue negotiable bonds, refund any bonds by

the issuance of new bonds whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other corporate purposes. The agency shall likewise have power to provide for the refunding of existing bonds and mortgages of eligible institutions located in the State of Maine to the extent that the refunding will enable the eligible institution to offer greater security for any bond issue of the agency authorized for any facilities for the eligible institution. Except as may otherwise be expressly provided by the agency, every issue of bonds shall be general obligations payable out of any moneys or revenues of the agency, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. All bonds and interest coupons appertaining thereto are hereby made negotiable instruments under the laws of this State, subject only to any provisions for registration in the resolution authorizing the bonds or in the trust indenture securing them. No bonds of the agency may be issued to finance any facility unless the agency first certifies to the Governor that in its opinion the facility is needed and will provide adequate revenues by lease rentals, or is otherwise adequately secured to repay the bonds and the interest thereon when due.

2. Resolution. The bonds shall be authorized by resolution of the board, be in such denominations and bear such date or dates, mature at such time or times not exceeding 30 years from their respective dates, bear interest at such rate or rates, payable semiannually, be in such forms either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption as the resolution may provide. If any officer whose signature or a facsimile thereof appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until the delivery, and any bond may bear the facsimile signature of or may be signed by such persons as at the time of the execution of it is duly authorized to sign it although at the date of the bond the person may not have been that officer. The bonds may be sold at public or private sale for such price as the agency may determine will best carry out the purposes of this chapter.

3. Any corporate purpose. The bonds may be issued for any corporate purpose of the agency including, without limiting the generality of the foregoing, payment to any reserve fund required by any trust indenture securing bonds or any bond resolution authorizing bonds.

4. Provisions of bond resolution. Any resolution authorizing bonds or the trust indenture securing them may contain provisions, which may be a part of the contract with the holders of the bonds, as to:

A. Pledging all or any part of the moneys of the agency to secure the payment of the bonds, including but not limited to the revenues of designated facilities, the proceeds of any grant in aid of the agency received from any private or public source, or any moneys received under the terms of the lease;

B. The setting aside of the revenues or sinking funds and the regulations or disposition thereof;

C. Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

D. Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

E. The procedure, if any, by which the terms of a new contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which consent may be given;

F. The creation of special funds into which any moneys of the agency may be deposited;

G. Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustees appointed by the bondholders, and limiting or abrogating the right of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of the trustee;

H. Defining the act or omissions to act which shall constitute a default in the obligations and duties of the agency to the bondholders and providing for the rights and remedies of the bondholders in the event of such a default, including as a matter of right the appointment of a receiver;

5. Pledge of revenues. Any pledge of revenues or other moneys made by the agency shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the agency shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency irrespective of whether those parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed in any public record.

6. Personal liability. Neither the members of the board nor any persons executing the bonds shall be liable personally on them or be subject to any personal liability or accountability by the reason of the issuance thereof.

7. Bond purchase. The agency may, out of funds available therefor, purchase any bonds issued by it at a price not exceeding the redemption price thereof. All bonds so purchased shall be cancelled.

8. Trust indenture. In the discretion of the agency the bonds may be secured by a trust indenture by and between the agency and a corporate trustee or the resolution authorizing the bonds may provide for the appointment of a corporate trustee for the purpose of securing the bonds, which may be any trust company or bank having the powers of a trust company in or out of the State of Maine. The trust indenture or resolution authorizing the bonds may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the

duties of the agency in relation to the acquisition, construction, maintenance, operation, repair and insurance of the facilities and the custody, safeguarding and application of all moneys, and may provide that any facility shall be constructed and paid for under the supervision and approval of consulting engineers or architects. The agency may provide by the trust indenture or resolution authorizing the bonds for the payment of the proceeds of the bonds and the revenues of any facility or moneys received under the terms of any lease, as the case may be, to the trustee of the trust indenture or resolution authorizing the bonds or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. If the bonds are secured by trust indenture or by the appointment of a trustee pursuant to the resolution authorizing the bonds, the bondholders shall have no authority to appoint a separate trustee to represent them.

§ 1798. State not liable

The bonds and other obligations of the agency shall not be a debt of the State of Maine nor shall the State be liable thereon, nor shall they be payable out of any funds other than those of the agency.

§ 1799. Bonds legal investments

The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees, committees and other fiduciaries, in the State may properly and legally invest funds in their control.

§ 1800. Exemptions from taxation

1. Public purpose. It is hereby found, determined and declared that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of Maine, for the improvement of their education, welfare and prosperity, and is a public purpose, and that the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The State of Maine covenants with the holders of the bonds that the agency shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of facilities, or upon any moneys, revenues or other income received by the agency; and that the bonds of the agency and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes.

2. State pledge. The State of Maine does pledge to and agree with the holders of the bonds that the State will not limit or alter the rights hereby vested in the agency to acquire, mortgage, construct, reconstruct and equip the facilities, to maintain, reconstruct, improve and operate the facilities, to establish and collect such rates, rental, fees and other charges as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies

of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installment of interest, and all costs and expenses incurred by the agency in connection with the facilities or in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged.

§ 1801. Remedies of bondholders

1. Default. If the agency defaults in the payment of principal or of interest on any of the bonds after the same becomes due, whether at maturity or upon call for redemption, and the default continues for a period of 30 days, or if the agency fails or refuses to comply with this chapter, or defaults in any agreement made with the holders of the bonds, the holders of 25% in aggregate principal amount of the bonds then outstanding, by an instrument filed in the office of the clerk of the county in which the facility is located and proved or acknowledged in the same manner as a deed to be recorded, may subject to the limitation specified in section 1797, subsection 8, appoint a trustee to represent the bondholders for the purposes provided.

2. Trustee's authority. The trustee may, and upon written request of the holders of 25% of the principal amount of the bonds then outstanding upon any facility, shall, in his or its own name:

A. By action enforce all rights of the bondholders, including the right to require the agency to collect rentals and other revenues of any facility adequate to carry out any agreement as to, or pledge of, the rental and other revenues, and to require the agency to carry out any other agreements with the bondholders and to perform its and their duties under this chapter;

B. Bring action upon the bonds;

C. By action require the agency to account as if it were the trustee of an express trust for the bondholders;

D. By action enjoin any acts or things which may be unlawful or violate the rights of the bondholders;

E. Declare all bonds due and payable upon any facility; and, if all defaults are made good, annul, upon the written consent of the holders of 25% in principal amount of the bonds then outstanding, the declaration and its consequences.

3. Jurisdiction. The Superior Court, wherein the facility is located, shall have jurisdiction of any action by the trustee on behalf of the bondholders.

4. Notice. Before declaring the principal of all bonds due and payable, the trustee shall first give 30 days' notice in writing to the agency.

5. Receiver. Any such trustee, whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver who may enter and take possession of the facility or any part thereof and operate and maintain it and collect and receive all rentals and other

revenues thereafter arising therefrom in the same manner as the agency itself might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court may direct. In any action by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any rentals and other revenues derived from the facility.

6. Additional powers of trustee. The trustee shall, in addition, have all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this chapter or incident to the general representation of the bondholders in the enforcement and protection of their rights, including the foreclosure of any mortgage given to secure the bonds and the power to liquidate any and all other security as may be given therefor.

§ 1802. Members and employees not to profit

No officer, member or employee of the agency may receive, or be lawfully entitled to receive, any pecuniary profit from the operation thereof except reasonable compensation for services in effecting one or more of its purposes set forth in this chapter.

§ 1803. Annual report

The agency shall prepare and submit to the Governor annually a complete report listing all projects applied for, planned, in progress and completed, and a complete financial report audited by an independent certified public accountant to be distributed in the same way as state departmental reports.

STATEMENT OF FACT

The purpose of this bill is to create the Maine Educational Buildings Financing Agency which would be empowered to acquire, construct, finance and otherwise provide buildings for eligible educational institutions without incurring any debt of the State of Maine.