

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 1244**

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H. P. 1004

House of Representatives, March 23, 1977

On Motion of Mr. Curran of South Portland referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

Cosponsors: Mr. Valentine of York, Mr. Quinn of Gorham.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Establishing the Maine Small Business Loan Authority.**

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

Sec. 1. 5 MRSA c. 373 is enacted to read:

**CHAPTER 373**

**MAINE SMALL BUSINESS LOAN ACT**

§ 8001. Title

This chapter shall be known and may be cited as the "Maine Small Business Loan Act."

§ 8002. Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

1. Borrower. "Borrower" shall mean the original borrower under a note and his successors and assigns, and shall be limited to residents of the State of Maine.

2. Cost of project. "Cost of project" shall mean the cost of fair market value of lands, buildings, real estate improvements, fishing vessels, new machinery and equipment including the installation thereof, stock, merchandise, used machinery and equipment, property rights, easements, franchises, financing charges, interest, engineering and legal services, plans, specifications,

surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an eligible project.

3. Eligible loan. "Eligible loan" shall mean any business or recreational facilities or any lands, buildings, real estate improvements or machinery and equipment, merchandise and stock, with auxiliary real and personal property, located within the State, used by an industrial, manufacturing, fishing or agricultural enterprise, sales and service, or both, the manufacturing, processing, assembling or preparing for market of raw materials or other products, or for the purposes of research and development for such enterprises.

4. Federal agency. "Federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

5. Lender. "Lender" shall mean the original lender of funds, and his successors and assigns approved by the authority and may include all insurance companies, trust companies, banks, investment companies and savings banks, executors, trustees and other fiduciaries, including pension and retirement funds.

6. Loan payments. "Loan payments" shall mean periodic payments called for by the note, including, but not limited to, payments covering interest, installments or principal, taxes and assessments, loan insurance premiums and hazard insurance premiums.

7. Maturity date. "Maturity date" shall mean the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the note.

8. Mortgage. "Mortgage" shall mean a first lien on an eligible project such as commonly given to secure advances on, or the unpaid purchase price of, real estate or personal property under the laws of the State of Maine together with the credit instruments, if any, secured thereby.

9. Resident. "Resident" shall mean anyone who has established a legal residence in Maine of at least 6 months duration immediately prior to making application for a loan under this chapter.

#### § 8003. Credit of State pledged

The Maine Small Business Loan Authority is authorized to insure the payment of up to 80% of mortgage loans, secured by eligible projects, and to this end the faith and credit of the State is pledged, consistent with the terms and limitations of the Constitution of the State of Maine, Article IX, section 14-A.

#### § 8004. Organization of Maine Small Business Loan Authority Board

The Maine Small Business Loan Authority Board is hereby created and established a body corporate and politic, hereinafter in this chapter called the "loan authority board" and is constituted a public instrumentality of the State, and the exercise by the loan authority of the powers conferred by this

chapter shall be deemed and held to be the performance of essential governmental functions. The loan authority board shall consist of 9 members, including the Director of the State Development Office and 8 members at large appointed by the Governor for a period of 4 years, provided that of the members first appointed, 2 shall be appointed for a term of one year, 2 for a term of 2 years, 2 for a term of 3 years and 2 for a term of 4 years. A vacancy in the office of an appointive member, other than by expiration, shall be filled in like manner as an original appointment, but only for the remainder of the term of the retiring member. Appointive members may be removed by the Governor for cause. The loan authority board shall elect one of its members as chairman, one as vice-chairman, one as treasurer, and shall employ a manager, who shall be secretary. The secretary and treasurer shall be bonded as the loan authority board shall direct. Five members of the loan authority shall constitute a quorum. The affirmative vote of 5 members present and voting shall be necessary for any action taken by the loan authority board. No vacancy in the membership of the loan authority board shall impair the right of the quorum to exercise all rights and perform all the duties of the loan authority board.

All the members of the loan authority board shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties and by a per diem of \$25 for each authorized meeting attended.

The manager shall be appointed by the Director of the State Development Office with the approval of the loan authority board and his tenure of office shall be at the pleasure of the director. He shall receive such compensation as shall be fixed by the director with the approval of the loan authority board.

The manager shall be the chief administrative officer for the loan authority board and as such shall direct and supervise the administrative affairs and technical activities of the loan authority board in accordance with rules, regulations and policies as set forth by the loan authority board. It shall be the duty of the manager among other things to:

1. Attend meetings and keep minutes. Attend all meetings of the loan authority board and to act as its secretary and keep minutes of all its proceedings;
2. Approve accounts and expenses. Approve all accounts for salaries, per diems, allowable expenses of the loan authority board or of any employee or consultant thereof, and expenses incidental to the operation of the loan authority board;
3. Appoint employees. Appoint, under the Personnel Law, such employees as the loan authority board may require, and such assistants, agents or consultants as may be necessary for carrying out the purposes of this chapter;
4. Reports. Make to the loan authority board and the State Development Office an annual report documenting the actions of the loan authority board and such other reports as the loan authority board may request;
5. Recommendations. Make recommendations and reports to the loan authority board on the merits of any proposed eligible project; and

6. Other duties. Perform such other duties as may be directed by the loan authority board in carrying out the purposes of this chapter.

No member of the loan authority board shall participate in any decision involving insurances of payments on a loan if the member has any interest in or connection with any firm, partnership, corporation or association which intends to rent, lease or otherwise use the property securing that loan.

#### § 8005. Powers of loan authority board

The board is authorized and empowered :

1. Rules. To adopt rules for the regulation of its affairs and the conduct of its business ;

2. Seal. To adopt an official seal and alter it at pleasure ;

3. Office. To maintain an office at such place or places within the State as it may designate ;

4. Sue and be sued ; service of process. To sue and be sued in its own name, plead and be impleaded. Service of process in any action shall be made by service upon the manager of the board either in hand or by leaving a copy of the process at the office of the manager ;

5. Agreements for eligible projects. To enter into agreements with prospective borrowers and lenders for the purpose of planning, designing, constructing, acquiring, altering and financing eligible projects ;

6. Use of property ; powers and duties. To acquire, hold and dispose of real and personal property and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties and the execution of its powers under this chapter ;

7. Loans from and agreements with federal agency. To accept from a federal agency, loans or grants for the planning or financing of any eligible project, and to enter into agreements with such agency respecting any such loans or grants ; and

8. Express powers. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

#### § 8006. Expenses of loan authority board

The loan authority board may in its discretion expend out of the fund such moneys as may be necessary for any expenses of the loan authority board, including administrative, legal, actuarial and other services. All such expenses incurred by the loan authority board shall be paid by the loan authority board and shall be charged to the fund. All proceeds received by the loan authority board from the disposal by sale, or in some other manner, of property it may have acquired in accordance with section 8011 shall be credited to the fund.

#### § 8007. Loan Insurance Fund

1. **Fund established.** There is established a Maine Small Business Loan Insurance Fund, hereinafter in this chapter referred to as the "fund," which shall be used by the loan authority board as a nonlapsing, revolving fund for carrying out this chapter. This fund shall initially be the sum of \$200,000. To this sum shall be charged any and all expenses of the loan authority board in connection with their operation under this chapter, including interest and principal payments required by loan defaults, and to the sum shall be credited all income of the board, including loan insurance premiums and sale, disposal, lease or rental proceeds.

2. **Deposited with Treasurer of State or invested.** Moneys in the fund, not needed currently to meet the obligations of the loan authority board in the exercise of its responsibilities as insurer as provided for in this chapter, shall be deposited with the Treasurer of State to the credit of the fund or may be invested in such manner as is provided for by statute.

#### § 8008. Additions to

If from time to time in the opinion of the loan authority board the addition of moneys to the fund may be required to meet obligations, the loan authority board shall, in writing, request the Governor to provide moneys in such amounts as may be necessary for the purpose. The Governor shall transfer to this fund sufficient moneys for the purpose from the State Contingent Account or from the proceeds of bonds to be issued as provided in this section. If bonds are to be issued, the Governor shall order the Treasurer of State to issue bonds in the amount requested, but not exceeding in the aggregate at any one time outstanding the amount set forth in the Constitution of Maine, Article IX, section 14-A, as it may be from time to time amended, to mature serially or made to run for such periods as the Governor may determine, but none of them shall run for a longer period than 20 years and at such rates of interest and on such terms and conditions as the Governor shall determine. The bonds so issued shall be deemed a pledge of the faith and credit of the State.

#### § 8009. Insurance of loans

The loan authority board is authorized upon application of the proposed lender to insure loan payments required by the first mortgage on any eligible project, upon such terms and conditions as the loan authority board may prescribe, provided the aggregate amount of principal obligations of all mortgages so insured outstanding at any one time shall not exceed \$2,000,000. To be eligible for insurance under this chapter a loan shall:

1. **Lender.** Be one which is to be made and held by a lender approved by the loan authority board as responsible and able to service the loan properly;

2. **Maturity; limit.** Have a maturity satisfactory to the loan authority board;

3. **Amortization.** Contain complete amortization provisions satisfactory to the loan authority board requiring periodic payments by the mortgagor which shall include principal and interest payments, cost of local property

taxes and assessments, land lease rents, if any, hazard insurance on the property and such loan insurance premiums as are required under section 8010;

4. Other terms. Contain such terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens and other matters as the loan authority board may prescribe;

5. Principal obligation; limit. Involve a principal obligation not to exceed \$15,000; and

6. Nonassignability of proceeds. No right, payment or proceeds of any loan made under this chapter or statutes supplementary thereof shall be subject to garnishment, attachment or execution of the claim of any other creditor other than the lender; nor shall any such right or payment be capable of assignment except under such rules and regulations as may be prescribed by the manager.

#### § 8010. Loan insurance premiums

The loan authority board is authorized to fix loan insurance premiums for the insurance of loan payments under this chapter, such premiums to be computed as a percentage of the principal obligation of the loan outstanding at the beginning of each year. Such insurance premiums shall not be less than  $\frac{1}{2}$  of 1% per year nor more than 2% per year of the outstanding principal obligation. Such premiums shall be payable by the lenders in such manner as shall be prescribed by the loan authority board.

#### § 8011. Acquisition and disposal of property

The loan authority board may take assignments of insured loans and other forms of security and may take title by foreclosure or conveyance to any eligible project when an insured loan thereon is clearly in default and when in the opinion of the loan authority board such acquisition is necessary to safeguard the loan insurance fund, and may sell, or on a temporary basis lease or rent, such eligible project for a use other than that specified.

#### § 8012. Loans eligible for investment

Loans insured by the loan authority board are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, pension or retirement funds.

#### § 8013. Loans with little or no collateral

The loan authority board may insure a loan to a borrower with less than full collateral providing the borrower is of good character and has a good personal credit record.

#### § 8014. Safeguarding the fund

When a loan insured under this chapter is clearly in default, the loan authority board may assent to the extension of the time of payment of such

insured loan, may extend the insurance thereon accordingly and may waive loan insurance premiums thereon, when in the opinion of the loan authority board any such action is necessary to safeguard the fund.

§ 8015. Accounts

The loan authority board shall keep proper records of accounts and shall make an annual report of its condition to the Bank Superintendent.

§ 8016. Records confidential

No member of the loan authority board, agent or employee thereof shall divulge or disclose any information obtained from the records and files or by virtue of such person's office concerning the name of any lessee or tenant or information supplied by any lessee, tenant or lender in support of an application for loan insurance. Annual returns filed with the loan authority board by a lender, lessee or tenant shall be privileged and confidential.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the State Development Office the sum of \$200,000 for fiscal year 1977-78 to establish the Maine Small Business Loan Insurance Fund. The breakdown shall be as follows:

	1977-78
STATE DEVELOPMENT OFFICE	
Maine Small Business Loan Insurance Fund	\$200,000

Any balance remaining in this account on June 30, 1978, shall not lapse, but shall remain in a continuous carrying account to be carried forward from fiscal year to fiscal year to be expended for the purposes of this Act.

### STATEMENT OF FACT

This bill establishes the Maine Small Business Loan Authority whose purpose is to insure small business loans made to Maine residents. The bill is patterned on the Maine Veterans Small Business Authority, but broadens the loan insurance eligibility to any Maine resident. The chief funding for this small business loan authority will be through the issuance of bonds authorized under the Maine Constitution, Article IX, section 14-A.

A small business loan authority is much needed in Maine and will be a powerful instrument in enabling Maine residents to start small businesses in this State, and thus to develop both economic and employment opportunities in Maine.