

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1886

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H. P. 1727

House of Representatives, June 17, 1977

Reported by Mr. Curran from Committee on State Government. Sent up for concurrence and ordered printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Improve the Effectiveness of the State's  
Development Financing Mechanism.**

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

Sec. 1. 10 MRSA § 703, sub-§ 3, ¶ E is enacted to read:

**E.** Any land designed for and proposed to be used as an industrial park or site for location of industrial enterprise, provided the municipality in which the proposed park is to be located has agreed to provide or assure the provision of support facilities, including utilities, access, site preparation, marketing efforts, and financial support as may be determined by the authority to be necessary and appropriate, and further provided that reasonable assurance is given to the authority that the project can gain approval for environmental permits and licenses and that the land shall be deeded to a local development corporation as defined in this section.

Sec. 2. 10 MRSA § 703, sub-§ 4, as amended by PL 1975, c. 566, § 3, is further amended to read:

4. Local development corporation "Local development corporation" shall mean any organization incorporated under Title 13, chapter 81, or otherwise chartered by the State, for the purpose of fostering, encouraging and assisting the physical location, settlement, and resettlement of industrial, manufacturing, fishing, agricultural, recreational and other business enterprises within the State, and to whose members no profit shall enure, or for the purpose of this chapter, any organized municipality of the State.

Sec. 3. 10 MRSA § 703, sub-§ 7, as amended by PL 1975, c. 566, § 4, is further amended to read:

7. Mortgagee. "Mortgagee" shall mean the original lender under a mortgage, and his successors and assigns approved by the authority and may

include all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, including pension and retirement funds, and the Maine Guarantee Authority in relation to loans made under chapter 104.

Sec. 4. 10 MRSA § 703, sub-§ 9, as amended by PL 1967, c. 525, § 5, is repealed and the following enacted in its place:

9. **Mortgagor.** "Mortgagor" shall mean the original borrower under a mortgage and his successors and assigns, and may include:

A. Local development corporations, as defined in this section, except that this limitation may be waived at the sole discretion of the authority when deemed necessary for compliance with the terms and conditions of governmental grants, loans or subsidies made or to be made for the planning or financing of eligible projects;

B. Any borrowers for those eligible projects.

Sec. 5. 10 MRSA § 751, 2nd sentence, as last amended by PL 1975, c. 771, § 115, is further amended to read:

The authority shall consist of 9 10 members, including the Treasurer of State as a nonvoting member and the Director of the State Development Office and 8 members at large appointed by the Governor, subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature, 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.

Sec. 6. 10 MRSA § 751, last ¶, as enacted by PL 1975, c. 566, § 6, is amended to read:

The Maine Guarantee Authority shall administer and exercise the authority granted to it by chapters 102 ~~and~~, 103 and 104 and Title 30, chapter 242.

Sec. 7. 10 MRSA § 752, sub-§§ 12 - 28 are enacted to read:

12. **Authority to issue revenue obligation securities.** To issue revenue obligation securities as provided in chapter 104 and to provide for and secure the payment thereof and to provide for the rights of the holders thereof and to purchase, hold and dispose of any bonds or notes as the authority may deem desirable and in the best interest of the State;

13. **Contracts.** To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

14. **Acquire real or personal property.** To acquire real or personal property, or any interest therein including rights or easements, on either a temporary or long term basis in the name of the authority by gift, purchase, transfer, foreclosure, lease or otherwise; to hold, sell, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage interest owned by it or in its control,

custody or possession and to release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including threat of foreclosure;

15. Lease or rent. To lease or rent any lands, buildings, structures, facilities or equipment from or to private parties to effectuate the purposes of this chapter;

16. Enter into agreements; United States; any agency of the State of Maine. To enter into agreements with and accept grants and the cooperation of the United States or any agency thereof or of the State of Maine or any agency or governmental subdivision thereof in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any eligible project and to do any and all things necessary in order to avail itself of such aid and cooperation;

17. Enter into agreements; any person. To enter into agreements or other transactions with any person, the purpose of which is to effectuate the purposes of the authority including construction agreements, purchase or acquisition agreements, loan or lease agreements including agreements conditioned upon the subleasing of the demised premises, partnership agreements including limited partnership agreements, joint ventures, participation agreements or loan agreements with leasing corporations or other financial intermediaries;

18. Receive and accept aid or contributions. To receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or the State of Maine for any purpose consistent with this chapter;

19. Procure insurance. To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable;

20. Invest funds. To invest any funds not needed for immediate use on disbursement, including any funds held in reserve, in property or securities in which fiduciaries in the State of Maine may legally invest funds;

21. Borrow money. To borrow money and issue bonds as provided in this chapter;

22. Consent to modification of contract; release or agreement. To the extent permitted under its contract with the holders of bonds, to consent to any modification of any contract, lease or agreement of any kind to which the authority is a party;

23. Issue insurance. To issue insurance with respect to the financing of any eligible facility as hereinafter provided;

24. Manage or operate real and personal property; etc. To manage or operate real and personal property, take assignments of leases and rentals,

proceed with foreclosure actions, or take any other action necessary or incidental to the performance of its corporate duties;

25. **Serve as broker or agent.** To serve as a broker or agent for the secondary marketing of obligations issued or incurred in connection with the financing of eligible facilities and to otherwise serve as a financial intermediary to encourage the flow of private funds for capital investment;

26. **Facilities.** To plan, carry out, acquire, lease and operate facilities and to provide for the construction, reconstruction, improvement, alteration or repair of any facility or part thereof;

27. **Appearance.** To appear in its own behalf before boards, commissions, departments or agencies of municipal, State or Federal Government;

28. **Powers.** To do any act necessary or convenient to exercise the powers herein granted or reasonably implied therefrom.

**Sec. 8.** 10 MRSA § 754, as last repealed and replaced by PL 1975, c. 566, § 10, is amended by adding after the 2nd sentence a new sentence to read:

The authority is authorized to fix reasonable application and service fees for applicants under this chapter; such fees shall be credited to the appropriate fund.

**Sec. 9.** 10 MRSA § 756, is enacted to read:

**§ 756. Investment plan**

The authority shall annually on or before January 1st each year prepare an investment plan for the forthcoming year setting forth the areas of economic activity to which the authority proposes to direct its primary effort. The State Development Office and the State Planning Office shall provide reasonable and necessary assistance to the authority in the development of the plan. The plan shall be submitted to the Governor, the State Planning Office and such other parties as the Governor or the authority may deem appropriate and shall be available to the public.

**Sec. 10.** 10 MRSA § 803, 1st ¶, as last amended by PL 1975, c. 770, § 55, is repealed and the following enacted in its place:

The authority is authorized to insure a percentage of the mortgage payments required by a first mortgage on any eligible project upon receipt of a proposal from the proposed tenant, but such percentage as determined by the authority shall not be greater than 95% of the first mortgage, except as otherwise provided in this section. Such percentage is to be determined so as to require the uninsured portion of the first mortgage to be a material amount. The authority may prescribe such additional terms and conditions as it deems appropriate.

The aggregate amount of the insured portions of the principal obligations of all mortgages so insured outstanding at any one time shall not exceed the amount of authorized and unissued bonds for this purpose. Loan guarantees pursuant to section 703, subsection 3, paragraph E shall not be greater than 95% of the first mortgage loan and in no event shall the guarantees exceed

100% of the market value of the undeveloped land involved. To be eligible for insurance under this chapter, a mortgage shall:

Sec. 11. 10 MRSA § 803, sub-§ 6 is enacted to read:

6. Loans of authority. All payments required to be paid under the terms of any mortgage or other agreement for the extension of credit or making of a loan by the authority for a project financed by revenue obligation securities or of notes issued in anticipation of such securities as provided in chapter 104 shall at all times that such securities or notes are outstanding be eligible for insurance pursuant to this chapter. The authority may insure any eligible mortgage or other agreement by designating such mortgage in the resolution authorizing the notes or bonds issued to provide funds to finance the eligible project or by endorsing an appropriate certificate on such mortgage or other agreement. In the case of a default in payment with respect to any mortgage or other agreement so insured, the amount of such payment shall immediately, and at all times during the continuance of such default, constitute a charge on the mortgage insurance fund and shall be applied by the authority to the payment of taxes or insurance on the eligible project or the payment of the mortgage loan secured by such mortgage or other agreement. The authority may make such payments from any current revenues or surplus and may pledge moneys in the mortgage insurance fund to the payments as aforesaid. The authority shall take or cause to be taken all reasonable steps to enforce the payment of amounts in default on any such mortgage or other agreement and to exercise all available remedies necessary to enforce such mortgage or other agreement and protect the security of the authority's obligations. The trustee for any bond or note issued in anticipation thereof or, if there be no such trustee, the holder of any such bond or note shall have the right to bring suit against the authority for payment.

Sec. 12. 10 MRSA c. 104 is enacted to read:

#### CHAPTER 104

### MAINE GUARANTEE AUTHORITY

### REVENUE OBLIGATION SECURITIES

#### § 861. Title

This chapter shall be known and may be cited as the "Maine Guarantee Authority Revenue Obligation Securities Act."

#### § 862. General grant of powers

The Maine Guarantee Authority is authorized and empowered:

1. Revenue-producing industrial-commercial, pollution control or recreational projects. To acquire, construct, reconstruct, maintain, renew and replace industrial-commercial, pollution control, recreational and combined projects within the State, whether or not now in existence, or to assist a user to acquire, construct, reconstruct, renew and replace such projects and facilities;

2. **Securities.** To issue revenue obligation securities of the authority to pay the cost of acquisition, construction, reconstruction, renewal or replacement of industrial-commercial, pollution-control, recreational and combined projects within the State and any single issue of such revenue obligation securities of the authority may provide for the cost of acquisition, construction, reconstruction, renewal or replacement of any one or more projects which may be separate, unconnected, distinct and unrelated in purpose; and to acquire one or more issues of revenue obligation securities issued by municipalities pursuant to Title 30, chapter 242, any single issue of such revenue obligation securities of the authority may provide funds for the acquisition of revenue obligation securities of one or more municipalities for one or more projects which may be separate, unconnected, distinct and unrelated in purpose;

3. **Refunding securities.** To issue revenue refunding obligation securities of the authority as provided to refund any revenue obligation securities then outstanding which shall have been issued under this chapter;

4. **Acquisition of property.** To acquire or enable a user to acquire from funds provided under the authority of this chapter such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the State as it may deem necessary or convenient for the construction or operation of any industrial-commercial, pollution-control, recreational or combined project upon such terms and conditions as it shall deem reasonable and proper, and to dispose of any of the foregoing in the exercise of its powers and the performance of its duties under this chapter;

5. **Contracts; employment of specialists.** To make and enter into all financial documents, including mortgages, leases, sale agreements, contracts, loans and other agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue obligation securities issued hereunder, and to employ such consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as deemed necessary, and to fix their compensation; provided all such expenses shall be payable solely from funds made available under this chapter;

6. **Government contracts.** To enter into contracts with the State or the Federal Government or any agency or instrumentality thereof, or with any municipality providing for or relating to an industrial-commercial, pollution-control, recreational or combined facility; provided, in the case of contracts with the Federal Government involving pollution-control facilities, that the consent of the Board of Environmental Protection is first obtained, such board being authorized to grant such consent notwithstanding Title 38, section 362;

7. **Government aid.** To accept from any authorized agency of the State or the Federal Government or municipality loans or grants for the planning, construction or acquisition of any industrial-commercial, pollution-control,

recreational or combined facility and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants and contributions may be made; provided, in the case of loans, grants or other aid from the Federal Government involving pollution-control facilities that the consent of the Board of Environmental Protection is first obtained, such board being authorized to grant such consent notwithstanding Title 38, section 362;

8. **General powers.** To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. The powers of the authority hereunder shall be exercised by or under the direction of its members;

9. **Applicability.** Title 14, section 6010, shall not apply to leases made hereunder. Leases made hereunder may provide that obligations of the lessees shall be unconditional; and

10. **Application of Title 32, chapter 13.** Title 32, chapter 13, relating to dealers in securities shall not apply to revenue obligation securities issued, re-issued or refunded under this chapter.

#### § 863. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Combined project.** "Combined project" means any combination of an industrial-commercial project, a pollution-control project and a recreational project undertaken by the authority for a common user or group of users.

2. **Cost.** "Cost," as applied to an industrial-commercial, pollution-control, recreational or combined project, shall include the purchase price of any such project, the cost of construction, the cost of all labor, materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, utility extensions, access roads, site development, financing charges, premiums for lease rental insurance, interest prior to and during construction and, if deemed advisable by the authority for not more than one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering, legal and other professional services, reserves for payment of future debt service on bonds of not more than the maximum amount of interest plus annual serial principal or sinking fund payment due in any 12-month period, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses as may be necessary or incident to the financing authorized. Any obligation or expenses incurred by the State, the authority, a municipality or any private person in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the State, the authority or a municipality or such person out of the proceeds of revenue obligation securities issued under this chapter.



3. Financial document. "Financial document" means a lease, installment sale agreement, conditional sale agreement, mortgage or loan agreement between the authority as lessor, seller, mortgagee or lender and a user as lessee, purchaser, mortgagor or borrower.

4. Industrial-commercial project. "Industrial-commercial project" means any building, structure, machinery, equipment or facilities, including transportation, communication, fishing or agricultural equipment or facilities, which may be deemed necessary for manufacturing, processing, assembling, storing, distributing, retailing or receiving raw materials or manufactured products, transportation, communication, fishing, agriculture or research or for public accommodation and facilities related thereto, including, but not limited to, lodging, dining or conventions, together with all lands, property, rights, rights-of-way, franchises, easements, and interests in lands which may be acquired by the authority or a user for the construction or operation of such project.

5. Pollution-control project. "Pollution-control project" means any building, structure, machinery, equipment or facilities, including transportation equipment or facilities, which may be deemed necessary for preventing, avoiding, reducing, controlling, abating or eliminating contamination, solid waste, thermal pollution or pollution by any other means of the air, the water or the earth, together with all lands, property, rights, rights-of-way, franchises, easements and interests in lands which may be acquired by the authority or a user for the construction or operation of the project.

6. Project. "Project" means industrial-commercial project, pollution-control project, health care project, recreational project or combined projects as the context may permit or require. For the purposes of this chapter and as it applies to chapter 103, the term "project" shall also include the plural "projects" in those instances where the authority is issuing revenue obligation securities for more than one project.

7. Recreational project. "Recreational project" means any building or other real estate improvement and, if a part thereof, the land upon which the same may be located, or any interest in land by lease or otherwise, or any equipment used or usable in connection with recreational facilities of whatever kind and nature, including, but not limited to, marinas, swimming pools, golf courses, camp grounds, picnic areas, lodges, ski resorts, arenas and any other recreational facilities which in the judgment of the authority are necessary or convenient to the exercise of the powers conferred by this chapter.

8. Rent or rental. "Rent" or "rental" means payments made by users under a financial document, and may include sale payments or loan payments.

9. Revenue obligation security. "Revenue obligation security" means a note, bond or other evidence of indebtedness to the payment of which is pledged the revenues as provided in section 869.

10. User. "User" means one or more persons acting as lessee, purchaser, mortgagor or borrower under a financial document.

**§ 864. Powers**

1. Assistance to applicants. The authority is authorized and empowered to assist applicants, who may be persons, firms and corporations, private or public, except as otherwise provided in this chapter, for the financing of projects by the issue of revenue obligation securities by it, in drafting of financing documents and other contracts, and trust agreements, in arranging for such financing, and in negotiations for the sale of securities to be issued by it under this chapter.

2. Certificates of approval. The authority is authorized and empowered to approve or disapprove projects following submission to it of applications for approval thereof, in such form and with such supporting data as it may require. The authority shall issue and file with the Secretary of State a certificate of approval for each project or group of projects approved by it. No project shall be approved and no certificate of approval shall be issued until the Department of Environmental Protection has certified to the authority that all licenses required by that department with respect to the project have been issued or that none are required. The requirement of certification by the Department of Environmental Protection shall likewise apply to any subsequent enlargement or addition to such project, for which approval is sought from the authority. The certificate of approval filed by the authority with the Secretary of State shall be in such form as the authority may determine, but shall in any event identify and describe each project as to location, purpose, and the amount of revenue obligation securities to be issued in respect thereof, and in the event that a single issue of revenue obligation securities is to be issued to provide for the costs of more than one project, the aggregate amount of revenue obligation securities to be issued.

3. Before issuing certificate of approval. Before issuing a certificate of approval in respect of any project, the authority shall determine to its satisfaction that:

- A. The project will make a significant contribution to the economic growth of, the control of pollution in the State;
- B. The project will not create a competitive advantage to any party to a contract entered into by the authority under this chapter or involve substantial detriment to existing industry;
- C. Adequate provision is being made to meet any increased demand upon public facilities that might result from such project;
- D. In cases where it is proposed to relocate an industrial-commercial or recreational facility existing in the State, there is a clear economic justification for such relocation;
- E. In the case of projects including pollution-control facilities, the proposed users of such facilities make a significant contribution to the economy of the State, a substantial public benefit will result from the inclusion of such facilities in such project, and it is unlikely that public facilities meeting the needs of such users and securing comparable public benefit will become available in the reasonably foreseeable future; and

4. **Effect of certificate.** A certificate of approval issued under this chapter shall be conclusive proof that the authority has made the determinations required by this section.

5. **Application and service fees.** The authority is authorized to fix reasonable application and service fees for each project authorized under this chapter.

6. **Disposition of application and service fees.** The application and service fees collected under this chapter shall be paid over to the authority and used by it for its corporate purposes.

7. **Express powers.** The authority is authorized and empowered to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

8. **Exception.** This section and section 866, subsection 1, shall not apply in the case of the issue by the authority of revenue obligation securities for the purpose of acquiring one or more issues of outstanding revenue obligation securities issued by municipalities pursuant to Title 30, chapter 242.

#### § 865. Conflicts of interest

No member of the authority shall participate in any decision on any contract entered into by the authority under this chapter if he has any interest, direct or indirect, in any firm, partnership, corporation or association which may be a party to such contract, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which is a user of any project to be financed pursuant to or in connection with such contract.

#### § 866. Issuance of revenue obligation securities

1. **Treasurer of State as agent.** The Treasurer of State shall act as agent to the authority for the sale and delivery by it of revenue obligation securities and anticipatory notes. The Treasurer of State shall assist the authority in the preparation, issuance, negotiation and sale of such securities and notes and provide such further advice and management assistance as is reasonable and appropriate. As agent to the authority, the Treasurer of State shall act at the direction of the authority. Nothing in this subsection shall prohibit the authority from employing such further counsel or assistants as it deems necessary or from otherwise acting in its own behalf, provided that the sale and delivery of anticipatory notes and revenue obligation securities shall be carried out at the authority's direction with and through the Treasurer of State.

2. **Resolution; actions to contest validity.** After issuance by it of a certificate of approval as provided in section 864, the authority is authorized to provide by resolution, at one time or from time to time, for the issuance and sale by it of revenue obligation securities for the purpose of paying the cost of the project or projects so approved by the authority. No revenue obligation securities of the authority shall be authorized and issued except pursuant to a resolution adopted by the vote of not less than 5 members of the authority. Such resolution shall describe the general purpose or purposes for which the

securities are to be issued and state the maximum principal amount of such securities proposed to be issued.

3. **Conclusive authorization.** After issuance, all bonds or notes of the authority shall be conclusively presumed to be fully authorized and issued under the laws of the State of Maine, and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the authority.

4. **Maturity; interest; form; use of proceeds.** The securities of each issue of revenue obligation securities shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of securities. The authority shall determine the form of the securities, including any interest coupons to be attached thereto, and the manner of execution of the securities, and shall fix the denomination or denominations of the securities and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. Revenue obligation securities shall be executed in the name of the authority by the manual or facsimile signature of such official or officials as may be authorized in said resolution to execute such securities, but at least one signature on each security shall be a manual signature. Coupons, if any, attached to securities, shall be executed with the facsimile signature of the official or officials of the authority designated in said resolution. In case any official whose signature or a facsimile of whose signature shall appear on any securities or coupons shall cease to be such official before the delivery of such securities, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any securities issued under this chapter, all such securities shall be deemed to be negotiable instruments issued under the laws of this State. The securities may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon securities as to principal alone and as to both principal and interest, and for the reconversion into coupon securities of any securities registered as to both principal and interest. The authority may sell such securities in such manner, either at public or private sale, and for such price as it may determine to be for the best interests of the authority.

The authority shall not sell such securities to any firm, partnership, corporation or association which is a party to any contract pertaining to the project being financed by such securities or which is to rent, purchase, lease or otherwise occupy any premises constituting part of such project, or to any affiliate or subsidiary thereof, provided, however, that the authority may sell its securities to a seller of the project being financed if such project is to be used and operated by a 3rd party.

The proceeds of the securities of each issue shall be used solely for the purpose or purposes for which such securities shall have been authorized, and

shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such securities or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such securities, by error of estimates or otherwise, shall be less than such cost, additional securities may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such securities, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the securities first issued for the same purpose. The resolution providing for the issuance of revenue obligation securities, and any trust agreement securing such securities, may contain such limitations upon the issuance of additional revenue obligation securities as the authority may deem proper, and such additional securities shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The authority may provide for the replacement of any securities which shall become mutilated or be destroyed or lost. Revenue obligation securities may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

5. Credit not pledged. Except as provided in this subsection, securities issued under this chapter shall not constitute any debt or liability of the State or of any municipality therein or any political subdivision thereof, or of the authority of a pledge of the faith and credit of the State or of any such municipality or political subdivision, but shall be payable solely from the revenues of the project or projects for which they are issued and all such securities shall contain on their face a statement to that effect. The issuance of securities under this chapter shall not directly or indirectly or contingently obligate the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Under chapter 103, the Maine Guarantee Authority is authorized to insure mortgage loans made with the proceeds of revenue obligation securities and anticipatory notes issued under this chapter. To these ends, the faith and credit of the State may be pledged, under and consistent with the terms and limitations of the Constitution of Maine, Article IX, sections 14-A and 14-B and such further limitations, if any, as may be provided by statute.

6. Anticipatory borrowing. The authority may borrow money in anticipation of the sale of securities under this chapter by issuing temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the securities, but the period of such anticipatory borrowing shall not exceed 3 years and the time within which such securities are to become due shall not be extended by such anticipatory borrowing, beyond the time fixed in the resolution of the authority authorizing their issue or, if no term is there specified, beyond the term permitted by law.

**§ 867. Pledges and covenants; trust agreement**

In the discretion of the authority, any revenue obligation securities issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such securities may pledge or assign the revenues of the project or projects and may contain such provisions for protecting and enforcing the rights and remedies of the security holders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the user in relation to the acquisition of property and the construction, reconstruction, renewal, replacement and insurance of the project or projects in connection with which such securities shall have been authorized, the rents to be charged or other payments to be made for the use thereof or payment therefor, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of securities or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the security holders and of the trustee, and may restrict the individual right of action by security holders.

In addition to the foregoing, any such trust agreement or other financial document may, to secure the payment of the revenue obligation securities, mortgage or assign the mortgage of the project or any part thereof and create a lien upon any or all of the real or personal property constituting a part of the project. Such trust agreement, financial document or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the security holders.

A trust agreement or financial document containing a mortgage or assignment of a mortgage hereunder in respect of a project may authorize the trustee or mortgagee, as the case may be, in the event of a default as defined in respect of the revenue obligation securities issued to provide for the costs of such project, to take possession of all or any part of the mortgaged property constituting such project, to hold, operate and manage the same, and, with or without such taking of possession, to sell or from time to time to lease the same. A judgment for such possession may be without conditions and such a sale or lease will not be subject to any right to redeem such mortgaged property. Upon satisfaction at any time of the obligations secured by the mortgage in respect of such project, which shall be deemed to include all applicable fees and expenses, any surplus proceeds from such operation, sale or lease of such project shall be paid to the mortgagor of such project or to those claiming under the mortgagor, and subject to any sale or lease under this paragraph, the mortgaged property in respect of such project shall revert or be returned to the mortgagor or to those claiming under the mortgagor. To the extent provided in an applicable financial document, a user of a project may be entitled to the rights of a mortgagor of such project under this paragraph.

All expenses incurred in carrying out such trust agreement, financial document or resolution may be treated as a part of the cost of the operation of the project. All pledges of revenue under this chapter shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action under the Uniform Commercial Code or otherwise, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

1. Pledging; specified revenues. Pledging any specified revenues or assets of the authority to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with holders of notes or bonds as may then exist;
2. Pledging; unencumbered revenues. Pledging all or any part of the unencumbered revenues or assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with holders of notes or bonds as may then exist;
3. Reserves. Setting aside of reserves or sinking funds and the regulation and disposition thereof;
4. Limitations. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds of any issue thereof;
5. Additional notes or bonds. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured and the refunding of outstanding or other notes or bonds;
6. Procedure. The procedure, if any, by which the terms of any contract with holders of notes or bonds may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto and the manner in which such consent may be given;
7. Amount to be expended. Limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;
8. Trustee or trustees. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the note or bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter on limiting the rights, powers and duties of such trustee;
9. Default. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the

notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; but only if such rights and remedies shall not be inconsistent with the general laws of the State and the other provisions of this chapter;

10. Other matters. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds.

#### § 868. Rentals and revenues

Before the issuance of revenue obligation securities for paying the cost of any project, provision shall be made by financial documents or other contracts which in the judgment of the authority will be adequate to assure that the authority will at all times have revenues sufficient:

1. Principal and interest. To pay the principal of and the interest of such securities as the same shall become due and payable and to create and maintain reserves for such purposes; and

2. Cost of project. To pay the cost of maintaining, repairing and operating the project unless provision shall be made in such financial document or other contract for such maintenance, repair and operation.

#### § 869. Sinking fund

All rentals and other revenues derived from any project or projects for which revenue obligation securities shall have been issued, except such part thereof, if any, as may be required to pay the cost of maintenance, repair and operation and to provide reserves therefor as may be provided in the resolution authorizing the issuance of the securities in the applicable financial document, or in the trust agreement, shall be set aside at such regular intervals as may be provided in such resolution, financial document, or trust agreement and deposited to the credit of a sinking fund which is pledged to and charged with, the payment of the interest on such securities as such interest shall fall due, the principal of such securities as the same shall fall due, the necessary charges of paying agents for paying principal and interest, and the redemption price or the purchase price of securities retired by call or purchase. The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be prescribed in the resolution authorizing the issuance of the securities or in the trust agreement or applicable financial document and, except as may otherwise be provided in such resolution, financial document, or trust agreement, such sinking fund shall be a fund for the benefit of all securities issued for such project or projects without distinction or priority of one over another.

#### § 870. Trust funds

All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. Any officer to whom, or any bank, trust company or other fiscal agent or trustee to which such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, sub-



ject to such regulations as this chapter and such resolution or trust agreement may provide.

#### § 871. Remedies

Any holder of revenue obligation securities issued under this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of such securities or such trust agreement or applicable financial document, may, either by action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted under this chapter or under such resolution, financial document or trust agreement, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this chapter or by such resolution, financial document or trust agreement to be performed by the authority, including the collecting of rates, fees and charges for the use of the project, and any such suit, action or proceeding shall be brought for the benefit of all the holders of such securities and coupons.

#### § 872. Revenue refunding securities

The authority is authorized to provide by resolution for the issuance of revenue refunding securities of the authority for the purpose of refunding any revenue securities then outstanding which shall have been issued under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such securities, and if deemed advisable by the authority for the additional purpose of constructing or enabling the construction of improvements, extensions, enlargements or additions of the project in connection with which the securities to be refunded shall have been issued. The authority is authorized to provide by resolution for the issuance of revenue obligation securities of the authority for the combined purpose of refunding any revenue securities or revenue refunding securities then outstanding which shall have been issued under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such securities, and paying all or any part of the cost of acquiring or constructing or enabling the acquisition or construction of any additional project or part thereof, or any improvements, extensions, enlargements or additions of any project. The issuance of such securities, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

#### § 873. Tax exemption

Revenue obligation securities issued under this chapter shall be deemed to constitute a proper public purpose and such securities so issued, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be exempt from taxation within the State.

**§ 874. Leasehold or other interests of lessee taxable**

The interest of the user of any industrial-commercial, pollution-control, recreational or combined projects or any multilevel private parking facility is subject to taxation in the manner provided for similar interests in Title 36, section 551, subject to Title 36, sections 655 and 656.

**§ 875. Records confidential**

No member of the authority, 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 applicant or user or information supplied by any applicant, user, financial institution, municipality or local development corporation in support of an application proposing to issue revenue-obligation securities or for a loan under this chapter.

**§ 876. Purpose**

It is declared that there is a statewide need for industrial-commercial, pollution-control, recreational and combined projects to provide enlarged opportunities for gainful employment by the people, to restore purity to the air, the water or the earth of the State which are fouled with, among other things, industrial and other waste materials and pollutants, to more adequately serve the working people of this State, and to provide a more healthy environment and thus to insure the preservation and betterment of the economy of the State and the living standards and health of its inhabitants.

**§ 877. Governmental function**

The carrying out by the authority of the powers and duties conferred upon it by this chapter shall be deemed to be the performance of an essential governmental function. Nothing herein contained shall in any way limit or restrict the powers and duties of the authority heretofore granted to it nor the right of a municipality to issue revenue obligation securities pursuant to Title 30, chapter 242.

**§ 878. Liberal construction**

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. To the extent of any conflict between this chapter and any other law, this chapter shall prevail, but the power and authority granted hereby shall be deemed to be in addition to and not in derogation of power and authority granted by any other law.

**§ 879. Bonds as legal investments**

The notes or bonds of the authority and any loan or extension of credit which is the subject of insurance pursuant to this chapter, shall be legal investments in which all public officers and public bodies of the State, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying

on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital, in their control, or belonging to them. The bonds and any loan or extension of credit which is the subject of insurance pursuant to this chapter are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the State or any agency or political subdivisions thereof and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

Sec. 13. 30 MRSA § 5328, sub-§ 8, as last amended by PL 1973, c. 633, § 21, is repealed and the following enacted in its place:

8. Disposition of application and service fees. The application and service fees collected under this chapter shall be used by the authority for its corporate purposes.

Sec. 14. 30 MRSA § 5331, sub-§ 1, as last amended by PL 1975, c. 223, § 4, is repealed and the following enacted in its place:

1. Notice of intent to issue bonds; actions to contest validity. Upon receipt of the certificate of approval as provided in section 5328, the municipal officers of any municipality are authorized to provide by resolution, at one time or from time to time, for the issuance of revenue obligation securities of the municipality for the purposes authorized elsewhere in this chapter.

No revenue obligation securities of the municipality shall be authorized and issued except pursuant to a resolution adopted by the vote of the municipal officers nor until notice of the intent of the municipality to issue the securities is published at least once in the state newspaper and in a newspaper of general circulation in the municipality no later than 14 full days after the date on which the resolution is adopted. The notice shall describe the general purpose or purposes for which the securities are to be issued, state the maximum principal amount of such securities proposed to be issued and shall set forth or summarize the text of the certificate of approval. The notice shall include a statement as to the time within which any action or proceeding to set aside such resolution or otherwise to obtain relief on the grounds of its invalidity or that of the certificate of approval must be commenced. Any action or proceeding in any court to set aside such resolution or certificate of approval, or to obtain relief upon the grounds that such resolution or certificate of approval was improperly adopted, was adopted for unauthorized purposes, or is otherwise invalid for any reason, must be commenced within 30 days after the date of such publication. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such resolution or approval or any provision thereof shall be commenced or asserted nor shall the validity of such resolution or approval or any provision thereof be open to question in any court upon any grounds whatever.

Sec. 15. 30 MRSA § 5331, sub-§ 2, 11th sentence, as enacted by PL 1965, c. 423, § 1, is amended to read:

If the proceeds of such securities, by error of estimates or otherwise, shall be less than such cost, additional securities may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such securities, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the securities first issued for the same purpose, provided the aggregate principal amount of revenue obligation securities of a municipality may not exceed the amount approved by the voters as provided resolution of the municipal officers.

**Sec. 16. Transitional provisions.** Revenue obligation securities which are provided for under Title 30, chapter 242, and either adopted before the effective date of this Act or adopted after the effective date of this Act and before February 15, 1978, may be issued pursuant to the proceedings of a municipality under Title 30, chapter 242 as that chapter existed before the effective date of this Act or as that chapter exists on or after the effective date of this Act.

#### STATEMENT OF FACT

This legislation seeks to improve the capability of the state's finance mechanisms for development and is based on recommendations by the Governor's Task Force on Economic Development. It provides for the preparation of an investment strategy to focus the Maine Guarantee Authority's activities, the guarantee of private loans for land development projects, faster access to the existing municipal industrial revenue bonding program and the establishment of a state industrial revenue bond program.

All of the program changes and additions are designed to increase the authority's flexibility to support economic development within its existing financial limits. In no instance could these program changes, either individually or collectively, increase the state's potential financial liability as a result of the authority's operations. The state industrial revenue bonding section is based upon the existing municipal program.

Specifically, the legislation provides for :

1. Inclusion of industrial parks within the mortgage guarantee program of the Maine Guarantee Authority, provided the municipality commits itself to provide the necessary support facilities. It is anticipated that this provision will permit the authority to assist in the acquisition costs of the land, under certain limitations and safeguards, and that the remaining costs of infrastructure development will be provided by the municipality, thereby enhancing the value of the collateral; (Sections 1, 2 and 10.)

2. Includes the Treasurer of State as a nonvoting member of the authority and provides that the Treasurer of State shall assist the authority in its bonding activities. This provides an added resource to the authority. (Sec. 5, Sec. 12, § 866) (Sec. 5, Sec. 12, § 866)

3. Allows the authority to charge fees to applicants insuring reasonable operating income for the authority. (Sec. 8; 12, § 864; Sec. 13)

4. The preparation of an annual investment plan by the Maine Guarantee Authority, serving to help focus the efforts of the authority on the most appropriate areas in the forthcoming year. This plan would be submitted to appropriate parties for comment (Sec. 9).

5. Removes the lower insurance limit regarding the insured portion of a mortgage loan, thereby allowing the authority to guarantee no more of a loan than necessary.

6. Elimination of the requirement for local referendum on municipal revenue bond issues. This requirement has proved cumbersome in the past and serves as a deterrent to new industry. Approval by the elected municipal officials is determined to be sufficient and the bond issue does not involve a pledge of the municipality's credit in any event (Sec. 14, 15 and 16).

7. Expansion of the definition of local development corporation in the statutes of the Maine Guarantee Authority to include municipalities and other nonprofit development corporations chartered by the State. This is designed to accommodate the recommendations that the proposed Maine Development Foundation and similar local organizations be eligible mortgagors under the mortgage guarantee program and allow a municipality to act as a development corporation, eliminating the need and cost of establishing such a corporation to participate in the authority's programs. (Sec. 2)

8. The issuance of revenue obligation securities by the Maine Guarantee Authority and the guarantee of such securities if proper collateral is provided. This part of the legislation authorizes the Maine Guarantee Authority to issue revenue obligation securities for the same purpose for which municipalities can issue revenue obligation securities pursuant to Title 30, chapter 242; and the legislation is patterned upon that law.

The power of the authority to issue revenue obligation securities specifically authorizes the combination of several separate projects under one securities issue.

Subject to the requirements and limitations of the existing insurance program, loans made by the authority from revenue bond proceeds may be insured. This provides low-cost, long-term debt financing through tax-exempt revenue bonds to smaller companies of good quality which have previously not been able to benefit from bond financing because of high transaction costs and the lack of established credit ratings.

The issuance of revenue obligation securities provided for in this legislation does not constitute any debt or liability of the State, and, while loans made with bond proceeds may be issued under existing law, this legislation does not increase the state's potential liability under programs of the authority.

Sections 2, 3, 4, 6, 7, 10, 11 and 12 relate to the new authority for the Maine Guarantee Authority to aid business development better through the use of revenue obligation securities.