

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 1519**

H. P. 1150

House of Representatives, March 22, 1979

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Baker of Portland.

Cosponsors: Mr. Hall of Sangerville, Mrs. Reeves of Pittston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Establish a State Bank to Encourage and Promote the Development of  
Agriculture, Commerce and Industry.**

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

Sec. 1. 9-B MRSA Part 11 is enacted to read:

**PART 11**

**PUBLIC BANKS**

**CHAPTER 111**

**ESTABLISHMENT OF MAINE PUBLIC BANK**

§ 1101. Legislative findings and purpose

1. Findings. The Legislature finds:

A. That Maine's economic growth, income and employment lag behind the rest of the nation;

B. That Maine's many excellent banks, while numerous and active, are often too small to provide sufficient funds and services for existing Maine businesses or new entrepreneurial endeavors;

C. That Maine's total money deposits available for investment in economic expansion are too small to satisfy future credit needs;

D. That too often socially desirous, small Maine businesses are unable to compete with more established firms for the limited funds available from our commercial financial institutions;

E. That too often the profits of Maine businesses are reinvested outside of Maine;

F. That Maine's economic development strategies and endeavors are scattered among numerous programs and agencies that would be more effectively coordinated; and

G. That a commercial bank owned and operated by this State will make important progress toward resolving the financial problems hindering Maine's economic growth.

2. Purpose. The purpose of this Part is to establish a public, State-owned bank:

A. Which will not compete but cooperate with Maine's many financial institutions;

B. Which will expand the total financial deposits and services available to promote the growth of socially desirable industry and commerce, especially farming and fishing;

C. Which will offer valuable services to our private financial institutions;

D. Which will provide a means by which profits of Maine businesses can be reinvested in Maine rather than outside of this State; and

E. Which will make possible the coordination of our many and diverse economic development agencies.

#### § 1102. Establishment of the Maine Public Bank

The Maine Public Bank corporation is created. It is referred to in this Part as the "bank." It is a public body corporate and politic and in instrumentality of the State. The bank shall be considered an agency of the State for the purposes of the Administrative Procedure Act, Title 5, chapter 375. The bank is hereby established and is directed, either directly or through a wholly-owned subsidiary corporation, to apply to the Bureau of Banking for a charter to operate a commercial bank.

#### § 1103. Permissible activities and restraints

Unless this Part specifically precludes it, the bank's permissible activities and restraints are:

1. Bank's business. The business of the bank may include anything that any commercial bank may do under this Title; and

2. **Bank's restraints.** The bank shall be subject to any state regulation that applies to the activities of Maine's commercial banks.

§ 1104. **Board of directors**

1. **Membership.** the board of directors of the bank shall consist of:

A. Commissioner of Finance and Administration;

B. Commissioner of Manpower Affairs;

C. Treasurer of State;

D. Commissioner of Agriculture;

E. Commissioner of Marine Resources;

F. A member of the University of Maine's Board of Trustees; and

G. Seven other persons of recognized eminence and authority to be appointed by the Governor in accordance with Title 3, chapter 6. These persons may be either in public or private employment and shall include:

- (1) One person qualified by training and experience in small business;
- (2) One person qualified by training and experience in banking;
- (3) One person qualified by training and experience in commercial farming;
- (4) One person qualified by training and experience in commercial fishing;
- (5) One person qualified by training and experience in investment; and
- (6) Two persons representing the public and demonstrating an active concern with consumer problems.

The 13 members first appointed shall serve for terms ending either 2, 4 or 6 years from January 1st following their appointment. The terms shall be staggered as follows:

The first person appointed shall serve for 2 years, the 2nd person for 4 years, the 3rd person for 6 years, the 4th person for 2 years and so on until all 13 appointments are made. Their successors shall serve for terms of 6 years each. Members shall serve until their successors are confirmed by the Legislature. If a vacancy occurs, the Governor shall appoint a successor in accordance with Title 3, chapter 6. The Governor shall designate one of his appointees to serve as chairman of the board. The members shall be reimbursed for expenses but serve without salary. Any member who is not a public employee shall receive a per diem allowance of \$250 when rendering services as a member.

2. **Quorum; delegation of powers.** A majority of the members of the board shall constitute a quorum for the exercise of its powers. The board may delegate to one or more of its directors, officers, agents or employees such powers as it deems proper. The board shall appoint a president of the bank.

3. **Removal.** The Superintendent of Banking may remove any member appointed by him for inefficiency, neglect of duty or misconduct in office giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than 10 days' notice. If any member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of charges made against that member and his findings thereon, together with a complete record of the defense proceeding.

4. **Indemnification.** The State shall indemnify the directors of the bank against any claim, demand, suit or judgment arising by reason of any act or omission to act by the director occurring in the discharge of his duties on behalf of the bank. A director shall not be indemnified if he is found by a final judicial determination not to have acted, in good faith, for a purpose which he reasonably believed to be in the best interests of the corporation or not to have had reasonable cause to believe that his conduct was lawful.

5. **Purpose.** In the conduct of their duties the directors shall be guided by the purposes described in section 1101.

#### § 1105. Cost of operation

The total compensation for members and all bank employees, together with all other expenditures for the operation and maintenance of the bank, shall remain within the bank's yearly appropriation by the Legislature.

#### § 1106. Powers

1. **Corporate powers.** Unless otherwise limited by this Part, included among the bank's powers are the power to:

- A. Sue and be sued;
- B. Have a state seal featuring the title, "Maine Public Bank;"
- C. Make and execute contracts, leases and all other instruments necessary or convenient to fulfill its duties;
- D. Make and alter bylaws for its organization and internal management;
- E. Acquire, hold and dispose of personal property for its corporate purposes;
- F. Appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- G. Borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;
- H. Invest any funds held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the bank's discretion, in obligations of the State or the United States Government or obligations the principal and interest of which are guaranteed by the State or the United States Government;

I. Procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in the amounts, and from such insurers, as it deems desirable;

J. Accept any gifts or grants or loans of funds or property or financial or other aid in any form from the Federal Government or any of its agencies or instrumentalities from the State or from any other source;

K. Engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

L. Enter into contracts with state agencies and any political subdivision or instrumentality of the State; and

M. Do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly granted in this Part.

#### § 1107. Capital of bank

The bank shall proceed to transact business upon being approved by the Bureau of Banking and achieving a capital fund of \$2,000,000. This capital may be achieved in part or entirely through an appropriation by the Legislature or the issuance of bonds by the bank.

#### § 1108. Issuance of bonds and rates

1. Issuance. The bank is authorized to issue its negotiable bonds and notes. These instruments can be issued for any reason necessary or convenient to fulfill the bank's corporate purpose. Unless expressly provided by the bank, these instruments shall be general obligations of the bank, payable out of any revenues or moneys of the bank.

2. Resolution of the board. The notes and bonds shall be authorized by resolution of the bank's board of directors. If they are sold at a private sale, the terms must be approved in writing by the Treasurer of State. The resolution shall contain provisions, which shall be part of the contract with the holders of the notes or bonds, to insure the instruments' security.

3. State liability. The State shall not be liable on notes or bonds of the bank and they shall not be a debt of the State. These instruments shall contain on their face a statement declaring this.

4. Bond and note limit. The bank shall not issue bonds and notes in an aggregate principal exceeding \$25,000,000.

5. Capital Reserve Fund. As of any date of computation, the bank shall maintain a Capital Reserve Fund which shall have an amount of money equal to the largest annual payment for debt service the bank would have to make in any year. In computing the Capital Reserve Fund for the purposes of this section, securities in which all or a portion of the reserve fund shall be invested shall be valued at par if purchased at par, or if purchased at other than par, at amortized value.

6. Bonds and notes as legal investments. The bank's bonds and notes are hereby made securities in which all public and private persons, state agencies, political subdivisions or business entities may be permitted to invest in. Specifically included in this description are municipalities, financial institutions, insurance companies and fiduciaries.

7. Exemption from taxation. The bank's bonds and notes shall be exempt from all taxation, except estate and gift taxes and taxes on transfers.

8. Agreement with the State. The State pledges and agrees with the holders of any bank bonds or notes to not limit or alter the bank's obligation to fulfill its contracts or to impair the rights or remedies of the holders.

9. State's right to redemption of bonds. The State may require the bank to redeem, prior to maturity, any entire bond issue on any interest payment date not less than 20 years after issuance. Redemption shall be at 105% of its face value and accrued interest or at such lower redemption price as may be printed in the holder's agreement.

#### § 1109. State funds shall be deposited in bank

All State funds, and funds of all state agencies, including penal, educational and development institutions, shall be deposited in the bank. These funds shall be promptly deposited by the person having control of them within 2 years of the effective date of this Part.

#### § 1110. Bank deposits

All bank deposits are guaranteed by the State. All deposits are exempt from state or local taxation. The bank may receive deposits from any source. It may deposit any funds in any financial institution, in or out of the State.

#### § 1111. Bank as a clearinghouse

For financial institutions that make the bank a reserve depository, it may provide the services of a clearinghouse to Maine's banks, including all facilities for providing domestic and foreign exchange, and may rediscount paper.

#### § 1112. Interest rates on deposits

Except as otherwise limited by law, the board of directors from time to time shall fix the rates of interest allowed and received in transactions of the bank. These rates shall be as nearly and constant as possible, and shall not be fixed or changed to work any discrimination against or in favor of any person or corporation. When interest is allowed on deposits, the interest rate shall be the same generally prevailing rate allowed by other banks in this State for similar accounts. The board of directors shall also fix reasonable charges for services rendered by the bank.

#### § 1113. Bank investments

The following are included among the investments which the bank may make.

1. **Bank loans.** The bank may make loans to and purchase securities issued by, state agencies and political subdivisions, including municipalities, of this State. The loans shall be repaid with interest to the bank. The bank may make loans to financial institutions, including credit unions, and may participate with them, in loans being made by them.

2. **Bank's purchase.** The bank may buy and sell federal funds, or excess reserves, bankers acceptances, participation loans and all securities issued by the United States Government or its agencies.

3. **Bank investments.** The bank may invest its funds in bonds, notes, commercial paper or debentures of any corporation incorporated under the laws of any state of the United States rated "A" or higher by a nationally recognized rating service approved by the board of directors except that the investments shall not be made to exceed for any one corporation 10% of the combined capital and surplus of the bank.

4. **Loans to bank customers.** The bank may make loans to holders of bank certificates of deposit and savings accounts up to 90% of the value of the certificates and savings accounts offered as security.

5. **Loans to the General Fund.** The bank may make loans to the state's General Fund. These loans at no time shall exceed \$5,000,000, for periods of time not exceeding 9 months.

6. **Small business loans.** The bank may make loans to a commercial farmer or fisherman.

7. **Federal insured student loans.** The bank may make federally insured student loans.

#### § 1114. Bank audit and supervision by the Bureau of Banking

The board of directors is responsible for contracting with a nongovernment certified public accounting firm to annually audit the bank in accordance with generally accepted auditing standards, which shall include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The auditor so hired shall audit the bank's methods of operation and accounting, shall report the results to the board of directors as soon as practicable and shall furnish one copy of the report to the Legislature. The cost of the audit shall be paid for by the bank. The Bureau of Banking shall supervise and examine the bank in the same manner as any commercial bank.

#### § 1115. Repayment of appropriation

The bank shall repay to the General Fund, out of the bank's net earnings, any appropriation by the Legislature to the bank. The bank shall pay interest on any unpaid appropriation at the rate of 6% per year on the unpaid balance.

#### § 1116. Future earnings



**1. Appointment.** When the bank has repaid any appropriation, the future net earnings of the bank shall be appointed at the discretion of the Legislature as follows:

- A.** For expansion of the facilities, services or reserves of the bank;
- B.** For increased payments under Title 22, chapter 1053, the Aid to Dependent Children program;
- C.** For property tax and rent relief for the high cost of a homestead; and
- D.** For improved vocational education programs or University of Maine programs.

**§ 1117. Exemption from taxation of property and income**

The property of the corporation and its income and operation shall be exempt from taxation.

**§ 1118. Corporate existence**

The bank and its corporate existence shall continue until terminated by law, provided that no law shall take effect so long as the bank shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment of them. Upon termination of the existence of the bank, all its rights and properties shall pass to and be vested in the State.

**§ 1119. Subsidiary corporations**

**1. Creation of subsidiary corporation.** The bank shall have the authority to perform its powers and functions through one or more subsidiary corporations. The bank by resolution of the board may direct any of its directors, officers or employees to organize a profit or nonprofit subsidiary corporation pursuant to Title 13. The resolution shall prescribe the purposes for which the subsidiary corporation is to be formed.

The corporation shall be deemed a subsidiary corporation whenever and so long as all of any voting shares of the subsidiary corporation are owned or held by the bank, and all of the directors of the bank are the directors of the subsidiary corporation.

**2. Administration.** The bank may transfer to any subsidiary corporation any moneys, real or personal or mixed property in order to carry out the purposes of this Part. Each such subsidiary corporation shall have all the privileges, immunities, tax exemptions and other exemptions of the bank to the extent the same are not inconsistent with Title 13.

**3. Compensation.** No officer or director of the bank shall receive any additional compensation, either direct or indirect, other than reimbursement for actual and necessary expenses incurred in the performance of his duties, by reason of his serving as a director, officer or trustee of any subsidiary corporation.

**§ 1120. Assistance by state agencies**

All state agencies, as defined in Title 5, section 8002, and the Attorney General may render services to the bank.

**§ 1121. Annual report**

1. **Description.** Each year the bank shall submit to the Governor and the Legislature within 18 days after the end of its fiscal year, a detailed report setting out:

A. Its operations and accomplishments;

B. Its receipts and expenditures during the fiscal year in accordance with the categories or classifications established by the bank for its operating and capital outlay purposes, including a list of all private consultants engaged by the corporation on a contract basis and a statement of the total amount paid to each such private consultant;

C. Its assets and liabilities at the end of its fiscal year, including a schedule of its mortgage loans and commitments and the status of Capital Reserve Fund and other reserve funds; and

D. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during the fiscal year.

**§ 1122. Bank employees**

All officers, agents and employees of the bank shall be unclassified employees of the State.

**§ 1123. Inconsistent provisions**

Insofar as the provisions of this Part are inconsistent with the provisions of any other law, the provisions of this Part shall be controlling.

**§ 1124. Coordination of development of industry and commerce in Maine**

1. **Responsible for coordination.** The bank shall be responsible for coordinating the activities of Maine's various development agencies. Specifically, the chairman of the board, or his designated representative, shall be a voting member, commissioner, or director of the following agencies:

A. Maine Guarantee Authority;

B. Maine Municipal Bond Bank;

C. Maine Small Business Loan Authority Board;

D. The Maine Capital Corporation;

E. Maine Development Foundation; and

F. Maine State Housing Authority.

**2. Development plan.** Within 2 years from the effective date of this Part, the bank shall present to the Legislature and the Governor a comprehensive plan to coordinate and direct to the state's efforts to develop commerce and industry and to provide sufficient jobs and housing for Maine citizens. This plan may require the agencies listed in subsection 1 to become subsidiary corporations of the bank. This comprehensive plan may call for creation of different development agencies or for a change in strategies or goals. It shall be accompanied by all necessary legislation. The bank shall insure that all interested persons will have ample opportunity to comment on the bank's plan before its completion and that at least 5 public hearings will be held in representative areas of the State before it is presented to the Legislature.

A summary of the comments and testimony will be appended to the bank's final report.

**Sec. 2. Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	1979-80	1980-81
MAINE PUBLIC BANK		
All Other	\$250,000	\$500,000

**Sec. 3. Effective date.** The effective date of this Act is January 1, 1980.

#### STATEMENT OF FACT

The purpose of this bill is to establish a Maine Public Bank:

1. Which will not compete but cooperate with Maine's many excellent financial institutions;
2. Which will expand the total financial deposits and services available to promote the growth of socially desirable industry and commerce, especially small farmers and fishing;
3. Which will offer valuable services to our private financial institutions;
4. Which will provide a means by which profits of Maine Businesses can be reinvested in Maine rather than outside of this State; and
5. Which will make possible the coordination of our many and diverse economic development agencies.

The bill's initial model was the state-owned bank of North Dakota. This public bank was established by North Dakota's Legislature in 1919. Since that year through 1975, the North Dakota State Bank has made net operating profits of over \$90,944,123. As of June, 1976, the bank had total resources of nearly \$437,000,000.

The Maine Public Bank requires an initial appropriation of \$250,000 for fiscal year 1979-80 and \$500,000 for 1980-81. These funds will be used to pay the expense of

organizing the bank and pay its initial operating expenses. Under the terms of this bill, any appropriation to the Legislature shall be paid back, with interest, from bank profits.

All profits in addition to those needed to repay an appropriation shall be used, at the discretion of the Legislature, to:

1. Expand bank services;
2. Increase Title 22, Aid to Dependent Children;
3. Provide tax relief for homestead owners and renters; and
4. Improve vocational education programs or the University of Maine's programs.