

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1798

S. P. 680

In Senate, January 10, 1980

On Motion of Senator Pierce of Kennebec, referred to the Committee on State Government. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Pierce of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Amend the Maine Health Facilities Authority Act to Include Certain Educational Institutions.

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

Sec. 1. 22 MRSA § 2051, as enacted by PL 1971, c. 303, § 1, is amended to read:

§ 2051. Title

This chapter shall be known as, and may be cited as, the "Maine Health and Higher Educational Facilities Authority Act."

Sec. 2. 22 MRSA § 2052, as amended by PL 1973, c. 713, § 1, is further amended to read:

§ 2052. Declaration of necessity

It is declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that hospitals and nursing homes within the State be provided with appropriate additional means to expand, enlarge and establish health care, hospital, nursing home and other related facilities; **that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities**; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable hospitals and nursing homes and institutions for higher education in the State to provide the

facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, and the exercise of the powers, to the extent and manner provided in this chapter, is declared the exercise of an essential governmental function.

Sec. 3. 22 MRSA § 2053, sub-§§ 1 and 2, as enacted by PL 1971, c. 303, § 1, are amended to read:

1. Authority. "Authority" means the **Maine Health and Higher Educational Facilities Authority** created and established as a public body corporate and politic of the State of Maine by section 2054 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this chapter shall be given by law.

2. Bonds and notes. "Bonds" and "notes" ~~means mean~~ **means mean** bonds and notes of the authority issued under this chapter, including refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of the authority or the full faith and credit of a participating hospital **or of a participating institution for higher education**, or any other lawfully pledged security of a participating hospital **or of a participating institution for higher education**.

Sec. 4. 22 MRSA § 2053, sub-§ 4-B is enacted to read:

4-B. Institution for higher education. "Institution for higher education" means any private, nonprofit or charitable institution or organization engaged in the operation of, or formed for the purpose of operating, an educational institution within this State which, by virtue of law or charter, is an educational institution empowered to provide a program of education beyond the high school level.

Sec. 5. 22 MRSA § 2053, sub-§ 5-A is enacted to read:

5-A. Participating institution for higher education. "Participating institution for higher education" means an institution for higher education which, pursuant to this chapter, shall undertake the financing and construction or acquisition of a project or shall undertake the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by this chapter.

Sec. 6. 22 MRSA § 2053, sub-§ 6, as amended by PL 1973, c. 713, § 4, is repealed and the following enacted in its place:

6. Project. "Project" means:

A. In the case of a participating hospital, the acquisition, construction, improvement, reconstruction or equipment of, or construction of an addition or additions to, any structure designed for use as a hospital, clinic, nursing home or other health care or nursing care facility, laboratory, laundry, nurses or interns residence or other multi-unit housing facility for staff, employees, patients, or relatives of patients admitted for treatment in the hospital or nursing home, doctors office building, administration building, research facility, maintenance, storage or utility facility or other structures or facilities

related to any of the foregoing or required or useful for the operation of the project, or the refinancing of existing indebtedness in connection with any of the foregoing, including parking and other facilities or structures essential or convenient for the orderly conduct of the hospital or nursing home. "Project" also includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with the structures mentioned in this paragraph, and includes landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as food, fuel, supplies or other items which are customarily considered as a current operating charge; and

B. In the case of a participating institution for higher education, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty, office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility or other building or structure essential, necessary or useful for instruction in a program of education provided by an institution for higher education, or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated in this paragraph. "Project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the structures mentioned in this paragraph, and also includes landscaping, site preparation, furniture, machinery equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as books, fuel, supplies or other items which are customarily considered as a current operating charge.

Sec. 7. 22 MRSA § 2053, sub-§ 7, as amended by PL 1973, c. 713, § 5, is further amended to read:

7. Refinancing of existing indebtedness. "Refinancing of existing indebtedness" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a hospital or nursing home or institution for higher education incurred to finance or aid in financing a lawful purpose of such hospital or nursing home or institution for higher education not financed pursuant to this chapter which would constitute a project had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a project related to the purpose for which the

indebtedness of the hospital or, nursing home or institution for higher education was incurred.

Sec. 8. 22 MRSA § 2054, sub-§ 1, as last amended by PL 1979, c. 533, §§ 11 to 13, is further amended to read:

1. **Authority.** There is hereby created a body politic and corporate to be known as the "Maine Health and Higher Educational Facilities Authority." ~~Said~~ **The** authority is constituted a public body corporate and politic and an instrumentality of the State, and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential public function. ~~Said~~ **The** authority shall consist of ~~12~~ **11** members, one of whom shall be the Bank Superintendent, ex officio, one of whom shall be the Commissioner of Human Services, ex officio, **one of whom shall be the Commissioner of Educational and Cultural Services, ex officio**, one of whom shall be the Treasurer of State or his designee, ex officio, as a nonvoting member; and 8 of whom shall be residents of the State appointed by the Governor, not more than 4 of such appointed members to be members of the same political party. The designee of the Treasurer of State shall be the Deputy Treasurer of State. Three of the appointed members shall be trustees, directors, officers or employees of hospitals and one of such appointed members shall be a person having a favorable reputation for skill, knowledge and experience in state and municipal finance, either as a partner, officer or employee of an investment banking firm which originates and purchases state and municipal securities, or as an officer or employee of an insurance company or bank whose duties relate to the purchase of state and municipal securities as an investment and to the management and control of a state and municipal securities portfolio. Of the 3 members first appointed who are trustees, directors, officers or employees of hospitals, one shall serve for 2 years, one for 3 years and one for 4 years. Of the 5 remaining members initially appointed, one shall serve for one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years. **For the 2 members whose terms expire in 1980 and 1981, the Governor shall appoint as successors, for terms of 5 years each, persons who are trustees, members of a corporation or board of governors, officers or employees of institutions for higher education.** Annually, the Governor shall appoint, for a term of 5 years, a successor to the member whose term expires. Members shall continue in office until their successors have been appointed and qualified. The Governor shall fill any vacancy for the unexpired terms. A member of the authority shall be eligible for reappointment. Any non-ex officio member of the authority may be removed by the Governor, after hearing, for misfeasance, malfeasance or willful neglect of duty. Each member of the authority before entering upon his duties shall take and subscribe the oath or affirmation required by the State Constitution, Article IX. A record of each such oath shall be filed in the office of the Secretary of State. The Bank Superintendent, the Treasurer of State ~~and~~, the Commissioner of Human Services **and the Commissioner of Educational and Cultural Services** may designate their deputies or, in the case of the Bank Superintendent ~~and~~, the Commissioner of Human Services **and the Commissioner of Educational and Cultural Services**, any

member of their staffs to represent them as members at meetings of the authority with full power to act and, in the case of the Bank Superintendent ~~and~~, the Commissioner of Human Services **and the Commissioner of Educational and Cultural Services**, to vote in their behalf.

Sec. 9. 22 MRSA § 2054, sub-§ 7, as amended by PL 1973, c. 713, § 6, is further amended to read:

7. Conflict of interest. Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer or employee of a hospital or nursing home **or for a trustee, member of a corporation or board of governors, officer or employee of an institution for higher education** to serve as a member of the authority, provided such trustee, director, **member of a corporation or board of governors**, officer or employee shall abstain from deliberation, action and vote by the authority under this chapter in specific respect to the hospital ~~or~~, nursing home **or institution for higher education** of which such member is a trustee, director, **member of a corporation or board of governors**, officer or employee.

Sec. 10. 22 MRSA § 2055, first ¶, as enacted by PL 1971, c. 303, § 1, is amended to read:

The purpose of the authority shall be to assist participating hospitals **and participating institutions for higher education** in the undertaking of projects and the refinancing of existing indebtedness which are declared to be public purposes and for the purposes of this chapter the authority is authorized and empowered.

Sec. 11, 22 MRSA § 2055, sub-§ 5, as enacted by PL 1971, c. 303, § 1, is amended to read:

5. Projects. To determine the location and character of any project to be financed under this chapter, and to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating hospital **or a participating institution for higher education** as its agent to determine the location and character of a project undertaken by such participating hospital **or such participating institution for higher education** under this chapter and as the agent of the authority, to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same, and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

Sec. 12. 22 MRSA § 2055, sub-§ 8, as enacted by PL 1971, c. 303, § 1, is amended to read:

8. Rules and regulations. To establish rules and regulations for the use of a project or any portion thereof and to designate a participating hospital **or a participating institution for higher education** as its agent to establish rules and

regulations for the use of a project undertaken by such participating hospital or such participating institution for higher education;

Sec. 13. 22 MRSA § 2055, sub-§§ 12-15, as enacted by PL 1971, c. 303, § 1, are amended to read:

12. **Loans.** To make loans to any participating hospital or participating institution for higher education for the cost of a project in accordance with an agreement between the authority and such participating hospital or participating institution for higher education, provided that no such loan shall exceed the total cost of the project as determined by the participating hospital or participating institution for higher education, and approved by the authority;

13. **Refund.** To make loans to a participating hospital or a participating institution for higher education to refund outstanding obligations, mortgages or advances issued, made or given by such participating hospital or institution for higher education for the cost of the project;

14. **Apportionment.** To charge to and equitably apportion among participating hospitals and participating institutions for higher education its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

15. **Other acts.** To do all things necessary or convenient to carry out the purposes of this chapter. In carrying out the purposes of this chapter, the authority may undertake a project for 2 or more participating hospitals jointly or 2 or more participating institutions for higher education, and, thereupon, all other provisions of this chapter shall apply to and for the benefit of the authority and such joint participants.

Sec. 14. 22 MRSA § 2057, as enacted by PL 1971, c. 303, § 1, is amended to read:

§ 2057. Acquisition of property by authority

The authority is authorized and empowered, directly or by and through a participating hospital or a participating institution for higher education, as its agent, to acquire by purchase or by gift or devise such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within or without the State, as it may deem necessary or convenient for the construction or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the authority or in the name of a participating hospital or a participating institution for higher education as its agent.

Sec. 15. 22 MRSA § 2058, as enacted by PL 1971, c. 303, § 1, is amended to read:

§ 2058. Conveyance of title to participating institutions

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for a participating hospital **or a participating institution for higher education**, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating hospital **or participating institution for higher education**, free and clear of all liens and encumbrances, all to the extent that title to such project or projects shall not, as the time, then be vested in such participating hospital **or participating institution for higher education**.

Sec. 16. 22 MRSA § 2060, sub-§ 2, first sentence, as enacted by PL 1971, c. 303, § 1, is amended to read:

Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes or other obligations shall be general obligations of the authority payable from any revenues or moneys of the authority available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds, notes or other obligations pledging any particular revenues or moneys and subject to any agreements with any participating hospital **or participating institution for higher education**.

Sec. 17. 22 MRSA § 2060, sub-§ 4, ¶ A, as enacted by PL 1971, c. 303, § 1, is amended to read:

A. Pledging the full faith and credit of the authority, the full faith and credit of a participating hospital **or a participating institution of higher education**, all or any part of the revenues of a project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

Sec. 18. 22 MRSA § 2061, sub-§§ 1-3, as repealed and replaced by PL 1975, c. 264, are amended to read:

1. Assistance. Such project will enable or assist a hospital or nursing home to fulfill its obligation to provide health care or nursing care facilities **or an institution for higher education to provide educational facilities within the State**;

2. Review. ~~Such~~ **Each** project for a hospital or nursing home has been reviewed and approved by the appropriate regional and state health planning agencies as organized under section 253, or by the agency of the State which serves as the Designated Planning Agency of the State for purposes of section 1122 of the Federal Social Security Act, as amended;

3. **Lease.** Such project will be leased to, or owned by, a hospital or, Nursing home or institution for higher education within the State; and

Sec. 19. 22 MRSA § 2063, last sentence, as enacted by PL 1971, c. 303, § 1, is amended to read:

Nothing in this section contained shall prevent nor be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating hospital or participating institution for higher education to the payment of bonds or notes or issue of notes or bonds authorized pursuant to this chapter.

Sec. 20. 22 MRSA § 2064, last sentence, as amended by PL 1973, c. 713, § 8, is further amended to read:

Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance projects at a particular participating hospital or participating institution for higher education without distinction or priority of one over another, provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a participating hospital or participating institution for higher education and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

Sec. 21. 22 MRSA § 2072, first sentence, as enacted by PL 1971, c. 303, § 1, is amended to read:

The State does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to this chapter, that the State will not limit, alter, restrict or impair the rights hereby vested in the authority and the participating hospitals and the participating institutions for higher education to acquire, construct, reconstruct, maintain and operate any project as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations of such parties until the bonds, notes and such other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority.

Sec. 22. 22 MRSA § 2073, first sentence, as enacted by PL 1971, c. 303, § 1, is amended to read:

Neither this chapter nor anything contained in this chapter is or shall be construed as a restriction or limitation upon any powers which the Maine Health **and Higher Educational** Facilities Authority might otherwise have under any laws of this State, and this chapter is cumulative of any such powers.

Sec. 23. Funding. This Act requires no appropriation from the General Fund. The authority is self-funding.

STATEMENT OF FACT

The purpose of this bill is to expand the authorized activities of the Maine Health Facilities Authority to include the financing of projects at higher education institutions in Maine. The authority has been a highly effective mechanism in securing capital investment in hospital projects, thereby enabling the institutions to receive lower interest rates on borrowed funds.