

# MAINE STATE LEGISLATURE

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(New Title)  
New Draft of H. P. 1302, L. D. 1515  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1671**

H. P. 1563

House of Representatives, May 28, 1981

Reported by Representative Diamond from the Committee on State Government. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Recodify and Amend the Maine Guarantee Authority Laws.**

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

Sec. 1. 10 MRSA cc. 102 to 104, as amended, are repealed.

Sec. 2. 10 MRSA c. 110 is enacted to read:

**CHAPTER 110**

**MAINE GUARANTEE AUTHORITY**

**SUBCHAPTER I**

**GENERAL PROVISIONS**

**§ 1001. Title**

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

**§ 1002. Purpose**

There is a statewide need: To provide enlarged opportunities for gainful employment by the people of Maine and to thus insure the preservation and betterment of the economy of the State and its inhabitants; to provide a more healthy environment through the restoration of 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, and to thus insure the preservation and betterment of the living standards and health of its inhabitants; to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions, including pension and retirement funds, to help finance expansion of industrial, manufacturing, fishing, agricultural and recreational enterprises; and to assist municipalities to provide modern manufacturing buildings and attractive industrial sites to meet the needs of modern industry. For these purposes, the Maine Guarantee Authority is established: To encourage the making of mortgage loans to finance expansion of industrial, manufacturing, fishing, agricultural and recreational enterprises; to issue revenue obligation securities to finance industrial-commercial projects, pollution-control projects recreational projects, energy generating systems, energy distribution systems, multi-level parking facilities and combined projects; to assist municipalities to issue revenue obligation securities for financing industrial-commercial projects, pollution-control projects, water supply systems, recreational projects, multi-level parking facilities, multi-family housing units secured by mortgages and consistent with a municipally approved community development program, energy generating systems, energy distribution systems and combined projects; and to provide financial aid and technical assistance to municipalities for industrial park planning and for the construction of modern industrial buildings.

#### **§ 1003. Definitions**

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

1. Application and service fees. "Application and service fees" means the amount of money authorized to be charged for the costs of application, servicing and technical assistance under subchapters II, III and IV.

2. Authority. "Authority" means the Maine Guarantee Authority.

2-A. Carrying costs. "Carrying costs" means reasonable costs incurred for the maintenance, protection and security of a community industrial building prior to occupancy including, but not limited to, insurance, taxes and interest.

3. Combined project, subchapters III and IV. "Combined project," as used in subchapters III and IV, means any combination of projects eligible under the applicable subchapter.

3-A. Commitment to issue mortgage insurance. "Commitment to issue mortgage insurance" means a commitment to provide insurance for mortgage payments, provided that a project is completed in the manner approved by the authority.

4. Community industrial building. "Community industrial building" means a building of flexible design whose construction or carrying costs, or both, are

financed through this chapter for the purpose of creating new jobs in a municipality resulting from the sale or lease of the building.

5. **Cost of project.** "Cost of project" as used in this chapter means the cost or fair market value of land, buildings, real estate improvements, labor materials, machinery and equipment, including installation, property rights, easements, franchises, financing charges, interest, engineering and legal services, plans specifications, surveys, cost estimates, studies and other expenses as may be necessary or incidental to the development, construction, acquisition, financing and placing in operation of an eligible project. In addition to the foregoing costs, under subchapters III and IV reserves for payment of future debt on bonds of not more than the maximum amount of interest plus annual serial principal or sinking fund payments due in any 12-month period may be included as part of the cost of project.

Any obligation or expenses incurred by the State, a municipality or any private person in connection with any of the foregoing items of cost related to revenue obligation securities issued under subchapters III or IV may be regarded as part of the cost and reimbursed to the State, municipality or person out of the proceeds of the securities issued.

In the case of a reconstruction of an existing building project, cost of construction includes the cost of reconstruction or remodeling and all other costs as defined by this subsection.

6. **Eligible project, subchapter II.** "Eligible project," as used in subchapter II, means:

A. Any lands, buildings, real estate improvements or machinery and equipment, with auxiliary real and personal property, used by an industrial enterprise, including, but not limited to, an industrial enterprise constructing sea-going ships and vessels, or used by a manufacturing, fishing or agricultural enterprise for research and development or for manufacturing, processing, assembling or preparing for market of raw materials or other products. Community industrial buildings, constructed under subchapter V are included. Farm machinery and machinery used on a farm are not included;

B. Any ocean pier or terminal used by an industrial, manufacturing, fishing or agricultural enterprise for manufacturing, processing, assembling, storing, shipping or preparing for market raw materials or other products;

C. Any building, real estate improvement, land or any interest in land, machinery or equipment used or usable in connection with public recreational facilities, consisting of a combination of such improvements as approach roads, parking facilities, marinas, swimming pools, golf courses, campgrounds, picnic areas, hotels, motels, lodges, ski resorts, arenas or similar recreational development for which a comprehensive plan has been prepared;

D. Any fishing vessel documented or to be documented as a fishing vessel under the laws of the United States, any fishing vessel registered or to be

registered under this state's law which is designed to be used for catching, processing or transporting fish or any vessel outfitted for such activity; and

E. Any land designed as an industrial park, provided the municipality in which the park is to be located has agreed to provide utilities, access, site preparation, marketing efforts and financial support deemed appropriate by the authority, 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.

6-A. Eligible project, subchapter III. "Eligible project," as used in subchapter III, means industrial-commercial project, pollution-control project, recreational project, energy generating system, energy distribution system, multi-level parking facilities or combined projects.

6-B. Eligible project, subchapter IV. "Eligible project," as used in subchapter IV, means industrial-commercial project, pollution-control project, water supply system project, recreational project, multi-level parking facilities, multi-family housing units secured by mortgages and consistent with a municipality approved community development program, energy generating system, energy distribution system or combined project.

7. Energy distribution system project. "Energy distribution system project" means any energy distribution system owned, in whole or in part, by a municipality, corporation or firm and which uses biomass, peat, solar, waste, water and related dams, wind, wood, coal or natural gas.

8. Energy generating system project. "Energy generating system projects" means:

A. For a system which does not generate electricity, an energy generating system owned, in whole or in part, by a municipality, corporation or firm, and which system used biomass, peat, solar, waste, water and related dams, wind, wood or coal, or which is an energy conservation project, including a transportation project consistent with the United States Internal Revenue Service guidelines; or

B. For a system which does generate electricity, an energy generating system which uses biomass, peat, solar, waste, water and related dams, wind, wood or coal, and which is owned, in whole or in part, by a public utility or a municipality, corporation or firm which qualifies as a cogenerator or small power producer under Title 35, chapter 172.

9. Federal agency. "Federal agency" includes the United States, the President of the United States and any current or future corporation, department, agency or instrumentality created, designated or established by the United States.

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

11. **Industrial-commercial project.** "Industrial-commercial project" means any building, structure, dam, machinery, equipment or facilities, which may be deemed necessary for manufacturing, processing, assembling, storing, distributing or receiving raw materials or manufactured products. Included are hydroelectric facilities for the production of electricity and those facilities for transportation, communication, fishing, agriculture, research, office space as provided in this section or public accommodation and related facilities, 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 under subchapter III, the municipality under subchapter IV or a user under subchapters III or IV for the construction or operation of such project. Hydroelectric facilities which are part of an industrial-commercial project need not be owned or operated by a public utility or a municipality, corporation or firm which is a cogenerator or small power producer under Title 35, chapter 172.

"Office space" means office space in excess of 30,000 square feet, provided that at least 1/2 of the employees occupying the square footage represent new jobs in the community. Office space facilities shall be an industrial-commercial project only for the purposes of subchapter IV.

Industrial-commercial project includes projects for agricultural production and processing, including, but not limited to, facilities for raising animals, and for fishing production and processing, including, but not limited to, fishing boats.

No approval may be granted under this chapter for any industrial-commercial project whose primary use is the operation of one or more retail stores, unless the application for approval thereof under prior section 864 or under section 1043 or 1063 or Title 30, section 5328 was received by the authority prior to October 1, 1981.

12. **Industrial park.** "Industrial park" means an area of land that is planned and designed for one or more industrial buildings.

13. **Lease.** "Lease" means a contract providing for the use of a project or portions of a project for a term of years for a designated or determinable rent. A lease may include an installment sales contract.

14. **Lessee.** "Lessee" means a tenant under lease and may include an installment purchaser.

15. **Local development corporation.** "Local development corporation" means a nonprofit organization, subchapter II, or any nonprofit organization created by a municipality, subchapter V; incorporated under Title 13, chapter 81, Title 13-B or otherwise chartered by the State; and designed to foster, encourage and assist the settlement or resettlement of industrial, manufacturing, fishing, agricultural, recreational and other business enterprises within the State. A majority vote of the municipal officers, subchapter V, is sufficient to form a local development corporation, notwithstanding Title 13, chapter 81. For the purposes of subchapter II, local development corporation also means any organized municipality.

16. **Maturity date.** "Maturity date" means the date on which the mortgage indebtedness would be ended if periodic payments were made as provided in a mortgage note or revenue obligation security.

17. **Mortgage.** "Mortgage" as used in subchapter II, means a first lien on an eligible project consisting of real estate, personal property or improvements and the underlying obligation secured by the first lien.

18. **Mortgagee.** "Mortgagee" means 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 subchapter III.

19. **Mortgage payments.** "Mortgage payments" means periodic payments called for by the mortgage covering interest and installments of principal.

20. **Mortgagor.** "Mortgagor" means the borrower for an eligible project under a mortgage and his successors and assigns.

21. **Municipality.** "Municipality," as used in subchapter V, means any county, city or town in the State.

22. **Pollution-control project.** "Pollution-control project," as used in subchapter III or IV, 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 under subchapter III, or the municipality under subchapter IV, for the construction or operation of the project.

23. **Reconstruction of existing building project.** "Reconstruction of existing building project" means any building which is at least 50 years old which is remodeled, reconstructed or rehabilitated for commercial use, together with all lands, property, rights, rights-of-way, franchises, easements and interests in lands which may be acquired by the municipality or a user for completion of the project.

24. **Recreational project.** "Recreational project," as used in subchapters III and IV, means any building, real estate improvement, land or interest in land, or equipment used or usable in connection with any type of recreational facilities, including, but not limited to, marinas, swimming pools, golf courses, campgrounds, picnic areas, lodges, ski resorts, arenas and any other recreational facilities which in the judgment of the authority under subchapter III, or in the judgment of the municipal officers under subchapter IV, are necessary or convenient to the exercise of powers conferred by this chapter.

25. **Rent or rental.** "Rent or rental," as used in subchapters III and IV, means payments under a lease.

26. **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 1045, or the revenues as provided in section 1065.

26-A. **Rural area.** For purposes of subchapter V, "rural area" means any area that is not an urban area as defined in this subchapter.

26-B. **Urban area.** For purposes of subchapter V, "urban area" means any municipality with a population greater than 10,000 persons.

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

28. **Water supply system project.** "Water supply system project" means any building, structure, facilities, machinery, pipes, aqueducts, conduits, drains or the equipment which may be deemed necessary to supply water for municipal, domestic and commercial-industrial use together with all lands, property, rights-of-way, franchises, easements and interests in lands which may be acquired by the municipality for the construction or operation of the project.

#### § 1004. Organization

1. **Establishment.** The Maine Guarantee Authority is established as a body corporate and politic and a public 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 essential governmental functions.

2. **Membership.** The authority shall consist of:

A. Eight members-at-large appointed by the Governor, subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature;

B. The Treasurer of State or his deputy, ex officio, as a nonvoting member; and

C. The Director of the State Development Office.

3. **Terms and conditions of office; compensation; expenses; indemnification.** A member of the authority shall:

A. Serve for a period of 4 years;

B. Service for no more than 2 full consecutive terms;

C. Be selected to fill vacancies in the same fashion as an original appointee for a full term;

D. Be subject to removal for cause by impeachment or by the Governor on the address of both branches of the Legislature;



E. Receive \$50 per day for time spent in performance of his duties, except for the Director of the State Development Office and the Treasurer of State or the deputy Treasurer of State, who shall receive no compensation, and the chairman, or the vice-chairman when he is serving as chairman, shall receive \$75 per day;

F. Be reimbursed for actual expenses at the same rate as paid to state employees; and

G. Be indemnified by the authority against expenses actually and necessarily incurred by him in connection with the defense of any action or proceeding in which he is made a party by reason of his being or having been a member of the authority, and against any final judgment rendered against him in such action or proceeding.

4. Conflicts of interest. In addition to the limitations of Title 5, section 18, no member of the authority may participate in any decision on any contract entered into by a municipality or by the authority under this chapter or in any decision involving insurance of payments on a loan to any eligible borrower if the member has any interest, direct or indirect, in any firm, partnership, corporation, water company, association or local development corporation which may be a party to the contract or which may lease, rent, occupy or use a property constructed by a municipality, financed by the authority or secured by a loan under this chapter.

In the absence of actual fraud, no member of the authority may be deemed to have or to have had a direct or indirect pecuniary interest in a question, proceeding or contract for the purposes of subchapter IV merely because he is an officer, employee or stockholder of a private corporation to which the question, proceeding or contract relates, unless the member of the authority is directly or indirectly the owner of at least 10% of the stock of the private corporation.

5. Quorum. Five members of the authority shall constitute a quorum.

6. Authority actions. The affirmative vote of 5 members, present and voting, shall be necessary for any action taken by the authority. No vacancy in the membership of the authority may impair the right of the quorum to exercise all rights and perform all the duties of the authority.

7. Administration. The authority shall elect one of its members as chairman and one as vice-chairman and shall employ a manager, who shall be secretary and treasurer. The manager and, when deemed necessary by the authority, the assistant manager shall be appointed by the authority and their tenure of office shall be at the pleasure of the authority. They shall receive compensation fixed by the authority with the approval of the Governor.

8. Manager; duties. The manager shall be the chief administrative officer for the authority and shall direct and supervise the administrative affairs and technical activities of the authority in accordance with rules and policies set forth by the authority. It shall be the duty of the manager to:

- A. Attend all meetings of the authority, act as its secretary and keep minutes of all its proceedings;**
- B. Approve all accounts for salaries, per diems, allowable expenses of the authority or of any employee or consultant and expenses incidental to the operation of the authority;**
- C. Make an annual report to the authority documenting its actions and make other reports at the request of the authority;**
- D. Maintain a close liaison with the State Development Office and provide assistance to its various divisions to facilitate the planning and financing of eligible projects;**
- E. Make recommendations and reports, in cooperation with the State Development Office, to the authority on the merits of any proposed eligible project, on the status of local development corporations and on meritorious industrial locations; and**
- F. Perform other duties directed by the authority in carrying out the purposes of this chapter.**

#### **§ 1005. General powers**

**The authority may:**

- 1. Bylaws. Adopt bylaws for the regulation of its affairs and the conduct of its business;**
- 2. Seal. Adopt an official seal and alter it at pleasure;**
- 3. Office. Maintain an office at a place or places within the State as it may designate;**
- 4. Sue and be sued; service of process. Sue and be sued in its own name; and plead and be impleaded.**

**Service of process in any action shall be made by service upon the manager of the authority either in hand or by leaving a copy of the process at the office of the manager and by sending a copy to the Attorney General;**

- 5. Employees. Employ, consistent with the Personnel Law, necessary assistants, agents, consultants and other employees, fix their compensation and utilize the services of other governmental agencies;**

**5-A. Agreements for eligible projects. Enter into agreements with prospective mortgagees and mortgagors, for the purpose of planning, designing, constructing, acquiring, altering and financing eligible projects;**

**5-B. Borrow money. Borrow money and issue bonds as provided in this subchapter;**

- 6. Use of property. 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; 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 release or relinquish any right, title claim, lien, interest, easement or demand however acquired, including threat of foreclosure;

7. Lease or rent. Lease or rent any lands, buildings, structures, facilities or equipment from or to private parties to further the purposes of this chapter;

8. Contracts. Enter into any contracts, leases and agreements, all other instruments and arrangements necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter;

9. Agreements, loans, grants; federal agency, State. Enter into agreements with and accept grants and the cooperation of a federal agency or the State or its agencies or governmental subdivisions to further the purposes of this chapter, including, but not limited to, the development, maintenance, operation and financing of any eligible project and do any and all things necessary to avail itself of such aid and cooperation; or accept from a federal agency loans or grants for the planning or financing of any eligible project and enter into agreements with the agency respecting any loan or grant;

10. Agreements; any person. Enter into agreements or other transactions with any person to further 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;

11. Receive and accept aid or contributions. Receive and accept aid or contributions from any source of money, property, labor other things of value, to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the grants and contributions may be made, including, but not limited to, gifts or grants from any federal agency, governmental subdivision or the State and its agencies for any purpose consistent with this chapter;

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

13. Application and service fees. Fix reasonable application and service fees for each project authorized under subchapters II, III and IV and use the collected fees for its corporate purposes;

14. Expenses. Pay for its administrative, legal, actuarial and other services, charging expenses to the appropriate fund;

15. **Invest funds.** Except as otherwise provided in this chapter, invest any funds not needed for immediate use, including any funds held in reserve, in property or securities in which fiduciaries in the State may legally invest funds;

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

17. **Other powers.** Do any acts and things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter; and

17-A. **Establish rules.** Establish rules in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375 as it deems necessary or convenient to carry out the purposes of this chapter.

**§ 1006. Investment plan; reports**

The authority shall:

1. **Investment plan.** On or before each January 1st, with reasonable assistance from the State Development Office and the State Planning Office, prepare an investment plan for the coming year. The plan shall be submitted to the Governor and the State Planning Office and shall be available to the public; and

2. **Annual report; records.** Keep proper records of accounts and make an annual report.

**§ 1007. Records confidential**

Except as provided in sections 1043 and 1063, no member, officer, agent or employee of the authority may knowingly divulge or disclose any information submitted to, or developed by, the authority in connection with an application for mortgage insurance, revenue obligation securities or financing of any project under this chapter, except to the extent that such disclosure is deemed by the authority to be necessary or convenient for evaluation of any application submitted to the authority or for the offering or sale of revenue obligation securities under subchapter III. This rule of confidentiality shall also apply to any officer, agent or employee of the Office of Energy Resources who is concerned with any project proposal under this chapter.

Nothing in this section may prohibit the disclosure of information from records or files of the authority or the production of records or files of the authority to a special interim legislative investigating committee, or its agent, upon written demand from the chairman of the committee or any member of the committee designated by him. The information, records or files may be used only for the lawful purposes of the committee and in any actions arising out of investigations conducted by it.

**§ 1008. Liberal construction**

This chapter, being necessary for the welfare of the State and its inhabitants,

shall be liberally construed. In the event of any conflict between this chapter and any other law, this chapter shall prevail, but the power and authority granted is deemed to be in addition to and not in derogation of power and authority granted by any other law.

**§ 1009. Governmental function**

The Maine Guarantee Authority shall administer and exercise the authority granted to it by this chapter. The carrying out of its powers and duties is deemed the performance of an essential governmental function.

**SUBCHAPTER II**

**MORTGAGE INSURANCE PROGRAM**

**§ 1021. Credit of State pledged**

The Maine Guarantee Authority may insure the payment of mortgage loans, secured by eligible projects, and to this end the faith and credit of the State is pledged, consistent with the terms and limitations of the Constitution of Maine, Article IX, Section 14-A and such further limitations as may be provided by statute.

**§ 1022. Powers of the authority under this program**

The authority may:

1. Issue insurance. Issue insurance with respect to the financing of any eligible project under this subchapter;
2. Management. Recommend business practices to be followed by an insured to avoid default; and
3. Examine books. Examine the books and records of any mortgagor and its lessee, tenant or assignee during the duration of the mortgage.

**§ 1023. Creation of Mortgage Insurance Fund**

1. Amount of fund. A Mortgage Insurance Fund is established in the initial amount of \$550,000 and shall be used by the authority as a nonlapsing, revolving fund for carrying out the purposes of this subchapter.
2. Items charged or credited. The authority may charge or credit to the fund:
  - A. All expense of the authority, including interest and principal payments required by loan defaults, all operating expenses and all income of the authority, including mortgage insurance premiums and sale, disposal, lease or rental proceeds;
  - B. All reasonable application and service fees for applicants under this subchapter; and
  - C. Any payments required in advance in anticipation of expenses, investigation and development to be incurred in connection with a proposed

project. Upon the issuance of mortgage insurance for any such project or projects, any expenses by the authority may be reimbursed to the authority by the mortgagee, mortgagor or lessee, as applicable, from the proceeds of the mortgage.

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

**§ 1024. Additions to fund**

1. Request for funds. If from time to time additional moneys are required to meet the obligations of the Mortgage Insurance Fund, the authority shall in writing request the Governor to provide the necessary moneys. The Governor shall transfer to the fund sufficient moneys from the State Contingent Account or from the proceeds of bonds to be issued as provided in subsection 2.

2. Issuance of bonds. In the event a request for funds is made under subsection 1 and there are insufficient funds in the State Contingent Account, bonds shall be issued in the following manner:

A. By the Treasurer of State on orders from the Governor;

B. In the amount required, but not exceeding in the aggregate at any one time outstanding the amount set forth in the Constitution, Article IX, Section 14-A, as it may be from time to time amended, except that bonds issued under the Constitution, Article IX, Section 14-A under this subchapter shall not exceed in the aggregate at any one time outstanding the amount of \$50,000,000;

C. To mature serially or to run for periods as the Governor may determine not to exceed 20 years;

D. At rates of interest and on terms and conditions approved by the Governor; and

E. As a pledge of the full faith and credit of the State.

**§ 1025. Safeguarding the Mortgage Insurance Fund**

When, in the opinion of the authority, the action is necessary to safeguard the Mortgage Insurance Fund and to maintain income from eligible projects, the authority may:

1. Acquisition and disposal of property. Take assignments of insured mortgages and other forms of security and take title by foreclosure or conveyance to any eligible project when an insured mortgage loan thereon is in default. The authority may sell, or on a temporary basis lease or rent, the eligible project for a use other than that specified in section 1003, subsection 6, paragraphs A to E. The Maine Guarantee Authority shall be liable to a municipality for property taxes on any unimproved real property owned by it in the municipality due on or after April 1st at least one year after acquisition of the property by the authority;

2. **Mortgagor rent or lease.** Permit a mortgagor to lease or rent an insured project, temporarily and under conditions set by the authority, to a responsible lessee or tenant for a use other than that specified in section 1003, subsection 6, paragraphs A to E, when that mortgagor does not meet mortgage payments insured by this authority by reason of default under the terms of the lease of its eligible project; and

3. **Extend time.** When a loan is in default, extend the time of payment of the loan beyond original maturity, extend the insurance accordingly and waive mortgage insurance premiums.

**§ 1026. Criteria for projects**

The authority may require from the applicant before issuance of any commitment to issue mortgage insurance:

1. **Subchapter purposes.** Evidence that the project will serve the purposes of the subchapter in increasing or retaining income and employment in the State;

2. **Achieve project goals.** Evidence, through submission of a comprehensive plan, of the project's capability of achieving its revenue and employment goals;

3. **Economic feasibility.** Evidence of the economic feasibility of this project;

4. **Financial capability.** Evidence of financial capability, including effective commitments for equity, interim financing and final mortgage financing for the project;

5. **Planning and management capability.** Evidence of management and planning capability; and

6. **Advisability.** A finding as to the expediency and advisability of any industrial, agricultural or recreational real estate project from the planning board of the municipality in which the project is to be located, or if there is no planning board, from either the municipal officers or the regional planning board of which the municipality is a member.

In any event, no mortgage may be insured by the authority until the mortgagee, mortgagor or any proposed lessee or assignee, as appropriate, has secured from the Department of Environmental Protection a certificate stating that all applicable licenses for the project for which mortgage insurance is sought have been obtained. This certificate requirement shall apply to any subsequent enlargement of or addition to that project.

**§ 1027. Insurance of mortgages**

The authority may insure up to 95% of the mortgage payments required by a first mortgage on an eligible project provided that the uninsured portion is material in relation to the uninsured loans of the lender with respect to the project and provided further that the aggregate of the insured portions of all outstanding mortgages insured by the authority shall not exceed the amount of authorized and unissued bonds for this purpose pursuant to section 1024 and the Constitution of

Maine, Article IX, Section 14-A. The same proportion of insurance by the authority and participation by the mortgagee shall be maintained until the mortgage is fully paid. In the event of a default of a mortgage loan whose mortgage payments are insured under this subchapter, the authority shall not pay interest during the period of default at a rate in excess of the Federal Housing Authority's insured rate plus 1/2 of 1% or the mortgage note rate in effect at the time of default, whichever is less. With respect to mortgage insurance agreements issued for land designed as an industrial park, the guarantees shall not exceed 95% of the first mortgage loan nor 100% of the market value of the undeveloped land.

In any event, no mortgage may be insured by the authority until the mortgagee, mortgagor or any proposed lessee or assignee, as appropriate, has secured from the Department of Environmental Protection a certificate stating that all applicable licenses for the project for which mortgage insurance is sought have been obtained. This certificate requirement shall apply to any subsequent enlargement of or addition to that project.

To be eligible for insurance under this subchapter, a mortgage shall:

1. Principal obligation; limits. Involve a principal obligation, including initial service charges and appraisals, inspection and other fees approved by the authority, which shall not exceed:

A. For industrial, manufacturing, fishing or agricultural projects, \$2,500,000 for any one project, and not exceed:

- (1) For real estate related projects, 90% of the cost of the project;
- (2) For real estate projects in the form of documented fishing vessels or fishing vessels registered under state law, 80% of the cost of the project; or
- (3) For machinery and equipment, 75% of the cost of this project; and

B. For recreational projects, \$2,500,000 for any one project and 75% of the cost of the project at the time the mortgage is executed.

The principal obligation limit of a recreational project loan shall not be less than \$100,000 unless that minimum prevents the authority from increasing an existing guaranteed loan to an amount less than \$100,000;

2. Mortgagee. Be one which is to be made and held by a mortgagee approved by the authority as responsible and able to service the mortgage properly;

3. Maturity; limit. Have a maturity satisfactory to the authority, but in no case later than 25 years from the date of the insurance on industrial, agricultural and recreational real estate mortgages; 20 years from the date of insurance for documented fishing vessels or fishing vessels registered under state law; 10 years from the date of insurance on securities for industrial and agricultural machinery and equipment; and 25 years from the date of the insurance on securities for recreational machinery and equipment;



4. **Amortization.** Contain complete amortization provisions satisfactory to the authority, requiring periodic payments by the mortgagor which shall include principal and interest payments, cost of local property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and mortgage insurance premiums required under section 1026;

5. **Other terms.** Contain terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional liens and such additional terms and conditions as the authority may prescribe.

**§ 1028. Mortgage insurance premiums**

The authority may fix mortgage insurance premiums for the insurance of mortgage payments under this subchapter. The insurance premiums shall not be less than  $\frac{1}{2}$  of 1% per year nor more than 2% per year of the outstanding principal obligation at the beginning of each year. The authority shall prescribe the manner in which the premiums shall be payable.

**§ 1029. Insurance of subchapter III loans**

1. **Eligible for insurance.** All payments required under a mortgage or other agreement for 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 those securities as provided in subchapter III shall be eligible for insurance under this subchapter provided it meets the definition of eligible projects set forth in section 1003, subsection 6.

The authority may insure any eligible mortgage or other agreement by designating the 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 the mortgage or other agreement.

2. **Default.** In the case of default in payment with respect to any insured mortgage or other agreement issued with respect to subchapter III loans, the authority shall:

A. Immediately, and at all times during the continuance of the default, charge the payment to the Mortgage Insurance Fund;

B. Apply the charged amount to taxes or insurance on the eligible project or to the payment of the mortgage loan secured by the mortgage or other agreement;

C. Make the payments from any current revenues or surplus or pledge moneys in the Mortgage Insurance Fund to the payments;

D. Take all reasonable steps to enforce the payments of amounts in default; and

E. Exercise all available remedies necessary to enforce the mortgage or other agreement and protect the security of the authority's obligations.

The trustee for any bond or note issued in anticipation of the bond, or if there is no trustee, the holder of any bond or note shall have the right to bring suit against the authority for payment.

**§ 1030. Contract of insurance**

Any contract of insurance executed by the authority under this chapter shall be conclusive evidence of the eligibility of the mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of an approved mortgagee except for fraud or misrepresentation on the part of the approved mortgagee.

**§ 1031. Mortgages eligible for investment**

Mortgages insured under this subchapter are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, pension or retirement funds.

**SUBCHAPTER III**

**REVENUE OBLIGATION SECURITIES PROGRAM**

**§ 1041. General powers**

The Maine Guarantee Authority may:

1. Kinds of projects. Acquire, construct, reconstruct, maintain, renew and replace the following kinds of projects within the State, whether or not now in existence, or assist a user to acquire, construct, reconstruct, renew and replace these projects and facilities:

- A. Energy distribution systems;
- B. Energy generating systems;
- C. Industrial-commercial projects;
- D. Multi-level parking facilities;
- E. Pollution-control projects;
- F. Recreational projects; and
- G. Combined projects.

2. Securities for projects. Issue revenue obligation securities to pay the cost of acquisition, construction, reconstruction, renewal or replacement of the projects in subsection 1. Any single securities issued 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;

3. Acquire municipal securities. Issue revenue obligation securities to

acquire one or more issues of revenue obligation securities issued by municipalities under subchapter IV. Any single issue of securities 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;

4. Refunding securities. Issue revenue refunding obligation securities as provided to refund any outstanding revenue obligation securities issued under this subchapter;

5. Serve as broker or agent. Serve as a broker, agent or other financial intermediary for the secondary marketing of obligations issued or incurred in connection with the financing of eligible projects and for the encouragement of the flow of private funds for capital investment;

6. Facilities. Plan, carry out, acquire, lease and operate facilities and provide for the construction, reconstruction, improvement, alteration or repair of any facility or any part;

7. Acquisition and disposal of property. Acquire or enable a user to acquire upon reasonable terms from subchapter III funds, the 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 and deemed necessary or convenient for the construction or operation of any subsection 1 project, and dispose of them;

8. Contracts. Make and enter into all financial documents and other contracts and trust agreements securing revenue obligation securities issued under this subchapter, provided all expenses shall be payable solely from funds made available under this subchapter;

9. Consent to modification of contracts, lease or agreement. To the extent not forbidden under its contract with the holders of bonds, consent to any modification of any contract, lease or agreement of any kind to which the authority is a party;

10. Employment of specialists. Employ consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other necessary employees and agents and fix their compensation, provided all expenses shall be payable solely from funds made available under this subchapter;

11. Government contracts. Enter into contracts with municipalities, the State or a federal agency relating to any eligible subsection 1 project. In the case of contracts with federal agencies involving pollution-control facilities, the consent of the Board of Environmental Protection shall first be obtained, notwithstanding Title 38, section 362;

12. Government aid. Accept loans or grants for the planning, construction or acquisition of any eligible subsection 1 project from a municipality, an authorized agency of the State or a federal agency and enter into agreements with the agency

respecting the loans or grants. In the case of loans, grants or other aid from a federal agency involving pollution-control facilities, the consent of the Board of Environmental Protection shall first be obtained, notwithstanding Title 38, section 362;

13. Private aid. 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 these loans, grants and contributions may be made;

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

15. Application of Title 32, chapter 13. The provisions of Title 32, chapter 13, relating to dealers in securities shall not apply to revenue obligations securities issued, reissued or refunded under this subchapter.

#### § 1042. Assistance to applicants

The authority may assist applicants, who may be persons, firms and corporations, private or public, except as provided in this chapter, in the financing of projects by issuing revenue obligation securities, drafting financing documents, trust agreements and other contracts, arranging the financing and negotiating for the sale of the securities.

#### § 1043. Certificates of approval

1. Issue. 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. Upon receipt of any such application the authority shall publish once in the state newspaper and in a newspaper of general circulation in the area of the State in which the project is to be located, notice of the receipt of such application and of the date on which the authority will meet to consider the application. Such notice shall be published at least 7 days prior to the date scheduled for such meeting, shall set forth the name of the applicant, describe generally the project and set forth the time and place of the meeting at which the application will be considered. In addition to the notice required to be published by the authority, the applicant shall make all reasonable efforts to notify any and all known competitors of the time and place of the meeting at which the application will be considered. The certificate of approval shall identify and describe each project as to location, purpose and the amount of revenue obligation securities to be issued. If a single issue of revenue obligation securities is to provide for the costs of more than one project, the certificate of approval shall identify the aggregate amount of revenue obligation securities to be issued.

2. Criteria. Before issuing a certificate of approval for any project, the authority shall determine that:

**A. The project will make a significant contribution to the economic growth of, the control of pollution in or the betterment of the health of the inhabitants of the State;**

**B. The project will not result in a substantial detriment to existing industry in the State. For purposes of this determination, the authority shall consider, pursuant to rules adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, such factors as it deems necessary to measure and evaluate the effect of the project on existing business, provided:**

**(1) That no project will be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing industry; and**

**(2) That any adverse economic effect of the project on existing enterprises is outweighed by the contribution which the project will make to the economic growth of, the control of pollution in or the betterment of the health of the inhabitants of the State.**

**The applicant shall have the burden of demonstrating that the project will not result in a substantial detriment to existing industry in accordance with the requirements of the subsection, including rules adopted in accordance therewith, except in cases where no interested parties object to the project, in which event the requirements of subparagraph (2) shall be deemed satisfied. Interested parties shall be given an opportunity, with or without a hearing at the discretion of the authority, to present their objections to the project on grounds that the project will result in a substantial detriment to existing industry. If any such party presents such objections with reasonable specificity and persuasiveness, the authority may divulge whatever information concerning the project which it deems necessary for a fair presentation by the objecting party and evaluation of such objections. The applicant shall then have the burden of demonstrating by a preponderance of the evidence that the project will not result in substantial detriment to existing industry. If the authority finds that the applicant has failed to meet its burden as specified in this subsection, the application shall be denied;**

**C. Adequate provision is being made to meet any increased demand upon public facilities that might result from the 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. 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. Any subsequent enlargement or addition to the project for which approval is sought from the authority shall also require certification by the Department of Environmental Protection;**

**F. In the case of projects including pollution-control facilities:**

- (1) The proposed users of the facilities make a significant contribution to the economy of the State;
- (2) A substantial public benefit will result from including the facilities in the project; and
- (3) It is unlikely that public facilities meeting the needs of the users and securing comparable public benefit will become available in the reasonably foreseeable future; and

**G. In the case of an energy generating system, an energy distribution system or an industrial-commercial project which includes hydroelectric facilities deemed necessary for the production of electricity:**

- (1) The Public Utilities Commission has certified that all required licenses have been issued or that none are required; and
- (2) The Director of Energy Resources has reviewed and commented upon the project proposal. The Director of Energy Resources shall make his comments within 30 days after receipt of a notification and copy of the project proposal from the authority. The authority shall take the comments into consideration in its consideration of the project.

Any municipality, firm or corporation producing electricity by means of projects in paragraph G or by means of a pollution-control project, recreational project, multi-level parking facility or combined project may, without the approval of and regulation by the Public Utilities Commission, generate and distribute electricity solely for its own use or the use of its tenant, but may not sell electricity to other than an electric public utility corporation or cooperative authorized to make, generate, sell and distribute electricity.

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

**4. Exception.** This section and section 1044, subsection 2, shall not apply in the case of 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 under subchapter IV.

#### **§ 1044. Issuance of revenue obligation securities**

**1. Notice of intent to issue bonds; actions to contest validity.** The authority may provide by resolution, at one time or from time to time, for the issuance of revenue obligations securities of the authority for the purposes authorized in this subchapter. No revenue obligation securities of the authority may be authorized and issued until:

- A.** A certificate of approval, as provided in section 1043, is received;
- B.** A resolution is adopted by vote of the authority; and

**C. A notice of the intent of the authority to issue the securities is published at least once in the state newspaper and in a newspaper of general circulation in the municipality in which the project is to be located:**

- (1) No later than 14 full days after the date on which the resolution is adopted;**
- (2) Describing the general purpose or purposes for which the securities are to be issued;**
- (3) Stating the maximum principal amount of the proposed securities;**
- (4) Setting forth or summarizing the text of the certificate of approval; and**
- (5) Including a statement as to the time within which any action or proceeding to set aside the resolution or otherwise 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 a resolution or certificate of approval or to obtain relief upon the grounds that the resolution or certificate of approval was improperly adopted, was adopted for unauthorized purposes, or is otherwise invalid for any reason, must be started within 30 days after the date of the publication. After the expiration of the period of limitation, no right of action or defense founded upon the invalidity of the resolution or approval or any provision shall be started or asserted nor shall the validity of the resolution or approval or provision be open to question in any court upon any grounds.**

**2. Treasurer of State as agent. The Treasurer of State shall at the direction of the authority, act as the authority's agent for the sale and delivery of revenue obligation securities and anticipatory notes. The Treasurer of State shall assist the authority in the preparation, issuance, negotiation and sale of the securities and notes and provide reasonable advice and management assistance. The authority may employ further counsel or assistants or act in its own behalf, provided that the sale and delivery of revenue obligation securities and anticipatory notes shall be carried out at the authority's direction with and through the Treasurer of State.**

**3. Resolution. After the authority has issued a certificate of approval, it may provide by resolution, at one time or from time to time, for the issuance and sale of revenue obligation securities to pay for the cost of the approved project or projects. Five members of the authority shall vote for adoption of the resolution. The resolution shall describe the general purpose or purposes for which the securities are to be issued and state the maximum principal amount of the proposed issue.**

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

5. **Maturity; interest.** The securities of each issue of revenue obligation securities shall be dated, shall mature at a time or times not exceeding 30 years from their date and shall bear interest at a rate or rates determined by the authority. At the option of the authority, the securities may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to their issuance.

6. **Form.** The authority shall determine the form of the securities, including any attached interest coupons, the manner of execution of the securities, the denomination or denominations of the securities and the place or places for 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 the official or officials authorized in the resolution, but at least one signature on each security shall be a manual signature. Any attached coupons shall be executed with the facsimile signature of the designated official or officials. Signatures and facsimiles of signatures on securities and coupons will be valid for all purposes even if the designated official ceases to hold office before delivery of the securities. The securities may be issued in coupon or registered form or both as the authority may determine. 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.

7. **Sale.** The authority may sell the securities at a public or private sale, in a manner and at a price it determines is in the best interest of the authority. The authority shall not sell the securities to any firm, partnership, corporation or association, including an affiliate or subsidiary, which is a party to any contract pertaining to the financed project or which is to rent, purchase, lease or otherwise occupy premises constituting part of the project. The authority may sell its securities to a seller of the project if the project is to be used and operated by a 3rd party.

8. **Proceeds.** The proceeds of each issue shall be used solely for the authorized purposes and shall be disbursed as provided in the authorizing resolution or in the securing trust agreement. If the proceeds are less than the cost of the securities, by error in the estimate or otherwise, additional securities may be issued in a like manner to provide the amount of the deficit and, unless otherwise provided in the authorizing resolution or the securing trust agreement, the additional securities are 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 authority may place limits or restrictions on the issuance of additional revenue obligation securities through the authorizing resolution or any securing trust agreement. The authority may provide for the replacement of mutilated, destroyed or lost securities. Revenue obligation securities may be issued under this subchapter 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 subchapter. Notwithstanding any of the other provisions of this subchapter, or of any recitals in any securities issued under this subchapter, all such securities are deemed to be negotiable instruments issued under the laws of this State.

9. Credit not pledged. Except as provided in this subsection, securities issued under this subchapter 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 securities shall contain on their face a statement to that effect. The issuance of securities under this subchapter 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 or to make any appropriation for their payment. Under subchapter II, the Maine Guarantee Authority may 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, Section 14-A and such further limitations, if any, as may be provided by statute.

10. Anticipatory borrowing. In anticipation of the sale of securities under this subchapter, the authority may issue 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. The period of such anticipatory borrowing shall not exceed 3 years and the time within which the securities are to become due shall not be extended by the anticipatory borrowing beyond the time fixed in the authorizing resolution, or, if no term is specified, beyond the term permitted by law.

#### § 1045. Trust agreements; financial documents; resolutions

1. Trust agreements. At the discretion of the authority, any revenue obligation securities issued under this subchapter may be secured by a trust agreement between the authority and any corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement may:

- A. Pledge or assign the revenues of the project or projects;
- B. Set forth the rights and remedies of the security holders and the trustees and contain any reasonable and legal provisions for protecting the rights and remedies of the security holder;
- C. Restrict the individual right of action by security holders; and
- D. Include covenants setting forth the duties of the authority and user in relation to:

- (1) Acquisition of property;

- (2) Construction, reconstruction, renewal, replacement and insurance of the project;
- (3) Rents to be charged or other payments to be made for use;
- (4) Payment of the project; and
- (5) 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 indemnifying bonds or to pledge the securities as may be required by the authority.

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other financial document may mortgage or assign the mortgage of the project or any part and create a lien upon any or all of the real or personal property of the project. In the event of a default with respect to the revenue obligation securities, the trustee or mortgagee may be authorized by the trust agreement or financial document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or from time to time to lease the property. A judgment for possession may be without condition and a sale or lease shall not be subject to any right to redeem the property. When the obligations secured by the mortgage are satisfied, including all applicable fees and expenses, any surplus proceeds from the operation, sale or lease of the project shall be paid to and any mortgaged property shall revert or be returned to the mortgagor of the project or to those claiming under the mortgagor. A user of a project may be entitled to the rights of the mortgagor to the extent provided in an applicable financial document.

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

- A. Pledging any specified revenues or assets of the authority to secure the payment of the notes or bonds or of any issue of bonds or notes, subject to agreements with existing holders of notes or bonds;
- B. Pledging all or any part of the unencumbered revenues or assets of the authority to secure the payment of the notes or bonds or any issue of notes or bonds, subject to agreements with existing holders of notes or bonds;
- C. Setting aside of, regulating and disposing of reserves or sinking funds;
- D. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue of notes or bonds;
- E. Limitations on the issuance of additional notes or bonds;

**F. The terms upon which additional notes or bonds may be issued and secured and the refunding of outstanding or other notes or bonds;**

**G. The procedure, if any, by which the terms of any contract with holders of notes or bonds may be amended or abrogated, including the amount of notes or bonds the holders of which must consent and the manner in which the consent may be given;**

**H. Limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;**

**I. 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 under this subchapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;**

**J. 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 note 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 the rights and remedies shall not be inconsistent with the general laws of the State and other provisions of this subchapter; and**

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

**4. Authorizing resolutions; other provisions. At the discretion of the authority, the authorizing resolution may:**

**A. Pledge or assign the revenues of the project or projects;**

**B. Set forth the rights and remedies of the security holders and the trustees and contain any reasonable and legal provisions for protecting the rights and remedies of the security holder;**

**C. Restrict the individual right of action by security holders; and**

**D. Include covenants setting forth the duties of the authority and user in relation to:**

**(1) Acquisition of property;**

**(2) Construction, reconstruction, renewal, replacement and insurance of the project;**

**(3) Rents to be charged or other payments to be made for use;**

**(4) Payment of the project; and**

**(5) 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 indemnifying bonds or to pledge the securities as may be required by the authority.

5. Expenses; pledges. All expenses incurred in carrying out a 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 subchapter shall be valid and binding from the time when the pledge is made. All the revenues pledged and later received by the authority shall immediately be subject to the lien of the pledges without any physical delivery or further action under the Uniform Commercial Code or otherwise. The lien of the pledges shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, against the authority irrespective of whether the parties have notice thereof.

6. Other provisions. A trust agreement, financial document or authorizing resolution may contain other provisions the authority deems reasonable and proper for the security of the security holders.

#### § 1046. Rentals and revenues

1. Provisions. Before issuing revenue obligation securities for any project, the authority shall provide financial documents or other contracts to assure that the authority, in its judgment, will at all times have revenues sufficient:

A. To pay the principal of and the interest of the securities as they become due and payable and to create and maintain reserves for that purpose; and

B. To pay the cost of maintaining, repairing and operating the project unless provision is made in the financial document or other contract for the maintenance, repair and operation.

2. Sinking fund. All project rentals and other revenues, except those required in subsection 1, paragraph B or to provide reserves for this maintenance, repair and operation, shall be set aside at regular intervals, as provided in the resolution, financial document or trust agreement, and deposited to the credit of a sinking fund charged with payment of the interest and principal of the securities as they 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 the sinking fund shall be subject to regulations prescribed in the authorizing resolution, the trust agreement or applicable financial document. Except as may otherwise be provided in the resolution, financial document or trust agreement, the sinking fund shall be a fund for the benefit of all securities issued for the project or projects without distinction or priority of one over another.

3. Trust funds. All moneys received under this subchapter shall be deemed trust funds, to be held and applied solely as provided in this subchapter. Any officer to whom, or any bank, trust company or other fiscal agent or trustee to which the moneys shall be paid shall act as trustees of the moneys and shall hold

and apply them for the purposes of this subchapter, subject to regulations provided in this subchapter, authorizing resolution or trust agreement.

**§ 1047. Remedies**

Any holder of revenue obligation securities or attached coupons issued under this subchapter and the trustee under any trust agreement, except as restricted by the authorizing resolution, the 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 this State or granted under this subchapter, the resolution, the trust agreement or financial document, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this subchapter, the resolution, the trust agreement or the financial document to be performed by the authority, including the collecting of rates, fees and charges for the use of the project. Any suit, action or proceeding shall be brought for the benefit of all holders of the securities and coupons.

**§ 1048. Revenue refunding securities**

The authority may provide by resolution for the issuance of revenue refunding securities of the authority to refund any outstanding revenue securities issued under this subchapter, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption, and, if deemed advisable by the authority, to construct or enable the construction of improvements, extensions, enlargements or additions of the original project. The authority may provide by resolution for the issuance of revenue obligation securities of the authority for the combined purpose of refunding any outstanding revenue securities or revenue refunding securities issued under this subchapter, including the payment of redemption premiums and interest accrued or to accrue 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 or any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the authority shall be governed by the provisions of this subchapter insofar as they are applicable.

**§ 1049. Tax exemption**

Revenue obligation securities issued under this subchapter shall constitute a proper public purpose and the securities, their transfer and the income from them, including any profits made on their sale, shall at all times be exempt from taxation within the State.

**§ 1050. Leasehold or other interests of lessee taxable**

The interest of the user of any project is subject to taxation in the manner provided for similar interest in Title 36, section 551, subject to Title 36, sections 655 and 656.

**§ 1051. Bonds as legal investments**

The notes or bonds of the authority and any loan or extension of credit insured under this subchapter, 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 who are now or may later 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 insured under this subchapter are also 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 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 later be authorized by law.

#### **SUBCHAPTER IV**

#### **MUNICIPAL SECURITIES APPROVAL PROGRAM**

##### **§ 1061. Powers of the municipality under this program**

A municipality may:

1. Kinds of projects. Acquire, construct, reconstruct, renew and replace or provide financing for, the following kinds of projects within the corporate limits of the municipality:

- A. Industrial-commercial projects;
- B. Pollution-control projects;
- C. Water supply systems;
- D. Recreational projects;
- E. Multi-level parking facilities;
- F. Multi-family housing units secured by mortgages and consistent with a municipally-approved community development program;
- G. Energy generating systems;
- H. Energy distribution systems;
- I. Reconstruction of existing building projects; and
- J. Combined projects.

2. Securities. Issue revenue obligation securities of the municipality to pay the costs of, or provide financing for, projects enumerated in subsection 1;

3. **Refunding securities.** Issue revenue refunding obligation securities of the municipality to refund any outstanding revenue obligation securities under this subchapter;

4. **Acquisition and disposal of property.** Acquire or enable a user to acquire upon reasonable terms from subchapter IV funds the lands, structures, property, rights, rights-of-way, franchises, easements and other interest in lands, including lands lying under water and riparian rights, which are located within the State and deemed necessary or convenient for the construction or operation of any subsection 1 project and to dispose of them;

5. **Contracts.** Make and enter into all financing documents including security agreements, mortgages, contracts and trust agreements securing revenue obligation securities issued under this subchapter, provided all expenses are payable solely from funds made available under this subchapter;

6. **Employment of specialists.** Employ consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other necessary employees and agents and fix their compensation, provided all expenses are payable solely from funds made available under this subchapter;

7. **Government contracts.** Enter into contracts with other municipalities, the State or a federal agency relating to any subsection 1 project. In the case of contracts with federal agencies involving pollution-control facilities, the consent of the Board of Environmental Protection shall first be obtained, notwithstanding Title 38, section 362;

8. **Government aid.** Accept loans or grants for the planning, construction or acquisition of any subsection 1 project from an authorized agency of the State or a federal agency and enter into agreements with the agency respecting the loans or grants. In the case of loans, grants or other aid from a federal agency involving pollution-control facilities, the consent of the Board of Environmental Protection shall first be obtained, notwithstanding Title 38, section 362;

9. **General powers.** Do all acts and things necessary or convenient to carry out the powers expressly granted in this subchapter. Except as otherwise provided in this subchapter, the powers of a municipality may be exercised by or under the direction of its municipal officers;

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

11. **Application of Title 32, chapter 13.** The provisions of Title 32, chapter 13, relating to dealers in securities, shall not apply to revenue obligation securities issued, reissued or refunded under this subchapter.

**§ 1062. Assistance to municipalities**

The Maine Guarantee Authority may assist municipalities in negotiations with

prospects, drafting of contracts, arranging for financing and negotiations for sale of securities to be issued under this subchapter.

**§ 1063. Certificates of approval**

1. **Issue.** The authority may approve or disapprove projects and issue certificates of approval upon application by municipalities proposing to issue revenue obligation securities under this subchapter. Upon receipt of any such municipal application, the authority shall publish, once in the state newspaper and in a newspaper of general circulation in the municipality in which the project is to be located, notice of the receipt of such application and of the date on which the Maine Guarantee Authority will meet to consider the application. The notice shall be published at least 14 days prior to the date scheduled for the meeting, shall set forth the name of the municipality and the proposed tenant of the project, describe generally the project and set forth the time and place of the meeting at which the application will be considered. In addition to the notice required to be published by the authority, the applicant shall make all reasonable efforts to notify any and all known competitors of the time and place of the meeting at which the application will be considered.

2. **Criteria.** Before issuing a certificate of approval for any project, the authority shall determine that:

A. The project will make a significant contribution to the economic growth of, the control of pollution in or the betterment of the health of the inhabitants of the State;

B. The project will not result in a substantial detriment to existing industry in the State. For purposes of this determination, the authority shall consider, pursuant to rules adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, such factors as it deems necessary to measure and evaluate the effect of the project on existing business, provided:

(1) That no project will be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing industry; and

(2) That any adverse economic effect of the project on existing enterprises is outweighed by the contribution which the project will make to the economic growth of, the control of pollution in or the betterment of the health of the inhabitants of the State.

The applicant shall have the burden of demonstrating that the project will not result in a substantial detriment to existing industry in accordance with the requirements of the subsection, including rules adopted in accordance therewith, except in cases where no interested parties object to the project, in which event the requirements of subparagraph (2) shall be deemed satisfied. Interested parties shall be given an opportunity, with or without a hearing at the discretion of the authority, to present their objections to the project on grounds that the project will result in a substantial detriment to existing industry. If any



such party presents such objections with reasonable specificity and persuasiveness, the authority may divulge whatever information concerning the project which it deems necessary for a fair presentation by the objecting party and evaluation of such objections. The applicant shall then have the burden of demonstrating by a preponderance of the evidence that the project will not result in substantial detriment to existing industry. If the authority finds that the applicant has failed to meet its burden as specified in this subsection, the application shall be denied;

C. Adequate provision is being made to meet any increased demand upon public facilities that might result from the project;

D. In cases where it is proposed to relocate an energy generating system, energy distribution system, industrial-commercial project, water supply system or recreational facility existing in the State, there is a clear economic justification for the relocation;

E. 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. Any subsequent enlargement or addition to the project for which approval is sought from the authority shall also require certification by the department;

F. In the case of projects including pollution-control facilities:

- (1) The proposed users of the facilities make a significant contribution to the economy of the State;
- (2) A substantial public benefit will result from including the facilities in the project; and
- (3) It is unlikely that public facilities meeting the needs of the users and securing comparable public benefit will become available in the reasonable foreseeable future;

G. In the case of an existing building project:

- (1) That the project will result in the reconstruction, remodeling or rehabilitation of any existing building which is at least 50 years old to be used for commercial purposes such as retailing, business and professional office space;
- (2) That the building is located in an existing commercial area of a municipality in which a substantial public benefit will result from reconstructing, remodeling or rehabilitating the building rather than removing the building for new construction, or to allow its continued deterioration; and
- (3) That the reconstruction, remodeling or rehabilitation was completed after January 1, 1981;

**H. In the case of water supply system projects:**

- (1) That the project will result in substantial public benefits;
- (2) That the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35, chapter 9; and
- (3) The Public Utilities Commission and the Department of Human Services have certified that all permits, licenses and approvals required from those departments have been issued or granted or that none are required, and until a location permit from the applicable licensing authority has been issued or it is determined that none is required. Any subsequent enlargement of or addition to the project, for which approval is sought from the authority, shall also require certification by the Public Utilities Commission and the Department of Human Services;

**I. In the case of an energy generating system project or energy distribution project which is intended to produce or distribute energy for sale to any person, municipality, firm, corporation or the State that the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35, chapter 9;**

**J. In the case of an energy generating system, an energy distribution system or an industrial-commercial project which includes hydroelectric facilities deemed necessary for the production of electricity:**

- (1) The Public Utilities Commission has certified that all required licenses have been issued or that none are required; and
- (2) The Director of Energy Resources has reviewed and commented upon the project proposal. The Director of Energy Resources shall make his comments within 30 days after receipt of a notification and copy of the project proposal from the authority. The authority shall take the comments into consideration in its consideration of the project; and

**Any municipality, firm or corporation producing electricity by means of projects in paragraph G or by means of a pollution-control project, health care project, recreational project, multi-level parking facility or combined project may, without the approval of and regulation by the Public Utilities Commission, generate and distribute electricity solely for its own use or the use of its tenant, but may not sell electricity to other than an electric public utility corporation or cooperative authorized to make, generate, sell and distribute electricity; and**

**K. If the authority is satisfied that the determinations of this section can be made and that a certificate of approval can be issued, upon receipt of the certificate or certificates required by paragraphs E, G, H, I and J, the authority may advise the departments concerned which may treat such advice as the completion of arrangements for financing for the purposes of Title 38, section 451, subsection 1, paragraph B.**

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

**§ 1064. Issuance of revenue obligation securities**

**1. Notice of intent to issue bonds; actions to contest validity.** 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 in this subchapter. No revenue obligation securities of the municipality may be authorized and issued until:

- A.** A certificate of approval, as provided in section 1063, is received;
- B.** A resolution is adopted by vote of the municipal officers; and
- C.** A 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:
  - (1)** No later than 14 full days after the date on which the resolution is adopted;
  - (2)** Describing the general purpose or purposes for which the securities are to be issued;
  - (3)** Stating the maximum principal amount of the proposed securities;
  - (4)** Setting forth or summarizing the text of the certificate of approval; and
  - (5)** Including a statement as to the time within which any action or proceeding to set aside the resolution or otherwise 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 a resolution or certificate of approval or to obtain relief upon the grounds that the resolution or certificate of approval was improperly adopted, was adopted for unauthorized purposes or is otherwise invalid for any reason, must be started within 30 days after the date of the publication. After the expiration of the period of limitation, no right of action or defense founded upon the invalidity of the resolution or approval or any provision shall be started or asserted nor shall the validity of the resolution or approval or provision be open to question in any court upon any grounds.

**2. Maturity; interest.** The securities of each issue of revenue obligation securities shall be dated, shall mature at a time or times not exceeding 25 years from their date or dates and shall bear interest at a rate or rates not exceeding 6% per year as may be determined by the municipal officers. At the option of the municipal officers, the securities may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to their issue. Notwithstanding any of the other provisions of this chapter, revenue obligation

securities may bear interest at rates exceeding 6% per year upon receipt of written approval from the authority. In giving approval for an interest rate in excess of 6%, the authority shall specify a rate which shall be the maximum rate for the particular revenue obligation security issue related to a single project, which rate may be a variable rate measured as a percentage of or otherwise in relation to a prime rate or other measuring standard. In granting approval of interest rates in excess of 6% per year, the authority shall consider the following:

- A. Interest rates in the current money market;
- B. Credit worthiness of the proposed lessee;
- C. Economic conditions in the municipality proposing to issue the revenue obligation securities; and
- D. Such other matters as the authority shall consider significant.

In making its determination as to rates of interest allowable in excess of 6% per year, the authority shall give such weight to the factors in this subsection as it deems adequate and the findings of the authority shall be final.

If the authority determines that a rate of interest in excess of 6% per year is in order, it shall issue its certificate which shall set forth the maximum allowable interest rate and the specific revenue obligation security issue to which the rate applies.

3. **Form.** The municipal officers shall determine the form of the securities, including any attached interest coupons, the manner of execution of the securities, the denomination or denominations of the securities signature. Revenue obligation securities shall be executed in the name of the municipality by the manual or facsimile signature of the municipal officer or officers authorized in the resolution, but at least one signature on each security shall be a manual signature. Any attached coupons shall be executed with the facsimile signature of the designated official. Signatures and facsimiles of signatures on securities and coupons will be valid for all purposes, even if the designated official ceases to hold office before delivery of the securities. The securities may be issued in coupon or registered form, or both. 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.

4. **Sale.** The municipal officers may sell the securities at a private or public sale, in a manner and at a price they determine, but no sale may be made at a price so low as to require the payment of interest on the money received at more than the interest approved by the authority.

The municipal officers shall not sell the securities to any firm, partnership, corporation, water company or association, including an affiliate or subsidiary, which is a party to any contract pertaining to the financial project or which is to rent, purchase, lease or otherwise occupy premises constituting part of the

project. The municipal officers may sell the securities to a seller of the project if the project is to be used and operated by a 3rd party.

5. Proceeds of each issue shall be used solely for the authorized purposes and shall be disbursed as provided in the authorizing resolution or in the securing trust agreement. If the proceeds shall be less than the cost of the securities, by error in the estimate or otherwise, additional securities may be issued in a like manner to provide the amount of the deficit and, unless otherwise provided in the authorizing resolution or the securing trust agreement, the additional securities are 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 resolution of the municipal officers. The municipality may place limits or restrictions on the issuance of additional revenue obligation securities through the authorizing resolution or any securing trust agreement. The municipality may provide for the replacement of mutilated, destroyed or lost securities. 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. Notwithstanding any of the other provisions of this subchapter or any recitals in any securities issued under this subchapter, all such securities are deemed to be negotiable instruments issued under the laws of this State.

6. Credit not pledged. Securities issued under this subchapter shall not constitute any debt or liability of the State, its political subdivisions or any municipality; shall not constitute a pledge of the faith and credit of the State, its political subdivisions or any municipality; shall be payable solely from the revenues of the project or projects for which they are issued; and shall contain on their face a statement to that effect. The securities issued under this subchapter shall not directly or indirectly or contingently obligate the State, its political subdivisions or any municipality to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

7. Anticipatory borrowing. In anticipation of the sale of securities under this subchapter, the municipal officers may issue 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. The period of such anticipatory borrowing shall not exceed one year, and the time within which the securities are to become due shall not be extended by the anticipatory borrowing beyond the time fixed in the authorizing resolution or, if no term is specified, beyond the term permitted by law.

#### **§ 1065. Trust agreements; resolutions**

1. Trust agreements. At the discretion of the municipal officers, any revenue obligation securities issued under this subchapter may be secured by a trust

agreement between the municipality and any corporate trustee or by a mortgage or other financial document. The trust agreement, mortgage, security agreement or other financial document may:

- A. Pledge or assign the revenues of the project or projects;
- B. Set forth the rights and remedies of the security holders and the trustees and contain any reasonable and legal provisions for protecting the rights and remedies of the security holder;
- C. Restrict the individual right of action by security holders; and
- D. Include covenants setting forth the duties of the municipal officers and used in relation to:
  - (1) Acquisition of property;
  - (2) Construction, reconstruction, renewal, replacement and insurance of the project;
  - (3) Rents to be charged or other payments to be made for use;
  - (4) Payment of the project; and
  - (5) 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 indemnifying bonds or to pledge the securities as may be required by the municipal officers.

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other financial document may mortgage the project or any part and create a lien upon any or all of the real or personal property of the project. In the event of a default with respect to the revenue obligation securities, the trustee or mortgagee may be authorized by the trust agreement or financial document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or, from time to time, to lease the property. A judgment for possession may be without condition and a sale or lease will not be subject to any right to redeem the property. When the obligations secured by the mortgage are satisfied, including all applicable fees and expenses, any surplus proceeds from the operation, sale or lease of the project shall be sold to or the mortgaged property shall revert or be returned to the mortgagor of the project or to those claiming under the mortgagor. A user of a project may be entitled to the rights of mortgagor to the extent provided in any applicable lease. Any security interest granted by a municipality under this chapter may be created and perfected in accordance with the provisions of the Uniform Commercial Code, Article 9, notwithstanding the provisions of Title 11, section 9-104, subsection 5.

3. Authorizing resolutions. Any resolutions authorizing notes or bonds or any

issue of notes or bonds may contain provisions which shall be a part of the contract with holders, as to:

- A. Pledging any specified revenues or assets of the project to secure the payment of the notes or bonds or of any issue of bonds or notes, subject to agreements with existing holders of notes or bonds;
  - B. Pledging all or any part of the unencumbered revenues or assets of the project to secure the payment of the notes or bonds or any issue of notes or bonds, subject to agreements with existing holders of notes or bonds;
  - C. Setting aside of, regulating and disposing of reserves or sinking funds;
  - D. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue of notes or bonds;
  - E. Limitations on the issuance of additional notes or bonds;
  - F. The terms upon which additional notes or bonds may be issued and secured and the refunding of outstanding or other notes or bonds;
  - G. The procedure, if any, by which the terms of any contract with holders of notes or bonds may be amended or abrogated, including the amount of notes or bonds to which the holders must consent and the manner in which the consent may be given;
  - H. Limitations on the amount of moneys to be expended by the authority for operating expenses of the project;
  - I. 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 under this subchapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;
  - J. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the municipal officers 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 the rights and remedies are not inconsistent with the general laws of the State and other provisions of this subchapter; and
  - K. Any other matters of like or different character which in any way affect the security or protection of the holders of the bonds.
4. Authorizing resolution; other provisions. At the discretion of the municipal officers, the authorizing resolution may:

- A. Pledge or assign the revenues of the project or projects;**
- B. Set forth the rights and remedies of the security holders and the trustees and contain any reasonable and legal provisions for protecting the rights and remedies of the security holder;**
- C. Restrict the individual right of action by security holders; and**
- D. Include covenants setting forth the duties of the municipal officers and user in relation to:**
  - (1) Acquisition of property;**
  - (2) Construction, reconstruction, renewal, replacement and insurance of the project;**
  - (3) Rents to be charged or other payments to be made for use;**
  - (4) Payment of the project; and**
  - (5) 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 indemnifying bonds or to pledge the securities as may be required by the authority.**

**5. Expenses; pledges. All expenses incurred in carrying out a 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 subchapter shall be valid and binding from the time when the pledge is made. All the revenues pledged and later received by the municipality shall immediately be subject to the lien of the pledges without any physical delivery or further action under the Uniform Commercial Code, or otherwise. The lien of the pledges shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the municipality, irrespective of whether the parties have notice.**

**6. Other provisions. A trust agreement, financial document or authorizing resolution may contain other provisions the municipal officers deem reasonable and proper for the security of the security holders.**

#### **§ 1066. Rentals and revenues**

**1. Provisions. Before issuing revenue obligation securities for any project, the authority shall be assured by leases or contracts that the municipality will at all times have revenues sufficient:**

- A. To pay the principal of and the interest of the securities as they become due and payable and to create and maintain reserves for that purpose; and**
- B. To pay the cost of maintaining, repairing and operating the project unless provision is made in the lease or other contract for the maintenance, repair and operation.**



2. **Sinking fund.** All project rentals and other revenues, except those required in subsection 1, paragraph B, or to provide reserves for this maintenance, repair and operation, shall be set aside at regular intervals, as provided in the resolution, financial document or trust agreement and deposited to the credit of a sinking fund charged with payment of the interest and principal of the securities as they 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 the sinking fund shall be subject to regulations prescribed in the authorizing resolution, the trust agreement or applicable financial document. Except as may otherwise be provided in the resolution, financial document or trust agreement, the sinking fund shall be a fund for the benefit of all securities issued for the project or projects without distinction or priority of one over another.

3. **Trust funds.** All moneys received under this subchapter are deemed trust funds, to be held and applied solely as provided in the subchapter. Any officer to whom, or any bank, trust company or other fiscal agent or trustee in which the moneys shall be paid shall act as trustee of the moneys and shall hold and apply them for the purposes of this subchapter, subject to regulations provided in the subchapter, authorizing resolution or trust agreement.

#### **§ 1067. Remedies**

Any holder of revenue obligation securities or attached coupons issued under this subchapter and the trustee under any trust agreement, except as restricted by the authorizing resolution, the 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 subchapter, the resolution, the trust agreement or financial document, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this subchapter, the resolution, the trust agreement or financial document to be performed by the municipality, the municipal officers or by any officer, including the collecting of rates, fees and charges for the use of the project. Any suit, action or proceeding shall be brought for the benefit of all the holders of the securities and coupons.

#### **§ 1068. Revenue refunding securities**

The municipal officers are authorized to provide by resolution for the issuance of revenue refunding securities of the municipality for the purpose of refunding any outstanding revenue securities issued under this subchapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, and, if deemed advisable by the municipal officers, to construct improvements, extensions, enlargements or additions of the original project. The municipal officers may provide by resolutions for the issuance of revenue obligation securities of the municipality for the combined purpose of refunding any outstanding revenue securities or revenue refunding securities issued under this subchapter, including the payment of any redemption premiums

and any interest accrued or to accrue to the date of redemption, and paying all or any part of the cost of acquiring or constructing any additional project or part or any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the municipality and the municipal officers shall be governed by the provisions of this subchapter insofar as applicable; provided the requirement that voter approval be obtained of the general purpose and maximum principal amount of securities as set forth in section 1064, subsection 1, shall not be applicable to securities issued for refunding purposes under this section; and that any action or proceeding in any court to set aside a resolution authorizing the issuance of revenue refunding securities under this chapter or to obtain any relief on the ground the resolution was improperly adopted, was adopted for unauthorized purposes or is otherwise invalid for any reason, must be commenced within 30 days after publication by the clerk of the municipality in the state newspaper and in a newspaper of general circulation in the municipality of a notice stating that the resolution has been adopted, the principal amount of revenue refunding securities authorized to be issued and the purpose of that issuance. After the expiration of the period of limitations, no right of action or defense founded upon the invalidity of that resolution or any of its provisions shall be asserted nor shall the validity of that resolution or any of its provisions be open to question in any court upon any ground whatever.

**§ 1069. Authorizing resolution**

Notwithstanding any other law, either general, special or local, or any charter or charter amendment adopted by the municipality, or any ordinance, resolution, bylaw, rule or regulation of the municipality, it shall not be necessary to publish any resolution adopted under this chapter, either before or after its final passage.

**§ 1070. Leasehold or other interests of lessee taxable**

The interest of the lessee of any project is subject to taxation in the manner provided for fee interests in real estate and personal property in Title 36, sections 563 and 602, subject to the provisions of Title 36, sections 655 and 656.

**§ 1071. Tax exemption**

Revenue obligation securities issued under this subchapter shall constitute a proper public purpose and the income from such securities, or from their transfer, including any profit made on their sale, shall at all times be exempt from taxation within the State.

**§ 1072. Bonds as legal investments**

The notes or bonds of the municipality and any loan or extension of credit insured under this subchapter, 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 who are now or may later 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 insured under this subchapter are also 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 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 later be authorized by law.

## **SUBCHAPTER V**

### **COMMUNITY INDUSTRIAL BUILDINGS PROGRAM**

#### **§ 1081. Powers of the authority under this program**

The authority may provide financial and technical assistance to local development corporations to create community industrial buildings in industrial parks.

#### **§ 1082. Community Industrial Building Fund**

1. **Creation.** The Community Industrial Building Fund is created as a nonlapsing revolving fund to be used by the authority only for the purposes of this subchapter. There is created within the fund, 2 separate accounts for rural and urban areas, respectively called the "rural" and "urban" accounts, which shall be separately charged and credited as provided under this section according to the location in a rural or urban area of each community industrial building.

2. **Items charged or credited.** Operating expenses of the authority or of the State Development Office incurred under this subchapter shall be charged to the fund and all payments required by the chapter shall be credited to it. All authority expenses that arise out of assistance to local development corporations shall be charged solely against the proceeds of the sale or rental of a community industrial building or all or part of an industrial park assisted under this subchapter.

3. **Deposited funds.** Money in the fund not currently needed to meet the obligations of the authority shall be deposited with the Treasurer of State to the credit of the fund with all interest earned by the deposit credited to the fund.

#### **§ 1083. Assistance to development corporations**

The authority may assist a local development corporation to construct a community industrial building by loaning it money for the project, subject to subsection 1.

1. **Project.** The following conditions apply to the project:

A. The project shall be within the scope of this subchapter, shall be of public use and benefit and must reasonably be expected to create new employment opportunities;

B. Within the separate rural and urban accounts, preference shall be given to projects in economically deprived areas within labor market districts declared to be in need of economic development assistance by the Department of Manpower Affairs; and

C. No more than one unoccupied community industrial building project shall be financed in a county at one time.

2. Local development corporation. Local development corporations shall comply with the following:

A. The local development corporation shall own or hold on long-term lease the site for the project;

B. The local development corporation, in the opinion of the authority, shall be responsible and shall present evidence of its ability to carry out the project as planned;

C. The site owned or leased by the local development corporation shall be not less than 4 times the size of the community industrial building;

D. The local development corporation shall provide and maintain, with funds other than those provided by the authority, an adequate access road from a public highway to the proposed site and water, sewer and power facilities. The development corporation will also be responsible for plowing out the plant site at all times and for landscaping the building in an attractive fashion until the building is occupied by an industrial tenant;

E. The local development corporation's project plans shall comply with applicable zoning, planning and sanitary regulations in the municipality where it is to be located. No loan may be approved and no certificate of approval for the project or for any subsequent enlargement or addition to the project may be issued until the Department of Environmental Protection has certified to the authority that all licenses required from the department have been issued or that none are required; and

F. The local development corporation shall make adequate provisions for insurance protection, fire protection and maintenance of the building while it is unoccupied.

3. Loan terms. Terms for a loan are as follows:

A. The authority may prescribe the terms and conditions of the loan;

B. Loans shall be repaid in full, including interest and other charges within 90 days after the building is occupied; and

**C. The building financed by an authority loan may not be sold or leased without the express approval of the authority of the purchaser or lessee. If the local development corporation and the authority agree that a community industrial building is unlikely to be sold in the near future despite a marketing effort, the authority may permit an interim lease upon terms it deems appropriate for the protection of the fund. Occupation of the premises under an interim lease shall not require payment in full of the entire loan within 90 days, as is provided in paragraph B.**

**4. Promotion and development. The State Development Office shall undertake promotional and publicity activities on behalf of community industrial buildings to properly market them to prospective purchasers or tenants. The office shall maintain a constant and continual effort to secure suitable tenants or purchasers for such buildings and shall prepare necessary advertising and promotional materials.**

**5. Taxes. While the community industrial building remains unoccupied and a first mortgage is held by the authority, it is declared to be property held for a legitimate public use and benefit and shall be exempt from all taxes and special assessments of the State or any of its political subdivisions. This section shall not apply to any community industrial building whose construction is not financed under this chapter.**

**Sec. 3. 30 MRSA c. 242, as amended, is repealed.**

**Sec. 4. Application. This Act does not affect any bonds, mortgages or transactions issued or entered into prior to the effective date of this Act.**

**Sec. 5. Transition provisions. Notwithstanding the Revised Statutes, Title 5, section 1585, any moneys in the Community Industrial Building Fund which are not obligated on the effective date of this Act, and any changes or credits made to the Community Industrial Building Fund on or after the effective date in connection with the financing of a community industrial building under this chapter prior to the effective date, shall be divided equally between rural and urban accounts.**

**Sec. 6. Effective date. This Act shall take effect October 1, 1981.**

### STATEMENT OF FACT

This new draft makes a number of nonsubstantive, technical changes. In addition it makes the following substantive changes from the bill.

1. The title is changed to reflect the fact that the bill in the new draft now amends as well as recodifies the Maine Guarantee Authority law.

2. The definition of industrial commercial project is changed, with deletion of authority for retailing projects (new Title 10, section 1003, subsection 12). The authority may approve retail projects for persons with applications pending for retail projects on the effective date of this Act.

3. New, more workable requirements for keeping records confidential are substituted for the requirements of the bill (new Title 10, section 1007).

4. Provisions in the current law on competitive advantage were changed, see Title 10, sections 1043 and 1063. The criteria in existing law that a project not create a "competitive advantage" and that it not result in a "substantial detriment to existing industry" have proven too unworkable for the authority because such phrases are not defined in the statute and do not suggest any meaningful direction for the authority. The purpose of the change is to eliminate the phrase "competitive advantage" from the statute, to elaborate on the phrase "substantial detriment to existing industry," and to specify a procedure for the authority to follow in making its determination. Title 10, section 1043, subsection 2, paragraph B, subparagraph (1) and Title 10, section 1063, subsection 2, paragraph B, subparagraph (1), are modeled in part on the Public Works and Economic Development Act of 1965, Section 702, United States Code, Title 42, section 3212 and regulations promulgated pursuant thereto in Title 13, Code of Federal Regulations, section 309.2. Title 10, section 1043, subsection 2, paragraph B, subparagraph (2) and Title 10, section 1063, subsection 2, paragraph B, subparagraph (2) are designed to address the objections of existing enterprises that may be adversely affected by the project even if the requirements of Title 10, section 1043, subsection 2, paragraph B, subparagraph (1) and Title 10, section 1063, subsection 2, paragraph B, subparagraph (1) are satisfied. The authority is also given explicit authority to adopt rules to measure and evaluate the effect of a project on existing industry in other ways. Finally a procedure is adopted, which is not intended to be adjudicatory in nature, but which provides for a fair and meaningful evaluation of objections raised by existing business that may be affected by the project.

5. Under the 2 revenue bond programs, authority for health care projects is deleted. Currently, the municipal program authorizes health care projects.

6. The exposure of the Maine Guarantee Authority in the guarantee program is reduced. Currently, the limits apply to the guarantee portion of the loan. The new draft will have the limit apply to the principal amount of the loan. See new Title 10, section 1027, subsection 1.

7. The authority is given power to approve a municipal bond issue with an interest rate greater than 6%, where the rate is variable — the new element is the variable rate, see new Title 10, section 1064, subsection 2.

8. An effective date is added of October 1, 1981, see section 6.

9. Under the municipal revenue bond program the definition of industrial-commercial project is broadened to include office space in excess of 30,000 square feet, provided that at least 1/2 of the employees occupying the square footage represent new jobs in the community, see Title 10, section 1003, subsection 12.

10. Under the municipal revenue bond program, authority is added for reconstruction of existing buildings for commercial use that are at least 50 years old, see Title 10, section 1003, subsection 23-A and other sections.

11. Under the guarantee program, the limit of the principal obligation for industrial, manufacturing, fishing or agricultural projects is reduced from \$7 million to \$2 1/2 million. See Title 10, section 1027, subsection 1.

12. The Community Industrial Building Program law is amended to divide the program into urban and rural components and to clarify the present statute by clearly stating that carrying costs may be financed under the program. See Title 10, chapter 110, subchapter V.

13. Language is added to clarify that an industrial-commercial project includes projects for agricultural production and processing, including, but not limited to, facilities for raising animals; and for fishing production and processing, including, but not limited to, fishing boats. See Title 10, section 1003, subsection 11.