

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1047

6  
7 H.P. 807

House of Representatives, March 4, 1983

8 On Motion of Representative Gwadosky of Skowhegan, referred to the  
9 Committee on State Government. Sent up for concurrence and ordered  
10 printed.

EDWIN H. PERT, Clerk

Presented by Representative Baker of Portland.

Cosponsor: Senator Carpenter of Aroostook.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Establish a State Bank.  
18

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

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

22 PART 11

23 PUBLIC BANKS

24 CHAPTER 111

25 ESTABLISHMENT OF MAINE PUBLIC BANK

26 §1101. Establishment of the Maine Public Bank

27 The Maine Public Bank Corporation is created. It  
28 is referred to in this Part as the "bank." It is a

1 public body corporate and politic and an instru-  
2 mentality of the State. The bank shall be considered  
3 an agency of the State for the purposes of the Maine  
4 Administrative Procedure Act, Title 5, chapter 375.  
5 The bank is established and directed, either directly  
6 or through a wholly-owned subsidiary corporation, to  
7 apply to the Bureau of Banking for a charter to oper-  
8 ate a commercial bank.

9 §1102. Permissible activities and restraints

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

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

15 2. Bank's restraints. The bank shall be subject  
16 to any state regulation that applies to the activi-  
17 ties of Maine's commercial banks.

18 §1103. Board of directors

19 1. Membership. The board of directors of the bank  
20 shall consist of:

21 A. The Commissioner of Finance and Administra-  
22 tion;

23 B. The Commissioner of Labor;

24 C. The Treasurer of State;

25 D. The Commissioner of Agriculture, Food and  
26 Rural Resources;

27 E. The Commissioner of Marine Resources; and

28 F. Seven other persons of recognized eminence and  
29 authority to be appointed by the Governor in ac-  
30 cordance with Title 3, chapter 6. These persons  
31 may be either in public or private employment and  
32 shall include:

33 (1) One person qualified by training and  
34 experience in small business;

- 1                   (2) One person qualified by training and  
2                   experience in banking;
- 3                   (3) One person qualified by training and  
4                   experience in commercial farming;
- 5                   (4) One person qualified by training and  
6                   experience in commercial fishing;
- 7                   (5) One person qualified by training and  
8                   experience in investment; and
- 9                   (6) Two persons representing the public and  
10                  demonstrating an active concern with con-  
11                  sumer problems.

12                  The 13 members first appointed shall serve for terms  
13                  ending either 2, 4 or 6 years from January 1st fol-  
14                  lowing their appointment. The terms shall be stag-  
15                  gered as follows. The first person appointed shall  
16                  serve for 2 years, the 2nd person for 4 years, the  
17                  3rd person for 6 years, the 4th person for 2 years  
18                  and so on until all 13 appointments are made. Their  
19                  successors shall serve for terms of 6 years each.  
20                  Members shall serve until their successors are con-  
21                  firmed by the Legislature. If a vacancy occurs, the  
22                  Governor shall appoint a successor in accordance with  
23                  Title 3, chapter 6. The Governor shall designate one  
24                  of his appointees to serve as chairman of the board.  
25                  The members shall be reimbursed for expenses but  
26                  serve without salary. Any member who is not a public  
27                  employee shall receive a per diem allowance of \$250  
28                  when rendering services as a member.

29                  2. Quorum; delegation of powers. A majority of  
30                  the members of the board shall constitute a quorum  
31                  for the exercise of its powers. The board may dele-  
32                  gate to one or more of its directors, officers,  
33                  agents or employees such powers as it deems proper.  
34                  The board shall appoint a president of the bank.

35                  3. Removal. The Superintendent of Banking may  
36                  remove any member appointed by him for inefficiency,  
37                  neglect of duty or misconduct in office, giving him a  
38                  copy of the charges against him and an opportunity to  
39                  be heard, in person or by counsel in his defense,  
40                  upon not less than 10 days' notice. If any member

1 shall be removed, the Governor shall file in the  
2 office of the Secretary of State a complete statement  
3 of charges made against that member and his findings  
4 thereon, together with a complete record of the  
5 defense proceeding.

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

17 §1104. Cost of operation

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

23 §1105. Powers

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

27 A. Sue and be sued;

28 B. Have a state seal featuring the title, "Maine  
29 Public Bank;"

30 C. Make and execute contracts, leases and all  
31 other instruments necessary or convenient to ful-  
32 fill its duties;

33 D. Make and alter bylaws for its organization and  
34 internal management;

35 E. Acquire, hold and dispose of personal property  
36 for its corporate purposes;

- 1           F. Appoint officers, agents and employees, pre-  
2           scribe their duties and qualifications and fix  
3           their compensation;
- 4           G. Borrow money and issue negotiable notes, bonds  
5           or other obligations and to provide for the  
6           rights of the holders thereof;
- 7           H. Invest any funds held in reserve or sinking  
8           funds, or any moneys not required for immediate  
9           use of disbursement, at the bank's discretion, in  
10           obligations of the State or the Federal Govern-  
11           ment or obligations the principal and interest of  
12           which are guaranteed by the State or the Federal  
13           Government;
- 14           I. Procure insurance against any loss in connec-  
15           tion with its property and other assets, includ-  
16           ing mortgages and mortgage loans, in the amounts,  
17           and from such insurers as it deems desirable;
- 18           J. Accept any gifts, grants, loans of funds or  
19           property or financial or other aid in any form  
20           from the Federal Government, any of its agencies  
21           or instrumentalities, from the State or from any  
22           other source;
- 23           K. Engage the services of private consultants on  
24           a contract basis for rendering professional and  
25           technical assistance and advice;
- 26           L. Enter into contracts with state agencies and  
27           any political subdivision or instrumentality of  
28           the State; and
- 29           M. Do any and all things necessary or convenient  
30           to carry out its purposes and exercise the powers  
31           expressly granted in this Part.

32           §1106. Capital of bank

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

1        §1107. Issuance of bonds and rates

2            1. Issuance. The bank may issue its negotiable  
3 bonds and notes. These instruments can be issued for  
4 any reason necessary or convenient to fulfill the  
5 bank's corporate purpose. Unless expressly provided  
6 by the bank, these instruments shall be general obli-  
7 gations of the bank, payable out of any revenues or  
8 moneys of the bank.

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

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

21            4. Capital Reserve Fund. As of any date of compu-  
22 tation, the bank shall maintain a Capital Reserve  
23 Fund which shall have an amount of money equal to the  
24 largest annual payment for debt service the bank  
25 would have to make in any year. In computing the Cap-  
26 ital Reserve Fund for the purposes of this section,  
27 securities in which all or a portion of the reserve  
28 fund shall be invested shall be valued at par if pur-  
29 chased at par, or if purchased at other than par, at  
30 amortized value.

31            5. Bonds and notes as legal investments. The  
32 bank's bonds and notes are made securities in which  
33 all public and private persons, state agencies,  
34 political subdivisions or business entities may be  
35 permitted to invest. Specifically included in this  
36 description are municipalities, financial insti-  
37 tutions, insurance companies and fiduciaries.

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

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

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

13           §1108. State funds shall be deposited in bank

14           All state funds and funds of all state agencies,  
15 including penal, educational and development insti-  
16 tutions, shall be deposited in the bank. These funds  
17 shall be promptly deposited by the person having con-  
18 trol of them within 2 years of the effective date of  
19 this Part.

20           §1109. Bank deposits

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

26           §1110. Bank as a clearinghouse

27           For financial institutions that make the bank a  
28 reserve depository, it may provide the services of a  
29 clearinghouse to Maine's banks, including all facili-  
30 ties for providing domestic and foreign exchange, and  
31 may rediscount paper.

32           §1111. Interest rates on deposits

33           Except as otherwise limited by law, the board of  
34 directors, from time to time, shall fix the rates of  
35 interest allowed and received in transactions of the  
36 bank. These rates shall be as nearly constant as pos-  
37 sible, and shall not be fixed or changed to work any  
38 discrimination against or in favor of any person or

1 corporation. When interest is allowed on deposits,  
2 the interest rate shall be the same generally pre-  
3 vailing rate allowed by other banks in this State for  
4 similar accounts. The board of directors shall also  
5 fix reasonable charges for services rendered by the  
6 bank.

7 §1112. Bank investments

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

10 1. Bank loans. The bank may make loans to and  
11 purchase securities issued by, state agencies and  
12 political subdivisions, including municipalities, of  
13 this State. The loans shall be repaid with interest  
14 to the bank. The bank may make loans to financial  
15 institutions, including credit unions, and may par-  
16 ticipate with them, in loans being made by them.

17 2. Bank's purchase. The bank may buy and sell  
18 federal funds, or excess reserves, bankers' accep-  
19 tances, participation loans and all securities issued  
20 by the Federal Government or its agencies.

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

29 4. Loans to bank customers. The bank may make  
30 loans to holders of bank certificates of deposit and  
31 savings accounts up to 90% of the value of the cer-  
32 tificates and savings accounts offered as security.

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

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

1           7. Federally-insured student loans. The bank may  
2 make federally-insured student loans.

3 §1113. Bank audit and supervision by the Bureau of  
4 Banking

5           The board of directors is responsible for con-  
6 tracting with a nongovernment certified public ac-  
7 counting firm to annually audit the bank in accor-  
8 dance with generally accepted auditing standards,  
9 which shall include inspection and verification of  
10 the assets in its possession and under its control  
11 with sufficient thoroughness to ascertain with  
12 reasonable certainty whether the valuations are car-  
13 ried correctly on its books. The auditor so hired  
14 shall audit the bank's methods of operation and ac-  
15 counting, report the results to the board of direc-  
16 tors as soon as practicable and furnish one copy of  
17 the report to the Legislature. The cost of the audit  
18 shall be paid for by the bank. The Bureau of Banking  
19 shall supervise and examine the bank in the same man-  
20 ner as any commercial bank.

21 §1114. Repayment of appropriation

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

27 §1115. Future earnings

28           1. Apportionment. When the bank has repaid any  
29 appropriation, the future net earnings of the bank  
30 shall be apportioned as follows:

31           A. For expansion of the facilities, services or  
32 reserves of the bank; and

33           B. All other money shall inure to the General  
34 Fund.

35 §1116. Exemption from taxation of property and income

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

1     §1117. Corporate existence

2             The bank and its corporate existence shall con-  
3 tinue until terminated by law, provided that no law  
4 may take effect so long as the bank has bonds, notes  
5 and other obligations outstanding, unless adequate  
6 provision has been made for the payment of them. Upon  
7 termination of the existence of the bank, all its  
8 rights and properties shall pass to and be vested in  
9 the State.

10    §1118. Subsidiary corporations

11             1. Creation of subsidiary corporation. The bank  
12 may perform its powers and functions through one or  
13 more subsidiary corporations. The bank by resolution  
14 of the board may direct any of its directors, offi-  
15 cers or employees to organize a profit or nonprofit  
16 subsidiary corporation pursuant to Titles 13, 13-A  
17 and 13-B. The resolution shall prescribe the purposes  
18 for which the subsidiary corporation is to be formed.

19             The corporation shall be deemed a subsidiary corpora-  
20 tion whenever and so long as all of any voting shares  
21 of the subsidiary corporation are owned or held by  
22 the bank, and all of the directors of the bank are  
23 the directors of the subsidiary corporation.

24             2. Administration. The bank may transfer to any  
25 subsidiary corporation any moneys, real or personal  
26 or mixed property in order to carry out the purposes  
27 of this Part. Each subsidiary corporation shall have  
28 all the privileges, immunities, tax exemptions and  
29 other exemptions of the bank to the extent that they  
30 are not inconsistent with Titles 13, 13-A and 13-B.

31             3. Compensation. No officer or director of the  
32 bank may receive any additional compensation, either  
33 direct or indirect, other than reimbursement for ac-  
34 tual and necessary expenses incurred in the perfor-  
35 mance of his duties, by reason of his serving as a  
36 director, officer or trustee of any subsidiary corpo-  
37 ration.

38    §1119. Assistance by state agencies

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

4       §1120. Annual report

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

9       A. Its operations and accomplishments;

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

18       C. Its assets and liabilities at the end of its  
19 fiscal year, including a schedule of its mortgage  
20 loans and commitments and the status of the Capi-  
21 tal Reserve Fund and other reserve funds; and

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

26       §1121. Bank employees

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

29       §1122. Inconsistent provisions

30       Insofar as the provisions of this Part are incon-  
31 sistent with the provisions of any other law, the  
32 provisions of this Part shall be controlling.

33       §1123. Coordination of development of industry and  
34 commerce in Maine

1           1. Responsible for coordination. The bank shall  
2 be responsible for coordinating the activities of  
3 Maine's various development agencies. Specifically,  
4 the chairman of the board, or his designated repre-  
5 sentative, shall be a voting member, commissioner or  
6 director of the following agencies, the:

7           A. Maine Guarantee Authority;

8           B. Maine Municipal Bond Bank;

9           C. Maine Small Business Loan Authority Board;

10          D. Maine Capital Corporation;

11          E. Maine Development Foundation; and

12          F. Maine State Housing Authority.

13           2. Development plan. Within 2 years from the  
14 effective date of this Part, the bank shall present  
15 to the Legislature and the Governor a comprehensive  
16 plan to coordinate and direct to the state's efforts  
17 to develop commerce and industry and to provide suf-  
18 ficient jobs and housing for Maine citizens. This  
19 plan may require the agencies listed in subsection 1  
20 to become subsidiary corporations of the bank. This  
21 comprehensive plan may call for creation of different  
22 development agencies or for a change in strategies or  
23 goals. It shall be accompanied by all necessary  
24 legislation. The bank shall insure that all interest-  
25 ed persons will have ample opportunity to comment  
26 on the bank's plan before its completion and that at  
27 least 5 public hearings will be held in representa-  
28 tive areas of the State before it is presented to the  
29 Legislature.

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

32           Sec. 2. Appropriation. The following funds are  
33 appropriated from the General Fund to carry out the  
34 purposes of this Act.



1 tial operating expenses. Under the terms of this  
2 bill, any appropriation from the Legislature shall be  
3 paid back, with interest, from bank profits.

4 All profits in addition to those needed to repay  
5 an appropriation shall be used to expand bank ser-  
6 vices and reserves and pay into the General Fund.

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