

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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