

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 649

7 S.P. 254

In Senate, February 21, 1985

8 Referred to the Committee on Local and County Government and
9 ordered printed. Sent down for concurrence.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Andrews of Cumberland.

11
12 STATE OF MAINE
13

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

17 AN ACT to Amend the Municipal Revenue
18 Producing Facilities Act.
19

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

22 Sec. 1. 30 MRSA §4251, sub-§1, as amended by PL
23 1981, c. 322, §1, is further amended to read:

24 1. Revenue producing facilities. To acquire,
25 construct, reconstruct, improve, extend, enlarge,
26 equip, repair, maintain and operate any revenue pro-
27 ducing municipal facility ~~consisting of~~ from which a
28 public benefit is determined to exist, including,
29 without limitation, a water system or part thereof, a
30 sewer system or part thereof, or airport or part
31 thereof, within or without, or partly within and
32 partly without, the corporate limits of the munici-
33 pality or of a parking facility within the corporate
34 limits of the municipality, or telecommunications
35 system or part thereof, or an energy facility or part
36 thereof, within or without, or partly within or with-

1 out, the corporate limits of the municipality. The
2 municipality may utilize its real or personal proper-
3 ty or funds in any project funded in part by a reve-
4 nue bond issued under this chapter. As used in the
5 this chapter, the term "energy facility" means in-
6 cludes, without limitation, an "energy generating
7 system project" or "an energy distribution system
8 project," as defined respectively in section 5326,
9 subsections 1-A and 1-B, or a hydroelectric power fa-
10 cility, including any equipment and structures de-
11 signed to distribute or transmit energy either from
12 or to such facility, or any combination or part of
13 the foregoing;

14 Sec. 2. 30 MRSA §4251, sub-§5, as amended by PL
15 1981, c. 322, §2, is repealed and the following en-
16 acted in its place:

17 5. Pledge of revenues. To mortgage on a
18 nonrecourse basis, any such facility or part of a fa-
19 cility and to pledge the revenues derived from any
20 revenue-producing facility to the payment of the rev-
21 enue or revenue refunding bonds issued with respect
22 to that revenue producing facility or any other mu-
23 nicipally-owned facility generating or anticipated to
24 generate revenues and, notwithstanding section 2151,
25 subsection 2, paragraph D, subparagraph (1), to
26 pledge the revenues derived from any parking facility
27 or system to the payment of revenue or revenue re-
28 funding bonds issued with respect to any parking fa-
29 cility included within the system;

30 Sec. 3. 30 MRSA §4251, sub-§10, as amended by PL
31 1981, c. 322, §3, is further amended to read:

32 10. Use of streets and highways. To enter upon,
33 use, occupy and dig up any street, alley, road, high-
34 way or other public places necessary to be entered
35 upon, used or occupied in connection with the acqui-
36 sition, construction, reconstruction, improvement,
37 maintenance or operation of any ~~telecommunication~~
38 ~~system;~~ energy facility; ~~airport or parking facility~~
39 ~~or system;~~ water system; sewer system or water and
40 sewer system revenue producing facility; when high-
41 ways maintained by the State are affected, the munic-
42 ipality shall be subject to the same statutory provi-
43 sions applicable to those corporations authorized to
44 lay their pipes and conduits in the public ways;

1 Sec. 4. 30 MRSA §4252, sub-§2, as amended by PL
2 1981, c. 322, §4, is further amended to read:

3 2. Maturity; interest; form; use of proceeds;
4 temporary bonds. The bonds of each issue of revenue
5 bonds shall be dated, shall mature at such time or
6 times not exceeding 30 years from their date or
7 dates, and shall bear interest at such rate or rates
8 or at a variable rate as may be determined by the mu-
9 nicipal officers, and may be made redeemable before
10 maturity, at the option of the municipality, at such
11 price or prices and under such terms and conditions
12 as may be fixed by the municipal officers prior to
13 the issuance of the bonds. The municipal officers
14 shall determine the form of the bonds, including any
15 interest coupons to be attached thereto, and the man-
16 ner of execution of the bonds, and shall fix the de-
17 nomination or denominations of the bonds and the
18 place or places of payment of principal and interest,
19 which may be at any bank or trust company within or
20 without the State. Revenue bonds shall be executed
21 in the name of the municipality by the manual or fac-
22 simile signature of such official or officials as may
23 be authorized in said resolution to execute such
24 bonds but at least one signature on each bond shall
25 be a manual signature. Coupons, if any attached to
26 such bonds, shall be executed with the facsimile sig-
27 nature of the officer or officers of the municipality
28 designated in said resolution. In case any officer
29 whose signature or a facsimile of whose signature
30 shall appear on any bonds or coupons shall cease to
31 be such officer before the delivery of such bonds,
32 such signature or such facsimile shall nevertheless
33 be valid and sufficient for all purposes the same as
34 if he had remained in office until such delivery.
35 Notwithstanding any of the other provisions of this
36 chapter or any recitals in any bond issued under this
37 chapter, all such bonds shall be deemed to be nego-
38 tiable instruments issued under the laws of this
39 State. The bonds may be issued in coupon or regis-
40 tered form or both, as the municipal officers may de-
41 termine, and provision may be made for the registra-
42 tion of any coupon bonds as to principal alone and as
43 to both principal and interest, and for the
44 reconversion into coupon bonds of any bonds regis-
45 tered as to both principal and interest. The munici-
46 pal officers may sell such bonds in such manner, ei-

1 ther at public or private sale, and for such price,
2 as they may determine to be for the best interests of
3 the municipality. The proceeds of the bonds of each
4 issue shall be used solely for the purpose for which
5 such bonds shall have been authorized, and shall be
6 disbursed in such manner and under such restrictions,
7 if any, as the municipal officers may provide in the
8 resolution authorizing the issuance of such bonds or
9 in the trust agreement hereinafter mentioned securing
10 the same. If the proceeds of such bonds, by error of
11 estimates or otherwise, shall be less than such cost,
12 additional bonds may in like manner be issued to pro-
13 vide the amount of such deficit and, unless otherwise
14 provided in the authorizing resolution or in the
15 trust agreement securing such bonds, shall be deemed
16 to be of the same issue and shall be entitled to pay-
17 ment from the same fund without preference or priori-
18 ty of the bonds first issued for the same purpose,
19 provided the aggregate principal amount of revenue
20 bonds of a town may not exceed the amount approved by
21 the voters as provided. The resolution providing for
22 the issuance of revenue bonds, and any trust agree-
23 ment securing such bonds, may contain such limita-
24 tions upon the issuance of additional revenue bonds
25 as the municipal officers may deem proper, and such
26 additional bonds shall be issued under such restric-
27 tions and limitations as may be prescribed by such
28 resolution or trust agreement. Prior to the prepara-
29 tion of definitive bonds, the municipal officers may,
30 under like restrictions, issue interim receipts or
31 temporary bonds, with or without coupons,
32 exchangeable for definitive bonds when such bonds
33 shall have been executed and are available for deliv-
34 ery. The municipal officers may provide for the re-
35 placement of any bonds which shall become mutilated
36 or be destroyed or lost. Bonds, except bonds for wa-
37 ter system purposes, may be issued under this chapter
38 without obtaining the consent of any commission,
39 board, bureau or agency of the State or of the munic-
40 ipality, and without any other proceeding or the hap-
41 pening of other conditions or things than those pro-
42 ceedings, conditions or things which are specifically
43 required by this chapter. Revenue bonds issued under
44 this chapter shall not be deemed to constitute a debt
45 or liability of the municipality or a pledge of the
46 faith and credit of the municipality, but such bonds
47 shall be payable solely from the funds provided

1 therefor, and a statement to that effect shall be re-
2 cited on the face of the bonds.

3 Sec. 5. 30 MRSA §4254, first ¶, as amended by PL
4 1981, c. 322, §5, is further amended to read:

5 Any resolution providing for the issuance of rev-
6 enue bonds for a ~~water system or sewer system, water~~
7 ~~and sewer system and airport or parking facility or~~
8 ~~telecommunications system or energy facility any rev-~~
9 ~~enue producing facility~~ under this chapter, or the
10 trust agreement securing such bonds may include any
11 or all of the following provisions, and may require
12 the municipal officers to adopt such resolutions or
13 take such other lawful action as shall be necessary
14 to effectuate such provisions and the municipal offi-
15 cers are hereby authorized to adopt such resolutions
16 and to take such other action:

17 Sec. 6. 30 MRSA §4254, sub-§1, as amended by PL
18 1981, c. 322, §6, is further amended to read:

19 1. Deposits. That the municipality may require
20 the owner, tenant or occupant of each lot or parcel
21 of land who is obligated to pay rates, fees or
22 charges for the use of or for the services furnished
23 by any ~~water system or sewer system, water and sewer~~
24 ~~system and airport or parking facility or revenue~~
25 ~~producing facility,~~ telecommunications system or en-
26 ergy facility owned or operated by the municipality
27 to make a reasonable deposit with the municipality in
28 advance to insure the payment of such rates, fees or
29 charges and to be subject to application to the pay-
30 ment thereof if and when delinquent.

31 Sec. 7. 30 MRSA §4255, as amended by PL 1981, c.
32 322, §7, is further amended to read:

33 §4255. Application of revenues

34 The resolution authorizing the issuance of reve-
35 nue bonds under this chapter, or any trust agreement
36 securing such bonds, may provide that all or a suffi-
37 cient amount of the revenues derived from the ~~water~~
38 ~~system, sewer system water and sewer system, airport~~
39 ~~or parking facility or system, or telecommunications~~
40 ~~system, or energy facility~~ revenue producing

1 facility, including the revenue producing municipal
2 facility financed with revenue bonds issued under
3 this chapter, after providing for the payment of the
4 cost of repair, maintenance and operation and re-
5 serves therefor as may be provided in such resolution
6 or trust agreement, shall be set aside at such regu-
7 lar intervals as may be provided in such resolution
8 or trust agreement and deposited to the credit of a
9 sinking fund for the payment of the interest on and
10 the principal of revenue bonds issued under this
11 chapter as the same shall become due, and the redemp-
12 tion price or purchase price of bonds retired by call
13 or purchase. The use and disposition of moneys to the
14 credit of such sinking fund shall be subject to such
15 regulations as may be provided in the resolution au-
16 thORIZING the issuance of the revenue bonds or in the
17 trust agreement securing such bonds and, except as
18 may otherwise be provided in such resolution or trust
19 agreement, such sinking fund shall be a fund for the
20 benefit of all bonds without distinction or priority
21 of one over another. The municipality shall cause to
22 be made at least once each year a comprehensive re-
23 port of the operations of the revenue producing mu-
24 nicipal facility, including all matters relating to
25 rates, revenues, expense of repair, maintenance and
26 operation and of renewals and replacements, principal
27 and interest requirements and the status of all
28 funds. Copies of such annual reports shall be filed
29 with the clerk of the municipality and shall be open
30 to the inspection of all interested persons.

31 Sec. 8. 30 MRSA §4256, as amended by PL 1981, c.
32 322, §8, is further amended to read:

33 §4256. Pledges and covenants; trust agreement

34 In the discretion of the municipal officers of
35 any municipality, each or any issue of revenue bonds
36 may be secured by a trust agreement by and between
37 the municipality and a corporate trustee, which may
38 be any trust company within or without the State.
39 The resolution authorizing the issuance of the bonds
40 or such trust agreement may pledge the revenues to be
41 received from the water system; sewer system; water
42 and sewer system; airport or parking facility or sys-
43 tem or telecommunications system; or energy facility
44 revenue producing facility, including the revenue

1 producing municipal facility financed with revenue
2 bonds issued under this chapter, but shall not convey
3 or mortgage any revenue producing municipal facility
4 or system including a revenue producing municipal fa-
5 cility, except on a nonrecourse basis. Such resolu-
6 tion may also contain such provisions for protecting
7 and enforcing the rights and remedies of the bond-
8 holders as may be reasonable and proper and not in
9 violation of law, including covenants setting forth
10 the duties of the municipality and the municipal of-
11 ficers in relation to the acquisition, construction,
12 reconstruction, improvement, repair, maintenance, op-
13 eration and insurance of any such revenue producing
14 municipal facility or related system or systems, the
15 fixing and revising of rates, fees and charges, and
16 the custody, safeguarding and application of all mon-
17 eys, and for the employment of consulting engineers
18 in connection with such acquisition, construction,
19 reconstruction or operation. Such resolution or trust
20 agreement may set forth the rights and remedies of
21 the bondholder and of the trustee, if any, and may
22 restrict the individual right of action by bondhold-
23 ers as is customary in trust agreements or trust in-
24 dentures securing bonds or debentures of corpora-
25 tions. Such resolution or trust agreement may con-
26 tain such other provisions in addition to the forego-
27 ing as the municipal officers may deem reasonable and
28 proper for the security of the bondholders. Except as
29 in this chapter otherwise provided, the municipal of-
30 ficers may provide for the payment of the proceeds of
31 the sale of the bonds and the revenues of any revenue
32 producing municipal facility or part thereof to such
33 officer, board or depository as it may designate for
34 the custody thereof, and for the method of disburse-
35 ment thereof, with such safeguards and restrictions
36 as it may determine. All expenses incurred in carry-
37 ing out such resolution or trust agreement may be
38 treated as a part of the cost of operation. All
39 pledges of revenue under this chapter shall be valid
40 and binding from the time when such pledge is made;
41 all such revenues so pledged and thereafter received
42 by the municipality shall immediately be subject to
43 the lien of such pledges without any physical deliv-
44 ery thereof or further action under the Uniform Com-
45 mercial Code or otherwise, and the lien of such
46 pledges shall be valid and binding as against all
47 parties having claims of any kind in tort, contract

1 or otherwise against the municipality, irrespective
2 of whether such parties have notice thereof.

3 Sec. 9. 30 MRSA §5061, first ¶, as amended by PL
4 1981, c. 322, §9, is further amended to read:

5 No municipality ~~shall~~ may incur debt which would
6 cause its total debt outstanding at any time, exclu-
7 sive of debt incurred for school purposes, for ~~storm~~
8 ~~or sanitary sewer purposes, for energy facility pur-~~
9 ~~poses or for municipal airport purposes revenue pro-~~
10 ~~ducing facility purposes under chapter 242 to exceed~~
11 7 1/2% of its last full state valuation. A municipi-
12 pality may incur debt for school purposes to an
13 amount outstanding at any time not exceeding 10% of
14 its last full state valuation, for storm or sanitary
15 sewer purposes to an amount outstanding at any time
16 not exceeding 7 1/2% of its last full state valua-
17 tion, and for municipal airport, water and special
18 district purposes to an amount outstanding at any
19 time not exceeding 3% of its last full state valua-
20 tion; provided, however, that in no event shall any
21 municipality incur debt which would cause its total
22 debt outstanding at any time to exceed 15% of its
23 last full state valuation.

24 STATEMENT OF FACT

25 This bill allows municipalities to undertake pub-
26 lic purposes without enumeration through greater use
27 of municipal revenue bonds. Currently, the municipal
28 revenue producing facilities law limits the eligibil-
29 ity requirements for municipal financing with revenue
30 bonds to water systems, sewer, airport or parking ga-
31 rage projects. Since there are many other community
32 and economic development projects which could other-
33 wise be financed with revenue bonds, these amendments
34 facilitate these financing options.

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