

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 396

S.P. 142

In Senate, February 19, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator CLARK of Cumberland.

Cosponsored by Senator COLLINS of Aroostook,  
Representative ERWIN of Rumford, Representative TELOW of  
Lewiston.

STATE OF MAINE

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

1 AN ACT to Amend the Law Regarding the  
2 Organization and Management of Stock  
3 Institutions.  
4

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

7 Sec. 1. 9-B MRSa §312, sub-§1, as enacted by PL  
8 1975, c. 500, §1, is amended to read:

9 1. Incorporators. Five or more persons, a major-  
10 ity of whom shall be residents of this State, may  
11 agree in writing to associate themselves for the pur-  
12 pose of forming a stock financial institution pursu-  
13 ant to this chapter.

14 If a company is a financial institution holding com-  
15 pany or will become a financial institution holding

1 company as a result of the formation of a stock in-  
2 stitution pursuant to this chapter, then the company  
3 proposing to organize a stock institution may be the  
4 sole incorporator. The company must subscribe to and  
5 ultimately purchase 100% of the capital stock of the  
6 institution in order to become the sole incorporator.  
7 A majority of the board of directors of the company  
8 must resolve to seek to organize the stock financial  
9 institution.

10 Sec. 2. 9-B M RSA §312, sub-§2, ¶G, as enacted by  
11 PL 1975, c. 500, §1, is amended to read:

12 G. Such additional information, including the  
13 reasons why an institution of the type specified  
14 in paragraph B is needed in the proposed loca-  
15 tion, as the superintendent may require by regu-  
16 lation. No application for a permission to or-  
17 ganize shall ~~may~~ be deemed considered complete  
18 unless accompanied by an application fee of  
19 ~~\$1,000~~ as determined by the superintendent, pay-  
20 able to the Treasurer of State, to be credited  
21 and used as provided in section 214. In no event  
22 may that fee be less than \$1,000.

23 Sec. 3. 9-B M RSA §312, sub-§3, as enacted by PL  
24 1975, c. 500, §1, is amended to read:

25 3. Publication of notice. After determining that  
26 the application required in subsection 2 is complete,  
27 the superintendent shall advise the incorporators to  
28 publish, within 15 days of such advice, a notice in  
29 such form as the superintendent may prescribe. Such  
30 notice shall appear at least once a week for 3 suc-  
31 cessive weeks in one or more newspapers of general  
32 circulation in the county where the financial insti-  
33 tution is to be established, or in such other newspa-  
34 pers as the superintendent may designate. Such pub-  
35 lished notice shall specify the names, addresses and  
36 occupations or businesses of each of the incorpora-  
37 tors and directors, the type of financial institution  
38 to be organized, and the name of the institution and  
39 its location as set forth in the application for per-  
40 mission to organize. The superintendent may require  
41 individual notice to any person or corporation, and  
42 may require that one of such publications contain the  
43 information required under section 252, subsection 2.

1           Sec. 4. 9-B, §312, sub-§4, as amended by PL  
2 1979, c. 663, §34, is further amended to read:

3           4. Permission from superintendent.

4           A. Within 10 days after the first publication of  
5 the notice required in subsection 3, the incorporators shall apply to the superintendent for a  
6 certificate that public convenience and advantage  
7 will be promoted by the establishment of a finan-  
8 cial institution of the type set forth in their  
9 application; and such request shall be deemed as  
10 completing the application for purposes of sec-  
11 tion 252, subsection 2.  
12

13           B. In determining whether or not a certificate  
14 of public convenience and advantage will be pre-  
15 moted by granting permission to organize the type  
16 of institution requested, which permits the in-  
17 corporator or incorporators to organize the type  
18 of financial institution requested, should be  
19 granted, the superintendent shall make his deci-  
20 sion in accordance with the requirements of sec-  
21 tion 253, pursuant to the procedures set forth in  
22 section 252.

23           C. A grant of a certificate of public conve-  
24 nience and advantage and permission to organize  
25 may include such terms and conditions as the su-  
26 perintendent may deem determines necessary in-  
27 cluding. These may include, but are not limited  
28 to, an increase in the minimum capital stock pur-  
29 suant to subsection 5.

30           Sec. 5. 9-B MRS §312, sub-§5, ¶A, as enacted by  
31 PL 1975, c. 500, §1, is amended to read:

32           A. The certificate of public convenience and ad-  
33 vantage and permission to organize, granted in  
34 writing by the superintendent, shall set forth  
35 the minimum amount of paid-in capital stock which  
36 a stock financial institution shall have to begin  
37 business.

38           Sec. 6. 9-B MRS §312, sub-§6, as enacted by PL  
39 1975, c. 500, §1, is amended to read:

1           6. Effect of denial. If the superintendent de-  
2 nies ~~permission to organize or~~ refuses to issue a  
3 certificate of public convenience and advantage, the  
4 application may be renewed in the manner provided in  
5 this section after one year from the date of such  
6 ~~denial~~ the refusal.

7           Sec. 7. 9-B MRSa §313, first ¶, as enacted by PL  
8 1975, c. 500, §1, is amended to read:

9           Upon receipt of a certificate of public conve-  
10 nience and advantage ~~and permission to organize~~ pur-  
11 suant to section 312, the incorporator or incorpora-  
12 tors shall comply with the following requirements:

13           Sec. 8. 9-B MRSa 313, sub-§§1 and 2, as enacted  
14 by PL 1975, c. 500, §1, are amended to read:

15           1. Franchise during organization. The incorpora-  
16 tor or incorporators and subscribers to stock in the  
17 institution as set forth in the application for per-  
18 mission to organize, and who subsequently receive  
19 permission a certificate of public convenience and  
20 advantage from the superintendent, shall hold the  
21 institution's franchise until such time as the re-  
22 quirements of this section are met, or the superin-  
23 tendent determines that ~~said~~ the requirements have  
24 not been complied with.

25           2. First meeting: adoption of articles and by-  
26 laws; elections.

27           A. Within 30 days after receipt of a certificate  
28 of public convenience and advantage ~~and permis-~~  
29 ~~sion to organize~~ pursuant to section 312, the  
30 first meeting of the incorporators and subscrib-  
31 ers to stock in the institution shall be called  
32 by a notice signed by that incorporator or sub-  
33 scriber who was designated in the application for  
34 that purpose, or by a majority of the incorpora-  
35 tors and subscribers. Such notice shall state the  
36 time, place and purposes of the meeting. A copy  
37 of the notice shall, at least 3 days before the  
38 date appointed for the meeting, be given to each  
39 incorporator and subscriber, or left at his resi-  
40 dence or usual place of business, or deposited in  
41 the post office addressed to him at his residence

1 or usual place of business, and another copy  
2 thereof, together with an affidavit of one of the  
3 incorporators or subscribers that the notice has  
4 been duly served, shall be recorded with the  
5 records of the institution. If all the incorpora-  
6 tors and subscribers shall, in writing indorsed  
7 upon the application to organize, waive such no-  
8 tice and fix the time and place of the meeting,  
9 no notice shall be required.

10 If the applicant is a sole incorporator as per-  
11 mitted by section 312, subsection 1, then the  
12 preceding requirements for the first meeting can  
13 be waived. Instead, the adoption of articles and  
14 bylaws and the election of directors and officers  
15 for the proposed institution can take place at a  
16 special meeting, called specifically for this  
17 purpose, of the applicant's board of directors  
18 within 30 days after the receipt of a certificate  
19 of public convenience and advantage.

20 B. At such the first meeting or at any adjourn-  
21 ment thereof, the incorporator or incorporators  
22 and subscriber or subscribers shall by ballot se-  
23 lect a temporary clerk, adopt articles of incor-  
24 poration and bylaws and, in such manner as the  
25 bylaws may determine, elect directors, a presi-  
26 dent, a clerk and such other officers as the by-  
27 laws may prescribe. All the officers so elected  
28 shall be sworn to the faithful performance of  
29 their duties. Upon election and the swearing of  
30 directors, the power and responsibility of the  
31 incorporator or incorporators for the institution  
32 shall cease.

33 C. The temporary clerk, is applicable, shall  
34 make and attest a record of the proceedings until  
35 the clerk has been chosen and sworn, including a  
36 record of such choice and qualification.

37 D. Within 10 days after adoption of the articles  
38 of incorporation and bylaws, the clerk of the in-  
39 stitution being so organized shall file with the  
40 superintendent copies thereof; and, within 15  
41 days after receipt, the superintendent shall, af-  
42 ter examining such articles and bylaws for con-  
43 formance with the requirements of this Title, ap-

1 prove or disapprove of such articles and bylaws.  
2 Sec. 9. 9-B MRSA §316, sub-§1, ¶D, as enacted by  
3 PL 1975, c. 500, §1, is amended to read:

4 D. No person shall may be eligible to serve as a  
5 director of any stock financial institution un-  
6 less he is the actual owner of stock in such the  
7 institution with a par value of at least \$1,000  
8 market value of not less than \$2,500, or is a  
9 nominee of a financial institution holding compa-  
10 ny which holds stock in such institution in such  
11 that an amount. Qualifying shares may not be en-  
12 cumbered.

13 STATEMENT OF FACT

14 The changes to the Maine Revised Statutes, Title  
15 9-B, chapter 31 are generally just clarifications of  
16 the laws. There has been some confusion as to when a  
17 certificate of public convenience and advantage  
18 should be issued in the decision-making process, and  
19 most of the changes to section 312 attempt to clarify  
20 this matter. The most substantive change in section  
21 312 is allowing a financial institution holding com-  
22 pany or a company that will become a financial insti-  
23 tution holding company, as a result of the organiza-  
24 tion of a stock financial institution, to be the sole  
25 incorporator of the stock financial institution.  
26 This will save the applicant the trouble of appoint-  
27 ing 5 or more of its officers to act as incorpora-  
28 tors. This is consistent with the Maine Business  
29 Corporation Act which allows for one or more incorpora-  
30 tors as opposed to the 5 or more required by the  
31 banking code. The changes to section 313 regarding  
32 notice of the organizational meeting have also been  
33 amended to reflect the possibility that there may on-  
34 ly be one corporate incorporator.

35 The other substantive change to chapter 31 re-  
36 gards directors qualifying shares as contained in  
37 section 316, subsection 1, paragraph D. The mutual  
38 to stock conversion of 2 savings bonds over the past  
39 3 years has demonstrated that 1,000 shares of par  
40 value is usually a substantial financial burden.

1 This can lead to situations where otherwise qualified  
2 individuals, who may have served as trustees for a  
3 mutual savings bank, would not be able to serve as  
4 directors because they lack the financial capability  
5 of purchasing qualifying shares. If a mutual savings  
6 bank offered \$1 par value stock for \$15 in a conver-  
7 sion, an individual would have to invest \$15,000 just  
8 to purchase his director's qualifying shares. The  
9 proposed bill would limit this burden to \$2,500, but  
10 in no event shall the number of qualifying shares be  
11 less than 25.

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