

MAINE STATE LEGISLATURE

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L.D. 2378

(Filing No. S-372)

STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 912, L.D. 2378,
Bill, "AN ACT Providing for the 1988 Amendments to the
Finance Authority of Maine Act."

Amend the Bill by striking out all of section 1.

Further amend the Bill by inserting after section
5 the following:

'Sec. 6. 10 MRSA §1024, sub-§2, as amended by PL
1987, c. 521, §6, is further amended to read:

2. Issuance of bonds. If a request for funds is
made under subsection 1 and if there are insufficient
funds in the State Contingent Account, bonds of the
State 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:

(1) The Constitution of Maine, Article IX,
Section 14-A, as it may be from time to time
amended, except that bonds issued under that
section and this subsection shall not exceed
in the aggregate at any one time outstanding
the principal amount of \$82,500,000; and

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1 (2) The Constitution of Maine, Article IX,
2 Section 14-D, as it may be from time to time
3 amended, except that bonds issued under that
4 section and this subsection shall not exceed
5 in the aggregate at any one time outstanding
6 the principal amount of \$4,000,000;

7 C. To mature serially or to run for such periods
8 as the Governor may determine, not to exceed 10
9 years, to be subject to prior redemption or
10 repurchase at the option of the State or the
11 holder, as the Governor may determine, with or
12 without premium;

13 D. At variable or fixed rates of interest, in
14 such denominations, at such price, at public or
15 private sale, in such manner and on such other
16 terms and conditions as approved by the Governor;
17 and

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

20 If, at any time, the Governor fails to honor such a
21 request for funds or to so order the Treasurer of
22 State or, if the Treasurer of State fails to issue
23 such bonds upon such order, any beneficiary of a valid
24 mortgage insurance obligation of the authority may, by
25 suit against the Governor, seek to require the
26 Governor to honor the request either by payment from
27 the State Contingent Account or by ordering the
28 Treasurer of State to issue such bonds with the
29 proceeds applied to honor the request and may, by suit
30 against the Treasurer of State, seek to require the
31 Treasurer of State to issue the bonds.'

32 Further amend the Bill by inserting after section
33 8 the following:

34 'Sec. 9. 10 MRS A §1032 is enacted to read:

35 §1032. Capital reserve funds; obligation of State

36 1. Capital reserve fund. The authority may
37 create and establish one or more capital reserve funds
38 and may pay into any such capital reserve fund any

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1 money appropriated and made available by the State for
2 the purposes of any such fund and any other money
3 available to the authority. For purposes of this
4 section, the amount of any letter of credit, insurance
5 contract, surety bond, indemnification agreement or
6 similar financial undertaking available to be drawn on
7 and applied to obligations to which money in any such
8 fund may be applied shall be deemed to be and counted
9 as money in the capital reserve fund.

10 2. Application. Money in any capital reserve
11 fund created pursuant to subsection 1, except as
12 provided in this section, shall be used solely with
13 respect to mortgage loans, repayment of which is
14 secured by any such fund, for the payment of
15 principal, accrued interest and costs and expenses
16 chargeable to the mortgage loan and with respect to
17 interest rate swap agreements benefiting eligible
18 enterprises. Money in excess of the reserve
19 requirement established pursuant to subsection 4 may
20 be transferred to other funds and accounts of the
21 authority.

22 3. Security for mortgage loans. With respect to
23 any mortgage loans which may be insured under this
24 subchapter and interest rate swap agreements
25 benefiting eligible enterprises, the authority may
26 provide that such mortgage loans or interest rate swap
27 agreements shall be secured by one or more capital
28 reserve funds established pursuant to subsection 1
29 instead of or in addition to mortgage insurance
30 provided under other sections of this subchapter.
31 Limitations and requirements applicable to mortgage
32 insurance under sections 1026-A to 1028 shall be
33 applicable to mortgage loans, but not interest rate
34 swap agreements, to which one or more capital reserve
35 funds apply as if the mortgage loans were backed by
36 mortgage insurance. Capital reserve funds may secure
37 interest rate swap agreements pertaining to eligible
38 enterprises which demonstrate the ability to honor the
39 swap agreement as determined by the authority and
40 which do not have as a principal element space for
41 retail sales or professional office space, as defined
42 by the authority. Any commitment with respect to a
43 mortgage loan executed and delivered pursuant to this
44 section shall be conclusive evidence of the
45 eligibility of the mortgage loan for insurance and the
46 validity of any such commitment or contract shall be.

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1 incontestable in the hands of a mortgage lender except
2 for fraud or misrepresentation on the part of the
3 mortgage lender. Mortgages secured by capital reserve
4 funds under this section are made legal investments
5 for all insurance companies, trust companies, banks,
6 investment companies, savings banks, savings and loan
7 associations, executors, trustees and other
8 fiduciaries, public and private pension or retirement
9 funds and other persons.

10 4. Reserve requirement. The authority may
11 provide that money in any such capital reserve fund
12 shall not be withdrawn at any time in an amount that
13 would reduce the amount of any such fund below an
14 amount established by the authority with respect to
15 the fund, except for the purpose of paying the amount
16 due pursuant to the terms of any mortgage loan or
17 interest rate swap agreement, repayment of which is
18 secured by any such fund.

19 5. Appropriation. On or before December 1st,
20 annually, the authority shall certify to the Governor
21 the amount, if any, necessary to restore the amount in
22 any capital reserve fund to which this section is
23 stated in any written agreement of the authority to
24 apply, to the reserve requirement established by the
25 authority. The Governor shall pay directly from the
26 State Contingent Account to any such fund as much of
27 the amount as is available in that account and shall
28 transmit directly to the Legislature certification and
29 a statement of the amount, if any, remaining to be
30 paid. The certified amount shall be appropriated and
31 paid to the authority during the current state fiscal
32 year.

33 6. Obligations outstanding. The authority shall
34 not have at any one time outstanding obligations to
35 which this section is stated in any agreement of the
36 authority to apply in principal amount exceeding
37 \$50,000,000, less the amount of revenue obligation
38 securities to which section 1053 is stated in the
39 trust agreement or other document to apply. Amounts
40 of revenue obligations securities which are not taken
41 into account pursuant to section 1053, subsection 6,
42 shall not be taken into account for purposes of
43 determining the amount which may be outstanding under
44 this section.'

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1 Further amend the Bill by inserting after section
2 9 the following:

3 'Sec. 10. 10 MRSAs §1053, sub-§1, as enacted by
4 PL 1985, c. 344, §78, is amended to read:

5 1. Capital reserve fund. The authority may
6 create and establish one or more capital reserve funds
7 and may pay into any such capital reserve fund any
8 money appropriated and made available by the State for
9 the purposes of any such fund, any proceeds of sale by
10 the authority of revenue obligation securities to the
11 extent determined by the authority and any other money
12 available to the authority. For purposes of this
13 section, the amount of any letter of credit, insurance
14 contract, surety bond or similar financial undertaking
15 available to be drawn on and applied to obligations to
16 which money in any such fund may be applied shall be
17 deemed to be and counted as money in the capital
18 reserve fund.'

19 Further amend the Bill in section 10 by striking
20 out all of subsection 3 and inserting in its place the
21 following:

22 '3. Reserve requirement. The authority may
23 provide that money in any such fund shall not be
24 withdrawn at any time in such amount as would reduce
25 the amount of any such fund to less than the maximum
26 amount of principal and interest becoming due by
27 reason of maturity or a required sinking fund payment
28 and payable under any applicable trust agreement or
29 other agreement in the next succeeding 12-month
30 period within which any such maturity occurs or any
31 such payment is required, the amount being referred
32 to as the "capital reserve requirement," except for
33 the purpose of paying the amount due at any such
34 maturity or the sinking fund payment and payable with
35 respect to revenue obligation securities, repayment of
36 which is secured by any such fund.'

37 Further amend the Bill by inserting after section
38 10 the following:

39 'Sec. 11. 10 MRSAs §1053, sub-§6, as amended by
40 PL 1985, c. 714, §33, is further amended to read:

1 6. Securities outstanding. The authority shall
2 not have at any one time outstanding revenue
3 obligation securities to which subsection 5 is stated
4 in the trust agreement or other document to apply in
5 principal amount exceeding an amount equal to
6 \$50,000,000 less the aggregate outstanding balance of
7 mortgage loans secured by capital reserve funds
8 pursuant to section 1032. The amount of revenue
9 obligation securities issued to refund securities
10 previously issued shall not be taken into account in
11 determining the principal amount of securities
12 outstanding, provided that proceeds of the refunding
13 securities are applied as promptly as possible to the
14 refunding of the previously issued securities. In
15 computing the total amount of revenue obligation
16 securities of the authority which may at any time be
17 outstanding for any purpose, the amount of the
18 outstanding revenue obligation securities that have
19 been issued as capital appreciation bonds or as
20 similar instruments shall be valued as of any date of
21 calculation at their then current accreted value
22 rather than their face value.

23 Sec. 12. 10 MRSA §1100-N, sub-§3 is enacted to
24 read:

25 3. Business support group initiative.
26 Notwithstanding anything in this section to the
27 contrary, the authority and any contracting community
28 action agency may delegate application review, loan
29 approval and servicing decisions to one or more
30 designated business support groups in the area served
31 by the contracting community action agencies, subject
32 to the following requirements.

33 A. Each group shall be composed of not less than
34 5 individuals, corporations or partnerships which
35 meet the eligibility criteria for job-start
36 program applicants, are hopeful of starting or
37 expanding separate businesses eligible for
38 job-start financing and have community or other
39 ties demonstrating a common mission or purpose.

40 B. Each group must agree to undergo a business
41 management training program established by the
42 authority and each group member must agree to

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1 provide business support to other members of the
2 group.

3 C. The authority, in consultation with
4 contracting community action agencies, may set
5 aside by rule not more than \$75,000 in the
6 aggregate for purposes of this initiative, which
7 will be available for loans to business support
8 group members.

9 D. The authority shall establish by rule
10 limitations on the amount of loans which may be
11 approved by each business support group and shall
12 establish incentives which condition release of
13 loan funds to each group on successful compliance
14 with loan conditions and payment obligations on
15 prior loans made to group members.'

16 Further amend the Bill by renumbering the sections
17 to read consecutively.

18 STATEMENT OF FACT

19 This amendment deletes section 1 of the bill,
20 which is substantially the same as a provision in a
21 separate bill pending before the Legislature.

22 This amendment clarifies legislative intent with
23 respect to the enforceability of the pledge of the
24 faith and credit of the State to back mortgage
25 insurance obligations of the Finance Authority of
26 Maine. Questions have been raised regarding whether
27 insured lenders and bondholders have any legal
28 recourse in the event that they are not paid. This
29 amendment clarifies that the Governor and Treasurer of
30 State could be sued in the event that they fail to
31 comply with the law. This provision is based on a
32 parallel provision in the Constitution of Maine,
33 Article V, Part Third, Section 5, which provides for
34 legal recourse against the Treasurer of State in the
35 event that general obligations are not paid when due.

36 The amendment also permits the authority to assist
37 businesses in obtaining mortgage loans and in reducing
38 the risk of variable interest rates by backing

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1 mortgage loans and interest rate swap agreements with
2 the "moral obligation" of the State. Unlike the
3 mortgage insurance which the authority currently uses,
4 the "moral obligation" is structured with a reserve
5 fund for each loan, which would be drawn on to pay
6 amounts coming due if the borrower fails to pay. If
7 the amount in the reserve is insufficient, the
8 authority would request the funds from the Governor,
9 who would either pay from the State Contingent Account
10 or request the necessary funds be appropriated by the
11 Legislature. Interest rate swap agreements allow
12 borrowers to effectively swap their variable rate
13 loans for fixed-rate loans by exchanging interest
14 payment obligations with a party who is making fixed-
15 rate interest payments.

16 The amendment also clarifies the bill regarding
17 the use of letters of credit, insurance contracts and
18 similar financial obligations in place of cash
19 deposits into the debt service reserve fund required
20 to back "moral obligation" bonds of the authority.
21 The authority would be authorized to use such
22 obligations instead of cash where it is advantageous
23 to do so. The "moral obligation" bond authority is
24 also clarified with regard to the amount required to
25 be deposited in the reserve funds. The amendment
26 makes clear that authorizing "moral obligation"
27 backing for mortgage loans in addition to bonds will
28 not increase the current statutory limit of
29 \$50,000,000 on "moral obligation" commitments by the
30 authority. The amount of bonds backed by "moral
31 obligation" under the Maine Revised Statutes, Title
32 10, section 1053, plus the amount of mortgage loans
33 backed by "moral obligation" under the proposed Title
34 10, section 1032, cannot exceed the \$50,000,000 limit
35 established in the 1983 public law that created the
36 authority.

37 Finally, the amendment authorizes the authority to
38 establish a business support group initiative within
39 the Maine Job-start Program. The authority could
40 designate business support groups to administer loans
41 among themselves, with incentives built in that will
42 cut off loan funds if prior loans are not being repaid
43 in accordance with their terms. The incentives will
44 encourage members of each group to support the
45 business of each member and to encourage each other to
46 repay their loans and make their businesses succeed.

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