

MAINE STATE LEGISLATURE

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L.D. 821

(Filing No. S- 195)

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 316, L.D. 821, Bill, "An Act Providing for the 1989 Amendments Pertaining to the Finance Authority of Maine Act"

Amend the bill by striking out all of section 3 and inserting in its place the following:

'Sec. 3. 10 MRSA §357, as enacted by PL 1985, c. 468, §2, is repealed.'

Further amend the bill by striking out all of section 4.

Further amend the bill by inserting after section 4 the following:

'Sec. 5. 10 MRSA §963-A, sub-§§24-A and 49-D are enacted to read:

24-A. Interest rate swap agreement. "Interest rate swap agreement" means a financial agreement as defined by the Finance Authority of Maine by rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

49-D. Swap counterparty. "Swap counterparty" means a person who is a party to an interest rate swap agreement.'

Further amend the bill by striking out all of section 12 and inserting in its place the following:

'Sec. 12. 10 MRSA §§988-A, 988-B and 1023-F are enacted to read:

§988-A. Natural Resources Capital Investment Fund

1. Creation. The Natural Resources Capital Investment Fund is created and established under the jurisdiction and control of the authority.

1 2. Sources of money. There shall be paid into the fund the
2 following:

3
4 A. All money appropriated for inclusion in the fund;

5
6 B. Subject to any pledge, contract or other obligation, all
7 interest, dividends or other pecuniary gains from investment
8 of money of the fund;

9
10 C. Subject to any pledge, contract or other obligation, any
11 money which the authority receives in repayment of advances
12 from the fund; and

13
14 D. Any other money available to the authority and directed
15 by the authority to be paid into the fund.

16
17 3. Application of fund. Money in the fund may be applied
18 to carry out any power of the authority under or in connection
19 with section 988-B, including, without limitation, to pledge or
20 transfer and deposit money in the fund as security for and to
21 apply money in the fund in payment of principal, interest,
22 dividends and other amounts due on secured loans or equity
23 interests. Money in the fund may be used for direct loans in
24 connection with a project eligible under section 988-B. The
25 authority, pursuant to the Maine Administrative Procedure Act,
26 Title 5, chapter 375, subchapter II, shall adopt rules for
27 determining eligibility, feasibility, terms, conditions and
28 security for direct loans or secured loans or investments. Money
29 in the fund not needed currently to meet the obligations of the
30 authority as provided in this section may be invested in a manner
31 permitted by law.

32
33 4. Accounts within fund. The authority may divide the fund
34 into separate accounts as it determines necessary or convenient
35 for carrying out this section, including, but not limited to,
36 accounts reserved for direct loan funds.

37
38 5. Revolving fund. The fund shall be a nonlapsing,
39 revolving fund. All money in the fund shall be continuously
40 applied by the authority to carry out this section and section
41 988-B.

42 §988-B. Natural resources capital investment program

43
44 1. Purpose. The purpose of this section is to establish a
45 program to provide assistance in the financing and development of
46 natural resource projects designed to increase the State's
47 capacity to produce, harvest, store, process, distribute, market
48 and improve the quality of its natural resource products. The
49 goal is to expand the opportunities for natural resource
50 enterprises and promote the quality of Maine products nationally
51 and internationally.

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2. Eligible projects. To be eligible for assistance under the program, projects must be located in the State and must consist of the construction, renovation or acquisition of land, buildings, equipment, docks, wharves, piers or vessels used in connection with a commercial natural resource enterprise, as that term is defined in section 963-A, subsection 41. Financing assistance may be provided with respect to the soft costs associated with eligible projects, but not for working capital.

3. Eligible borrowers. Eligible borrowers shall include profit and nonprofit businesses, producer groups, cooperatives and governmental entities.

4. Assistance provided. The authority is authorized to provide assistance in the form of direct loans or security for commercial loans or equity investments, subject to the following limitations.

A. In the case of direct loans, funds may be provided from the fund established under section 988-A for up to 45% of total project costs. Borrowers must contribute at least 10% of total project costs in equity or the equivalent and the balance of project costs may be financed by a lender. The authority may provide that repayment of loans from the fund and the security therefor may be subordinate to the lender loan. The interest rate, other loan terms and conditions and fees to the authority may be established by the authority by rulemaking pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, provided that the interest rate is not less than 5% per year and loan terms do not exceed 10 years for equipment, 20 years for vessels and 25 years for real estate.

B. In the case of security for commercial loans, funds may be provided from the fund established under section 988-A to the lender as collateral for the loan on terms and conditions established by the authority by rulemaking pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, provided that funds deposited with the lender do not exceed 45% of the total loan. The authority may also provide funds to a lender as a deposit in the name of the authority at a reduced rate of interest provided that the interest savings to the lender is passed on to the borrower in the form of a lower interest rate on the loan.

C. In the case of security for equity investments, the authority may pledge or deposit money from the fund established under section 988-A as security for up to 30% of a direct equity investment in an eligible borrower on terms and conditions established by the authority by rulemaking

1 pursuant to the Maine Administrative Procedure Act, Title 5,
2 chapter 375, subchapter II.

3
4 D. Assistance from the fund pursuant to this section may
5 not exceed in aggregate 45% of total project costs of an
6 eligible project. The authority may establish a mechanism
7 for reserving funds for or giving priority to projects in
8 industries or areas of the State deemed to require special
9 assistance.

10
11 E. Each applicant must demonstrate a reasonable likelihood
12 that it would not be able to obtain financing or investment
13 sufficient for the project's needs on reasonable terms
14 without assistance from the fund, that there is a reasonable
15 likelihood that it will be able to repay the loan or secured
16 investment and that the project will assist in accomplishing
17 the purposes of this subchapter.

18 §1023-F. Innovation Finance Fund

19
20 1. Creation. The Innovation Finance Fund is created and
21 established under the jurisdiction and control of the authority.

22
23 2. Sources of money. There shall be paid into the fund the
24 following:

25
26 A. All money appropriated for inclusion in the fund;

27
28 B. Subject to any pledge, contract or other obligation, all
29 interest, dividends or other pecuniary gains from investment
30 of money of the fund;

31
32 C. Subject to any pledge, contract or other obligation, any
33 money which the authority receives in repayment of advances
34 from the fund; and

35
36 D. Any other money available to the authority and directed
37 by the authority to be paid into the fund.

38
39 3. Application of fund. Money in the fund may be applied
40 to carry out any power of the authority under or in connection
41 with section 1026-H, including, without limitation, to pledge or
42 transfer and deposit money in the fund as security for and to
43 apply money in the fund in payment of principal, interest,
44 dividends and other amounts due on secured loans or equity
45 interests. Money in the fund may be used for direct loans for
46 all or part of a project eligible under section 1026-H. The
47 authority, pursuant to the Maine Administrative Procedure Act,
48 Title 5, chapter 375, subchapter II, shall adopt rules for
49 determining eligibility, feasibility, terms, conditions and
50 security for direct loans or secured loans or investments. Money
51 in the fund not needed currently to meet the obligations of the

1 authority as provided in this section may be invested in a manner
2 permitted by law.

3

4 4. Accounts within fund. The authority may divide the fund
5 into separate accounts it determines necessary or convenient for
6 carrying out this section, including, but not limited to,
7 accounts reserved for direct loan funds.

9

10 5. Revolving fund. The fund shall be a nonlapsing,
11 revolving fund. All money in the fund shall be continuously
12 applied by the authority to carry out this section and section
13 1026-H.'

13

14 Further amend the bill by inserting after section 12 the
15 following:

17

16 'Sec. 13. 10 MRSA §1026-D, sub-§2, ¶B, as enacted by PL 1985,
17 c. 344, §49, is amended to read:

19

20 B. The authority may insure no more than 90% of the
21 mortgage payments, except that the authority may insure up
22 to 100% of a mortgage loan if the insured lender provides
23 the authority with a letter of credit or equivalent
24 undertaking in an amount at least equal to that portion of
25 the insurance liability exceeding 90% of the mortgage loan.

27

26 Sec. 14. 10 MRSA §1026-H is enacted to read:

29

28 §1026-H. Innovation finance program

31

30 1. Purpose. The purpose of this section is to establish a
31 program to provide assistance to credit worthy businesses in the
32 financing and development of new or higher quality products and
33 services, new production and delivery mechanisms and new markets
34 for products and services. The assistance is designed to provide
35 an inducement to businesses to undertake research and
36 development activities to better enable Maine businesses to
37 participate in the new global economy and to be prepared to adapt
38 to changes in the competitive marketplace.

41

39 2. Eligible projects. To be eligible for assistance under
40 the program, projects must pertain to manufacturing, industrial,
41 recreational or natural resource enterprises, must be located in
42 the State and must consist of research and development associated
43 with new or higher quality products and services, new production
44 and delivery mechanisms and new markets for products and
45 services. Financing assistance may be provided with respect to
46 all costs associated with eligible projects, including working
47 capital.

51

48 3. Eligible borrowers. To be eligible for assistance under
49 the program, borrowers must be for-profit or nonprofit businesses
50 and must have 50 or fewer employees or annual sales of \$5,000,000
51

53

1 or less.

3 4. Assistance provided. The authority may provide
5 assistance in the form of direct loans or security for commercial
loans or equity investments, subject to the following limitations:

7 A. In the case of direct loans, the authority shall seek to
9 leverage funds from other sources to the extent reasonably
11 possible. Borrowers must obtain or contribute at least 10%
13 of total project costs in equity or the equivalent and the
15 balance of project costs may be financed by a lender. The
17 authority may provide that repayment of loans from the fund
19 and the security therefor may be subordinate to the lender
loan. The interest rate, fees to the authority and other
loan terms and conditions may be established by the
authority by rulemaking pursuant to the Maine Administrative
Procedure Act, Title 5, chapter 375, subchapter II, provided
that the loan amount does not exceed \$200,000 per borrower,
the interest rate is not less than 5% per year and the loan
term does not exceed 10 years.

21 B. In the case of security for commercial loans, funds may
23 be provided from the fund established under section 1026-G
25 to the lender as collateral for the loan on such terms and
27 conditions as may be established by the authority by
29 rulemaking pursuant to the Maine Administrative Procedure
31 Act, Title 5, chapter 375, subchapter II, provided that
33 funds deposited with the lender do not exceed 45% of the
35 total loan. The authority may provide that the lender may
apply the deposited money from the fund to the loan in the
event of default prior to application of collateral to the
loan. The authority may also provide funds to a lender as a
deposit in the name of the authority at a reduced rate of
interest provided that the interest savings to the lender is
passed on to the borrower in the form of a lower interest
rate on the loan.

37 C. In the case of security for equity investments, the
39 authority may pledge or deposit money from the fund
41 established under section 1026-G as security for up to 30%
43 of a direct equity investment in an eligible borrower on
45 terms and conditions established by the authority by
rulemaking pursuant to the Maine Administrative Procedure
Act, Title 5, chapter 375, subchapter II.

47 D. The authority may establish a mechanism for reserving
49 funds for or giving priority to projects in industries or
areas of the State deemed to require special assistance.

51 E. Each applicant must demonstrate a reasonable likelihood
that it would not have been able to conduct the project at
the same level without assistance from the fund, that there

COMMITTEE AMENDMENT "A" to S.P. 316, L.D. 821

1 is a reasonable likelihood that it will be able to repay the
3 loan or secured investment from current operations and not
5 from the income anticipated from the project and that the
7 project will likely result in significant public benefit in
9 the form of increased opportunities for employment,
11 particularly skilled employment, enhanced markets outside
13 the State for Maine products and services, benefits to the
15 industry of which the borrower is a part or a material
17 contribution to a business with an above average rate of
19 growth.'

21 Further amend the bill by striking out all of section 13 and
23 inserting in its place the following:

25 'Sec. 13. 10 MRSA §1032, sub-§§2, 3, 4 and 6, as enacted by PL
27 1987, c. 697, §9, are amended to read:

29 2. Application. Money in any capital reserve fund created
31 pursuant to subsection 1, except as provided in this section,
33 shall be used solely with respect to mortgage loans, repayment of
35 which is secured by any such fund, for the payment of principal,
37 accrued interest and costs and expenses chargeable to the
39 mortgage loan and with respect to interest rate swap agreements
41 benefiting eligible enterprises, and with respect to amounts
43 borrowed by the authority to be used for direct loans from the
45 authority to eligible businesses when direct loans have been
47 authorized by law. Money in any capital reserve fund may be used
49 to pay all amounts due and payable, whether by acceleration or
51 otherwise, under the contractual agreements pertaining to such
53 mortgage loans, interest rate swap agreements and loans to the
 authority, including fees, commissions, indemnities, expenses and
 other amounts due. Money in excess of the reserve requirement
 established pursuant to subsection 4 may be transferred to other
 funds and accounts of the authority.

 3. Security for mortgage loans. With respect to any
 mortgage loans which may be insured under this subchapter and with
 respect to interest rate swap agreements benefiting eligible enterprises and
 loans to the authority to be used for direct loans to eligible
 enterprises, the authority may provide that such mortgage loans
 or interest rate swap agreements or loans to the authority
 shall be secured by one or more capital reserve funds established
 pursuant to subsection 1 instead of or in addition to mortgage
 insurance provided under other sections of this subchapter.
 Limitations and requirements applicable to mortgage insurance
 under sections 1026-A to 1028 shall be applicable to mortgage
 loans, but not interest rate swap agreements or loans to the
 authority, to which one or more capital reserve funds apply as if
 the mortgage loans were backed by mortgage insurance. Capital
 reserve funds may secure interest rate swap agreements pertaining
 to eligible enterprises which demonstrate the ability to honor
 the swap agreement as determined by the authority and which do
 not have as a principal element space for retail sales or

1 professional office space, as defined by the authority. Any
2 commitment with respect to a mortgage loan executed and delivered
3 pursuant to this section shall be conclusive evidence of the
4 eligibility of the mortgage loan for insurance and the validity
5 of any such commitment or contract shall be incontestable in the
6 hands of a mortgage lender, swap counterparty or lender to the
7 authority except for fraud or misrepresentation on the part of
8 the mortgage lender, swap counterparty or lender to the
9 authority. Mortgages secured by capital reserve funds under this
10 section are made legal investments for all insurance companies,
11 trust companies, banks, investment companies, savings banks,
12 savings and loan associations, executors, trustees and other
13 fiduciaries, public and private pension or retirement funds and
14 other persons.

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

24 6. Obligations outstanding. The authority shall not have
25 at any one time outstanding obligations to which this section is
26 stated in any agreement of the authority to apply in principal
27 amount exceeding \$50,000,000 \$75,000,000, less the amount of
28 revenue obligation securities to which section 1053 is stated in
29 the trust agreement or other document to apply. Amounts of
30 revenue obligations securities which are not taken into account
31 pursuant to section 1053, subsection 6, shall not be taken into
32 account for purposes of determining the amount which may be
33 outstanding under this section.'

34
35 Further amend the bill by inserting after section 13 the
36 following:

37
38 'Sec. 14. 10 MRSA §1053, sub-§2, as enacted by PL 1985, c.
39 344, §78, is amended to read:

40
41 2. Application. Money held in any capital reserve fund,
42 except as provided in this section, shall be used solely with
43 respect to revenue obligation securities, repayment of which is
44 secured by any such fund and solely for the payment of principal
45 of the securities, the purchase or redemption of the securities,
46 including any fees or premiums or the payment of interest on the
47 securities. In addition, if the authority obtains a letter of
48 credit, insurance contract, surety bond or similar financial
49 undertaking to establish and fund a capital reserve fund under
50 subsection 1, money in the fund may be used to pay, as and when
51 due, whether by acceleration or otherwise, all reimbursement

1 obligations of the authority established in connection with that
2 letter of credit, insurance contract, surety bond or similar
3 financial undertaking, including, but not limited to, all fees,
4 expenses, indemnities and commissions. Money in excess of the
5 reserve requirement ~~set--forth~~ established as provided in
6 subsection 3 may be transferred to other funds and accounts of
7 the authority.

9 Sec. 15. 10 MRSA §1053, sub-§§3 and 4, as amended by PL 1987,
10 c. 697, §12, are further amended to read:

11

12 3. Reserve requirement. The authority may provide that
13 money in any such fund shall not be withdrawn at any time in such
14 amount as would reduce the amount of any such fund ~~to less than~~
15 ~~the maximum amount of principal and interest becoming due and~~
16 ~~payable under any applicable trust agreement or other agreement~~
17 ~~in the next succeeding 12-month period~~ below an amount
18 established by the authority with respect to the fund, the amount
19 established by the authority being referred to as the "capital
20 reserve requirement," except for the purpose of paying the amount
21 due and payable with respect to revenue obligation securities,
22 repayment of which is secured by any such fund, or reimbursement
23 obligations of the authority with respect to any letter of
24 credit, insurance contract, surety bond or similar financial
25 undertaking pertaining to any such fund.

27

28 4. Issuance limit. The authority may provide that it shall
29 not issue revenue obligation securities if the capital reserve
30 requirement established by the authority with respect to
31 securities outstanding and then to be issued and secured by any
32 such fund will exceed the amount of any such fund, including the
33 amount available ~~to be drawn on~~ under any letter of credit,
34 insurance contract, surety bond or other similar financial
35 undertaking given to secure the capital reserve requirement, at
36 the time of issuance, unless the authority, at the time of
37 issuance of the securities, shall deposit in any such fund from
38 proceeds of the securities so to be issued, or from other
39 sources, an amount, which, together with the amounts then in any
40 such fund and amounts available ~~to be drawn~~ under any letter of
41 credit, insurance contract, surety bond or other similar
42 financial undertaking, will not be less than the capital reserve
43 requirement.'

43

44 Further amend the bill by renumbering the sections to read
45 consecutively.

47

48 Further amend the bill by adding before the statement of
49 fact the following:

49

FISCAL NOTE

51

This legislation appropriates from the General Fund to the

1 Finance Authority of Maine a total of \$1,750,000 in fiscal year
2 1989-90 and \$1,500,000 in fiscal year 1990-91. In fiscal year
3 1989-90, \$250,000 will expand the Pine Tree Partnership Fund
4 program; \$1,000,000 in each fiscal year of the next biennium will
5 establish a natural resources capital investment program; and
6 \$500,000 in each fiscal year will establish the Innovation
7 Finance Fund.

9 This legislation will increase the limitation from
10 \$50,000,000 to \$75,000,000 on the amount of moral obligation debt
11 that the Finance Authority of Maine can have outstanding at any
12 time. This moral obligation debt is backed by capital reserve
13 funds which, if there are insufficient reserves in these funds
14 due to a significant increase in defaults, are replenished by
15 transfers from the State Contingent Account and, if necessary,
16 additional General Fund appropriations.

17 The increase in the limit will increase the reserve
18 requirements. While no transfers or additional appropriations
19 are required at this time, there may be future requests for
20 transfers and General Fund appropriations due to the expanded
21 activity.

23

25

27 STATEMENT OF FACT

29

This amendment makes the following changes to the bill.

31

1. It corrects a technical error in the bill.

33

2. The Finance Authority of Maine, which is currently
34 restricted to insuring no more than 90% of a loan, would be
35 authorized to insure 100% of an eligible loan if the excess over
36 90% is secured by a letter of credit from the lender, or the
37 equivalent. This will benefit borrowers using bond financing in
38 that they would be able to get the best available interest rates
39 on the loan, without materially increasing the authority's risk,
40 while ensuring that the lender servicing the loan has an
41 investment at stake in the project.

43

3. The amendment will authorize the Finance Authority of
44 Maine to pledge the "moral obligation" authority, in effect, the
45 State's credit, to secure loans to the authority to be used to
46 make direct loans to borrowers where the authority has been
47 authorized to make direct loans. This will allow the authority
48 to augment funds appropriated to the Natural Resources Capital
49 Investment Fund and the Innovation Finance Fund.

51

4. The amendment facilitates the issuance of tax-exempt and
52 taxable bonds to benefit eligible businesses by clarifying that
53 the moral obligation authority which the Finance Authority of

COMMITTEE AMENDMENT "A" to S.P. 316, L.D. 821

1 Maine uses to provide credit enhancement on bonds and loans
3 covers principal and interest due as well as all associated
5 costs, including fees, commissions and indemnities due the
7 parties to the financing. In addition, the amendment permits the
authority to determine the appropriate amount of the reserve
requirement that must be established for moral obligation
financing.

Reported by Senator Weymouth for the Committee on Housing
and Economic Development. Reproduced and Distributed
Pursuant to Senate Rule 12.

(5/31/89)

(Filing No. S-195)