

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

---

Legislative Document

No. 401

H.P. 281

House of Representatives, February 6, 1991

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative DORE of Auburn.

Cosponsored by Senator CLEVELAND of Androscoggin, Representative MAHANY of Easton and Representative SIMONDS of Cape Elizabeth.

---

STATE OF MAINE

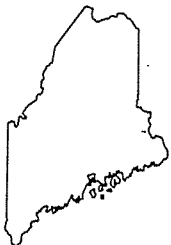
---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Increase the Availability of Funding for Health Care.**

---



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

2  
4       **Sec. 1. 22 MRSA §2052**, as amended by PL 1979, c. 680, §2, is further amended to read:

6       **§2052. Declaration of necessity**

8       It is declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that hospitals, community mental health facilities and nursing homes within the State be provided with appropriate additional means to expand, enlarge and establish health care, hospital, community mental health, nursing home and other related facilities; that this and future generations of students be given the fullest opportunity to learn and to develop their intellectual capacities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable hospitals, community mental health facilities, nursing homes and institutions for higher education in the State to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, and the exercise of the powers, to the extent and manner provided in this chapter, is declared the exercise of an essential governmental function.

26       **Sec. 2. 22 MRSA §2053, sub-§2**, as amended by PL 1979, c. 680, §3, is further amended to read:

30       **2. Bonds and notes.** "Bonds" and "notes" mean bonds and notes of the authority issued under this chapter, including refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of the authority or the full faith and credit of a participating hospital, of a participating community mental health facility or of a participating institution for higher education, or any other lawfully pledged security of a participating hospital, of a participating community mental health facility or of a participating institution for higher education.

40       **Sec. 3. 22 MRSA §2053, sub-§§2-A and 4-C** are enacted to read:

42       **2-A. Community mental health facility.** "Community mental health facility" means a community-based facility that renders mental health services to members of the general public.

46       **4-C. Participating community mental health facility.** "Participating community mental health facility" means a community mental health facility that, pursuant to this subchapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or

2 refinancing of existing indebtedness as provided in and permitted  
3 by this chapter.

4 **Sec. 4. 22 MRSA §2053, sub-§6, ¶A,** as amended by PL 1983, c.  
5 199, §2, is further amended to read:

6  
7 A. In the case of a participating hospital or participating  
8 community mental health facility, the acquisition,  
9 construction, improvement, reconstruction or equipping of,  
10 or construction of an addition or additions to, any  
11 structure designed for use as a hospital, community mental  
12 health facility, clinic, nursing home or other health care  
13 or nursing care facility, laboratory, laundry, nurses or  
14 interns residence or other multi-unit housing facility  
15 whether congregate or not, for staff, employees, patients or  
16 relatives of patients admitted for treatment in the  
17 hospital, community mental health facility or nursing home,  
18 doctors office building, administration building, research  
19 facility, maintenance, storage or utility facility or other  
20 structures or facilities related to any of the foregoing or  
21 required or useful for the operation of the project, or the  
22 refinancing of existing indebtedness in connection with any  
23 of the foregoing, including parking and other facilities or  
24 structures essential or convenient for the orderly conduct  
25 of the hospital, community mental health facility or nursing  
26 home. "Project" also includes all real and personal  
27 property, lands, improvements, driveways, roads, approaches,  
28 pedestrian access roads, rights-of-way, utilities, easements  
29 and other interests in land, parking lots, machinery and  
30 equipment, and all other appurtenances and facilities either  
31 on, above or under the ground which are used or usable in  
32 connection with the structures mentioned in this paragraph,  
33 and includes landscaping, site preparation, furniture,  
34 machinery and equipment and other similar items necessary or  
35 convenient for the operation of a particular facility or  
36 structure in the manner for which its use is intended, but  
37 does not include such items as food, fuel, supplies or other  
38 items which are customarily considered as a current  
39 operating charge. In the case of a hospital, as defined in  
40 subsection 4, paragraph B, or in the case of a community  
41 mental health facility as defined in subsection 2-A,  
42 "project" does not include any facilities, structures or  
43 appurtenances, the use of which is not directly related to  
44 the provision of patient care by its members; and

45 **Sec. 5. 22 MRSA §2053, sub-§7,** as amended by PL 1979, c. 680,  
46 §7, is further amended to read:

47  
48 **7. Refinancing of existing indebtedness.** "Refinancing of  
49 existing indebtedness" means liquidation, with the proceeds of  
50 bonds or notes issued by the authority, of any indebtedness of a  
51 hospital, community mental health facility, nursing home or  
52

2 institution for higher education incurred to finance or aid in  
3 financing a lawful purpose of such hospital, community mental  
4 health facility, nursing home or institution for higher education  
5 not financed pursuant to this chapter which would constitute a  
6 project had it been undertaken and financed by the authority, or  
7 consolidation of such indebtedness with indebtedness of the  
8 authority incurred for a project related to the purpose for which  
9 the indebtedness of the hospital, community mental health  
10 facility, nursing home or institution for higher education was  
11 incurred.

12 **Sec. 6. 22 MRSA §2054, sub-§1**, as amended by PL 1989, c. 700,  
13 Pt. A, §76, is further amended to read:

14  
15 **1. Authority.** The "Maine Health and Higher Educational  
16 Facilities Authority," established by Title 5, chapter 379, is  
17 constituted a public body corporate and politic and an  
18 instrumentality of the State, and the exercise by the authority  
19 of the powers conferred by this chapter shall ~~be~~ is deemed and  
20 held to be the performance of an essential public function. The  
21 authority shall ~~consist~~ consists of 12 members, one of whom shall  
22 must be the Bank Superintendent, ex officio, one of whom shall  
23 must be the Commissioner of Human Services, ex officio, one of  
24 whom shall must be the Commissioner of Education, ex officio, one  
25 of whom shall must be the Treasurer of State, ex officio, and 8  
26 of whom shall must be residents of the State appointed by the  
27 Governor, ~~not~~. Not more than 4 of such the appointed members ~~to~~  
28 may be members of the same political party. Three of the  
29 appointed members shall must be trustees, directors, officers or  
30 employees of hospitals or community mental health facilities and  
31 one of such appointed members shall must be a person having a  
32 favorable reputation for skill, knowledge and experience in state  
33 and municipal finance, either as a partner, officer or employee  
34 of an investment banking firm which originates and purchases  
35 state and municipal securities, or as an officer or employee of  
36 an insurance company or bank whose duties relate to the purchase  
37 of state and municipal securities as an investment and to the  
38 management and control of a state and municipal securities  
39 portfolio. Of the 3 members first appointed who are trustees,  
40 directors, officers or employees of hospitals or community mental  
41 health facilities, one shall serve for 2 years, one for 3 years  
42 and one for 4 years. Of the 5 remaining members initially  
43 appointed, one shall serve for one year, one for 2 years, one for  
44 3 years, one for 4 years and one for 5 years. For the 2 members  
45 whose terms expire in 1980 and 1981, the Governor shall appoint  
46 as successors, for terms of 5 years each, persons who are  
47 trustees, members of a corporation or board of governors,  
48 officers or employees of institutions for higher education.  
49 Annually, the Governor shall appoint, for a term of 5 years, a  
50 successor to the member whose term expires. Members shall  
51 continue in office until their successors have been appointed and  
52 qualified. The Governor shall fill any vacancy for the unexpired

2 terms. A member of the authority shall--be is eligible for  
reappointment. Any non-ex officio member of the authority may be  
4 removed by the Governor, after hearing, for misfeasance,  
malfeasance or willful neglect of duty. Each member of the  
6 authority before entering upon ~~his~~ the member's duties shall ~~must~~  
take and subscribe the oath or affirmation required by the  
8 Constitution of Maine, Article IX. A record of each such oath  
shall ~~must~~ be filed in the office of the Secretary of State. The  
10 Bank Superintendent, the Treasurer of State, the Commissioner of  
Human Services and the Commissioner of Education may designate  
12 their deputies to represent them with full authority and power to  
act and vote in their behalf or, in the case of the Bank  
14 Superintendent, the Commissioner of Human Services and the  
Commissioner of Education, any member of their staffs to  
represent them as members at meetings of the authority with full  
16 power to act and, in the case of the Bank Superintendent, the  
Commissioner of Human Services and the Commissioner of Education,  
18 to vote in their behalf.

20 **Sec. 7. 22 MRSA §2054, sub-§7,** as amended by PL 1979, c. 680,  
§9, is further amended to read:

22 **7. Conflict of interest.** Notwithstanding any other law to  
24 the contrary, it shall ~~does~~ not be--or constitute a conflict of  
interest for a trustee, director, officer or employee of a  
26 hospital, community mental health facility or nursing home or for  
a trustee, member of a corporation or board of governors, officer  
28 or employee of an institution for higher education to serve as a  
member of the authority, ~~provided~~ if such trustee, director,  
30 member of a corporation or board of governors, officer or  
employee shall--~~abstain~~ abstains from deliberation, action and  
32 vote by the authority under this chapter in specific respect to  
the hospital, community mental health facility, nursing home or  
34 institution for higher education of which such member is a  
trustee, director, member of a corporation or board of governors,  
36 officer or employee.

38 **Sec. 8. 22 MRSA §2055, first ¶,** as amended by PL 1979, c. 680,  
§10, is further amended to read:

40 The purpose of the authority shall--be is to assist  
42 participating hospitals, participating community mental health  
facilities and participating institutions for higher education in  
44 the undertaking of projects and the refinancing of existing  
indebtedness which are declared to be public purposes and for the  
46 purposes of this chapter the authority is authorized and  
empowered:

48 **Sec. 9. 22 MRSA §2055, sub-§5,** as amended by PL 1979, c. 680,  
50 §11, is further amended to read:

2           **5. Projects.** To determine the location and character of  
3 any project to be financed under this chapter, and to acquire,  
4 construct, reconstruct, renovate, improve, replace, maintain,  
5 repair, extend, enlarge, operate, lease, as lessee or lessor, and  
6 regulate the same, to enter into contracts for any or all of such  
7 purposes, to enter into contracts for the management and  
8 operation of a project, and to designate a participating  
9 hospital, a participating community mental health facility or a  
10 participating institution for higher education as its agent to  
11 determine the location and character of a project undertaken by  
12 such the participating hospital, participating community mental  
13 health facility or such participating institution for higher  
14 education under this chapter and as the agent of the authority,  
15 to acquire, construct, reconstruct, renovate, improve, replace,  
16 maintain, repair, extend, enlarge, operate, lease, as lessee or  
17 lessor, and regulate the same, and, as the agent of the  
18 authority, to enter into contracts for any or all of such  
19 purposes, including contracts for the management and operation of  
20 such project;

21           **Sec. 10. 22 MRSA §2055, sub-§8,** as amended by PL 1979, c. 680,  
22 §12, is further amended to read:

23           **8. Rules.** To establish rules and ~~regulations~~ for the use of  
24 a project or any portion thereof and to designate a participating  
25 hospital, a participating community mental health facility or a  
26 participating institution for higher education as its agent to  
27 establish rules and ~~regulations~~ for the use of a project  
28 undertaken by such the participating hospital, participating  
29 community mental health facility or such participating  
30 institution for higher education;

31           **Sec. 11. 22 MRSA §2055, sub-§§12 and 13,** as amended by PL 1979,  
32 c. 680, §13, are amended to read:

33           **12. Loans.** To make loans to any participating hospital,  
34 participating community mental health facility or participating  
35 institution for higher education for the cost of a project in  
36 accordance with an agreement between the authority and such  
37 participating hospital, participating community mental health  
38 facility or participating institution for higher education,  
39 provided that no such loan shall may exceed the total cost of the  
40 project as determined by the participating hospital,  
41 participating community mental health facility or participating  
42 institution for higher education, and approved by the authority;

43           **13. Refund.** To make loans to a participating hospital,  
44 participating community mental health facility or a participating  
45 institution for higher education to refund outstanding  
46 obligations, mortgages or advances issued, made or given by such  
47 participating hospital, participating community mental health  
48 facility

2 facility or participating institution for higher education for  
the cost of the project;

4 **Sec. 12. 22 MRSA §2055, sub-§14**, as amended by PL 1981, c.  
470, Pt. A, §82, is further amended to read:

6  
8 **14. Apportionment.** To charge to and equitably apportion  
among participating hospitals, participating community mental  
10 health facilities and participating institutions for higher  
education its administrative costs and expenses incurred in the  
12 exercise of the powers and duties conferred by this chapter; and

14 **Sec. 13. 22 MRSA §2055, sub-§15**, as amended by PL 1979, c.  
680, §13, is further amended to read:

16 **15. Other acts.** To do all things necessary or convenient to  
carry out the purposes of this chapter. In carrying out the  
18 purposes of this chapter, the authority may undertake a project  
for 2 or more participating hospitals jointly, 2 or more  
20 participating community mental health facilities jointly or 2 or  
more participating institutions for higher education jointly,  
22 and, thereupon, all other provisions of this chapter shall apply  
to and for the benefit of the authority and such joint  
24 participants.

26 **Sec. 14. 22 MRSA §2057**, as amended by PL 1979, c. 680, §14,  
is further amended to read:

28 **§2057. Acquisition of property by authority**

30  
32 The authority is authorized and empowered, directly or by  
and through a participating hospital, a participating community  
34 mental health facility or a participating institution for higher  
education, as its agent, to acquire by purchase or by gift or  
36 devise such lands, structures, property, real or personal, rights  
and air rights, rights-of-way, franchises, easements and other  
interests in lands, including lands lying under water and  
38 riparian rights, and air rights, which are located within or  
without the State, as it may deem necessary or convenient for the  
40 construction or operation of a project, upon such terms and at  
such prices as may be considered by it to be reasonable and can  
42 be agreed upon between it and the owner thereof, and to take  
title thereto in the name of the authority or in the name of a  
44 participating hospital, a participating community mental health  
facility or a participating institution for higher education as  
46 its agent.

48 **Sec. 15. 22 MRSA §2058**, as amended by PL 1979, c. 680, §15,  
is further amended to read:

50



2  
3 **§2058. Conveyance of title to participating institutions**

4 When the principal of and interest on bonds of the authority  
5 issued to finance the cost of a particular project or projects  
6 for a participating hospital, a participating community mental  
7 health facility or a participating institution for higher  
8 education, including any refunding bonds issued to refund and  
9 refinance such bonds, have been fully paid and retired or when  
10 adequate provision has been made to fully pay and retire the  
11 same, and all other conditions of the resolution or trust  
12 agreement authorizing and securing the same have been satisfied  
13 and the lien of such resolution or trust agreement has been  
14 released in accordance with the provisions thereof, the authority  
15 shall promptly do such things and execute such deeds and  
16 conveyances as are necessary and required to convey title to such  
17 project or projects to such participating hospital, participating  
18 community mental health facility or participating institution for  
19 higher education, free and clear of all liens and encumbrances,  
20 all to the extent that title to such project or projects shall  
21 may not, at the time, then be vested in such participating  
22 hospital, participating community mental health facility or  
participating institution for higher education.

23 **Sec. 16. 22 MRSA §2060, sub-§2**, as amended by PL 1979, c. 680,  
24 §16, is further amended to read:

25  
26 2. **General obligations.** Except as may otherwise be  
27 expressly provided by the authority, every issue of its bonds,  
28 notes or other obligations shall ~~be~~ are general obligations of  
29 the authority payable from any revenues or moneys of the  
30 authority available therefor and not otherwise pledged, subject  
31 only to any agreements with the holders of particular bonds,  
32 notes or other obligations pledging any particular revenues or  
33 moneys and subject to any agreements with any participating  
34 hospital, participating community mental health facility or  
35 participating institution for higher education. Notwithstanding  
36 that such bonds, notes or other obligations may be payable from a  
37 special fund, they shall ~~be~~ are and must be deemed to be for all  
38 purposes negotiable instruments within the meaning of and for all  
39 the purposes of the Uniform Commercial Code, Article 8, subject  
40 only to the provisions of such bonds, notes or other obligations  
41 for registration.

42  
43 **Sec. 17. 22 MRSA §2060, sub-§4, ¶A**, as amended by PL 1979, c.  
44 680, §17, is further amended to read:

45  
46 A. Pledging the full faith and credit of the authority, the  
47 full faith and credit of a participating hospital, a  
48 participating community mental health facility or a  
49 participating institution of higher education, all or any  
50 part of the revenues of a project or any revenue-producing  
51 contract or contracts made by the authority with any  
52

individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

**Sec. 18. 22 MRSA §2061, sub-§1**, as amended by PL 1979, c. 680, §18, is further amended to read:

**1. Assistance.** Such project will enable or assist a hospital, community mental health facility or nursing home to fulfill its obligation to provide health care or nursing care facilities or an institution for higher education to provide educational facilities within the State;

**Sec. 19. 22 MRSA §2061, sub-§2**, as amended by PL 1983, c. 579, §11, is further amended to read:

**2. Review.** Each project for a hospital, community mental health facility or nursing home has been reviewed and approved to the extent required by the agency of the State which serves as the Designated Planning Agency of the State in accordance with the provisions of ~~section~~ Section 1122 of the United States Social Security Act, as amended, or by the Department of Human Services in accordance with the provisions of the Maine Certificate of Need Act of 1978, as amended, or, in the case of a project for a hospital or community mental health facility, has been reviewed and approved by the Maine Health Care Finance Commission to the extent required by chapter 107;

**Sec. 20. 22 MRSA §2061, sub-§3**, as amended by PL 1979, c. 680, §18, is further amended to read:

**3. Lease.** Such project will be leased to, or owned by, a hospital, community mental health facility, nursing home or institution for higher education within the State; and

**Sec. 21. 22 MRSA §2063**, as amended by PL 1979, c. 680, §19, is further amended to read:

**§2063. Credit of State not pledged**

Bonds and notes issued under this chapter shall do not constitute or create any debt or debts, liability or liabilities on behalf of the State or of any political subdivision thereof other than the authority or a loan of the credit of the State or a pledge of the faith and credit of the State or of any such political subdivision other than the authority, but ~~shall be~~ are payable solely from the funds provided therefor. All such bonds and notes shall must contain on the face thereof a statement to the effect that neither the State ~~of Maine~~ nor any political subdivision thereof ~~shall be~~ is obligated to pay the same or the interest thereon, except from revenues of the project or the

2 portion thereof for which they are issued and that neither the  
3 faith and credit nor the taxing power of the State of Maine or of  
4 any political subdivision thereof is pledged to the payment of  
5 the principal of or the interest on such bonds or notes. The  
6 issuance of bonds or notes under this chapter shall may not  
7 directly or indirectly or contingently obligate the State or any  
8 political subdivision thereof to levy or to pledge any form of  
9 taxation whatever therefor or to make any appropriation for their  
10 payment. Nothing in this section contained shall may prevent nor  
11 be construed to prevent the authority from pledging its full  
12 faith and credit or the full faith and credit of a participating  
13 hospital, a participating community mental health facility or  
14 participating institution for higher education to the payment of  
15 bonds or notes or issue of notes or bonds authorized pursuant to  
16 this chapter.

17 **Sec. 22. 22 MRSA §2064**, as amended by PL 1979, c. 680, §20,  
18 is further amended to read:

19 **§2064. Rents and charges**

20 The authority is authorized to fix, revise, charge and  
21 collect rates, rents, fees and charges for the use of and for the  
22 services furnished or to be furnished by each project and to  
23 contract with any person, partnership, association or  
24 corporation, or other body, public or private, in respect  
25 thereof. Such rates, rents, fees and charges shall must be fixed  
26 and adjusted in respect of the aggregate of rates, rents, fees  
27 and charges from such project so as to provide funds sufficient  
28 with other revenues or moneys available therefor, if any, to pay  
29 the cost of maintaining, repairing and operating the project and  
30 each and every portion thereof, to the extent that the payment of  
31 such cost has not otherwise been adequately provided for, to pay  
32 the principal of and the interest on outstanding bonds or notes  
33 of the authority issued in respect of such project as the same  
34 shall become due and payable, and to create and maintain reserves  
35 required or provided for in any resolution authorizing, or trust  
36 agreement securing, such bonds or notes of the authority. Such  
37 rates, rents, fees and charges shall are not be subject to  
38 supervision or regulation by any department, commission, board,  
39 body, bureau or agency of this State other than the authority. A  
40 sufficient amount of the revenues derived in respect of a  
41 project, except such part of such revenues as may be necessary to  
42 pay the cost of maintenance, repair and operation and to provide  
43 reserves and for renewals, replacements, extensions, enlargements  
44 and improvements as may be provided for in the resolution  
45 authorizing the issuance of any bonds or notes of the authority  
46 or in the trust agreement securing the same, shall must be set  
47 aside at such regular intervals as may be provided in such  
48 resolution or trust agreement in a sinking or other similar fund  
49 which is hereby pledged to, and charged with, the payment of the  
50 principal of and the interest on such bonds or notes as the same  
51  
52

2 shall become due, and the redemption price or the purchase price  
of bonds retired by call or purchase as therein provided. Such  
pledge shall--be is valid and binding from the time when the  
4 pledge is made; the rates, rents, fees and charges and other  
revenues or other moneys so pledged and thereafter received by  
6 the authority shall are immediately be subject to the lien of  
such pledge without any physical delivery thereof or further act,  
8 and the lien of any such pledge shall--be is valid and binding as  
against all parties having claims of any kind in tort, contract  
10 or otherwise against the authority, irrespective of whether such  
parties have notice thereof. Neither the resolution nor any trust  
12 agreement nor any other agreement nor any lease by which a pledge  
is created need be filed or recorded except in the records of the  
14 authority. The use and disposition of moneys to the credit of  
such sinking or other similar fund shall--be are subject to the  
16 resolution authorizing the issuance of such bonds or notes or of  
such trust agreement. Except as may otherwise be provided in such  
18 resolution or such trust agreement, such sinking or other similar  
fund may be a fund for all such bonds or notes issued to finance  
20 projects at a particular participating hospital, participating  
community mental health facility or participating institution for  
22 higher education without distinction or priority of one over  
another, provided the authority in any such resolution or trust  
24 agreement may provide that such sinking or other similar fund  
shall--be is the fund for a particular project at a participating  
26 hospital, participating community mental health facility or  
participating institution for higher education and for the bonds  
28 issued to finance a particular project and may, additionally,  
permit and provide for the issuance of bonds having a subordinate  
30 lien in respect of the security herein authorized to other bonds  
of the authority, and, in such case, the authority may create  
32 separate sinking or other similar funds in respect of such  
subordinate lien bonds.

34

36

#### STATEMENT OF FACT

38

This bill allows community mental health facilities to  
participate in projects under the Maine Health and Higher  
40 Educational Facilities Authority Act under the Maine Revised  
Statutes, Title 22, chapter 413. This bill also amends that Act  
42 to include specifically congregate housing affiliated with  
medical services institutions within the definition of the  
44 project.