

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

THIRD SPECIAL SESSION-1992

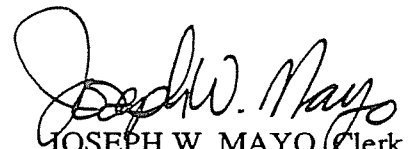
Legislative Document

No. 2465

H.P. 1785

House of Representatives, October 1, 1992

Reference to the Committee on Taxation suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative PENDLETON of Scarborough. (GOVERNOR'S BILL)
Cosponsored by Representative DiPIETRO of South Portland, Senator COLLINS of
Aroostook and Senator BRANNIGAN of Cumberland.

STATE OF MAINE

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

An Act to Create Jobs for the State.



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

Sec. 1. 30-A MRSA c. 208 is enacted to read:

CHAPTER 208

**DEFENSE FINANCE AND ACCOUNTING SERVICE
FINANCIAL ASSISTANCE ACT**

§5271. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Economic and Community Development.

2. Department. "Department" means the Department of Economic and Community Development.

3. DFAS. "DFAS" means the Defense Finance and Accounting Service of the United States Department of Defense.

4. DFAS development program. "DFAS development program" means a statement of the means and objectives designed to design, acquire, construct and operate a DFAS project.

5. DFAS project. "DFAS project" means the facility provided in response to the Defense Finance and Accounting Service's Opportunity for Economic Growth announcement issued March 2, 1992, including all real property, personal property and other improvements, rights and interests in or to real, personal or other property relating to, associated with or used in connection with that facility, as identified by the municipality providing that facility.

6. DFAS project area. "DFAS project area" means a specified area within the corporate limits of a municipality that will be developed in accordance with a DFAS development program adopted pursuant to section 5273.

7. DFAS revenues. "DFAS revenues" means the additional sales and individual income taxes generated as a result of the implementation of a DFAS development program.

8. Eligible municipality. "Eligible municipality" means any municipality in the State that responded on or before June 1, 1992 to the Defense Finance and Accounting Service's Opportunity for Economic Growth announcement issued March 2, 1992.

2 9. Financial plan. "Financial plan" means a statement of
3 the costs and sources of revenue required to implement the DFAS
4 development program.

6 10. Project costs. "Project costs" means any expenditures
7 made or estimated to be made or monetary obligations incurred or
8 estimated to be incurred by a municipality that are listed in a
9 DFAS development program as costs of improvements, including
10 public works, acquisition, construction or rehabilitation of land
11 or improvements for sale or lease to commercial or industrial
12 users within a DFAS project area, plus any costs incidental to
13 those improvements, reduced by any income, special assessments or
14 other revenues, other than DFAS revenues, received or reasonably
15 expected to be received by the municipality in connection with
16 the implementation of this plan.

18 A. "Project costs" does not include the cost of buildings
19 or portions of buildings used predominantly for the general
20 conduct of local government. These buildings include, but
21 are not limited to, city halls and other headquarters of
22 government where the governing body meets regularly,
23 courthouses, jails, police stations and other State
24 Government and local government office buildings.

26 B. "Project costs" includes, but is not limited to:

28 (1) Capital costs, including, but not limited to:

30 (a) The actual costs of the construction of
31 public works or improvements, new buildings and
32 support facilities, structures and fixtures;

34 (b) The demolition, alteration, remodeling,
35 repair or reconstruction of existing buildings,
36 structures and fixtures;

38 (c) The acquisition of equipment; and

40 (d) The clearing and grading of land;

42 (2) Maintenance and operation costs, including, but
43 not limited to, the costs of all activities necessary
44 to maintain facilities after the facilities have been
45 developed and all activities necessary to operate the
46 facilities;

48 (3) Financing costs, including, but not limited to,
49 all interest paid to holders of evidences of
50 indebtedness issued to pay for project costs and any

2 premium paid over the principal amount of that
3 indebtedness because of the redemption of the
4 obligations before maturity;

6 (4) Real property assembly costs, meaning any deficit
7 incurred resulting from the sale or lease as lessor by
8 a municipality of real or personal property within a
9 DFAS project area for consideration that is less than
10 its cost to the municipality;

12 (5) Professional service costs, including, but not
13 limited to, those costs incurred for architectural
14 planning, engineering and legal advice and services;

16 (6) Administrative costs, including, but not limited
17 to, reasonable charges for the time spent by municipal
18 employees in connection with the implementation of a
19 DFAS development program;

20 (7) Relocation costs, including, but not limited to,
21 those relocation payments made following condemnation;

24 (8) Organizational costs, including, but not limited
25 to, the costs of conducting environmental impact and
26 other studies and the costs of informing the public
27 about the implementation of DFAS development programs;

28 (9) Payments made, in the discretion of the local
29 legislative body, that are considered necessary or
30 convenient to the implementation of DFAS development
31 programs;

34 (10) That portion of the costs related to the
35 construction or alteration of sewerage treatment
36 plants, water treatment plants or other environmental
37 protection devices, storm or sanitary sewer lines,
38 waterlines or amenities on streets or the rebuilding or
39 expansion thereof that is required by the DFAS
40 development program, whether or not the construction,
41 alteration, rebuilding or expansion is within the DFAS
42 project area;

44 (11) Training costs, including, but not limited to,
45 those costs associated with providing skills
46 development and training for DFAS employees; and

48 (12) Promotional costs, which are costs associated
49 with developing new employment opportunities; promoting
50 public events; advertising cultural, educational and
51 commercial activities; providing public safety;

2 establishing and maintaining administrative and
3 management support; and other services that are
4 necessary or appropriate to carry out the DFAS
5 development program.

6 **§5272. DFAS financial assistance program**

8 **1. Establishment.** This section establishes within the
9 department a program to provide assistance to municipalities in
10 the financing of a DFAS development program.

12 **2. Eligible projects.** The only project for which
13 assistance may be provided under this program is the DFAS project.

14 **3. Eligible participants.** Any municipality of the State
15 implementing a DFAS development program may participate in the
16 DFAS financial assistance program.

18 **4. Assistance.** The DFAS financial assistance program
19 provides for a municipality to receive a portion of the increased
20 sales and personal income taxes generated as a result of
21 implementing the DFAS development program to pay for the cost of
22 implementing the program. In addition, the DFAS financial
23 assistance program vests a municipality with the same authority
24 in section 5275, subsection 4.

26 **5. Receipt of DFAS revenues.** To finance the DFAS
27 development program, an eligible participant may receive up to
28 100% of the DFAS revenues generated within the DFAS project area
29 and up to 80% of the DFAS revenues generated outside the DFAS
30 project area. Upon adopting a DFAS development program, the
31 municipal legislative body shall adopt statements of the
32 percentages of DFAS revenues to be received by the eligible
33 participant in accordance with the DFAS development program. The
34 statements of percentages may establish a specific percentage or
35 percentages or may describe a method or formula for determination
36 of the percentages.

38 **6. Cap on DFAS revenues.** The maximum amount of DFAS
39 revenues available to a municipality may not exceed the amount
40 necessary to finance costs specified in the municipality's
41 response on or before June 1, 1992 to the Defense Finance and
42 Accounting Service's Opportunity for Economic Growth announcement
43 issued March 2, 1992.

44 **7. Calculation of DFAS revenues.** Annually, the State Tax
45 Assessor shall determine the DFAS revenues generated from the
46 implementation of the DFAS development program and on or before
47 April 15th, forward a statement of the amount of DFAS revenues to
48

2 be received by the municipality to the Commissioner of
3 Administrative and Financial Services.

4 8. DFAS program fund. To manage properly the DFAS revenues
5 received pursuant to subsection 5, the municipality:

6 A. Shall establish a DFAS program fund that consists of the
7 following:

10 (1) A development sinking fund account that is pledged
11 to and charged with the payment of the interest and
12 principal as the interest and principal fall due, and
13 the necessary charges of paying interest on, principal
14 of and redemption price of any notes, bonds or other
15 evidences of indebtedness that were issued to fund or
16 refund the cost of the DFAS program fund; and

18 (2) A project cost account that is pledged to and
19 charged with the payment of project costs as outlined
20 in the financial plan and are paid in a manner other
21 than described in subparagraph (1);

22 B. Shall annually set aside all DFAS revenues payable to
23 the municipality for public purposes and deposit all those
24 revenues to the appropriate DFAS program fund account in the
25 following priority:

28 (1) To the development sinking fund account, an amount
29 sufficient, together with estimated future revenues to
30 be deposited to the account and earnings on that
31 amount, to satisfy all annual debt service on bonds and
32 notes issued to implement the DFAS development program;
33 and

34 (2) To the project cost account, an amount sufficient,
35 together with the estimated future revenues to be
36 deposited to the account and earnings on that amount,
37 to satisfy all annual project costs to be paid from the
38 account;

40 C. May make transfers between DFAS program fund accounts as
41 required in paragraphs A and B, as long as the transfers do
42 not result in a balance in the development sinking fund
43 account that is insufficient to cover the annual obligations
44 of that account; and

46 D. Shall annually return to the State's General Fund any
47 DFAS revenues in excess of those estimated to be required to
48 satisfy the obligations of the DFAS program fund.

50

2 9. State DFAS contingent account. On or before June 30th
4 of each year, the Commissioner of Administrative and Financial
6 Services shall deposit an amount equal to the total DFAS
8 revenues to be received by a municipality for the preceding
10 calendar year in the DFAS contingent account established,
maintained and administered by the Commissioner of Administrative
and Financial Services. On or before July 31st of each year, the
Commissioner of Administrative and Financial Services shall pay
over to a municipality an amount equal to the DFAS revenues for
the preceding calendar year.

12 10. Program administration, rule-making authority. The
14 commissioner shall administer the DFAS financial assistance
16 program and shall adopt rules pursuant to the Maine
18 Administrative Procedure Act for implementation of that program.
The State Tax Assessor shall adopt rules establishing the method
for determining DFAS revenues. That method must provide for
calculation of revenues as a factor or percentage of wages paid
to persons employed within the DFAS project area, based on the
State Tax Assessor's determination of the relationship between
those wages and the State's income tax revenue and sales tax
revenue.

24 **§5273. DFAS development program**

26 1. Program. The legislative body of an eligible
28 municipality may propose a DFAS development program. The DFAS
development program must contain, without limitation, the
following information:

30 A. A metes and bounds description of the real property
32 constituting the location of the DFAS project area. The
34 information concerning the location of the project area must
36 include the location of any buildings and other improvements
38 to be constructed, and any undeveloped real property
necessary for, associated with, used in conjunction with or
otherwise adjacent to the buildings and improvements;

40 B. A description of the buildings and other improvements to
42 be constructed, including, without limitation, a general
functional description of the nature, type, size and scope
of the buildings and improvements;

44 C. A construction schedule indicating anticipated
46 expenditures by fiscal year;

48 D. An estimate of the number of new permanent jobs to be
50 created within the DFAS project area as a result of the
implementation of the DFAS development program, together
with a schedule describing the number of jobs to be created
within each of the first 3 years following completion of

2 construction, and the rate of compensation, exclusive of
3 fringe benefits, to be paid to each new employee;

4 E. A financial plan that includes cost estimates for the
5 DFAS development program, a description of the amounts and
6 types of debt to be incurred in implementing the DFAS
7 development program, a debt retirement schedule and a
8 schedule of anticipated revenues, including financial
9 assistance received pursuant to section 5272;

10 F. A complete list of public facilities to be constructed;

11 G. The uses of private property within the project area;

12 H. Plans for the relocation of persons displaced by the
13 development activities;

14 I. The proposed local regulations or ordinances and
15 facilities to improve transportation;

16 J. The environmental controls to be applied;

17 K. The proposed operation of the project area after the
18 planned capital improvements are completed; and

19 L. The duration of the program, which may not exceed 30
20 years from the date of designation of the project area.

21 2. Local approval. Before adopting a DFAS development
22 program, the municipal legislative body or the municipal
23 legislative body's designee shall hold at least one public
24 hearing. Notice of the hearing must be published at least 10
25 days before the hearing in a newspaper of general circulation
26 within the municipality.

27 If the municipality has a charter, local approval must be
28 obtained in accordance with the provisions of the charter. Once
29 approved, the DFAS development program may be altered or amended
30 only after meeting the requirements for adoption under this
31 subsection.

32 3. Powers. Within the DFAS project area, and consistent
33 with the DFAS development program, the municipality may undertake
34 activities intended to meet the objectives of the DFAS
35 development program. Pursuant to the DFAS development program,
36 the municipality may acquire property, land or easements through
37 negotiation, or by exercising eminent domain powers in the manner
38 authorized for community development programs under section
39 5204. The municipality's legislative body may adopt ordinances
40 regulating traffic in and access to any facilities constructed

2 within the DFAS project area. The municipality may install
3 public improvements.

4 4. Application. A municipality, acting through its
5 municipal officers or their designee, shall submit an application
6 to the commissioner on forms and with supporting data that the
7 commissioner requires for approval of the proposed DFAS
8 development program and financial assistance available pursuant
9 to section 5272, including without limitation all of the
10 information described in subsection 1, paragraphs A to L.

11 5. Criteria for approval. Prior to issuing a certificate
12 of approval for a DFAS development program, the commissioner must
13 determine that:

14 A. The DFAS development program has received local approval
15 pursuant to subsection 2;

16 B. The activities described in the DFAS development program
17 may not be implemented without the State's approval of the
18 DFAS development program; and

19 C. The debt retirement schedule included in the financial
20 plan of the proposed DFAS development program can be met
21 based on the financial assistance available pursuant to
22 section 5272. To make this determination, the commissioner
23 or the commissioner's designee must be party to discussions
24 involving the structure of the debt to be entered into in
25 implementing the DFAS development program.

26 D. The Legislature has approved, by resolve, the DFAS
27 development program within 60 days of local approval.

28 6. Certificate of approval. Upon approval of the DFAS
29 development program, the commissioner shall issue a certificate
30 of approval.

31 **§5274. DFAS development financing**

32 1. General grant of powers. Any municipality that has
33 received approval of the commissioner for a DFAS development
34 program may:

35 A. Undertake activities that are necessary, appropriate or
36 convenient to develop and operate the DFAS project and to
37 carry out the powers granted in this chapter;

38 B. Issue bonds of the municipality as provided in
39 subsection 2 or to refund any of those bonds that may be
40 outstanding from time to time or as provided in this section;

41 C. Fix and revise, from time to time, and collect rates,
42 fees and other charges for use of or for services and
43 facilities furnished by the DFAS facility;

2 D. Pledge DFAS revenues and any other revenues derived from
4 any DFAS project to the payment of bonds issued with respect
to the DFAS project;

6 E. Acquire in the municipality's name by gift, purchase,
8 lease or the exercise of eminent domain, land, rights and
10 interests in land or water, or air rights in connection with
12 activities undertaken pursuant to paragraph A and acquire
any personal property that the municipality considers
necessary or appropriate in connection with those activities
and hold and dispose of any real and personal property
acquired pursuant to paragraph A;

14 F. Make and enter into all contracts and agreements
16 necessary or incidental to the development of the DFAS
18 project, the performance of its duties under this chapter or
20 under any contracts or agreements relating to the DFAS
project, including trust agreements securing any bonds
issued under this chapter;

22 G. Employ any consulting or other engineers, attorneys,
24 accountants, construction and financial experts and any
26 other employees or agents that it considers necessary or
appropriate in connection with the development and operation
of the DFAS project;

28 H. Exercise jurisdiction, control and supervision over any
30 DFAS projects owned, operated or maintained by the
32 municipality and make and enforce any regulations for the
34 maintenance and operation of any facility that are, in the
judgment of the municipal officers, necessary or desirable
for the efficient operation of the facility and for
accomplishing the purposes of this chapter;

36 I. Enter upon any lands, waters or premises to make
38 surveys, borings, soundings or other examinations for the
purposes of this chapter; and

40 J. Enter into contacts with the federal government, with
42 the State or any agency or instrumentality of the federal
44 government or the State, or with any other municipality,
district private corporation, partnership, association or
individual providing for or relating to the DFAS project,
its development and financing.

46 2. Issuance of bonds. The issuance of bonds under this
48 chapter is as follows.

2 A. A municipality that has received approval from the
4 commissioner of a DFAS development program may provide by
6 resolution of its municipal officers, at one time or from
8 time to time, for the issuance of revenue bonds of the
municipality to pay the cost of designing, acquiring,
constructing, improving, extending, enlarging or equipping
any DFAS project, and any such bonds may be known as DFAS
development bonds.

10 B. The bonds of each issue of DFAS development bonds must
12 be limited obligation revenue bonds payable solely from the
14 revenues pledged for those bonds and those bonds do not
16 constitute a general obligation of or a pledge of the faith
18 and credit of the municipality, nor a debt or a pledge of
20 the faith and credit of the State or of any municipality or
22 political subdivision, but are payable solely from the
24 revenues pledged for those bonds under this chapter and any
trust agreement or indenture pursuant to which those bonds
are issued. The issuance of the DFAS development bonds does
not obligate the municipality, the State or any municipality
or political subdivision to levy or to pledge any form of
taxation whatever or to make any appropriation for their
payment.

26 C. The bonds of each issue of DFAS development bonds must:

28 (1) Be dated;

30 (2) State the date of maturity, which may not exceed
32 30 years from the date of issuance, and bear interest
at a rate or rates determined by the municipal officers;

34 (3) Be redeemable before maturity, at the
36 municipality's option, at the price and under terms
and conditions determined by the municipal officers at
the time of issuance of the bonds;

38 (4) Be issued as serial bonds, term bonds or any
40 combination of serial or term bonds, as determined by
the municipal officers; and

42 (5) State that the bonds do not constitute a debt or
44 liability of the municipality or a pledge of the faith
46 or credit of the municipality and that the bonds are
payable solely from revenues pledged for that purpose.

48 D. The municipal officers shall determine the form of the
50 bonds, including any interest coupons to be attached to the
bonds, and the manner of execution of the bonds. Municipal
officers shall fix the denomination or denominations of the

2 bonds and the place or places of payment of principal and
3 interest, which may be at any bank or trust company. The
4 bonds may be issued in coupon or registered form, or both,
5 as the municipal officers may determine. Notwithstanding
6 any other provision of law, or any language appearing on a
7 bond issued under this chapter, all bonds issued under this
8 chapter are negotiable instruments issued under the laws of
9 the State.

10 E. The municipal officers may sell the bonds in the manner,
11 either at public or private sale, and for a price as they
12 determine are in the best interest of the municipality. The
13 proceeds must be disbursed in any manner, and under any
14 restrictions, if any, that the municipal officers provide in
15 the resolution authorizing the issuance of the bonds or in
16 any trust or other agreement governing the bonds or
17 providing security for those bonds.

18 F. Before the preparation of bonds in their final form, the
19 municipal officers may issue interim receipts or temporary
20 bonds, with or without coupons, exchangeable for bonds in
21 their final form when those bonds are executed and available
22 for delivery. The municipal officers may provide for the
23 replacement of any bonds that are mutilated, destroyed or
24 lost.

25 G. After issuance, all DFAS development bonds issued under
26 this section are conclusively presumed to be authorized and
27 issued under the laws of the State, and any person or
28 governmental unit is estopped from questioning the
29 authorization, sale, issuance, execution or delivery by the
30 municipality of those bonds.

31 **3. Pledges and covenants: trust agreements and indentures.**
32 **Any municipality issuing DFAS development bonds may undertake any**
33 **of the following actions.**

34 A. In the discretion of the municipal officers of the
35 municipality issuing DFAS development bonds, any issue of
36 DFAS development bonds may be secured by a trust agreement
37 or trust indenture by and between the municipality and a
38 corporate trustee, which may be any trust company. All
39 expenses incurred in carrying out and performing the
40 obligations of the municipality and the corporate trustee
41 under such a trust agreement or indenture may be treated as
42 a part of the cost of operation of the DFAS project.

43 B. The resolution authorizing the issuance of DFAS
44 development bonds or the trust agreement or indenture
45 pursuant to which the bonds are issued may pledge DFAS
46 assets to secure the bonds.

2 revenues and any other revenues as the municipal officers,
4 in their discretion, determine necessary or appropriate in
6 connection with that financing, and the municipal officers
8 are further authorized to convey, mortgage or otherwise
10 provide for a lien on the DFAS project and any improvement,
12 easements, rights, interests or other property, real or
14 personal, constituting a DFAS project, associated with a
16 DFAS project or used in connection with the operation of
18 such a project. All pledges of revenue, mortgages, security
20 interests and other collateral interests granted or extended
22 under this chapter are valid and binding from the date the
pledge, mortgage or other interest is granted or given. All
revenues received by the municipality after being pledged
under this chapter are immediately subject to the lien of
that pledge without any physical delivery thereof or further
action under the Uniform Commercial Code, or otherwise. The
lien of those pledges is valid and binding against all
parties having claims of any kind, whether in tort, contract
or otherwise, against the municipality, the DFAS project or
against any other persons or parties, whether or not the
claimant has notice of the pledge or lien.

24 C. The resolution authorizing the issuance of DFAS
26 development bonds or the trust agreement or indenture
28 pursuant to which the bonds are issued may also contain
30 provisions for protecting and enforcing the rights and
remedies of the bondholders that are reasonable and proper
and not in violation of law, including covenants setting
forth the municipality, its agents and employees, in
relation to:

32 (1) The acquisition, construction, reconstruction,
34 improvement, repair, maintenance, operation and
insurance of the DFAS project or any related property,
system or systems;

36 (2) The fixing and revising of rates, fees and
38 charges; and

40 (3) The custody, safeguarding and application of all
42 money.

44 The resolution authorizing the issuance of DFAS development
46 bonds or the trust agreement or indenture pursuant to which
48 those bonds are issued may contain any other provisions the
50 municipal officers consider reasonable, necessary or
appropriate for the security of the bondholders and the
marketing of the bonds. Any such resolution, trust
agreement or indenture may set forth the rights and remedies
of the bondholders and of the trustee, if any, and may

2 restrict the individual right of action by bondholders, as
3 determined necessary or appropriate in the judgment of the
4 municipal officers authorizing the same.

5 D. Any trust agreement, indenture or financing document
6 granting a mortgage lien upon or a security interest in any
7 real or personal property constituting all or a portion of a
8 DFAS project may authorize the trustee or mortgagee, as the
9 case may be, in the event of a default as defined with
10 respect to the DFAS development bonds issued under a trust
11 agreement, indenture or financing document, to provide for
12 the costs of the DFAS project, or any part of the DFAS
13 project, to take possession of all or any part of the DFAS
14 project, to hold, operate and manage the DFAS project and,
15 with or without the taking of possession, to sell or, from
16 time to time, to lease the DFAS project. The remedies
17 provided in this section are not exclusive and are in
18 addition to every other remedy existing at law, in equity or
19 pursuant to the trust agreement, indenture or financing
20 document granting the mortgage or security interest.

21 4. Trust funds. All funds received pursuant to the
22 authority of this chapter are trust funds, to be held and applied
23 solely as provided in this chapter and in the resolution of the
24 municipal officers authorizing the issuance of DFAS development
25 bonds, or in the trust agreement or indenture pursuant to which
26 the bonds are issued. Any officer to whom, or any bank, trust
27 company or other fiscal agent trustee to which the funds must be
28 paid, shall act as trustee of those funds and shall hold and
29 apply the funds for that purpose subject to the provisions of
30 this chapter, a resolution authorizing the DFAS development bonds
31 or the trust agreement or indenture pursuant to which the bonds
32 are issued.

33 5. Remedies. Any holder of bonds issued under this chapter
34 or of any of the coupons appertaining to the bonds and the
35 trustee under any resolution, trust agreement or indenture
36 pursuant to which those bonds are issued, except to the extent
37 the rights given may be restricted by the resolution authorizing
38 the issuance of the bonds or a trust agreement or indenture
39 applicable thereto, may, by action, mandamus or other proceeding,
40 protect and enforce any rights under the laws of the State where
41 granted under this chapter or under the resolution, trust
42 agreement, indenture or financing documents relating to such
43 bonds, including the appointment of a receiver of pledged amounts
44 or any property pledged, mortgaged or otherwise subjected to a
45 lien in favor of bondholders, and may enforce and compel the
46 performance of all duties required by this chapter or by the
47 resolution, trust agreement or financing documents to be
48 performed by the municipality, including the collection of DFAS
49 bonds.

2 revenues, any other rates, rents, fees and charges as may be
4 applicable with respect to the DFAS project, or otherwise, and
6 the performance of the municipality's obligations with respect to
8 any capital reserve fund established for the bonds pursuant to
10 section 5274. Any suit, action or proceeding brought pursuant to
12 this subsection must be brought for the benefit of all of the
14 holders of bonds issued under this chapter.

16 6. Refunding. Any municipality that has received approval
18 of a DFAS development program by the commissioner may provide by
20 resolution of its municipal officers for the issuance of
22 refunding bonds of the municipality for the purpose of:

24 A. Refunding any DFAS development bonds outstanding that
26 were issued under this chapter, including the payment of any
28 redemption premium on those bonds and any interest accrued
30 or to accrue to the date of redemption of those bonds; and

32 B. If considered advisable by the municipal officers,
34 constructing improvements, extensions or enlargements of the
36 DFAS project in connection with which the bonds to be
38 refunded were originally issued.

40 The issuance of refunding bonds under this subsection,
42 including the maturities and other details of those bonds,
44 the rights and remedies of the holders, and the rights,
46 powers, privileges, duties and obligations within the
48 municipality regarding those bonds is governed by this
50 chapter insofar as this chapter is applicable.

7. Authorizing resolution. Notwithstanding any other law
or any charter or charter amendment previously adopted by a
municipality, it is not necessary to publish any notice or
resolution adopted under this chapter, to receive approval of the
voters of the municipality at referendum or to otherwise hold
multiple readings, public hearings, provide notices or follow any
other procedures as may ordinarily be required with respect to
the issuance of general obligation bonds or revenue bonds of the
municipality; as long as the municipality follows the following
authorization procedure:

A. At least 10 days prior to the adoption of the resolution
authorizing the issuance of DFAS development bonds, the
municipal officers shall publish in a newspaper of general
circulation within the municipality a notice of a public
hearing to be held regarding the approval of those bonds.
The notice must contain a reasonably accurate and complete
description of the resolution authorizing the issuance of
those bonds; and

2 B. The municipal officers shall hold a public hearing prior
4 to the adoption of any resolution authorizing the issuance
6 of DFAS development bonds, at which members of the public
8 are entitled to appear and provide testimony and comment
10 regarding the resolution.

12 Following public hearing, the municipal officers may adopt
14 the resolution and, upon adoption, the resolution is
16 effective without further action on the part of the
18 municipality or the municipal officers. Once adopted, such
20 a resolution may only be amended, revised or altered upon
22 compliance with the procedure relating to adoption of the
24 resolution.

26 8. Governmental functions; alternative method. The
28 exercise by the municipality of the powers conferred upon it by
30 this chapter is considered the performance of an essential
32 governmental function. This chapter does not limit the authority
34 of the municipality to borrow money for its own benefit. This
36 chapter may not be construed to limit a municipality's home rule
38 authority or any other provisions of law relating to a
40 municipality borrowing money or issuing debt. This chapter
42 supplements the powers conferred by other laws and does not abate
44 or repeal any powers existing under any other law or ordinance,
46 as long as the municipality in issuing DFAS development bonds is
48 not required to comply with the requirements of that other law or
50 ordinance applicable to the issuance of bonds.

9. Liberal construction. This chapter must be liberally
construed to effect the purposes of this chapter. To the extent
of any conflict between this chapter and any other law, this
chapter prevails.

10. Bonds as legal investments. The bonds issued under
this chapter are legal investments in which all public officers
and public bodies of the State, its political subdivisions, all
municipalities and municipal subdivisions, all insurance
companies and associations and other persons carrying on an
insurance business, all banks, bankers, banking associations,
including savings and loan associations, building and loan
associations, investment companies and other persons carrying on
a banking business, all administrators, guardians, executors,
trustees and other fiduciaries, and all other persons who are now
or may be authorized to invest in securities of the State may
properly and legally invest funds, including capital in their
control or belonging to them, in these bonds. Bonds issued under
this chapter are also made securities that may be properly and
legally deposited with and received by all public officers and
bodies of the State or any agency or political subdivision, and
all municipalities and public corporations for any purpose for

2 which the deposit of securities of the State is or may be
3 authorized by law.

4 11. Actions against municipality. No officer, employee or
5 agent of the municipality, while acting in the scope of the
6 authority of this chapter, is subject to any personal liability
7 resulting from the exercise of, or carrying out of, any of the
8 municipality's purposes or powers under this chapter.

10 12. Validity of bonds. DFAS development bonds bearing
11 authorized signatures of officers or officials of the
12 municipality are valid and binding obligations, even if before
13 the delivery of and payment for the obligation any person whose
14 signature appears on the bonds has ceased to be an officer or
15 official. The validity of bonds issued under this chapter is not
16 dependent on or affected by the validity or regularity of any
17 proceedings to acquire a DFAS project financed with the proceeds
18 of the bonds, or to refund outstanding bonds, or any action
19 otherwise taken in connection with the acquisition, construction
20 or operation of the DFAS project.

22 13. Tax exemption. Any bonds issued under this chapter,
23 including refunding bonds, and their transfer and the income from
24 the bonds, including any profit made on the sale of the bonds,
25 are not subject to taxation by the State, including any minimum
26 tax under Title 36, chapter 818 and franchise tax under Title 36,
27 chapter 819 or any successor statutes.

28 14. Taxable bond option. At the option of the municipality
29 issuing DFAS development bonds, the municipality may covenant and
30 consent that the interest on the bonds is includable, under the
31 United States Internal Revenue Code of 1986, as amended, or any
32 subsequent corresponding internal revenue law of the United
33 States, in the gross income of the holders of the bonds to the
34 same extent and in the same manner that the interest on bills,
35 bonds, notes or other obligations of the United States is
36 includable in the gross income of the holders under the Internal
37 Revenue Code or any subsequent law. Such a designation does not
38 affect the exemption from state taxation provided in subsection
39 13.

42 **§5275. Capital reserve fund**

44 1. Capital reserve fund. Any municipality with an approved
45 DFAS development program may establish one or more capital
46 reserve funds and may pay into such a capital reserve fund any
47 money appropriated and made available by the municipality or the
48 State for the purposes of that fund, any proceeds of sale by a
49 municipality of DFAS bonds pursuant to section 5274 to the extent
50 determined by the municipality and any other money available to

2 the municipality. For purposes of this section, the amount of
3 any letter of credit, insurance contract, surety bond or similar
4 financial undertaking available to be drawn on and applied to
5 obligations to which money in such a fund may be applied is
6 considered and must be counted as money in the capital reserve
7 fund.

8 2. Application. Money held in any capital reserve fund,
9 except as provided in this section, may be used in conjunction
10 with DFAS development bonds, repayment of which is secured by
11 such a fund, and solely for the payment of principal of the
12 bonds, the purchase or redemption of the bonds, including any
13 fees or premium, or the payment of interest on the bonds. In
14 addition, if the municipality obtains a letter of credit,
15 insurance contract, surety bond or similar financial instrument
16 to establish and fund a capital reserve fund under subsection 1,
17 money in the fund may be used to pay, as and when due, whether by
18 acceleration or otherwise, all reimbursement obligations of the
19 municipality established in connection with that letter of
20 credit, insurance contract, surety bond or similar financial
21 instrument, including, but not limited to, all fees, expenses,
22 indemnities and commissions. Money in excess of the reserve
23 requirement established as provided in subsection 3 may be
24 transferred to other funds and accounts of the municipality.

26 3. Reserve requirement. The municipality may provide that
27 money in such a fund may not be withdrawn at any time in an
28 amount that would reduce the amount of any such fund below an
29 amount established by the municipality with respect to the fund,
30 the amount established by the municipality being referred to as
31 the "capital reserve requirement," except for the purpose of
32 payment of the amount due and payable with respect to DFAS
33 development bonds, repayment of which is secured by such a fund,
34 or reimbursement obligations of the municipality with respect to
35 any letter of credit insurance contract, surety bond or similar
36 financial undertaking pertaining to any such fund.

38 4. Appropriation. On or before December 1st, annually, the
39 municipality shall certify to the Commissioner of the Department
40 of Economic and Community Development, or its successor, and the
41 commissioner shall immediately certify to the Governor the
42 amount, if any, necessary to restore the amount in the capital
43 reserve fund, to which this subsection is stated in any trust
44 agreement or other document to apply, to the capital reserve
45 requirement. The Governor shall immediately pay from the
46 Contingent Account to such a fund so much of the amount as is
47 available in the Contingent Account and shall immediately
48 transmit to the Legislature the certification and a statement of
49 the amount, if any, remaining to be paid and the Governor shall
50 request that the Legislature appropriate the amount certified to

2 be paid to the municipality during the then current state fiscal
3 year.

4 5. Securities outstanding. The municipality may not
5 establish a reserve for DFAS development bonds to which
6 subsection 4 is stated in the trust agreement or other document
7 to apply, in a principal amount exceeding \$110,000,000. The
8 amount of DFAS development bonds issued to refund bonds
9 previously issued may not be taken into account in determining
10 the principal amount of securities outstanding, as long as
11 proceeds of the refunding bonds are applied as promptly as
12 possible to the refunding of the previously issued bonds. In
13 computing the total amount of DFAS development bonds that may at
14 any time be outstanding for any purpose, the amount of the
15 outstanding DFAS development bonds that have been issued as
16 capital appreciation bonds or as similar instruments must be
17 valued as of any date of calculation at their then current
18 accreted value rather than their face value.

20 **Sec. 2. Repeal.** If the Commissioner of Economic and Community
21 Development does not approve assistance under this chapter for a
22 municipality by September 1, 1995, this chapter is repealed on
23 that date.
24

26 FISCAL NOTE

28 This bill will have a potential future cost to the State if
29 actual revenues are not sufficient to cover the payment of
30 revenue bond debt issued by the qualifying municipality. The
31 State has an implied moral obligation to repay this debt. In
32 addition, a project of this size will affect at least the
33 certified costs of education, thereby increasing the State's
34 costs through General Purpose Aid for Local Schools. The precise
35 amounts of additional state cost or liability can not be
36 determined at this time.

38 Additional administrative costs incurred by the Bureau of
39 Taxation and the Department of Economic and Community Development
40 to implement the DFAS development program can be absorbed by
41 these agencies within existing budgeted resources.
42

44 STATEMENT OF FACT

46 This bill establishes within the Department of Economic and
47 Community Development the Defense Finance and Accounting Service
48 financial assistance program. This program is intended to assist
49 Maine municipalities that responded to the Defense Finance and
50 Accounting Service's Opportunity for Economic Growth announcement

2 in financing the cost of developing and constructing a facility
to accommodate 4,000 or 7,000 employees of the Defense Finance
4 and Accounting Service. Eligible municipalities are permitted to
receive a portion of the increased sales and income taxes
6 resulting from the establishment of the Defense Finance and
Accounting Service facility to retire a bond issued locally to
8 finance the facility. Section 2 of the bill repeals the program
if assistance is not approved by September 1, 1995.