

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1547

DATE: 3/25/94

(Filing No. H-949)

HOUSING & ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1148, L.D. 1547, Bill, "An Act to Authorize a General Fund Bond Issue in the Amount of \$20,000,000 to Provide Funds for Assistance to Maine Businesses"

Amend the bill by striking out the title and substituting the following:

'An Act to Authorize a General Fund Bond Issue in the Amount of \$15,000,000 to Provide Funds for Assistance to Maine Businesses'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Preamble. Two thirds of both Houses of the Legislature deeming it necessary in accordance with the Constitution of Maine, Article IX, Section 14, to authorize the issuance of bonds on behalf of the State of Maine to provide funds for the Economic Recovery Program and the Regional Economic Development Revolving Loan Program.

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

PART A

Sec. A-1. Authorization of bonds to provide for the Economic Recovery Program and the Regional Economic Development Revolving Loan Program. The Treasurer of State is authorized, under the direction of the Governor, to issue bonds in the name

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and behalf of the State in an amount not exceeding \$15,000,000 to raise funds for economic development activities as authorized by section 6. The bonds are a pledge of the full faith and credit of the State. The bonds may not run for a period longer than 10 years from the date of the original issue of the bonds. At the discretion of the Treasurer of State, with the approval of the Governor, any issuance of bonds may contain a call feature. The bonds must be issued from time to time so as to meet the needs of the Economic Recovery Program and the Regional Economic Development Revolving Loan Program of the Finance Authority of Maine. The bonds, when paid at maturity or otherwise retired, may not be reissued, but may be refunded on terms more favorable to the State than those in the original issue.

Sec. A-2. Records of bonds issued to be kept by the Treasurer of State. The Treasurer of State shall keep an account of each bond showing the number of the bond, the name of the successful bidder to whom sold, the amount received for the bond, the date of sale and the date when payable.

Sec. A-3. Sale; how negotiated; proceeds appropriated. The Treasurer of State may negotiate the sale of the bonds by direction of the Governor, but no bond may be loaned, pledged or hypothecated on behalf of the State. The proceeds of the sale of the bonds, which must be held by the Treasurer of State and paid by the Treasurer of State upon warrants drawn by the State Controller, are appropriated solely for the purposes set forth in this Act. Any unencumbered balances remaining at the completion of the project in section 6 lapse to the debt service account established for the retirement of these bonds.

Sec. A-4. Interest and debt retirement. The Treasurer of State shall pay interest due or accruing on any bonds issued under this Act and all sums coming due for payment of bonds at maturity.

Sec. A-5. Disbursement of bond proceeds. The proceeds of the bonds must be expended as set out in section 6 under the direction and supervision of the Finance Authority of Maine.

Sec. A-6. Allocations from General Fund bond issue; Economic Recovery Program and Regional Economic Development Revolving Loan Program. The proceeds of the sale of bonds must be expended as designated in the following schedule.

	1994-95
FINANCE AUTHORITY OF MAINE	
Regional Economic Development Revolving Loan Program	\$10,000,000

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2 Provides funds for the capitalization of the
3 Regional Economic Development Revolving Loan
4 Program. The program consists of a
5 revolving loan fund, which is used to
6 provide loans to assist businesses to create
7 or retain jobs. The fund and the program
8 are administered by the Finance Authority of
9 Maine, on behalf of local, regional and
10 statewide economic development entities.

12 **Economic Recovery Program** \$5,000,000

14 Provides funds for the continuation of the
15 capitalization of the Economic Recovery
16 Program. The program is a direct lending
17 program designed to assist small businesses
18 in their efforts to remain viable. Priority
19 is given to projects that demonstrate strong
20 public benefit and leverage other sources of
21 capital.

22 **FINANCE AUTHORITY OF MAINE**
24 **TOTAL** \$15,000,000

26 **Sec. A-7. Contingent upon ratification of bond issue.** Sections 1
28 to 6 do not become effective unless the people of the State have
29 ratified the issuance of bonds as set forth in this Act.

30 **Sec. A-8. Appropriation balances at year end.** At the end of each
32 fiscal year, all unencumbered appropriation balances representing
33 state money carry forward. Bond proceeds that have not been
34 disbursed into the Economic Recovery Program Fund or the Regional
35 Economic Development Revolving Loan Fund within 5 years after the
36 date of the sale of the bonds lapse to General Fund debt service.

38 **Sec. A-9. Bonds authorized but not issued.** Any bonds authorized
39 but not issued, or for which bond anticipation notes are not
40 issued within 5 years of ratification of this Act, are
41 deauthorized and may not be issued; except that the Legislature
42 may, within 2 years after the expiration of that 5-year period,
43 extend the period for issuing any remaining unissued bonds or
44 bond anticipation notes for an additional amount of time not to
45 exceed 5 years.

46

COMMITTEE AMENDMENT

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2 **Sec. A-10. Referendum for ratification; submission at primary**
3 **election; form of question; effective date.** This Part must be submitted
4 to the legal voters of the State of Maine at the June 1994
5 primary election following passage of this Act. The municipal
6 officers of this State shall notify the inhabitants of their
7 respective cities, towns and plantations to meet, in the manner
8 prescribed by law for holding a general election, to vote on the
9 acceptance or rejection of this Part by voting on the following
10 question:

11 "Do you favor a \$15,000,000 bond issue to create and retain
12 Maine jobs through the establishment of community, regional
13 and state business financing programs?"

14
15 The legal voters of each city, town and plantation shall
16 vote by ballot on this question and designate their choice by a
17 cross or check mark placed within a corresponding square below
18 the word "Yes" or "No." The ballots must be received, sorted,
19 counted and declared in open ward, town and plantation meetings
20 and returns made to the Secretary of State in the same manner as
21 votes for members of the Legislature. The Governor shall review
22 the returns and, if a majority of the legal votes are cast in
23 favor of the Act, the Governor shall proclaim the result without
24 delay, and the Act becomes effective 30 days after the date of
25 the proclamation.

26
27 The Secretary of State shall prepare and furnish to each
28 city, town and plantation all ballots, returns and copies of this
29 Act necessary to carry out the purpose of this referendum.

30
31 **PART B**

32
33 **Sec. B-1. 10 MRSA §1023-I, sub-§§3, 4 and 5, as enacted by PL**
34 **1991, c. 849, §1 and as affected by §7, are amended to read:**

35
36 **3. Application of the fund.** Money in the fund, except
37 money in the 1994 Bond Proceeds Account, may be applied to carry
38 out any power of the authority under or in connection with
39 section 1026-J or to pay obligations incurred in connection with
40 the fund. Money in the 1994 Bond Proceeds Account may be applied
41 to carry out any power of the authority under or in connection
42 with section 1026-J or 1026-K or to pay obligations incurred in
43 connection with the fund. Money in the fund not needed currently
44 to meet the obligations of the authority as provided in this
45 section may be invested in a manner permitted by law.

46
47 **4. Accounts within fund.** The authority may divide the fund
48 into separate accounts it determines necessary or convenient for
49 carrying out this section. Notwithstanding this subsection, the
50 authority shall create and establish within the fund the 1992

2 Bond Proceeds Account and the 1994 Bond Proceeds Account. The
4 authority shall allocate and deposit to the 1992 Bond Proceeds
6 Account all proceeds of bonds issued pursuant to Private and
8 Special Law 1991, chapter 113, Part A and, subject to any pledge,
10 contract or other obligation, all interest, dividends or other
12 pecuniary gains from investment of money or any money that the
14 authority receives in repayment of advances from the 1992 Bond
16 Proceeds Account in the fund and shall allocate to the 1994 Bond
18 Proceeds Account all proceeds of any bonds authorized in 1994 to
20 be issued for the purpose of meeting the needs of the Economic
22 Recovery Program and, subject to any pledge, contract or other
24 obligation, all interest, dividends or other pecuniary gains from
26 investment of money or any money that the authority receives in
28 repayment of advances from the 1994 Bond Proceeds Account in the
30 fund.

32 **5. Revolving fund.** The fund is a nonlapsing, revolving
34 fund. All money in the 1992 Bond Proceeds Account of the fund
36 must be continuously applied by the authority to carry out this
38 section and section 1026-J and all money in the 1994 Bond
40 Proceeds Account of the fund must be continuously applied by the
42 authority to carry out this section and sections 1026-J and
44 1026-K.

46 **Sec. B-2. 10 MRSA §1026-L is enacted to read:**

48 **§1026-L. Capital Access Program**

50 **1. Capital Access Program established.** The authority shall
establish a program known as the Capital Access Program, referred
to in this section as "CAP," for the benefit of each
participating state bank. The Capital Access Program Fund,
referred to in this section as the "fund," is established to
implement the CAP. The fund must be separate and apart from all
other funds of the authority and held exclusively to secure the
principal of and the interest on CAP loans made by a
participating state bank.

2. Contribution limit. The amount of the authority's
contribution to the fund may not exceed 10% of the principal
amount of CAP loans to be secured by the fund. As a condition of
the authority making a contribution to the fund, the authority
may require the borrower or the participating state bank to make
a contribution to the fund and may impose other conditions the
authority determines necessary. All money contributed to the
fund by the authority must be held in the name of the authority.
Investment earnings on the fund must be credited to the fund and
periodically paid to the authority, unless a CAP participation
agreement pursuant to subsection 3 provides otherwise.

2 3. Bank participation; rules. Before establishing a CAP at
3 a participating state bank, the authority must enter into a CAP
4 participation agreement with the participating state bank. The
5 CAP participation agreement must specify:

6 A. The maximum amount of the authority's contributions to
7 the CAP;

8 B. Conditions under which the authority may make
9 contributions to the CAP;

10 C. Conditions under which the participating state bank may
11 demand payment from a CAP to pay a defaulted CAP loan;

12 D. Minimum due diligence procedures for servicing CAP loans;

13 E. Conditions under which the participating state bank or a
14 borrower may be required to contribute to the CAP;

15 F. Provisions for the payment of authority fees, costs and
16 expenses from earnings on the CAP or otherwise;

17 G. Provisions for the termination of the CAP, in whole or
18 in part, and disbursement of any excess funds in the CAP;

19 H. Criteria and procedures that qualify a loan as a CAP
20 loan;

21 I. The requirement that the participating state bank report
22 to the authority at least annually regarding outstanding
23 balances on CAP loans, delinquent CAP loans and such other
24 information as the authority determines appropriate;

25 J. Permitted investments in the CAP; and

26 K. Other terms and conditions the authority determines
27 necessary.

28 4. Minimum requirements. At a minimum, CAP loans must
29 meet the following requirements.

30 A. The borrower must be either a start-up business or may
31 not have had annual sales in its most recently completed
32 fiscal year greater than \$5,000,000.

33 B. The total outstanding principal amount of CAP loans to
34 the borrower may not exceed \$500,000.

35 C. The proceeds of the CAP loan must be used for business
36 purposes.

2 By written notice to participating state banks, the authority may
4 impose requirements on CAP loans in addition to those contained
6 in this subsection or in a CAP participation agreement.
8 Additional requirements do not apply to CAP loans already made or
10 to CAP loans for which written commitments exist if CAP loans
12 from these written commitments are made within 3 months after the
14 date of the written notice.

10 **Sec. B-3. Application; contingent on bond issue.** This Part takes
12 effect only if the bond issue submitted pursuant to Part A of
14 this Act is approved by the voters of this State.

PART C

16 **Sec. C-1. 10 MRSA §1026-M is enacted to read:**

18 **§1026-M. Regional Economic Development Revolving Loan Program**

20 **1. Established.** The Regional Economic Development
22 Revolving Loan Program, referred to in this section as the
24 "program," is established to provide financial assistance to
26 businesses that need assistance in order to create or retain
28 jobs. The authority shall administer the program on behalf of
30 eligible economic development corporations or entities. The
32 Regional Economic Development Revolving Loan Program Fund,
34 referred to in this section as the "fund," is established as a
36 revolving fund, into which must be deposited all amounts
38 appropriated to the program, interest earnings on the fund and
40 any amounts repaid to the program by participating corporations.
Amounts in the fund must be used by the authority for purposes
authorized in this section.

34 **2. Eligible corporations.** The fund is open to local,
36 regional and statewide nonprofit or governmental economic
38 development corporations or entities, capable of providing
40 financial assistance to businesses in order to create and protect
jobs and referred to in this section as "corporations." To be
eligible for assistance from the fund:

42 A. A corporation must apply to the authority to participate
44 in the fund. The application must describe the corporation
46 and its funding sources, the region it serves, its methods
48 and criteria for qualifying borrowers, including any
targeted lending and economic development strategies, its
expertise in management assistance and financing of small
and emerging businesses, the method by which it will
leverage funds from other sources in an amount at least

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2 equal to 2 times the amount requested from the fund and
3 other information the authority determines necessary;

4 B. A corporation must have a strategy for the creation and
5 retention of jobs, an effective small business marketing and
6 technical assistance plan and enough expert assistance
7 available to it to underwrite, document and service loans
8 and assist its clients;

10 C. The corporation must be determined by the authority to
11 be able to prudently and effectively administer a direct
12 loan fund and to coordinate with other business assistance
13 programs and employment training and social assistance
14 programs; and

16 D. The corporation must propose performance measurements
17 and goals and a process for monitoring compliance with
18 proposed measurements and goals. The authority shall assist
19 corporations in developing loan underwriting and
20 administrative capacity and in portfolio monitoring and
21 servicing and may establish one or more advisory boards or
22 committees to assist corporations.

24 3. Disbursements from fund. If an application is approved,
25 the authority shall determine the amount to be disbursed to the
26 corporation, taking into account:

28 A. The size of the region served by the corporation and the
29 expected demand for loan funds in that region;

30 B. The demand for funds from other eligible corporations in
31 relation to the total amount available in the fund; and

34 C. Whether an eligible corporation will serve a geographic
35 area or segment of potential business borrowers not served
36 by other applicants.

38 A corporation may not receive more than \$1,250,000 from the
39 fund. Funds must be disbursed directly to and retained by the
40 eligible corporation in accordance with the contract between the
41 corporation and the authority. Funds must be disbursed to the
42 corporation in the form of a loan or a grant. The authority may,
43 in its discretion, disburse fund amounts in one lump sum or
44 periodic disbursements.

46 4. Contract. A corporation that has been approved for
47 participation in the program may enter into a contract with the
48 authority. The contract governs the administration of the
49 program and the use of funds. The contract must provide that a
50 corporation shall, at a minimum, conform to the following terms
and conditions:

- 2 A. The corporation shall certify that it will use funds
4 only for eligible purposes;
- 6 B. The corporation shall review applications for financial
8 assistance, determine the feasibility of the application and
10 approve or deny the application, which determination is
12 final in the case of loans under \$100,000 or in the case of
14 denials of any amount;
- 16 C. An officer or employee of the corporation or a member of
18 its credit committee may not participate in any way in, or
20 have any influence over, a decision on a project in which
22 that officer, employee or member has a direct or indirect
24 personal financial interest;
- 26 D. If the corporation breaches its contract with the
28 authority or ceases to operate a loan program in substantial
30 conformance with its proposal to the authority, the
32 authority may withhold further funding and may require
34 repayment of any undisbursed loan funds and loan repayments
36 to the authority; and
- 38 E. Other terms and conditions as the authority determines
40 appropriate.
- 42 5. Administrative costs. A corporation may not use any
44 money disbursed from the fund by the authority for administrative
46 expenses, but may charge a commitment fee of up to 1% and may use
48 interest earnings not to exceed 5% of each loan annually on loans
50 to cover reasonable administrative and technical assistance
 costs. The authority shall review and approve a corporation's
 administrative expenses on an annual basis. The authority may
 establish by rule reasonable administrative fees for its
 administration of the fund.
6. Financing terms and conditions. Loans may be made from
 program funds under the following terms and conditions.
- A. Loans may not exceed \$200,000 to a borrower, including
 an affiliated entity, and approval of the authority is
 required for any loan in excess of \$100,000.
- B. Loans may not exceed 1/3 of the net new funds being
 provided to a borrower.
- C. Each corporation shall establish interest rates,
 amortization schedules and repayment terms for each
 borrower, except that loans may not bear a rate of interest
 greater than the prime rate of interest plus 7% or may not
 be for a term longer than 20 years.

2 D. When necessary, a corporation may provide for flexible
4 repayment terms and may require additional payments tied to
 the borrower's financial success.

6 E. A corporation shall require collateral for loans when
 available, but may subordinate to loans from other lenders.

8 7. Eligible projects. In order for a project or borrower
10 to be eligible for financial assistance under the program, the
 following criteria must be met.

12 A. The business for which funds are requested has 50 or
14 fewer employees or annual sales of \$5,000,000 or less, and
 it consists of or involves at least one of the following:

16 (1) Advanced manufacturing technologies, such as
18 value-added wood products and specialty fabricated
 metal and electronic products;

20 (2) Advanced information system technologies, such as
22 telecommunications and environmental products and
 services;

24 (3) Advanced biological and natural resource
26 technologies, such as aquaculture, agriculture and
 biotechnology;

28 (4) A business converting from defense dependency;

30 (5) A business significantly engaged in export of
32 goods or services to locations outside the State;

34 (6) A business that dedicates significant resources to
 research and development activities; and

36 (7) Other businesses with 5 or fewer employees.

38 B. The borrower is unable to obtain funding needed for the
40 project from other public and private sources, including the
42 personal resources of the owners of the business borrowing
 from the fund.

44 C. The borrower has committed all reasonably available
46 resources to the project, obtained financial commitment from
48 other sources of financing and demonstrated a reasonable
 likelihood that the loan can be repaid.

50 D. The loan is not used to make distributions to or for the
 benefit of an owner of the business borrowing from the fund
 or a related entity.

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8. Priorities. Among eligible applicants, a corporation shall give priority to businesses with the potential of meeting one or more of the following objectives.

A. The financing will help the business pursue a business that adds significant value to raw materials or inventory.

B. The financing is likely to result in a long-term net increase in permanent, quality jobs that meet a local or regional need or the retention of jobs in jeopardy of being lost.

9. Reports. A corporation shall report at least semiannually to the authority on the projects the corporation funds and the administration of the program. The report must include a description of each project, the amount, type and terms of assistance the project received, the number of jobs that were created or retained and other information the authority requires. The report must contain an accounting of the loan portfolio and any loans that are in default, as well as an accounting of the corporation's administrative and technical assistance expenses incurred and charged to the program.

10. Audit. The authority shall review annually each corporation's participation in the program and may, in its discretion, require an independent audit at the expense of the corporation. If the authority determines that a corporation has used funds for ineligible purposes, the corporation shall repay those funds to the authority for deposit into the fund. The authority may not disburse additional funds to a corporation until the corporation has repaid the misapplied funds and has fully complied with its obligations under the contract with the authority.

11. Written procedures. The authority shall adopt rules governing the program pursuant to Title 5, chapter 375.

Sec. C-2. Application; contingent on bond issue. This Part takes effect only if the bond issue submitted pursuant to Part A of this Act is approved by the voters of this State.'

Further amend the bill by inserting at the end before the statement of fact the following:

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FISCAL NOTE

2
4 The estimated cost of sending this bond issue out to
6 referendum will vary according to the total number of referenda
8 enacted during the Second Regular Session of the 116th
Legislature. The estimated cost to the Secretary of State if one
to 6 referenda are enacted is \$95,000. Each additional
referendum costs an additional \$7,000.

10 If approved by the voters, the total cost of this bond issue
12 is estimated to be \$20,197,500 with principal payments of
\$15,000,000 and interest payments of approximately \$5,197,500.

STATEMENT OF FACT

14
16 The funds provided by this bond issue, in the amount of
18 \$15,000,000, will be used to capitalize 2 economic development
20 programs to assist Maine businesses in creating and retaining
22 jobs. The Regional Economic Development Revolving Loan Program
24 will facilitate establishment of and funding for community and
regional revolving loan programs to provide financial assistance
to targeted small and emerging businesses. Establishment of the
Capital Access Program will encourage private lenders to make
business loans that they would otherwise not make. This bond
26 issue will also provide additional capitalization for the
Economic Recovery Program, which was established in 1992. This
28 is a direct lending program designed to provide necessary
30 financing to businesses unable to obtain such financing through
traditional lending sources.

32 This amendment also adds a fiscal note.