

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 808

S.P. 239

In Senate, February 4, 1997

An Act to Amend the Laws Governing Banking Institutions.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.
Cosponsored by Representative CARLETON of Wells.

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

2
4 **Sec. 1. 9-B MRSA §131, sub-§37**, as amended by PL 1993, c. 99, §1, is further amended to read:

6 **37. Service corporation.** "Service corporation" means a
8 corporation substantially all the activities of which consist of
10 originating, purchasing, selling and servicing loans and
12 participation interests therein; or clerical, bookkeeping,
14 accounting and statistical or similar functions related to a
16 financial institution or real estate activities; or management,
18 personnel, marketing or investment counseling related to a
20 financial institution or real estate activities; or establishing
22 or operating one or more satellite facilities; or any activity
authorized by the superintendent by regulation that has been
authorized under federal law for service corporations owned or
controlled by national banks, federally chartered savings and
loan associations, federally chartered savings banks or federally
chartered credit unions. The purpose of authorizing any such
activity is to maintain competitive equality between federally
chartered and state-chartered institutions.

24 **Sec. 2. 9-B MRSA §334, sub-§1**, as amended by PL 1991, c. 386, §1, is further amended to read:

26 **1. Superintendent's approval.** A financial institution or a
28 service corporation wholly owned by one or more financial
30 institutions may establish or participate in the use of a
32 satellite or off-premise facility, as defined in section 131. A
financial institution or service corporation may not establish a
satellite facility without prior approval--of notice to the
superintendent, pursuant to ~~section 336~~ this section.

34 **Sec. 3. 9-B MRSA §334, sub-§3**, as enacted by PL 1975, c. 500, §1, is amended to read:

36 **3. Ownership.** Such a facility may be wholly or partly owned
38 by the institution; or may be owned by 2 or more such financial
40 institutions; ~~provided that the superintendent shall approve such~~
~~joint-ownership.~~

42 **Sec. 4. 9-B MRSA §334, sub-§4**, as amended by PL 1993, c. 139, §1, is further amended to read:

44 **4. Use of established facilities by additional**
46 **institutions.** A satellite facility established under this
48 chapter must be made available for use by other financial
50 institutions authorized to do business in this State. The
~~superintendent may not approve the establishment of any satellite~~
~~facility unless all~~ All financial institutions using the facility

2 must have equal access to the facility, except that a financial
4 institution owning an off-premise facility may designate that
6 facility as accepting cash deposits for its customers only. When
8 a facility is shared, the identification and promotion of that
10 facility must include the name or logo of the network system and
12 may include the name of the sponsoring financial institution. If
14 the name of the sponsoring financial institution is displayed, it
16 must be equal in prominence to the name of the network system or
18 logo.

20 **Sec. 5. 9-B MRSA §334, sub-§6**, as enacted by PL 1991, c. 386,
22 §4, is amended to read:

24 **6. Notification required.** A financial institution shall
26 notify the superintendent at least 10 days before the
28 establishment, moving or closing of a satellite facility. The
30 notification must be filed in the form and manner and containing
32 information prescribed by the superintendent. A financial
34 institution participating in the use or discontinuing the use of
36 a ~~satellite-facility-or~~ network system must provide notice to the
38 superintendent in the form and manner and containing the
40 information required by the superintendent.

42 **Sec. 6. 9-B MRSA §336, sub-§1**, as repealed and replaced by PL
44 1983, c. 614, §2, is amended to read:

46 **1. Notification required; application upon request.** At
48 least 30 days prior to the relocation of a main office or the
50 establishment, moving or closing of a branch or agency office ~~or~~
facility authorized by this chapter, the institution shall notify
the superintendent of the proposed action. A complete
application for the action branch establishment, moving or
closing may be required only when the superintendent or any
interested person requests that a complete application be filed
within 30 days of notice. The notification, or the application,
if requested, shall must be filed with the superintendent in the
form and manner and containing information as the superintendent
may prescribe. If no application is requested within the 30-day
period, the change ~~shall-be~~ is deemed approved. A fee ~~shall~~ must
accompany the notification in an amount established by the
superintendent but not to exceed 1/2 of the application fee.

42 **Sec. 7. 9-B MRSA §336, sub-§5**, as amended by PL 1985, c. 647,
44 §5, is further amended to read:

46 **5. Approvals; time extensions.** If the superintendent
48 approves an application to establish and operate a branch or
50 agency office ~~or--facility,~~ copies of the order shall must be
~~filed with the Secretary of State and shall be~~ furnished to the
applicant institution. ~~If only the notification is submitted and~~

2 ~~no application is requested during the 30 day period, a copy of~~
3 ~~the acknowledgment of the action shall be filed with the~~
4 ~~Secretary of State. The order or acknowledgment shall lapse~~
5 ~~lapses~~ one year after its effective date if the office or
6 ~~facility~~ authorized thereunder has not opened for business,
7 unless the superintendent for good cause shown has granted in
8 writing an extension of time, not to exceed 6 months. No fee
9 shall may be charged for such an extension. Additional 6-month
10 extensions may be granted by the superintendent for good cause
11 shown at a fee established by the superintendent for such
12 extensions not to exceed \$500.

13 **Sec. 8. 9-B MRSA §336, sub-§6**, as enacted by PL 1975, c. 500,
14 §1, is amended to read:

15 **6. Notice of opening.** Within 5 days after an approved
16 branch office or ~~facility~~ has opened for business, a certificate
17 of such opening signed by the president and the clerk or
18 secretary of the institution shall must be filed with the
19 superintendent ~~and the Secretary of State.~~

20 **Sec. 9. 9-B MRSA §342-A** is enacted to read:

21 **§342-A. Authority for expedited conversion to new charter:**
22 **federal to state**

23 Notwithstanding any other provision of law or any charter,
24 certificate of organization, articles of association, articles of
25 incorporation or bylaw of any participating institution, when a
26 charter conversion is approved by the directors of a financial
27 institution authorized to do business in this State and that
28 charter conversion is necessary for the protection of depositors,
29 shareholders or the public and following compliance with any
30 applicable requirements of federal law, the superintendent may
31 order that the charter conversion become effective immediately.
32 Any person aggrieved by a charter conversion executed pursuant to
33 this section is entitled to judicial review of the
34 superintendent's order in accordance with Title 5, chapter 375,
35 subchapter VII.

36 **Sec. 10. 9-B MRSA §354, sub-§§1 and 2**, as enacted by PL 1975,
37 c. 500, §1, are amended to read:

38 **1. Resulting mutual institution.** A stock financial
39 institution may be merged into or consolidated with a mutual
40 financial institution organized under the laws of this State, in
41 accordance with the procedures and subject to the conditions and
42 limitations set forth below in this subsection.

2 A. The acquiring mutual institution shall comply with the
requirements of section 353, subsections 1 through ~~3~~ to 4,
4 except that the plan of merger or consolidation shall must
state the amount which ~~such~~ that institution will pay for
6 the shares of stock in the stock institution to be acquired
and such additional information as the superintendent may
deem considers appropriate.

8
10 B. ~~After approval of such plan by both the superintendent
and the corporators or members of the acquiring institution,
the board of directors of such institution shall cause to be
12 published, as it deems necessary, a tender offer to the
shareholders of the stock institution to be acquired. Such
14 tender offer shall contain the following information:~~

16 (1) ~~The price to be paid for the shares;~~

18 (2) ~~A statement that the acquiring institution seeks
to acquire a minimum of 90 percent of the outstanding
20 shares of each class of stock of the institution to be
acquired;~~

22 (3) ~~The period during which the offer shall remain
24 open;~~

26 (4) ~~A statement that in the event 90% of such shares
are not tendered to the acquiring institution, all
28 shares previously tendered shall be returned to the
parties who tendered such shares;~~

30 (5) ~~A provision that if the price offered for any
32 shares is increased, all parties who previously
tendered shares of the same class shall receive such
34 increase;~~

36 (6) ~~A provision requiring the escrow of such shares
until the acquiring institution's purchase is
38 consummated or the tender offer is terminated;~~

40 (7) ~~A provision for withdrawal of tendered shares
until 60 days prior to the close of the offer; and~~

42 (8) ~~Such other provisions as the superintendent may
44 deem necessary to insure the fairness of the
transaction.~~

46
48 C. ~~If the institution receives 90% or more of the stock of
each class in the institution to be acquired as a result of
its tender offer, it shall upon the close of the offer merge~~

2 the institution so acquired into itself, pursuant to Title
13-A, section 904.

4 D. Upon completion of the merger in paragraph C, the
6 acquiring institution shall comply with the requirements set
8 forth in section 353, subsections 4 and 5, and all other
requirements of this chapter applicable to such mergers and
consolidations.

10 E. The stock institution to be acquired shall comply with
12 section 352, subsections 1 to 6.

14 F. Sections 356 to 358 apply to mergers or consolidations
16 made pursuant to this section.

16 **2. Resulting stock institution.** Except as the
18 superintendent may authorize pursuant to section 367, subsection
7 section 354-A, a mutual institution shall may not merge into a
20 stock institution organized under the laws of this State without
22 prior compliance with section 344 and all regulations promulgated
thereunder rules adopted under that section.

24 **Sec. 11. 9-B MRSA §413, sub-§1, ¶¶A and B**, as enacted by PL
1975, c. 500, §1, are amended to read:

26 A. Subject to the prior written approval of the
28 superintendent, a financial institution may issue and sell
its capital notes or debentures, which shall must be
30 subordinate to the claims of its depositors, ~~shareholders~~
and its other creditors.

32 B. Capital notes or debentures of a financial institution
34 may, with the approval of the superintendent, be issued,
sold, or pledged to any officer, board, commission,
36 corporation, or body created by the Federal Government. Such
capital notes or debentures may be made subordinate to the
38 claims or interests of its depositors, or other creditors ~~or~~
~~shareholders~~, or prior to the claims or interests of its
40 depositors ~~or~~ ~~shareholders~~, in and to the institution's
surplus.

42 **Sec. 12. 9-B MRSA §445, sub-§1**, as amended by PL 1991, c. 386,
44 §12, is further amended to read:

46 **1. Authorization.** A financial institution may establish,
48 acquire or invest in the capital stock, obligations or other
securities of a service corporation, as defined in section 131,
or otherwise participate in or utilize the service of such a
50 corporation. ~~Except as provided in subsection 5, a financial~~
~~institution may not establish or acquire a service corporation~~

2 ~~without prior approval of the superintendent pursuant to section~~
252 A service corporation may be owned by one or more
3 institutions engaged in the business of banking.

4
5 **Sec. 13. 9-B MRSA §445, sub-§2**, as amended by PL 1991, c. 386,
6 §13, is further amended to read:

7
8 **2. Limitations.** The stock of a service corporation formed
9 pursuant to this section may be owned only by institutions
10 engaged in the business of banking. The maximum amount of
11 investment in any one such service corporation may not exceed 20%
12 of the institution's total capital and reserves or its total
13 surplus account. The aggregate investment of a financial
14 institution in these all service corporations may not exceed 50%
15 of its total capital and reserves or its total surplus account.
16 For purposes of applying the legal lending limit prescribed in
17 this Title, a financial institution's investment in a service
18 corporation, if majority owned, must be consolidated with the
19 financial institution on a line-for-line basis proportionate to
20 the financial institution's ownership interest in the service
21 corporation.

22
23 **Sec. 14. 9-B MRSA §445, sub-§4**, as amended by PL 1991, c. 386,
24 §14, is repealed.

25
26 **Sec. 15. 9-B MRSA §445, sub-§5**, as enacted by PL 1991, c. 386,
27 §15, is repealed.

28
29 **Sec. 16. 9-B MRSA §445, sub-§6** is enacted to read:

30
31 **6. Application; notice required.** A financial institution
32 seeking to invest in one or more service corporations shall
33 notify the superintendent in writing at least 10 days prior to
34 such investment. A financial institution seeking to establish or
35 acquire one or more service corporations shall seek authorization
36 to do so in accordance with the following.

37
38 **A.** If the services are to be performed only for other
39 financial institutions authorized to do business in this
40 State as defined in section 131, subsection 17-A, the
41 financial institution shall notify the superintendent in
42 writing, at least 10 days in advance, of its intent to
43 establish or acquire the service corporation. This notice
44 must contain information required by the superintendent.

45
46 **B.** If the services are to be performed for the public as
47 well as other financial institutions, the financial
48 institution shall file an application in accordance with
49 section 252. The superintendent may, in addition to the
50 criteria set forth in section 253, consider the type of

2 institution making application and the competitive effect of
3 that ownership.

4 An application or notice required by this subsection is not
5 complete unless accompanied by a fee to be credited and used as
6 provided in section 214.

8 **Sec. 17. 9-B MRSA §446, first ¶**, as enacted by PL 1975, c. 500,
9 §1, is amended to read:

10 A financial institution authorized to do business in this
11 State ~~which is not a subsidiary of a financial institution~~
12 ~~holding company, as defined in chapter 101,~~ may engage in those
13 activities deemed permissible for Maine financial institution
14 holding companies pursuant to section 1014, subject to the
15 conditions and limitations set forth in this section.

16 **Sec. 18. 9-B MRSA §446, sub-§1**, as enacted by PL 1975, c. 500,
17 §1, is amended to read:

18 1. **Application required.** A Except as provided in section
19 1015, subsection 4, a financial institution shall make
20 application to the superintendent in accordance with section 252
21 for authority to engage in any activity permissible under section
22 1014. In determining whether such to grant authority shall ~~be~~
23 ~~granted~~, the superintendent shall consider those criteria set
24 forth in section 253, except that size of such the financial
25 institution alone shall ~~is~~ not be the determining factor in the
26 superintendent's decision to approve or disapprove the
27 application.

28 **Sec. 19. 9-B MRSA §465-A, sub-§2**, as enacted by PL 1991, c.
29 681, §3, is amended to read:

30 2. **Terms and credit worthiness.** A financial institution
31 may not make a loan to any of its principal stockholders,
32 policy-making officers or directors, or to any related interest
33 of that person, unless the loan is made on substantially the same
34 terms, including interest rates and collateral, as those
35 generally available to the public, or to employees of the
36 financial institution pursuant to a benefit or compensation
37 program, and does not involve more than the normal risk of
38 repayment or present other unfavorable features.

39 **Sec. 20. 9-B MRSA §467, sub-§1**, as amended by PL 1989, c. 502,
40 Pt. D, §6, is repealed.

41 **Sec. 21. 9-B MRSA §522, sub-§4**, as enacted by PL 1975, c. 500,
42 §1, is repealed.

43 **Sec. 22. 9-B MRSA §539-A, sub-§4**, as amended by PL 1987, c.
44 405, §13, is further amended to read:

2 **4. Maturity of credit line.** A line of credit given pursuant
to this section shall must be reviewed at least annually by the
4 board of directors or trustees or a by a committee of board
members or by bank officers or a committee of bank officers.

6 **Sec. 23. 9-B MRSA §722, sub-§4,** as enacted by PL 1975, c. 500,
§1, is repealed.

8 **Sec. 24. 9-B MRSA §739-A, sub-§4,** as amended by PL 1987, c.
10 405, §30, is further amended to read:

12 **4. Maturity of credit line.** A line of credit given pursuant
to this section shall must be reviewed at least annually by the
14 board of directors or trustees or a by a committee of board
members or by bank officers or a committee of bank officers.

16 **Sec. 25. 9-B MRSA §1015, sub-§1,** as amended by PL 1989, c. 16,
18 §§2 and 3, is further amended to read:

20 **1. Requirements.** ~~Approval~~ Except as provided in subsection
22 4, approval of the superintendent shall must be obtained for the
following actions:

24 A. Acquisition by a person or company of control of a Maine
financial institution or any financial institution or
26 financial institution holding company controlling, directly
or indirectly, a Maine financial institution, or
28 establishment by a person or company of a Maine financial
institution or Maine financial institution holding company;

30 B. Acquisitions by a financial institution or financial
32 institution holding company of interests in a Maine
financial institution or any financial institution or
34 financial institution holding company controlling, directly
or indirectly, a Maine financial institution in excess of 5%
36 of the voting shares of such financial institution or
financial institution holding company;

38 C. Acquisition or establishment by a Maine financial
40 institution holding company of a financial institution
outside of the State of Maine in excess of 5% of the voting
42 shares of such institution;

44 D. Authority for a Maine financial institution holding
company to engage in a closely-related activity, or
46 acquisition or establishment of a subsidiary to engage in a
closely-related activity; or

48 E. Authority for any financial institution holding company
50 controlling a Maine financial institution to engage in a

2 closely-related activity in Maine, or acquisition or
establishment of a subsidiary in Maine to engage in a
3 closely-related activity.

4 **Sec. 26. 9-B MRSA §1015, sub-§4** is enacted to read:

6 **4. Exceptions for permissible activities.** Notwithstanding
8 subsection 1, a Maine financial institution or a Maine financial
10 institution holding company may engage in a closely related
12 activity or acquire or establish a subsidiary to engage in a
14 closely related activity and a financial institution holding
16 company controlling a Maine financial institution may engage in a
closely related activity in Maine or acquire or establish a
subsidiary in Maine to engage in a closely related activity
without the prior approval of the superintendent subject to all
of the following conditions:

18 A. Before and immediately after the proposed transaction,
20 the acquiring financial institution and the financial
22 institution holding company are well-capitalized, as
determined by the superintendent;

24 B. At the time of the transaction, the acquiring financial
26 institution and the financial institution holding company
are well-managed, which means:

28 (1) The institution received a CAMEL composite rating
of 1 or 2 in connection with its most recent
examination; and

30 (2) The institution received at least a satisfactory
32 rating for management;

34 C. The proposed activities are permissible under section
36 1014;

38 D. The book value of the total assets to be acquired does
not exceed 15% of the consolidated total risk-weighted
assets of the acquiring institution;

40 E. The consideration to be paid for the securities or
42 assets to be acquired does not exceed 15% of the
consolidated Tier 1 capital of the acquiring institution;

44 F. During the 12-month period before the proposed
46 transaction, the acquiring financial institution and the
financial institution holding company have not been under an
48 enforcement action and there is no enforcement action
pending; and

50

2 G. The acquiring institution must provide written
3 notification to the superintendent not later than 10
4 business days after consummating the transaction.

6 **SUMMARY**

8 The bill accomplishes the following.

10 1. It expands the definition of activities that may be
11 performed by a service corporation to include those activities
12 permitted for service corporations owned by national banks.

14 2. It eliminates the application requirement for
15 establishing, closing or relocating a satellite facility and
16 replaces it with a notification requirement.

18 3. It permits the Superintendent of the Bureau of Banking
19 to expedite the conversion of a federally chartered financial
20 institution to state charter if the superintendent considers it
21 necessary for the protection of depositors, shareholders or the
22 public. This provision is consistent with expedited authorities
23 for mergers, acquisitions and other conversion transactions.

24 4. It changes the provisions for the acquisition of a stock
25 institution by a mutual institution.

28 5. It eliminates references to shareholders in the
29 subordination of claims from the issuance of capital notes or
30 debentures.

32 6. It changes the current application process for most
33 service corporations and subsidiaries to a notice process with no
34 formal approval, which is similar to the process provided under
35 federal law.

36 7. It changes the provisions relating to insider lending to
37 more closely track federal regulation of this area.

40 8. It repeals language that prohibits a bank director,
41 officer or employee from engaging in the business of selling
42 securities.

44 9. It repeals outdated requirements in thrift
45 deposit-taking law regarding the payment of interest or dividends
46 on deposit.

48 10. It makes consistent the process for annual review of
49 lines of credit for banks and thrift institutions.

50