

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1759

S.P. 589

In Senate, April 9, 1997

An Act to Create the Maine Governmental Facilities Authority.

Reference to the Committee on State and Local Government 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 NUTTING of Androscoggin. (GOVERNOR'S BILL).
Cosponsored by Representative AHEARNE of Madawaska and
Senators: BENNETT of Oxford, CLEVELAND of Androscoggin, LIBBY of York,
Representatives: BUMPS of China, MARVIN of Cape Elizabeth, TUTTLE of Sanford,
WINSOR of Norway.

2 duties of his that office faithfully and impartially and that
oath shall must be filed in the office of the Secretary of State.

4 **3. Officers; quorum.** The authority shall elect from its
membership a ~~chairman, a vice chairman, a secretary and a~~
6 ~~treasurer~~ chair and a vice-chair. In addition, the authority may
8 have a secretary and a treasurer, who may be members or
shall constitute a quorum and the vote of 3 members shall ~~be~~ is
10 necessary for any action taken by the authority. No A vacancy in
the membership of the authority may does not impair the right of
12 a quorum to exercise all the rights and perform all the duties of
the authority.

14 **4. Compensation.** Each member of the authority shall ~~be~~
16 ~~compensated~~ is entitled to compensation in accordance with Title
5, chapter 379. Each member of the authority shall must be
18 indemnified by the authority against expenses actually and
necessarily incurred by ~~him~~ the member in connection with the
20 defense of any action or proceeding in which he the member is
made a party by reason of his being or having been a member of
22 the authority, and against any final judgment rendered against
~~him~~ the member in that action or proceeding.

24 **Sec. 3. 4 MRSA §1603, sub-§§1 to 3,** as enacted by PL 1987, c.
26 438, §1, are amended to read:

28 **1. Act.** "Act" means the Maine Court Governmental
Facilities Authority Act.

30 **2. Authority.** "Authority" means the Maine Court
32 Governmental Facilities Authority as established by this Act.

34 **3. Bonds.** "Bonds" means any bonds or securities of the
Maine Court Governmental Facilities Authority issued pursuant to
36 this Act.

38 **Sec. 4. 4 MRSA §1603, sub-§4, ¶¶C and I,** as enacted by PL 1987,
40 c. 438, §1, are amended to read:

42 C. The cost of all labor, materials, machinery, furniture,
fixtures and equipment;

44 I. The cost of reserves, insurance, letters of credit or
46 other financial guarantees for payment of future debt
service on securities;

48 **Sec. 5. 4 MRSA §1603, sub-§§5 and 6,** as enacted by PL 1987, c.
50 438, §1, are amended to read:

2 **5. Holder of securities or holder.** "Holder of securities"
or "holder" or any similar term, when used with reference to
4 securities of the Maine Court Governmental Facilities Authority,
means any person who is the bearer of any outstanding securities
6 of the authority registered to bearer or not registered, or the
registered owner of any outstanding securities of the authority
which that, at the time, is are registered other than to bearer.

8
10 **6. Notes.** "Notes" means any notes of the Maine Court
Governmental Facilities Authority issued pursuant to this Act.

12 **Sec. 6. 4 MRSA §1603, sub-§7**, as amended by PL 1989, c. 596,
Pt. N, §1, is further amended to read:

14
16 **7. Project, projects or part of any project.** "Project,
projects or part of any project" means the acquisition,
18 construction, improvement, reconstruction or equipping of, or
construction of an addition or additions to, any structure
designed for use as a court facility, state office or state
20 activity space and intended to be used primarily by the State,
any agency, instrumentality or department of the State or by any
22 branch of State Government. The structure may include facilities
for the use of ~~court-related~~ related agencies of state, county or
24 local government ~~such as, but not limited to, public prosecutors'~~
~~offices and probation and parole offices.~~ "Project, projects or
26 part of any project" includes all real and personal property,
lands, improvements, driveways, roads, approaches, pedestrian
28 access roads, parking lots, parking facilities, rights-of-way,
utilities, easements and other interests in land, machinery and
30 equipment and all fixtures, appurtenances and facilities either
on, above or under the ground which that are used or usable in
32 connection with the structure, and also includes landscaping,
site preparation, furniture, machinery, equipment and other
34 similar items necessary or convenient for the operation of a
particular facility or structure in the manner for which its use
36 is intended. "Project, projects or part of any project" also
includes the acquisition, construction, improvement,
38 reconstruction or repair of any equipment, device, technology,
software or other personal property intended to be used primarily
40 by the State, any agency, instrumentality or department of the
State or by any branch of State Government or any related agency
42 of state, county or local government. The exact scope of each
project, projects or part of any project, other than those for
44 the Judicial Branch, must be set forth in a written designation
by the Commissioner of Administrative and Financial Services to
46 the authority and the exact scope of each project, projects or
part of any project for the Judicial Branch must be set forth in
48 a written designation by the State Court Administrator to the
authority. "Project, projects or part of any project" does not
50 include such items as fuel, supplies or

2 other items which that are customarily considered as a current
operating charge.

4 **Sec. 7. 4 MRSA §1604, first ¶**, as enacted by PL 1987, c. 438,
§1, is amended to read:

6
8 In order to carry out the purposes of this Act, the Maine
Court Governmental Facilities Authority ~~shall--have~~ has the
10 following powers with respect to project, projects or part of any
project together with all powers incidental to those powers or
necessary for the performance of the following:

12 **Sec. 8. 4 MRSA §1604, sub-§§1, 2, 4 to 6 and 8**, as enacted by PL
14 1987, c. 438, §1, are amended to read:

16 **1. Perpetual succession.** To have perpetual succession as a
body politic and corporate and an instrumentality ~~of--agency~~ of
18 the State;

20 **2. Power to sue and be sued.** To sue ~~and--be--sued,--and~~
~~complain--and--defend,--in--its--own--name,--and--to--plead--and--be~~
22 impleaded or initiate or appear in any proceeding and the
authority may be sued on its written contracts or in accordance
24 with Title 1, section 409, Title 5, chapter 375 or Title 14,
chapter 741;

26 **4. Bylaws; rules.** ~~To--make--and--enforce--bylaws--or--rules--for~~
~~the--conduct--of--its--affairs--and--business--and--for--use--of--its~~
28 services--and--facilities To adopt bylaws and, pursuant to Title 5,
30 chapter 375, adopt any rule necessary or useful for carrying out
any of its powers or duties pursuant to this Act. Rules adopted
32 by the authority are routine technical rules pursuant to Title 5,
chapter 375, subchapter II-A;

34 **5. Acquire real or personal property; eminent domain.** To
36 acquire real or personal property, or any interest in real or
personal property, including rights or easements, on either a
38 temporary or long-term basis by gift, purchase, transfer, eminent
domain, foreclosure, lease or otherwise, to improve, hold, sell
40 with or without public bidding, assign, lease, rent, encumber,
mortgage or otherwise dispose of any real or personal property,
42 or any interest in real or personal property, or mortgage
interests owned or in its control, custody or possession and
44 release or relinquish any right, title claim, lien, interest,
easement or demand, however acquired, including threat of
46 foreclosure;

48 **6. Prepare and plan projects and facilities.** To prepare or
cause to be prepared plans, specifications, designs and estimates
50 of costs for the construction and equipment ~~of~~ for the project,

2 projects or part of any project and attendant facilities and from
time to time to modify, or cause to be modified, those plans,
specifications, designs or estimates;

4
6 **8. Maintain, reconstruct and operate.** To maintain,
reconstruct and operate, or cause to be maintained, reconstructed
8 and operated, the project, projects or part of any project until
the cost of the project, projects or part of any project and
10 whether or not the outstanding securities issued with respect to
the project, projects or any part of the project are no longer
considered outstanding;

12 **Sec. 9. 4 MRSA §1604, sub-§§17 and 18,** as enacted by PL 1987,
14 c. 438, §1, are amended to read:

16 **17. Manage or operate real and personal property.** To
manage or operate, or cause to be managed or operated, real and
18 personal property, take assignments of leases and rentals or take
any other action necessary or incidental to the performance of
20 its duties under this Act;

22 **18. Lease or rent any land, buildings, structures,**
facilities or equipment. To lease or rent any land, buildings,
24 structures, facilities or equipment comprising all or a portion
of a project, projects or part of any project for such amounts as
26 the authority shall--~~determine~~ determines to the State or any
agency, instrumentality or department of the State or by any
28 branch of State Government or any related agency of state, county
or local government, to further the purposes of the Act, provided
30 that the obligation of the State or of any such agency,
instrumentality ~~or,~~ department or branch to make any rental or
32 other payments shall--~~be~~ is considered executory only to the
extent of money made available by the Legislature, and that no
34 liability on account of the state agency, instrumentality ~~or,~~
department or branch may be incurred by the State or any such
36 agency, instrumentality ~~or,~~ department or branch beyond the money
available for that purpose;

38 **Sec. 10. 4 MRSA §1604, sub-§24,** as amended by PL 1989, c. 221,
40 §1, is further amended to read:

42 **24. Contract with Maine Municipal Bond Bank.** In carrying
out its powers under this section, the authority shall, whenever
44 possible, contract with the Maine Municipal Bond Bank for
necessary clerical and administrative services, including use of
46 the Executive Director of the Maine Municipal Bond Bank as the
executive director, secretary and treasurer of the authority; and

48 **Sec. 11. 4 MRSA §1604, sub-§25,** as enacted by PL 1989, c. 221,
50 §2, is amended to read:

2 **25. Accept federal funds; gifts and contributions.** To
4 accept federal funds, gifts and contributions, which include, but
are not limited to, money; annuities and investments;
6 furnishings, including paintings, artifacts and similar items; or
anything of value for the purposes set forth in section 1619; and

8 **Sec. 12. 4 MRSA §1604, sub-§26** is enacted to read:

10 **26. Delegation to Bureau of General Services.** To delegate
12 those powers that the authority may specifically exercise, or
cause to be exercised, pursuant to subsection 5, 6, 8, 9, 17 or
14 18 to the Department of Administrative and Financial Services,
Bureau of General Services. The authority may revoke such a
16 delegation upon the failure of the Bureau of General Services to
discharge the delegated powers. The Bureau of General Services
18 may provide to the authority an indemnity and hold-harmless
agreement with respect to a delegation.

20 **Sec. 13. 4 MRSA §1605,** as enacted by PL 1987, c. 438, §1, is
amended to read:

22 **§1605. Leasing or renting property of the authority**

24 For the purposes of this chapter, the authority may lease,
26 rent, assign or otherwise dispose of ~~court-facilities~~ a project,
projects or part of any project only to the ~~judicial~~ State, any
28 agency, instrumentality or department of the State or branch of
State Government ~~to-be-used-for-court-facilities~~ or any related
30 agency of state, county or local government and the revenues
derived by the authority from any lease or ~~rent~~ rental agreement
32 shall must be used, as necessary, to pay the principal and
interest and other associated costs on or with respect to any
34 bonds securities issued pursuant to this chapter.

36 **Sec. 14. 4 MRSA §1606, sub-§1,** as reenacted by PL 1987, c.
872, §1, is amended to read:

38 **1. Resolution for issuance of securities.** The ~~Maine-Court~~
40 ~~Facilities-Authority~~ authority may provide by resolution, at one
time or from time to time, for the issuance and sale by it of
42 securities, in its own name, for the purpose of paying the cost
of any project, projects or part of any project, or the
44 refinancing of existing indebtedness, approved by the authority.
~~Ne-securities~~ Securities of the authority may not be authorized
46 and issued except pursuant to a resolution adopted by the vote of
not less than a majority of the members of the authority. The
48 resolution shall must describe the general purpose or purposes
for which the securities are to be issued and state the maximum
50 principal amount of the securities proposed to be issued. Ne

2 securities Securities may not be issued by the authority without
the prior approval of the Legislature.

4 **Sec. 15. 4 MRSA §1606, sub-§2**, as amended by PL 1991, c. 868,
is further amended to read:

6
8 **2. Limitation on securities issued.** The authority may not
issue securities in excess of ~~\$25,000,000~~ \$70,000,000 outstanding
at any one time, of which no less than \$35,000,000 must be
10 specifically allocated to projects relating to the Judicial
12 Branch, except for the issuance of revenue refunding securities
authorized by section 1610. The amount of securities that may be
14 outstanding in the name of the authority may be increased by the
Legislature upon a showing by the authority that its available
16 revenues are sufficient to support additional issuance of ~~bonds~~
securities and that the issuance of ~~bonds securities~~
18 securities will not materially impair the credit standing of the authority, the
investment status of ~~bonds securities~~ issued by the authority or
20 the ability of the authority to fulfill its commitments to
~~bondholders~~ holders of securities. Nothing in this chapter may
be construed to authorize the authority to issue securities to
22 fund the construction, reconstruction, purchase or acquisition of
facilities ~~for the use of the Supreme Judicial Court~~ without
24 approval of the Legislature.

26 **Sec. 16. 4 MRSA §1606, sub-§§7 and 9**, as enacted by PL 1987, c.
438, §1, are amended to read:

28
30 **7. Use of proceeds.** The proceeds of the securities of each
issue shall must be used for the payment of all or part of the
32 cost of the project, projects or part of any project for which
authorized and shall must be disbursed in such manner and under
such restrictions as are provided in the resolution authorizing
34 the issuance of the bonds or in the trust agreement securing the
securities. ~~Bond-proceeds~~ Proceeds may be used to pay all costs
36 incurred in issuing the ~~bonds securities~~, interest on the ~~bonds~~
securities for such time as may be authorized by the authority,
38 subject to the provisions of this Act and to establish reserve
funds and sinking funds for the ~~bonds securities~~.

40
42 **9. Securing of principal and interest.** The principal of
and interest on any securities issued by the authority shall
44 together with any related costs and expenses, must be secured by
a pledge of the revenues and receipts derived by the authority
46 from the project, projects or part of any project financed and
from such other revenues of the authority as may be specially
pledged by the authority and may be secured by a mortgage
48 covering all or any part of the project, projects or part of any
project, including any enlargements of and additions to the
50 project, projects or part of any project made. The resolution

2 under which the bonds securities may be issued and any mortgage
3 may contain any agreements and provisions respecting the
4 maintenance of the project, projects or part of any project
5 covered, the fixing and collection of rents, fees or other
6 charges, the creation and maintenance of special funds from the
7 revenues and any reserve funds and the rights and remedies
8 available in the event of default, all as the authority shall
9 ~~consider~~ considers advisable and not in conflict with the
10 ~~provision~~ provisions of this Act. Each pledge, agreement and
11 mortgage made for the benefit or security of any of the holders
12 of securities shall--~~continue~~ continues in effect until the
13 principal of and interest and any related costs and expenses on
14 the securities for the benefit for which the securities were made
15 have been fully paid.

16 **Sec. 17. 4 MRSA §1607, sub-§1**, as enacted by PL 1987, c. 438,
17 §1, is amended to read:

18 **1. Pledge of full faith and credit of authority.** Pledging
19 the full faith and credit of the authority or of all or any
20 specified revenues or assets of the authority to secure the
21 payment of the securities or of any issue of securities, subject
22 to such agreements with holders of securities as may then exist;

23 **Sec. 18. 4 MRSA §1610**, as enacted by PL 1987, c. 438, §1, is
24 amended to read:

25 **§1610. Revenue refunding securities**

26 The authority may provide by resolution for the issuance of
27 revenue refunding securities of the authority for the purpose of
28 refunding any obligations of the authority or for the purpose of
29 the refinancing of existing indebtedness, then outstanding, ~~which~~
30 ~~have~~ that has been issued or incurred under this Act or
31 otherwise, including the payment of any redemption premium and
32 any interest accrued or to accrue to the date of redemption of
33 those obligations and, if considered advisable by the authority,
34 for the additional purpose of construction or enabling the
35 construction of improvements, extensions, enlargements or
36 additions of the project, projects or part of any project in
37 connection with which the obligations to be refunded were
38 issued. The authority may provide by resolution for the issuance
39 of securities of the authority for the combined purpose of
40 refunding any obligations or revenue refunding securities then
41 outstanding or for the purpose of the refinancing of existing
42 indebtedness, ~~which shall have~~ that has been issued or incurred
43 under this Act, or otherwise, including the payment of any
44 redemption premium on that indebtedness and any interest accrued
45 or to accrue to the date of redemption of the obligations and
46 paying all or any part of the cost of selling the securities or

2 acquiring or constructing or enabling the acquisition or
3 construction of any additional project, projects or part of any
4 project, or any improvements, extensions, enlargements or
5 additions of any project, projects or part of any project. The
6 issuance of the securities, the maturities and other details of
7 the securities, the rights and remedies of the holders of the
8 securities and the rights, powers, privileges, duties and
9 obligations of the authority with respect to the securities,
10 shall-be are governed by this Act.

11 **Sec. 19. 4 MRSAs §§1612, 1615, 1616 and 1618**, as enacted by PL
12 1987, c. 438, §1, are amended to read:

13 **§1612. Governmental functions**

14 The carrying out by the ~~Maine--Court--Facilities--Authority~~
15 authority of the powers and duties conferred upon it by this Act
16 shall-be is considered to be the performance of an essential
17 function. Nothing contained in this Act may in any way limit or
18 restrict the powers and duties of the authority granted to it.
19

20 **§1615. Conflicts**

21 No A member of the ~~Maine--Court--Facilities--Authority~~
22 authority may not participate in any decision on any contract
23 entered into by the authority under this Act if he that member
24 has any interest, direct or indirect, in any firm, partnership,
25 corporation or association which that may be party to the
26 contract. The interest shall must be disclosed to the authority
27 in writing and shall must be set forth in the minutes of the
28 authority.
29

30 **§1616. Actions against authority**

31 No A member of the ~~Maine--Court--Facilities--Authority~~
32 authority, while acting within the scope of the authority of this
33 Act, may not be subject to any personal liability resulting from
34 the exercise or carrying out of any of the authority's purposes
35 or powers.
36

37 **§1618. Credit of State not pledged**

38 Securities issued under this Act shall do not constitute or
39 create any debt or debts, liability or liabilities on behalf of
40 the State or of any political subdivision of the State other than
41 the ~~Maine--Court--Facilities--Authority~~ authority or a loan of the
42 credit of the State or a pledge of the faith and credit of the
43 State or of any political subdivision other than the authority,
44 but shall-be are payable solely from the funds provided for that
45 payment. All such securities shall must contain on their face a
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2 statement to the effect that neither the State nor any political
3 subdivision of the State be is obligated to pay the securities or
4 the interest on the securities, except from revenues of the
5 authority or the project, projects or part of any project for
6 which they are issued and that neither the faith and credit nor
7 the taxing power of the State or of any political subdivision of
8 the State is pledged to the payment of the principal of or the
9 interest on the securities. The issuance of securities under
10 this Act shall does not directly, indirectly or contingently
11 obligate the State or any political subdivision of the State to
12 levy or to pledge any form of taxation whatever or to make any
13 appropriation for their payment. Nothing contained in this
14 section may prevent or be construed to prevent the authority from
15 pledging its full faith and credit to the payment of securities
16 authorized pursuant to this Act.

17 **Sec. 20. 4 MRSA §1619, first ¶**, as enacted by PL 1989, c. 221,
18 §3, is amended to read:

19 The authority may accept gifts and contributions as provided
20 in section 1604, subsection 25, for the purpose of designing,
21 constructing, reconstructing, renovating or acquiring ~~court~~
22 ~~facilities~~ a project, projects or part of any project, including
23 facilities for the Supreme Judicial Court, in accordance with
24 section 1606, subsection 2. The authority may accept gifts for
25 the purpose of furnishing ~~court-facilities~~ a project, projects or
26 part of any project, including the facilities of the Supreme
27 Judicial Court. Furnishings include, but are not limited to,
28 paintings, artifacts, furniture and similar articles.

29 **Sec. 21. 4 MRSA §§1620 and 1621** are enacted to read:

30 **§1620. Procedure in exercise of right of eminent domain**

31 The right of eminent domain granted in section 1604,
32 subsection 5 may be exercised only after complying with the
33 following procedures.

34 **1. Notice to owner.** The authority shall provide to the
35 owner or owners of record notice of the following:

36 **A.** The determination of the authority that it proposes to
37 exercise the right of eminent domain;

38 **B.** A description and scale map of the land or easement to
39 be taken;

40 **C.** The final amount offered for the land or easement to be
41 taken based on the fair value as estimated by the authority;
42 and

2 D. Notice of the time and place of the hearing provided in
3 subsection 4.

4
5 Notice may be made by personal service in hand by an officer duly
6 qualified to serve civil process in this State or by certified
7 mail, return receipt requested, to the last known address of the
8 owner or owners. If the owner or owners are not known or can not
9 be notified by personal service or certified mail, notice may be
10 given by publication in the manner provided in subsection 4.

12 2. Notice to tenant. Notice must be given to a tenant in
13 the same manner as notice is given to the owner of the property.

14
15 3. Notice to the affected municipality. Notice must be
16 given to the municipality in which the property to be acquired is
17 located in the same manner as notice is given to the owner of the
18 property and must be addressed to the municipal officers.

19 4. Hearing. The authority shall hold a public hearing on
20 the advisability of its proposed exercise of the right of eminent
21 domain. Notice of the hearing must be made by publication in a
22 newspaper of general circulation in the area of the taking once a
23 week for 2 successive weeks, the last publication to be at least
24 2 weeks before the time appointed for the hearing. The hearing
25 notice must include:

26
27 A. The time and place of the hearing;

28 B. A description of the land or easement to be taken; and

29 C. The name of the owners, if known.

30
31
32
33 §1621. Continuing disclosure

34
35 With respect to any securities of the authority, the
36 Treasurer of State may enter into any agreement for the benefit
37 of holders of securities of the authority to provide annual
38 financial information with respect to the State in order to
39 assist underwriters of the securities of the authority in
40 complying with any applicable regulation promulgated by the
41 United States Securities and Exchange Commission with respect to
42 annual financial information.

43
44 Sec. 22. Succession of the authority. The Maine Governmental
45 Facilities Authority is the successor to the Maine Court
46 Facilities Authority and as such assumes all rights, liabilities,
47 indebtedness and duties entered into by the Maine Court
48 Facilities Authority, upon the effective date of this Act. All
49 properties, rights in land, buildings and equipment and any
50

2 funds, money, revenues and receipts or assets of the Maine Court
3 Facilities Authority or due to the Maine Court Facilities
4 Authority belong to the Maine Governmental Facilities Authority
5 as successor. Upon succession, the Maine Court Facilities
6 Authority ceases to exist.

8 **SUMMARY**

10 This bill establishes the Maine Governmental Facilities
11 Authority for the purpose of financing the renovation or
12 construction of state facilities.

14 The bill incorporates the existing provisions of the Maine
15 Court Facilities Authority Act and permits the Maine Governmental
16 Facilities Authority to finance state facilities as well as court
17 facilities.

18 The bill requires that each issuance of securities by the
20 Maine Governmental Facilities Authority be approved by the
Legislature.