

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1409

S.P. 465

In Senate, March 20, 2003

An Act To Update the Process for the Allocation of the State Ceiling on Tax-exempt Bonds

Reference to the Committee on Business, Research and Economic Development 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 President DAGGETT of Kennebec. (GOVERNOR'S BILL)
Cosponsored by Speaker COLWELL of Gardiner and
Senators: BROMLEY of Cumberland, DAVIS of Piscataquis, HALL of Lincoln, TURNER of
Cumberland, Representatives: BOWLES of Sanford, MILLS of Farmington, RICHARDSON
of Brunswick, SULLIVAN of Biddeford.

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

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Sec. 1. 10 MRSA §363, sub-§1-A, as amended by PL 1999, c. 728, §1, is further amended to read:

1-A. Procedure. For each calendar year, the Legislature may establish a procedure for allocation of the entire amount of the state ceiling by allocating an amount of the state ceiling to the specific issuers designated in this section for further allocation by each specific issuer to itself or to other issuers for specific bond issues requiring an allocation of the state ceiling or for carryforward. This procedure supersedes the federal formula to the full extent that the United States Code, Title 26, authorizes the Legislature to vary the federal formula. Allocations may be reviewed by the Legislature periodically and unused allocations may be reallocated to other issuers; however, notwithstanding the existence of legislation allocating or reallocating all or any portion of the state ceiling, at any time during the period from September 1st to and including December 31st of any calendar year, and at any other time that the Legislature is not in session, a group consisting of a representative of each of the issuers specifically identified in subsections 4, 6 and, 7, 8 and 8-A; ~~a representative of a corporation created pursuant to the former Title 20, section 2237 and Title 20-A, section 11407;~~ and a representative of the Governor designated each year by the Governor may, by written agreement executed by no fewer than 4 of the 5 6 voting representatives, allocate amounts not previously allocated and reallocate unused allocations from one of the specific issuers designated in this section to another specific issuer for further allocation or carryforward, with respect to the state ceiling for that calendar year only. In no event may any issuer have more than one vote. If an issuer is allocated a portion of the state ceiling in more than one category, the written agreement must be executed by no fewer than 4 of the 6 voting representatives. The issuer specifically identified in subsection 5 and a representative of the Department of Economic and Community Development designated each year by the Commissioner of Economic and Community Development shall participate as nonvoting members of the group of representatives described in this subsection with respect to agreements or recommendations for allocation or reallocation of the state ceiling. Except for records containing specific and identifiable personal information acquired from applicants for or recipients of financial assistance, the records of the group of representatives described in this subsection are public records and the meetings of the group of representatives described in this subsection are public proceedings within the meaning of Title 1, chapter 13, subchapter I 1.

2 **Sec. 2. 10 MRSA §363, sub-§8**, as amended by PL 1999, c. 728,
§6 and affected by §20 and amended by PL 2001, c. 44, §11 and
4 affected by §14, is further amended to read:

6 **8. Allocations to the Maine Educational Loan Authority.**

7 That portion of the state ceiling allocated to the categories of
8 ~~bonds providing funds for the purposes of a corporation created~~
9 ~~pursuant to the former Title 20, section 2237, and Title 20-A,~~
10 ~~section 11407, or of issuance of bonds by the Maine Educational~~
11 ~~Loan Authority pursuant to Title 20-A, chapter 417-A~~ must be
12 allocated to ~~that corporation or to the Maine Educational Loan~~
13 ~~Authority, or both, and each may further allocate the portion of~~
14 ~~the state ceiling allocated to it to bonds requiring an~~
15 ~~allocation to qualify as tax exempt bonds. Any further~~
16 ~~allocation or reallocation of any portion of the state ceiling~~
17 ~~from the Maine Educational Loan Authority or a corporation~~
18 ~~created pursuant to former Title 20, section 2237 and Title 20-A,~~
19 ~~section 11407 to each other or to another specific issuer~~
20 ~~designated in this section must be done in accordance with the~~
21 ~~requirements in subsection 1-A.~~

22 A. Prior to issuing loans funded through an allocation of
23 the state ceiling for the issuance of education loans, an
24 issuer or lender must provide to the appropriate agency
25 within the Department of Professional and Financial
26 Regulation examples of the disclosures to be made to loan
27 recipients or obligors. The information must be provided to
28 the Bureau of Financial Institutions if the issuer or lender
29 is a financial institution or credit union established
30 pursuant to state or federal law or to the Office of
31 Consumer Credit Regulation for all other issuers or
32 lenders. This information must be provided to the
33 appropriate agency within the Department of Professional and
34 Financial Regulation upon request, or in the course of an
35 examination of the issuer or lender by the agency, and must
36 include a description of any interest rate or other
37 discounts offered that clearly identifies all of the terms
38 and conditions of obtaining any discount, a projection of
39 the approximate number or percentage of loan obligors who
40 are likely to benefit from the discounts and any other
41 disclosures pursuant to guidelines established by the Bureau
42 of Financial Institutions and the Office of Consumer Credit
43 Regulation for the issuance of education loans that would
44 benefit from an allocation of the state ceiling. The Bureau
45 of Financial Institutions and the Office of Consumer Credit
46 Regulation shall jointly adopt, to the extent allowed by
47 law, rules to carry out the provisions of this paragraph by
48 establishing uniform disclosure requirements and sanctions
49 for noncompliance. Rules adopted pursuant to this paragraph
50 are routine technical rules, as defined in Title 5, chapter

2 375, subchapter II-A 2-A. All information provided to the
3 appropriate agencies within the Department of Professional
4 and Financial Regulation must include the source of the
information and the basis for any projections.

6 B-1. All education loans made under the federal Higher
7 Education Act of 1965, 20 United States Code, Chapter 28
8 that are purchased or originated with proceeds of tax-exempt
9 bonds using a portion of the state ceiling on private
10 activity bonds must be guaranteed by the state agency
11 designated as administrator of federal guaranteed student
12 loan programs pursuant to Title 20-A, chapter 417,
13 subchapter I 1, provided that this requirement does not
14 apply to serial loans of a borrower that are guaranteed by a
15 different guarantee agency and acquired or financed with
16 tax-exempt bond proceeds prior to the effective date of this
17 paragraph. The state agency designated as administrator of
18 federal guaranteed student loan programs pursuant to Title
19 20-A, chapter 417, subchapter I 1 shall use its best efforts
20 to provide competitive rates for the guarantee function.

22 **Sec. 3. 10 MRSA §363, sub-§8-A** is enacted to read:

24 **8-A. Allocations to issuer of bonds for purchase of**
25 **education loans.** That portion of the state ceiling allocated to
26 **the categories of bonds providing funds for the purposes of an**
27 **entity designated pursuant to Title 20-A, section 11407, must be**
28 **allocated to the entity designated pursuant to Title 20-A,**
29 **section 11407.**

30
31 **A. Prior to issuing loans funded through an allocation of**
32 **the state ceiling for the issuance of education loans, an**
33 **issuer or lender must provide to the appropriate agency**
34 **within the Department of Professional and Financial**
35 **Regulation examples of the disclosures to be made to loan**
36 **recipients or obligors. The information must be provided to**
37 **the Bureau of Financial Institutions, Department of**
38 **Professional and Financial Regulation if the issuer or**
39 **lender is a financial institution or credit union**
40 **established pursuant to state or federal law or to the**
41 **Office of Consumer Credit Regulation, Department of**
42 **Professional and Financial Regulation for all other issuers**
43 **or lenders. This information must be provided to the**
44 **appropriate agency within the Department of Professional and**
45 **Financial Regulation upon request, or in the course of an**
46 **examination of the issuer or lender by the agency, and must**
47 **include a description of any interest rate or other**
48 **discounts offered that clearly identifies all of the terms**
49 **and conditions of obtaining any discount, a projection of**
50 **the approximate number or percentage of loan obligors who**

2 are likely to benefit from the discounts and any other
4 disclosures pursuant to guidelines established by the Bureau
6 of Financial Institutions and the Office of Consumer Credit
8 Regulation for the issuance of education loans that would
10 benefit from an allocation of the state ceiling. The Bureau
12 of Financial Institutions and the Office of Consumer Credit
14 Regulation shall jointly adopt, to the extent allowed by
16 law, rules to carry out the provisions of this paragraph by
18 establishing uniform disclosure requirements and sanctions
20 for noncompliance. Rules adopted pursuant to this paragraph
22 are routine technical rules, as defined in Title 5, chapter
24 375, subchapter 2-A. All information provided to the
26 appropriate agencies within the Department of Professional
28 and Financial Regulation must include the source of the
30 information and the basis for any projections.

18 B. All education loans made under the federal Higher
20 Education Act of 1965, 20 United States Code, Chapter 28
22 that are purchased with proceeds of tax-exempt bonds using a
24 portion of the state ceiling on private activity bonds must
26 be guaranteed by the state agency designated as
28 administrator of federal guaranteed student loan programs
30 pursuant to Title 20-A, chapter 417, subchapter 1; however,
32 this requirement does not apply to serial loans of a
34 borrower that are guaranteed by a different guarantee agency
36 and acquired or financed with tax-exempt bond proceeds prior
38 to the effective date of this paragraph. The state agency
40 designated as administrator of federal guaranteed student
42 loan programs pursuant to Title 20-A, chapter 417,
44 subchapter 1 shall use its best efforts to provide
46 competitive rates for the guarantee function.

32 **Sec. 4. 20-A MRSA §11407**, as amended by PL 1999, c. 728, §11
34 and affected by §§20 and 21, is further amended to read:

36 **§11407. Authorization for Governor to request organizations to**
38 **acquire loan notes**

40 To the extent and for the purposes contemplated by the
42 federal Internal Revenue Code of 1954, Section 103(e), as
44 amended, and successor provisions thereto, including without
46 limitation the federal Internal Revenue Code of 1986, Section
48 150(d), as amended, the Governor may on behalf of the State
50 request the organization of one or more nonprofit corporations to
operate exclusively for the purpose of acquiring student loan
notes incurred under the federal Higher Education Act of 1965, 20
United States Code, Chapter 28, Title IV, Part B, as amended.
~~Notwithstanding the requirements of this section, if a nonprofit~~
~~corporation formed under this section does not comply with the~~
~~requirements of this section, the~~ The Governor may request on

2 behalf of the State that one or more state agencies acquire
3 student loan notes incurred under the federal Higher Education
4 Act of 1965, 20 United States Code, Chapter 28, Title IV, Part B,
5 as amended.

6 **1. Origination of loans.** ~~A nonprofit corporation formed~~
7 ~~under this section~~ Any entity acquiring student loan notes may
8 not originate federally guaranteed loans ~~or otherwise extend~~
9 ~~credit to any person.~~ The ~~corporation~~ entity may not
10 discriminate against any financial institution or credit union
11 authorized to do business in this State or any other entity with
12 respect to the acquisition of loans. The ~~corporation~~ entity
13 shall adopt policies regarding conflict of interest.

14 **2. Loan guarantee.** All education loan notes incurred under
15 the federal Higher Education Act of 1965, 20 United States Code,
16 Chapter 28 ~~by a nonprofit corporation formed under this section~~
17 that are acquired with proceeds of tax-exempt bonds using a
18 portion of the state ceiling on private activity bonds must be
19 guaranteed by the state agency designated as administrator of
20 federal guaranteed student loan programs pursuant to chapter 417,
21 subchapter I 1, provided that this requirement does not apply to
22 serial loans of a borrower that are guaranteed by a different
23 guarantee agency and acquired or financed with tax-exempt bond
24 proceeds prior to the effective date of this paragraph. The
25 state agency designated as administrator of federal guaranteed
26 student loan programs pursuant to chapter 417, subchapter I 1
27 shall use its best efforts to provide competitive rates for the
28 guarantee function.

29 **3. Board of directors.** The board of directors of a
30 nonprofit corporation formed under this section consists of 7
31 members. Four members representing the public with full voting
32 rights must be appointed by the Governor, subject to review and
33 approval by the joint standing committee of the Legislature
34 having jurisdiction over business and economic development
35 matters and confirmation by the Legislature. ~~The initial terms~~
36 ~~of the members appointed by the Governor pursuant to this~~
37 ~~subsection begin on the date of the corporation's year 2000~~
38 ~~annual meeting or on December 31, 2000, whichever date occurs~~
39 ~~first.~~ The terms of the initial members must be staggered: 2
40 members must be appointed to 2-year terms and 2 members must be
41 appointed to 3-year terms. On the expiration of a term of any
42 member, a successor must be appointed to a 3-year term. A member
43 serves until a successor is appointed and qualified. A member is
44 eligible for reappointment. If a member is appointed to fill a
45 vacancy in an unexpired term, that member may serve only for the
46 remainder of that term until a successor is appointed. An
47 officer, director or employee of a nonprofit corporation formed
48 under this section may not at the same time serve as an officer,
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2 director or employee of the Maine Educational Loan Authority, of
the state agency designated as administrator of federal
4 guaranteed student loan programs pursuant to chapter 417,
subchapter 1 or of any entity that has a contract to provide a
6 significant level of administrative services to a nonprofit
corporation formed under this section, to the Maine Educational
Loan Authority or to the state agency designated as administrator
8 of federal guaranteed student loan programs pursuant to chapter
417, subchapter 1.

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12 **4. Public meetings and records.** Except for records
containing specific and identifiable personal information
14 acquired from applicants for or recipients of financial
assistance, the books and records of a nonprofit corporation
formed under this section are public records and the meetings of
16 such a corporation are public proceedings within the meaning of
Title 1, chapter 13, subchapter 1.

18
20 **5. Use of competitive bidding.** ~~A nonprofit corporation~~
formed An entity designated under this section may enter into
22 contracts for loan administration, loan servicing and other
substantial operating contracts related to loan purchase
activities through an open competitive bidding process in
24 accordance with this subsection. The ~~corporation~~ entity shall
adopt rules requiring that loan administration or servicing
26 contracts may not be entered into without prior public notice and
opportunity for interested persons to make proposals, and the
~~corporation~~ entity may not adopt the rules until after providing
28 public notice and opportunity for public comment on the proposed
rules. In adopting those rules, the ~~corporation~~ entity shall
30 consider to the extent possible the rules and procedures with
respect to the competitive bidding process set forth in Title 5,
chapter 155, subchapter 1-A 1-A. Any loan administration or
34 servicing contract must be approved by the board after review of
the contract and an accompanying fairness opinion prepared by an
36 independent 3rd party.

38 **6. Annual report.** ~~A nonprofit corporation formed~~ An entity
designated under this section shall report annually on its
40 activities during the previous fiscal year to the joint standing
committees of the Legislature having jurisdiction over business
42 and economic development matters, appropriations matters and
education matters. The report must include a listing of the
44 current directors and officers ~~of the corporation~~; a summary of
the ~~corporation's~~ purchases of loans in the secondary market
46 during the previous fiscal year; a listing of the institutions
from which loans were purchased during the previous fiscal year;
48 ~~a summary of the corporation's direct student loans~~; and a
complete financial statement of the ~~corporation's~~ entity's
50 operations related to loan purchases during the previous fiscal

2 year, including a breakdown of income and costs, the
administrative and operating costs ~~of the corporation~~, the assets
and liabilities ~~of the corporation~~, the total excess revenues
4 over expenditures for the previous fiscal year and the total
accumulation of these revenues, the total income derived from
6 investments during the previous fiscal year, the disposition and
use of excess revenues, the proceeds from investments and the
8 geographic distribution and distribution between institutions of
higher learning of its student loans among residents of this
10 State. The report must demonstrate that all revenues, including
reserves, that are acquired with proceeds of tax-exempt bonds
12 using a portion of the state ceiling on private activity bonds
are being used in a manner consistent with the public purpose for
14 which the bonds are issued. The report must include similar
information on all affiliated entities and must be provided
16 annually in writing to the joint standing committees of the
Legislature having jurisdiction over business and economic
18 development matters, appropriations matters and education matters
by December 1st. ~~A nonprofit corporation formed~~ An entity
20 designated under this section shall also file copies of the
~~corporation's~~ entity Internal Revenue Code forms and returns with
22 the Attorney General and the joint standing committee of the
Legislature having jurisdiction over business and economic
24 development matters.

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SUMMARY

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This bill updates provisions for the allocation of the state
30 ceiling for tax-exempt bonds to allow the Governor to name a
nonprofit corporation or state agency to serve as a secondary
32 market for student loans that are eligible to receive an
allocation of a portion of the state ceiling and to vote on the
34 overall allocation of the state ceiling for tax-exempt bonds.