

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1625

S.P. 579

In Senate, May 28, 2003

An Act To Provide Affordable Loans for Higher Education

Reference to the Committee on Business 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, TREAT of Kennebec, Representatives: RICHARDSON
of Brunswick, SULLIVAN of Biddeford.

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

4 **Sec. 1. 10 MRSA §969-A, sub-§14-C** is enacted to read:

6 14-C. Student loan secondary market. Take all actions
8 necessary to implement and administer a student loan secondary
10 market;

12 **Sec. 2. 20-A MRSA c. 417-F** is enacted to read:

14 **CHAPTER 417-F**

16 **HIGHER EDUCATION LOAN PURCHASE PROGRAM**

18 **§11491. Purpose; program established**

20 The Legislature finds and declares that the provision of
22 higher education for all residents of this State and for
24 nonresidents attending institutions of higher education within
26 this State who desire higher education and are properly qualified
28 is important to the welfare and security of this State and
30 consequently is an important public purpose. Many qualified
32 students are deterred by financial considerations from completing
34 their education, with a consequent irreparable loss to the State
36 of talents vital to the welfare of the State and its citizens.
38 Accordingly, there is established the Higher Education Loan
40 Purchase Program to provide greater access to federal loan
42 program loans at a lower cost enabling students in this State to
44 attend the institutions of higher education of their choice.

46 **§11492. Definitions**

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

1. **Authority.** "Authority" means the Finance Authority of
Maine established in Title 10, section 961 and its successors or
assigns.

2. **Bonds.** "Bonds" includes bonds, notes, commercial paper,
pass-through instruments or any other evidences of indebtedness
the authority issues under this chapter.

3. **Borrower.** "Borrower" means a person who is obligated as
a borrower to make payment of an eligible loan.

4. **Eligible lender.** "Eligible lender" means the authority
and the Federal Government and any financial institution or
institution of higher education that is an eligible lender under
the federal Higher Education Act of 1965, Public Law 89-329, 79

2 Stat. 1219, Title IV, as amended, or under the federal Health
3 Professions Educational Assistance Act of 1976, Public Law
4 94-484, 90 Stat. 2243, as amended, as applicable or, in each
5 case, any successor provision, that is approved by the authority
6 for participation in the program.

7 **5. Eligible loan or loan.** "Eligible loan" or "loan" means a
8 loan originated under the federal Higher Education Act of 1965,
9 Public Law 89-329, 79 Stat. 1219, Title IV, as amended, or under
10 the federal Health Professions Educational Assistance Act of
11 1976, Public Law 94-484, 90 Stat. 2243, as amended, in each case
12 along with any successor provision, by an eligible lender to a
13 borrower, or under any student loan program administered by the
14 authority.

15 **6. Finance.** "Finance" means the acquisition or refinancing
16 of eligible loans, including loans to eligible lenders to make
17 such loans.

18 **7. Program.** "Program" means the Higher Education Loan
19 Purchase Program established by this chapter.

20 **§11493. Higher Education Loan Purchase Program**

21 **1. Program.** The authority is authorized to carry out the
22 program by issuing bonds for the purpose of financing eligible
23 loans and may use any net earnings on those bonds to administer
24 the program, to pay or further secure the bonds and to make
25 eligible loans.

26 **2. Rules.** The authority shall adopt rules to implement and
27 administer the program. All rules adopted pursuant to this
28 subsection are routine technical rules as defined in Title 5,
29 chapter 375, subchapter 2-A.

30 **§11494. Records confidential**

31 **1. Confidential information.** Records containing any
32 information acquired by the authority or a member, employee or
33 agent of the authority from borrowers whose loans are financed by
34 the authority are confidential for purposes of Title 1, section
35 402, subsection 3, paragraph A.

36 **2. Wrongful disclosure prohibited.** A member, employee,
37 agent, other representative of the authority or other person may
38 not knowingly divulge or disclose records declared confidential
39 by this section, except that the authority may, in its
40 discretion, make or authorize any disclosure of information of
41 the following types:

2 A. Impersonal, statistical or general information;

4 B. Information to an eligible lender or credit reporting service;

6 C. Information necessary to comply with the federal Higher Education Act of 1965, Public Law 89-329, 79 Stat. 1219, Title IV, as amended, or the federal Health Professions Educational Assistance Act of 1976, Public Law 94-484, 90 Stat. 2243, as amended, in each case along with any successor provision, or any administrative requirements of the Federal Government or any guarantee agency under the Federal Government or of any federal or state law or rule or with any agreement pertaining to financial assistance;

16 D. Information, the disclosure of which the authority determines is necessary or convenient to the sale or transfer of its bonds;

20 E. Information necessary to ensure collection of any obligation in which the authority has or may have an interest;

24 F. In any litigation or proceeding in which the authority has appeared, any information obtained from records declared confidential by this section; and

28 G. Information required pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.

36 **§11495. Bonds**

38 1. Issuance; purpose; payment; authorization; interim receipts or certificates. The authority may issue bonds for the purposes of this chapter, including, without limitation, financing eligible loans, which may include consolidation loans funding the payment of eligible loans to borrowers of eligible loans financed by the authority, financing loans to eligible lenders to fund the origination of eligible loans and acquiring existing portfolios of eligible loans from eligible lenders. The bonds of each issue must be authorized by the authority and be payable only from such sources specified in the agreement with bondholders, which may include, without limitation, payments on or with respect to eligible loans from any source, including sale proceeds; reserves established by the authority for the bonds;

2 payments pursuant to agreements with financial institutions,
3 educational institutions or any governmental entity; payments
4 pursuant to interest rate exchange agreements; investment
5 earnings from funds or accounts maintained pursuant to a trust
6 agreement or other document; proceeds of refunding bonds; and
7 other fees, charges or revenues of the authority.

8 Bonds issued by the authority for the purposes of this chapter,
9 the resolution authorizing the issuance of such bonds or any
10 trust agreement authorized for the issuance of such bonds may
11 include such provisions, which must be part of the contract with
12 the holders of the bonds of such issue and with any 3rd-party
13 credit or liquidity provider or counterparties to interest rate
14 exchange agreements, as the authority considers necessary or
15 convenient to the security or issuance of the bonds, including
16 without limitation:

17 A. Specifying the payment terms of bonds, including the
18 basis upon which interest accrues on those bonds, which may
19 be fixed, variable, auction-based or adjustable; the payment
20 of principal at maturity or redemption; a date or dates, and
21 a maturity at a time or times, whether as serial bonds or as
22 term bonds, or both, determined by the authority; the
23 denominations and form, which may include coupon,
24 registered, coupon and registered or book entry; and such
25 privileges as to conversion and for the replacement of
26 mutilated, lost or destroyed bonds as the authority may
27 establish;

28 B. Providing that bonds be payable in lawful money of the
29 United States at a designated place or be payable in another
30 form of currency if the authority so designates and be
31 considered to be negotiable instruments issued under the
32 laws of the State within the meaning and for all purposes of
33 Title 11, Article 3-A, whether or not of the form or
34 character to so qualify under the terms of Title 11, Article
35 3-A, subject only to the applicable provisions of any trust
36 agreement;

37 C. Providing that bonds be executed by the manual or
38 facsimile signatures of the officers or designees of the
39 authority;

40 D. Providing that bonds be sold in the manner and upon the
41 terms determined by the authority at public or private sale,
42 with or without public bidding;

43 E. Pledging or assigning revenues, contractual rights and
44 other assets to secure the bonds;

45

2 F. Establishing loan funding deposits, debt service
4 reserves, capitalized interest accounts, cost of issuance
accounts and sinking funds and other accounts and their
regulation, investment and disposition;

6 G. Providing for the issuance of additional bonds and
8 refunding bonds;

10 H. Defining the acts or omissions that constitute a default
12 in the duties of the authority of its obligations to
bondholders and providing the rights or remedies of such
bondholders in the event of a default;

14 I. Providing for guarantees, letters of credit, lines of
16 credit, insurance policies, surety bonds, purchase
agreements or similar instruments or other security for the
18 benefit of the bondholders;

20 J. Providing for interest rate or exchange agreements; and

22 K. Any other matter relating to the bonds that the
authority determines appropriate.

24 **2. Credit not pledged.** Bonds issued under this chapter do
26 not constitute or create any debt or liability on behalf of the
State or of any political subdivision of the State or the
28 authority, a loan of the credit of the State or a pledge of the
faith and credit of the State or of any political subdivision of
30 the State or the authority, but are payable solely from the funds
provided for those bonds. All the bonds must contain a statement
32 to the effect that the State, any political subdivision of the
State or the authority is not obligated to pay the bonds or the
34 interest on the bonds, except from funds provided for those bonds
pursuant to one or more agreements, and that neither the faith
36 and credit nor the taxing power of the State or of any political
subdivision of the State is pledged to the payment of the
38 principal of, premium, if any, or the interest on such bonds.
40 The issuance of bonds under this chapter does not directly or
indirectly or contingently obligate the State or any political
42 subdivision of the State to levy or to pledge any form of
taxation whatever or to make any appropriation for the bonds'
payment.

44 **3. Liability of members.** A member or employee of the
46 authority or any person executing the bonds may not be held
liable personally on the bonds or subject to any personal
48 liability by reason of the issuance of the bonds.

50 **4. Interest rate exchange agreements.** In connection with,
or incidental to, the issuance or carrying of bonds issued under

2 this chapter or carrying of any investment, the authority may
3 enter into agreements with financial institutions that the
4 authority determines to be necessary or appropriate to place the
5 obligation or investment of the authority, in whole or in part,
6 on the interest rate, cash flow or other basis as determined by
7 the authority.

8 **5. Purchasing, refunding or refinancing by authority.** The
9 authority may purchase its bonds out of any available funds and
10 may hold, pledge, cancel or resell the bonds subject to and in
11 accordance with agreements with bondholders. The authority may
12 refund or refinance any of its bonds.

13 **6. Conclusive authorization.** All bonds of the authority
14 must be conclusively presumed to be fully authorized and issued
15 under the laws of the State, and any person or governmental unit
16 is estopped from questioning their authorization, sale, issuance,
17 execution or delivery by the authority.

18 **§11496. Trust agreement; pledge of security**

19 **1. Trust agreement.** Any bonds issued under this chapter
20 may be secured by a trust agreement by and between any or all of
21 the following: the authority, a financial institution and a
22 corporate trustee or trustees, which may be any trust company or
23 bank having the powers of a trust company within or without the
24 State.

25 **2. Pledge of security.** This subsection governs a pledge of
26 security pursuant to this chapter.

27 **A.** All moneys received by the authority or received on
28 behalf of the authority by any eligible lender, servicer,
29 trustee, custodian or collection agent, pursuant to any
30 resolution, trust agreement or any other agreement
31 authorized by this chapter and pledged pursuant to a
32 resolution, trust agreement or other agreement for the
33 benefit of the bondholders, whether as proceeds from the
34 sale of bonds or as revenues, are deemed to be trust funds
35 to be held and applied solely as provided in such
36 resolution, trust agreement or other agreement. Subject to
37 the provisions of any such resolution, trust agreement or
38 other agreement, any such money may be invested in such
39 investments and investment agreements as may be approved by
40 resolution of the authority. Any servicer, custodian or
41 collection agent with which such money is deposited is
42 deemed to hold such money in trust for the benefit of the
43 authority or the bondholders and shall apply such money
44 solely for the purposes of this chapter, subject to such
45 provisions as may be provided in such resolution, trust
46 agreement or other agreement.

2 restrictions as this chapter, the applicable authorizing
resolution, trust agreement or other agreement may provide.

4 B. Any pledge made by the authority of income, revenues or
other property is valid and binding from the time the pledge
6 is made. The income, revenue or other property so pledged
and received after being pledged by the authority, or
8 received on behalf of the authority by any eligible lender,
servicer, trustee, custodian or collection agent, pursuant
10 to any resolution, trust agreement or other agreement that
is authorized by this chapter and pledged pursuant to a
12 resolution, trust agreement or other agreement for the
benefit of the bondholders, is immediately subject to the
14 lien of such pledge without any physical delivery thereof or
further act, and the lien of any such pledge is valid and
16 binding as against all parties having claims of any kind in
tort, contract or otherwise against the authority, or such
18 other recipient on behalf of the authority, irrespective of
whether such parties have notice of that lien.
20 Notwithstanding any other provision of law, neither
possession nor the filing of any financing or continuation
22 statement is necessary with respect to any such income,
revenues or other property to establish or evidence the lien
24 of any such pledge, including the creation, perfection,
priority or enforcement of such lien, with respect thereto.
26 A resolution authorizing bonds, a trust agreement or other
agreement described in this section or any other instrument
28 by which such a pledge is created does not need to be
recorded.

30 **§11497. Loan transactions**

32 The authority may finance, sell, service, pledge, invest in,
34 hold, trade, accept as collateral or otherwise deal in, acquire
or transfer, all on such terms and conditions as the authority
36 may specify, any eligible loan or portfolio of loans or loan
pass-through certificate pledge, including any pledge of loan
38 revenue, loan participation certificate or other loan-backed or
loan-related security. Any such transaction may be conducted by
40 public or private offering. In connection with the financing or
sale of an eligible loan or of a beneficial interest or
42 participation in an eligible loan or portfolio of eligible loans,
the authority may enter into one or more agreements providing for
44 the origination, guarantee, financing, purchase, sale, servicing,
custody, control and administration of such eligible loan or
46 portfolio of eligible loans. Any such agreement may provide that
the authority, any other eligible lender, a financial institution
48 or other person may act as trustor, trustee or custodian under
the agreement. Any such agreement may provide that, with respect
50 to loans governed by the agreement, title to a loan, or to a

2 beneficial interest or participation in a loan, is deemed to have
3 been transferred on terms and to the extent specified in that
4 agreement and that the effect of a sale of a beneficial interest
5 or participation in a loan is the same as a sale of a loan. The
6 authority may issue or cause to be issued certificates or other
7 instruments evidencing the holder's fractional interest in a pool
8 of loans, which interest may be undivided or limited to one or
9 more specific loans. Whether or not the certificates or
10 instruments are of such form or character as to be negotiable
11 instruments under Title 11, Article 3-A, the certificates or
12 instruments are made negotiable instruments within the meaning of
13 and for all purposes of Title 11, Article 3-A, subject only to
14 such registration requirements as the authority may establish.

15 **§11498. Tax exemption**

16 Bonds issued under this chapter constitute a proper public
17 purpose and the securities, their transfer and the income from
18 them, including any profits made on their sale, are at all times
19 exempt from taxation within the State, whether or not those
20 securities, their transfer or the income from them, including any
21 profits made on their sale, are subject to federal taxation.

22 **§11499. Bonds as legal investments**

23 Bonds issued by the authority under this chapter are
24 securities in which all public officers and public bodies of the
25 State and its political subdivisions; insurance companies and
26 associations and other persons carrying on an insurance business;
27 trust companies, banks, bankers, banking associations, savings
28 banks and savings associations, including savings and loan
29 associations; financial institutions; credit unions; building and
30 loan associations; investment companies; executors,
31 administrators, trustees and other fiduciaries; pension,
32 retirement funds and profit-sharing; other persons carrying on a
33 banking business; and all other persons may properly and legally
34 invest funds, including capital in their control or belonging to
35 them. These bonds are made securities that may properly and
36 legally be deposited with and received by any state, municipal or
37 public officer or any agency or political subdivision of the
38 State for any purpose for which the deposit of bonds or other
39 obligations of the State is now or may hereafter be authorized by
40 law.

41 **§11499-A. Taxable bond option**

42 With respect to all or any portion of any issue of any bonds
43 or any series of bonds that the authority may issue in accordance
44 with the limitations and restrictions of this chapter, the
45 authority may covenant, elect and consent that the interest on
46 the bonds shall be taxable as interest on bonds.

2 the bonds be includable under the federal Internal Revenue Code
3 or any subsequent corresponding internal revenue law of the
4 United States in the gross income of the holders of the bonds to
5 the same extent and in the same manner that the interest on
6 bills, bonds, notes or other obligations of the United States is
7 includable in the gross income of the holders under the federal
8 Internal Revenue Code or any subsequent law. Bonds issued
9 pursuant to this section are not subject to any limitations or
10 restrictions of any law that may limit the authority's power to
11 issue those bonds. The grant of power in this section may not be
12 construed as limiting the inherent power of the State or its
13 agencies under any other provision of law to issue debt, the
14 interest on which is includable in the gross income of the
15 holders under the federal Internal Revenue Code or any subsequent
16 law.

17 **§11499-B. Agreement of the State**

18 The State pledges to and agrees with the holders of any
19 bonds issued under this chapter and with those parties who may
20 enter into any contract with the authority pursuant to this
21 chapter that the State will not limit, alter, restrict or impair
22 the rights vested by this chapter in the authority until the
23 bonds issued pursuant to this chapter, together with interest,
24 including interest on any unpaid installment of interest and all
25 costs and expenses in connection with any actions or proceedings
26 by or on behalf of the bondholders, are fully met and discharged
27 and such contracts are fully performed on the part of the
28 authority. Nothing in this chapter precludes that limitation or
29 alteration if and when adequate provision is made by law for the
30 protection of the holders of such bonds and of those parties
31 entering into contracts with the authority. The authority is
32 authorized to include this pledge and undertaking for the State
33 in those bonds or contracts.

34 **§11499-C. Chapter cumulative; no notice required**

35 This chapter may not be construed as a restriction or
36 limitation upon any powers that the authority might otherwise
37 have under any laws of this State and this chapter is cumulative
38 of any such powers. Neither the making of contracts nor the
39 issuance of bonds pursuant to this chapter need comply with the
40 requirements of any other state law applicable to the making of
41 contracts, the issuance of bonds or the construction, acquisition
42 or management of any project undertaken pursuant to this
43 chapter. No proceedings, notice or approval is required for the
44 issuance of any bonds or any instrument as security for those
45 bonds, except as is provided in this chapter or in the federal
46 Internal Revenue Code, if applicable.

47

§11499-D. Chapter liberally construed

2

This chapter being necessary for the welfare of the State
4 and its inhabitants must be liberally construed so as to effect
its purposes.

6

8

SUMMARY

10

This bill creates the Higher Education Loan Purchase Program
to be administered by the Finance Authority of Maine as a
12 secondary market for higher education loans, as provided in
Public Law 2003, chapter 112, allowing the Governor to designate
14 a state agency as a secondary market, and Executive Order 16 FY
02/03, dated May 14, 2003, designating the Finance Authority of
16 Maine as the state secondary market for educational loans.

18

The bill adds the administration of a secondary market for
student loans to the general powers of the authority. The
20 authority is authorized to issue tax exempt bonds to finance
certain loans.