

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1503

H.P. 1055

House of Representatives, March 29, 2005

An Act To Amend the Economic Development Statutes

Submitted by the Department of Economic and Community Development pursuant to Joint Rule 204.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BERUBE of Lisbon.
Cosponsored by Senator DOW of Lincoln and
Representatives: AUSTIN of Gray, BEAUDETTE of Biddeford, CROSBY of Topsham,
RECTOR of Thomaston, ROSEN of Bucksport, SMITH of Monmouth, Senator: ROSEN of
Hancock.

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

2
4 **Sec. 1. 5 MRSA §934-A, sub-§1**, as amended by PL 2003, c. 673, Pt. M, §1, is repealed and the following enacted in its place:

6 1. Major policy-influencing position. The Deputy
8 Commissioner is a major policy-influencing position within the
10 Department of Economic and Community Development. The Deputy
12 Commissioner is appointed by the Commissioner of Economic and
14 Community Development and serves at the commissioner's pleasure.
16 Notwithstanding any other provision of law, this position and its
18 successor position is subject to this chapter.

20 **Sec. 2. 5 MRSA §3327, sub-§1, ¶G**, as amended by PL 2003, c. 9, §1, is further amended to read:

22 G. The Commissioner of Economic and Community Development
24 or the commissioner's designee;

26 **Sec. 3. 5 MRSA §13033**, as amended by PL 2003, c. 681, §5, is further amended to read:

28 **§13033. Membership**

30 The commission consists of 10 members: the Chief Executive
32 Officer of the Finance Authority of Maine or the chief executive
34 officer's designee; the Commissioner of Economic and Community
36 Development or the commissioner's designee; the House and Senate
38 chairs of the joint standing committee of the Legislature having
40 jurisdiction over business, research and economic development
42 matters, who are ex officio, nonvoting members; the chair of the
44 Small Business Development Centers Advisory Council; the District
46 Director of the United States Small Business Administration's
48 Maine District Office; and a designee from the administrative
unit and 3 public members with expertise and knowledge in small
business and entrepreneurship, appointed by the commissioner.

38 **Sec. 4. 5 MRSA c. 383, sub-c. 1-B**, as amended, is repealed.

40 **Sec. 5. 5 MRSA §13105, sub-§1**, as enacted by PL 2003, c. 673, Pt. M, §8, is amended to read:

42 **1. Office established.** The commissioner shall establish the
44 Office of Innovation, referred to in this subchapter as "the
46 office." The office shall encourage and coordinate the State's
48 research and development activities to foster collaboration among
the State's higher education and nonprofit research institutions
and the business community. The commissioner shall appoint the

2 State Science Advisor, who shall serve as the Director of the
3 Office of Innovation.

4 **Sec. 6. 5 MRSA §13120-B, sub-§1**, as enacted by PL 2001, c.
5 703, §6, is amended to read:

6
7 **1. Carrying costs.** "Carrying costs" means reasonable costs
8 incurred for the maintenance, protection and security of a
9 ~~e~~community speculative industrial building prior to occupancy,
10 including, but not limited to, insurance, taxes and interest.

11 **Sec. 7. 5 MRSA §13120-B, sub-§5**, as enacted by PL 2001, c.
12 703, §6, is repealed.

13 **Sec. 8. 5 MRSA §13120-B, sub-§11** is enacted to read:

14
15 **11. Speculative industrial building.** "Speculative
16 industrial building" means a building of flexible design and
17 suitable for commercial use, for which the construction or
18 carrying costs or both are financed through this subchapter for
19 the purpose of creating new jobs in a municipality resulting from
20 the sale or lease of the building.

21
22 **Sec. 9. 5 MRSA §13120-C, sub-§1, ¶A**, as enacted by PL 2001, c.
23 703, §6, is amended to read:

24
25 A. ~~C~~ommunity Speculative industrial building program,
26 pursuant to section 13120-N;

27
28 **Sec. 10. 5 MRSA §13120-D, sub-§1, ¶B**, as enacted by PL 2001,
29 c. 703, §6, is amended to read:

30
31 B. Two ex officio members:

32
33 (1) The Commissioner of Economic and Community
34 Development or the commissioner's designee; and

35
36 (2) The Chief Executive Officer of the Finance
37 Authority of Maine or the chief executive officer's
38 designee.

39
40 **Sec. 11. 5 MRSA §13120-I, sub-§1**, as amended by PL 2003, c.
41 281, §4, is further amended to read:

42
43 **1. Authorization.** The authority may provide by resolution
44 for the issuance of bonds for the purpose of funding the
45 ~~C~~ommunity Speculative Industrial Buildings Fund, or any successor
46 to the fund, for the construction of proposed commercial
47 facilities and improvement of existing or acquired commercial
48 facilities and for the fulfillment of other undertakings that it
49
50

2 may assume. The bonds of the authority do not constitute a debt
3 of the State or of any agency or political subdivision of the
4 State but are payable solely from the revenue of the authority,
5 and neither the faith nor credit nor taxing power of the State or
6 any political subdivision of the State is pledged to payment of
7 the bonds. Notwithstanding any other provision of law, any bonds
8 issued pursuant to this subchapter are fully negotiable. If any
9 member of the board of trustees whose signature appears on the
10 bond or coupons ceases to be a member of the board of trustees
11 before the delivery of those bonds, that signature is valid and
12 sufficient for all purposes as if that member of the board of
13 trustees had remained a member of the board of trustees until
14 delivery.

15 **Sec. 12. 5 MRSA §13120-I, sub-§3,** as enacted by PL 2001, c.
16 703, §6, is amended to read:

17 **3. Money received.** All money received from any bonds
18 issued must be applied solely for loans to municipalities or
19 local development corporations for ~~e~~community speculative
20 industrial buildings, for the construction of proposed commercial
21 facilities and improvement of existing or acquired commercial
22 facilities and for the fulfillment of other undertakings that are
23 within the power of the authority. There is created a lien upon
24 the money until so applied in favor of the bondholders or any
25 member of the board of trustees as may be provided in respect of
26 the bonds.

27 **Sec. 13. 5 MRSA §13120-J, sub-§1,** as enacted by PL 2001, c.
28 703, §6, is amended to read:

29 **1. Acquisition of interest.** A member of the board of
30 trustees or employee of the authority may not acquire or hold a
31 direct or an indirect personal financial ~~ex-personal~~ interest in:

32 A. An authority activity;

33 B. Property or facilities included, planned to be included
34 or expected to directly benefit from an authority activity;
35 or

36 C. A contract or proposed contract in connection with an
37 authority activity.

38 When an acquisition is involuntary, the interest acquired must be
39 disclosed immediately in writing to the board of trustees and the
40 disclosure must be entered in the board of trustees' minutes.

41 **Sec. 14. 5 MRSA §13120-N,** as amended by PL 2003, c. 281, §§5
42 and 6, is further amended to read:

2 **§13120-N. Speculative industrial building program**

4 The authority may assist a municipality or local development
6 corporation to construct a ~~e~~community speculative industrial
8 building by loaning the municipality or local development
 corporation money for construction or carrying costs or both for
 the project, subject to the following.

10 **1. Project.** The following conditions apply to a project
12 receiving money under this section.

14 A. The project must be within the scope of this subchapter,
16 must be of public use and benefit and must reasonably be
 expected to accomplish one or more of the following:

- 18 (1) Create new employment opportunities;
- 20 (2) Retain or improve existing employment; or
- 22 (3) Improve the competitiveness of the occupant
 business.

24 B. Not more than one unoccupied ~~e~~community speculative
26 industrial building project may be financed in a
 municipality.

28 C. The authority shall charge interest on loans or funds
30 provided under this section to the municipality or local
32 development corporation for a ~~e~~community speculative
 industrial building that remains unoccupied for 3 or more
 years following completion of the building.

34 D. The authority shall adopt rules under chapter 375 with
36 respect to:

- 38 (1) The methodology and criteria for allocating funds
 to ~~e~~community speculative industrial building projects;
- 40 (2) The process through which municipalities and local
42 development corporations must apply for ~~e~~community
 speculative industrial building funds;
- 44 (3) Rates of interest, the duration of interest
46 payments and any other terms to which municipalities
 and local development corporations must be subject
48 under this paragraph; and
- 50 (4) Other matters necessary to the proper
 administration of this section.

2 Rules adopted under this paragraph are routine technical
rules pursuant to chapter 375, subchapter 2-A.

4

6 **2. Obligations.** The municipality or local development
corporation receiving money under this section must:

8 A. Own, or hold on long-term lease, the site for the
project;

10

12 B. Be responsible for and present evidence to the authority
of its ability to carry out the project as planned;

14 C. Site and maintain the ~~e~~community speculative industrial
building on property that is appropriate to the size and
16 location of the ~~e~~community speculative industrial building;

18 D. Provide and maintain, with funds other than those
provided by the authority, an adequate access road from a
20 public highway to the proposed site and provide and maintain
water, sewer and power facilities. The municipality or
22 local development corporation must be responsible for
plowing out the plant site at all times and for landscaping
24 the grounds surrounding the building until the building is
occupied by a tenant;

26

28 E. Comply with applicable zoning, planning and sanitary
regulations in the municipality where the ~~e~~community
speculative industrial building is to be located. A loan
30 may not be approved and a certificate of approval for the
project or for any subsequent enlargement or addition to the
32 project may not be issued until the Department of
Environmental Protection has certified to the authority that
34 all licenses required by the authority have been issued or
that none are required; and

36

38 F. Make adequate provisions for insurance and fire
protection and for maintenance of the ~~e~~community speculative
industrial building while it is unoccupied.

40

42 **3. Loan terms.** Terms for a loan under this section are as
follows.

44 A. The authority shall prescribe the terms and conditions
of the loan.

46

48 B. Loans must be repaid in full, including interest and
other charges, within 90 days after the ~~e~~community
speculative industrial building is occupied.

50

2 C. A eommunity speculative industrial building financed by
3 an authority loan may not be sold or leased without the
4 express approval of the purchaser or lessee by the
5 authority. If the municipality or local development
6 corporation and the authority agree that a eommunity
7 speculative industrial building is unlikely to be sold in
8 the near future despite a marketing effort, the authority
9 may permit an interim lease upon terms it considers
10 appropriate for the protection of the Community Speculative
11 Industrial Buildings Fund or any successor to the fund.
12 Occupation of the premises under an interim lease does not
13 require payment in full of the entire loan within 90 days,
14 as provided in paragraph B.

15 **4. Marketing and promotion.** The municipality or local
16 development corporation receiving money under this section shall
17 make a reasonable and continual effort to market the eommunity
18 speculative industrial building for sale into private commercial
19 use. Upon the request of the authority, the municipality or
20 local development corporation shall present evidence of its
21 marketing efforts and expenditures related to the eommunity
22 speculative industrial building.

23 **5. Taxes.** While a eommunity speculative industrial
24 building under this section remains unoccupied and a first
25 mortgage is held by the authority, it is property held for a
26 legitimate public use and benefit and is exempt from all taxes
27 and special assessments of the State or any of its political
28 subdivisions.

29 **6. Municipality.** A municipality may raise or appropriate
30 money supporting and guaranteeing the obligation of a chamber of
31 commerce, board of trade or local development corporation for the
32 purpose of constructing a eommunity speculative industrial
33 building subject to the provisions of this subchapter.

34 **Sec. 15. 5 MRSA §13120-P, sub-§§2 and 3,** as amended by PL 2003,
35 c. 281, §8, are further amended to read:

36 **2. Redevelopment of property.** Except as provided in
37 section 13120-Q, the authority may undertake the redevelopment of
38 property as an owner or lender for subsequent use and sale under
39 the following conditions:

40 A. The property has been previously and materially used as
41 a commercial facility or the property is suitable for
42 adaptive use as a commercial or industrial facility;

2 B. The property is currently not in productive commercial
use or is expected to be taken out of productive commercial
use within the immediate future;

4
6 C. The property has not been placed under a purchase option
or contract;

8 D. The authority, using due diligence, has determined that:

10 (1) There is a reasonable expectation that the
property will become financially viable following its
redevelopment; and

12
14 (2) The economic benefits, including the restoration
of employment opportunities, expected to result from
the redevelopment justify the risks associated with the
authority's equity, security or other interest in the
property; and

16
18
20 ~~E. At least 25% of the total cost to acquire, redevelop and~~
~~return the property to productive commercial use will be~~
~~borne by the~~ The municipality or local development
corporation or another entity will provide funding for the
project equal to 25% of the funding that the authority
provides to the project.

22
24
26 The authority may finance undeveloped land or personal property
only if the undeveloped land or personal property is part of the
overall redevelopment project.

28
30 **3. Development of property.** Except as provided in section
32 13120-Q, the authority may undertake the development of property
as an owner or lender for subsequent use and sale under the
34 following conditions:

36 A. The property consists of real estate that is zoned,
sited or otherwise suitable for development as a commercial
38 facility;

40 B. The property is currently not in productive commercial
use;

42
44 C. The property has not been placed under a purchase option
or contract;

46 D. The authority, using due diligence, has determined that:

48 (1) There is a reasonable expectation that the
property will become financially viable following its
50 development;

2 (2) The development of the property will create
4 employment opportunities and other economic benefits
within the region; and

6 (3) The economic benefits expected to result from the
8 development justify the risks associated with the
authority's equity, loan or other interest in the
property; and

10 E. ~~At least 25% of the total cost to acquire, develop and~~
12 ~~bring the property to productive commercial use will be~~
14 ~~borne by the~~ The municipality or, local development
16 corporation or another entity will provide funding for the
project equal to 25% of the funding that the authority
provides to the project.

18 The authority may finance undeveloped land or personal property
20 only if the undeveloped land or personal property is part of the
overall development project.

22 **Sec. 16. 5 MRSA §15302, sub-§3, ¶¶A and C,** as enacted by PL
24 1999, c. 401, Pt. AAA, §3, are amended to read:

26 A. The Governor shall appoint 9 10 voting directors, 7 8 of
28 whom must be representatives of targeted technologies. The
other 2 directors must have demonstrated significant
30 experience in finance, lending or venture capital. In
32 making the appointments from targeted technologies, the
Governor shall consider recommendations submitted by
34 representatives of targeted technology sectors. Directors
of the board appointed by the Governor are entitled to
receive reimbursement at the legislative rate for necessary
expenses for their attendance at authorized meetings of the
board.

36 C. ~~The President of the Maine Science and Technology~~
38 ~~Foundation or the president's designee and the~~ Director of
the State Planning Office or the director's designee are is
40 an ex officio nonvoting directors director.

42 **Sec. 17. 5 MRSA §15306,** as enacted by PL 1999, c. 401, Pt.
44 AAA, §3, is amended to read:

46 **§15306. Liability of officers, directors and employees**

48 All officers, directors, employees and other agents of the
institute entrusted with the custody of the securities of the
institute or authorized to disburse the funds of the institute
50 must be bonded either by a blanket bond or by individual bonds

2 with a minimum limitation of \$100,000 coverage for each person
covered by the bond or bonds, or equivalent fiduciary liability
4 insurance, conditioned upon the faithful performance of their
duties. The premiums for the bond or bonds must be paid out of
6 the assets of the institute.

8 **Sec. 18. 5 MRSA §15308, sub-§2**, as enacted by PL 1999, c. 401,
Pt. AAA, §3, is repealed.

10 **Sec. 19. 10 MRSA §363, sub-§1-A**, as amended by PL 2003, c.
385, §1, is further amended to read:

12 **1-A. Procedure.** For each calendar year, the Legislature
14 may establish a procedure for allocation of the entire amount of
the state ceiling by allocating an amount of the state ceiling to
16 the specific issuers designated in this section for further
allocation by each specific issuer to itself or to other issuers
18 for specific bond issues requiring an allocation of the state
ceiling or for carryforward. This procedure supersedes the
20 federal formula to the full extent that the United States Code,
Title 26, authorizes the Legislature to vary the federal
22 formula. Allocations may be reviewed by the Legislature
periodically and unused allocations may be reallocated to other
24 issuers; however, notwithstanding the existence of legislation
allocating or reallocating all or any portion of the state
26 ceiling, at any time during the period from September 1st to and
including December 31st of any calendar year, and at any other
28 time that the Legislature is not in session, a group consisting
of a representative of each of the issuers specifically
30 identified in subsections 4, 5, 6, 7, 8 and 8-A; and a
representative of the Governor designated each year by the
32 Governor may, by written agreement executed by no fewer than 5 of
the 6 voting representatives, allocate amounts not previously
34 allocated and reallocate unused allocations from one of the
specific issuers designated in this section to another specific
36 issuer for further allocation or carryforward, with respect to
the state ceiling for that calendar year only. In no event may
38 any issuer have more than one vote. If an issuer is allocated a
portion of the state ceiling in more than one category, the
40 written agreement must be executed by no fewer than 4 of the 6
voting representatives. ~~A representative of the Department of~~
42 ~~Economic and Community Development designated each year by the~~
~~Commissioner of Economic and Community Development shall~~
44 ~~participate as a nonvoting member of the group of representatives~~
~~described in this subsection with respect to agreements or~~
46 ~~recommendations for allocation or reallocation of the state~~
ceiling. Except for records containing specific and identifiable
48 personal information acquired from applicants for or recipients
of financial assistance, the records of the group of
50 representatives described in this subsection are public records

2 and the meetings of the group of representatives described in
4 this subsection are public proceedings within the meaning of
6 Title 1, chapter 13, subchapter 1.

8 **Sec. 20. 10 MRSA §384, sub-§1**, as enacted by PL 1995, c. 699,
10 §3, is amended to read:

12 **1. Establishment; membership.** There is established as a
14 body corporate and politic and a public instrumentality of the
16 State the Small Enterprise Growth Board, which consists of 11
18 members appointed by the Governor as follows:

20 A. An experienced commercial lender;

22 B. An attorney with knowledge of securities law;

24 C. Five members of the public who have knowledge and
26 experience in managing or investing in high-growth small
28 businesses;

30 D. Three members of the public who have knowledge and
32 experience in the development of technological innovation;
34 and

36 E. The Commissioner of Economic and Community Development
38 or the commissioner's designee, who shall serve as a voting
40 ex officio member of the board.

42 **Sec. 21. 10 MRSA §965, sub-§4, ¶A**, as amended by PL 1987, c.
44 534, Pt. B, §§7 and 23, is further amended to read:

46 A. The Commissioner of Economic and Community Development
48 or the commissioner's designee;

50 **Sec. 22. 20-A MRSA §12705, sub-§1**, as amended by PL 1995, c.
52 688, §11 and PL 2003, c. 20, Pt. 00, §2 and affected by §4, is
54 further amended to read:

56 **1. Membership.** The board of trustees consists of 13
58 appointed voting members, one ex officio voting member and 2 1 ex
60 officio, nonvoting ~~members~~ member as follows:

62 C. Twelve from the field of business and industry, the
64 field of labor, the field of education and the general
66 public;

68 D. The Commissioner of Education, or the commissioner's
70 successor, who serves as an ex officio voting member;

2 ~~E. -- The Commissioner of Economic and Community Development,~~
3 ~~or the commissioner's successor, who serves as an ex officio~~
4 ~~nonvoting member;~~

6 F. The Commissioner of Labor, or the commissioner's
7 successor, who serves as an ex officio nonvoting member; and

8 G. One member who is from the student body of one of the
9 community college campuses at the time of appointment and
10 who is a permanent resident of the State. To be eligible
11 for appointment as a student member, a student must be
12 enrolled for a minimum of 12 credit hours per semester.

14 The student member is a full voting member of the board of
15 trustees and serves for a 2-year term and until a successor
16 is qualified. By January 1st of every 2nd year, the
17 president of the system shall solicit a list of 6 eligible
18 students from the student governments from 6 of the campuses
19 within the Maine Community College System, the 7th campus
20 being excluded in accordance with this subsection. The
21 Governor shall then nominate a student trustee chosen from
22 the list within 30 days of receiving the list of names. The
23 nomination is subject to review by the joint standing
24 committee of the Legislature having jurisdiction over
25 education matters and to confirmation by the Legislature.
26 The student trustee may not come from the same campus in any
27 2 consecutive terms. In the event that the student trustee
28 transfers from one campus to another during the student's
29 term of appointment, the student's original campus of
30 enrollment is the campus excluded when the next student
31 trustee is appointed.

34 SUMMARY

36 This bill makes changes to the Maine Rural Development law,
37 including changing the name of the community industrial building
38 program to the speculative industrial building program,
39 clarifying conflicts of interest for the board of directors and
40 clarifying the required municipal participation in a project.
41 The bill also removes the sunset from the Maine Technology
42 Institute law, makes changes to the board members as a result of
43 the dissolution of the Maine Science and Technology Foundation
44 and clarifies the board liability insurance coverage. The bill
45 also creates designee authority for the Commissioner of Economic
46 and Community Development on the Maine Rural Development
47 Authority, Finance Authority of Maine, Energy Resources Council
48 and Maine Small Business and Entrepreneurship Commission and
49 removes the commissioner as a nonvoting trustee from the Maine
50 Community College System board.

2 The bill removes the office directors within the Department
of Economic and Community Development as major policy-influencing
4 positions and adds that the Director of the Office of Innovation
serves as the State Science Advisor. It removes a representative
6 from the department as a nonvoting member from the allocation
committee for determining the private activity bond ceiling. It
8 also establishes the Small Enterprise Growth Board as a corporate
entity. Finally, the bill repeals the language requiring the
10 department to develop and implement a marketing campaign to
attract and retain youth in Maine.