

MAINE STATE LEGISLATURE

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No. 1899

H.P. 1332

House of Representatives, May 8, 2007

**An Act To Include Institutions Providing an Educational Program
among Entities Eligible To Borrow from the Maine Health and
Higher Educational Facilities Authority**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative ADAMS of Portland.
Cosponsored by President EDMONDS of Cumberland and
Representative: Speaker CUMMINGS of Portland.

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

2 **Sec. 1. 22 MRSA §2052**, as amended by PL 1993, c. 390, §1, is further amended
3 to read:

4 **§2052. Declaration of necessity**

5 It is declared that for the benefit of the people of the State, the increase of their
6 commerce, welfare and prosperity and the improvement of their health and living
7 conditions, it is essential that health care facilities within the State be provided with
8 appropriate additional means to expand, enlarge and establish health care facilities and
9 other related facilities; that this and future generations of students be given the fullest
10 opportunity to learn and to develop their intellectual capacities; and that it is the purpose
11 of this chapter to provide a measure of assistance and an alternative method to enable
12 health care facilities ~~and~~, institutions for higher education and nonprofit institutions
13 providing an educational program in the State to provide the facilities and structures
14 needed to accomplish the purposes of this chapter, all to the public benefit and good, and
15 the exercise of the powers, to the extent and manner provided in this chapter, is declared
16 the exercise of an essential governmental function.

17 **Sec. 2. 22 MRSA §2053, sub-§2**, as amended by PL 1993, c. 390, §2, is further
18 amended to read:

19 **2. Bonds and notes.** "Bonds" and "notes" mean bonds and notes of the authority
20 issued under this chapter, including refunding bonds, notwithstanding that the same may
21 be secured by mortgage or the full faith and credit of the authority or the full faith and
22 credit of a participating health care facility ~~or of~~, a participating institution for higher
23 education or a participating institution providing an educational program, or any other
24 lawfully pledged security of a participating health care facility ~~or of~~, a participating
25 institution for higher education or a participating institution providing an educational
26 program.

27 **Sec. 3. 22 MRSA §2053, sub-§3-B**, as enacted by PL 1997, c. 385, §1, is
28 amended to read:

29 **3-B. Eligible entity.** "Eligible entity" means a facility or institution eligible to
30 participate in financing or other borrowing services authorized by this chapter and
31 includes a participating community health or social service facility, a participating health
32 care facility ~~or~~, a participating institution for higher education or a participating
33 institution providing an educational program.

34 **Sec. 4. 22 MRSA §2053, sub-§4-E** is enacted to read:

35 **4-E. Institution providing an educational program.** "Institution providing an
36 educational program" means a nonprofit or charitable institution, public or private, that is
37 exempt from federal taxation pursuant to the United States Internal Revenue Code of
38 1986, as amended, Section 501 and that provides a program of education for the purpose
39 of enhancing the knowledge or abilities of its members or the general public.

1 **Sec. 5. 22 MRSA §2053, sub-§5-B** is enacted to read:

2 **5-B. Participating institution providing an educational program.** "Participating
3 institution providing an educational program" means an institution providing an
4 educational program that, pursuant to this chapter, undertakes the financing and
5 construction or acquisition of a project or undertakes the refunding or refinancing of
6 obligations or of a mortgage or of advances as provided in and permitted by this chapter.

7 **Sec. 6. 22 MRSA §2053, sub-§6**, as amended by PL 1995, c. 179, §3, is further
8 amended to read:

9 **6. Project.** "Project" means:

10 A. In the case of a participating health care facility or a participating community
11 health or social service facility, the acquisition, construction, improvement,
12 reconstruction or equipping of, or construction of an addition or additions to, a
13 structure designed for use as a health care facility, community health or social service
14 facility, congregate housing facility, laboratory, laundry, nurses or interns residence
15 or other ~~multi-unit~~ multiunit housing facility for staff, employees, patients or relatives
16 of patients admitted for treatment in the health care facility, community health or
17 social service facility, doctors office building, administration building, research
18 facility, maintenance, storage or utility facility or other structures or facilities related
19 to any of the foregoing or required or useful for the operation of the project, or the
20 refinancing of existing indebtedness in connection with any of the foregoing,
21 including parking and other facilities or structures essential or convenient for the
22 orderly conduct of the health care facility or community health or social service
23 facility. "Project" also includes all real and personal property, lands, improvements,
24 driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities,
25 easements and other interests in land, parking lots, machinery and equipment, and all
26 other appurtenances and facilities either on, above or under the ground that are used
27 or usable in connection with the structures mentioned in this paragraph, and includes
28 landscaping, site preparation, furniture, machinery and equipment and other similar
29 items necessary or convenient for the operation of a particular facility or structure in
30 the manner for which its use is intended, but does not include such items as food,
31 fuel, supplies or other items that are customarily considered as a current operating
32 charge. In the case of a hospital, as defined in subsection 4, paragraph B, a
33 community health center or a community health or social service facility, "project"
34 does not include any facilities, structures or appurtenances, the use of which is not
35 directly related to the provision of patient care by its members; ~~and~~

36 B. In the case of a participating institution for higher education, the acquisition,
37 construction, improvement, reconstruction or equipping of, or construction of an
38 addition or additions to, any structure designed for use as a dormitory or other
39 housing facility, dining facility, student union, academic building, administrative
40 facility, library, classroom building, research facility, faculty facility, office facility,
41 athletic facility, health care facility, laboratory, maintenance, storage or utility facility
42 or other building or structure essential, necessary or useful for instruction in a
43 program of education provided by an institution for higher education, including a
44 parking facility, or any ~~multi-purpose~~ multipurpose structure designed to combine 2

1 or more of the functions performed by the types of structures enumerated in this
2 paragraph. "Project" includes all real and personal property, lands, improvements,
3 driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities,
4 easements and other interests in land, machinery and equipment, and all
5 appurtenances and facilities either on, above or under the ground ~~which~~ that are used
6 or usable in connection with any of the structures mentioned in this paragraph, and
7 also includes landscaping, site preparation, furniture, machinery, equipment and other
8 similar items necessary or convenient for the operation of a particular facility or
9 structure in the manner for which its use is intended, but does not include such items
10 as books, fuel, supplies or other items ~~which~~ that are customarily considered as a
11 current operating charge; and

12 C. In the case of a participating institution providing an educational program, the
13 acquisition, construction, improvement, reconstruction or equipping of, or
14 construction of an addition or additions to, any structure designed for use as a
15 dormitory or other housing facility, dining facility, student union, academic building,
16 administrative facility, library, classroom building, research facility, faculty facility,
17 office facility, athletic facility, health care facility, laboratory, maintenance, storage
18 or utility facility, exhibition facility or space, performing arts facility, museum,
19 theater, studio or other building or structure essential, necessary or useful to the
20 participating institution providing an educational program, including a parking
21 facility or any multipurpose structure designed to combine 2 or more of the functions
22 performed by the types of structures enumerated in this paragraph. "Project" includes
23 all real and personal property, lands, improvements, driveways, roads, approaches,
24 pedestrian access roads, rights-of-way, utilities, easements and other interests in land,
25 machinery and equipment, and all appurtenances and facilities either on, above or
26 under the ground that are used or usable in connection with any of the structures
27 mentioned in this paragraph, and also includes landscaping, site preparation,
28 furniture, machinery, equipment and other similar items necessary or convenient for
29 the operation of a particular facility or structure in the manner for which its use is
30 intended, but does not include such items as books, fuel, supplies or other items that
31 are customarily considered as a current operating charge.

32 **Sec. 7. 22 MRSA §2053, sub-§7, as amended by PL 1993, c. 390, §9, is further**
33 **amended to read:**

34 **7. Refinancing of existing indebtedness.** "Refinancing of existing indebtedness"
35 means liquidation, with the proceeds of bonds or notes issued by the authority, of an
36 indebtedness of a health care facility ~~or~~ an institution for higher education ~~or~~ a
37 participating institution providing an educational program incurred to finance or aid in
38 financing a lawful purpose of that health care facility ~~or~~ an institution for higher education
39 or participating institution providing an educational program not financed pursuant to this
40 chapter that would constitute a project had it been undertaken and financed by the
41 authority, or consolidation of such indebtedness with indebtedness of the authority
42 incurred for a project related to the purpose for which the indebtedness of the health care
43 facility ~~or~~ an institution for higher education ~~or~~ participating institution providing an
44 educational program was incurred.

1 **Sec. 8. 22 MRSA §2054, sub-§7**, as amended by PL 1993, c. 390, §11, is further
2 amended to read:

3 **7. Conflict of interest.** Notwithstanding any other law to the contrary, it does not
4 constitute a conflict of interest for a trustee, director, officer or employee of a health care
5 facility or a participating institution providing an educational program or for a trustee,
6 member of a corporation or board of governors, officer or employee of an institution for
7 higher education to serve as a member of the authority; if ~~such~~ that trustee, director,
8 member of a corporation or board of governors, officer or employee abstains from
9 deliberation, action and vote by the authority under this chapter in specific respect to the
10 health care facility ~~or~~ institution for higher education or participating institution
11 providing an educational program of which ~~such~~ that member is a trustee, director,
12 member of a corporation or board of governors, officer or employee.

13 **Sec. 9. 22 MRSA §2055, first ¶**, as amended by PL 1993, c. 390, §12, is further
14 amended to read:

15 The purpose of the authority is to assist participating health care facilities,
16 participating institutions providing an educational program and participating institutions
17 for higher education in the undertaking of projects and the refinancing of existing
18 indebtedness that are declared to be public purposes, and for the purposes of this chapter
19 the authority is authorized and empowered:

20 **Sec. 10. 22 MRSA §2055, sub-§5**, as amended by PL 1993, c. 390, §13, is
21 further amended to read:

22 **5. Projects.** To determine the location and character of any project to be financed
23 under this chapter; and to acquire, construct, reconstruct, renovate, improve, replace,
24 maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same,
25 to enter into contracts for any or all of such purposes, to enter into contracts for the
26 management and operation of a project, and to designate a participating health care
27 facility ~~or~~ a participating institution for higher education or a participating institution
28 providing an educational program as its agent to determine the location and character of a
29 project undertaken by the participating health care facility ~~or~~ participating institution for
30 higher education or participating institution providing an educational program under this
31 chapter and, as the agent of the authority, to acquire, construct, reconstruct, renovate,
32 improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and
33 regulate the same; and, as the agent of the authority, to enter into contracts for any or all
34 of such purposes, including contracts for the management and operation of such project;

35 **Sec. 11. 22 MRSA §2055, sub-§8**, as amended by PL 1993, c. 390, §14, is
36 further amended to read:

37 **8. Rules.** To establish rules for the use of a project or any portion thereof and to
38 designate a participating health care facility ~~or~~ a participating institution for higher
39 education or a participating institution providing an educational program as its agent to
40 establish rules for the use of a project undertaken by the participating health care facility
41 ~~or~~ participating institution for higher education or participating institution providing an
42 educational program;

1 **Sec. 12. 22 MRSA §2055, sub-§12**, as amended by PL 1993, c. 390, §15, is
2 further amended to read:

3 **12. Loans.** To make loans to a participating health care facility, participating
4 institution for higher education, participating institution providing an educational
5 program, other entity eligible to use the authority or consortium of entities eligible to use
6 the authority for the cost of a project in accordance with an agreement between the
7 authority and the participating entity or entities, except that no such loan may exceed the
8 total cost of the project as determined by the participating entity or entities and approved
9 by the authority;

10 **Sec. 13. 22 MRSA §2055, sub-§13**, as amended by PL 1993, c. 390, §16, is
11 further amended to read:

12 **13. Refund.** To make loans to a participating health care facility ~~or~~, a participating
13 institution for higher education or a participating institution providing an educational
14 program to refund outstanding obligations, mortgages or advances issued, made or given
15 by such a participating health care facility ~~or~~, participating institution for higher
16 education or participating institution providing an educational program for the cost of the
17 project;

18 **Sec. 14. 22 MRSA §2055, sub-§14**, as amended by PL 1997, c. 385, §2, is
19 further amended to read:

20 **14. Apportionment.** To charge to and equitably apportion among participating
21 health care facilities ~~and~~, participating institutions for higher education and participating
22 institutions providing an educational program its administrative costs and expenses
23 incurred in the exercise of the powers and duties conferred by this chapter;

24 **Sec. 15. 22 MRSA §2055, sub-§15**, as amended by PL 1997, c. 385, §3, is
25 further amended to read:

26 **15. Other acts.** To do all things necessary or convenient to carry out the purposes of
27 this chapter. In carrying out the purposes of this chapter, the authority may undertake a
28 project for 2 or more participating health care facilities jointly ~~or~~, 2 or more participating
29 institutions for higher education jointly or 2 or more participating institutions providing
30 educational programs, and, upon undertaking the project, all other provisions of this
31 chapter apply to and for the benefit of the authority and such joint participants;

32 **Sec. 16. 22 MRSA §2057**, as amended by PL 1993, c. 390, §19, is further
33 amended to read:

34 **§2057. Acquisition of property by authority**

35 The authority is authorized and empowered, directly or by and through a participating
36 health care facility ~~or~~, a participating institution for higher education or a participating
37 institution providing an educational program, as its agent, to acquire by purchase or by
38 gift or devise such lands, structures, property, real or personal, rights and air rights,
39 rights-of-way, franchises, easements and other interests in lands, including lands lying

1 under water and riparian rights, and air rights, that are located inside or outside the State,
2 as it determines necessary or convenient for the construction or operation of a project,
3 upon such terms and at such prices as may be considered by it to be reasonable and can
4 be agreed upon between it and the owner of lands, including lands lying under water and
5 riparian rights, and air rights, that are located inside or outside the State, and to take title
6 to lands, including lands lying under water and riparian rights, and air rights, that are
7 located inside or outside the State in the name of the authority or in the name of a
8 participating health care facility or, a participating institution for higher education or a
9 participating institution providing an educational program as its agent.

10 **Sec. 17. 22 MRSA §2058**, as amended by PL 1993, c. 390, §20, is further
11 amended to read:

12 **§2058. Conveyance of title to participating institutions**

13 When the principal of and interest on bonds of the authority issued to finance the cost
14 of a particular project or projects for a participating health care facility or, a participating
15 institution for higher education or a participating institution providing an educational
16 program, including any refunding bonds issued to refund and refinance such bonds, have
17 been fully paid and retired or when adequate provision has been made to fully pay and
18 retire the same, and all other conditions of the resolution or trust agreement authorizing
19 and securing the same have been satisfied and the lien of such resolution or trust
20 agreement has been released in accordance with the provisions of the bonds, the authority
21 shall promptly do such things and execute such deeds and conveyances as are necessary
22 and required to convey title to such project or projects to such participating health care
23 facility or, participating institution for higher education or participating institution
24 providing an educational program, free and clear of all liens and encumbrances, all to the
25 extent that title to such project or projects is not, at the time, vested in such participating
26 health care facility or, participating institution for higher education or participating
27 institution providing an educational program.

28 **Sec. 18. 22 MRSA §2060, sub-§2**, as amended by PL 1993, c. 390, §21, is
29 further amended to read:

30 **2. General obligations.** Except as may otherwise be expressly provided by the
31 authority, every issue of its bonds, notes or other obligations is a general obligation of the
32 authority payable from revenues or money of the authority available for the payment of
33 the obligation and not otherwise pledged, subject only to agreements with the holders of
34 particular bonds, notes or other obligations pledging particular revenues or money and
35 subject to any agreements with a participating health care facility or, participating
36 institution for higher education or participating institution providing an educational
37 program. Notwithstanding that such bonds, notes or other obligations may be payable
38 from a special fund, they are and must be deemed to be for all purposes negotiable
39 instruments within the meaning of and for all the purposes of the Uniform Commercial
40 Code, Article 8, subject only to the provisions of such bonds, notes or other obligations
41 for registration.

42 **Sec. 19. 22 MRSA §2060, sub-§4, ¶A**, as amended by PL 1993, c. 390, §22, is
43 further amended to read:

1 A. Pledging the full faith and credit of the authority, the full faith and credit of a
2 participating health care facility ~~or~~, a participating institution of higher education or a
3 participating institution providing an educational program, all or a part of the
4 revenues of a project or a revenue-producing contract or contracts made by the
5 authority with an individual, partnership, corporation or association or other body,
6 public or private, to secure the payment of the bonds or of a particular issue of bonds,
7 subject to such agreements with bondholders as may then exist;

8 **Sec. 20. 22 MRSA §2061, sub-§1**, as amended by PL 1993, c. 390, §23, is
9 further amended to read:

10 **1. Assistance.** Such a project will enable or assist a health care facility to fulfill its
11 obligation to provide health care facilities ~~or~~, an institution for higher education to
12 provide educational facilities within the State or a participating institution providing an
13 educational program to fulfill its mission within the State;

14 **Sec. 21. 22 MRSA §2061, sub-§3**, as amended by PL 2001, c. 609, §1, is further
15 amended to read:

16 **3. Lease.** Such a project will be leased to, or owned by, a health care facility ~~or~~,
17 institution for higher education or institution providing an educational program inside the
18 State;

19 **Sec. 22. 22 MRSA §2063**, as amended by PL 1993, c. 390, §26, is further
20 amended to read:

21 **§2063. Credit of State not pledged**

22 Bonds and notes issued under this chapter do not constitute or create a debt or debts,
23 liability or liabilities on behalf of the State or of a political subdivision of the State other
24 than the authority or a loan of the credit of the State or a pledge of the faith and credit of
25 the State or of any such political subdivision other than the authority, but are payable
26 solely from the funds provided for the bonds and notes. All such bonds and notes must
27 contain on the face of the bonds and notes a statement to the effect that neither the State
28 nor a political subdivision of the State is obligated to pay the same or the interest on the
29 bonds and notes, except from revenues of the project or the portion of the project for
30 which they are issued and that neither the faith and credit nor the taxing power of the
31 State or of a political subdivision of the State is pledged to the payment of the principal of
32 or the interest on such bonds or notes. The issuance of bonds or notes under this chapter
33 may not directly or indirectly or contingently obligate the State or a political subdivision
34 of the State to levy or to pledge any form of taxation whatever for the bonds and notes or
35 to make an appropriation for their payment. Nothing in this section may prevent nor be
36 construed to prevent the authority from pledging its full faith and credit or the full faith
37 and credit of a participating health care facility ~~or~~, participating institution for higher
38 education or participating institution providing an educational program to the payment of
39 bonds or notes or issue of notes or bonds authorized pursuant to this chapter.

40 **Sec. 23. 22 MRSA §2064**, as corrected by RR 1993, c. 2, §12, is amended to
41 read:

1 **§2064. Rents and charges**

2 The authority is authorized to fix, revise, charge and collect rates, rents, fees and
3 charges for the use of and for the services furnished or to be furnished by each project
4 and to contract with a person, partnership, association or corporation, or other body,
5 public or private, in respect of rates, rents, fees and charges. Such rates, rents, fees and
6 charges must be fixed and adjusted in respect of the aggregate of rates, rents, fees and
7 charges from such project so as to provide funds sufficient with other revenues or money
8 available for the project, if any, to pay the cost of maintaining, repairing and operating the
9 project and each and every portion of the project, to the extent that the payment of such
10 cost has not otherwise been adequately provided for, to pay the principal of and the
11 interest on outstanding bonds or notes of the authority issued in respect of such project as
12 the same become due and payable, and to create and maintain reserves required or
13 provided for in a resolution authorizing, or trust agreement securing, such bonds or notes
14 of the authority. Such rates, rents, fees and charges are not subject to supervision or
15 regulation by a department, commission, board, body, bureau or agency of this State
16 other than the authority. A sufficient amount of the revenues derived in respect of a
17 project, except such part of such revenues as may be necessary to pay the cost of
18 maintenance, repair and operation and to provide reserves and for renewals,
19 replacements, extensions, enlargements and improvements as may be provided for in the
20 resolution authorizing the issuance of bonds or notes of the authority or in the trust
21 agreement securing the same, must be set aside at such regular intervals as may be
22 provided in such resolution or trust agreement in a sinking or other similar fund that is
23 pledged to, and charged with, the payment of the principal of and the interest on such
24 bonds or notes as the same become due, and the redemption price or the purchase price of
25 bonds retired by call or purchase as therein provided. Such pledge is valid and binding
26 from the time when the pledge is made; the rates, rents, fees and charges and other
27 revenues or other money so pledged and later received by the authority are immediately
28 subject to the lien of such pledge without any physical delivery of the revenues or money
29 or further act, and the lien of any such pledge is valid and binding as against all parties
30 having claims of any kind in tort, contract or otherwise against the authority, irrespective
31 of whether such parties have notice of the lien. Neither the resolution nor a trust
32 agreement nor any other agreement nor any lease by which a pledge is created need be
33 filed or recorded except in the records of the authority. The use and disposition of money
34 to the credit of such sinking or other similar fund are subject to the resolution authorizing
35 the issuance of such bonds or notes or of such trust agreement. Except as may otherwise
36 be provided in such resolution or such trust agreement, such sinking or other similar fund
37 may be a fund for all such bonds or notes issued to finance projects at a particular
38 participating health care facility ~~or~~, participating institution for higher education or
39 participating institution providing an educational program without distinction or priority
40 of one over another, provided the authority in any such resolution or trust agreement may
41 provide that such sinking or other similar fund is the fund for a particular project at a
42 participating health care facility ~~or~~, participating institution for higher education or
43 participating institution providing an educational program and for the bonds issued to
44 finance a particular project and may, additionally, permit and provide for the issuance of
45 bonds having a subordinate lien in respect of the security authorized in this chapter to
46 other bonds of the authority, and, in such case, the authority may create separate sinking
47 or other similar funds in respect of such subordinate lien bonds.

