

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 1998

S.P. 792

December 18, 2007

**An Act To Provide Accessible Higher Education Financial
Assistance for Maine Families**

(EMERGENCY)

Submitted by the Finance Authority of Maine pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 18, 2007. Referred to the Committee on Business, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MITCHELL of Kennebec.

Cosponsored by Speaker CUMMINGS of Portland and

Senators: BOWMAN of York, President EDMONDS of Cumberland, MILLS of Somerset,

Representatives: EDGECOMB of Caribou, NORTON of Bangor, PINGREE of North Haven,

PRESCOTT of Topsham, SIMPSON of Auburn.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** Maine residents require a consistent, reliable source of higher education
4 financial assistance, including unbiased information; and

5 **Whereas,** due to substantial changes in the availability of student financial
6 assistance, Maine residents have less access to higher education financial assistance; and

7 **Whereas,** the educational attainment of Maine residents is essential to the economic
8 growth and prosperity of Maine; and

9 **Whereas,** students need to know that sufficient student financial assistance is
10 available so that they can make determinations about attending postsecondary schools in
11 a timely manner; and

12 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
13 the meaning of the Constitution of Maine and require the following legislation as
14 immediately necessary for the preservation of the public peace, health and safety; now,
15 therefore,

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

17 **Sec. 1. 10 MRSA §363, sub-§10,** as enacted by PL 1999, c. 443, §4, is amended
18 to read:

19 **10. Allocation for benefit of State.** All of the allocation of the state ceiling must be
20 used for a purpose that benefits individuals, communities or businesses in this State. For
21 purposes of this subsection, a bond issuance is presumed to benefit individuals,
22 communities or businesses in this State if it benefits business operations located in this
23 State, residents of this State, students attending institutions of higher education in this
24 State, residents of this State attending institutions of higher education outside this State
25 ~~or, municipalities in this State or~~ or programs predominantly for the provision of benefits for
26 residents of this State. ~~An allocation of the state ceiling may only be used to purchase~~
27 ~~student loans if the borrower is a resident of this State or is a student attending an~~
28 ~~institution of higher education in this State or if the borrower has previously obtained a~~
29 ~~student loan while a resident of this State or while attending an institution of higher~~
30 ~~education in this State.~~ A student eligible to receive the benefit of a portion of the state
31 ceiling remains eligible for student loans notwithstanding any changes in residency or
32 institution attended.

33 **Sec. 2. 20-A MRSA §11492, sub-§6,** as enacted by PL 2003, c. 455, §2, is
34 amended to read:

35 **6. Finance.** "Finance" means the origination, acquisition or refinancing of eligible
36 loans, including through loans to eligible lenders; ~~however, except as otherwise provided~~
37 ~~in section 11493, subsection 2, the authority is not authorized hereby to originate loans,~~
38 ~~other than consolidation loans funding the payment of eligible loans to borrowers of~~

1 ~~eligible loans financed by the authority, through a financial institution acting in the~~
2 ~~capacity of a trustee on behalf of the authority.~~

3 **Sec. 3. 20-A MRSA §11493, sub-§1**, as enacted by PL 2003, c. 455, §2, is
4 amended to read:

5 **1. Program.** The authority is authorized to carry out the program by issuing bonds
6 for the purpose of financing eligible loans and may use any net earnings on those bonds
7 to administer the program, to pay or further secure the bonds and to make eligible loans,
8 ~~except as otherwise provided in subsection 2.~~

9 **Sec. 4. 20-A MRSA §11493, sub-§2**, as enacted by PL 2003, c. 455, §2, is
10 repealed.

11 **Sec. 5. 20-A MRSA §11495, sub-§1**, as enacted by PL 2003, c. 455, §2, is
12 amended to read:

13 **1. Issuance; purpose; payment; authorization; interim receipts or certificates.**
14 The authority may issue bonds for the purposes of this chapter, including, ~~except as~~
15 ~~otherwise provided by section 11493, subsection 2,~~ financing eligible loans, which may
16 include originating eligible loans, including consolidation loans ~~funding the payment of~~
17 ~~eligible loans to borrowers of eligible loans financed by the authority,~~ financing loans to
18 eligible lenders to fund the origination of eligible loans and acquiring existing portfolios
19 of eligible loans from eligible lenders. The bonds of each issue must be authorized by the
20 authority and be payable only from such sources specified in the agreement with
21 bondholders, which may include, without limitation, payments on or with respect to
22 eligible loans from any source, including sale proceeds; reserves established by the
23 authority for the bonds; payments pursuant to agreements with financial institutions,
24 credit unions, educational institutions or any governmental entity; payments pursuant to
25 interest rate exchange agreements; investment earnings from funds or accounts
26 maintained pursuant to a trust agreement or other document; proceeds of refunding
27 bonds; and other fees, charges or revenues of the authority.

28 Bonds issued by the authority for the purposes of this chapter, the resolution authorizing
29 the issuance of such bonds or any trust agreement securing such bonds may include such
30 provisions, which ~~must~~ may be part of the contract with the holders of the bonds of such
31 issue and with any 3rd-party credit or liquidity provider or counterparties to interest rate
32 exchange agreements, as the authority considers necessary or convenient to the security
33 or issuance of the bonds, including without limitation:

34 A. Specifying the terms of bonds, including the basis upon which interest accrues
35 on those bonds, which may be fixed, variable, auction-based or adjustable; the date
36 from which interest begins to accrue; the time and manner of principal payment upon
37 scheduled maturity or redemption; the denominations and form, which may include
38 coupon, registered, coupon and registered or book entry; and such privileges as to
39 conversion and for the replacement of mutilated, lost or destroyed bonds as the
40 authority may establish;

41 B. Providing that bonds be payable in lawful money of the United States at a
42 designated place or be payable in another form of currency if the authority so

- 1 designates and be considered to be negotiable instruments issued under the laws of
2 the State within the meaning and for all purposes of Title 11, Article 3-A, whether or
3 not of the form or character to so qualify under the terms of Title 11, Article 3-A,
4 subject only to the applicable provisions of any trust agreement;
- 5 C. Providing that bonds be executed by the manual or facsimile signatures of the
6 officers or designees of the authority;
- 7 D. Providing that bonds be sold in the manner and upon the terms determined by
8 the authority at public or private sale, with or without public bidding;
- 9 E. Pledging or assigning revenues, contractual rights and other assets to secure the
10 bonds;
- 11 F. Establishing loan funding deposits, debt service reserves, capitalized interest
12 accounts, cost of issuance accounts and sinking funds and other accounts and their
13 regulation, investment and disposition;
- 14 G. Providing for the issuance of additional bonds and refunding bonds;
- 15 H. Defining the acts or omissions that constitute a default in the duties of the
16 authority or its obligations to bondholders and providing the rights or remedies of
17 such bondholders in the event of a default;
- 18 I. Providing for guarantees, letters of credit, lines of credit, insurance policies,
19 surety bonds, purchase agreements or similar instruments or other security for the
20 benefit of the bondholders;
- 21 J. Providing for interest rate or exchange agreements; and
- 22 K. Any other matter relating to the bonds that the authority determines appropriate.

23 **Sec. 6. 20-A MRSA §11497**, as enacted by PL 2003, c. 455, §2, is amended to
24 read:

25 **§11497. Loan transactions**

26 ~~Except as otherwise provided in section 11493, subsection 2, the~~ The authority may
27 finance, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal
28 in, acquire or transfer, all on such terms and conditions as the authority may specify, any
29 eligible loan or portfolio of loans or loan pass-through certificate, pledge, including any
30 pledge of loan revenue, loan participation certificate or other loan-backed or loan-related
31 security. Any such transaction may be conducted by public or private offering. In
32 connection with the financing or sale of an eligible loan or of a beneficial interest or
33 participation in an eligible loan or portfolio of eligible loans, or other interest in eligible
34 loans, the authority may enter into one or more agreements providing for the origination,
35 guarantee, financing, purchase, sale, servicing, custody, control and administration of
36 such eligible loan or portfolio of eligible loans. Any such agreement may provide that the
37 authority, any other eligible lender, a financial institution, a credit union or other person
38 may act as trustor, trustee or custodian under the agreement. Any such agreement may
39 provide that, with respect to loans governed by the agreement, title to such eligible loans
40 or portfolio of eligible loans or other interest in eligible loans is deemed to have been
41 transferred on terms and to the extent specified in that agreement and that the effect of a

1 sale of an interest in a loan is the same as a sale of a loan. The authority may issue or
2 cause to be issued certificates or other instruments evidencing the holder's fractional
3 interest in a pool of loans, which interest may be undivided or limited to one or more
4 specific loans. Whether or not the certificates or instruments are of such form or
5 character as to be negotiable instruments under Title 11, Article 3-A, the certificates or
6 instruments are made negotiable instruments within the meaning of and for all purposes
7 of Title 11, Article 3-A, subject only to such registration requirements as the authority
8 may establish.

9 **Emergency clause.** In view of the emergency cited in the preamble, this
10 legislation takes effect when approved.

11 **SUMMARY**

12 This bill amends certain provisions of the Finance Authority of Maine's existing
13 authority to finance education loans to ensure the ability of the Finance Authority of
14 Maine to originate such loans.