

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1452

H.P. 1066

House of Representatives, April 11, 2011

An Act To Create the Maine Street Economic Development Bank

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RUSSELL of Portland.
Cosponsored by Representative BEAVERS of South Berwick and
Representatives: BERRY of Bowdoinham, BOLDUC of Auburn, CAREY of Lewiston,
CHIPMAN of Portland, GOODE of Bangor, Senator: BARTLETT of Cumberland.

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

2 Sec. 1. 9-B MRSA c. 125 is enacted to read:

3 **CHAPTER 125**

4 **MAINE STREET ECONOMIC DEVELOPMENT BANK**

5 **§1251. Bank established; purposes**

6 The Maine Street Economic Development Bank is established for the following
7 purposes:

8 **1. Economic development.** To support job creation and the economic development
9 of the State by increasing access to capital for businesses and farms within the State in
10 partnership with local financial institutions;

11 **2. Financial stability.** To provide stability to the state financial sector, but not to
12 compete with state-chartered community banks, credit unions or other financial
13 institutions;

14 **3. Basic banking services.** To reduce costs paid by the State for basic banking
15 services; and

16 **4. Return profits.** To return profits, beyond the revenue needed to accomplish the
17 mission and continued sound operation of the bank, to the Maine Budget Stabilization
18 Fund established in Title 5, section 1532.

19 **§1252. Definitions**

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

22 **1. Advisory committee.** "Advisory committee" means the Maine Street Economic
23 Development Bank Advisory Committee established in section 1254.

24 **2. Bank.** "Bank" means the Maine Street Economic Development Bank established
25 under section 1251.

26 **3. Board.** "Board" means the Board of Directors for the Maine Street Economic
27 Development Bank established in section 1253.

28 **4. Public funds.** "Public funds" means funds under the control or in the custody of a
29 public official by virtue of office.

30 **§1253. Board; duties and powers**

31 **1. Members.** The Board of Directors for the Maine Street Economic Development
32 Bank is established and consists of 5 voting members appointed by the Governor and
33 subject to approval by the joint standing committee of the Legislature having jurisdiction
34 over appropriations and financial affairs and confirmation by the Senate. The Treasurer

1 of State and the Commissioner of Administrative and Financial Services serve as ex
2 officio nonvoting members of the board. The board shall oversee the operation,
3 management and control of the bank in accordance with this chapter. The board shall
4 designate one of its members as chair and shall determine the location and maintain
5 places of business of the bank.

6 **2. Meetings; quorum.** The board shall establish the frequency of regular board
7 meetings in bylaws and public notice requirements for meetings through rulemaking
8 under subsection 5. A special meeting may be called at any time upon notice by the
9 Governor, or by 3 members of the board. Three voting members constitute a quorum and
10 may transact business and exercise all rights, duties and powers of the board.

11 **3. Appointment of president; employment of officers and agents.** The board shall
12 appoint a person with extensive experience in banking as the president of the bank. The
13 board may appoint and employ any subordinate officers, employees and agents that the
14 board considers necessary and shall define the duties, designate the titles and fix the
15 compensation of all those positions.

16 The board may designate the president or another officer or employee as its agent with
17 respect to the functions of the bank, subject to the supervision, limitation and control of
18 the board. The board may remove and discharge any person appointed and employed
19 under this subsection.

20 **4. Compensation.** Board members serve without compensation except that
21 members may be reimbursed for travel expenses associated with their duties under this
22 chapter.

23 **5. Rulemaking.** The board, through rulemaking, shall adopt bylaws and operating
24 policies and shall enforce orders necessary to fulfill its functions under this section.
25 Rules adopted under this subsection are routine technical rules as defined in Title 5,
26 chapter 375, subchapter 2-A.

27 **§1254. Advisory committee**

28 The board shall appoint the Maine Street Economic Development Bank Advisory
29 Committee to actively enlist the help of private enterprise and encourage use of the bank.

30 **1. Members.** The advisory committee consists of 7 members and must include:

31 A. Representatives of the State's financial, business, agricultural and labor sectors;
32 and

33 B. At least 2 officers of state-chartered financial institutions that do not maintain
34 offices outside the State.

35 **2. Officers.** The board shall appoint a chair, vice-chair and secretary for the
36 advisory committee from the members of the advisory committee.

37 **3. Terms.** Advisory committee members serve a term of office of 4 years, except as
38 provided by law for initial appointments.

1 **4. Duties.** The advisory committee shall:

2 A. Meet regularly with the board to review and make recommendations concerning
3 the bank's operations and finances and loan practices;

4 B. Make recommendations to the board for improving management performance,
5 customer service and internal methods, procedures and operating policies of the bank;

6 C. Make recommendations to the board relating to the establishment of additional
7 objectives for the operation of the bank;

8 D. Make recommendations to the board concerning the appointment of officers of
9 the bank; and

10 E. Participate on loan committees.

11 **5. Compensation.** Advisory committee members serve without compensation
12 except that members may be reimbursed for travel expenses associated with their duties
13 under this chapter.

14 **§1255. Deposit of funds**

15 The bank may accept deposits of public funds. Except as provided in section 1256,
16 the bank may not accept deposits of private funds. All income earned by the bank on
17 public funds must be credited to and becomes a part of the revenues and income of the
18 bank.

19 **1. Paying of interest.** The bank shall pay interest on public deposits at a rate
20 comparable to rates paid by private depositories of public funds and may offer other
21 financial products to the Treasurer of State on a competitive basis.

22 **2. Deposit by the Treasurer of State.** The Treasurer of State shall deposit with the
23 bank from funds received under Title 5, section 130 an amount the Treasurer of State
24 determines is necessary to allow the bank to fulfill its duties under this chapter.

25 **3. Investment by Maine Public Employees Retirement System.** The bank may
26 accept funds from the Maine Public Employees Retirement System pursuant to section
27 1257.

28 **§1256. Powers of the bank**

29 **1. Loans.** The bank may:

30 A. Make, purchase, guarantee, modify or hold loans:

31 (1) To state-chartered financial institutions;

32 (2) That are insured or guaranteed in whole or in part by the United States or its
33 agencies or instrumentalities;

34 (3) Obtained as security pledged for, or originated in the restructuring of, any
35 other loan properly originated or participated in by the bank; and

36 (4) To instrumentalities of this State; and

1 B. Purchase, guarantee, modify or hold loans originated by financial institutions
2 authorized to do business in this State.

3 The bank may not make loans to any private individual or legal entity.

4 **2. Participation interests.** The bank may:

5 A. Purchase participation interests in loans made or held by banks, bank holding
6 companies, state-chartered or federally chartered financial institutions, any other
7 financial institutions or any other entity that provides financial services and that
8 meets underwriting standards that are generally accepted by state or federal financial
9 regulatory agencies; and

10 B. Make loans in the form of participation loans to qualified persons residing in or
11 doing business in this State when the originator of the loan is a private financial
12 institution.

13 **3. Investments.** The bank shall invest its funds in conformity with policies of the
14 board and the investment standards in Title 5, chapter 7.

15 **4. Federal bonds.** The bank may buy and sell federal bonds.

16 **5. Property.** The bank may lease, assign, sell, exchange, transfer, convey, grant,
17 pledge or mortgage all real and personal property, title to which has been acquired in any
18 manner.

19 **6. Services to other banks.** The bank may:

20 A. Act as a custodian bank for financial institutions authorized to do business in this
21 State and accept deposits from the financial institutions in connection with this
22 function;

23 B. Issue bank stock loans to financial institutions authorized to do business in this
24 State; and

25 C. For financial institutions that make the bank a reserve depository, perform the
26 functions and render the services of a clearinghouse, including all functions for
27 providing domestic and foreign exchange, and rediscount notes, on terms prescribed
28 by the board.

29 **7. Other powers.** The bank may perform all acts and do all things necessary,
30 convenient, advisable or desirable to carry out the powers expressly granted or
31 necessarily implied in this chapter through or by means of its president, officers, agents or
32 employees or by contracts with any person, firm or corporation.

33 **§1257. Investment by Maine Public Employees Retirement System authorized**

34 **1. Investment authorized.** The Maine Public Employees Retirement System,
35 referred to in this section as "the retirement system," may invest funds in the bank in the
36 exercise of its discretion and consistent with its fiduciary duties to the beneficiaries of the
37 retirement system. This subsection does not mandate or require any investment by the
38 retirement system or give the retirement system any responsibilities in the governance
39 and oversight of the bank.

1 **2. Investment restrictions.** The retirement system may not invest more than
2 \$20,000,000 in the bank.

3 **3. Disclosure of investment.** The retirement system shall make available to the
4 public the following information with respect to any investment in the bank pursuant to
5 this section:

6 A. The amount of the retirement system's total investment in the bank;

7 B. The date of the investment; and

8 C. The rate of interest paid on the investment by the bank in accordance with section
9 1255, subsection 1.

10 **§1258. Transfer to Maine Budget Stabilization Fund**

11 Except as provided in Title 5, section 1533, as soon as possible after the end of each
12 calendar year, the board shall determine the amount of income, if any, earned by the bank
13 in that prior calendar year that is in excess of amounts necessary to pay for expenses of
14 administering the activities of the bank less any reserves required pursuant to rules
15 adopted in accordance with section 1259, subsection 1, paragraph E for delinquencies and
16 future business and payment of debts from any initial funding. The amount of the excess
17 must be transferred to the Maine Budget Stabilization Fund established in Title 5, section
18 1532.

19 **§1259. Rulemaking; oversight**

20 **1. Rule-making authority.** The bank shall adopt rules to:

21 A. Ensure the safety and soundness of the bank that, to the extent possible, reflect
22 applicable standards for safety and soundness set forth in 12 Code of Federal
23 Regulations, Part 364;

24 B. Specify the bank's powers and permissible investments and activities consistent
25 with section 1256;

26 C. Specify services that the bank may provide;

27 D. Specify limits for loans and other obligations the bank makes or undertakes;

28 E. Specify reserve requirements; and

29 F. Set other requirements that the board considers necessary to administer the bank
30 under this chapter and to accomplish the purposes listed in section 1251.

31 Rules adopted under this subsection are major substantive rules as defined in Title 5,
32 chapter 375, subchapter 2-A.

33 **2. Examination and report.** The bureau shall examine the bank at least once each
34 calendar quarter to verify and ensure that the bank is complying with the rules adopted
35 under subsection 1. The bureau shall report the results of the examination to the board
36 and to the Commissioner of Administrative and Financial Services. The bureau's report
37 is a public record subject to disclosure.

1 **3. Audit.** The State Auditor shall audit the accounts and financial affairs of the
2 bank at least once every 2 years.

3 **4. Annual report; performance measures.** Beginning July 1, 2014 and annually
4 thereafter, the bank shall report to the Governor and the Legislature on the financial
5 condition and performance of the bank and provide an analysis of the bank's impact on
6 the State consistent with the bank's purposes set forth in section 1251, particularly the
7 bank's impact on job creation and economic development.

8 **§1260. Exempt from liability**

9 Whenever any public funds are deposited in the bank, the public official who
10 deposited the funds and the sureties on any bond of the public official are exempt from
11 liability for loss of any of the funds while the funds are deposited in the bank.

12 **§1261. Use of name; execution of instruments**

13 All business of the bank must be conducted under the name of the Maine Street
14 Economic Development Bank. Title to property pertaining to the operation of the bank
15 must be obtained and conveyed in the name of the Maine Street Economic Development
16 Bank.

17 Instruments must be executed in the name of the State. Within the scope of authority
18 granted by the board, the president of the bank may execute instruments on behalf of the
19 bank, including any instrument granting, conveying or otherwise affecting any interest in
20 or lien upon real or personal property.

21 Officers or employees of and legal counsel to the bank may execute instruments on
22 behalf of the bank when authorized by the board.

23 **Sec. 2. Treasurer of State and Commissioner of Administrative and**
24 **Financial Services to make recommendations.** No later than January 15, 2012, the
25 Treasurer of State and the Commissioner of Administrative and Financial Services, in
26 consultation with the Attorney General, shall submit a report to the Joint Standing
27 Committee on Appropriations and Financial Affairs with recommendations for
28 implementing the Maine Street Economic Development Bank, as established in the Maine
29 Revised Statutes, Title 9-B, chapter 125 and referred to in this section as "the bank." The
30 report must include:

31 1. A draft of any legislation needed to amend the Constitution of Maine to authorize
32 the State to establish the bank;

33 2. A recommendation on the amount of money needed to adequately capitalize the
34 bank;

35 3. A draft of any legislation needed to transfer funds to the bank;

36 4. A description and draft of statutory changes needed to fully utilize the resources
37 and powers of the bank and to eliminate any duplication of efforts or conflict with the

1 authority or responsibilities of the Maine Municipal Bond Bank and any other state
2 agencies;

3 5. Recommendations for guaranteeing funds deposited in the bank;

4 6. Recommendations pertaining to the liability of the State and the bank in civil
5 actions; and

6 7. Recommendations regarding the confidentiality of certain records held by the
7 bank.

8 **Sec. 3. Initial appointments.** Initial appointments for the Maine Street Economic
9 Development Bank Advisory Committee established in the Maine Revised Statutes, Title
10 9-B, section 1254 must be for staggered terms. One member must be appointed for a one
11 year term, one member must be appointed for a 2-year term, one member must be
12 appointed for a 3-year term and one member must be appointed for a 4-year term.

13 **Sec. 4. Authority to report out a bill.** The Joint Standing Committee on
14 Appropriations and Financial Affairs may report out a bill to the Second Regular Session
15 of the 125th Legislature pertaining to the establishment, oversight and operation of the
16 Maine Street Economic Development Bank established in the Maine Revised Statutes,
17 Title 9-B, chapter 125.

18 **Sec. 5. Effective date.** That section of this Act that enacts the Maine Revised
19 Statutes, Title 9-B, chapter 125 takes effect July 1, 2013 except that the Maine Street
20 Economic Development Bank may not make, purchase, modify or hold loans until the
21 bank has adequate capital of at least \$20,000,000.

22 SUMMARY

23 This bill establishes the Maine Street Economic Development Bank effective July 1,
24 2013 except that the bank may not make, purchase, guarantee, modify or hold loans until
25 the bank has adequate capital of at least \$20,000,000. It specifies the purposes of the
26 bank, establishes a board of directors and creates an advisory committee. It allows the
27 bank to accept deposits of public funds, to make, purchase, guarantee, modify or hold
28 certain loans and to serve as a custodian bank. It directs the Treasurer of State to deposit
29 money into the bank in an amount the Treasurer of State determines is necessary to allow
30 the bank to fulfill its duties. Excess income of the bank is deposited in the Maine Budget
31 Stabilization Fund.

32 The bill provides for a quarterly examination by the Department of Professional and
33 Financial Services, Bureau of Financial Institutions and an audit by the State Auditor
34 every 2 years.

35 The bill directs the Treasurer of State and the Commissioner of Administrative and
36 Financial Services to consult with the Attorney General and report to the Joint Standing
37 Committee on Appropriations and Financial Affairs by January 15, 2012 with
38 recommendations to fully implement the bank. It authorizes the Joint Standing

1 Committee on Appropriations and Financial Affairs to report out a bill to the Second
2 Regular Session of the 125th Legislature.