

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1508

H.P. 1078

House of Representatives, May 7, 2013

An Act To Create a Public State Bank

Reference to the Committee on Appropriations and Financial Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative RUSSELL of Portland.
Cosponsored by Representatives: BEAVERS of South Berwick, EVANGELOS of Friendship,
HAMANN of South Portland, MacDONALD of Boothbay.

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

2 **Sec. 1. 5 MRSA §12004-F, sub-§19** is enacted to read:

3 **19.**

4 Maine Street Bank, Board of Expenses Only 9-B MRSA §1253
5 Directors

6 **Sec. 2. 5 MRSA §12004-I, sub-§2-H** is enacted to read:

7 **2-H.**

8 Banking Maine Street Bank Expenses Only 9-B MRSA §1254
9 Advisory Committee

10 **Sec. 3. 9-B MRSA c. 125** is enacted to read:

11 **CHAPTER 125**

12 **MAINE STREET BANK**

13 **§1251. Bank established; purposes**

14 The Maine Street Bank is established and is a public body corporate and politic and
15 an instrumentality of the State. The bank is established for the following purposes:

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

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

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

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

27 **§1252. Definitions**

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

30 **1. Advisory committee.** "Advisory committee" means the Maine Street Bank
31 Advisory Committee established in section 1254.

1 **2. Bank.** "Bank" means the Maine Street Bank established under section 1251.

2 **3. Board.** "Board" means the Board of Directors of the Maine Street Bank
3 established in section 1253.

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

6 **§1253. Board; duties and powers**

7 **1. Members.** The Board of Directors of the Maine Street Bank is established
8 pursuant to Title 5, section 12004-F, subsection 19 and consists of 5 voting members
9 appointed by the Governor and subject to approval by the joint standing committee of the
10 Legislature having jurisdiction over appropriations and financial affairs and confirmation
11 by the Senate. The Treasurer of State and the Commissioner of Administrative and
12 Financial Services serve as ex officio nonvoting members of the board. The board shall
13 oversee the operation, management and control of the bank in accordance with this
14 chapter. The board shall designate one of its members as chair and shall determine the
15 location and maintain places of business of the bank.

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

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

26 The board may designate the president or another officer or employee as its agent with
27 respect to the functions of the bank, subject to the supervision, limitation and control of
28 the board. The board may discharge any person appointed and employed under this
29 subsection.

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

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

1 **§1254. Advisory committee**

2 The board shall appoint the Maine Street Bank Advisory Committee established
3 according to Title 5, section 12004-I, subsection 2-H to actively enlist the help of private
4 enterprise and encourage use of the bank.

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

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

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

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

12 **3. Terms.** Advisory committee members serve a term of office of 4 years.

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

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

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

18 C. Make recommendations to the board relating to the establishment of objectives
19 for the operation of the bank;

20 D. Make recommendations to the board concerning the appointment of officers of
21 the bank; and

22 E. Participate on loan committees.

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

26 **§1255. Deposit of funds**

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

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

34 **2. Deposit by the Treasurer of State.** The Treasurer of State shall deposit with the
35 bank 50% of the funds in the State Treasury according to Title 5, section 130 no later than

1 December 31, 2020; 75% of these funds no later than December 31, 2025; and 100% of
2 these funds no later than December 31, 2030.

3 **3. Investment by Maine Public Employees Retirement System.** The bank may
4 accept funds from the Maine Public Employees Retirement System pursuant to section
5 1257.

6 **§1256. Powers of the bank**

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

8 **A. Make, purchase, guarantee, modify or hold loans:**

9 (1) To state-chartered financial institutions;

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

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

14 (4) To instrumentalities of this State; and

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

17 Except as provided in subsection 2, paragraph B, the bank may not make loans to any
18 private individual or legal entity.

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

20 **A. Purchase participation interests in loans made or held by banks, bank holding**
21 **companies, state-chartered or federally chartered financial institutions, any other**
22 **financial institutions or any other entity that provides financial services and that**
23 **meets underwriting standards that are generally accepted by state or federal financial**
24 **regulatory agencies; and**

25 **B. Make loans in the form of participation loans to qualified persons residing in or**
26 **doing business in this State when the originator of the loan is a private financial**
27 **institution.**

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

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

31 **5. Corporate bonds.** The bank may issue corporate bonds.

32 **6. Property.** The bank may lease, assign, sell, exchange, transfer, convey, grant,
33 pledge or mortgage all real and personal property, title to which has been acquired in any
34 manner.

35 **7. Services to other banks.** The bank may:

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

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

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

10 **8. Reserves.** The bank may hold reserves in the form of gold or silver bullion.

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

15 **§1257. Investment by Maine Public Employees Retirement System authorized**

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

22 **2. Investment restrictions.** The retirement system may not invest more than
23 \$20,000,000 in the bank.

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

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

28 B. The date of the investment; and

29 C. The rate of interest paid on the investment by the bank in accordance with section
30 1255, subsection 1.

31 **§1258. Transfer to Maine Budget Stabilization Fund**

32 Except as provided in Title 5, section 1533, as soon as possible after the end of each
33 calendar year, the board shall determine the amount of income, if any, earned by the bank
34 in that prior calendar year that is in excess of amounts necessary to pay for expenses of
35 administering the activities of the bank less any reserves required pursuant to rules
36 adopted in accordance with section 1259, subsection 1, paragraph E for delinquencies and
37 future business and payment of debts from any initial funding. The amount of the excess
38 must be transferred to the Maine Budget Stabilization Fund established in Title 5, section
39 1532.

1 **§1259. Rulemaking; oversight**

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

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

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

8 C. Specify services that the bank may provide;

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

10 E. Specify reserve requirements; and

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

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

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

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

22 **4. Annual report; performance measures.** Beginning July 1, 2016 and annually
23 thereafter, the bank shall report to the Governor and the Legislature on the financial
24 condition and performance of the bank and provide an analysis of the bank's impact on
25 the State consistent with the bank's purposes set forth in section 1251, particularly the
26 bank's impact on job creation and economic development.

27 **§1260. Exempt from liability**

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

31 **§1261. Use of name; execution of instruments**

32 All business of the bank must be conducted under the name of the Maine Street Bank.
33 Title to property pertaining to the operation of the bank must be obtained and conveyed in
34 the name of the Maine Street Bank.

35 Instruments must be executed in the name of the State. Within the scope of authority
36 granted by the board, the president of the bank may execute instruments on behalf of the

1 bank, including any instrument granting, conveying or otherwise affecting any interest in
2 or lien upon real or personal property.

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

5 **Sec. 4. 9-B MRSA c. 127** is enacted to read:

6 **CHAPTER 127**

7 **COUNTY AND MUNICIPAL BANKS**

8 **§1271. County and municipal banks authorized**

9 **1. County or municipality may establish.** A county or municipality may establish
10 a public bank.

11 **2. Purposes.** A bank established by a county or municipality shall serve the
12 following purposes:

13 A. To support job creation and the economic development of the county or
14 municipality by increasing access to capital for business and farms within the county
15 or municipality in partnership with local financial institutions;

16 B. To provide stability to the county or municipal financial sector, but not to
17 compete with state-chartered community banks, credit unions or other financial
18 institutions;

19 C. To reduce costs paid by the county or municipality for basic banking services; and

20 D. To return profits, beyond the revenue needed to accomplish the mission and for
21 continued sound operation of the bank, to the county or municipality.

22 **3. Board.** The legislative body of the county or municipality that establishes a bank
23 shall appoint a board of directors for the bank. The board of directors shall oversee the
24 operation, management and control of the bank. The board of directors shall appoint a
25 president for the bank.

26 **4. Deposit of funds.** A bank established by a county or municipality may accept
27 deposits of public funds. All income earned by the bank on public funds must be credited
28 to and becomes a part of the revenues and income of the bank.

29 **5. Audit.** The State Auditor shall audit the accounts and financial affairs of a bank
30 established by a county or municipality at least once every 2 years.

31 **6. Rules.** The bureau shall adopt rules, which are routine technical rules as
32 described in Title 5, chapter 375, subchapter 2-A, governing the operation and
33 examination of banks established by a county or municipality.

34 **Sec. 5. Treasurer of State, Commissioner of Administrative and**
35 **Financial Services and the Chief Executive Officer of the Finance Authority**
36 **of Maine to make recommendations.** No later than January 15, 2014, the Treasurer

1 of State, the Commissioner of Administrative and Financial Services and the Chief
2 Executive Officer of the Finance Authority of Maine, in consultation with the Attorney
3 General, shall submit a report to the Joint Standing Committee on Appropriations and
4 Financial Affairs with recommendations for implementing the Maine Street Bank, as
5 established in the Maine Revised Statutes, Title 9-B, chapter 125 and referred to in this
6 section as "the bank." The report must include:

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

9 2. A recommendation on the amount of money needed to adequately capitalize the
10 bank;

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

12 4. A description and draft of statutory changes needed to fully utilize the resources
13 and powers of the bank, to eliminate any duplication of efforts or conflict with the
14 authority or responsibilities of the Maine Municipal Bond Bank and any other state
15 agencies and to merge the Finance Authority of Maine into the bank. Programs and
16 services offered by the Finance Authority of Maine must continue to be offered by the
17 bank and rights and obligations of the Finance Authority of Maine must be assigned to
18 the bank;

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

20 6. Recommendations pertaining to the liability of the State and the bank in civil
21 actions; and

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

24 **Sec. 6. Initial appointments.** Notwithstanding the Maine Revised Statutes, Title
25 9-B, section 1254, subsection 3, of the initial appointments to the Maine Street Bank
26 Advisory Committee established in Title 9-B, section 1254, one member must be
27 appointed for a one-year term, 2 members must be appointed for a 2-year term, 2
28 members must be appointed for a 3-year term and 2 members must be appointed for a
29 4-year term.

30 **Sec. 7. Authority to report out a bill.** The Joint Standing Committee on
31 Appropriations and Financial Affairs may report out a bill to the Second Regular Session
32 of the 126th Legislature pertaining to the establishment, oversight and operation of the
33 Maine Street Bank established in the Maine Revised Statutes, Title 9-B, chapter 125.

34 **Sec. 8. Effective date.** Those sections of this Act that enact the Maine Revised
35 Statutes, Title 5, section 12004-F, subsection 19; Title 5, section 12004-I, subsection 2-H
36 and Title 9-B, chapters 125 and 127 take effect July 1, 2015 except that the Maine Street
37 Bank may not make, purchase, modify or hold loans until the bank has adequate capital
38 of at least \$20,000,000.

1

SUMMARY

2 This bill establishes the Maine Street Bank effective July 1, 2015 except that the bank
3 may not make, purchase, guarantee, modify or hold loans until the bank has adequate
4 capital of at least \$20,000,000. It specifies the purposes of the bank, establishes a board
5 of directors and creates an advisory committee. It allows the bank to accept deposits of
6 public funds, to make, purchase, guarantee, modify or hold certain loans and to serve as a
7 custodian bank. It directs the Treasurer of State to deposit money into the bank. Excess
8 income of the bank is deposited in the Maine Budget Stabilization Fund.

9 The bill provides for a quarterly examination by the Department of Professional and
10 Financial Regulation, Bureau of Financial Institutions and an audit by the State Auditor
11 every 2 years.

12 The bill allows counties and municipalities to establish public banks.

13 The bill directs the Treasurer of State, the Commissioner of Administrative and
14 Financial Services and the Chief Executive Officer of the Finance Authority of Maine to
15 consult with the Attorney General and report to the Joint Standing Committee on
16 Appropriations and Financial Affairs by January 15, 2014 with recommendations to fully
17 implement the bank, including recommendations regarding the merger of the Finance
18 Authority of Maine into the bank. It authorizes the Joint Standing Committee on
19 Appropriations and Financial Affairs to report out a bill to the Second Regular Session of
20 the 126th Legislature.