

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

cial institution covenants with the treasurer as a condition of the deposit to loan an amount at least equal to the amount so deposited with the financial institution by the treasurer under this paragraph to agricultural enterprises located within the State for agricultural purposes. All the loans shall be at interest rates which are below the interest rates the loans would have borne under existing market conditions and loan standards of the financial institution but for the deposit by the treasurer under this paragraph, and the interest rates shall fully reflect the savings to the financial institution due to the reduced interest rate paid on the deposit. Notwithstanding any provisions of this section to the contrary, the treasurer shall not be obligated to seek competitive bids for investments or deposits pursuant to this paragraph. The Finance Authority of Maine shall provide assistance to the treasurer in implementing this paragraph. For purposes of this section, "Agricultural agricultural enterprises" means a business involving cultivating soil, producing crops and raising livestock or their by-products. In adopting rules to implement this paragraph, the treasurer shall consider criteria targeting loans under the program to geographic areas of financial need, and may establish limits on deposits to any one financial institution and limits on deposits supporting loans to any one borrower.

Sec. 2. 5 MRSA §135, as amended by PL 1987, c. 247, §1, and c. 402, Pt. A, §10, is further amended by adding at the end a new paragraph to read:

The Treasurer of State may deposit an amount not to exceed \$4,000,000 in each calendar year with responsible financial institutions authorized to do business in the State at a rate of return not more than 2% per year below the rate of return otherwise obtainable had the funds been invested with such financial institutions for a similar term, as determined by the treasurer, for periods not to exceed one year, provided that each such financial institution covenants with the treasurer as a condition of the deposit to loan an amount at least equal to the amount so deposited with the financial institution by the treasurer under this paragraph to commercial enterprises approved by the treasurer pursuant to this paragraph. All the loans shall be at interest rates which are below the interest rates the loans would have borne under existing market conditions and loan standards of the financial institution but for the deposit by the treasurer under this paragraph, and the interest rates shall fully reflect the savings to the financial institution due to the reduced interest rate paid on the deposit. Notwithstanding any provisions of this section to the contrary, the treasurer shall not be obligated to seek competitive bids for investments or deposits pursuant to this paragraph. The Finance Authority of Maine shall provide assistance to the treasurer in implementing this paragraph. For purposes of this paragraph, eligible commercial enterprises are for-profit businesses with 20 or fewer employees or annual sales of less than \$2,500,000, whose sales of services or products are primarily out of state or which are manufacturers, which are primarily owned and operated by Maine residents or by corporations which are

primarily owned and operated by Maine residents, when the treasurer determines that not less than one job will be created or retained per \$20,000 of deposited funds. The maximum loan to any borrower for which a deposit may be applied under this paragraph is \$200,000, and businesses shall be eligible to receive subsidies pursuant to this paragraph for a maximum of an aggregate of 24 months. In adopting rules to implement this paragraph, the treasurer shall consider criteria targeting loans under the program to geographic areas of financial need, and may establish limits on deposits to any one financial institution, further limits on deposits supporting loans to any one borrower, and further restrictions on eligibility.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 28, 1988.

CHAPTER 807

S.P. 988 — L.D. 2616

AN ACT to Create the Maine Educational Loan Authority.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, students who are attending institutions of higher education and who are residents of the State or are attending such institutions in the State, and the families of these students, are in need of financial assistance; and

Whereas, it is desirable for the State to provide additional means of providing such financial assistance; and

Whereas, it is desirable to make such additional means available as soon as possible so that students and their families who are now beginning to plan for the 1988-89 academic year can depend on such additional means; and

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

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

Sec. 1. 5 MRSA §12004, sub-§7, ¶A, sub-¶(14) is enacted to read:

(14)	Maine Educational Loan Authority	Legislative Per Diem	20-A MRSA §11414
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Sec. 2. 10 MRSA §363, sub-§8, as enacted by PL 1987, c. 3, §2, and c. 413, §4, is repealed and the following enacted in its place:

8. Allocations for educational bonds. That portion of the state ceiling allocated to the categories of bonds providing funds for the purposes of a corporation created pursuant to Title 20, section 2237, and Title 20-A, section 11407, or of the Maine Educational Loan Authority shall be allocated to that corporation or to the Maine Educational Loan Authority, or both, and each may further allocate the portion of the state ceiling allocated to it to bonds requiring an allocation to qualify as tax-exempt bonds.

Sec. 3. 20-A MRSA c. 417-A is enacted to read:

CHAPTER 417-A

MAINE EDUCATIONAL LOAN AUTHORITY

§11411. Title

This chapter shall be known and may be cited as the "Maine Educational Loan Authority Act."

§11412. Declaration of necessity and purpose

The Legislature declares that there is a need to provide additional assistance for higher education for residents and inhabitants of this State; the cost of higher education is increasing; assistance to higher education, including recipients and providers of higher education, will benefit the people of this State, enhance their welfare and increase their commerce and economic prosperity; it is the purpose of this chapter to provide assistance to students or the families of students who are residents of this State attending institutions of higher education within or outside of this State, to students and the families of students attending institutions of higher education within this State and to institutions of higher education within this State; the assistance provided by this chapter is intended in part to supplement federal guaranteed higher education loan programs, other student loan programs, grant programs, scholarship programs, programs assisting institutions of higher education and other means of assisting students, families of students and institutions of higher education; and the exercise of the powers to the extent and in the manner provided in this chapter is the exercise of an essential governmental function.

§11413. Definitions

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

1. Authority. "Authority" means the Maine Educational Loan Authority and its successors or assigns.

2. Authority loans. "Authority loans" means loans

by the authority to institutions of higher education, students or other persons for the purpose of funding, financing or acquiring education loans.

3. Bonds. "Bonds" includes bonds, notes, refunding bonds, commercial paper, pass-through instruments or any other evidences of obligations of the authority issued under this chapter.

4. Borrower. "Borrower" means a student who has received an education loan or any parent who has received or agreed to repay an education loan.

5. Code. "Code" means the United States Internal Revenue Code of 1986, as amended, and the regulations to that Code.

6. Cost of attendance. "Cost of attendance" means the tuition and fees applicable to a student, together with an estimate of other expenses reasonably related to cost of attendance at an institution, including, without limitation, the cost of room and board, transportation, books and supplies.

7. Default insurance. "Default insurance" means insurance which insures authority loans or bonds against default.

8. Default Reserve Fund. "Default Reserve Fund" means a fund established by the authority for the purpose of securing authority loans or bonds.

9. Education loan. "Education loan" means a loan which is made by the authority or by, or on behalf of, an institution to a student or to parents of a student, or both, in amounts not in excess of the maximum amounts specified by the authority to finance a part or all of the student's cost of attendance at an institution. An education loan shall constitute an authority loan.

10. Education loan series portfolio. "Education loan series portfolio" means all education loans made by a specific institution which are funded from or acquired by the proceeds of an authority loan to the institution of higher education out of the proceeds of a related specific bond issue through the authority.

11. Institution. "Institution" or "institution of higher education" means any public or private nonprofit educational institution within the State, or such an institution outside of the State which is attended by residents of the State, which:

A. Provides a program of education beyond the high school level;

B. Awards an associate, bachelor or advanced degree; and

C. Meets the conditions of applicable rules.

12. Loan funding deposit. "Loan funding deposit"

means money or other property deposited by an institution with the authority or a trustee or custodian, in amounts the authority determines necessary as a condition for an institution's participation in the authority's programs to:

- A. Provide security for bonds;
- B. Fund a default reserve fund;
- C. Acquire default insurance; or
- D. Defray costs of the authority.

13. Parent. "Parent" means any parent or guardian of a student at an institution of higher education.

14. Rule. "Rule" means a rule adopted by the authority pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

15. Secondary market. "Secondary market" means the entity created pursuant to section 11407 prior to the enactment of this chapter.

§11414. Authority created

There is created the "Maine Educational Loan Authority," which is constituted a public body corporate and politic and a public instrumentality of the State. The exercise by the authority of the powers conferred by this chapter is the performance of an essential public function by and on behalf of the State.

§11415. Members

1. Composition. There shall be 7 voting members of the authority, 5 of whom shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over education and confirmation by the Legislature.

2. Qualifications. Each member shall be a resident of this State. One member shall be the Treasurer of State, ex officio, or the Treasurer of State's designee. One member shall be the president of the secondary market, ex officio, or the president of the secondary market's designee. Of the remaining 5 members to be appointed by the Governor, 2 members shall be trustees, directors, officers or employees of institutions of higher education, at least one of whom shall be from an institution not owned or operated by the State or any of its political subdivisions. Each member of the authority, before entering upon that member's duties, shall take and subscribe the oath or affirmation required by the Constitution of Maine, Article IX, Section 1. A record of each oath shall be filed in the office of the Secretary of State.

3. Term of office. Of the 5 members of the authority first appointed, one shall serve for a term expiring June 30, 1989, 2 shall serve for terms expiring June 30,

1990, and 2 shall serve for terms expiring June 30, 1991, and until a successor is appointed and qualified. On the expiration of the term of any member, a successor shall be appointed for a term of 3 years and serve until a successor is appointed and qualified. The Governor shall appoint a qualified person to fill any vacancy. A member of the authority shall be eligible for reappointment. A member appointed to fill a vacancy in an unexpired term serves only for the remainder of that term and until a successor is appointed and qualified. After notice, any member may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty or other cause.

4. Officers. Each year the authority shall elect from among its members a chairman, vice chairman, a secretary and any other officers it requires.

Each member of the authority shall be compensated by the authority in accordance with Title 5, chapter 379.

§11416. Officers; quorum; effective actions

The authority shall appoint an executive director. The executive director shall serve in that capacity at the pleasure of the authority and receive compensation as fixed by the authority. The executive director need not be a full-time employee of the authority. The executive director shall keep a record of the proceedings of the authority, shall be custodian of all books, documents and papers filed with the members of the authority, the minute book or journal of the authority and its official seal and may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

Four members of the authority shall constitute a quorum. The affirmative vote of a majority of the members present is necessary for any action taken by the members of the authority.

A vacancy in the membership of the authority may not impair the right of a quorum to exercise all the rights and perform all the duties of the members of the authority.

Any action taken by the members of the authority under this chapter may be authorized by resolution at any regular or special meeting and, except for any rule, may take effect immediately and need not be published.

§11417. Powers and functions

1. General. The authority may, subject to any limitation of this chapter:

- A. Borrow money or otherwise obtain credit in its own name;

B. Lend money or otherwise extend credit to any person and exercise all powers of a lender or creditor;

C. Insure or guarantee performance of any loan agreement or other obligation;

D. Acquire, use, manage, improve or dispose of any interest in, or type of, real or personal property, including grant, purchase, sale, borrow, loan, lease, foreclosure, mortgage, assignment or other lawful means, with or without public bidding and also including the assessment of fees, the forgiveness of indebtedness, the receipt of reimbursements for expenses incurred in carrying out its purposes and the expenditure or investment of its funds;

E. Purchase, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, on such terms and conditions as the authority may specify, any loan, loan pass-through certificate, pledge, including any pledge of loan revenue, loan participation certificate or other loan-backed or loan-related security;

F. Obtain, develop or disseminate any information useful or convenient for carrying out any purpose or power of the authority. The authority may conduct hearings, hear testimony under oath, administer oaths, issue subpoenas requiring the attendance of witnesses or the production of records or other things and may issue commissions for the examination of witnesses who are outside of the State, unable to attend or are excused from attendance;

G. Procure insurance in aid of any of its corporate purposes;

H. In accordance with the limitations and restrictions of this chapter, cause any of its powers or duties to be carried out by one or more nonprofit corporations organized and operated under Title 13-B;

I. Obtain any certification, warranty, affidavit or other representation necessary or useful for carrying out any of its powers or duties;

J. Employ persons, including private legal counsel and financial experts, on either a temporary or permanent basis, in order to carry out any of its powers and duties. Employees of the authority shall not be subject to Title 5, chapters 71 and 372, subchapter II;

K. Sue or initiate or appear in any proceeding. The authority may be sued on its written contracts or in accordance with Title 1, section 409; Title 5, chapter 375; or Title 14, chapter 741;

L. Maintain an office at a place designated by it within the State;

M. Adopt an official seal and alter it at pleasure;

N. Pursuant to Title 5, chapter 375, subchapter II, adopt any rules, including its bylaws, necessary or useful for carrying out any of its powers or duties;

O. Make, modify and carry out any agreement, including issuing any bond, necessary or useful for carrying out any of its powers, duties or purposes; and

P. Do any act or thing necessary or useful for carrying out any of its powers, duties or purposes.

2. Programs. Without limiting the generality of this chapter, the authority is authorized to carry out one or more programs making financial and other assistance available to borrowers, institutions, or both, to finance costs of attendance. The authority is further authorized to issue its bonds, lend the proceeds of the bonds and exercise any other power set forth in this chapter for these purposes.

3. Policies. The members of the authority shall have the power and duty to establish and revise, from time to time, rules pertaining to participation in programs of the authority, issuing bonds and borrowing money by the authority, a process for allocation and carry forward of that portion of the state ceiling on issuance of tax-exempt bonds allocated to the authority pursuant to Title 10, chapter 9, servicing and collection of loans made pursuant to programs of the authority and other policies governing the operation of the authority. In addition, the members of the authority may, by resolution of the members, determine that the authority may borrow money in accordance with any such resolution. All other powers and duties of the authority shall be vested in the executive director who shall carry out such powers and duties in accordance with this chapter and the rules of the authority.

4. Administration. In carrying out its powers under this chapter, the authority shall, whenever determined desirable by the authority, contract with the secondary market for necessary clerical and administrative services.

§11418. Records confidential

1. Confidential information. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority from applicants for or recipients of financial assistance provided pursuant to a program administered or established by the authority shall be deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

2. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information;

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;

C. To a financial institution or credit reporting service;

D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of its bonds;

F. If necessary to assure collection of any obligation in which it has or may have an interest;

G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and

H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.

§11419. Conflict of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the authority and each employee, contractor, agent or other representative of the authority is deemed an "executive employee" solely for the purposes of Title 5, section 18. In addition, Title 17, section 3104 shall be applicable, in accordance with its provisions, to all representatives of the authority.

§11420. Bonds

1. Issuance; purpose; payment; authorization; interim receipts or certificates. The authority may, at any time and from time to time, issue bonds for any corporate purpose, including, without limitation, for the purpose of making authority loans to institutions participating in a program of the authority for the purpose of providing education loans, for acquiring existing portfolios of education loans from institutions or for financing or funding education loans directly or indirectly to borrowers. The bonds of each issue shall be payable from sources specified in the agreement with bondholders, including without limitation, principal and interest on loans; payments by institutions, banks, insurance companies or others pursuant to letters of credit or purchase agreements; investment earnings from funds or accounts maintained pursuant to a trust agreement or other document; insurance proceeds; loan funding deposits; proceeds of

sales of education loans; proceeds of refunding bonds; and other fees, charges or revenues of the authority.

Bonds shall be authorized by the authority and shall:

A. Bear the date or dates, and mature at a time or times, whether as serial bonds or as term bonds, or both, determined by the authority;

B. Bear interest at a rate or rates determined by the authority, including, but not limited to, fixed, variable, floating or adjustable interest rates;

C. Be payable at a time or times, in the denominations and form, either coupon or registered or both, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost or destroyed bonds as the authority may establish;

D. Be negotiable and be payable in lawful money of the United States at a designated place or be payable in another form of currency if the authority so designates;

E. Be subject to redemption in accordance with the agreement with bondholders;

F. Be executed by the manual or facsimile signatures of the officers or designees of the authority;

G. Be sold in the manner and upon the terms determined by the authority at public or private sale, with or without public bidding;

H. Be conclusively presumed to be fully and duly authorized and issued under the laws of the State and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the authority; and

I. Be deemed to be negotiable instruments issued under the laws of the State.

Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

Bonds issued under this chapter shall not constitute or create any debt or debts, liability or liabilities on behalf of the State or of any political subdivision of the State, other than the authority, or a loan of the credit of the State or a pledge of the faith and credit of the State or of any such political subdivision, other than the authority, but shall be payable solely from the funds provided. All such bonds shall contain on the face of the bonds a statement to the effect that neither the State nor any political subdivision of the State shall be obligated to pay the same or the interest on the bonds, except from revenues derived pursuant to one or more agreements and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State

is pledged to the payment of the principal of, premium, if any, or the interest on such bonds. The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever or to make any appropriation for their payment. Nothing in this section contained may prevent nor be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of an institution to the payment of bonds or issue of bonds authorized pursuant to this chapter.

2. Provisions in bond resolution or other document. Any bond resolution or other document may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

A. Pledging or assigning the revenues derived from authority loans, education loans or other sources with respect to which the bonds are to be issued;

B. The fees and other charges to be collected and the sums to be raised in each year, and the use, investment and disposition of such sums;

C. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment and disposition;

D. Limitations on the use of proceeds of loans;

E. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

F. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, other bonds;

G. The refunding or refinancing of outstanding bonds;

H. The procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;

I. Defining the acts or omissions which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights or remedies of such holders in the event of a default;

J. Providing for guarantees, pledges of endowments, letters of credit, property or other security, or insurance for the benefit of the holders of the bonds; and

K. Any other matter relating to the bonds which the authority determines appropriate.

3. Liability. No member or employee of the authority nor any person executing the bonds may be liable personally on the bonds or subject to any personal liability by reason of the issuance of the bonds.

4. Purchasing, refunding or refinancing by authority. The authority may purchase its bonds out of any available funds and may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondholders.

The authority may refund or refinance any of its bonds.

5. Security for series or issue of bonds. The authority may pledge the repayments of authority loans as security for a series or issue of bonds. Notwithstanding any other provision contained in this chapter, the authority may commingle and pledge as security for a series or issue of bonds, with the consent of all of the institutions which are participating in the series or issue; the education loan series portfolios and some or all future education loan series portfolios of the institutions; and the loan funding deposits of the institutions if education loan series portfolios and other security and money set aside in any fund or funds pledged for any series or issue of bonds are held for the sole benefit of the series or issue separate and apart from education loan series portfolios and other security and money pledged for any other series or issue of bonds of the authority.

The authority may provide for transfer of registration of its registered bonds by book entry on the records of the entity designated for that purpose and may enter into any agreement which it deems necessary to accomplish these purposes.

§11421. Refunding bonds

The authority may provide for issuance of refunding bonds of the authority to refund any outstanding bonds issued under this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, and, if deemed advisable by the authority, for any other purpose of the authority. The authority may provide for the issuance of bonds of the authority for the combined purpose of refunding any outstanding bonds, including refunding bonds issued under this chapter. The issuance of the bonds, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the authority shall be governed by the provisions of this chapter insofar as they are applicable.

§11422. Loan transactions

The authority may purchase, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, all on such terms and conditions as the authority may specify, any loan, loan pass-through certificate, pledge, including any pledge of loan revenue, loan participation certificate or other loan-backed or loan-

related security. Any such transaction may be conducted by public or private offering, with or without public bidding. In connection with the purchase or sale of a loan or of a beneficial interest or participation in a loan, the authority may enter into one or more agreements providing for the custody, control and administration of the loan. Any such agreement may provide that the authority, a financial institution or other person shall act as trustor, trustee or custodian under the agreement. Any such agreement may provide that, with respect to loans governed by the agreement, title to a loan, or to a beneficial interest or participation in a loan, shall be deemed to have been transferred on terms and to the extent specified in that agreement and that the effect of a sale of a beneficial interest or participation in a loan is the same as a sale of a loan. The authority may issue or cause to be issued certificates or other instruments evidencing the holder's fractional interest in a pool of loans, which interest may be undivided or limited to one or more specific loans. Whether or not the certificates or instruments are of such form or character as to be negotiable instruments under Title 11, Article 8, the certificates or instruments shall be and are made negotiable instruments within the meaning of and for all purposes of Title 11, Article 8, subject only to such registration requirements as the authority may establish.

§11423. Trust agreement; pledge

1. Trust agreement. Any bonds issued under this chapter may be secured by a trust agreement by and between any or all of the following: The authority, a participating institution and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State.

2. Pledge. Any trust agreement may pledge or assign any revenues to be received by the authority or proceeds or benefits of any contract and may serve to convey or mortgage or otherwise secure any property or property rights, contain provisions for protecting and enforcing the rights and remedies of bondholders, restrict the individual right of action by bondholders and contain such other provisions as the authority deems appropriate, including the right to the appointment of a receiver and the right to the issuance of an order of specific performance by a court of competent jurisdiction.

3. Education loan program. Any expense incurred in carrying out the trust agreement may be treated as a part of the cost of the operation of an education loan program.

4. Valid and binding. A pledge by the authority of revenues as security for an issue of bonds shall be valid and binding from the time when the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery, recording of any instrument or further act and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or other-

wise against the authority or any participating institution or borrower, irrespective of whether the person has notice.

No bond resolution, trust agreement or financing statement, continuation statement or other instrument adopted or entered into by the authority need be filed or recorded in any public record other than the records of the authority in order to perfect the lien against 3rd persons, regardless of any contrary provision of law.

5. Trust funds. All money received by or on behalf of the authority under this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

Any officer with whom, or any bank or trust company with which, that money is deposited shall act as trustee of the money and shall hold and apply it for the purposes provided in the chapter and any applicable bond resolution or trust agreement.

§11424. Capital reserve funds; obligation of the State

1. Capital reserve fund. The authority may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of the sale by the authority of bonds to the extent determined by the authority and any other money available to the authority.

2. Application. Money held in any capital reserve fund, except as provided in this section, shall be used solely with respect to bonds, repayment of which is secured by any such fund and solely for the payment of principal of bonds, the purchase or redemption of those bonds, including any fees or premiums and the payment of interest on those bonds. Money in excess of the reserve requirement set forth in subsection 3 may be transferred to other funds and accounts of the authority.

3. Reserve requirement. The authority may provide that money in any such fund shall not be withdrawn at any time in such amount as would reduce the amount of any such fund to less than the maximum amount of principal and interest becoming due by reason of maturity or a required sinking fund payment in the next succeeding 12-month period within which any such maturity occurs or any such payment is required, the amount being referred to as the "capital reserve requirement," except for the purpose of paying the amount due at any such maturity or the sinking fund payment with respect to bonds, repayment of which is secured by any such fund.

4. Issuance limit. The authority may provide that it shall not issue bonds if the capital reserve requirement with respect to bonds outstanding and then to be issued and secured by any such fund will exceed the amount of any such fund at the time of issuance, unless the authority, at the time of issuance of the bonds, shall

deposit in any such fund from proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in any such fund, will not be less than the capital reserve requirement.

5. Appropriation. On or before December 1st, annually, the authority shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund, to which this subsection is stated in the trust agreement or other document to apply, to the capital reserve requirement. The Governor shall pay directly from the Contingent Account to any such fund as much of the amount as is available in the Contingent Account and shall transmit directly to the Legislature that certification and a statement of the amount, if any, remaining to be paid and the amount certified shall be appropriated and paid to the authority during the current state fiscal year.

6. Bonds outstanding. The authority shall not have at any one time outstanding bonds to which subsection 5 is stated in the trust agreement or other document to apply in principal amount exceeding \$50,000,000. The amount of bonds issued to refund bonds previously issued shall not be taken into account in determining the principal amount of the bonds outstanding, provided that the proceeds of the refunding bonds are applied as promptly as possible to the refunding of the previously issued bonds. In computing the total amount of bonds of the authority which may at any time be outstanding for any purpose, the amount of the outstanding bonds that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their current accreted value rather than their face value.

§11425. Enforcement of rights and duties

Except to the extent that the rights are restricted by any applicable bond resolution or trust or other agreement, any holder of bonds issued under this chapter or a trustee under a trust agreement entered into under this chapter may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of the State or by any applicable bond resolution or trust or other agreement.

§11426. Bonds as legal investments

Bonds issued by the authority under this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, financial institutions, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business and all other persons whatsoever, may properly and legally invest funds, including

capital in their control or belonging to them. These bonds are hereby made securities which may properly and legally be deposited with and received by any state, municipal or public officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

§11427. Accounts and reports

The authority shall keep full and accurate accounts of its activities and operations and shall, within 120 days after the end of each of its fiscal years, make and deliver a report to the Governor, the Speaker of the House, the President of the Senate and the joint standing committee of the Legislature having jurisdiction over education. The report shall cover the preceding fiscal year and shall include a complete operating and financial statement for that year. The authority shall cause an audit of its books and accounts to be made at least once each year by independent certified public accountants and the cost shall be paid by the authority from funds available to it pursuant to this chapter.

§11428. Chapter additional and supplemental

1. In general. This chapter provides a complete, additional and alternative method for carrying out the functions authorized and shall be regarded as supplemental and additional to, and the limitations imposed by this chapter do not limit or otherwise affect powers or rights conferred by other laws and the issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds.

2. Institutions of higher education. Notwithstanding any other provision of law or charter, institutions of higher education may borrow money from the authority, make education loans and take all other actions necessary or convenient to consummate the transactions contemplated under this chapter. The authority may establish, contract for, charge and collect any amount or rate of interest or compensation with respect to authority loans and participating institutions of higher education may contract for, charge and collect any amount or rate of interest or compensation with respect to education loans. Neither the authority nor any institution of higher education participating in a loan program under this chapter may be subject to any licensing provisions relating to financial institutions or any credit regulations of the State.

§11429. Tax exemption

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the State, for the increase of their commerce, welfare and prosperity and for the improvement of their health and living conditions and constitutes the performance of an essential governmental function. Neither the authority nor any of its agents may be required to pay

any taxes or assessments upon or in respect of education loans or any property acquired, used by the authority or any of its agents or under the jurisdiction, control, possession or supervision of, or upon the activities of, the authority or any of its agents in the operation of any program under this chapter, or upon income or other revenues received and any bonds issued under this chapter, the transfer and the income from the bonds, including any profit made on the sale of the bonds, as well as the income and property of the authority, are at all times exempt from taxation of every kind by the State and by the municipalities and all other political subdivisions of the State.

§11430. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds which the authority may issue in accordance with the limitations and restrictions of this chapter, the authority may covenant, elect and consent that the interest on the bonds shall be includable, under the code or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the code or any subsequent law. Bonds issued pursuant to this section shall not be subject to any limitations or restrictions of any law which may limit the authority's power to issue those bonds. The foregoing grant of power shall not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders under the code or any subsequent law.

§11431. Agreement of the State

The State hereby pledges to and agrees with the holders of any bonds issued under this chapter and with those parties who may enter into any contract with the authority pursuant to this chapter that the State will not limit, alter, restrict or impair the rights vested in the authority and the participating institutions until the bonds, together with interest, including interest on any unpaid installment of interest and all costs and expenses in connection with any actions or proceedings by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this chapter precludes that limitation or alteration if and when adequate provision is made by law for the protection of the holders of bonds of the authority or those entering into contracts with the authority. The authority is authorized to include this pledge and undertaking for the State in those bonds or contracts.

§11432. Termination of existence of authority

The authority in its corporate existence shall continue until terminated by law but no law terminating its exist-

ence shall take effect as long as any bonds of the authority are outstanding and unpaid without adequate provision for payment having been made. Upon termination of its existence, all rights, privileges and property of the authority shall pass to and be vested in the State or such entity as the State by proper act shall designate.

§11433. Act cumulative; no notice required

Neither this chapter nor anything contained in this chapter may be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this State and this chapter is cumulative of any such powers. Neither the making of contracts nor the issuance of bonds pursuant to this chapter need comply with the requirements of any other state law applicable to the making of contracts, the issuance of bonds or the construction, acquisition or management of any project undertaken pursuant to this chapter. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument as security therefor, except as is provided in this chapter or in the code, if applicable.

§11434. Act liberally construed

This chapter being necessary for the welfare of the State and its inhabitants shall be liberally construed so as to effect its purposes.

§11435. Sunset review

For purposes of the Maine Sunset Act, Title 3, chapter 23, the authority shall be considered an independent agency, with its first justification report in accordance with Title 3, section 504, due in 1991, and the evaluation and analysis in accordance with Title 3, section 505, by the joint standing committee of the Legislature having jurisdiction over audit and program review due no later than December 31, 1992, but notwithstanding Title 3, sections 506 and 507, the authority shall not terminate.

Sec. 4. PL 1987, c. 668, §3 is amended to read:

Sec. 3. Allocation to the Finance Authority of Maine. The \$25,000,000 in state ceiling for calendar year 1988 previously allocated to the Finance Authority of Maine, plus an additional ~~\$3,000,000~~ \$48,000,000 of the state ceiling for calendar year 1988, is allocated to the Finance Authority of Maine to be used in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 6. Twenty-five million dollars of the state ceiling for calendar year 1989 is allocated to the Finance Authority of Maine to be used in accordance with Title 10, section 363, subsection 6.

Sec. 5. Allocation to the Maine Educational Loan Authority. Thirty-five million dollars of the state ceiling, as defined in the Maine Revised Statutes, Title 10, section 361, subsection 5, for calendar year 1988 is allocated to the Maine Educational Loan Authority to be used in accordance with the Maine Revised Statutes, Title 10, section 363, subsection 8.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 28, 1988.

CHAPTER 808

H.P. 1683 — L.D. 2312

AN ACT to Amend the Sentencing Provisions of the Maine Criminal Code.

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

Sec. 1. 17-A MRSA §1252, sub-§2, ¶A, as enacted by PL 1975, c. 499, §1, is amended to read:

A. In the case of a Class A crime, the court shall set a definite period not to exceed ~~20~~ 40 years;

Sec. 2. 17-A MRSA §1252-B is enacted to read:

§1252-B. Imposition of sentence; court consideration of good time

If a court imposes a sentencing alternative pursuant to section 1152 which includes a term of imprisonment, in setting the appropriate length of that term, as well as any unsuspended portion of that term, if any, the court shall consider the potential impact of deductions for good time along with all other appropriate factors.

Sec. 3. Effective date. Section 1 of this Act shall become effective on July 1, 1989.

Effective August 4, 1988, unless otherwise indicated.

CHAPTER 809

H.P. 1687 — L.D. 2316

AN ACT to Consolidate State Land Use Statutes into the Natural Resources Protection Act.

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

Sec. 1. 38 MRSA c. 3, sub-c. I, Arts. 1-A, 1-C, 2-A and 5, as amended, are repealed.

Sec. 2. 38 MRSA c. 3, sub-c. I, Art. 5-A is enacted to read:

ARTICLE 5-A

PROTECTION OF NATURAL RESOURCES

§480-A. Findings; purpose

The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas.

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

§480-B. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Coastal sand dune systems. "Coastal sand dune systems" means sand deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into the coastal wetlands.

2. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or annual storm flowage at any time excepting periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

3. Fragile mountain areas. "Fragile mountain