LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 1990 to July 10, 1991

FIRST SPECIAL SESSION
July 11, 1991 to July 18, 1991

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

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

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND FIFTEENTH LEGISLATURE

JULY 11, 1991 to JULY 18, 1991

reserve must be annually appropriated and paid for deposit in the fund. The amount of the minimum reserve deposit, if any, must be certified by the executive director of the bank to the Governor as the amount necessary to restore any fund to an amount equal to the required minimum reserve for the average aggregate amount of bond insurance contracts outstanding during the 12-month period prior to certification.

4. Operation and eligibility. The bond insurance program shall operate, determine eligibility and make payments as follows.

A. The bank is authorized to operate a bond insurance program and may:

(1) Establish fund insurance contracts;

(2) Charge and collect premiums;

(3) Make appropriate payments;

(4) Sell bonds and notes of the bank, regardless of any other limitations or restrictions in this chapter, the proceeds of which may be used to meet the minimum reserve requirement of the Maine Municipal Bond Insurance Fund authorized and created by this section; and

(5) Do all other things necessary, proper or desirable to administer and operate a municipal bond insurance program.

B. The bond insurance program may provide bond insurance to any public issuer of debt, including governmental units, municipalities, instrumentalities of the State, and the State. The bank may establish an application or procedure, requesting such information as it considers necessary or desirable, for eligible participants to apply for the benefits of the program. Acceptance of an applicant for participation in the program is in the sole judgment of the bank. Participation in the program must be evidenced by and made in accordance with the terms and conditions specified in a contract of insurance to be executed by the bank and the participating unit. The contract of insurance must state the terms and conditions under which insurance coverage is provided, the premiums, payments or assessments that may be due and payable or called for under the terms of the contract, the schedule upon which payments must be made and any other terms and conditions determined as necessary or desirable by the bank.

C. Contracts for insurance entered into under this section are not in any way a debt or liability of the State and do not constitute a loan of the credit of the State or create any obligation or obligations, debt or debts or liability or liabilities on behalf of the State or constitute a pledge of the faith and credit of the State. All obligations to pay under the terms of any contracts of insurance entered into or issued under this chapter are payable solely from the revenues or funds pledged in the Maine Municipal Bond Insurance Fund and not from any other revenues, funds or assets of the bank or the State. There is no obligation implied, stated or expressed in this section from the bank or the State to make any payment to or on behalf of any 3rd party, including, but not limited to, bond holders, coinsurers, program participants or any other party whatsoever, from any source other than the bond insurance fund created in this section. Each bond insurance contract must contain on its face a statement to the effect that the bank is obligated to make any payments called for in the contract only from the assets and revenues available in the bond insurance fund and not from any other revenues or assets of the bank and that neither the full faith and credit of the bank or the State nor the taxing power of the State is pledged to make any payments of any type or kind called for in the contract of bond insurance.

Effective October 17, 1991.

CHAPTER 606

H.P. 1211 - L.D. 1769

An Act to Encourage Business Investments

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

Whereas, this Act establishes the Commission to Study State Permitting and Reporting Requirements; and

Whereas, to begin its work in a timely fashion, this commission must hold its first meeting no later than July 15, 1991; 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:

PART A

Sec. A-1. 30-A MRSA §5251, sub-§2-A is enacted to read:

2-A. State participation. Recognizing that the State, as well as municipalities, shares in the benefits of respon-

sible new development, the State may also participate in the local program for improving a district:

A. To enhance local efforts for economic or commercial development, or both; and

B. To expand employment opportunities.

Sec. A-2. 30-A MRSA §5252, sub-§§1-A and 8-A are enacted to read:

1-A. Benefitted business. "Benefitted business" means a business that receives the direct financial benefits from the operation of the tax increment financing district.

8-A. State tax increment. "State tax increment" means that portion of all additional sales and individual income taxes generated as a result of increased sales and employment within a duly designated tax increment financing district above the normal growth for that district.

Sec. A-3. 30-A MRSA §5254-A is enacted to read:

§5254-A. State tax increment financing

1. Eligibility. Any tax increment financing district, created by a municipality and duly designated by the State, in which captured assessed value is created after the effective date of this section, is eligible to be approved as a state tax increment financing district. Municipalities must demonstrate that without the approval as a state tax increment financing district the project will not go forward, and as a result will not generate new sales tax revenues or create new jobs that will result in new individual income taxes. Upon determination by the designating authority that these conditions have been met, the designating authority shall approve the municipal creation of the state tax increment financing district.

2. Retained state tax revenues. On an annual basis, designated businesses within the district shall report the amount of new sales tax and number of new employees and their compensation levels, above the average level of the previous 3 years. The State Tax Assessor shall determine the net annual gain in state tax revenues through newly generated individual income and sales taxes. The municipality may receive up to 25% of the total of new sales tax revenues and up to 25% of the total of new individual income taxes generated by each designated business within the district, as determined by the State Tax Assessor subject to the further limitations in subsection 4. The municipality shall then place this state tax increment financing revenue in the development sinking fund established in accordance with section 5254, subsection 3.

3. State tax increment contingent account created. At the end of each fiscal year, the Commissioner of Finance shall deposit up to 25% of the net annual gain in sales and individual income tax revenues as determined by the State Tax Assessor in the state tax increment contingent account. The State Controller shall pay the funds to municipalities as certified by the State Tax Assessor.

4. Limitations. The following limitations apply.

A. A state tax increment financing district may apply only to benefitted businesses involved in nonretail commercial activities, including but not limited to manufacturing, wholesaling, warehousing, distribution, office, administration and other service-related commercial activities.

B. A business relocating from another location in this State, moving employment and sales, is not eligible for the state tax increment financing.

C. A business must demonstrate that the operation within a tax increment financing district will have no adverse effect on other businesses in the State nor will it create an unfair competitive advantage in relation to other businesses in the State.

D. A state tax increment financing district may not designate an aggregate amount of retained state tax revenues greater than 10% of the aggregated total allowed within the state tax increment contingent account.

E. At no time may the aggregate annual liability for all state tax increment financing districts exceed $20,000,000.

F. A transfer of ownership of an existing business may not be construed as creating newly generated state tax revenues.

5. Duration of state designation. State tax increment financing districts have a maximum duration of 10 years.

6. Program; administration. The Commissioner of Economic and Community Development shall administer a state tax increment financing program. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act for implementation of the program, including, but not limited to, rules for determining and certifying eligibility and the amount of the tax increment attributable to particular districts. The commissioner may also establish by rule fees for administration of the program.

7. Repeal of state tax increment financing districts. The designation of new state tax increment financing districts ceases 2 years after the effective date of this section, subject to review by the joint standing committees of the Legislature having jurisdiction over economic development and taxation matters. Designation of new state tax increment financing districts may only be resumed by act of the Legislature.

Sec. A-4. Effective date. This Part takes effect 90 days after approval.

PART B

Maine World Trade Association. To the extent possible with available resources, the Maine World Trade Association will work to increase trade between Maine and Canada with special emphasis on Quebec.

PART C

Sec. C-1. 30-A MRSA §4852, sub-§3, as amended by PL 1987, c. 104, Pt. C, §§8 and 10, is further amended to read:

3. Availability requirement. For at least 3 months after the date on which any appropriation is first available for expenditure, at least 50% of the proceeds of mortgage purchase bonds assisted under subsection 2 and allocated by the Maine State Housing Authority for the purchase of home improvement notes for owner-occupied residential housing ~~shall~~ must be made available for persons of low income whose adjusted income does not exceed 100% of the median family income for the State, as developed by the Maine State Housing Authority from available data or publications. For at least 30 days after the date on which the proceeds of mortgage purchase bonds assisted under subsection 2 and allocated by the Maine State Housing Authority for the purchase of mortgage loans for owner-occupied residential housing are first made available, 30% of such proceeds must be made available for mortgage loans for newly constructed owner-occupied residences.

Sec. C-2. Affordable housing. The 30% set-aside authorized by the Maine Revised Statutes, Title 30-A, section 4852, subsection 3 must be used by the Maine State Housing Authority to administer within its existing single-family mortgage loan program, a subcategory of the program designed to increase economic growth in Maine by encouraging the construction of new homes and to make affordable housing available to more residents of this State. The subcategory, called the Jump Start Program, or such other name chosen by the Maine State Housing Authority, is subject to all the rules and regulations of the existing single-family mortgage loan program.

Sec. C-3. Effective date. This Part takes effect 90 days after approval.

PART D

Sec. D-1. Commission established. The Commission to Study State Permitting and Reporting Requirements is established to study the state permitting and reporting requirements for businesses and to improve the regulatory process.

Sec. D-2. Commission membership. The commission consists of the following 9 members:

1. Six members representing private industry to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives. The members must be chosen to provide statewide representation and equal representation from small and large businesses;

2. One member of the Senate to be appointed by the President of the Senate; and

3. Two members of the House of Representatives to be appointed by the Speaker of the House.

Sec. D-3. Appointments; meetings. All appointments must be made no later than 30 days following the effective date of this Act. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. When the appointment of all members has been completed, the Chair of the Legislative Council shall call and convene the first meeting of the commission no later than July 15, 1991. The commission shall select a chair from among its members.

Sec. D-4. Duties. The commission shall study current state permitting and reporting requirements and determine ways to reduce the time and expense associated with filing permits and reports required by statute or rule. The commission may establish subcommittees and appoint persons to serve on those subcommittees to assist in the performance of its duties. Subcommittee members are not eligible for compensation and serve in an advisory capacity to the commission. The commission shall study the following:

1. The cost to business and citizens of this State of regulatory permits and reporting requirements both in terms of time delays and money;

2. The effect on the competitive position of businesses of this State as a result of the regulatory environment in this State;

3. The process of enacting new regulatory requirements and the recognition of the economic effects in this process;

4. The effect of local ordinances and the interaction of municipalities with state agencies on the regulatory process;

5. The effect of budget reductions on the regulatory process;

6. The accountability of state agency staff decisions within regulatory agencies;

7. The feasibility of a single administrative location where all license fees for businesses may be paid;

8. The feasibility of a generic form or forms to be used in permitting, reporting and licensing; and

9. Any other subject that the commission decides to be relevant to regulatory permitting and reporting requirements in this State.

Sec. D-5. Staff assistance. The commission shall request staffing assistance from the Legislative Council.

Sec. D-6. Reimbursement. The members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at commission meetings. Legislative members of the commission are entitled to expenses, as defined in Title 5, section 12002, upon application to the Executive Director of the Legislative Council for those expenses. Business community members are not entitled to expenses.

Sec. D-7. Report. The commission shall submit its report, together with any necessary implementing legislation, to the Second Regular Session of the 115th Legislature no later than November 1, 1991.

Sec. D-8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

	1991-92
LEGISLATURE	
Commission to Study State Permitting and Reporting Requirements	
Personal Services	$660
All Other	1,000
Provides funds to the Commission to Study State Permitting and Reporting Requirements for the per diem and expenses of legislative members, printing and miscellaneous commission expenses.	
LEGISLATURE TOTAL	$1,660

PART E

Sec. E-1. 10 MRSA §§1023-H and 1026-I are enacted to read:

§1023-H. Maine Street Investment Program Fund

1. Creation. The Maine Street Investment Program Fund, referred to in this section as the "fund," is created under the jurisdiction and control of the authority.

2. Sources of money. The fund consists of the following:

A. All money appropriated or allocated for inclusion in the fund, from whatever source;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money from the fund;

C. Subject to any pledge, contract, fee or other obligation, any money that the authority receives in repayment of advances from the fund; and

D. Any other money available to the authority and directed by the authority to be paid into the fund.

3. Application of fund. Money in the fund may be applied to carry out any power of the authority under or in connection with section 1026-I or to pay obligations incurred in connection with the fund. Money in the fund not needed currently to meet the obligations of the authority as provided in this section may be invested in a manner permitted by law.

4. Accounts within fund. The authority may divide the fund into separate accounts it determines necessary or convenient for carrying out this section, including, but not limited to, accounts reserved for grants or for loans.

5. Revolving fund. The fund is a nonlapsing, revolving fund. All money in the fund must be continuously applied by the authority to carry out this section and section 1026-I.

§1026-I. Maine Street Investment Program

The Maine Street Investment Program is established to provide loans to businesses for investments in downtown areas and business districts.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Business district" means any area zoned by a municipality for business or industrial uses or, where no zoning exists, where business or industrial uses would not be inconsistent with current uses, as determined by the authority.

B. "Downtown" means the area designated by a municipality or generally considered to be the central business district of a municipality, as determined by the authority.

2. Eligibility for loans. Businesses may apply to the authority for loans under the program.

A. The projects to be financed must pertain to manufacturing, industrial, recreational or natural resource

enterprises, be located in the State and provide significant public benefit in relation to the amount of the loan, as determined by the authority. Public benefits include, but are not limited to, increased opportunities for employment, increased capital flows, particularly capital flowing in from outside the State, increased state and municipal tax revenues, rehabilitation of blighted or underutilized areas and provision of necessary services. Loan proceeds may be used for any appropriate commercial purpose, as determined by the authority, including working capital.

B. The authority must determine that the borrower is a for-profit or nonprofit commercial entity, that it is creditworthy and reasonably likely to repay the loan. If the authority determines that the proposed borrower is not creditworthy or not likely to be able to repay the loan, the municipality may elect either to cosign the loan or borrow the money directly and relend the proceeds to the business, assuming the obligation to repay the loan to the authority.

C. The authority must determine that the loan is necessary to implementation of the project either because the borrower has insufficient access to other funds or because the borrower demonstrates and the authority determines that the project would not provide the projected public benefits without the availability of the loan.

D. The authority must determine that the project will not result in a substantial detriment to existing business in the State. In making this determination, the authority shall consider it necessary to measure and evaluate the effect of the project on existing business, including considering:

(1) Whether a loan for a project should be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing business; and

(2) Whether any adverse economic effect of the project on existing business is outweighed by the contribution that the project will make to the economic growth and vitality of the State.

The applicant has the burden of demonstrating a reasonable likelihood that the project will not result in a substantial detriment to existing business, except in cases where no interested parties object to the project, in which event the requirements of this paragraph are deemed satisfied. Interested parties must be given an opportunity, with or without a hearing at the discretion of the authority, to present their objections to the project on grounds that the project will result in a substantial detriment to existing business. If any such party presents such objections with reasonable specificity and persuasiveness, the authority may divulge whatever information concerning the project that it considers necessary for a fair presentation by the objecting party and evaluation of such objections. If the authority finds that the applicant has failed to meet its burden of proof as specified in this paragraph, the application must be denied.

3. Loan terms and conditions. Loans may not exceed 50% of total project costs up to a total loan of $500,000 per project. The authority may establish prudent terms and conditions for loans, including limits on the amount of loans for any one project and requiring adequate collateral for the loans. Loan terms may not exceed 20 years in the case of loans primarily secured by real estate, 10 years in the case of loans secured primarily by machinery and equipment and 7 years for other loans. The interest rate charged on each loan may not exceed the prime rate of interest less 2%, as determined by the authority.

4. Rulemaking. The authority shall establish rules for the implementation of the program established by this section, including, but not limited to, the establishment of fees that may be charged for the administration of the program.

Sec. E-2. Effective date. This Part does not take effect unless bonds authorized for the purposes set forth in the Maine Revised Statutes, Title 10, section 1026-I are approved by the voters.

PART F

Sec. F-1. 10 MRSA §1026-D, sub-§5, as amended by PL 1987, c. 393, §9, is further amended to read:

5. Office space. ~~The~~ Except in the case of projects for borrowers that qualify as nonprofit tax exempt organizations under the Internal Revenue Code, the authority may not insure any mortgage loan for a project 35% or more of which, as determined by the authority, is professional office space, as defined by the authority.

Sec. F-2. 10 MRSA §1041-A, as amended by PL 1987, c. 393, §10, is repealed and the following enacted in its place:

§1041-A. Limitations on certain projects

The authority may not provide financing from proceeds of revenue obligation securities issued by the authority for any housing that is eligible for financing by the Maine State Housing Authority except with respect to property that the authority has acquired or may acquire on account or in anticipation of imminent or actual default under the mortgage insurance program.

Sec. F-3. 10 MRSA §1061-A, as amended by PL 1983, c. 519, §18, is repealed and the following enacted in its place:

§1061-A. Limitations on certain projects

In the case of projects consisting of multi-family or single-family residential property, the Maine State Housing Authority has responsibility to approve or disapprove such projects in accordance with regulations adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, in lieu of the approval required by the authority under this subchapter, provided that this subsection applies only to projects that require an allocation under any applicable state bond ceiling for tax-exempt bonds.

PART G

Sec. G-1. 5 MRSA c. 383, sub-c. III, Art. 5 is enacted to read:

Article 5

ECONOMIC OPPORTUNITY

§13089. Economic Opportunity Fund

1. Creation. The Economic Opportunity Fund, referred to in this section as the fund, is created under the jurisdiction and control of the department.

2. Sources of money. The fund consists of the following:

A. All money appropriated or allocated for inclusion in the fund, from whatever source;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money from the fund;

C. Subject to any pledge, contract, fee or other obligation, any money that the department receives in repayment of advances from the fund; and

D. Any other money available to the department and directed by the department to be paid into the fund.

3. Application of fund. Money in the fund may be applied to carry out any power of the department under or in connection with section 13090 or to pay obligations incurred in connection with the fund. Money in the fund not needed currently to meet the obligations of the department as provided in this section may be invested in a manner permitted by law.

4. Accounts within fund. The department may divide the fund into separate accounts it determines necessary or convenient for carrying out this section.

5. Revolving fund. The fund is a nonlapsing, revolving fund. All money in the fund must be continuously applied by the department to carry out this section and section 13090.

§13090. Economic Opportunity Program

The Economic Opportunity Program, referred to in this section as the "program," is established to provide loans to municipalities for public and private investments to stimulate economic growth.

1. Eligibility for loans. Municipalities may apply to the department for loans under the program to be, in turn, loaned to business entities based on the following eligibility criteria.

A. The projects to be financed must pertain to manufacturing, industrial, real estate development, recreational or natural resource enterprises or activities supporting those businesses, must be located in the State or establishing a presence in the State and must provide significant public benefit in relation to the amount of the loan, as determined by the department. Public benefits include, but are not limited to, increased opportunities for employment, increased capital flows, particularly capital flowing in from outside the State, increased state and municipal tax revenues, rehabilitation of blighted or underutilized areas and provision of necessary services. Loan proceeds may be used for any appropriate commercial purpose, as determined by the department, including working capital.

B. The department must determine that the borrower is a for-profit or nonprofit commercial entity, that it is creditworthy and reasonably likely to repay the loan.

C. The department must determine that the loan is necessary to implementation of the project either because the borrower has insufficient access to other funds or because the borrower demonstrates and the department determines that the project would not provide the projected public benefits without the availability of the loan.

D. The department must determine that the project will not result in a substantial detriment to existing business in the State. In making this determination, the department shall consider such factors it determines necessary to measure and evaluate the effect of the project on existing business, including considering:

(1) Whether a loan for a project should be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing business; and

(2) Whether any adverse economic effect of the project on existing business or other municipalities is outweighed by the contribution that the project will make to the economic growth and vitality of the State.

The application has the burden of demonstrating a reasonable likelihood that the project will not result in a substantial detriment to existing business or other municipalities, except in cases where no interested parties object to the project, in which event the requirements of this paragraph are deemed satisfied. Interested parties must be given an opportunity, with or without a hearing at the discretion of the department, to present their objections to the project on grounds that the project will result in a substantial detriment to existing business or other municipalities. If any such party presents such objections with reasonable specificity and persuasiveness, the department may divulge whatever information concerning the project that it deems necessary for a fair presentation by the objecting party and evaluation of such objections. If the department finds that the applicant has failed to meet its burden of proof as specified in this paragraph, the application must be denied.

2. Loan terms and conditions. The department may establish prudent terms and conditions for loans, including limits on the amount of loans for any one project and requiring adequate collateral for the loans. Loan terms may not exceed 20 years in the case of loans primarily secured by real estate, 10 years in the case of loans primarily secured by machinery and equipment and 7 years for other loans. The interest rate charged on each loan is determined on a case-by-case basis.

3. Rulemaking. The department shall establish rules for the implementation of the program established by this section.

Sec. G-2. Repeal. Unless the referendum for a bond issue in an amount not to exceed $7,500,000 for the purposes of capitalizing the Economic Investment Fund and other funds is approved by the voters in November 1991, this Part is repealed on November 15, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved except as otherwise indicated.

Effective July 30, 1991, unless otherwise indicated.

CHAPTER 607

S.P. 365 - L.D. 967

An Act to Eliminate the Lobster Management Task Force

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

Sec. 1. PL 1991, c. 591, Pt. B, §1, under that part designated "LEGISLATURE," that part relating to "Lobster Management Task Force" is repealed.

Sec. 2. PL 1991, c. 591, Pt. B, §1, under that part designated "LEGISLATURE," last line is amended to read:

TOTAL	~~(2,872,361)~~ (2,881,361)	(1,005,206)

Sec. 3. PL 1991, c. 591, Pt. B, §1, last line is amended to read:

TOTAL APPROPRIATIONS	~~(148,860,369)~~ (148,869,369)	(211,749,901)

Effective October 17, 1991.

CHAPTER 608

S.P. 466 - L.D. 1249

An Act Relating to the Education of Homeless Students

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

Sec. 1. 20-A MRSA §1, sub-§13-A is enacted to read:

13-A. Homeless student. "Homeless student" means a person eligible to attend elementary or secondary school pursuant to section 5201 who:

A. Lacks a fixed, regular and adequate nighttime residence;

B. Has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters and transitional housing for the mentally ill;

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or