

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

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
1993

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

THIRD SPECIAL SESSION

of the

ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

| | |
|----------------------|------------------|
| All Other | 33,333 |
| Capital Expenditures | 25,000 |
| TOTAL | \$181,699 |

Provides funding for 2 Managing Examiners, one Workers' Compensation Specialist, one Senior Rate Analyst and one Clerk Steno III; additional actuarial contracting; computer equipment; and other general operating expenses to administer the new rating law and the expected increase in the number of filings by self-insurers.

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

Effective October 7, 1992, unless otherwise indicated.

CHAPTER 886

H.P. 1785 - L.D. 2465

An Act to Create Jobs for the State

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

Sec. 1. 30-A MRSA c. 208 is enacted to read:

CHAPTER 208

DEFENSE FINANCE AND ACCOUNTING SERVICE FINANCIAL ASSISTANCE ACT

§5271. Definitions

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

1. Commissioner. "Commissioner" means the Commissioner of Economic and Community Development.

2. Department. "Department" means the Department of Economic and Community Development.

3. DFAS. "DFAS" means the Defense Finance and Accounting Service of the United States Department of Defense.

4. DFAS development program. "DFAS development program" means a statement of the means and

objectives designed to design, acquire, construct and operate a DFAS project.

5. DFAS project. "DFAS project" means the facility provided in response to the Defense Finance and Accounting Service's Opportunity for Economic Growth announcement issued March 2, 1992, including all real property, personal property and other improvements, rights and interests in or to real, personal or other property relating to, associated with or used in connection with that facility, as identified by the municipality providing that facility.

6. DFAS project area. "DFAS project area" means a specified area within the corporate limits of a municipality that will be developed in accordance with a DFAS development program adopted pursuant to section 5273.

7. DFAS revenues. "DFAS revenues" means the additional sales and individual income taxes generated as a result of the implementation of a DFAS development program.

8. Eligible municipality. "Eligible municipality" means any municipality in the State that responded on or before June 1, 1992 to the Defense Finance and Accounting Service's Opportunity for Economic Growth announcement issued March 2, 1992.

9. Financial plan. "Financial plan" means a statement of the costs and sources of revenue required to implement the DFAS development program.

10. Project costs. "Project costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by a municipality that are listed in a DFAS development program as costs of improvements, including public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to commercial or industrial users within a DFAS project area, plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than DFAS revenues, received or reasonably expected to be received by the municipality in connection with the implementation of this plan.

A. "Project costs" does not include the cost of buildings or portions of buildings used predominantly for the general conduct of local government. These buildings include, but are not limited to, city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other State Government and local government office buildings.

B. "Project costs" includes, but is not limited to:

- (1) Capital costs, including, but not limited to:

- (a) The actual costs of the construction of public works or improvements, new buildings and support facilities, structures and fixtures;
 - (b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures;
 - (c) The acquisition of equipment; and
 - (d) The clearing and grading of land;
- (2) Maintenance and operation costs, including, but not limited to, the costs of all activities necessary to maintain facilities after the facilities have been developed and all activities necessary to operate the facilities;
- (3) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;
- (4) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by a municipality of real or personal property within a DFAS project area for consideration that is less than its cost to the municipality;
- (5) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;
- (6) Administrative costs, including, but not limited to, reasonable charges for the time spent by municipal employees in connection with the implementation of a DFAS development program;
- (7) Relocation costs, including, but not limited to, those relocation payments made following condemnation;
- (8) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public about the implementation of DFAS development programs;
- (9) Payments made, in the discretion of the local legislative body, that are considered necessary or convenient to the implementation of DFAS development programs;

(10) That portion of the costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, waterlines or amenities on streets or the rebuilding or expansion thereof that is required by the DFAS development program, whether or not the construction, alteration, rebuilding or expansion is within the DFAS project area;

(11) Training costs, including, but not limited to, those costs associated with providing skills development and training for DFAS employees; and

(12) Promotional costs, which are costs associated with developing new employment opportunities; promoting public events; advertising cultural, educational and commercial activities; providing public safety; establishing and maintaining administrative and management support; and other services that are necessary or appropriate to carry out the DFAS development program.

§5272. DFAS financial assistance program

1. Establishment. This section establishes within the department a program to provide assistance to municipalities in the financing of a DFAS development program.

2. Eligible projects. The only project for which assistance may be provided under this program is the DFAS project.

3. Eligible participants. Any municipality of the State implementing a DFAS development program may participate in the DFAS financial assistance program.

4. Assistance. The DFAS financial assistance program provides for a municipality to receive a portion of the increased sales and personal income taxes generated as a result of implementing the DFAS development program to pay for the cost of implementing the program. In addition, the DFAS financial assistance program vests a municipality with the same authority in section 5275, subsection 4.

5. Receipt of DFAS revenues. To finance the DFAS development program, an eligible participant may receive up to 100% of the DFAS revenues generated within the DFAS project area and up to 80% of the DFAS revenues generated outside the DFAS project area. Upon adopting a DFAS development program, the municipal legislative body shall adopt statements of the percentages of DFAS revenues to be received by the eligible participant in accordance with the DFAS development program. The statements of percentages may es-

establish a specific percentage or percentages or may describe a method or formula for determination of the percentages.

6. Cap on DFAS revenues. The maximum amount of DFAS revenues available to a municipality may not exceed the amount necessary to finance costs specified in the municipality's response on or before June 1, 1992 to the Defense Finance and Accounting Service's Opportunity for Economic Growth announcement issued March 2, 1992.

7. Calculation of DFAS revenues. Annually, the State Tax Assessor shall determine the DFAS revenues generated from the implementation of the DFAS development program and on or before April 15th, forward a statement of the amount of DFAS revenues to be received by the municipality to the Commissioner of Administrative and Financial Services.

8. DFAS program fund. To manage properly the DFAS revenues received pursuant to subsection 5, the municipality:

A. Shall establish a DFAS program fund that consists of the following:

(1) A development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due, and the necessary charges of paying interest on, principal of and redemption price of any notes, bonds or other evidences of indebtedness that were issued to fund or refund the cost of the DFAS program fund; and

(2) A project cost account that is pledged to and charged with the payment of project costs as outlined in the financial plan and are paid in a manner other than described in subparagraph (1);

B. Shall annually set aside all DFAS revenues payable to the municipality for public purposes and deposit all those revenues to the appropriate DFAS program fund account in the following priority:

(1) To the development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on that amount, to satisfy all annual debt service on bonds and notes issued to implement the DFAS development program; and

(2) To the project cost account, an amount sufficient, together with the estimated future revenues to be deposited to the account and earnings on that amount, to satisfy all an-

nual project costs to be paid from the account;

C. May make transfers between DFAS program fund accounts as required in paragraphs A and B, as long as the transfers do not result in a balance in the development sinking fund account that is insufficient to cover the annual obligations of that account; and

D. Shall annually return to the State's General Fund any DFAS revenues in excess of those estimated to be required to satisfy the obligations of the DFAS program fund.

9. State DFAS contingent account. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit an amount equal to the total DFAS revenues to be received by a municipality for the preceding calendar year in the DFAS contingent account established, maintained and administered by the Commissioner of Administrative and Financial Services. On or before July 31st of each year, the Commissioner of Administrative and Financial Services shall pay over to a municipality an amount equal to the DFAS revenues for the preceding calendar year.

10. Program administration, rule-making authority. The commissioner shall administer the DFAS financial assistance program and shall adopt rules pursuant to the Maine Administrative Procedure Act for implementation of that program. The State Tax Assessor shall establish the method for determining DFAS revenues as part of the program, subject to section 5273, subsection 5, paragraph D. That method must provide for calculation of revenues as a factor or percentage of wages paid to persons employed within the DFAS project area, based on the State Tax Assessor's determination of the relationship between those wages and the State's income tax revenue and sales tax revenue.

§5273. DFAS development program

1. Program. The legislative body of an eligible municipality may propose a DFAS development program. The DFAS development program must contain, without limitation, the following information:

A. A metes and bounds description of the real property constituting the location of the DFAS project area. The information concerning the location of the project area must include the location of any buildings and other improvements to be constructed, and any undeveloped real property necessary for, associated with, used in conjunction with or otherwise adjacent to the buildings and improvements;

B. A description of the buildings and other improvements to be constructed, including, without

limitation, a general functional description of the nature, type, size and scope of the buildings and improvements;

C. A construction schedule indicating anticipated expenditures by fiscal year;

D. An estimate of the number of new permanent jobs to be created within the DFAS project area as a result of the implementation of the DFAS development program, together with a schedule describing the number of jobs to be created within each of the first 3 years following completion of construction, and the rate of compensation, exclusive of fringe benefits, to be paid to each new employee;

E. A financial plan that includes cost estimates for the DFAS development program, a description of the amounts and types of debt to be incurred in implementing the DFAS development program, a debt retirement schedule and a schedule of anticipated revenues, including financial assistance received pursuant to section 5272;

F. A complete list of public facilities to be constructed;

G. The uses of private property within the project area;

H. Plans for the relocation of persons displaced by the development activities;

I. The proposed local regulations or ordinances and facilities to improve transportation;

J. The environmental controls to be applied;

K. The proposed operation of the project area after the planned capital improvements are completed; and

L. The duration of the program, which may not exceed 30 years from the date of designation of the project area.

2. Local approval. Before adopting a DFAS development program, the municipal legislative body or the municipal legislative body's designee shall hold at least one public hearing. Notice of the hearing must be published at least 10 days before the hearing in a newspaper of general circulation within the municipality.

If the municipality has a charter, local approval must be obtained in accordance with the provisions of the charter. Once approved, the DFAS development program may be altered or amended only after meeting the requirements for adoption under this subsection.

3. Powers. Within the DFAS project area, and consistent with the DFAS development program, the

municipality may undertake activities intended to meet the objectives of the DFAS development program. Pursuant to the DFAS development program, the municipality may acquire property, land or easements through negotiation, or by exercising eminent domain powers in the manner authorized for community development programs under section 5204. The municipality's legislative body may adopt ordinances regulating traffic in and access to any facilities constructed within the DFAS project area. The municipality may install public improvements.

4. Application. A municipality, acting through its municipal officers or their designee, shall submit an application to the commissioner on forms and with supporting data that the commissioner requires for approval of the proposed DFAS development program and financial assistance available pursuant to section 5272, including without limitation all of the information described in subsection 1, paragraphs A to L.

5. Criteria for approval. Prior to issuing a certificate of approval for a DFAS development program, the commissioner must determine that:

A. The DFAS development program has received local approval pursuant to subsection 2;

B. The activities described in the DFAS development program may not be implemented without the State's approval of the DFAS development program;

C. The debt retirement schedule included in the financial plan of the proposed DFAS development program can be met based on the financial assistance available pursuant to section 5272. To make this determination, the commissioner or the commissioner's designee must be party to discussions involving the structure of the debt to be entered into in implementing the DFAS development program; and

D. The Legislature has approved, by resolve, the DFAS development program within 60 days of local approval.

6. Certificate of approval. Upon approval of the DFAS development program, the commissioner shall issue a certificate of approval.

§5274. DFAS development financing

1. General grant of powers. Any municipality that has received approval of the commissioner for a DFAS development program may:

A. Undertake activities that are necessary, appropriate or convenient to develop and operate the DFAS project and to carry out the powers granted in this chapter;

B. Issue bonds of the municipality as provided in subsection 2 or to refund any of those bonds that may be outstanding from time to time or as provided in this section;

C. Fix and revise, from time to time, and collect rates, fees and other charges for use of or for services and facilities furnished by the DFAS facility;

D. Pledge DFAS revenues and any other revenues derived from any DFAS project to the payment of bonds issued with respect to the DFAS project;

E. Acquire in the municipality's name by gift, purchase, lease or the exercise of eminent domain, land, rights and interests in land or water, or air rights in connection with activities undertaken pursuant to paragraph A and acquire any personal property that the municipality considers necessary or appropriate in connection with those activities and hold and dispose of any real and personal property acquired pursuant to paragraph A;

F. Make and enter into all contracts and agreements necessary or incidental to the development of the DFAS project, the performance of its duties under this chapter or under any contracts or agreements relating to the DFAS project, including trust agreements securing any bonds issued under this chapter;

G. Employ any consulting or other engineers, attorneys, accountants, construction and financial experts and any other employees or agents that it considers necessary or appropriate in connection with the development and operation of the DFAS project;

H. Exercise jurisdiction, control and supervision over any DFAS projects owned, operated or maintained by the municipality and make and enforce any regulations for the maintenance and operation of any facility that are, in the judgment of the municipal officers, necessary or desirable for the efficient operation of the facility and for accomplishing the purposes of this chapter;

I. Enter upon any lands, waters or premises to make surveys, borings, soundings or other examinations for the purposes of this chapter; and

J. Enter into contacts with the federal government, with the State or any agency or instrumentality of the federal government or the State, or with any other municipality, district private corporation, partnership, association or individual providing for or relating to the DFAS project, its development and financing.

2. Issuance of bonds. The issuance of bonds under this chapter is as follows.

A. A municipality that has received approval from the commissioner of a DFAS development program may provide by resolution of its municipal officers, at one time or from time to time, for the issuance of revenue bonds of the municipality to pay the cost of designing, acquiring, constructing, improving, extending, enlarging or equipping any DFAS project, and any such bonds may be known as DFAS development bonds.

B. The bonds of each issue of DFAS development bonds must be limited obligation revenue bonds payable solely from the revenues pledged for those bonds and those bonds do not constitute a general obligation of or a pledge of the faith and credit of the municipality, nor a debt or a pledge of the faith and credit of the State or of any municipality or political subdivision, but are payable solely from the revenues pledged for those bonds under this chapter and any trust agreement or indenture pursuant to which those bonds are issued. The issuance of the DFAS development bonds does not obligate the municipality, the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

C. The bonds of each issue of DFAS development bonds must:

(1) Be dated;

(2) State the date of maturity, which may not exceed 30 years from the date of issuance, and bear interest at a rate or rates determined by the municipal officers;

(3) Be redeemable before maturity, at the municipality's option, at the price and under terms and conditions determined by the municipal officers at the time of issuance of the bonds;

(4) Be issued as serial bonds, term bonds or any combination of serial or term bonds, as determined by the municipal officers; and

(5) State that the bonds do not constitute a debt or liability of the municipality or a pledge of the faith or credit of the municipality and that the bonds are payable solely from revenues pledged for that purpose.

D. The municipal officers shall determine the form of the bonds, including any interest coupons to be attached to the bonds, and the manner of execution of the bonds. Municipal officers shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company. The bonds may be issued in coupon or reg-

istered form, or both, as the municipal officers may determine. Notwithstanding any other provision of law, or any language appearing on a bond issued under this chapter, all bonds issued under this chapter are negotiable instruments issued under the laws of the State.

E. The municipal officers may sell the bonds in the manner, either at public or private sale, and for a price as they determine are in the best interest of the municipality. The proceeds must be disbursed in any manner, and under any restrictions, if any, that the municipal officers provide in the resolution authorizing the issuance of the bonds or in any trust or other agreement governing the bonds or providing security for those bonds.

F. Before the preparation of bonds in their final form, the municipal officers may issue interim receipts or temporary bonds, with or without coupons, exchangeable for bonds in their final form when those bonds are executed and available for delivery. The municipal officers may provide for the replacement of any bonds that are mutilated, destroyed or lost.

G. After issuance, all DFAS development bonds issued under this section are conclusively presumed to be authorized and issued under the laws of the State, and any person or governmental unit is estopped from questioning the authorization, sale, issuance, execution or delivery by the municipality of those bonds.

3. Pledges and covenants: trust agreements and indentures. Any municipality issuing DFAS development bonds may undertake any of the following actions.

A. In the discretion of the municipal officers of the municipality issuing DFAS development bonds, any issue of DFAS development bonds may be secured by a trust agreement or trust indenture by and between the municipality and a corporate trustee, which may be any trust company. All expenses incurred in carrying out and performing the obligations of the municipality and the corporate trustee under such a trust agreement or indenture may be treated as a part of the cost of operation of the DFAS project.

B. The resolution authorizing the issuance of DFAS development bonds or the trust agreement or indenture pursuant to which the bonds are issued may pledge DFAS revenues and any other revenues as the municipal officers, in their discretion, determine necessary or appropriate in connection with that financing, and the municipal officers are further authorized to convey, mortgage or otherwise provide for a lien on the DFAS project and any improvement, easements, rights, interests

or other property, real or personal, constituting a DFAS project, associated with a DFAS project or used in connection with the operation of such a project. All pledges of revenue, mortgages, security interests and other collateral interests granted or extended under this chapter are valid and binding from the date the pledge, mortgage or other interest is granted or given. All revenues received by the municipality after being pledged under this chapter are immediately subject to the lien of that pledge without any physical delivery thereof or further action under the Uniform Commercial Code, or otherwise. The lien of those pledges is valid and binding against all parties having claims of any kind, whether in tort, contract or otherwise, against the municipality, the DFAS project or against any other persons or parties, whether or not the claimant has notice of the pledge or lien.

C. The resolution authorizing the issuance of DFAS development bonds or the trust agreement or indenture pursuant to which the bonds are issued may also contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the municipality, its agents and employees, in relation to:

- (1) The acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of the DFAS project or any related property, system or systems;
- (2) The fixing and revising of rates, fees and charges; and
- (3) The custody, safeguarding and application of all money.

The resolution authorizing the issuance of DFAS development bonds or the trust agreement or indenture pursuant to which those bonds are issued may contain any other provisions the municipal officers consider reasonable, necessary or appropriate for the security of the bondholders and the marketing of the bonds. Any such resolution, trust agreement or indenture may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders, as determined necessary or appropriate in the judgment of the municipal officers authorizing the same.

D. Any trust agreement, indenture or financing document granting a mortgage lien upon or a security interest in any real or personal property constituting all or a portion of a DFAS project may authorize the trustee or mortgagee, as the case may be, in the event of a default as defined with re-

spect to the DFAS development bonds issued under a trust agreement, indenture or financing document, to provide for the costs of the DFAS project, or any part of the DFAS project, to take possession of all or any part of the DFAS project, to hold, operate and manage the DFAS project and, with or without the taking of possession, to sell or, from time to time, to lease the DFAS project. The remedies provided in this section are not exclusive and are in addition to every other remedy existing at law, in equity or pursuant to the trust agreement, indenture or financing document granting the mortgage or security interest.

4. Trust funds. All funds received pursuant to the authority of this chapter are trust funds, to be held and applied solely as provided in this chapter and in the resolution of the municipal officers authorizing the issuance of DFAS development bonds, or in the trust agreement or indenture pursuant to which the bonds are issued. Any officer to whom, or any bank, trust company or other fiscal agent trustee to which the funds must be paid, shall act as trustee of those funds and shall hold and apply the funds for that purpose subject to the provisions of this chapter, a resolution authorizing the DFAS development bonds or the trust agreement or indenture pursuant to which the bonds are issued.

5. Remedies. Any holder of bonds issued under this chapter or of any of the coupons appertaining to the bonds and the trustee under any resolution, trust agreement or indenture pursuant to which those bonds are issued, except to the extent the rights given may be restricted by the resolution authorizing the issuance of the bonds or a trust agreement or indenture applicable thereto, may, by action, mandamus or other proceeding, protect and enforce any rights under the laws of the State where granted under this chapter or under the resolution, trust agreement, indenture or financing documents relating to such bonds, including the appointment of a receiver of pledged amounts or any property pledged, mortgaged or otherwise subjected to a lien in favor of bondholders, and may enforce and compel the performance of all duties required by this chapter or by the resolution, trust agreement or financing documents to be performed by the municipality, including the collection of DFAS revenues, any other rates, rents, fees and charges as may be applicable with respect to the DFAS project, or otherwise, and the performance of the municipality's obligations with respect to any capital reserve fund established for the bonds pursuant to section 5274. Any suit, action or proceeding brought pursuant to this subsection must be brought for the benefit of all of the holders of bonds issued under this chapter.

6. Refunding. Any municipality that has received approval of a DFAS development program by the commissioner may provide by resolution of its municipal officers for the issuance of refunding bonds of the municipality for the purpose of:

A. Refunding any DFAS development bonds outstanding that were issued under this chapter, including the payment of any redemption premium on those bonds and any interest accrued or to accrue to the date of redemption of those bonds; and

B. If considered advisable by the municipal officers, constructing improvements, extensions or enlargements of the DFAS project in connection with which the bonds to be refunded were originally issued.

The issuance of refunding bonds under this subsection, including the maturities and other details of those bonds, the rights and remedies of the holders, and the rights, powers, privileges, duties and obligations within the municipality regarding those bonds is governed by this chapter insofar as this chapter is applicable.

7. Authorizing resolution. Notwithstanding any other law or any charter or charter amendment previously adopted by a municipality, it is not necessary to publish any notice or resolution adopted under this chapter, to receive approval of the voters of the municipality at referendum or to otherwise hold multiple readings, public hearings, provide notices or follow any other procedures as may ordinarily be required with respect to the issuance of general obligation bonds or revenue bonds of the municipality; as long as the municipality follows the following authorization procedure:

A. At least 10 days prior to the adoption of the resolution authorizing the issuance of DFAS development bonds, the municipal officers shall publish in a newspaper of general circulation within the municipality a notice of a public hearing to be held regarding the approval of those bonds. The notice must contain a reasonably accurate and complete description of the resolution authorizing the issuance of those bonds; and

B. The municipal officers shall hold a public hearing prior to the adoption of any resolution authorizing the issuance of DFAS development bonds, at which members of the public are entitled to appear and provide testimony and comment regarding the resolution.

Following public hearing, the municipal officers may adopt the resolution and, upon adoption, the resolution is effective without further action on the part of the municipality or the municipal officers. Once adopted, such a resolution may only be amended, revised or altered upon compliance with the procedure relating to adoption of the resolution.

8. Governmental functions; alternative method. The exercise by the municipality of the powers conferred

upon it by this chapter is considered the performance of an essential governmental function. This chapter does not limit the authority of the municipality to borrow money for its own benefit. This chapter may not be construed to limit a municipality's home rule authority or any other provisions of law relating to a municipality borrowing money or issuing debt. This chapter supplements the powers conferred by other laws and does not abate or repeal any powers existing under any other law or ordinance, as long as the municipality in issuing DFAS development bonds is not required to comply with the requirements of that other law or ordinance applicable to the issuance of bonds.

9. Liberal construction. This chapter must be liberally construed to effect the purposes of this chapter.

10. Bonds as legal investments. The bonds issued under this chapter are legal investments in which all public officers and public bodies of the State, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may be authorized to invest in securities of the State may properly and legally invest funds, including capital in their control or belonging to them, in these bonds. Bonds issued under this chapter are also made securities that may be properly and legally deposited with and received by all public officers and bodies of the State or any agency or political subdivision, and all municipalities and public corporations for any purpose for which the deposit of securities of the State is or may be authorized by law.

11. Actions against municipality. No officer, employee or agent of the municipality, while acting in the scope of the authority of this chapter, is subject to any personal liability resulting from the exercise of, or carrying out of, any of the municipality's purposes or powers under this chapter.

12. Validity of bonds. DFAS development bonds bearing authorized signatures of officers or officials of the municipality are valid and binding obligations, even if before the delivery of and payment for the obligation any person whose signature appears on the bonds has ceased to be an officer or official. The validity of bonds issued under this chapter is not dependent on or affected by the validity or regularity of any proceedings to acquire a DFAS project financed with the proceeds of the bonds, or to refund outstanding bonds, or any action otherwise taken in connection with the acquisition, construction or operation of the DFAS project.

13. Tax exemption. Any bonds issued under this chapter, including refunding bonds, and their transfer

and the income from the bonds, including any profit made on the sale of the bonds, are not subject to taxation by the State, including any minimum tax under Title 36, chapter 818 and franchise tax under Title 36, chapter 819 or any successor statutes.

14. Taxable bond option. At the option of the municipality issuing DFAS development bonds, the municipality may covenant and consent that the interest on the bonds is includable, under the United States Internal Revenue Code of 1986, as amended, 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 Internal Revenue Code or any subsequent law. Such a designation does not affect the exemption from state taxation provided in subsection 13.

§5275. Capital reserve fund

1. Capital reserve fund. Any municipality with an approved DFAS development program may establish one or more capital reserve funds and may pay into such a capital reserve fund any money appropriated and made available by the municipality or the State for the purposes of that fund, any proceeds of sale by a municipality of DFAS bonds pursuant to section 5274 to the extent determined by the municipality and any other money available to the municipality. For purposes of this section, the amount of any letter of credit, insurance contract, surety bond or similar financial undertaking available to be drawn on and applied to obligations to which money in such a fund may be applied is considered and must be counted as money in the capital reserve fund.

2. Application. Money held in any capital reserve fund, except as provided in this section, may be used in conjunction with DFAS development bonds, repayment of which is secured by such a fund, and solely for the payment of principal of the bonds, the purchase or redemption of the bonds, including any fees or premium, or the payment of interest on the bonds. In addition, if the municipality obtains a letter of credit, insurance contract, surety bond or similar financial instrument to establish and fund a capital reserve fund under subsection 1, money in the fund may be used to pay, as and when due, whether by acceleration or otherwise, all reimbursement obligations of the municipality established in connection with that letter of credit, insurance contract, surety bond or similar financial instrument, including, but not limited to, all fees, expenses, indemnities and commissions. Money in excess of the reserve requirement established as provided in subsection 3 may be transferred to other funds and accounts of the municipality.

3. Reserve requirement. The municipality may provide that money in such a fund may not be withdrawn at any time in an amount that would reduce the

amount of any such fund below an amount established by the municipality with respect to the fund, the amount established by the municipality being referred to as the "capital reserve requirement," except for the purpose of payment of the amount due and payable with respect to DFAS development bonds, repayment of which is secured by such a fund, or reimbursement obligations of the municipality with respect to any letter of credit insurance contract, surety bond or similar financial undertaking pertaining to any such fund.

4. Appropriation. On or before December 1st, annually, the municipality shall certify to the Commissioner of the Department of Economic and Community Development, or its successor, and the commissioner shall immediately certify to the Governor the amount, if any, necessary to restore the amount in the capital reserve fund, to which this subsection is stated in any trust agreement or other document to apply, to the capital reserve requirement. The Governor shall immediately pay from the Contingent Account to such a fund so much of the amount as is available in the Contingent Account and shall immediately transmit to the Legislature the certification and a statement of the amount, if any, remaining to be paid and the Governor shall request that the Legislature appropriate the amount certified to be paid to the municipality during the then current state fiscal year.

5. Securities outstanding. The municipality may not establish a reserve for DFAS development bonds to which subsection 4 is stated in the trust agreement or other document to apply, in a principal amount exceeding \$110,000,000. The amount of DFAS development bonds issued to refund bonds previously issued may not be taken into account in determining the principal amount of securities outstanding, as long as 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 DFAS development bonds that may at any time be outstanding for any purpose, the amount of the outstanding DFAS development bonds that have been issued as capital appreciation bonds or as similar instruments must be valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 2. Repeal. If the Commissioner of Economic and Community Development does not approve assistance under this chapter for a municipality by September 1, 1995, this chapter is repealed on that date.

Effective January 5, 1993.
