

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

1. Appointment. The Governor shall appoint the Commissioner of Corrections, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~health and institutional services corrections matters~~ and to confirmation by the Senate, to serve at the pleasure of the Governor.

Sec. 5. 38 MRSA §341-A, sub-§3, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

3. Commissioner. The commissioner ~~shall be~~ is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~energy and~~ natural resource matters and to confirmation by the Legislature.

A. The commissioner ~~shall serve~~ serves at the pleasure of the Governor.

B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act.

C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department.

Sec. 6. 38 MRSA §341-C, sub-§1, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

1. Appointments. The board ~~shall consist~~ consists of 10 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~energy and~~ natural resource matters and to confirmation by the Legislature.

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

Effective January 24, 1995.

CHAPTER 4

H.P. 230 - L.D. 309

An Act to Encourage Major Business Expansion in Maine

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

Whereas, there is a need to provide incentives to retain jobs and encourage major business expansions within the State in order to create new employment opportunities, provide a broader tax base and improve the economy of the State; and

Whereas, access to financing for major projects at reduced interest rates provides a substantial incentive to businesses to relocate to Maine or expand Maine activities; and

Whereas, this legislation will serve an important public purpose; 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. 10 MRSA §963-A, sub-§10, ¶M, as amended by PL 1993, c. 712, §3, is further amended to read:

M. Any aboveground oil replacement or upgrade project, including equipment installed to meet requirements for gasoline service station vapor control and petroleum liquids transfer vapor recovery; ~~or~~

Sec. 2. 10 MRSA §963-A, sub-§10, ¶N, as enacted by PL 1993, c. 712, §4, is amended to read:

N. Any electric rate stabilization project; ~~or~~

Sec. 3. 10 MRSA §963-A, sub-§10, ¶O is enacted to read:

O. Any major business expansion project.

Sec. 4. 10 MRSA §963-A, sub-§31-A is enacted to read:

31-A. Major business expansion project. "Major business expansion project" means any building, structure, machinery, equipment or facility proposed to be constructed, rehabilitated, expanded, modernized or acquired in the State by a business entity, that has a projected cost of \$5,000,000 or more, that is projected to result in a net gain of at least 100 job opportunities within the State or the retention of at least 100 jobs and that benefits from financing assistance from the authority including use of a capital reserve fund pursuant to section 1053. A major

business expansion project does not include electric rate stabilization projects or projects primarily involved in the provision of housing or retail sales to consumers.

Sec. 5. 10 MRSA §1043, sub-§2, ¶F, as amended by PL 1985, c. 344, §63, is further amended to read:

F. In the case of projects ~~which~~ that are primarily pollution-control facilities:

- (1) The proposed users of the facilities make a contribution to the economy of the State;
- (2) A public benefit will result from including the facilities in the project; and
- (3) It is unlikely that public facilities meeting the needs of the users and securing comparable public benefit will become available in the reasonably foreseeable future; ~~and~~

Sec. 6. 10 MRSA §1043, sub-§2, ¶I, as repealed and replaced by PL 1987, c. 697, §10, is amended to read:

I. The project will, to the extent possible, cooperate with representatives of the Department of Labor and the Department of Human Services regarding employment opportunities for recipients of the services of those departments; and

Sec. 7. 10 MRSA §1043, sub-§2, ¶J is enacted to read:

J. In the case of major business expansion projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary to measure and evaluate the sufficiency of the pledged revenues to repay the obligations, including:

- (1) Whether individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations, and a strong probability that those revenues will continue to be available for the term of the revenue obligation securities;
- (2) Whether the applicant demonstrates a strong probability that the project will continue to operate and provide the public

benefits projected to be created for the term of the revenue obligation securities;

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;

(4) Whether the applicant's creditworthiness is demonstrated by such factors as historical financial performance, management ability, its plan for marketing its product or service and its ability to access conventional financing;

(5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;

(6) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority; and

(7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances.

Financing assistance for any one major business expansion project may not exceed \$25,000,000 in loan amount. The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter II, application procedures, approval criteria and reasonable fees for major business expansion projects.

Sec. 8. 10 MRSA §1053, sub-§6, as amended by PL 1993, c. 712, §5, is further amended to read:

6. Securities outstanding. The authority may not have at any one time outstanding revenue obligation securities to which subsection 5 is stated in the trust agreement or other document to apply in principal amount exceeding an amount equal to \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032. Notwithstanding any other provision of this subsection, the authority may additionally have outstanding at any one time up to \$120,000,000 of bonds under this subchapter relating to loans for electric rate stabilization projects and \$120,000,000 of bonds under this subchapter relating to loans for major business expansion projects, in each case consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds

to fund capital reserve funds. The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 9. 10 MRSA §1054, as amended by PL 1987, c. 393, §12, is further amended to read:

§1054. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds ~~which that~~ the authority may issue in accordance with the limitations and restrictions of this subchapter, the authority may covenant and consent that the interest on the bonds ~~shall be is~~ includable, under the United States Internal Revenue Code of ~~1954~~ 1986 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 United States Internal Revenue Code or any subsequent law. Bonds issued pursuant to this section ~~shall are~~ not be subject to any limitations or restrictions of any law ~~which that~~ may limit the authority's power to issue those bonds or to the procedures set forth in section 1043 or in section 1044, subsections 1, 11 and 12; except that the procedures set forth in section 1043 do apply with respect to major business expansion projects. The foregoing grant of power ~~shall may~~ 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 of the interest under the United States Internal Revenue Code or any subsequent law. Any action or proceeding in any court to contest the issuance of the securities, the approval by the authority of a project to benefit from issuance of the securities or the approval by the authority of mortgage insurance or the provision of a capital reserve fund for the securities for any reason must be started within 30 days after the date on which the members of the authority adopt a formal resolution approving issuance of the securities and otherwise must be governed by Title 5, chapter 375, subchapter VII. Once the authority has adopted a resolution to approve the issuance of securities pursuant to this section, any

action by the authority to amend, alter or revise the resolution may not commence a new period of time within which any such action or proceeding may be commenced. Notwithstanding the provisions of section 969-A, subsection 11 and Title 5, chapter 375, subchapter VII, including, but not limited to, Title 5, sections 11002 and 11003, any such action or proceeding may be commenced only by first serving the petition for review upon the authority, in hand, within that 30-day period. After the expiration of the 30-day period of limitation, no right of action or defense founded upon the invalidity of the resolution or contesting any provision of the resolution, any amendment to the resolution or the issuance of the securities may be started or asserted nor may the resolution or the issuance of the securities be open to question in any court upon any grounds.

Sec. 10. Loans authorized. The Finance Authority of Maine may make loans for major business expansion projects, as defined in the Maine Revised Statutes, Title 10, section 963-A, from up to \$100,000,000 of the proceeds of revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053. Any revenue obligation securities for major business expansion projects secured by capital reserve funds pursuant to Title 10, section 1053 are limited obligations of the Finance Authority of Maine payable from revenues from borrowers and any capital reserve funds pledged for those securities as those funds are administered under Title 10, chapter 110, subchapter III and are not payable from any other assets or funds of the Finance Authority of Maine.

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

Effective February 1, 1995.

CHAPTER 5

H.P. 120 - L.D. 155

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 1995

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