

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

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NON-EMERGENCY LAWS IS
JULY 4, 1996

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

obligation securities secured by capital reserve funds pursuant to Title 10, section 1053. Notwithstanding any provision of Title 10, chapter 110, loans may aggregate up to \$220,000,000 plus an amount determined by the Finance Authority of Maine of up to an additional aggregate of \$44,000,000 to fund any capital reserve fund established by the authority for these loans. Revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053 relating to such loans may not be issued for an electric rate stabilization agreement, as defined in Title 35-A, section 3156, executed after ~~May 1, 1996~~ February 1, 1997. Any revenue obligation securities issued for electric rate stabilization 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. In addition to all other applicable provisions, the requirements of Title 10, section 1045-A apply to loans for electric rate stabilization projects.

Sec. 3. PL 1993, c. 712, §9, as amended by PL 1995, c. 120, §4 and affected by §5, is further amended to read:

Sec. 9. Reports. The Finance Authority of Maine shall report by February 1, 1996 and May 1, 1997 to the joint standing committee of the Legislature having jurisdiction over utilities matters on all loans made to electric utilities for electric rate stabilization projects, as defined in the Maine Revised Statutes, Title 10, section 963-A. ~~The Each~~ report must identify each loan made, to whom the loan was made, the amount of the loan and the general description of the electric rate stabilization project for which the loan was made. ~~The Each~~ report may include recommendations for extending the period during which loans to electric utilities may be made or any other suggestions for changes to the provisions of this Act. The Public Utilities Commission shall report by February 1, 1996 and May 1, 1997 to the joint standing committee of the Legislature having jurisdiction over utilities matters on all electric rate stabilization agreements for which an application for a certificate of approval has been processed pursuant to Title 35-A, section 3156. ~~The Each~~ report must identify the number of applications received by the commission, the identity of the applicants, a general description of each application and, for each application, whether the application was approved or denied. ~~The Each~~ report may include recommendations for extending the period during which certificates of approval may be issued to electric utilities or any other suggestions for changes to the provisions of this Act.

Sec. 4. Retroactivity. This Act applies retroactively to February 1, 1996.

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

Effective April 11, 1996.

CHAPTER 699

H.P. 1337 - L.D. 1831

An Act to Create the Small Enterprise Growth Program

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

Sec. 1. 5 MRSA §12004-F, sub-§17 is enacted to read:

17. Small Expenses Only 10 MRSA
Enterprise Growth Board §471

Sec. 2. 10 MRSA c. 7, as amended, is repealed.

Sec. 3. 10 MRSA c. 13 is enacted to read:

CHAPTER 13

SMALL ENTERPRISE GROWTH PROGRAM

§381. Small Enterprise Growth Program established

There is established the Small Enterprise Growth Program.

§382. Definitions

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

1. Board. "Board" means the Small Enterprise Growth Board.

2. Fund. "Fund" means the Small Enterprise Growth Fund.

3. Program. "Program" means the Small Enterprise Growth Program.

4. Qualifying small business. "Qualifying small business" means a business employing 25 or fewer employees or having gross sales not exceeding \$2,000,000 within the most recent 12 months for which financial statements are available.

§383. Fund established

1. Creation of fund. There is established the Small Enterprise Growth Fund, which is a revolving fund used to provide funding for disbursements to qualifying small businesses in the State seeking to pursue an eligible project. The fund must be deposited with and maintained and administered by the Finance Authority of Maine and consists of appropriations provided for that purpose, interest accrued on the fund balance, funds received by the board to be applied to the fund, all funds remaining in the Pine Tree Partnership Fund and any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services. The fund is a nonlapsing fund.

2. Administrative expenses. Costs and expenses of maintaining and servicing the fund and administering the Small Enterprise Growth Program established by this chapter may be paid out of amounts in the fund.

§384. Board

1. Establishment; membership. There is established the Small Enterprise Growth Board, which consists of 11 members appointed by the Governor as follows:

- A. An experienced commercial lender;
- B. An attorney with knowledge of securities law;
- C. Five members of the public who have knowledge and experience in managing or investing in high-growth small businesses;
- D. Three members of the public who have knowledge and experience in the development of technological innovation; and
- E. The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve as a voting ex officio member of the board.

2. Chair. The board shall annually elect a chair from among its members.

3. Terms. The members other than the Commissioner of Economic and Community Development or the commissioner's designee serve for one-year terms and may be reappointed.

4. Compensation. Members are entitled to compensation in accordance with Title 5, chapter 379.

§385. Duties of board

The board has the following powers and duties.

1. Receipt of money and property. The board may accept and receive gifts, grants, investments, bequests or devises from any source, including funds from the Federal Government or any subdivision of the Federal Government.

2. Administer program. The board must administer the Small Enterprise Growth Program and may contract with the Finance Authority of Maine, financial institutions, educational institutions, business enterprises, nonprofit institutions and organizations or individuals for such assistance in administering the program as the board may require.

3. Ownership interests. The board may not hold an ownership interest in a private enterprise unless it is determined by the board that such an interest is necessary to recover amounts due to the fund and the agreement between the board and the private enterprise contains a specific plan for the board to divest itself of the ownership at some future time.

4. Rules. The board may adopt rules, in accordance with the Maine Administrative Procedure Act, to carry out this chapter.

§386. Eligible projects

In order for a qualifying small business to be eligible for financial assistance under the program, the following criteria must be met.

1. Engagement; involvement. The qualifying small business must be engaged in or involve at least one of the following:

- A. Marine science;
- B. Biotechnology;
- C. Manufacturing;
- D. Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State;
- E. Software development;
- F. Provision or development of environmental services or technologies;
- G. Provision or development of financial or insurance products or services;
- H. Production of value-added goods from natural resources; or
- I. Other enterprises that the board determines will further the purposes and intent of the pro-

gram, including, but not limited to, retail sales, tourism and agricultural production.

2. Growth; public benefit. The qualifying small business must demonstrate the potential for high growth and public benefit.

3. Need for assistance. The qualifying small business must provide evidence of each of the following:

A. Commitment of all reasonably available resources to the project;

B. A need for financial assistance from the fund to realize its projected growth and achievement of public benefits; and

C. Inability to access sufficient financial assistance from a financial institution.

4. Financing plan. The qualifying small business must submit a financing plan as part of an overall business plan. The proposed financing plan must include adequate mechanisms to monitor the accomplishment of the business plan as proposed.

The disbursement may not be used to make distributions to or for the benefit of an owner of the business borrowing from the fund or a related entity.

§387. Review of applications

In order to effectively review and process applications under the program, the board may delegate the authority to deny applications for disbursements from the fund to one or more subcommittees of the members. Such delegation may provide that the action of the subcommittee constitutes final agency action. The board may delegate authority to recommend approval of applications, but final approval may be given only by the board.

§388. Financing terms and conditions

Disbursements may be made from program funds under the following terms and conditions.

1. Disbursements. Disbursements may not exceed \$150,000 to a qualifying small business, including an affiliated entity.

2. Provide evidence. The qualifying small business must provide evidence satisfactory to the board of matching funds in cash in an amount equal to the disbursement. Such matching funds may be in the form of debt or equity, but must be at risk in the qualifying small business for a minimum of 5 years.

3. Agreement. The board must enter into an agreement with the recipient of the disbursement requiring repayment of the full amount disbursed, and

providing for the payment of interest at a rate based on the board's assessment of the risk of the disbursement. The agreement may provide for flexible payments based on the financial success of the recipient. In addition, in recognition of the degree of risk of the project, the agreement may require royalties or additional payments based on sales, net cash flow or other financial measures, or rights to equity in the enterprise in the form of warrants or similar rights.

4. Report. The board shall require that each disbursement recipient report to the board at least annually on each of the following factors:

A. Financial performance;

B. Job creation;

C. Technological progress;

D. Market progress; and

E. Any other factors as the board may require.

§389. Cooperation and coordination

The University of Maine System, the Small Business Development Center Program, the Maine World Trade Association and the Maine Science and Technology Foundation shall provide such support and assistance as the board may request, within the expertise of each.

§390. Conflicts of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the board, and each employee, contractor, agent or other representative of the board is deemed an "executive employee" solely for purposes of Title 5, section 18, and for no other purpose. Title 17, section 3104 does not apply to any of those representatives. If a member does not participate in an action or deliberation with respect to a particular project, that member is presumed not to have personally and substantially participated in a decision of the board with respect to that project. Every interest of a board member in any matter before the board must be disclosed to the board in writing.

§391. Disclosure and confidentiality of records

1. Disclosure required. Notwithstanding subsections 2 and 3, and except as provided in paragraph F, the board shall make available the following records, either to any person upon a request that reasonably describes the records to which access is sought or, if no request is made, in any manner and at any time that the board may determine:

A. After a written application or proposal for financial assistance or property transfer has been

filed in a form specified by or acceptable to the board:

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Description of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the board, the general terms of transfer and the purposes for which transferred property will be used; and

(5) Number of jobs and the amount of tax revenues projected and resulting from a project;

B. Any information pursuant to a waiver determined satisfactory by the board;

C. Information that, as determined by the board, has already been made available to the public; and

D. Information necessary to comply with Title 1, section 407, subsection 1.

The board shall provide to a legislative committee the information or records specified in a written request signed by the chair of that legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the board prior to receipt of a written application or proposal, in a form specified by or acceptable to the board, for financial assistance to be provided by or with the assistance of the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection;

B. Any record obtained or developed by the board that:

(1) A person, including the board, to whom the record belongs or pertains has requested be designated confidential; and

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through board records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the board in the case of a person other than the board, to any person to whom the record belongs or pertains;

C. Any financial statement or tax return of an individual or any other record obtained or developed by the board the disclosure of which would constitute an invasion of personal privacy, as determined by the board;

D. Any record, including any financial statement or tax return obtained or developed by the board in connection with any monitoring or servicing activity by the board, pertaining to any financial assistance provided or to be provided by or with the assistance of the board;

E. Any record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of any person or project; and

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the board, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential.

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board 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 financing 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. If necessary to ensure collection of any obligation in which it has or may have an interest;

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

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

§392. Governmental function

The board shall administer and exercise the authority granted to it by this chapter. The carrying out of its powers and duties is considered the performance of an essential governmental function.

Sec. 4. Rules. Any rule adopted by the Small Enterprise Growth Board pursuant to this Act is a technical rule.

See title page for effective date.

CHAPTER 700

H.P. 1353 - L.D. 1854

An Act to Implement the Recommendations of the Land and Water Resources Council Regarding Gravel Pits and Rock Quarries

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

Sec. 1. 38 MRSA §480-Q, sub-§3, as enacted by PL 1987, c. 809, §2, is repealed.

Sec. 2. 38 MRSA §482, first ¶, as amended by PL 1993, c. 350, §1, is further amended to read:

As used in this article ~~and article 7~~, unless the context otherwise indicates, the following terms have the following meanings.

Sec. 3. 38 MRSA §482, sub-§2, as repealed and replaced by PL 1993, c. 680, Pt. C, §7, is amended to read:

2. Development that may substantially affect the environment. "Development that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

A. Occupies a land or water area in excess of 20 acres;

~~B. Contemplates drilling for or excavating natural resources on land or under water where the area affected is in excess of 60,000 square feet;~~

C. Is a metallic mineral mining or advanced exploration activity as defined in this section;

D. Is a structure as defined in this section; or

E. Is a subdivision as defined in this section.

~~"Development" does not include borrow pits regulated under article 7.~~

Sec. 4. 38 MRSA §482, sub-§2-B, as repealed and replaced by PL 1993, c. 383, §5 and affected by §42, is amended to read:

2-B. Metallic mineral mining or advanced exploration activity. "Mining Metallic mineral mining or advanced exploration activity," in this article also called "mining," means an activity or process necessary for the extraction or removal of the product metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of the product and includes one or more of the following: metallic minerals and includes the bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover.

~~A. An excavation of more than 5 acres of land for borrow, topsoil, clay or silt whether alone or in combination;~~

~~B. The bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover; or~~