

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE
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CHAPTER 523

S.P. 589 - L.D. 1759

An Act to Create the Maine Governmental Facilities Authority

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

Sec. 1. 4 MRSA c. 33, is amended by repealing the headnote and enacting in its place the following:

CHAPTER 33

MAINE GOVERNMENTAL FACILITIES AUTHORITY

Sec. 2. 4 MRSA §§1601 and 1602, as enacted by PL 1987, c. 438, §1, are amended to read:

§1601. Short title

This chapter ~~shall be~~ is known and may be cited as the "Maine ~~Court~~ Governmental Facilities Authority Act."

§1602. Maine Governmental Facilities Authority; members; compensation

1. Establishment; membership. The Maine ~~Court~~ Governmental Facilities Authority is created as a body corporate and politic and a public instrumentality ~~and agency~~ of the State. The exercise by the authority of powers conferred by this chapter ~~shall be~~ is considered to be the performance of essential governmental functions. The authority ~~shall consist~~ consists of 5 members, one of whom ~~shall be~~ is the Treasurer of State, serving as an ex officio, voting member, one of whom is the Commissioner of Administrative and Financial Services, serving as an ex officio, voting member, and ~~4~~ 3 other members who shall each serve for a term of 5 years and ~~shall be~~ are appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government and confirmation by the Legislature. Any member of the authority may be removed by the Governor for cause. In the event of vacancy occurring in the membership, the Governor shall appoint a replacement member for the remainder of that term. Each member of the authority shall serve until that member's successor is appointed and qualified. Any member of the authority ~~shall be~~ is eligible for reappointment.

A. The initial appointed members of the authority ~~shall be~~ are appointed in a manner to stagger the terms of the members. Of the initial ~~4~~ 3 appointed members, ~~one shall be appointed to a term of 2 years;~~ one ~~shall be~~ is appointed to a term of 3 years; one ~~shall be~~ is appointed to a term of 4 years; and one ~~shall be~~ is appointed to a term of 5 years.

2. Oath. Each member of the authority before commencing ~~his~~ the member's duties shall take an oath to administer the duties of ~~his~~ that office faithfully and impartially and that oath ~~shall~~ must be filed in the office of the Secretary of State.

3. Officers; quorum. The authority shall elect from its membership a ~~chairman, a vice chairman, a secretary and a treasurer~~ chair and a vice-chair. In addition, the authority may have a secretary and a treasurer, who may be members or nonmembers of the authority. Three members of the authority ~~shall~~ be constitute a quorum and the vote of 3 members ~~shall be~~ is necessary for any action taken by the authority. ~~No~~ A vacancy in the membership of the authority ~~may~~ does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

4. Compensation. Each member of the authority ~~shall be compensated~~ is entitled to compensation in accordance with Title 5, chapter 379. Each member of the authority ~~shall~~ must be indemnified by the authority against expenses actually and necessarily incurred by ~~him~~ the member in connection with the defense of any action or proceeding in which ~~he~~ the member is made a party by reason of ~~his~~ being or having been a member of the authority, and against any final judgment rendered against ~~him~~ the member in that action or proceeding.

Sec. 3. 4 MRSA §1603, sub-§§1 to 3, as enacted by PL 1987, c. 438, §1, are amended to read:

1. Act. "Act" means the Maine ~~Court~~ Governmental Facilities Authority Act.

2. Authority. "Authority" means the Maine ~~Court~~ Governmental Facilities Authority as established by this Act.

3. Bonds. "Bonds" means any bonds or securities of the Maine ~~Court~~ Governmental Facilities Authority issued pursuant to this Act.

Sec. 4. 4 MRSA §1603, sub-§4, ¶¶C and I, as enacted by PL 1987, c. 438, §1, are amended to read:

C. The cost of all labor, materials, machinery, furniture, fixtures and equipment;

I. The cost of reserves, insurance, letters of credit or other financial guarantees for payment of ~~future~~ debt service on securities;

Sec. 5. 4 MRSA §1603, sub-§§5 and 6, as enacted by PL 1987, c. 438, §1, are amended to read:

5. Holder of securities or holder. "Holder of securities" or "holder" or any similar term, when used with reference to securities of the Maine ~~Court~~ Governmental Facilities Authority, means any person who is the bearer of any outstanding securities of the authority registered to bearer or not registered, or the registered owner of any outstanding securities of the authority ~~which that~~, at the time, ~~is~~ are registered other than to bearer.

6. Notes. "Notes" means any notes of the Maine ~~Court~~ Governmental Facilities Authority issued pursuant to this Act.

Sec. 6. 4 MRSA §1603, sub-§7, as amended by PL 1989, c. 596, Pt. N, §1, is further amended to read:

7. Project, projects or part of any project. "Project, projects or part of any project" means the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a court facility, state office or state activity space and intended to be used primarily by the State, any agency, instrumentality or department of the State or by any branch of State Government. The structure may include facilities for the use of ~~court-related~~ related agencies of state, county or local government ~~such as, but not limited to, public prosecutors' offices and probation and parole offices.~~ "Project, projects or part of any project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, parking lots, parking facilities, rights-of-way, utilities, easements and other interests in land, machinery and equipment and all fixtures, appurtenances and facilities either on, above or under the ground which that are used or usable in connection with the structure, and also includes landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended. "Project, projects or part of any project" also includes the acquisition, construction, improvement, reconstruction or repair of any equipment, device, technology, software or other personal property intended to be used primarily by the State, any agency, instrumentality or department of the State or by any branch of State Government or any related agency of state, county or local government. The exact scope of each project, projects or part of any project, other than those for the Judicial Branch, must

be set forth in a written designation by the Commissioner of Administrative and Financial Services to the authority and the exact scope of each project, projects or part of any project for the Judicial Branch must be set forth in a written designation by the State Court Administrator to the authority. "Project, projects or part of any project" does not include such items as fuel, supplies or other items ~~which that~~ are customarily considered as a current operating charge.

Sec. 7. 4 MRSA §1604, first ¶, as enacted by PL 1987, c. 438, §1, is amended to read:

In order to carry out the purposes of this Act, the Maine ~~Court~~ Governmental Facilities Authority ~~shall have~~ has the following powers with respect to project, projects or part of any project together with all powers incidental to those powers or necessary for the performance of the following:

Sec. 8. 4 MRSA §1604, sub-§§1, 2, 4 to 6 and 8, as enacted by PL 1987, c. 438, §1, are amended to read:

1. Perpetual succession. To have perpetual succession as a body politic and corporate and an instrumentality ~~or agency~~ of the State;

2. Power to sue and be sued. To sue ~~and be sued, and complain and defend, in its own name, and to plead and be impleaded or initiate or appear in any proceeding~~ and the authority may be sued on its written contracts or in accordance with Title 1, section 409, Title 5, chapter 375 or Title 14, chapter 741;

4. Bylaws; rules. ~~To make and enforce bylaws or rules for the conduct of its affairs and business and for use of its services and facilities~~ To adopt bylaws and, pursuant to Title 5, chapter 375, adopt any rule necessary or useful for carrying out any of its powers or duties pursuant to this Act. Rules adopted by the authority are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A;

5. Acquire real or personal property. To acquire real or personal property, or any interest in real or personal property, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise, to improve, hold, sell with or without public bidding, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, or any interest in real or personal property, or mortgage interests owned or in its control, custody or possession and release or relinquish any right, title claim, lien, interest, easement or demand, however acquired, including threat of foreclosure;

6. Prepare and plan projects and facilities. To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construc-

tion and equipment ~~of~~ for the project, projects or part of any project and attendant facilities and from time to time to modify, or cause to be modified, those plans, specifications, designs or estimates;

8. Maintain, reconstruct and operate. To maintain, reconstruct and operate, or cause to be maintained, reconstructed and operated, the project, projects or part of any project until the cost of the project, projects or part of any project ~~and whether or not~~ the outstanding securities issued with respect to the project, projects or any part of the project are no longer considered outstanding;

Sec. 9. 4 MRSA §1604, sub-§§17 and 18, as enacted by PL 1987, c. 438, §1, are amended to read:

17. Manage or operate real and personal property. To manage or operate, or cause to be managed or operated, real and personal property, take assignments of leases and rentals or take any other action necessary or incidental to the performance of its duties under this Act;

18. Lease or rent any land, buildings, structures, facilities or equipment. To lease or rent any land, buildings, structures, facilities or equipment comprising all or a portion of a project, projects or part of any project for such amounts as the authority ~~shall determine~~ determines to the State or any agency, instrumentality or department of the State or by any branch of State Government or any related agency of state, county or local government, to further the purposes of the Act, provided that the obligation of the State or of any such agency, instrumentality ~~or~~ department or branch to make any rental or other payments ~~shall be~~ is considered executory only to the extent of money made available by the Legislature, and that no liability on account of the state agency, instrumentality ~~or~~ department or branch may be incurred by the State or any such agency, instrumentality ~~or~~ department or branch beyond the money available for that purpose;

Sec. 10. 4 MRSA §1604, sub-§24, as amended by PL 1989, c. 221, §1, is further amended to read:

24. Contract with Maine Municipal Bond Bank. In carrying out its powers under this section, the authority shall, whenever possible, contract with the Maine Municipal Bond Bank for necessary clerical and administrative services, including use of the Executive Director of the Maine Municipal Bond Bank as the executive director, secretary and treasurer of the authority; ~~and~~

Sec. 11. 4 MRSA §1604, sub-§25, as enacted by PL 1989, c. 211, §2, is amended to read:

25. Accept federal funds; gifts and contributions. To accept federal funds, gifts and contributions, which include, but are not limited to, money; annuities and investments; furnishings, including paintings, artifacts and similar items; or anything of value for the purposes set forth in section 1619-; and

Sec. 12. 4 MRSA §1604, sub-§26 is enacted to read:

26. Delegation to Bureau of General Services. To delegate those powers that the authority may specifically exercise, or cause to be exercised, pursuant to subsection 5, 6, 8, 9, 17 or 18 to the Department of Administrative and Financial Services, Bureau of General Services. The authority may revoke such a delegation upon the failure of the Bureau of General Services to discharge the delegated powers. The Bureau of General Services may provide to the authority an indemnity and hold-harmless agreement with respect to a delegation.

Sec. 13. 4 MRSA §1605, as enacted by PL 1987, c. 438, §1, is amended to read:

§1605. Leasing or renting property of the authority

For the purposes of this chapter, the authority may lease, rent, assign or otherwise dispose of ~~court facilities~~ a project, projects or part of any project only to the judicial State, any agency, instrumentality or department of the State or branch of State Government to be used for court facilities or any related agency of state, county or local government and the revenues derived by the authority from any lease or ~~rent~~ rental agreement shall must be used, as necessary, to pay the principal ~~and~~ interest and other associated costs on or with respect to any bonds securities issued pursuant to this chapter.

Sec. 14. 4 MRSA §1606, sub-§1, as reenacted by PL 1987, c. 872, §1, is amended to read:

1. Resolution for issuance of securities. ~~The Maine Court Facilities Authority~~ authority may provide by resolution, at one time or from time to time, for the issuance and sale by it of securities, in its own name, for the purpose of paying the cost of any project, projects or part of any project, or the refinancing of existing indebtedness, approved by the authority. ~~No securities~~ Securities of the authority may ~~not~~ be authorized and issued except pursuant to a resolution adopted by the vote of not less than a majority of the members of the authority. The resolution ~~shall~~ must describe the general purpose or purposes for which the securities are to be issued and state the maximum principal amount of the securities proposed to be issued. ~~No securities~~ Securities may ~~not~~ be issued by the authority without ~~the prior approval~~ a 2/3 vote of approval in each House of the Legislature.

Sec. 15. 4 MRSA §1606, sub-§2, as amended by PL 1991, c. 868, is further amended to read:

2. Limitation on securities issued. The authority may not issue securities in excess of ~~\$25,000,000~~ \$60,000,000 outstanding at any one time, of which no less than \$30,000,000 must be specifically allocated to projects relating to the Judicial Branch, except for the issuance of revenue refunding securities authorized by section 1610. The amount of securities that may be outstanding in the name of the authority may be increased by the Legislature upon a showing by the authority that its available revenues are sufficient to support additional issuance of ~~bonds~~ securities and that the issuance of ~~bonds~~ securities will not materially impair the credit standing of the authority, the investment status of ~~bonds~~ securities issued by the authority or the ability of the authority to fulfill its commitments to ~~bondholders~~ holders of securities. Nothing in this chapter may be construed to authorize the authority to issue securities to fund the construction, reconstruction, purchase or acquisition of facilities ~~for the use of the Supreme Judicial Court~~ without ~~approval~~ a 2/3 vote of approval in each House of the Legislature.

Sec. 16. 4 MRSA §1606, sub-§§7 and 9, as enacted by PL 1987, c. 438, §1, are amended to read:

7. Use of proceeds. The proceeds of the securities of each issue ~~shall~~ must be used for the payment of all or part of the cost of the project, projects or part of any project for which authorized and ~~shall~~ must be disbursed in such manner and under such restrictions as are provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the securities. ~~Bond proceeds~~ Proceeds may be used to pay all costs incurred in issuing the ~~bonds~~ securities, interest on the ~~bonds~~ securities for such time as may be authorized by the authority, subject to the provisions of this Act and to establish reserve funds and sinking funds for the ~~bonds~~ securities.

9. Securing of principal and interest. The principal of and interest on any securities issued by the authority ~~shall~~ , together with any related costs and expenses, must be secured by a pledge of the revenues and receipts derived by the authority from the project, projects or part of any project financed and from such other revenues of the authority as may be specially pledged by the authority and may be secured by a mortgage covering all or any part of the project, projects or part of any project, including any enlargements of and additions to the project, projects or part of any project made. The resolution under which the ~~bonds~~ securities may be issued and any mortgage may contain any agreements and provisions respecting the maintenance of the project, projects or part of any project covered, the fixing and collection of rents, fees

or other charges, the creation and maintenance of special funds from the revenues and any reserve funds and the rights and remedies available in the event of default, all as the authority ~~shall consider~~ considers advisable and not in conflict with the provision provisions of this Act. Each pledge, agreement and mortgage made for the benefit or security of any of the holders of securities ~~shall continue~~ continues in effect until the principal of and interest and any related costs and expenses on the securities for the benefit for which the securities were made have been fully paid.

Sec. 17. 4 MRSA §1607, sub-§1, as enacted by PL 1987, c. 438, §1, is amended to read:

1. Pledge of full faith and credit of authority. Pledging the full faith and credit of the authority or of all or any specified revenues or assets of the authority to secure the payment of the securities or of any issue of securities, subject to such agreements with holders of securities as may then exist;

Sec. 18. 4 MRSA §1610, as enacted by PL 1987, c. 438, §1, is amended to read:

§1610. Revenue refunding securities

The authority may provide by resolution for the issuance of revenue refunding securities of the authority for the purpose of refunding any obligations of the authority or for the purpose of the refinancing of existing indebtedness, then outstanding, ~~which have~~ that has been issued or incurred under this Act or otherwise, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of those obligations and, if considered advisable by the authority, for the additional purpose of construction or enabling the construction of improvements, extensions, enlargements or additions of the project, projects or part of any project in connection with which the obligations to be refunded were issued. The authority may provide by resolution for the issuance of securities of the authority for the combined purpose of refunding any obligations or revenue refunding securities then outstanding or for the purpose of the refinancing of existing indebtedness, ~~which shall have~~ that has been issued or incurred under this Act, or otherwise, including the payment of any redemption premium on that indebtedness and any interest accrued or to accrue to the date of redemption of the obligations and paying all or any part of the cost of selling the securities or acquiring or constructing or enabling the acquisition or construction of any additional project, projects or part of any project, or any improvements, extensions, enlargements or additions of any project, projects or part of any project. The issuance of the securities, the maturities and other details of the securities, the rights and remedies of the holders of the securities and the rights, powers, privileges, duties and

obligations of the authority with respect to the securities, ~~shall be~~ are governed by this Act.

Sec. 19. 4 MRSA §§1612, 1615, 1616 and 1618, as enacted by PL 1987, c. 438, §1, are amended to read:

§1612. Governmental functions

The carrying out by the ~~Maine Court Facilities Authority~~ authority of the powers and duties conferred upon it by this Act ~~shall be~~ is considered to be the performance of an essential function. Nothing contained in this Act may in any way limit or restrict the powers and duties of the authority granted to it.

§1615. Conflicts

~~No A member of the Maine Court Facilities Authority~~ authority may not participate in any decision on any contract entered into by the authority under this Act if ~~he that member~~ that member has any interest, direct or indirect, in any firm, partnership, corporation or association ~~which that~~ that may be party to the contract. The interest ~~shall must~~ must be disclosed to the authority in writing and ~~shall must~~ must be set forth in the minutes of the authority.

§1616. Actions against authority

~~No A member of the Maine Court Facilities Authority~~ authority, while acting within the scope of the authority of this Act, may not be subject to any personal liability resulting from the exercise or carrying out of any of the authority's purposes or powers.

§1618. Credit of State not pledged

Securities issued under this Act ~~shall do~~ do not constitute or create any debt or debts, liability or liabilities on behalf of the State or of any political subdivision of the State other than the ~~Maine Court Facilities Authority~~ authority or a loan of the credit of the State or a pledge of the faith and credit of the State or of any political subdivision other than the authority, but ~~shall be~~ are payable solely from the funds provided for that payment. All such securities ~~shall must~~ must contain on their face a statement to the effect that neither the State nor any political subdivision of the State ~~be is~~ is obligated to pay the securities or the interest on the securities, except from revenues of the authority or the project, projects or part of any project for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged to the payment of the principal of or the interest on the securities. The issuance of securities under this Act ~~shall does~~ does not directly, indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever or to make any

appropriation for their payment. Nothing contained in this section may prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of securities authorized pursuant to this Act.

Sec. 20. 4 MRSA §1619, first ¶, as enacted by PL 1989, c. 221, §3, is amended to read:

The authority may accept gifts and contributions as provided in section 1604, subsection 25, for the purpose of designing, constructing, reconstructing, renovating or acquiring ~~court facilities a project, projects or part or any project~~ a project, projects or part of any project, including facilities for the Supreme Judicial Court, in accordance with section 1606, subsection 2. The authority may accept gifts for the purpose of furnishing ~~court facilities a project, projects or part of any project~~ a project, projects or part of any project, including the facilities of the Supreme Judicial Court. Furnishings include, but are not limited to, paintings, artifacts, furniture and similar articles.

Sec. 21. 4 MRSA §1620 is enacted to read:

§1620. Continuing disclosure

With respect to any securities of the authority, the Treasurer of State may enter into any agreement for the benefit of holders of securities of the authority to provide annual financial information with respect to the State in order to assist underwriters of the securities of the authority in complying with any applicable regulation promulgated by the United States Securities and Exchange Commission with respect to annual financial information.

Sec. 22. Succession of the authority. The Maine Governmental Facilities Authority is the successor to the Maine Court Facilities Authority and as such assumes all rights, liabilities, indebtedness and duties entered into by the Maine Court Facilities Authority, upon the effective date of this Act. All properties, rights in land, buildings and equipment and any funds, money, revenues and receipts or assets of the Maine Court Facilities Authority or due to the Maine Court Facilities Authority belong to the Maine Governmental Facilities Authority as successor. Upon succession, the Maine Court Facilities Authority ceases to exist.

Sec. 23. Report. The Commissioner of Administrative and Financial Services shall submit a plan to the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on State and Local Government by January 15, 1998 that describes a method by which the debt service payments together with any related costs and expenses of the Maine Governmental Facilities Authority will be financed.

See title page for effective date.