

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

and as habitat for fish and other aquatic life. The habitat ~~shall~~ must be characterized as natural.

Sec. 6. 38 MRSA §465-B, sub-§1, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Class SA waters ~~shall~~ must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish ~~and~~, navigation and as habitat for fish and other estuarine and marine life. The habitat ~~shall~~ must be characterized as free-flowing and natural.

Sec. 7. 38 MRSA §465-B, sub-§2, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Class SB waters ~~shall~~ must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, ~~hydroelectric~~ hydroelectric power generation ~~and~~, navigation and as habitat for fish and other estuarine and marine life. The habitat ~~shall~~ must be characterized as unimpaired.

Sec. 8. 38 MRSA §465-B, sub-§3, ¶A, as enacted by PL 1985, c. 698, §15, is amended to read:

A. Class SC waters ~~shall~~ must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation ~~and~~, navigation and as a habitat for fish and other estuarine and marine life.

Sec. 9. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 38, section 465, subsection 1, paragraph A; subsection 2, paragraph A; subsection 3, paragraph A; and subsection 4, paragraph A and section 465-A, subsection 1, paragraph A take effect when the water use standards for maintaining in-stream flows are finally adopted as provided in Title 38, section 470-E.

See title page for effective date, unless otherwise indicated.

CHAPTER 228

S.P. 405 - L.D. 1199

An Act To Establish the Lincoln and Sagadahoc Multicounty Jail Authority

Mandate preamble. This measure requires one or more local units of government to expand or

modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

Whereas, Lincoln County and Sagadahoc County have been exploring the concept of a common jail for many months; and

Whereas, Lincoln County and Sagadahoc County may soon need to begin making binding commitments regarding a common jail; 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. 30-A MRSA c. 17 is enacted to read:

CHAPTER 17

LINCOLN AND SAGADAHOC MULTICOUNTY JAIL AUTHORITY

SUBCHAPTER 1

GENERAL PROVISIONS

§1801. Short title

This chapter may be known and cited as "the Lincoln and Sagadahoc Multicounty Jail Authority Act."

§1802. Definitions

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

1. Authority. "Authority" or "jail authority" means the authority formed under this chapter and Title 13, chapter 81.

2. Commissioner. "Commissioner" or "county commissioner" means a person elected or appointed to the Lincoln County or Sagadahoc County board of commissioners.

3. Consent of county. "Consent of county" means a vote taken pursuant to section 122.

4. Director. "Director" and "board of directors" means the directors of the jail authority.

5. Jail facility. "Jail facility" or "jail" means any land area, structure, location or equipment, or combination of them, used for the confinement of prisoners.

6. Municipality. "Municipality" means a city or town.

7. Municipal officers. "Municipal officers" means the municipal officers or councillors of a town or the mayor and municipal officers or councillors of a city.

8. Operating and governance agreement. "Operating and governance agreement" means the documents that set the terms of the jail authority operations and structure for governance.

9. Revenues. "Revenues" means the proceeds of bonds, all revenues, rates, tolls, assessments, rents, transportation charges, reimbursement from the State excluding community corrections money, boarding fees and inmate-related medical reimbursements, and other charges and receipts derived by the jail authority from the operation of a multicounty jail, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties, and must include proceeds from assessments when the power of assessment has been granted to the jail authority under sections 1952 and 1953.

§1803. Relationship to other laws

This chapter provides an alternative method for carrying out the purposes of this chapter and is supplemental to powers conferred by other laws, and is not in derogation of any existing powers.

§1804. Exemption from taxation

1. Exemption. The property, both real and personal, rights and franchises of the jail authority formed under this chapter are exempt from taxation.

2. Payments in lieu of taxes. The jail authority may elect to make payments in lieu of taxes to communities in which its property is located or utilized.

§1805. Governmental function

The Lincoln and Sagadahoc Multicounty Jail shall administer and exercise the authority granted to it under this chapter. The carrying out of its powers and duties is considered the performance of an essential governmental function.

SUBCHAPTER 2

ORGANIZATION

§1851. Formation

The formation of the multicounty jail authority must be in accordance with this subchapter.

1. Commissioners; meeting. The commissioners shall meet to consider all available information regarding the jail authority. Notwithstanding section 122, the commissioners shall consider a site or sites for the multicounty jail. The site or sites are not required to be in the county seat of either county. If the commissioners vote to proceed with the formation of the jail authority, which vote requires a majority vote of the commissioners of each county, they shall hold public hearings pursuant to the provisions of subsection 2.

2. Public hearing. A public hearing must be held in Lincoln County and Sagadahoc County. The notice of public hearing must contain the name of the proposed authority; the territory of the proposed authority, which must be within the borders of Lincoln County and Sagadahoc County; the locations identified as potential sites for the multicounty jail; and any other information the commissioners determine relevant. The public hearing must be held at a convenient place within the counties. Notice of the public hearing must be given to the municipal officers of each municipality within Lincoln County and Sagadahoc County and must be published at least once in a newspaper of general circulation in each county 14 days prior to the date of the public hearing.

3. Organizational meeting. If after the public hearings the commissioners desire to form a jail authority, they shall call an organizational meeting. Notice of the meeting must be published and the meeting held in the same manner as provided in subsection 2. A majority of the commissioners from each county shall attend the organizational meeting, and the vote to form a multicounty jail authority requires a majority vote of the commissioners of each county. At the organizational meeting, the commissioners shall discuss the terms of an operating and governance agreement among the participating counties. The operating and governance agreement determines:

A. The number and qualifications of the directors;

B. The terms of the directors, including provisions for initial terms and ongoing terms; and

C. Provisions similar to paragraphs A and B regarding an advisory committee.

The commissioners shall also agree upon contracts between the authority and the counties regarding cost-sharing and the placement of prisoners.

§1852. Transfer of property and assets

The directors shall determine what property or properties, if any, owned by Lincoln County and Sagadahoc County may be necessary to perform the functions of the jail authority and may request in writing that the commissioners convey title to the property to the jail authority, and the commissioners may make the conveyance. The jail authority shall pay fair compensation for the property or properties. Any request by the directors must be in writing within 2 years of the date of the certificate of organization. The authority shall provide a right of first refusal to the county in which the property is located should the property no longer be needed by the authority.

§1853. Directors

1. Authorization. All of the affairs of the jail authority are managed by a board of directors that consists of not less than 12 directors. The initial board consists of 6 public members, one from each of the commissioners' districts; 4 county commissioners, 2 from each county and 2 sheriffs, one from each county. The exact number of directors must be determined by the operating and governance agreement. Each director is entitled to one vote. The jail authority may alter the number of its directors by amending the operating and governance agreement. A quorum of the directors may conduct the affairs of the jail authority even if there is a vacancy on the board of directors. A quorum is a simple majority of eligible and appointed directors, as long as each county is represented. A simple majority of directors voting, either in person or by written consent, may conduct the affairs of the jail authority.

2. Term. The duration of terms is determined by the operating and governance agreement. Directors shall serve until their successors are appointed and qualified. Any director may be appointed to successive terms without limit.

3. Vacancy. Any vacancy on the board of directors must be filled within 30 days after the vacancy occurs by appointment of the commissioners of the county that the director is to represent. An appointee to a vacancy serves until the expiration of the term of the director for whose position the appointment was made, and may be reappointed.

§1854. Appointment of director; organizational meeting

1. Appointment of directors. Directors are appointed by the commissioners of the county they represent, except that any host county director must be

appointed by all the commissioners of the counties in the jail authority. Alternate directors may be appointed by the commissioners to act in the absence of a director. The operating and governance agreement defines the specific process for appointing directors. To the extent possible, the board of directors shall include a mix of individuals with sufficient managerial, technical, financial or corrections experience to execute their duties efficiently and effectively. Appointments must be by vote of the commissioners, attested to by the county clerk, and presented to the clerk of the jail authority, once selected. The commissioners, by majority vote, may remove their appointed directors during their term for cause after notice and hearing.

2. First meeting. Upon receipt of the names of all the directors, the commissioners shall set a time, place and date for the first meeting of the directors. Notice of the meeting must be given to the directors by certified or registered mail, return receipt requested, and mailed at least 10 days prior to the date set for the meeting.

3. Elect officers. The directors shall elect from their own members a chair, vice-chair, treasurer and clerk. They shall choose, employ and fix the stipend of any other necessary officers and agents who serve at the directors' pleasure. They shall adopt a corporate seal. Prior to the election of the officers, each director shall be sworn to the faithful performance of the director's duties by the respective county clerk.

4. Bylaws. The directors may from time to time adopt, establish and amend bylaws consistent with this subchapter and the laws of the State that are necessary or reasonable for the proper management of the affairs of the jail authority and perform any other acts within the powers delegated to them by law.

5. Annual meeting. After the meeting of the board of directors, the directors shall meet annually at a time determined by their bylaws for the purpose of electing a chair, vice-chair, treasurer and clerk to serve until the next annual election and until their successors are appointed and qualified. To the extent possible, the treasurer shall be chosen based on financial skills. The treasurer shall furnish bond in such sum and with such sureties as the directors shall approve, but not less than 50% of the anticipated annual revenues of the jail authority, the cost to be paid by the authority, unless the treasurer has no official role in the receipt and disbursement of money. The directors shall make and publish an annual report, including a report of the treasurer.

6. Employed by jail authority. A member of the board of directors of the jail authority may not be employed for compensation as an employee or in any other capacity by the jail authority.

7. Committee. The board of directors may establish an advisory committee pursuant to the operating and governance agreement under section 1851, subsection 3 and grant authority as it determines necessary. The board of directors may establish any and all committees as it determines necessary.

§1855. Assumption of responsibilities

Any jail that is constructed pursuant to this chapter becomes the responsibility of the jail authority when its board of directors declares the multicounty jail operational.

§1856. Agreement to provide limited services

Before the board of directors declares a multicounty jail operational, the jail authority may contract with either Lincoln County or Sagadahoc County to provide for services related to the counties' obligations under chapter 13.

§1857. Withdrawal of counties

Lincoln County or Sagadahoc County may withdraw from the jail authority at any time prior to the commitment by the jail authority, or either county on behalf of the jail authority, to issue any instrument of indebtedness, including, but not limited to, bonds and notes. The date upon which the jail authority or either county is committed to issue the debt is established by a majority vote of the board of directors at least 90 days in advance of that date. At the time of withdrawal, the withdrawing county remains liable for its proportionate share of jail authority debts and withdrawal expenses incurred prior to the date of withdrawal and shall make provisions satisfactory to the board of directors and the commissioners to pay its share of the debt outstanding at the time of withdrawal.

If a county withdraws from the jail authority or if the jail authority is dissolved, all of the responsibilities granted to the jail administrator are assumed by the sheriffs of the respective counties.

After issuance of instruments of indebtedness with a maturity of one year or more, neither Lincoln County nor Sagadahoc County may withdraw from the jail authority while the indebtedness remains outstanding without the approval of 2/3 of the board of directors and a majority vote of the commissioners from each county. A withdrawing county shall make provisions satisfactory to 2/3 of the board of directors and a majority of the commissioners from each county to pay its share of debt outstanding at the time of withdrawal. Those provisions must include the pledge of the full faith and credit of the withdrawing county after consent of each county, if full faith and credit has not already been pledged under section 1954 or 1955.

Withdrawal must be permissible in existing debt instruments.

In considering the request of a county to withdraw, the board of directors and the commissioners shall consider the effect of the proposed withdrawal on the ability of the jail authority to continue operating the multicounty jail in a manner and at a cost to the remaining county that is reasonable.

If the withdrawal causes the costs of the other county to increase as a condition of withdrawal the withdrawing county may be required by the board of directors and the commissioners either to secure an alternate and equivalent source of prisoners for the reasonable life of the jail facility or to execute an agreement to make payments to the jail authority following withdrawal that maintains the costs of the other county to remain constant when adjusted annually for the effect of all other factors on the costs until an alternate and equivalent source of prisoners is secured or results from the nonwithdrawing county's population.

Subject to any required approval by the board of directors and the commissioners of each county, withdrawal by a county may be accomplished by a vote of the commissioners.

§1858. Dissolution

1. Method. In the event both counties vote to withdraw pursuant to section 1857, the board of directors shall vote to dissolve the jail authority. The board of directors may, at any time by 2/3 vote, recommend to the counties that the jail authority be dissolved. If such a recommendation is made, the commissioners in each county shall vote on the question of dissolving the jail authority. If the commissioners in each of the counties vote to dissolve the jail authority, the jail authority must be dissolved by the board of directors at a time fixed by the board of directors.

2. Assets and liabilities. Upon dissolution, the directors shall conclude the affairs of the jail authority and shall liquidate the jail authority's assets and liabilities by:

A. Paying all expenses and paying or securing the payment of all debts of the jail authority in a manner permissible by the debt instruments; and

B. Distributing all assets and all liabilities in a manner permissible by the debt instruments proportionately between the counties in accordance with any formula contained in section 1954 for guarantees and assessments.

3. Filing of articles of dissolution. A copy of the articles of dissolution must be filed with the Secretary of State by the board of directors.

SUBCHAPTER 3

POWERS

§1901. Powers

The power and authority of the jail authority formed under this chapter and the administration and the general supervision of all affairs of the authority are vested in the directors. The jail authority has the power, within the counties, to provide for the planning, construction, equipping, operation and maintenance of a common facility for corrections; to generate revenues from those activities and incur expenses from those activities, including reimbursement to Lincoln County and Sagadahoc County for organizational costs, and make contracts with persons, firms, corporations, partnerships, limited partnerships and other entities, whether private, public or municipal, as may be necessary or proper; and, in general, to do any or all other things necessary or incidental for the exercise of its powers or to the accomplishment of the purposes of the jail authority.

When the board of directors declares the jail facility operational any powers and duties necessary to the operation of the Lincoln and Sagadahoc Multicounty Jail facility under this chapter are assumed by the administrator of the multicounty jail facility.

The power to make contracts includes, but is not limited to:

1. Experts. Contracting with architects, engineers, financial and legal consultants and other experts for services;

2. Operation. Contracting with persons, firms, corporations, limited partnerships, partnerships, associations, authorities and agencies for the operation of the multicounty jail and for services relating to the operation of the multicounty jail;

3. Corrections. Contracting for corrections with Lincoln County, Sagadahoc County and other governmental agencies, including other counties;

4. Government. Contracting with State Government, the Federal Government or any subdivision or agency of the State or the United States for services;

5. County employee services. Contracting with Lincoln County or Sagadahoc County for the services of any officers or employees of either county;

6. Counties. Contracting with Lincoln County and Sagadahoc County to reimburse organizational costs;

7. Real and personal property. Purchasing, selling, leasing, acquiring, conveying, mortgaging, improving and using real and personal property in connection with the purposes of the jail authority;

8. Staff; employment. Employing and establishing salaries and qualifications for such professional, clerical and administrative staff personnel as may be necessary or convenient to the operation of the jail authority; and

9. Use of bidding processes. Making contracts, issuing bonds, notes or other debt instruments under subchapter 4 and dealing generally with 3rd parties, including the power to use a negotiated or competitive bidding process or any other process that may be advantageous to the jail authority. The determination of the process to be used is made by and at the discretion of the directors.

§1902. Real and personal property; right of eminent domain

The jail authority formed under this chapter may acquire and hold real and personal property that the jail authority considers necessary for its purposes and is granted the right of eminent domain. The jail authority may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public uses any land, real estate, easements or interest in land, real estate or easements necessary for construction and operating the multicounty jail.

§1903. Procedure in exercise of right of eminent domain

The right of eminent domain granted in section 1902 may only be exercised after complying with the following procedures.

1. Notice to owner. The jail authority shall provide notice to the owner of property subject to seizure as follows.

A. The owner or owners of record shall be:

(1) Notified that the directors are exercising the right of eminent domain;

(2) Provided with a description and scale map of the land or easement to be taken;

(3) Presented with the final amount offered for the land or easement to be taken, based on the fair market value as estimated by the jail authority; and

(4) Notified of the time and place of the hearing under subsection 4.

B. Notice may be made:

(1) By personal service in hand by an officer duly qualified to serve civil process in this State; or

(2) By certified mail, return receipt requested, to the last known address of the owner or owners.

C. If the owner or owners are not known or if the owner or owners can not be notified by personal service or certified mail, notice may be given by publication in the same manner under subsection 4.

2. Notice to tenant. Notice under subsection 1 must be given to any tenants in the same manner as for the owner of the property.

3. Notice to the affected municipality. Notice under subsection 1 must be given to the municipality in which the property to be acquired is located in the same manner as for the owner of the property and must be addressed to the municipal officers.

4. Hearing. The directors shall hold a public hearing on the advisability of the proposed exercise of the right of eminent domain. Notice of the hearing must be made by publication in a newspaper of general circulation in the area of the taking and must be given once a week for 2 successive weeks, the last publication to be at least 2 weeks prior to the time appointed in the hearing. The hearing notice must include:

A. The time and place of the hearing;

B. A description of the land or easement proposed to be taken; and

C. The name of the owners, if known.

§1904. Condemnation proceedings

The jail authority formed under this chapter, in exercising the right of eminent domain conferred upon it by section 1902 shall file in the office of the commissioners of the county in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest in lands, real estate or easements, with an appropriate description and the names of the owners, if known. When for any reason the jail authority fails to acquire property that the jail authority is authorized to take and that is described in that location, or if the description of the location so recorded is defective and uncertain, the authority may, at any time, correct and perfect the

description of the location and file a new description. In that case, the jail authority is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the jail authority is not liable for any acts that would have been justified if the original taking had been lawful. Entry may not be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, at which time possession may be had of all the lands, real estate, easements or interests in lands, real estate or easements and other property and rights to be taken, but title may not vest in the jail authority until payment for the property.

§1905. Appeal

If a person sustaining damages by the taking by the jail authority under section 1903 does not agree with the jail authority upon the sum to be paid, either party, upon petition to the superior court of the county in which the property is located, may have the damages assessed by the superior court. The procedure and all subsequent proceedings and right of appeal must be under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways by the commissioners, except that title to the lands, real estate, easements or interests in lands, real estate or easements and other property and rights to be taken may not vest in the jail authority until payment to the owner of the amount awarded for the taking or, if the payment is refused upon tender, until tender is made to the owner. The amount awarded must be escrowed at interest for the benefit of the owner, pending final determination of the amount to which the owner is entitled.

§1906. Procedures

The directors may adopt procedures to regulate the corrections activities within the jail authority consistent with the provisions of the operating and governance agreement.

§1907. Setting fees and other charges

The directors may establish and adjust a structure for fees, including penalty charges, for correction services on behalf of or under contract with, the jail authority.

§1908. Annual audit

Each year an audit must be made of the accounts of the jail authority, and for this purpose authorized agents of a certified public accounting firm appointed by the directors have access to all necessary papers, books and records. Upon the completion of each audit, a report must be made to the chair of the jail authority board of directors and a copy must be sent to the

commissioners of each county. The audit must be completed within 60 days of the end of the authority's fiscal year.

§1909. Surplus revenues

If, at the end of any fiscal year, the jail authority has realized a surplus from operations for the fiscal year after payment of or provision for all current expenses, current maintenance, repairs and replacements, current debt service on all outstanding bonds and notes of the jail authority, all reserves for debt service, repairs and replacements, costs or current expenses as may be required by a trust agreement or resolution securing bonds or notes or as may otherwise be maintained by the jail authority, and any other amounts that the jail authority may be obligated by law or contract to pay or provide for, the jail authority may:

1. Reduction in charges. Apply the surplus in the following fiscal year to a reduction in the rates, fees, rents or other charges established by the jail authority for services provided;

2. Reduction of capital debt. Apply the surplus to the reduction of its outstanding capital debt, or to a reserve account for that purpose if the financing documents do not allow debt reduction; or

3. Refunds. Make a proportional refund to the counties.

SUBCHAPTER 4

BONDS AND NOTES

§1951. Jail authority bonds and notes

1. Authorization of bonds. Subject to the limitations in this subchapter, the jail authority may provide by resolution of its board of directors and commissioners and with consent of the counties for the borrowing of money and the issuance from time to time of bonds and notes for any of its corporate purposes, including, but not limited to:

A. Paying and refunding its indebtedness;

B. Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the jail authority or any county in the jail authority. The jail authority may reimburse either county in the jail authority for any such expenses incurred or paid by that county;

C. Paying costs directly or indirectly associated with acquiring properties, paying damages, constructing, maintaining and operating correctional

facilities; and making renewals, additions, extensions and improvements to the property or facilities; and covering interest payments during the period of construction and for such period as the directors and commissioners may determine;

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds or notes;

E. Financing all or part of a correctional facility for a user. The term "user," as used in this section, means one or more persons or entities, other than a jail authority, acting as lessee, purchaser, mortgagor, borrower or contracting party; and

F. Any combination of these purposes.

Bonds may be issued by the jail authority under this chapter as general obligations of the jail authority or as special obligations payable solely from particular funds. The principal, premium and interest on all bonds must be payable solely from the funds provided for that purpose from revenues. All bonds issued by the jail authority under this chapter are legal obligations of the jail authority and the jail authority is declared to be a quasi-municipal corporation within the meaning of section 5701. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State. Bonds issued by the authority under this section are a municipal security as defined by section 5903 and are eligible for purchase by the Maine Municipal Bond Bank. Except as provided in this subchapter, bonds issued under this chapter by the jail authority do not constitute a debt or liability of the State or of either county in the jail authority or a pledge of the faith and credit of the State or either county, and a statement to that effect must be recited on the face of the bonds.

2. Notes. The jail authority may also provide by resolution of its board of directors for the issuance from time to time of:

A. Notes in anticipation of bonds authorized under this chapter;

B. Notes in anticipation of the revenues to be collected or received in any year; or

C. Notes in anticipation of the receipt of federal or state grants or other aid. The issuance of these notes is governed by the applicable provisions of this chapter relating to the issuance of bonds, as long as notes in anticipation of revenue mature no later than one year from those notes' respective dates of issuance. Notes issued in anticipation of federal or state grants or other aid and renewals of grants or aid must mature no later than the expected date, as determined by the

board of directors, of receipt of those grants or aid. The board of directors may adjust the maturity date of notes issued in anticipation of federal or state grants or other aid to reflect changes in the expected date of receipt. Notes in anticipation of revenue issued to mature less than one year from dates of issuance of the notes may be renewed from time to time by the issuance of other notes, except that the period from the date of an original note to the maturity of any note issued to renew or pay the original note or the interest on the original note may not exceed one year.

The jail authority may enter into agreements with the State Government or Federal Government, or any agency of either, or any county, corporation, commission or board authorized to grant or loan money or to otherwise assist in the financing of projects of the type that the jail authority is authorized to carry out. The jail authority may also accept grants and borrow money from the State Government or the Federal Government or any agency of either, or any county, corporation, commission or board authorized to grant or loan money as may be necessary or desirable to accomplish the purposes of the jail authority.

3. Maturity; interest; form; temporary bonds.

The bonds issued under this chapter must be dated, must mature at such time or times not exceeding 40 years from their date or dates of issuance and must bear interest at such rate or rates as may be determined by the board of directors or determined pursuant to a formula approved by the board of directors or by a 3rd party rate-setting agent selected by the board of directors. The bonds may be made redeemable before maturity, at the option of the jail authority, at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the bonds. The board of directors shall determine the form of the bonds including any interest coupons to be attached, and the manner of execution of the bonds, and 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 financial institution having trust powers inside or outside the State. Bonds must be executed in the name of the jail authority by the manual or facsimile signature of such officer or officers as may be authorized in the resolution to execute the bonds, but at least one signature on each bond must be a manual signature. Coupons, if any, attached to the bonds must be executed with the facsimile signature of the officer or officers of the jail authority designated in the resolution. If an officer whose signature or facsimile signature appears on any bonds or coupons ceases to hold that office before the delivery of the bonds, the signature or its facsimile is valid and sufficient for all purposes, as if the officer had remained in office until the delivery.

Notwithstanding any other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds are deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the board of directors may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board of directors may sell the bonds in the manner, either at public or private sale, and for such price as they may determine to be for the best interests of the jail authority. The proceeds of the bonds of each issue must be used solely for the purpose for which those bonds have been authorized and must be disbursed in such manner and under such restrictions as the board of directors may provide.

The resolution providing for the issuance of bonds, and any trust agreement securing the bonds, may contain such limitations upon the issuance of additional bonds as the board of directors may determine proper, and these additional bonds must be issued under such restrictions and limitations as may be prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the board of directors may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery. The board of directors may provide for the replacement of any bond that is mutilated, destroyed or lost.

4. Pledges; covenants; trust agreement. In the discretion of the board of directors, each or any issue of bonds may be secured by a trust agreement by and between the jail authority and a corporate trustee, which may be any financial institution having trust powers inside or outside the State.

The resolution of the directors authorizing the issuance of the bonds or the trust agreement may pledge or assign, in whole or in part, the revenues and other money held or to be received by the jail authority and any accounts and contracts or other rights to receive the revenues or money, whether existing or coming into existence and whether held or acquired by the jail authority and the proceeds of the bonds, and may convey or mortgage the multicounty jail or any other properties of the jail authority. The resolution may also contain provisions for protecting and enforcing the rights and remedies of the bondholders, including, but not limited to, covenants setting forth the duties of the jail authority and the board of directors in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of the multicounty jail or any of the authority's other properties; the fixing and revising of rates, tolls, assessments, rents and transportation

charges and other charges; the application of the proceeds of bonds; the custody, safeguarding and application of revenues; the defining of defaults and providing for remedies in the event of defaults, which may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The resolution or trust agreement may set out the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. The resolution or trust agreement may contain such other provisions as the board of directors may determine reasonable and proper for the security of the bondholders, including means by which the resolution or trust agreement may be amended.

All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation. The pledge by any such resolution or trust agreement is valid and binding and is deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made. All revenues, money, rights and proceeds so pledged and received by the jail authority are immediately subject to the lien of the pledge without any physical delivery or segregation or further action under the Uniform Commercial Code or otherwise, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the jail authority irrespective of whether those parties have notice of the lien of the pledge.

The resolution authorizing the issuance of bonds under this chapter, or any trust agreement securing those bonds, may provide that all or a sufficient amount of revenues and assessments, after providing for the payment of the cost of repair, maintenance and operation and reserves for the cost of repair, maintenance and operation as may be provided in the resolution or trust agreement, must be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited in the credit of a fund for the payment of the interest on and the principal of bonds issued under this chapter as the bonds become due, and the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of money in or to the credit of the fund is subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds and, except as may otherwise be provided in the resolution or trust agreement, the fund is a fund for the benefit of all bonds without distinction or priority of one over another.

5. Trust funds. All money set aside for payment of the bonds, or other purposes pursuant to the

provisions of any trust agreement securing the bonds, is deemed to be a trust fund to be held and applied as provided by the trust agreement; except that investment or deposit of those funds is subject to the provisions applicable to municipal funds under chapter 223, subchapter 3-A. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds must provide that any officer of a bank or trust company or other financial institution or fiscal agent to which money is paid shall act as trustee of the money and shall hold and apply the money for the purposes pursuant to this subsection, subject to any regulations as may be provided in the resolution or trust agreement or as may be required by this chapter.

6. Remedies. Any holder of bonds issued under this chapter or of any of the coupons attached to those bonds, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of those bonds or trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver to take possession and control of the properties of the jail authority, protect and enforce any and all rights under the laws of the State or granted under this chapter or under the resolution or trust agreement. A holder of bonds or a trustee may enforce and compel the performance of all duties required by this chapter or by the resolution or trust agreement to be performed by the jail authority or by any officer of the jail authority, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the jail authority, or if applicable, the making of any assessments against the counties under section 1952.

7. Refunding bonds. The jail authority formed under this chapter by resolution of its board of directors without consent of either county may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration of maturity or redemption of those bonds. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of directors determines to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium on the bonds, any interest accrued or to accrue to the date of payment of those bonds, the expenses of issuance of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of the refunding bonds as may be required by the trust agreement or resolution securing bonds. The issuance of refunding bonds, the maturities and other details of the issuance of refunding bonds, the security for the issuance of refunding bonds, the rights of the holders of the issuance of refunding bonds and the

rights, duties and obligations of the jail authority in respect of the same is governed by the applicable provisions of this chapter relating to the issuance of bonds.

8. Tax exemption. All bonds, notes or other evidences of indebtedness issued under this chapter, and their transfer and the income from bonds, notes or other evidences of indebtedness, including any profit made on the sale of bonds, notes or other evidences of indebtedness, are at all times free from taxation inside the State.

9. Bonds declared legal investments. Bonds and notes issued by the jail authority under this chapter are securities in which: all public officers and public bodies of the State and its political subdivisions; all insurance companies and associations and other persons carrying on an insurance business; trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries of pension, profit-sharing, retirement funds; other persons carrying on a banking business; and all other persons who are now, or may be, authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are made securities that may properly and legally be deposited with and received by any state, municipal or public officer, or any agency or political subdivision of the State, for any purpose for which the deposit of bonds or other obligations of the State is now or may be authorized by law.

10. Certain bond issues; notice; special meeting; vote. In the event that the directors vote to authorize bonds or notes for any of the corporate purposes of the jail authority, excluding notes payable within one year or notes in anticipation of the revenues to be collected or received in any year or notes in anticipation of bonds that have already been authorized in accordance with this chapter or notes in anticipation of the receipt of approved federal or state grants, the authorized amount of which, singly or in the aggregate included in any one financing, is 10% or less of the operating budget, the directors do not need consent of the counties, but shall provide notice to the general public:

A. Of the proposed bond or note issue and the purposes for which the debt is being incurred; and

B. Of a special jail authority meeting for the purpose of permitting the collection of testimony from the public concerning the amount of the debt so authorized.

Notice of the proposed bond or note issue, the purposes for which the debt is being issued and the call of the special meeting must be published at least once in a newspaper having general circulation in the 2 counties.

11. Negotiated or competitive bidding process. Any notes, bonds or other instruments of indebtedness may be the subject of a negotiated or competitive bidding process or any other process that may be advantageous to the jail authority. Determination of the process to be used must be made by and at the discretion of the directors.

§1952. Charges

All persons, firms and corporations, whether public or private, shall pay to the treasurer of the jail authority formed under this chapter the rates, tolls, assessments, rents, transportation charges and other charges established by the directors for services provided by the jail authority. In this subchapter, the words "other charges" include, but are not limited to, interest on delinquent accounts at a rate not to exceed the highest lawful rate set by the Treasurer of State for municipal taxes. The jail authority may submit periodic bills directly to individual users or to the counties as determined by the directors.

The jail authority may establish schedules of charges by any method determined by the directors.

The rates, tolls, assessments, rents, transportation charges and other charges must be so established as to provide revenue at least sufficient, together with any other money available, to:

1. Current operating expenses. Pay the current expenses of operating and maintaining the multicounty jail facility;

2. Unanticipated operating expenses. Create and maintain a reserve not to exceed 3.5% of the operating budget for unanticipated operating expenses;

3. Payment of interest and principal. Pay the principal, premium and interest on all bonds and notes issued by the jail authority under this chapter when due and payable;

4. Payments into reserve funds. Create and maintain such reserves as may be required by any trust agreement or resolution securing bonds and notes;

5. Repairs, replacements and renewals. Provide funds for paying the cost of all necessary repairs, replacements and renewals of the multicounty jail facilities; and

6. Payment of obligations. Pay or provide for any and all amounts that the jail authority may be

obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes and including payment of organizational costs to Lincoln County and Sagadahoc County.

§1953. Collection of unpaid charges

The treasurer of the jail authority may collect the rates, tolls, assessments, rents, transportation charges and other charges established by the jail authority and those charges are committed to the treasurer. The treasurer may, after demand for payment, sue in the name of the jail authority in a civil action for any rate, toll, rent, assessment, transportation charge or other charges remaining unpaid in any court of competent jurisdiction. In addition, the treasurer may order the termination of service for nonpayment of any amount owed to the jail authority. The treasurer may also collect rates, tolls, assessments, rents, transportation charges or other charges remaining unpaid pursuant to Title 36, section 891, to the extent applicable and only against assets of the county.

§1954. Guarantee by counties of jail authority bonds and notes

Subject to the consent of the counties, the board of directors and a majority of the commissioners of each county may provide by resolution for the issuance, at one time or from time to time, of guaranteed notes and bonds of the jail authority for any purpose for which the jail authority may issue debt. Bonds issued by the authority under this section are a municipal security as defined by section 5903 and are eligible for purchase by the Maine Municipal Bond Bank. Except as otherwise provided, notes and bonds issued by the jail authority in accordance with this section must be authorized, issued and sold in the same manner as and subject to the other provisions of this subchapter relating to notes and bonds. The principal, premiums, if any, and interest on notes and bonds issued under this section must be guaranteed by the counties of the jail authority and the full faith and credit of the counties must be pledged for the guarantee provided in this section. The share of liability of each county for the guaranteed notes and bonds must be established in accordance with the method established in the operating and governance agreement.

§1955. Bonds issued by counties

For the purpose of assisting the jail authority in financing the multicounty jail authorized by this chapter, and notwithstanding any other provision of law, with consent of the counties, Lincoln County and Sagadahoc County may issue general obligation bonds backed by the full faith and credit of the counties. Proceeds of the bonds or any part of the bonds may be

either loaned or contributed to the jail authority. The issuance of the bonds and the loaning or contributing of funds to the jail authority formed under this chapter constitute a valid purpose for which either county may raise or appropriate money. General obligation bonds issued by either county under this section are municipal securities as defined in section 5903, and are eligible for purchase by the Maine Municipal Bond Bank. A county issuing bonds under this section and the jail authority receiving the proceeds of the bonds may enter into such contracts and agreements as they may agree upon, both with each other and 3rd parties, establish trust or enterprise funds to provide for timely payment of the bonds, employ a trustee and do all things that may be necessary or convenient to the jail authority or the county to make use of the bonds as may be determined by the board of directors and the county commissioners of the county issuing bonds.

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

Effective May 21, 2003.

CHAPTER 229

H.P. 248 - L.D. 305

An Act To Amend the Lien Procedures for Time-share Estates

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

Sec. 1. 33 MRSA §593, sub-§5, as amended by PL 1991, c. 197, §2, is further amended to read:

5. Escrow account. If the managing entity collects money for taxes, it shall maintain an escrow account with a financial institution licensed by the State, and deposit any money collected or received for taxes in the escrow account within 10 days after collection or receipt. The escrow account must be established in the names of both the managing entity and the municipality in which the time-share estates are located. No withdrawal may be made from the escrow account without the written agreement of the municipality.

Prior to the delinquency date established by the municipality in which the time-share estates are located, the managing entity shall pay to the municipal tax collector all money deposited in the escrow account for the purpose of tax payment. If the amount paid from the escrow account is not sufficient to discharge all taxes and tax-related costs, due and owing, the managing entity shall either pay the difference and place a lien on those time-share estates whose owners have not contributed to the escrow