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An Act To Regulate the Bonded Indebtedness of the State

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

Sec. 1. 4 MRSA §1606, sub-§1, as amended by PL 1997, c. 523, §14, is further amended to read:

1. Resolution for issuance of securities. The 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. 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 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. Securities may not be issued by the authority without a 2/3 vote of approval in each House of the Legislature and must be approved by the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond.

Sec. 2. 5 MRSA §152, as amended by PL 2007, c. 515, §1, is further amended to read:

§ 152. Ratification of bond issue; signed statement

In accordance with the Constitution of Maine, Article IX, section 14, the Treasurer of State shall prepare a signed statement to accompany any question submitted to the electors for ratification of a bond issue setting forth the total amount of bonds of the State outstanding and unpaid, the total amount of bonds of the State authorized and unissued and the total amount of bonds of the State contemplated to be issued if the enactment submitted to the electors should be ratified. The Treasurer of State shall also set forth in that statement an estimate of costs involved, including explanation of, based on such factors as interest rates that may vary, the interest cost contemplated to be paid on the amount to be issued, the total cost of principal and interest that will be paid at maturity, the total estimated cost of debt service that will be paid over the life of the bond per person based on the State's population from the latest Federal Decennial Census and any other substantive explanatory information relating to the debt of the State as the Treasurer of State considers appropriate. To meet the requirement that the signed statement of the Treasurer of State accompany any ballot question for ratification of a bond issue, the statement may be printed on the ballot or it may be printed as a separate document that is posted in each voting booth on election day and, in the case of absentee voting, the statement must be made available to each voter who votes in the presence of the municipal clerk or provided along with the ballot to each absentee voter who does not vote in the presence of the municipal clerk.

Sec. 3. 5 MRSA c. 146 is enacted to read:

CHAPTER 146

VOTER APPROVAL OF INDEBTEDNESS

§ 1601. Definitions

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

1. Authority. "Authority" means an entity created by the Legislature with the power to issue bonded indebtedness.

2. Bonded indebtedness. "Bonded indebtedness" means a note, bond, interim certificate, debenture or other evidence of indebtedness or revenue obligation security sold in a public or private offering.

§ 1602. Bonded indebtedness requires voter approval

1. Voter approval required. Bonded indebtedness may not be created or authorized by the Legislature either directly or through any authority created by the Legislature without voter approval. Any financial obligation of indebtedness must be submitted to the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond.

2. Exceptions. Subsection 1 does not apply to:

A. Debts incurred to suppress insurrection, to repel invasion or for the purposes of war;

B. Temporary loans to be paid out of money raised by taxation during the fiscal year in which the loans are made;

C. Refinancing of existing indebtedness if there is conclusive net present value savings;

D. Contractual agreements for noncapital goods and services;

E. Local unit bonds;

F. Leases under sections 1587 or 1588;

G. Debt issued under Title 10, sections 1026A; 1044; 1053, subsection 6, paragraph D; or 1064;

H. Student loan bonds and notes issued pursuant to Title 20A, sections 11417 or 11420;

I. Housing bonds and notes issued pursuant to Title 30A, chapter 201;

J. Bonds and notes issued pursuant to Title 22, chapter 413; and

K. Bonds and notes issued pursuant to Title 30A, chapter 225 but excluding section 6006G.

§ 1603. Competitive sale

All bonded indebtedness authorized by the Legislature or sold by an authority created by the Legislature must be sold in a competitive sale, unless an alternative mode of sale is approved by a vote of the authority's board and approved by the State Treasurer based on market conditions.

Sec. 4. 10 MRSA §362, as amended by PL 1987, c. 413, §3, is further amended to read:

§ 362. Legislative purpose

The Legislature finds and declares that the availability of financing through use of tax-exempt bonds is an effective and necessary tool for economic development, ensuring an adequate supply of affordable housing, providing for loans for higher education and promoting and improving the health, safety, welfare and quality of life of the people of the State. Because the availability of the financing is largely determined by the United States Internal Revenue Code and because there is a statewide need to assure that the limited amount of tax-exempt financing available is used in the most efficacious manner by issuers of bonds in the State to provide the greatest benefits to the State, the Legislature determines that the legislative purpose of promoting the best use of a limited resource can be best met by authorizing the ~~Legislature and certain designated issuers of bonds~~ Treasurer of State to allocate available amounts of tax-exempt bond authority among issuers. This chapter is intended to apply to the federal formulas in effect on the effective date of this chapter, as well as to any unified volume limitation that may be enacted subsequently by the United States Congress. Any action by the designated issuers pursuant to this chapter is expressly delegated to those issuers by the ~~Legislature~~ Treasurer of State for purposes of determining whether such action is authorized by the United States Code, Title 26.

Sec. 5. 10 MRSA §363, as amended by PL 2007, c. 273, Pt. B, §5 and affected by §7 and amended by c. 520, §§1 and 2 and affected by c. 695, Pt. A, §47, is further amended to read:

§ 363. Allocation of the state ceiling

1-A. Procedure. ~~For~~ By December 1st of each calendar year, the ~~Legislature may~~ Treasurer of State shall after consulting the various issuers affected establish a procedure for allocation of the entire amount of the state ceiling for the subsequent calendar year by allocating an amount of the state ceiling to the specific issuers designated in this section for further allocation by each specific issuer to itself or to other issuers for specific bond issues requiring an allocation of the state ceiling or for carryforward for the subsequent calendar year. This procedure supersedes the federal formula to the full extent that the United States Code, Title 26, authorizes the Legislature to vary the federal formula. Allocations may be reviewed by the ~~Legislature~~ Treasurer of State periodically and unused allocations may be reallocated to other issuers; however, notwithstanding the existence of legislation allocating or reallocating all or any portion of the state ceiling, at any time during the period from September 1st to and including December 31st of any calendar year, and at any other time that the Legislature is not in session, a group consisting of a representative of each of the issuers specifically identified in subsections 4, 5, 6, 7, 8 and 8-A; and a representative of the Governor designated each year by the Governor may, by written agreement executed by no fewer than 5 of the 6 voting representatives, allocate amounts not previously allocated and reallocate unused allocations from one of the specific issuers designated in this section to another specific issuer for further allocation or carryforward, with respect to the state ceiling for that calendar year only. In no event may any issuer have more than one vote. If an issuer is allocated a portion of the state ceiling in more than one category, the written agreement must be executed by no fewer than 4 of the 6 voting representatives. Except for records containing specific and identifiable personal information acquired from applicants for

or recipients of financial assistance, the records of the group of representatives described in this subsection are public records and the meetings of the group of representatives described in this subsection are public proceedings within the meaning of Title 1, chapter 13, subchapter 1 by the Treasurer of State.

2-A. Recommendation of Governor and issuers. ~~At any time action of the Legislature under subsection 1-A is necessary or desirable, the Governor shall recommend to the appropriate committee of the Legislature a proposed allocation or reallocation of all or part of the state ceiling. To assist the Governor in making a recommendation of proposed allocations of the state ceiling on private activity bonds, the group of 7 representatives described in subsection 1-A shall make a recommendation regarding allocation or reallocation of the state ceiling. In order to assist the group in making its recommendation and to assist the Governor and the Legislature, the State Planning Office shall prepare an annual analysis of the State's economic outlook, prevailing interest rate forecasts related to tax-exempt financing by the issuers specifically identified in subsections 4 to 8, the availability to those issuers of alternative financing from sources that do not require an allocation of the state ceiling and the relationship of these factors and various public policy considerations to the allocation or reallocation of the state ceiling. In recommending any allocation or reallocation of the state ceiling to the Legislature, the Governor shall consider the requests and recommendations of those issuers of bonds within the State designated in this section, the recommendations of the group of representatives described in subsection 1-A and the annual analysis of the State Planning Office.~~

4. Allocation to Maine State Housing Authority. That portion of the state ceiling allocated under this section to the category of bonds for housing or housing-related purposes must be allocated to the Maine State Housing Authority, which may further allocate that portion of the state ceiling to bonds for housing-related projects that require an allocation in order to qualify as tax-exempt bonds. Any further allocation or reallocation of any portion of the state ceiling from the Maine State Housing Authority to another specific issuer designated in this section must be ~~done in accordance with the requirements in subsection 1-A~~ made by the Treasurer of State after consultation with the Maine State Housing Authority.

5. Allocation to the Treasurer of State. That portion of the state ceiling allocated under this section to the category of general obligation bonds of the State must be allocated to the Treasurer of State, who may further allocate that portion of the state ceiling to bonds of the State requiring an allocation in order to qualify as tax-exempt bonds. Any further allocation or reallocation of any portion of the state ceiling from the Treasurer of State to another specific issuer designated in this section must be ~~done in accordance with the requirements in subsection 1-A~~ made by the Treasurer of State.

6. Allocation to the Finance Authority of Maine. That portion of the state ceiling allocated to the category of bonds that are limited obligations of the issuer payable solely from the revenues of the projects financed with the proceeds of the bonds, other than for housing-related projects or issues included in an issue of the Maine Municipal Bond Bank, as well as that portion of the state ceiling allocated to bonds authorized to be issued by the Finance Authority of Maine pursuant to Title 20A, chapter 417B, must be allocated to the Finance Authority of Maine, which may further allocate that portion of the state ceiling to bonds requiring an allocation in order to qualify as tax-exempt bonds. Any further allocation

or reallocation of any portion of the state ceiling from the Finance Authority of Maine to another specific issuer designated in this section must be ~~done in accordance with the requirements in subsection 1~~made by the Treasurer of State after consultation with the Finance Authority of Maine.

7. Allocation to the Maine Municipal Bond Bank. That portion of the state ceiling allocated to the category of bonds that are general obligations of issuers within the State, other than the State; that are included in bond issues of the Maine Municipal Bond Bank; that are included in bond issues of the Maine Public Utility Financing Bank; or that are qualified redevelopment bonds as defined in the United States Code, Title 26, must be allocated to the Maine Municipal Bond Bank, which may further allocate that portion of the state ceiling to bonds requiring an allocation in order to qualify as tax-exempt bonds. Any further allocation or reallocation of any portion of the state ceiling from the Maine Municipal Bond Bank to another specific issuer designated in this section must be ~~done in accordance with the requirements in subsection 1~~made by the Treasurer of State after consultation with the Maine Municipal Bond Bank.

8. Allocations to the Maine Educational Loan Authority. That portion of the state ceiling allocated to the issuance of bonds by the Maine Educational Loan Authority pursuant to Title 20A, chapter 417A must be allocated to the Maine Educational Loan Authority. Any further allocation or reallocation of any portion of the state ceiling from the Maine Educational Loan Authority to another issuer designated in this section must be made by the Treasurer of State after consultation with the Maine Educational Loan Authority.

A. Prior to issuing loans funded through an allocation of the state ceiling for the issuance of education loans, an issuer or lender must provide to the appropriate agency within the Department of Professional and Financial Regulation examples of the disclosures to be made to loan recipients or obligors. The information must be provided to the Bureau of Financial Institutions if the issuer or lender is a financial institution or credit union established pursuant to state or federal law or to the Bureau of Consumer Credit Protection for all other issuers or lenders. This information must be provided to the appropriate agency within the Department of Professional and Financial Regulation upon request, or in the course of an examination of the issuer or lender by the agency, and must include a description of any interest rate or other discounts offered that clearly identifies all of the terms and conditions of obtaining any discount, a projection of the approximate number or percentage of loan obligors who are likely to benefit from the discounts and any other disclosures pursuant to guidelines established by the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection for the issuance of education loans that would benefit from an allocation of the state ceiling. The Bureau of Financial Institutions and the Bureau of Consumer Credit Protection shall jointly adopt, to the extent allowed by law, rules to carry out the provisions of this paragraph by establishing uniform disclosure requirements and sanctions for noncompliance. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A. All information provided to the appropriate agencies within the Department of Professional and Financial Regulation must include the source of the information and the basis for any projections.

~~B-1. All education loans made under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 that are purchased or originated with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter 1, provided that this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter 1 shall use its best efforts to provide competitive rates for the guarantee function.~~

8-A. Allocations to issuer of bonds for purchase of education loans. That portion of the state ceiling allocated to the categories of bonds providing funds for the purposes of an entity designated pursuant to Title 20-A, section 11407, must be allocated to the entity designated pursuant to Title 20-A, section 11407.

A. Prior to issuing loans funded through an allocation of the state ceiling for the issuance of education loans, an issuer or lender must provide to the appropriate agency within the Department of Professional and Financial Regulation examples of the disclosures to be made to loan recipients or obligors. The information must be provided to the Bureau of Financial Institutions, Department of Professional and Financial Regulation if the issuer or lender is a financial institution or credit union established pursuant to state or federal law or to the Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation for all other issuers or lenders. This information must be provided to the appropriate agency within the Department of Professional and Financial Regulation upon request, or in the course of an examination of the issuer or lender by the agency, and must include a description of any interest rate or other discounts offered that clearly identifies all of the terms and conditions of obtaining any discount, a projection of the approximate number or percentage of loan obligors who are likely to benefit from the discounts and any other disclosures pursuant to guidelines established by the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection for the issuance of education loans that would benefit from an allocation of the state ceiling. The Bureau of Financial Institutions and the Bureau of Consumer Credit Protection shall jointly adopt, to the extent allowed by law, rules to carry out the provisions of this paragraph by establishing uniform disclosure requirements and sanctions for noncompliance. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A. All information provided to the appropriate agencies within the Department of Professional and Financial Regulation must include the source of the information and the basis for any projections.

9. Use of carryforward. In the event that any issuer has made a carryforward election under the United States Code, Title 26, Section 146(f), as amended, the issuer shall use, to the extent possible and consistent with the purpose for which the carryforward was elected, the carryforward for issues subject to the state ceiling prior to allocating any portion of the state ceiling for the applicable calendar year to the issue. ~~To the extent permitted by federal law, a group consisting of a representative of each of the issuers specifically identified in subsections 4 to 7; a representative of a corporation created pursuant to former Title 20, section 2237 and Title 20-A, section 11407; and a representative of the Governor designated~~

~~each year by the Governor may reallocate, by written agreement executed by no fewer than 4 of the 5 voting representatives, carryforward amounts from one of the specific issuers designated in this section to another specific issuer.~~

10. Allocation for benefit of State. All of the allocation of the state ceiling must be used for a purpose that benefits individuals, communities or businesses in this State. For purposes of this subsection, a bond issuance is presumed to benefit individuals, communities or businesses in this State if it benefits business operations located in this State, residents of this State, students attending institutions of higher education in this State, residents of this State attending institutions of higher education outside this State, municipalities in this State or programs predominantly for the provision of benefits for residents of this State. A student eligible to receive the benefit of a portion of the state ceiling remains eligible for student loans notwithstanding any changes in residency or institution attended.

11. Annual review. By March 15th of each year, each issuer identified in subsections 4 to 8 shall deliver a report to the Governor, ~~the group of representatives described in subsection 1-A~~ Treasurer of State. By March 31st of each year, the Treasurer of State shall provide a report to the Governor and the joint standing committee ~~committees~~ of the Legislature having jurisdiction over ~~business appropriations and financial affairs and labor, commerce, research~~ and economic development matters. Each report must include, without limitation, a review of what bonds have been issued in the most recent year, how the state ceiling was allocated or carried forward, a demonstration of the benefits to the State of the allocation of the state ceiling to such issuer for the most recent year and a demonstration that allocation of the state ceiling is necessary to fulfill an unmet need for financing by the private sector. In addition, each report must be accompanied by the most recent annual audited financial statements of the issuer and, if any tax-exempt bonds were issued during the most recent year, by a letter from an independent accountant addressing the savings attributable to the use of tax-exempt financing and how that savings was passed on to the entities or individuals benefiting from the bond proceeds. The joint standing committees of the Legislature may submit legislation related to the report.

Sec. 6. 23 MRSA §1612, as enacted by PL 2007, c. 329, Pt. P, §1, is amended by adding after the first paragraph a new paragraph to read:

GARVEE bonds must be approved by the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond.

Sec. 7. 23 MRSA §1965, sub-§1, ¶M, as enacted by PL 1981, c. 595, §3, is amended to read:

M. Borrow money, make, issue and sell at public or private sale negotiable notes, bonds and other evidences of indebtedness or obligations of the authority for the purposes set forth in this chapter and secure the payment of that obligation or any part thereof by pledge of all or any part of the operating revenues of the turnpike. All bonded indebtedness must be approved by the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond;

Sec. 8. 23 MRSA §1965, sub-§2, ¶A, as amended by PL 1999, c. 177, §1, is further amended to read:

A. Members of the authority are appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over transportation and subject to confirmation by the Legislature. The Commissioner of Transportation ~~is a member~~ and the State Treasurer are members ex officio. The Commissioner of Transportation may designate a deputy, director, assistant or other officer or employee of the department to represent the Commissioner of Transportation at meetings of the authority with full power to act and vote on behalf of the Commissioner of Transportation. The Deputy State Treasurer may represent the State Treasurer at meetings of the authority with full power to act and vote on behalf of the State Treasurer. Upon the expiration of the term of office of any member, the Governor shall appoint a new member who serves in office for a term of 7 years and until a successor is duly appointed and qualified, and any member of the authority is eligible for reappointment. In the event of a vacancy in the membership of the authority caused by the death, incapacity, resignation or removal of a member, the Governor shall appoint a member to fill that vacancy only for the unexpired term of office of the member whose death, incapacity, resignation or removal created the vacancy, but the newly appointed member may be reappointed at the end of the unexpired term in accordance with this subsection. In all events, a member may not be appointed to the authority who is not a resident of the State at the time of the appointment and qualification, or who has not been a qualified voter in the State for a period of at least one year next preceding the appointment.

Sec. 9. 23 MRSA §1965, sub-§2, ¶A-1, as enacted by PL 1999, c. 177, §2, is amended to read:

A-1. The authority consists of the Commissioner of Transportation and the State Treasurer, who is ~~an~~are ex officio ~~member~~members, and:

(1) Four members appointed by the Governor pursuant to paragraph A. Three members of the authority constitute a quorum and 3 votes are required for the authority to act on any matter, although a lesser number may adjourn a meeting;

(2) On and after August 1, 2000, 5 members appointed by the Governor pursuant to paragraph A. Three members of the authority constitute a quorum and 3 votes are required for the authority to act on any matter, although a lesser number may adjourn a meeting; and

(3) On and after August 1, 2002, 6 members appointed by the Governor pursuant to paragraph A. After August 1, 2002, 4 members of the authority constitute a quorum and 4 votes are required for the authority to act on any matter, although a lesser number may adjourn a meeting.

Sec. 10. 23 MRSA §1968, sub-§1, as amended by PL 2007, c. 270, §3, is further amended to read:

1. Turnpike revenue bonds. In addition to bonds outstanding pursuant to any other provision of this chapter, the authority may provide by resolution from time to time for the issuance of turnpike revenue bonds, including notes or other evidences of indebtedness or obligations defined to be bonds under this chapter, but not exceeding \$486,000,000 in the principal amount at any one time outstanding

exclusive of refundings, for any purpose described in section 1969, subsection 1. All bonded indebtedness must be approved by the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond.

Sec. 11. 30-A MRSA §6006-G, sub-§3, as enacted by PL 2007, c. 470, Pt. D, §1, is amended to read:

3. Bond terms; authorized levels. Bonds issued pursuant to this section may not have terms of more than 15 years. Commencing with the budget presented for the fiscal year beginning July 1, 2009, each new authorization of TransCap revenue bonding must be presented for review and approval by the Legislature as part of the Highway Fund budget and must be approved by the legal voters of the State at a statewide election including the amount to be borrowed and the specific purpose for the bond.

SUMMARY

This bill requires that bonded indebtedness created or authorized by the Legislature either directly or through any authority created by the Legislature must be approved by the voters, unless exempted from the requirement.

The bill requires that all bonds authorized by the Legislature or sold by an authority created by the Legislature must be sold in a competitive sale, unless an alternative mode of sale is approved by the authority board and approved by the State Treasurer based on market conditions.

The bill requires that the total cost of principal and interest that will be paid at maturity per person based on the State's population from the latest Federal Decennial Census be added to the State Treasurer's statement that accompanies bonds on the ballot.

The bill authorizes the State Treasurer to allocate and reallocate available amounts of private activity tax-exempt bond authority authorized by 26 United States Code among issuers and then report to the Governor and the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and labor, commerce, research and economic development matters, which have the authority to submit legislation based on the report.

This bill adds the State Treasurer as an ex officio member of the Maine Turnpike Authority.