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An Act To Provide Accessible Higher Education Financial Assistance for Maine Families

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

Whereas, Maine residents require a consistent, reliable source of higher education financial assistance, including unbiased information; and

Whereas, due to substantial changes in the availability of student financial assistance, Maine residents have less access to higher education financial assistance; and

Whereas, the educational attainment of Maine residents is essential to the economic growth and prosperity of Maine; and

Whereas, students need to know that sufficient student financial assistance is available so that they can make determinations about attending postsecondary schools in a timely manner; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §363, sub-§8-A, ¶B, as enacted by PL 2003, c. 112, §3, is repealed.

Sec. 2. 10 MRSA §363, sub-§10, as enacted by PL 1999, c. 443, §4, is amended to read:

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 or, municipalities in this State or programs predominantly for the provision of benefits for residents of this State. ~~An allocation of the state ceiling may only be used to purchase student loans if the borrower is a resident of this State or is a student attending an institution of higher education in this State or if the borrower has previously obtained a student loan while a resident of this State or while attending an institution of higher education in 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.

Sec. 3. 20-A MRSA §11492, sub-§6, as enacted by PL 2003, c. 455, §2, is amended to read:

6. Finance. "Finance" means the origination, acquisition or refinancing of eligible loans, including through loans to eligible lenders; ~~however, except as otherwise provided in section 11493, subsection 2, the authority is not authorized hereby to originate loans, other than consolidation loans funding the payment of eligible loans to borrowers of eligible loans financed by the authority, through a financial institution acting in the capacity of a trustee on behalf of the authority.~~

Sec. 4. 20-A MRS §11493, sub-§1, as enacted by PL 2003, c. 455, §2, is amended to read:

1. Program. The authority is authorized to carry out the program by issuing bonds for the purpose of financing eligible loans and may use any net earnings on those bonds to administer the program, to pay or further secure the bonds and to make eligible loans, ~~except as otherwise provided in subsection 2.~~

Sec. 5. 20-A MRS §11493, sub-§2, as enacted by PL 2003, c. 455, §2, is repealed.

Sec. 6. 20-A MRS §11495, sub-§1, as enacted by PL 2003, c. 455, §2, is amended to read:

1. Issuance; purpose; payment; authorization; interim receipts or certificates.
The authority may issue bonds for the purposes of this chapter, including, ~~except as otherwise provided by section 11493, subsection 2,~~ financing eligible loans, which may include originating eligible loans, ~~including consolidation loans funding the payment of eligible loans to borrowers of eligible loans financed by the authority,~~ financing loans to eligible lenders to fund the origination of eligible loans and acquiring existing portfolios of eligible loans from eligible lenders. The bonds of each issue must be authorized by the authority and be payable only from such sources specified in the agreement with bondholders, which may include, without limitation, payments on or with respect to eligible loans from any source, including sale proceeds; reserves established by the authority for the bonds; payments pursuant to agreements with financial institutions, credit unions, educational institutions or any governmental entity; payments pursuant to interest rate exchange agreements; investment earnings from funds or accounts maintained pursuant to a trust agreement or other document; proceeds of refunding bonds; and other fees, charges or revenues of the authority.

Bonds issued by the authority for the purposes of this chapter, the resolution authorizing the issuance of such bonds or any trust agreement securing such bonds may include such provisions, which ~~must~~ may be part of the contract with the holders of the bonds of such issue and with any 3rd-party credit or liquidity provider or counterparties to interest rate exchange agreements, as the authority considers necessary or convenient to the security or issuance of the bonds, including without limitation:

A. Specifying the terms of bonds, including the basis upon which interest accrues on those bonds, which may be fixed, variable, auction-based or adjustable; the date from which interest begins to accrue; the time and manner of principal payment upon scheduled maturity or redemption; the denominations and form, which may include coupon, registered, coupon and registered or book entry; and such privileges as to conversion and for the replacement of mutilated, lost or destroyed bonds as the authority may establish;

- B. Providing that bonds be payable in lawful money of the United States at a designated place or be payable in another form of currency if the authority so designates and be considered to be negotiable instruments issued under the laws of the State within the meaning and for all purposes of Title 11, Article 3-A, whether or not of the form or character to so qualify under the terms of Title 11, Article 3-A, subject only to the applicable provisions of any trust agreement;
- C. Providing that bonds be executed by the manual or facsimile signatures of the officers or designees of the authority;
- D. Providing that bonds be sold in the manner and upon the terms determined by the authority at public or private sale, with or without public bidding;
- E. Pledging or assigning revenues, contractual rights and other assets to secure the bonds;
- F. Establishing loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds and other accounts and their regulation, investment and disposition;
- G. Providing for the issuance of additional bonds and refunding bonds;
- H. Defining the acts or omissions that constitute a default in the duties of the authority or its obligations to bondholders and providing the rights or remedies of such bondholders in the event of a default;
- I. Providing for guarantees, letters of credit, lines of credit, insurance policies, surety bonds, purchase agreements or similar instruments or other security for the benefit of the bondholders;
- J. Providing for interest rate or exchange agreements; and
- K. Any other matter relating to the bonds that the authority determines appropriate.

Sec. 7. 20-A MRS §11497, as enacted by PL 2003, c. 455, §2, is amended to read:

§ 11497. Loan transactions

~~Except as otherwise provided in section 11493, subsection 2, the~~The authority may finance, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, all on such terms and conditions as the authority may specify, any eligible loan or portfolio of loans or loan pass-through certificate, pledge, including any pledge of loan revenue, loan participation certificate or other loan-backed or loan-related security. Any such transaction may be conducted by public or private offering. In connection with the financing or sale of an eligible loan or of a beneficial interest or participation in an eligible loan or portfolio of eligible loans, or other interest in eligible loans, the authority may enter into one or more agreements providing for the origination, guarantee, financing, purchase, sale, servicing, custody, control and administration of such eligible loan or portfolio of eligible loans. Any such agreement may provide that the authority, any other eligible lender, a financial institution, a credit union or other person may act as trustor, trustee or custodian under the agreement. Any such agreement may provide that, with respect to loans governed by the agreement, title to such eligible loans or portfolio of eligible loans or other interest in eligible loans is deemed to have been transferred on terms and to the

extent specified in that agreement and that the effect of a sale of an interest in a loan is the same as a sale of a loan. The authority may issue or cause to be issued certificates or other instruments evidencing the holder's fractional interest in a pool of loans, which interest may be undivided or limited to one or more specific loans. Whether or not the certificates or instruments are of such form or character as to be negotiable instruments under Title 11, Article 3-A, the certificates or instruments are made negotiable instruments within the meaning of and for all purposes of Title 11, Article 3-A, subject only to such registration requirements as the authority may establish.

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

Effective March 27, 2008.