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Legislative Document

No. 239

S.P. 75

In Senate, February 5, 2013

**An Act To Improve the Return to the State on the Sale of Spirits and
To Provide a Source of Payment for Maine's Hospitals**

(EMERGENCY)

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator FLOOD of Kennebec. (GOVERNOR'S BILL)

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

Whereas, this legislation involves the operation of the liquor laws and makes changes necessary to maximize revenues for the benefit of the people of Maine; and

Whereas, the financial health of the State is in jeopardy due to the long-term amounts owed to Maine hospitals; and

Whereas, funds generated by the implementation of this legislation will be used to retire the State's overdue financial obligations to Maine hospitals; 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:

PART A

Sec. A-1. 28-A MRSA §2, sub-§31-A is enacted to read:

31-A. Spirits administration. "Spirits administration" or "administration" means the management of spirits activities involving the distribution and sale of spirits and fortified wine by the alcohol bureau or any person awarded a contract under section 90. "Spirits administration" includes, but is not limited to, financial and performance management; profitable and responsible growth management; management of contracts; management of agency liquor store matters and orders; personnel management; monitoring and reporting of spirits inventory; management of bailment records and billing; management of accounts receivable, accounts payable and tax collection and reporting; and sales and profit reporting. "Spirits administration" does not include warehousing and distribution of spirits by the alcohol bureau.

Sec. A-2. 28-A MRSA §2, sub-§31-B is enacted to read:

31-B. Spirits trade marketing. "Spirits trade marketing" or "trade marketing" means oversight and management by the alcohol bureau or any person awarded a contract under section 90. "Spirits trade marketing" includes, but is not limited to, agency liquor store category management, analysis and recommendations; agency liquor store shelf reset recommendations; agency liquor store displays, advertising, point-of-sale material and event marketing recommendations; development, production and distribution of sales, marketing and informational publications; consultation and coordination with suppliers and brokers on matters affecting their brands; and development, production and distribution of any social responsibility initiatives and compliance related to those initiatives.

Sec. A-3. 28-A MRSA §83, sub-§1, as amended by PL 2003, c. 20, Pt. LLL, §1 and affected by §4, is further amended to read:

1 **1. Bureau of Alcoholic Beverages and Lottery Operations; rules.** ~~Until the~~
2 ~~effective date of the privatization of the entire wholesale liquor business authorized by~~
3 ~~Unless one or more contracts is awarded under section 88 90,~~ the alcohol bureau shall
4 manage the sale, ~~distribution and merchandising~~ administration and trade marketing of
5 spirits and fortified wine through ~~state liquor stores, agency liquor stores and licensees.~~
6 The alcohol bureau may establish rules and procedures for the administration of the state
7 liquor laws under its jurisdiction. The rules adopted under this section are routine
8 technical rules pursuant to Title 5, chapter 375, subchapter 2-A. The day-to-day activities
9 of the alcohol bureau are under the supervision of the Commissioner of Administrative
10 and Financial Services and the director of the alcohol bureau.

11 **Sec. A-4. 28-A MRSA §83, sub-§2,** as amended by PL 2003, c. 20, Pt. LLL, §1
12 and affected by §4, is further amended to read:

13 **2. Purchase.** ~~Until the effective date of the privatization of the wholesale liquor~~
14 ~~business authorized by section 88, the~~ The alcohol bureau may buy and have in its
15 possession spirits and fortified wine for sale to the public. The alcohol bureau shall buy
16 spirits directly and not through the State Purchasing Agent. All spirits and fortified wine
17 must be free from adulteration and misbranding.

18 **Sec. A-5. 28-A MRSA §83, sub-§8** is enacted to read:

19 **8. Price regulation.** The alcohol bureau shall regulate the wholesale and retail
20 prices of spirits and fortified wine sold under this Title. The alcohol bureau shall adopt
21 rules for price regulation of the wholesale and retail liquor business at agency liquor
22 stores. A person awarded a contract under section 90 may distribute liquor pursuant to
23 this chapter and is immune from antitrust action as long as the person is in compliance
24 with the alcohol bureau's rules and all other applicable laws and regulations.

25 **Sec. A-6. 28-A MRSA §88,** as enacted by PL 2003, c. 20, Pt. LLL, §2 and
26 affected by §4, is repealed.

27 **Sec. A-7. 28-A MRSA §89,** as enacted by PL 2011, c. 380, Pt. S, §1, is repealed.

28 **Sec. A-8. 28-A MRSA §90** is enacted to read:

29 **§90. Management of spirits activities**

30 **1. Statement of purpose.** The Legislature finds that it is in the public interest to
31 seek efficiencies, cost savings and increased revenues through the management of
32 wholesale liquor activities, including the control of all revenues and proceeds from the
33 sale of spirits and fortified wine, which may include a private sector person to provide
34 administration, trade marketing and distribution and warehousing activities subject to
35 price regulation and oversight by the alcohol bureau.

36 **2. Authority to award contracts.** The Commissioner of Administrative and
37 Financial Services may enter into a competitive bidding or bargaining process to award
38 one or more contracts, subject to review under subsection 3, for spirits administration,
39 spirits trade marketing and warehousing and distribution activities, to be effective on or

1 after July 1, 2014. A contract awarded under this subsection may require initial payment
2 by a person awarded a contract due at the time of the award of the contract. A contract
3 awarded under this subsection may not be for a term of more than 10 years.

4 **3. Review by legislative committees.** Prior to awarding a contract under subsection
5 2, the Commissioner of Administrative and Financial Services shall provide a contract
6 negotiated pursuant to subsection 2 to the joint standing committee of the Legislature
7 having jurisdiction over alcoholic beverage matters and the joint standing committee of
8 the Legislature having jurisdiction over appropriations and financial affairs so that those
9 committees may review that contract prior to its execution.

10 **4. Proceeds from liquor operations.** Net proceeds from the sale of spirits and
11 fortified wine in this State must be credited to the Liquor Operation Revenue Fund
12 established in Title 5, section 174.

13 **5. Prohibition.** A person awarded a contract under subsection 2 is prohibited from:

14 A. Holding a retail license to sell liquor for off-premises consumption pursuant to
15 chapter 45; and

16 B. Selling spirits and fortified wine directly to establishments licensed by the State to
17 sell spirits and fortified wine for on-premises consumption pursuant to chapter 43.

18 **Sec. A-9. 28-A MRSA §453, sub-§2-C,** as enacted by PL 2009, c. 213, Pt. JJJJ,
19 §2, is amended to read:

20 **2-C. Licenses.** ~~Beginning July 1, 2009, the~~ The bureau shall consider whether the
21 applicant can satisfy the following criteria when determining whether to issue an agency
22 liquor store license under this section:

23 A. The applicant has held a license in this State to sell malt liquor ~~and~~ or wine for
24 off-premises consumption for more than one year immediately preceding application
25 without a violation of any provision of this Title or, if the applicant has not held a
26 license in this State to sell malt liquor or wine, the applicant has held a license in
27 another state for at least one year to sell malt liquor, wine or spirits at retail for
28 off-premises consumption without violation of the laws governing the sale of
29 alcoholic beverages in that state and can provide the bureau with documentation of
30 financial success as determined by the bureau;

31 B. The applicant will be able to stock at least \$10,000 worth of spirits purchased
32 from the State or the State's wholesale distributor upon issuance of an agency liquor
33 store license; and

34 C. The applicant can purchase the initial stock of spirits using a bank check or other
35 financial instrument that certifies that funds are available.

36 **Sec. A-10. 28-A MRSA §460, sub-§2, ¶M,** as enacted by PL 2009, c. 459, §1, is
37 amended to read:

38 M. The agency liquor store must purchase all distilled spirits served at a taste testing
39 from the ~~wholesale liquor provider as defined in section 501~~ State or a person
40 awarded a contract pursuant to section 90.

Sec. A-11. 28-A MRSA c. 21, as amended, is repealed.

PART B

Sec. B-1. 5 MRSA sub-c. 2 is enacted to read:

SUBCHAPTER 2

LIQUOR OPERATION REVENUE BONDS

§171. Legislative intent

It is the express legislative intent that revenue financing bonds as authorized in this subchapter are tax-exempt or taxable bonds repaid as provided in this subchapter and such bonds do not include a legal or equitable claim against tax revenues of the State, and therefore do not represent constitutional debt of or the pledge of the full faith and credit of the State.

§172. Definitions

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

1. Ancillary obligation. "Ancillary obligation" means the obligation of the Treasurer of State in connection with liquor operation revenue bonds issued under this subchapter under any of the following entered into by the Treasurer of State:

A. A credit enhancement or liquidity agreement, including an obligation in the form of bond insurance, letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility or other similar arrangement;

B. A remarketing agreement, auction agent agreement, broker-dealer agreement or other agreement relating to the marketing of liquor operation revenue bonds, interest rate or other type of swap or hedging contract; or

C. An investment agreement, forward purchase agreement or similarly structured investment contract.

2. Costs of issuance. "Costs of issuance" means an item of expense directly or indirectly payable or reimbursable by the Treasurer of State and related to the authorization, sale or issuance of liquor operation revenue bonds, including, but not limited to, underwriting fees and fees and expenses of professional consultants and fiduciaries.

3. Financing costs. "Financing costs" means all costs of issuance, capitalized interest, capitalized operating expenses and debt service reserves, fees and costs of any ancillary obligation or other fees, expenses and costs related to issuing, securing and marketing liquor operation revenue bonds.

1 **4. Fund.** "Fund" means the Liquor Operation Revenue Fund established in section
2 174.

3 **5. Liquor operation revenue bonds.** "Liquor operation revenue bonds" means a
4 bond, note or other evidence of indebtedness issued by the Treasurer of State pursuant to
5 this subchapter.

6 **§173. Liquor operation revenue bonds authorized**

7 **1. Revenue bonds.** Notwithstanding any other provision of law and upon approval
8 of the Governor, the Treasurer of State may issue liquor operation revenue bonds of up to
9 \$187,000,000 plus financing costs, and excluding bonds to refund bonds, for the purpose
10 of retiring amounts determined by the Commissioner of Health and Human Services to be
11 owed by the State to health care providers. The bonds must be repaid solely from funds
12 as provided in this subchapter.

13 **2. Amount and terms.** The Treasurer of State may issue liquor operation revenue
14 bonds in the amount and upon such terms as the Treasurer of State considers appropriate.
15 The terms of the liquor operation revenue bonds, their repayment schedule and other
16 provisions to facilitate their creditworthiness must be determined by the Treasurer of
17 State.

18 **3. Form; interest; taxability.** The Treasurer of State shall determine the following
19 regarding liquor operation revenue bonds:

20 A. The form of the liquor operation revenue bond;

21 B. The rate or rates at which the bond bears interest, except that the rate must be
22 includable in or excludable from the gross income of the bond owners for federal and
23 state income tax purposes, as determined by bond counsel to the Treasurer of State
24 and pursuant to the United States Internal Revenue Code of 1986, 26 United States
25 Code, et seq., as amended;

26 C. The time of maturity, except that a liquor operation revenue bond must mature
27 before July 1, 2029; and

28 D. Other such terms.

29 **4. Not a pledge of the full faith or credit; not a debt.** Liquor operation revenue
30 bonds are not, and may not be considered to constitute, a debt or liability of the State or
31 of any political subdivision of the State, or a pledge of the full faith and credit of the State
32 or of any political subdivision of the State but are special obligations payable solely from
33 the funds and revenues pledged therefor.

34 **5. Bond proceeds.** Proceeds from any sale of liquor operation revenue bonds must
35 be deposited into the Health Care Liability Retirement Fund established in Title 22-A,
36 section 216, except for any amounts required to be deposited in the Liquor Operation
37 Revenue Fund by the terms of the bond.

38 **6. Agreements with financial institutions.** For the purposes of this subchapter, the
39 Treasurer of State may enter into an ancillary obligation or other agreement or contract

1 with a commercial bank, trust company or banking or other financial institution within or
2 outside the State that is necessary, desirable or convenient in the opinion of the Treasurer
3 of State to provide any other services to the Treasurer of State to assist the Treasurer of
4 State in effectuating the purposes of this subchapter. The Treasurer of State may enter
5 into, amend or terminate any ancillary obligation or other agreement as the Treasurer of
6 State determines to be necessary or appropriate. The ancillary obligation or other
7 agreement may include without limitation contracts commonly known as interest rate
8 swap agreements, forward purchase contracts or guaranteed investment contracts and
9 futures or contracts providing for payments based on levels of, or changes in, interest
10 rates. These contracts may be entered into by the Treasurer of State in connection with or
11 incidental to entering into or maintaining any agreement that secures liquor operation
12 revenue bonds issued under this subchapter or any investment or contract providing for
13 investment of reserves or similar facility guaranteeing an investment rate for a period of
14 years not to exceed the underlying terms of the bonds. The determination by the
15 Treasurer of State that an ancillary obligation or other agreement or the amendment or
16 termination of an ancillary obligation or other agreement is necessary or appropriate as
17 provided in this section is conclusive. An ancillary obligation or other agreement may
18 contain provisions regarding payment, security, default, remedy, termination and
19 payments and other terms and conditions as determined by the Treasurer of State, after
20 giving due consideration to the creditworthiness of the counterparty or other obligated
21 party, including any rating by any nationally recognized rating agency, and to any other
22 criteria as may be appropriate.

23 A liquor operation revenue bond or any ancillary obligation or other agreement made
24 pursuant to this subsection may contain a recital that it is issued or executed, respectively,
25 pursuant to this subchapter. The recital is conclusive evidence of the validity of the
26 liquor operation revenue bond or ancillary obligation or other agreement and of the
27 regularity of the proceedings relating to them.

28 **7. Remedies of holders of bonds.** If the Treasurer of State defaults in the payment
29 of principal of or interest on any issue of liquor operation revenue bonds after the
30 principal and interest become due, whether at maturity or upon call for redemption, and
31 that default continues for a period of 30 days, or if the Treasurer of State fails or refuses
32 to comply with this subchapter or defaults in an agreement made with the holders of an
33 issue of liquor operation revenue bonds, the holders of 25% in aggregate principal
34 amount of liquor operation revenue bonds then outstanding, by instrument or instruments
35 filed in the office of the clerk of courts of Kennebec County and proved or acknowledged
36 in the same manner as a deed to be recorded, may appoint a trustee to represent the
37 bondholders. The trustee, in the trustee's own name, by mandamus or other suit, action or
38 proceeding at law or in equity, shall enforce all rights of the bondholders or holders of the
39 ancillary obligations or other agreements and require the Treasurer of State to carry out
40 any other agreements with the bondholders or holders of such ancillary obligations or
41 other agreements and to perform the Treasurer of State's duties required under this
42 subchapter, as long as the bonds are limited revenue obligations. An obligation to make
43 debt service payments does not constitute a debt or liability of the State or any political
44 subdivision of the State within the meaning of any constitutional or statutory limitation,
45 or a loan of the credit of the State, or a pledge of the faith and credit of the State or any
46 political subdivision of the State, or a contractual obligation in excess of the amounts

1 deposited with the State, and the State has no continuing legal obligation to appropriate
2 money for those payments or other obligations. Payments of the principal of, redemption
3 premium for, if any, and interest on the liquor operation revenue bonds must be made
4 solely from amounts derived from the Liquor Operation Revenue Fund established
5 pursuant to section 174. Neither the faith and credit nor the taxing power of the State or
6 of any political subdivision of the State is pledged to the payment of the principal of,
7 redemption premium for, if any, or interest on the liquor operation revenue bonds.

8 **§174. Liquor Operation Revenue Fund**

9 **1. Fund established.** The Liquor Operation Revenue Fund, referred to in this
10 section as "the fund," is a nonlapsing fund established within the Office of the Treasurer
11 of State to pay amounts owed to holders of liquor operation revenue bonds. The fund
12 must be held separate and apart from all other money, funds and accounts.

13 **2. Funding.** There must be deposited directly into the fund any amounts received
14 pursuant to Title 28-A, section 90 and Title 22-A, section 216, and any other money or
15 funds transferred or made available to the Treasurer of State only for the purposes of the
16 fund from any other source including amounts required to be deposited in the fund by the
17 terms of any bond secured by the fund.

18 **3. Use of fund during bond retirement period.** Money in the fund must be held
19 and applied solely to the payment of the interest on and principal of bonds secured by the
20 fund as the bonds become due and payable and for the retirement of bonds, including the
21 payment of any redemption premium required to be paid when any bonds are redeemed
22 or retired before maturity or for the payment of ancillary obligations; except that, to the
23 extent there is money in the fund not needed in accordance with terms of the bonds,
24 before June 30th of each year, the State Controller shall withdraw an amount to be
25 determined by the Treasurer of State but not exceeding \$7,000,000 to be distributed as
26 follows:

27 A. First, in equal amounts to an account within the Department of Health and Human
28 Services and an account within the Department of Environmental Protection, up to
29 \$3,500,000 per account or the maximum amount allowed for federal matching funds
30 purposes, whichever is less, to be used for revolving loan funds for drinking water
31 systems and wastewater treatment; and

32 B. The remainder, if any, to an account within the Department of Transportation to
33 be used for the construction of highways and bridges.

34 Immediately upon retirement of all outstanding bonds secured by the fund, the State
35 Controller shall withdraw any excess money in the fund and transfer it to the Maine
36 Budget Stabilization Fund established in section 1532.

37 **4. Use of fund after bond retirement.** After all bonds secured by the fund have
38 been retired, additional proceeds credited to the fund from Title 22-A, section 216 and
39 Title 28-A, section 90 must be disbursed on a quarterly basis by the State Controller as
40 follows:

41 A. The lesser of 15% and the maximum amount allowed for federal matching funds
42 purposes, divided equally between an account within the Department of Health and

1 Human Services and an account within the Department of Environmental Protection
2 for revolving loan funds for drinking water systems and wastewater treatment;

3 B. Thirty-five percent to an account within the Department of Transportation for
4 construction of highways and bridges; and

5 C. The remainder to the Maine Budget Stabilization Fund established in section
6 1532.

7 **Sec. B-2. 5 MRSA §1523** is enacted to read:

8 **§1523. Constitutional prohibition on use of bond proceeds**

9 In accordance with the Constitution of Maine, Article V, Part Third, Section 5,
10 proceeds from the sale of bonds authorized by a majority of electors pursuant to Article
11 IX, Section 14 may not be used to meet current expenditures of the State. For purposes
12 of this section, "current expenditures" means operational costs due and payable and
13 generated in the ordinary course of business during the term of the Legislature that
14 authorized the bond issue.

15 **Sec. B-3. 22-A MRSA §216** is enacted to read:

16 **§216. Health Care Liability Retirement Fund**

17 The Health Care Liability Retirement Fund, referred to in this section as "the fund," is
18 established as a nonlapsing fund within the Department of Health and Human Services.
19 The fund consists of proceeds from the sale of liquor operation revenue bonds pursuant to
20 Title 5, section 173. The money in the fund must be used for the purpose of making
21 payments to health care providers for services provided prior to December 1, 2012.
22 When, as determined by the commissioner, there exist no outstanding amounts owed to
23 health care providers eligible to be paid from the fund, the State Controller must transfer
24 all amounts in the fund to the Liquor Operation Revenue Fund established in Title 5,
25 section 174.

26 **Sec. B-4. Maine Revised Statutes headnote enacted; revision clause.** In the
27 Maine Revised Statutes, Title 5, chapter 7, after the chapter headnote, the headnote
28 "subchapter 1, duties, generally" is enacted and the Revisor of Statutes shall implement
29 this revision when updating, publishing or republishing the statutes.

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

32 **SUMMARY**

33 Part A repeals the law privatizing the State's wholesale liquor business and the law
34 requiring the Commissioner of Administrative and Financial Services to seek bids no
35 later than June 20, 2013 for the renewal, replacement or continuation of the current
36 contract regarding the privatization. Instead, this bill allows the commissioner to enter
37 into an agreement for certain wholesale liquor activities. Part A also amends the criteria
38 for obtaining a license as an agency liquor store to clarify that an applicant that was

1 licensed in another state to sell malt liquor, wine or spirits at retail for off-premises
2 consumption must have conducted that business without a violation of the laws governing
3 the sale of alcoholic beverages in the state in which that applicant was licensed. Part A
4 also repeals the provisions of law regarding wholesale liquor providers.

5 Part B authorizes the Treasurer of State, with the approval of the Governor, to issue
6 liquor operation revenue bonds in an amount up to \$187,000,000. Part B establishes 2
7 funds, the Health Care Liability Retirement Fund and the Liquor Operation Revenue
8 Fund. The Health Care Liability Retirement Fund is funded with the revenue from the
9 sale of the bonds and used to pay debts owed by the State for services provided by health
10 care providers prior to December 1, 2012; anything in excess of the amount owed is
11 transferred to the Liquor Operation Revenue Fund. The Liquor Operation Revenue Fund
12 is funded by revenue from the management of wholesale liquor activities; such revenue
13 will be used to pay the principal and interest of the liquor operation revenue bonds as
14 those amounts become due. During the repayment of bonds period, any excess revenue is
15 transferred to the Department of Health and Human Services and the Department of
16 Environmental Protection for revolving loan funds for drinking water systems and
17 wastewater treatment and to the Department of Transportation for construction of
18 highways and bridges. Following the retirement of bonds, excess revenue is also
19 transferred to the Maine Budget Stabilization Fund. Part B also reiterates a provision
20 contained in the Constitution of Maine that the proceeds from the sale of bonds
21 authorized by the voters may not be used to meet current expenditures of the State.