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**An Act To Include Institutions Providing an Educational
Program among Entities Eligible To Borrow from the
Maine Health and Higher Educational Facilities Authority**

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

Sec. 1. 22 MRSA §2052, as amended by PL 1993, c. 390, §1, is further amended to read:

§ 2052. Declaration of necessity

It is declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that health care facilities within the State be provided with appropriate additional means to expand, enlarge and establish health care facilities and other related facilities; that this and future generations of students be given the fullest opportunity to learn and to develop their intellectual capacities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable health care facilities ~~and~~ institutions for higher education and nonprofit institutions providing an educational program in the State to provide the facilities and structures needed to accomplish the purposes of this chapter, all to the public benefit and good, and the exercise of the powers, to the extent and manner provided in this chapter, is declared the exercise of an essential governmental function.

Sec. 2. 22 MRSA §2053, sub-§2, as amended by PL 1993, c. 390, §2, is further amended to read:

2. Bonds and notes. "Bonds" and "notes" mean bonds and notes of the authority issued under this chapter, including refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of the authority or the full faith and credit of a participating health care facility ~~or~~ a participating institution for higher education or a participating institution providing an educational program, or any other lawfully pledged security of a participating health care facility ~~or of~~ a participating institution for higher education or a participating institution providing an educational program.

Sec. 3. 22 MRSA §2053, sub-§3-B, as enacted by PL 1997, c. 385, §1, is amended to read:

3-B. Eligible entity. "Eligible entity" means a facility or institution eligible to participate in financing or other borrowing services authorized by this chapter and includes a participating community health or social service facility, a participating health care facility ~~or~~ a participating institution for higher education or a participating institution providing an educational program.

Sec. 4. 22 MRSA §2053, sub-§4-E is enacted to read:

4-E. Institution providing an educational program. "Institution providing an educational program" means a nonprofit or charitable institution, public or private, that is exempt from federal taxation pursuant to the United States Internal Revenue Code of 1986, as amended, Section 501 and that provides a program of education for the purpose of enhancing the knowledge or abilities of its members or the general public.

Sec. 5. 22 MRSA §2053, sub-§5-B is enacted to read:

5-B. Participating institution providing an educational program. "Participating institution providing an educational program" means an institution providing an educational program that, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by this chapter.

Sec. 6. 22 MRSA §2053, sub-§6, as amended by PL 1995, c. 179, §3, is further amended to read:

6. Project. "Project" means:

A. In the case of a participating health care facility or a participating community health or social service facility, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, a structure designed for use as a health care facility, community health or social service facility, congregate housing facility, laboratory, laundry, nurses or interns residence or other ~~multi-unit~~multiunit housing facility for staff, employees, patients or relatives of patients admitted for treatment in the health care facility, community health or social service facility, doctors office building, administration building, research facility, maintenance, storage or utility facility or other structures or facilities related to any of the foregoing or required or useful for the operation of the project, or the refinancing of existing indebtedness in connection with any of the foregoing, including parking and other facilities or structures essential or convenient for the orderly conduct of the health care facility or community health or social service facility. "Project" also includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground that are used or usable in connection with the structures mentioned in this paragraph, and includes landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as food, fuel, supplies or other items that are customarily considered as a current operating charge. In the case of a hospital, as defined in subsection 4, paragraph B, a community health center or a community health or social service facility, "project" does not include any facilities, structures or appurtenances, the use of which is not directly related to the provision of patient care by its members; and

B. In the case of a participating institution for higher education, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a dormitory or other housing facility, dining facility, student union,

academic building, administrative facility, library, classroom building, research facility, faculty facility, office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility or other building or structure essential, necessary or useful for instruction in a program of education provided by an institution for higher education, including a parking facility, or any ~~multi-purpose~~multipurpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated in this paragraph. "Project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, machinery and equipment, and all appurtenances and facilities either on, above or under the ground ~~which~~that are used or usable in connection with any of the structures mentioned in this paragraph, and also includes landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as books, fuel, supplies or other items ~~which~~that are customarily considered as a current operating charge; and

C. In the case of a participating institution providing an educational program, the acquisition, construction, improvement, reconstruction or equipping of, or construction of an addition or additions to, any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty facility, office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility, exhibition facility or space, performing arts facility, museum, theater, studio or other building or structure essential, necessary or useful to the participating institution providing an educational program, including a parking facility or any multipurpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated in this paragraph. "Project" includes all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements and other interests in land, machinery and equipment, and all appurtenances and facilities either on, above or under the ground that are used or usable in connection with any of the structures mentioned in this paragraph, and also includes landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but does not include such items as books, fuel, supplies or other items that are customarily considered as a current operating charge.

Sec. 7. 22 MRSA §2053, sub-§7, as amended by PL 1993, c. 390, §9, is further amended to read:

7. Refinancing of existing indebtedness. "Refinancing of existing indebtedness" means liquidation, with the proceeds of bonds or notes issued by the authority, of an indebtedness of a health care facility ~~or, an institution for higher education or a participating institution providing an educational program~~ incurred to finance or aid in financing a lawful purpose of that health care facility ~~or, institution for higher education or participating institution providing an educational program~~ not financed pursuant to this chapter that would constitute a project had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a project related to the purpose for which the indebtedness of the health care facility ~~or, institution for higher education or participating institution providing an educational program~~ was incurred.

Sec. 8. 22 MRSA §2054, sub-§7, as amended by PL 1993, c. 390, §11, is further amended to read:

7. Conflict of interest. Notwithstanding any other law to the contrary, it does not constitute a conflict of interest for a trustee, director, officer or employee of a health care facility or a participating institution providing an educational program or for a trustee, member of a corporation or board of governors, officer or employee of an institution for higher education to serve as a member of the authority; if ~~such~~that trustee, director, member of a corporation or board of governors, officer or employee abstains from deliberation, action and vote by the authority under this chapter in specific respect to the health care facility ~~or~~, institution for higher education or participating institution providing an educational program of which ~~such~~that member is a trustee, director, member of a corporation or board of governors, officer or employee.

Sec. 9. 22 MRSA §2055, first ¶, as amended by PL 1993, c. 390, §12, is further amended to read:

The purpose of the authority is to assist participating health care facilities, participating institutions providing an educational program and participating institutions for higher education in the undertaking of projects and the refinancing of existing indebtedness that are declared to be public purposes, and for the purposes of this chapter the authority is authorized and empowered:

Sec. 10. 22 MRSA §2055, sub-§5, as amended by PL 1993, c. 390, §13, is further amended to read:

5. Projects. To determine the location and character of any project to be financed under this chapter; and to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating health care facility ~~or~~, a participating institution for higher education or a participating institution providing an educational program as its agent to determine the location and character of a project undertaken by the participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program under this chapter and, as the agent of the authority, to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, extend, enlarge, operate, lease, as lessee or lessor, and regulate the same; and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

Sec. 11. 22 MRSA §2055, sub-§8, as amended by PL 1993, c. 390, §14, is further amended to read:

8. Rules. To establish rules for the use of a project or any portion thereof and to designate a participating health care facility ~~or~~, a participating institution for higher education or a participating institution providing an educational program as its agent to establish rules for the use of a project undertaken by the participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program;

Sec. 12. 22 MRSA §2055, sub-§12, as amended by PL 1993, c. 390, §15, is further amended to read:

12. Loans. To make loans to a participating health care facility, participating institution for higher education, participating institution providing an educational program, other entity eligible to use the authority or consortium of entities eligible to use the authority for the cost of a project in accordance with an agreement between the authority and the participating entity or entities, except that no such loan may exceed the total cost of the project as determined by the participating entity or entities and approved by the authority;

Sec. 13. 22 MRSA §2055, sub-§13, as amended by PL 1993, c. 390, §16, is further amended to read:

13. Refund. To make loans to a participating health care facility ~~or~~, a participating institution for higher education ~~or~~ a participating institution providing an educational program to refund outstanding obligations, mortgages or advances issued, made or given by such a participating health care facility ~~or~~, participating institution for higher education ~~or~~ participating institution providing an educational program for the cost of the project;

Sec. 14. 22 MRSA §2055, sub-§14, as amended by PL 1997, c. 385, §2, is further amended to read:

14. Apportionment. To charge to and equitably apportion among participating health care facilities ~~and~~, participating institutions for higher education ~~and~~ participating institutions providing an educational program its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

Sec. 15. 22 MRSA §2055, sub-§15, as amended by PL 1997, c. 385, §3, is further amended to read:

15. Other acts. To do all things necessary or convenient to carry out the purposes of this chapter. In carrying out the purposes of this chapter, the authority may undertake a project for 2 or more participating health care facilities jointly ~~or~~, 2 or more participating institutions for higher education jointly ~~or~~ 2 or more participating institutions providing educational programs, and, upon undertaking the project, all other provisions of this chapter apply to and for the benefit of the authority and such joint participants;

Sec. 16. 22 MRSA §2057, as amended by PL 1993, c. 390, §19, is further amended to read:

§ 2057. Acquisition of property by authority

The authority is authorized and empowered, directly or by and through a participating health care facility ~~or~~, a participating institution for higher education ~~or~~ a participating institution providing an educational program, as its agent, to acquire by purchase or by gift or devise such lands, structures, property, real or personal, rights and air rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, as it determines necessary or convenient for the construction or operation of a project,

upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner of lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State, and to take title to lands, including lands lying under water and riparian rights, and air rights, that are located inside or outside the State in the name of the authority or in the name of a participating health care facility ~~or~~, a participating institution for higher education or a participating institution providing an educational program as its agent.

Sec. 17. 22 MRSA §2058, as amended by PL 1993, c. 390, §20, is further amended to read:

§ 2058. Conveyance of title to participating institutions

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for a participating health care facility ~~or~~, a participating institution for higher education or a participating institution providing an educational program, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions of the bonds, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program, free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, vested in such participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program.

Sec. 18. 22 MRSA §2060, sub-§2, as amended by PL 1993, c. 390, §21, is further amended to read:

2. General obligations. Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes or other obligations is a general obligation of the authority payable from revenues or money of the authority available for the payment of the obligation and not otherwise pledged, subject only to agreements with the holders of particular bonds, notes or other obligations pledging particular revenues or money and subject to any agreements with a participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program. Notwithstanding that such bonds, notes or other obligations may be payable from a special fund, they are and must be deemed to be for all purposes negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Article 8, subject only to the provisions of such bonds, notes or other obligations for registration.

Sec. 19. 22 MRSA §2060, sub-§4, ¶A, as amended by PL 1993, c. 390, §22, is further amended to read:

A. Pledging the full faith and credit of the authority, the full faith and credit of a participating health care facility ~~or~~, a participating institution of higher education or a participating institution providing an educational program, all or a part of the revenues of a project or a revenue-producing contract or

contracts made by the authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds, subject to such agreements with bondholders as may then exist;

Sec. 20. 22 MRSA §2061, sub-§1, as amended by PL 1993, c. 390, §23, is further amended to read:

1. Assistance. Such a project will enable or assist a health care facility to fulfill its obligation to provide health care facilities or, an institution for higher education to provide educational facilities within the State or a participating institution providing an educational program to fulfill its mission within the State;

Sec. 21. 22 MRSA §2061, sub-§3, as amended by PL 2001, c. 609, §1, is further amended to read:

3. Lease. Such a project will be leased to, or owned by, a health care facility or, institution for higher education or institution providing an educational program inside the State;

Sec. 22. 22 MRSA §2063, as amended by PL 1993, c. 390, §26, is further amended to read:

§ 2063. Credit of State not pledged

Bonds and notes issued under this chapter do not constitute or create a debt or debts, liability or liabilities on behalf of the State or of a political subdivision of the State other than the authority or a loan of the credit of the State or a pledge of the faith and credit of the State or of any such political subdivision other than the authority, but are payable solely from the funds provided for the bonds and notes. All such bonds and notes must contain on the face of the bonds and notes a statement to the effect that neither the State nor a political subdivision of the State is obligated to pay the same or the interest on the bonds and notes, except from revenues of the project or the portion of the project for which they are issued and that neither the faith and credit nor the taxing power of the State or of a political subdivision of the State is pledged to the payment of the principal of or the interest on such bonds or notes. The issuance of bonds or notes under this chapter may not directly or indirectly or contingently obligate the State or a political subdivision of the State to levy or to pledge any form of taxation whatever for the bonds and notes or to make an appropriation for their payment. Nothing in this section may prevent nor be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating health care facility or, participating institution for higher education or participating institution providing an educational program to the payment of bonds or notes or issue of notes or bonds authorized pursuant to this chapter.

Sec. 23. 22 MRSA §2064, as corrected by RR 1993, c. 2, §12, is amended to read:

§ 2064. Rents and charges

The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with a person, partnership, association or corporation, or other body, public or private, in respect of rates, rents, fees and charges. Such rates, rents, fees and charges must be fixed and adjusted in respect of the aggregate

of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues or money available for the project, if any, to pay the cost of maintaining, repairing and operating the project and each and every portion of the project, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds or notes of the authority issued in respect of such project as the same become due and payable, and to create and maintain reserves required or provided for in a resolution authorizing, or trust agreement securing, such bonds or notes of the authority. Such rates, rents, fees and charges are not subject to supervision or regulation by a department, commission, board, body, bureau or agency of this State other than the authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of bonds or notes of the authority or in the trust agreement securing the same, must be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund that is pledged to, and charged with, the payment of the principal of and the interest on such bonds or notes as the same become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge is valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other money so pledged and later received by the authority are immediately subject to the lien of such pledge without any physical delivery of the revenues or money or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice of the lien. Neither the resolution nor a trust agreement nor any other agreement nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of money to the credit of such sinking or other similar fund are subject to the resolution authorizing the issuance of such bonds or notes or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance projects at a particular participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program without distinction or priority of one over another, provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund is the fund for a particular project at a participating health care facility ~~or~~, participating institution for higher education or participating institution providing an educational program and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security authorized in this chapter to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

Sec. 24. 22 MRSA §2072, as amended by PL 1993, c. 390, §28, is further amended to read:

§ 2072. Agreement of the State

The State pledges to and agrees with the holders of bonds, notes and other obligations issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to this chapter, that the State will not limit, alter, restrict or impair the rights hereby vested in the authority and the participating health care facilities ~~and~~, the participating institutions for higher education and the participating institutions providing an educational program to acquire, construct, reconstruct, maintain

and operate a project as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation of the project and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations of such parties until the bonds, notes and such other obligations, together with interest on the bonds, notes and other obligations, with interest on any unpaid installment of interest and all costs and expenses in connection with an action or proceeding by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the authority or those entering into such contracts with the authority. The authority is authorized to include this pledge and undertaking for the State in such bonds, notes or other obligations or contracts.

SUMMARY

This bill allows eligible institutions providing an educational program that meet underwriting requirements of the Maine Health and Higher Educational Facilities Authority to borrow from the authority.