

94-457 FINANCE AUTHORITY OF MAINE

Chapter 1: BYLAWS AND ADMINISTRATION OF THE FINANCE AUTHORITY OF MAINE

Summary: This rule establishes the bylaws and provides for administration of the Finance Authority of Maine (the Authority). In addition, it establishes procedures for obtaining advisory rulings and for the conduct of contested hearings.

1. ANNUAL BUDGET

The members of the Authority shall approve an annual budget for the next fiscal year, no later than June 30th annually.

2. ADMINISTRATIVE FUNCTIONS

The Chief Executive Officer of the Authority is authorized to carry out all administrative functions of the Authority, including adoption of a seal, establishment of an office, appearing in or instituting legal proceedings, investing funds, transferring registered bonds, making determinations pertaining to confidentiality of records, carrying out any resolution of the members or agreement of the Authority and employing experts, officers, agents and other personnel and determining their qualifications, duties and compensation.

3. BYLAWS OF THE MEMBERS OF THE AUTHORITY

- A. **Name.** The name of the Authority is the Finance Authority of Maine.
- B. **Purpose.** The Authority was created by the Maine Legislature for the purposes set forth in the Finance Authority of Maine Act and following (the "Act").
- C. **Office.** The principal office of the Authority shall be at such location as it shall determine.
- D. **Seal.** The seal of the Authority shall be in the form of a circle within which shall be the name of the Authority and the year 1983.
- E. **Members of the Authority.** The members of the Authority shall be appointed and compensated and shall serve such terms as the Act may specify.
- F. **Quorum of and action by the members.** The requirements for determining a quorum and for taking action shall be governed by the Act. If seven members are present at the beginning of any meeting, then quorum exists for the transaction of business. If any member(s) leaves from a meeting at which a quorum was originally present, so that less than seven (7) members remain, quorum continues to exist. The affirmative vote of the greater of five members present, and voting or a majority of those present and voting is necessary for any action taken by the members.

- G. **Officers of the members.** The members shall elect from among themselves one person as Chair, one person as Vice Chair who shall serve as secretary, one person as treasurer and such other officers as it may from time to time determine. The officers shall have a term of one year and shall serve until the election of their successors. The Chair shall preside over meetings of the members. In the absence or incapacity of the Chair or if for any reason there is no Chair, then the Vice Chair shall perform the duties of the Chair. In addition, the Vice Chair, as Secretary, shall sign the minutes of all meetings of the members, after such minutes have been approved by the members.
- H. **Nominating Committee.** At least four weeks before the date scheduled for the annual meeting, the Chair shall appoint a nominating committee consisting of at least three members, who shall report to the members presenting a slate of nominees for officers of the Authority.
- I. **Regular meetings.** The members will ordinarily meet on the third Thursday of each month.
- J. **Special meetings.** Special meetings of the members may be called by either the Chair or any three members.
- K. **Annual Meeting.** The annual meeting of the members shall be held in the fall of each year at which time the members shall elect the officers.
- L. **Location of Meetings.** Meetings other than the annual meeting shall ordinarily be held in Augusta, unless another location is designated by the Chair or Chief Executive Officer.
- M. **Compensation Requests.** A member's request for payment of a per diem as provided by law and for reimbursement of expenses in connection with a duly called regular or special meeting of the members shall be presented to the Chief Executive Officer or the Director of Finance for approval and payment. A member's request for payment of a per diem and for reimbursement of expenses in connection with any other matter shall set forth the basis for the request and shall be presented to the Chief Executive Officer or the Director of Finance for payment. In the event it is not clear that the request is eligible for reimbursement, a determination will be made by the Chair and, if approved, presented to the Chief Executive Officer or Director of Finance for payment.
- N. **Notice of Meetings.** Any meeting held on the third Thursday of the month shall be deemed a regular meeting for which no advance notice is required. Meetings held on any other day shall be deemed special meetings for which notice must be received by the members at least two (2) business days prior to the date of the meeting, by mail, telephone or otherwise. Notice of emergency meetings must be given in accordance with the requirements of the FAME Act and the Maine Freedom of Access Act.
- O. **Order of Business.** The Chair shall determine the Order of Business of each meeting.

4. ADVISORY RULINGS

The Chief Executive Officer is authorized to issue nonbinding advisory rulings as to the applicability of the Finance Authority of Maine Act (the "Act") or the Authority's rules to the applicant, its property or circumstances. Requests for advisory rulings must be in writing and must specifically identify the section or provision of the statute or rule on which the ruling is sought. The Chief Executive Officer may decline to issue any ruling if the request is not sufficiently specific, is not accompanied by adequate information, does not adequately identify the applicant or the purpose for which the ruling is sought, or if the Chief Executive Officer determines that issuance of a ruling would not assist the applicant or would be contrary to the purposes of the Act. All rulings shall be in writing. Rulings shall not be binding upon the Authority. The Authority may charge an applicant for a ruling the Authority's actual, out-of-pocket costs and expenses, if any, in preparing any ruling.

5. HEARING PROCEDURES

In any case where applicable law or rule requires the Authority to conduct a hearing on an application and any objection is received with respect to such application from a competitor or a member of the public, the hearing shall be conducted substantially as follows:

- A. The applicant shall make a statement in support of the application, addressing the findings required to be made by the Authority in considering the application. The Authority and objectors may ask questions of the applicant.
- B. Opponents shall be given an opportunity to state the basis of their objections to the application.
- C. The applicant shall be given an opportunity to respond to the objections presented.
- D. The Authority may require additional information, and may continue the hearing to a later date or specify a period within which it will accept further evidence, but shall not be obligated to do so.

The Authority may, in its discretion, retain a court reporter or otherwise make a record of the hearing, and the applicant shall be responsible for any costs and expenses of making the record.

If the Authority must conduct a hearing on any other matter, the procedure shall be substantially similar to the foregoing, adapted as circumstances require.

6. CODE OF ETHICS

The members of the Authority recognize that either the existence or the perception of a Conflict of Interest can be harmful. Therefore, the members of the Finance Authority of Maine, adopt this Code of Ethics regarding Conflict of Interest.

A. Ineligible for any direct loan:

Any member of the Board or employee of the Authority and/or such person's spouse, children, parents, brothers and sisters, the spouse's children, parents, brothers and sisters, and anyone sharing a household with a Board member or employee (collectively "immediate relations.")

Any firm, partnership, corporation or other entity, including a sole proprietorship, if either a member of the board or employee of the Authority is materially involved in management

Any firm, partnership, corporation or other entity, including a sole proprietorship, 10% or more of which is owned in the aggregate by a board member or employee and/or such person's immediate relations.

B. Ineligible for any other benefits from the Authority:

Any member of the Board or employee of the Authority and/or such person's immediate relations except for those benefits attributable to status as a Board member or employee or relative thereof

Any firm, partnership, corporation or other entity, including a sole proprietorship (other than a financial institution seeking insurance for a loan or loans it desires to make), if either a member of the board or employee of the Authority is materially involved in management

Any firm, partnership, corporation or other entity, including a sole proprietorship, 10% or more of which is owned in the aggregate by a board member or employee and/or such person's immediate relations

C. A member or employee shall abstain in all aspects and respects and avoid contact with any other member and any other employee regarding any matter involving, any person, firm, partnership, corporation or other entity, including a sole proprietorship, which is either an applicant or a borrower or participating coordinate lender if:

the member or employee is (i) an officer, director, attorney, accountant or other representative of such applicant or borrower or participating coordinate lender; ~~(ii)~~ a vendor, ~~a~~ competitor or vendee of any such applicant, ~~or~~ borrower, or participating coordinate lender, to any significant degree; or (iii) such person is the member or employee or such person's immediate relations, or is a firm, partnership, corporation or other entity, including a sole proprietorship 2% of more of which is owned in the aggregate by, the member or employee and/or such person's immediate relations.

Any degree of involvement must be disclosed in writing to, and whether such is significant or not is to be determined by, the Chief Executive Officer in consultation with the Office of General Counsel of the Authority, subject to appeal.

- D. Subsections A and B of this Section 6 notwithstanding, this Rule shall not impair any member, employee, or relative thereof from being eligible for benefits under any and all Federal and State Educational Financial Assistance Programs operated by the Authority under Title 20-A M.R.S.A or from being eligible (in his or her individual capacity or as the holder of an interest in a separate legal entity) for benefits (as an investor only, and not as the subject business) under the Maine Seed Capital Tax Credit program administered by the Authority under 10 MRSA § 1100-T, provided, however, that in each such case, subsection C of this Section 6 shall apply, and provided further that in the event that the applicant is the Chief Executive Officer or one of his or her immediate relations or an entity 2% of which is owned in the aggregate by such persons, the benefits shall not be approved except by the members, and if the applicant is a member or one of member's immediate relations or an entity 2% or more of which is owned by such persons, the benefits shall not be approved unless eligibility is determined by an independent party chosen or approved by a majority of the disinterested members and that independent party's finding is approved by a majority of the disinterested members at a regular or special meeting of the members at which the action is scheduled and properly noticed to be heard.
- E. Any benefits extended as of the effective date of this Rule may be renewed without violating this Rule.
- F. Any interpretation of this Code of Ethics, including whether participation in any particular program in which the Authority plays any significant role constitutes a "benefit," whether a degree of involvement is "significant" or material, or whether an interest is "direct" or "indirect" shall be made by the Chief Executive Officer in consultation with the Office of General Counsel of the Authority and be subject to appeal to the members, as shall be the application of this Code with regard to an employee of the Authority. It will take the affirmative vote of at least two-thirds (2/3) of the members present and voting, but not less than five (5) members, to overrule a ruling by the Chief Executive Officer in consultation with the Office of General Counsel or to waive the application of this Code with regard to an employee of the Authority.
- G. Each and every contact by any Member of the Board or employee of the Authority who has a Conflict of Interest as defined above shall be reported to the Office of General Counsel by the member or employee of the Authority who is contacted. The report of contact shall be made to the Office of General Counsel and a list of any such contacts shall be provided to the Members of the Board. The Board shall thereupon take such action as it shall deem appropriate.
- H. A Conflict of Interest will remain a conflict for one year following the termination of the relationship which caused the conflict.
- H-1. ~~A member of the Board or an employee may not accept any gift, compensation or service with a value of more than \$25.00 from any person or organization with whom FAME does business without first checking with the Chief Executive Officer. This includes persons and organizations that have done business with FAME in the past and those considering or attempting to do business in the future. Compensation includes the withholding of any penalty and is also~~

~~interpreted to include gifts, services or compensation to members of the employee's immediate family or household and to gifts, services or compensations which may be given to anyone on behalf of the employee. A member of the Board or an employee may not knowingly accept any gift, compensation or service from any person or organization: (i) with whom FAME currently does business; (ii) with whom FAME has done business in the past twelve months; or (iii) that is known to be considering or attempting to do business with FAME in the future (collectively, "Prohibited Gifts").~~

~~Prohibited Gifts include the waiver or withholding of any charge or penalty and also includes gifts, services, compensation or waivers given to members of the Board member's or employee's immediate family or household and gifts, services, compensations or waivers which may be given to anyone on behalf of the Board member or employee.~~

~~For the purposes of this Gift Policy, "Prohibited Gifts" shall not include: (1) gifts, compensation or services, or waivers of charges or penalties, which, collectively with any other gifts, compensation, service or waivers received directly or indirectly from the same source within the prior twelve month period, have a fair value of less than \$25 ("De Minimis Gifts"); (2) reasonable payments for services rendered by the Board member or the employee to the person or organization in a capacity unrelated to their Board service or FAME employment ("Permitted Compensation"); (3) reasonable services provided by the person or organization in exchange for payment by the Board member or employee ("Permitted Services"); or (4) reasonable and customary gifts (other than De Minimis Gifts) provided to the Board member or the employee in connection with such member or employee's relationship to the person or organization in a capacity clearly unrelated to their Board service or FAME employment ("Permitted Gifts").~~

~~The fact that compensation, services or gifts may be considered De Minimis Gifts, Permitted Compensation, Permitted Services or Permitted Gifts, shall not: (A) permit the payer, provider or donor to receive loans or other FAME benefits when otherwise proscribed under this Code of Ethics; nor (B) eliminate a conflict of interest or requirement for abstention of a Board member or FAME employee when otherwise defined or required under this Code of Ethics. In the event that a Board member or FAME employee accepts a Permitted Gift, Permitted Compensation, or Permitted Service, they shall provide prompt notice to the Chief Executive Officer, if it has not been previously disclosed.~~

Members of the Board and employees should be sensitive to the appearance of impropriety in accepting any gift, service or compensation of any value, including the purchase of meals.

No gift, service or compensation, even if otherwise considered a De Minimis Gift, Permitted Compensation, Permitted Service or Permitted Gift, may will be accepted if the intent is to influence decision-making. Members of the Board and employees should use prudent judgment when evaluating the purpose of gift-giving and ~~in~~ the acceptance of any gift, even a token item of minimal value. ~~Members of the Board and~~

~~employees are prohibited from accepting multiple gifts, services or compensation from one person or organization without first checking with the Chief Executive Officer~~

- I. ~~Members of the board shall read and sign t~~This Code of Ethics ~~shall be read~~ each year on or before the first meeting of members following the annual meeting of the Authority and each new member of the board and each new employee of the Authority shall read and sign this Code of Ethics.

Basis Statement--AMENDMENT 6

The Amendment amends the Gift Policy within the Authority’s Code of Ethics. These changes clarify the limited circumstances when gifts or compensation to an employee or board member may be accepted without violation of the policy, and the effect of the receipt of such gifts or compensation. The Amendment also makes other, non-substantive changes to the Code of Ethics.

{Public Hearing} {Comments received}

Economic Impact Analysis Statement/Fiscal Impact Note:

A. This rule amendment will have no cost to the Authority other than costs which can be absorbed within allocated appropriations.

B. No parties will be affected by the rule amendment as the amendment incorporates long-standing policy into the rule.

C. The rule amendment will have no effect on competition.

The proposed rule amendment will not impose any costs on municipalities or counties.

STATUTORY AUTHORITY: 10 M.R.S.A. C. 110, specifically §969-A(6),(14) and (16)

EFFECTIVE DATE:

February 24, 1984 (EMERGENCY)

EFFECTIVE DATE OF PERMANENT RULE:

December 28, 1985

AMENDED:

September 22, 1986

May 16, 1987

April 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

AMENDED:

August 30, 2000

January 23, 2007 – filing 2007-10 (Amendment 5)

[July _____, 2018 \(Amendment 6\)](#)