THE MAINE CAPITAL CORPORATION

Report of a Study by the

JOINT STANDING COMMITTEE ON TAXATION

to the

111th Maine Legislature

January, 1984

Committee Members:

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Sen. Thomas M. Teague
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SUMMARY

The Joint Standing Committee on Taxation of the 111th Legislature undertook a study of the Maine Capital Corporation as required by PL 1981, Chapter 686 enacted during the Second Regular Session of the 110th Legislature. This law directed the Committee on Taxation to evaluate the Maine Capital Corporation with respect to the purposes for which the corporation was established and the effect of the income tax credits as they relate to the purpose in the enabling legislation.

The Joint Standing Committee on Taxation studied a report entitled "Maine Small Business Development Finance" by Belden Hull Daniels which examined Maine's financial institutions and business finance programs, including the Maine Capital Corporation. In addition, the Committee discussed several issues, including criticisms and problems of the MCC, with representatives of the Maine Capital Corporation. The Committee also conducted research pertaining to the operation and investment strategies of venture capital firms, in general.

The Maine Capital Corporation is the outgrowth of enabling legislation enacted in 1977 as a means to promote economic development throughout the State. This corporation is capitalized by statute at $1,000,000 to be invested in Maine businesses. The stock of the company consists of 10,000 shares of commonstock with a par value of $100 per share. Currently, the stock is held by 21 banks, 4 individuals, 2 supermarket corporations, 2 securities-brokerage firms, 1 paper company, 1 newspaper publishing firm, and 1 charitable foundation. In return for investing in the MCC, investors are eligible for a total of $500,000 of income tax credits.

Since its inception, the Maine Capital Corporation has invested $250,000 in 3 Maine firms, one of which failed. Two of the investments have been equity investments, and the third is a $50,000 loan to a restaurant. The remaining $750,000 is invested in securities which, for the year 1982, yielded nearly $100,000 in interest. Current operating costs are 10-12% of the firm's capitalization compared to 3-4% for the average venture capital firm which usually has a much higher capitalization ($5,000,000-$10,000,000).

Critics of the Maine Capital Corporation argue that:

1. the MCC avoids investments in the more risky business start-ups and is interested only in the more secure and higher yield ventures,

2. the low capitalization rate significantly hampers the firm from making a significant contribution to the state's economy,

3. the MCC has a very poor track record for the past 6 years, and only 25% of the firm's investment capital is invested in Maine businesses,

4. there are inadequate safeguards to protect the State's investment of $500,000 of income tax credits for the MCC, and

5. the MCC does not fulfill the purpose for which it has been created.

The Maine Capital Corporation which employed new management and relocated to Portland in 1981 argues that:

1. the low capitalization does not allow for many losses and does not generate sufficient income to pay administrative costs and offer attractive returns to investors,

2. the investment strategy of the MCC is no different than the investment strategy of most venture capital firms,

3. the investment of $250,000 in Maine businesses and future investments, in themselves, fulfill the public purpose in the enabling legislation, and

4. the MCC is a private firm in which investors are eligible for income tax credits in return for risking their private fortunes. The income tax credits are not state investment.

The Maine Capital Corporation argues that if no changes are made with respect to the low capitalization and the geographical investment restriction (limited to Maine businesses), the MCC will form a "sister Corporation" able to invest anywhere. If the capitalization ceiling is removed, but the geographical restriction is not eliminated, the MCC argues that out-of-state investors, the major source of investment capital, will not invest in the MCC.

As a result of its investigation, the Joint Standing Committee on Taxation discovered that the enabling legislation and income tax credit provisions were amended in 1979. In the process of revising the income tax credit provisions to facilitate administration of the tax credits, the Legislature may have inadvertantly expanded eligibility for MCC tax credits. Initially, only the original subscribers of MCC stock were eligible for tax credits, but currently, any investor in the corporation may qualify for the credits. The Committee unanimously recommends revision of the income tax credit to apply only to the original subscribers.

To many of the members of the Committee on Taxation, the Maine Capital Corporation has not yet achieved the purpose for which the corporation has been established. Some of the members of the Committee, however, perceive significant potential for the firm in the future. In order to achieve this potential, however, some members contend that the MCC enabling law will have to be revised.

The suggested revisions include increased capitalization and removal of the geographical investment restriction that limits MCC investments to Maine businesses. The Committee on Taxation, however, is very concerned that removal of the geographical restriction to attract more investors to the MCC may result in the concentration of MCC investments outside the State. To avoid this danger, it is recommended that a percentage of any increase in investments in the MCC be reserved for investment in Maine.

A majority of the Committee on Taxation also recommends repeal of the enabling law that creates the Maine Capital Corporation at the end of 1988 when the income tax credits expire. The MCC would continue under the State's general incorporation law.

REPORT OF THE JOINT STANDING COMMITTEE
ON TAXATION

TO

THE SECOND REGULAR SESSION OF THE
111TH LEGISLATURE

WITH RESPECT TO
ITS STUDY OF
THE MAINE CAPITAL CORPORATION

I. Background of Study

Chapter 686 of the Public Laws of 1981, enacted during the Second Regular Session of the 110th Legislature, requires the Joint Standing Committee on Taxation, in addition to other duties, to prepare an evaluation report of the Maine Capital Corporation and prepare any implementing legislation to be submitted to the Legislature no later than December 31, 1983.

The law requires the study to describe and evaluate the extent to which the purpose of the Maine Capital Corporation and the income tax credit accorded to investors has been achieved. In addition, the Committee is directed to determine whether the Maine Capital Corporation and the accompanying investment incentive should be terminated or modified in any way.

II. Procedure

The Joint Standing Committee on Taxation investigated the Maine Capital Corporation with respect to the operation of the corporation, the statutory purpose for which it has been created, and the degree of realization of that purpose. In addition, the Committee on Taxation examined issues pertaining to the Maine Capital Corporation raised in a report entitled, "Maine Small Business Development Finance by Belden Hull Daniels. /1/ This report, completed in January, 1983 for the Maine State Development Office, questioned the consistency of purpose and strategy established by the Maine Capital Corporation with respect to the purpose and strategy set forth in the enabling law.

Following an analysis of the enabling law and the questions raised in the Daniels report, the Committee on Taxation discussed the issues with representatives of the Maine Capital Corporation. Mr. Philip Hussey, President, and Mr. David Coit, Executive Vice President of the Maine Capital Corporation discussed with the Committee the problems and achievements of the firm as well as their personal perceptions of the future operation of the corporation.

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1. Belden Hull Daniels is president of the Counsel For Community Devlopment, Inc., in Cambridge, Massachusetts.

III. Definition and History of the Maine Capital Corporation

The Maine Capital Corporation (MCC) is a private venture capital investment firm established by an Act of the Legislature in 1977 (PL 1977, Chapter 108) as a means of promoting economic development throughout the State. The proposal to establish the Maine Capital Corporation came from the James B. Longley administration which emphasized the encouragement of the private sector to undertake activities that yield both public and private benefits. According to Governor Longley (1975-1979), by encouraging the private sector to invest equity in Maine firms, both the investor and the State would benefit.

The Maine Capital Corporation is capitalized at a maximum ceiling of $1,000,000 consisting of 10,000 shares at $100 per share. This firm is empowered to invest up to a ceiling of $200,000 in any single new business or business expansion in the State. Financing may include equity investments, loans, guarantees or commitments for such financings.

In order to encourage investment in the MCC, the law provides a 50% tax credit toward personal and corporate income taxes. In any taxable year, an investor can credit the lesser of 10 percent of the investment or 50% of the total tax imposed on the investor. Additionally, there is a 4 year carry forward provision which allows investors to spread the unused balance of the credit over a 5 year period. The tax credit applies to any and all income of the investor and is not limited to the income derived from the Maine Capital Corporation. If the investor disposes of the MCC stock within 6 years of purchase, the income tax credit is recaptured in full.

Initially, subscriptions to the shares in the MCC were very slow, and the company did not organize until 1979. The capital stock was issued on August 7, 1980 to 6 individuals, 6 corporations, and 19 banks.

In addition to the organization of the firm in 1979, the enabling legislation was amended in 1979 to expand the financing methods of the MCC from solely investing equity capital to also include loans and guarantees. The purpose of this change was to allow the MCC to operate as a Small Business Investment Corporation under the Small Business Administration. This new function allows the SBIC or the MCC in this case to borrow money from the SBA to loan to small business. A SBIC can borrow up to 3 times its capital .

In the first year of operation, the MCC contracted with the Maine Development Foundation which agreed to provide facilities and personnel to the venture capital firm at a rate not to exceed $65,000 per year. Using the administrative and staff resources of the Maine Development Foundation the MCC made its first investment of $52,000 in a firm entitled Cabletronix in Rockland. In June, 1981, Cabletronix filed for bankruptcy.

As a result of several factors, the Maine Capital Corporation, in 1981, hired a new manager directly responsible to the MCC, and moved its operation to Portland, Maine. Since that time, the venture capital investment firm has invested in two Maine businesses, and a fourth investment is reputed to be forthcoming soon.

Up to the present date, the Maine Capital Corporation has provided venture capital to 3 firms as described below:

	FIRM	MCC INVESTMENT	% OF EQUITY
1.	Cabletronix II	$ 52,000	33 1/3% filed for bankruptcy
2.	VORtech Corporation Portland, ME	$150,000	18%
3.	PORT GARDENS Restaurant-Kennebunkport	$ 50,000	LOAN

The Maine Capital Corporation also "...invests idle cash in certificates of deposit and money market accounts with shareholder banks. As of June 30, 1983, these investments were approximately $800,000, and income from those investments for 1983 was $95,000."

IV. The Need for Capital in Maine

Maine's economy has been described as a predominantly rural economy dominated by small business. Maine's capital needs may have been described as the capital needs of a small business economy. This premise is based on the fact that Maine's larger firms are controlled by larger firms located outside the State which have access to internal funds or other sources of capital from which a great many small businesses may be excluded. /2/

In comparing the capital resources of Maine to the nation, in general, Maine is significantly below the U.S. average. Between 1970 and 1980, assets per capita in Maine declined, deposit and loan growth fell significantly below the U.S. growth rate, and deposits per capita in the entire banking sector fell signficantly below the U.S. average.

In addition to a comparatively limited supply of capital for investment, Maine's banking industry has not been highly competitive, particularly the commercial banking sector. Since small businesses are perceived as the highest risk class of borrowers, this sector particularly suffers from a "shortage" of capital for investment. In general, small business must depend upon short-term, high-rate capital from local commercial banks. Furthermore, the Maine banking industry has been skeptical about products, processes, management, and individuals with which it has little familiarity. For the most part, "...smaller, newer, and non-traditionally based businesses have a difficult time borrowing funds...because lenders tend to have an aversion to risk and commercial banks do not lend aggressively." /3/

2. Belden Hull Daniels, "Maine Small Business Development Finance; Final Report", January, 1983, produced for the State Development Office, p. 25.

3. Ibid, p. 48.

V. Issues Pertaining to the Formation and Operation of the MCC

The history and operation of the Maine Capital Corporation have raised a number of questions and issues concerning the effectiveness of the firm and the cost to the State. These issues include

A. The Degree of Compatability between public and private goals
B. The Capitalization Level of the MCC;
C. The extent of the credit; and
D. The Practical Potential of Venture Capital in Maine.

A. Degree of Compatability Between Public and Private Goals.

The question has been raised whether the operation of the Maine Capital Corporation is consistent with the purposes expressed in its enabling legislation. In addition, this question relates to a larger issue pertaining to the achievement of a primarily public purpose by means of a private, profit-making firm.

The MCC enabling legislation asserts that the purpose of the Maine Capital Corporation is to promote economic development of the State. The law defines economic development to include:

1. Develop or promote development of new businesses
2. Promote viable business expansions
3. Encourage capital reinvestments
4. Reduce unemployment
5. Increase per capita income.

The actual primary objective of the Maine Capital Corporation according to the MCC brochure and the major MCC critic "...is to create long term capital appreciation for the venture's stockholders and for Maine Capital Corporation." The Daniels' report questions whether this primary objective is consistent with the purpose expressed in the law. The Daniels' report does not agree that "what is good for Maine Capital is good for the State of Maine."

The Daniels report strongly urges that the MCC be made accountable to the State with respect to the purposes established in the law. This argument suggests the establishment of minimum standards and goals within the law, such as the number of new jobs to be created, in order for investors to qualify for the tax credit.

The Maine Capital Corporation, on the other hand, argues that the intent of the Legislature has been to establish a venture capital corporation to provide private capital for investment in Maine enterprise. No venture capital firm existed in Maine prior to MCC's creation. The creation of MCC has awakened the Maine business community to the possibilities of venture capital financing. The injection of private venture capital into Maine firms is, in itself, an act for the public benefit. In order to attract private capital for investment in high risk ventures, it was necessary to provide an incentive in the form of a tax credit. The result has been the investment of private capital in 3 Maine firms which has helped the Maine economy, and which promises greater benefits in the future.

Although the stated primary goal of the Maine Capital Corporation is not the same goal as stated in the enabling legislation, the primary objective of the MCC is no different from that of most venture capital firms throughout the nation. According to _Venture Economics_, "The primary motivation for venture capital investment is to achieve very large capital gains for investors." /5/ By depending upon a strictly private venture capital investment company which has obligations to stockholders and no State imposed performance standards as a means to promote economic development of the State, the State of Maine has accepted the premise that the injection of venture capital in the Maine economy, is itself, a public benefit and promotes economic development. The more pertinent issue in this case may be the degree of effectiveness of a private, Maine based venture capital firm in providing needed capital to the Maine economy.

The question concerning the consistency of the purpose in the MCC enabling legislation with the primary objective of the Maine Capital Corporation is further reflected in the dispute between the MCC and its critics pertaining to the types of investments, the investment requirements, and the investment strategy of the Maine Capital Corporation.

1. _Types of Investments_

According to the Belden Hull Daniels report and other critics of the Maine Capital Corporation, most venture capital firms invest in "start-ups" or new businesses which from careful analyses, show great potential for significant growth and financial returns in the future. These investment firms are willing to take significant risks and experience some losses which are more than offset by successful investments in a few "winners". According to the State Development Office, venture capital firms do not invest in ventures with the same degree of risk as bank loans. If there is no differences between bank loans and venture capital investments with respect to risk, there is no need for venture capital investment firms.

The Maine Capital Corporation, assert the critics, is primarily interested in investing in business expansions and leveraged buy-outs (Transfer of ownership of an existing business to a venture capital investment firm) which have proven to be successful and show promise of future growth with good rates of return. This approach is based, to a great extent, on the low capitalization ceiling of the firm which does not permit many losses. One significant loss could be detrimental to the MCC. According to David Coit, Executive Vice President of the MCC,

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5. Office of Economic Policy, Planning and Research, Department of Economic and Business Development, State of California, "Financial Performance, Growth, and Financing for Small Manufacturers," May 5, 1981, p. 11.

> Start-up Financings should be attempted only in the exceptional case and with experienced and deep pocketed co-investors. Start-up financing will accelerate the erosion of MCC's capital base as a result of foregone current income, and subject the fund to the risks of significant capital improvement in the case of business failure...../6/

In addition to avoiding start-ups, the Maine Capital Corporation, according to Coit, should focus on expansion financings which are

> a very attractive investment for Maine Capital Corporation....Principally though, MCC should be looking for marketing oriented management with enough of a management team in place to support the grwoth potential of the business. /7/

With respect to leveraged buy-outs (purchase of ownership of an existing business), the Maine Capital Corporation reports, "Leveraged buy-outs are perhaps the most appropriate investments....As such, these companies should be able to support significant debt financing. /8/

The Daniels report criticism of MCC's investment strategy would not appear to be based upon universally accepted ideas of the role of venture capital companies. A study of venture capital company investment activities across the nation as reported in the publication, Venture Economics study of venture capital investment in California points out that nearly two-thirds of the capital investments of these firms is concentrated business expansions and leveraged buy-outs. Thus, roughly one-third of the total capital investments of Venture Capital firms investing in California are invested in "start-ups."

Maine Capital Corporation investment strategy therefore, is not out-of-line with private venture capital corporation across the nation. The MCC argues that a timely investment in business expansion can produce substantial results that would benefit the State. In addition, the Maine Capital Corporation argues that a leveraged buy-out does not represent ideas, new business methods, or "new-blood" to a stagnating enterprise or a firm that has not reached its potential and allow that firm to "take-off."

2. Investment Requirements

The Maine Capital Corporation requires a minimum rate of return of 12% on its investments in order to cover administrative and operating costs. In addition, it is necessary for the MCC to provide an attractive rate of return for MCC investors. The Belden Hull Daniels report argues that the MCC looks for a minimum rate of return of 25 to 30% on its investment. Furthermore, the Daniels report asserts that this rate of return is substantial compared to the actual investment of $500,000 by the stockholders. The 50% income tax credit reduces the $1,000,000 investment to $500,000 and increases the effective rate of return to 50-60 percent.

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6. Coit, David, "Maine Capital Corporation: The Venture Capital Opportunity in Maine," a report to the Board of Directors, p. 7.
7. Ibid, p. 7.
8. Ibid, p. 8.

Critics of the MCC also assert that Maine Capital Corporation seeks equity investments of 30% or more in Maine firms. This investment requirement, argue the critics, greatly restricts the number of firms which are willing to accept the conditions of Maine Capital Corporation.

The Maine Capital Corporation insists that there are no minimum ownership of rate of return criteria for its investments. In addition, the MCC argues that its investment record is strong evidence that the firm has not devised minimum ownership and rate of return requirements. The determining factors of MCC equity in a firm are 1) the maximum allowable investment for MCC ($200,000/single investment), 2) the total number of shares of the prospective firm, and 3) the number of shares available for purchases. Furthermore, the rate of return depends upon the success of the firm with the injection of venture capital.

Maine Capital Corporation's investment of $150,000 in Vortech Corporation, a start-up, represents 18% equity. The MCC $50,000 loan to Port Gardens Restaurant in Kennebunkport does not provide the MCC with a 25-30% rate of return.

The MCC also indicates that the 50% income tax credit is not part of a rate of return. It is an inducement to private investment in a venture capital firm. If the MCC realized a 30% rate of return, 12% of the 30% would go for administration, as much as 8% could be lost to cover previous losses, leaving 10% for the investors. A 10% income tax credit (not to exceed 50% in 5 years) is not an outrageous return on such a venture.

While the investment record of Maine Capital Corporation argues against the equity and rate of return requirements suggested by the critics of MCC, it is obvious that the Maine Capital Corporation requires investments that will be attractive to stockholders with respect to dividends and capital gains and that will cover the relatively high administrative-operating costs of the investment firm. Thus, the types of firms in Maine that can meet these requirements may be significantly "few and far-between" compared to the total number in the State.

3. Operational Strategy

While it is clear that the Maine Capital Corporation has adopted a controversial investment policy that minimizes risk with respect to its investments in Maine, the MCC has also developed an operational strategy that minimizes its role with respect to Maine firms and emphasizes investment opportunities out-of-State. This strategy includes serving as a referral service for Maine businesses in need of capital, providing SBA monies to eligible Maine enterprise, and the formation of a sister corporation to invest, regardless of location, in the most lucrative business opportunities.

According to David Coit of the MCC, the Maine Capital Corporation can provide a valuable service to the State by referring Maine businesses to other sources of venture capital. Since the MCC is developing contracts with many other venture capital firms out-of-state, the MCC could monitor the operation of Maine firms for out-of-state investment companies.

In addition to serving as a referral service, the MCC, as a result of the change made in its enabling legislation in 1979, may provide Small Business Administration (SBA) monies to eligible firms. Following investment of its total capitalization, the MCC could be eligible for as much as $3,000,000 in SBA funds to be loaned to Maine firms.

Although the Maine Capital Corporation asserts that there is significant potential in Maine, it has indicated that the more lucrative investment opportunities lie outside the State. The MCC is seriously contemplating the formation of a limited partnership that would not be restricted by a capitalization ceiling or by a geographical investment restriction. This limited partnership could invest alone or with out-of-state venture capital firms in "foreign" business ventures.

The Maine Capital Corporation is also interested in removing the capitalization ceiling and the geographical investment restriction in its enabling legislation for new investors. In the opinion of David Coit, this proposal would encourage more people to invest in the MCC and would permit the firm to realize greater returns by investing in the most lucrative opportunities wherever they may be.

B. The Capitalization Ceiling and Geographical Restriction

There is no dispute with respect to the limitation posed by the $1,000,000 capitalization ceiling. According to both the Maine Capital Corporation and its critics, the ceiling does not allow for many losses and does not generate substantial revenues to offset the comparatively high percentage of administrative costs.

The current administrative and operating costs of the Maine Capital Corporation are roughly 10-12% of its capitalization. The administrative and operating costs of the average venture capital firm which also has a higher capitalization is roughly 3-4% of assets. Although none of MCC's administrative costs appear to be out-of-line, its high percentage of operating costs results from its comparatively low capitalization.

The relatively high administrative costs of the MCC, have contributed to an investment policy and strategy that, in the opinion of critics, are not consistent with the purpose stated in the enabling legislation. According to this argument, the MCC need for relatively high rates of return to cover administrative costs limits MCC investments to less risky investments and to high yield ventures.

The Belden Daniel's Report suggests that a higher capitalization limit (e.g., $3,000,000) would enable the MCC to invest in the more risky "start-ups." The MCC argues that the geographical limit (Maine firms only) would also have to be removed. According to the MCC, the corporation could not induce existing stockholders to increase their investment or new stockholders to invest in the venture capital corporation with the constraint of investing only in Maine firms.

A conclusion that may be drawn from this issue is that the Maine Capital Corporation is not interested in investing more than $1,000,000 in Maine enterprise and sees more lucrative investments outside the State. Hence, the plan to develop a sister corporation.

C. Extent of the Tax Credit

The question has been raised whether the tax credit for investment in the MCC does or should extend to purchasers of stock other than the original subscribers. While the statement of fact and debate on the original bill suggest that the tax credit was intended only for the original subscribers, the law was amended in 1981, and present law does not reflect this intention. The present provisions may be interpreted to authorize income tax credits for any subsequent purchaser of MCC stock.

The Maine Capital Corporation has operated under the assumption that the tax credit is non-transferrable. This assumption is based on an opinion rendered by the firm's attorney, Jerome Goldberg, of the law firm of Bernstein, Shur, Sawyer, & Nelson. This opinion is based upon the original law that established the Maine Capital Corporation and an Attorney-General's opinion written by Assistant Attorney-General, Jerome S. Matus, on August 31, 1979 that referred to the original law.

The original law creating the MCC limited the income tax credit provision to "subscribers in the common stock of the Maine Capital Corporation." The Attorney-General's office interpreted "subscribers in the common stock" to be the initial investors in the Maine Capital Corporation. According to this opinion, "...a transferee purchasing stock from a subscriber is not a subscriber, and thus, the credit cannot extent to transferees." /9/

In 1981, the 110th Legislature passed legislation enacted as PL 1981, c. 364, §70 which amended the income tax credit provisions of the Maine Capital Corporation for the purpose of clarifying "...the administrative interpretation of the credit." In addition, the amending legislation consolidated into a single section in the general tax credit chapter (36 MRSA, c. 822), the 3 separate credit provisions in the original legislation.

The amending legislation removed from the original law the phrase, "subscribers in the common stock". The effect of this change has been to place in question the 1979 opinion of the Attorney General. Although the Legislature did not intend to change the application of the income tax credit of the original law, the effort to provide greater ease of administering the law may allow new investors in the Maine Capital Corporation to qualify for the income tax credit.

If the income tax credit is not available to new investors, the cost to the State of Maine is a maximum of $500,000 over a maximum period of 9 years. If the income tax credit is available to "new" stockholders, the maximum cost to the state over a continuous period of time would be $100,000 per year. The actual cost over time, however, is indeterminable and depends upon the extent of transfers of stock ownership.

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9. Matus, Jerome S., Assistant Attorney General, Letter to Jerome F. Goldberg, Esquire, August 31, 1979.

The Maine Capital Corporation has not suggested that the tax credit be made available to all subsequent subscribers of stock. The major emphasis of the MCC is the removal of the capitalization ceiling and geographical investment restriction as the means of encouraging greater investment in the MCC.

One conclusion that may be drawn from this issue is that substantial capital gains and dividends are by far the most attractive measure to induce investors in the MCC and the income tax credit, in itself, is not a significant inducement. The MCC has implied that it does not need the "encouragement" of the State and would like to go its own way.

Critics of the Maine Capital Corporation argue that the price Maine has to pay for the MCC exceeds the worth of the results. The Belden Hull Daniels report argues that the performance of the MCC has been disappointing up to this point. A total investment of $250,000 in 3 ventures since the establishment of the firm in 1977 is considered to be a poor record.

Some economic development specialists argue that it is not necessary to encourage the investment of venture capital by tax credits. In their opinion, the key to venture capital investment is the potential of an enterprise over which the state has little control.

The slow rate of performance is not entirely the blame of the Maine Capital Corporation. The difficulty in selling stock, entrepreneurial suspicion of co-investors, and the recession have been difficult obstacles to overcome. Since late 1981, the Maine Capital Corporation, according to company spokesmen, has invested on a schedule compatible with out-of-state venture capital firms. In the opinion of Mr. David Coit, executive vice-president of the MCC, most venture capital firms invest in 2 or 3 firms per year following an investment analyses of 100 or more firms. The Maine Capital Corporation has invested in 3 ventures since 1981 and a fourth venture is planned in the near future.

Clearly, the cost to the State at the present time for the creation of the Maine Capital Corporation has been substantial and probably greater than the returns to the State. Nevertheless, the MCC has invested only 25% of its capitalization and future MCC investments and the effect of current investments could have a significant impact upon the State. At a minimum, MCC has freed $250,000 of capital from other sources for investment in Maine.

D. The Practical Potential of Venture Capital In Maine

Although there are substantial amounts of high-risk investment capital in the markets throughout the nation today, most of this capital is invested in energy development firms and high technology industries.

A study of venture capital investment in California, conducted by Venture Economics, points out that these types of investments are largely concentrated in the computer, electronics, communication, and medical technologies firms. Furthermore, the number of venture capital investments in California firms during the period between 1976 and October 31, 1980, was evenly divided between California based and out-of-state venture capital investment firms. Thus, venture capital firms' investments throughout the nation are primarily concentrated in newer (not start-ups) industries with high growth potential, and these industries attract this capital from wherever it is available in the nation or abroad.

This conclusion is further supported by an analysis of capital investment in industry throughout the United States during the period 1976-1980. According to the study "Financial Performance, Growth, and Financing For Small Manufacturers," published by the office of Economic and Business Development, manufacturing firms, for the most part, have depended upon capital from sources other than venture capital firms for growth and development. This report asserts that large manufacturing firms depend primarily on external issues of capital stock, long term debt, and bonding for their investment capital stock. The small manufacturing firms depend largely upon retained earnings, trade debits, and long term bank loans for their investment capital needs. It should be noted that the Maine economy relies more heavily on manufacturing enterprise than the economies of most other states.

It is evident that venture capital firms' investments in manufacturing across the nation have been negligible. In addition, venture capital throughout the nation is attracted like a magnet to those firms and industries which show great promise of substantial growth and large capital gains for investors.

It is questionable whether venture capital firms will invest in smaller firms in non-glamorous industries which characterize much of the Maine economy. Maine enterprise in the past has not been attractive to venture capital investment firms which do not perceive the degree of growth and the sizeable capital gains to be made in Maine as compared to opportunities outside Maine. Hence, the Maine Capital Corporation was formed to fill this void in capital investment in Maine firms.

Since the most significant sources of capital for larger Maine firms are located out-of-state and since the most significant sources of capital for small Maine businesses or micro-businesses consist primarily of friends, relatives, suppliers, and local banks, the role of private venture capital may be limited to "small" businesses. In addition, small businesses in Maine have been very reluctant to share ownership with venture capitalists or to undertake non-traditional financing.

This question becomes more paramount considering the investment strategy of the Maine Capital Corporation. The MCC, for the most part, has shown that it will not attempt any investment ventures beyond its present $1,000,000 capitalization.

Findings and Recommendations of the Majority of the Joint Standing Committee on Taxation -

Sen. Donald Twitchell	Rep. Edward Kane
Sen. Thomas Teague	Rep. Thomas Kilcoyne
	Rep. Richard McCollister
	Rep. John Cashman
	Rep. John Masterman
	Rep. Russell Day
	Rep. Gennette Ingraham

FINDINGS

1. There is a need for venture capital in the State of Maine to finance business projects with good potential, particularly businesses with a minimal track record that banks are unwilling to finance;

2. The Maine Capital Corporation, the only venture capital investment firm in Maine, is hampered by a very low capitalization. This low capitalization inhibits investment in business "start-ups" and higher risk business ventures;

3. Investment in the Maine Capital Corporation is hampered by the statutory geographical limitation which limits investments to Maine businesses. As a result, out-of-state investors, for the most part, and other sources of investment capital are not interested in investing in the MCC which would thereby increase the MCC capitalization;

4. An increased capitalization to $3,000,000 or more would enable the Maine Capital Corporation to invest in more business "start-ups" and higher risk ventures;

5. It is obvious that a significantly greater number of attractive venture capital investment opportunities exist outside the State in comparison to the number of opportunities within the State. The Maine Capital Corporation can establish a "sister company" to invest outside the State. It is advisable, however, to provide for the investment of more venture capital in Maine enterprise that a "sister company" may not be willing to undertake;

6. The initial enabling legislation enacted by the 108th Legislature limited the income tax credits to the original subscribers of common stock in the Maine Capital Corporation. Subsequent amendments and revisions of Maine's income tax credit provisions inadvertantly expanded the credit to any investor in the MCC. Stockholders in the MCC were not made aware of these revisions, and the stockholders do not consider this expansion of tax credits necessary for the MCC.

7. The Maine Capital Corporation, to this point, has not achieved the purpose established in the enabling law. Nevertheless, the Maine Capital Corporation has significant potential that may allow this purpose to be met in the future. There has been a change in the management of the corporation which, coupled with the experience and talent of board members promises good potential for the future.

RECOMMENDATIONS

It is the recommendation of the Majority of the Joint Standing Committee on Taxation that:

1. The capitalization ceiling established by statute be removed compeltely;

2. The geographical limitation be removed to encourage capital from outside Maine to migrate into the State via Maine Capital Corporation;

3. In exahange for the income tax credits and removal of the investment barriers, one-third of any additional capital (in excess of the initial $1,000,000) be reserved for investment in Maine until the end of 1988 when the income tax credits expire.

4. The income tax credit be provided only to the initial subscribers of the common stock of Maine Capital Corporation as provided in the original enabling legislation;

5. The public law creating the Maine Capital Corporation be repealed at the end of 1988 when the income tax credits have expired. The Maine Capital Corporation may continue as a corporation entirely governed by Title 13 MRSA, and the initial $1,000,000 of the corporation shall be reserved for investment in Maine businesses in perpetuity.

Findings and Recommendations of the Minority of the Joint Standing Committee on Taxation - Representative Craig Higgins and Representative Tom Andrews.

FINDINGS

1. There is a need for venture capital in the State of Maine to finance business projects with good potential, particularly businesses with a minimal track record that banks are unwilling to finance;

2. The Maine Capital Corporation, the only venture capital investment firm in Maine, is hampered by a very low capitalization. This low capitalization inhibits investment in business "start-ups" and higher risk business ventures;

3. Investment in the Maine Capital Corporation is hampered by the statutory geographical limitation which limits investments to Maine businesses. As a result, out-of-state investors, for the most part, and other sources of investment capital are not interested in investing in the MCC which would thereby increase the MCC capitalization;

4. An increased capitalization to $3,000,000 or more would enable the Maine Capital Corporation to invest in more business "start-ups" and higher risk ventures;

5. It is obvious that a significantly greater number of attractive venture capital investment opportunities exist outside the State in comparison to the number of opportunities within the State. The Maine Capital Corporation can establish a "sister company" to invest outside the State. It is advisable, however, to provide for the investment of more venture capital into Maine enterprise that a "sister company" may not be illing to undertake;

6. The formation of a "sister" venture capital investment firm could exploit the managerial and administrative resources of the Maine Capital Corporation and thereby reduce the focus and level of activity of the MCC on investments in Maine businesses; and

7. The initial enabling legislation enacted by the 108th Legislature limited the income tax credits to the original subscribers of common stock in the Maine Capital Corporation. Subsequent amendments and revisions of Maine's income tax credit provisions inadvertantly expanded the credit to any investor in the MCC. Stockholders in the MCC were not made aware of these revisions, and the stockholders do not consider this expansion of tax credits necessary for the MCC.

8. The Maine Capital Corporation, to this point, has not achieved the purpose established in the enabling law. Nevertheless, the Maine Capital Corporation has significant potential that may allow this purpose to be met in the future. There has been a change in the management of the corporation which, coupled with the experience and talent of board members promises good potential for the future.

RECOMMENDATIONS

It is the recommendation of the minority of the Joint Standing Committee on Taxation that:

1. The capitalization ceiling established by statute be removed completely;

2. The geographical limitation be removed to encourage capital from outside Maine to migrate into the State via Maine Capital Corporation;

3. In exchange for the income tax credits and removal of the investment barriers, one-third of any additional capital (in excess of the initial $1,000,000) be reserved for investment in Maine, in perpetuity;

4. The income tax credit be provided only to the initial subscribers of the common stock of Maine Capital Corporation as provided in the original enabling legislation;

5. The Maine Capital Corporation be prohibited from accepting management/administration contracts from or providing managerial/administrative services to any other venture capital firm.

6. The public law creating the Maine Capital Corporation be repealed at the end of 1988 when the income tax credits have expired. The Maine Capital Corporation may continue as a corporation entirely governed by Title 13 MRSA, and the initial $1,000,000 of the corporation shall be reserved for investment in Maine businesses in perpetuity.

Findings and Recommendations of the Minority
of the Joint Standing Committee on Taxation-
Senator Frank Wood

FINDINGS

1. The Maine Capital Corporation has failed to meet the public purpose established in 10 MRSA §950. According to the enabling legislation, the primary purpose of the Maine Capital Corporation is to promote economic development of the State by investing in Maine businesses. Since 1980, the Maine Capital Corporation has invested 25% of its capital in 3 ventures, one of which failed. The firm has invested 75% of its capital in securities that earn approximately $100,000 per year in interest.

2. The objective of the Maine Capital Corporation conflicts with the public purpose established in 10 MRSA Chapter 108. The stated objective of the Maine Capital Corporation is to earn the most substantial return possible for its investors. As a result, promotion of economic development in Maine is not a consideration of the MCC.

A. The emphasis of the Maine Capital Corporation is on the less risky and high yield ventures in order to derive satisfactory returns for intestors and to cover the inordinately high percentage of administrative costs to capitalization.

B. The stated investment strategy of the Maine Capital Corporation is to avoid business start-ups and to invest in business expansions and "leveraged buy-outs". These are "proven" ventures that could, in most circumstances, qualify for bank loans.

3. The track record of the Maine Capital Corporation is poor. Since 1977 when the enabling legislation was enacted, the MCC has made 2 equity investments and 1 loan. The first equity investment in a firm known as Cabletronix failed. The second equity investment in Votech required substantial encouragement of MCC to invest in the firm. The loan of $50,000 to a restaurant is not the type of venture anticipated or considered for investment by the Legislature which enacted the enabling legislation. Thus, one venture in 6 years has partially met the purpose of the law.

4. The Maine Capital Corporation does not need the State of Maine. The Maine Capital Corporation intends to form a sister corporation or limited partnership which will be able to invest in ventures outside the State. The MCC asserts that it will go its own way whether or not the restrictions in the enabling legislation are removed. It is not necessary therefore to remove the restrictions in the enabling legislation.

5. The Maine Capital Corporation investment strategy could seriously hurt some Maine enterprise. By investing outside Maine, the MCC could invest in businesses directly competing with Maine businesses.

6. The Maine Capital Corporation investment strategy, which emphasizes the more secure and proven ventures, may have very little impact on the State's economic growth. There is no provision to prohibit the firm from loaning monies to or purchasing equity in the form of new stock issues in firms such as Great Northern Paper Company or Bath Iron Works.

In addition, loans to or purchases of equity in smaller and lesser-known companies may not be of great service to the state if these firms would qualify for bank loans. In either situation, the entrepreneur or firm with a good idea but with no or a minimal track record, most likely will not be assisted by the MCC.

7. A reserve requirement for investment in Maine businesses does not assure that the investments will be undertaken. Currently, 80 percent of the capital of Maine Capital Corporation is invested in securities that earn substantial interest. Thus, Maine Capital Corporation is not interested in the concerns and wishes of the Legislature. To require a percentage of additional capitalization be reserved for investment in Maine business will most likely result in MCC investment of much greater sums in interest bearing securities.

RECOMMENDATIONS

1. The Maine Capital Corporation does not meet and does not intend to meet the public purpose for which it was established and provided with income tax credits. The enabling legislation, therefore, should be repealed. The MCC may continue as a corporation under the provisions of Title 13-A MRSA.

2. The income tax credit provisions in Title 36 MRSA $5212 should be revised to apply the credit to the original subscribers of the $1,000,000 of common stock as provided in the 1977 public law. Subsequent revisions of the income tax credit inadvertently removed the term "subscribers" and thereby broadened the credit to any investor in the MCC.

3. The $1,000,000 capitalization for which a $500,000 income tax credit has been provided should be reserved, in perpetuity, for investment in Maine businesses.

APPENDIX

I. Stockholders of Maine Capital Corporation

II. RECOMMENDED LEGISLATION

MAINE CAPITAL CORPORATION'S STOCKHOLDERS

Androscoggin Savings Bank
Bangor Savings Bank
Bank of New England
Burgess & Leith
Canal Bank & Trust Company
Casco Northern Bank
Central Maine Power
Coastal Savings Bank
Depositors of Aroostook
Depositors Trust Company (Bangor)
Depositors Trust Company (Augusta)
F. L. Putnam Securities
Mr. Richard Foxwell
Franklin Savings Bank
Gorham Savings Bank
Guy Gannett Publishing Co.
Hannaford Brothers
Heritage Savings Bank
Mr. Louis O. Hilton
Maine National Bank
Maine Savings Bank
Mr. Charles McKee
Merrill Bankshares
Norway Savings Bank
Ocean National Bank
Oxford Bank & Trust Co.
Peoples Savings Bank
S.D. Warren/Scott Paper Co.
Shaws Supermarket
Skowhegan Savings Bank
Uniommutual Charitable Foundation
Mr. Vincent Welch

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No.

H.P. House of Representatives,

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Provide More Venture Capital to Maine Business.

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

Sec. 1. 10 MRSA §950, as amended by PL 1979, c. 587, §§1 and 2, if further amended by adding at the end a new paragraph to read:

The Legislature further finds that it is prudent to permit the corporation to invest outside the State except that the initial $1,000,000 capitalization and 1/3 of any additional capitalization shall be reserved for investment in Maine business.

Sec. 2. 10 MRSA §951, as repealed and replaced by PL 1979, c. 587, §3, is amended to read:

§ 951. Formation; name; purposes

There is hereby authorized the formation, under Title 13-A, of a private investment corporation to be named "The Maine Capital Corporation" for the purpose of providing investment capital to new Maine business firms or in existing Maine business firms for purposes of expansion and for the purpose of investing outside the State in accordance with section 952.

Sec. 3. 10 MRSA §952, as amended by PL 1981, c. 364, §1, is further amended to read:

§952. Limitations on purposes and powers

The Maine Capital Corporation shall have all of the general powers of business corporations enumerated in Title 13-A, section 202, except that:

1. Investments and related business dealings. ~~Its~~ The investment of the initial $1,000,000 capitalization and 1/3 of any additional capitalization, shall be restricted to financings ~~and related business dealings shall be restricted to~~ of Maine business firms which, for the purposes of this chapter, shall be defined as Maine business entities, including, without limitation, corporations and limited partnerships, whether or not the same are subsidiaries of foreign corporations, which are doing business primarily in Maine or do substantially all of their production in Maine. Any funds so invested in Maine business firms by purchase of stock or otherwise shall be used by the firms solely for the purpose of enhancing their productive capacities or ability to do business within the State, or to facilitate their ability to generate value added within the State to goods or services for export to out-of-state markets. The Maine Capital Corporation's financings may include, in any combination and without limitation, equity investments, loans, guarantees and commitments for such financings;

2. Investment limited. Its investment in any one Maine business firm shall be limited to a maximum of ~~$200,000~~ 20% of its capital;

The Maine Capital Corporation shall not invest in any firm in which a person, or his or her spouse or dependent children, owning common stock of the Maine Capital Corporation holds over a 25% interest;

3. Maximum capitalization. Its ~~maximum~~ initial capitalization shall not exceed $1,000,000 and shall consist of 10,000 shares of common capital stock having a par value of $100 per share. All shares offered for sale by the corporation shall be for cash at their par value;

Any capitalization in excess of the initial $1,000,000, except as provided, may be invested without geographical limitation.

4. Commencement of business. Before it commences doing business, the corporation shall have and thereafter maintain a board of 9 directors, 7 of whom shall be elected by the shareholders and 2 of whom shall be appointed by the Governor and shall represent the public interests of the State;

5. Amount of common stock held. No person, firm or corporation shall subscribe for, own or hold directly or indirectly more than ~~1,000 shares~~ 20% of the common stock of the corporation at any time. For the purposes of determining ownership hereunder, the attribution rules of section 318 of the Internal Revenue Code in effect as of the effective date of this Act shall apply;

6. Payment of dividends. It shall not declare or pay any dividends to its shareholders during its first 5 years of operation and thereafter any dividends shall be paid only on common stock whose holders are not using the credit for investment in the Maine Capital Corporation allowed under Title 36, section 5216. Dividends paid shall be limited to a maximum of 50% of retained earnings, with the balance being reinvested according to subsections 1 and 2; and

7. Financial statement. It shall cause to be prepared an audited financial statement, certified by an independent certified public accountant, within 60 days after the close of each fiscal year of its operations, which report shall be distributed to the Governor and ~~Legislative Council~~ the committee of the Legislature having jurisdiction over taxation and made available to the public, detailing its investment and financial activities.

Sec. 4. 10 MRSA §955 is enacted to read:

§955. Repeal

On December 31, 1988, chapter 108 shall be repealed, and the Maine Capital Corporation may continue as a general business corporation under Title 13-A. The initial $1,000,000 of capital investment in Maine Capital Corporation shall be revised for investment in Maine businesses in perpetuity.

Sec. 5. 36 MRSA §5216, sub-§1, as amended by PL 1983, c. 519, §26, is further amended to read:

1. Credit. A resident individual, resident estate or trust, or taxable corporation is entitled to a credit against the tax otherwise due under this Part equal to 50% of the amount of his or its investment in common stock of The Maine Capital Corporation or the Maine Natural Resource Capital Corporation. Twenty percent of the credit shall be taken in the taxable year of the investment and 20% in each of the next 4 taxable years. The credit allowed under this section shall be available only to the subscribers of the initial $1,000,000 of capital in the common stock of the Maine Capital Corporation.

Sec. 6. 36 MRSA §5216, sub-§5 is enacted to read:

5. Repeal. On December 31, 1988, this section shall be repealed.

STATEMENT OF FACT

The purpose of this bill is to enable the Maine Capital Corporation to attract more venture capital and to provide more capital for investment in Maine business. To accomplish this purpose the bill:

1. Authorizes the Maine Capital Corporation to invest in enterprise outside Maine, except that the initial $1,000,000 of the company and 1/3 of any additional capital acquired by the firm are required to be reserved for investment in Maine businesses. Except for the restriction on the initial $1,000,000,

the geographical limitation terminates at the end of 1988;

2. Limits the ownership of any single investor in Maine Capital Corporation to 20% of the common stock;

3. Limits the investment of Maine Capital Corporation in any single enterprise to 20% of the capitalization of Maine Capital Corporation;

4. Revises the application of the income tax credit authorized for investments in the Maine Capital Corporation to the original subscribers of the common stock in the corporation. The intent of this provision is to restore the original Legislative intent which was inadvertantly repealed in 1979 when the law was revised to facilitate administration of the tax credits; and

5. Repeals the Maine Capital Corporation effective on December 31, 1988. The Maine Capital Corporation will continue thereafter as a corporation organized under Title 13-A.

5470011684

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No.

H.P. House of Representatives,

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Increase the Capitalization of Maine Capital Corporation and Reserve Capital for Investment in Maine.

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

Sec. 1. 10 MRSA §950, as amended by PL 1979, c. 587, §§1 and 2, is further amended by adding at the end a new paragraph to read:

The Legislature further finds that it is prudent to permit the corporation to invest outside the State except that the initial $1,000,000 capitalization and 1/3 of any additional capitalization shall be reserved for investment in state businesses.

Sec. 2. 10 MRSA §951, as repealed and replaced by PL 1979, c. 587, §3, is amended to read:

§951. Formation; name; purposes

There is hereby authorized the formation, under Title 13-A, of a private investment corporation to be named "The Maine Capital Corporation" for the purpose of providing investment capital to new Maine business firms or in existing Maine business firms for purposes of expansion, and for the purpose of investing outside the State in accordance with section 952.

Sec. 3. 10 MRSA §952, as amended by PL 1981, c. 364, §1, is further amended to read:

§952. Limitations on purposes and powers

The Maine Capital Corporation shall have all of the general powers of business corporations enumerated in Title 13-A, section 202, except that:

1. Investments and related business dealings. ~~Its~~ The investment of the initial $1,000,000 capitalization and 1/3 of any additional capitalization, shall be restricted to financings of Maine business firms which, for the purposes of this chapter, shall be defined as Maine business entities, including, without limitation, corporations and limited partnerships, whether or not the same are subsidiaries of foreign corporations, which are doing business primarily in Maine or do substantially all of their production in Maine. Any funds so invested in Maine business firms by purchase of stock or otherwise shall be used by the firms solely for the purpose of enhancing their productive capacities or ability to do business within the State, or to facilitate their ability to generate value added within the State to goods or services for export to out-of-state markets. The Maine Capital Corporation's financings may include, in any combination and without limitation, equity investments, loans, guarantees and commitments for such financings;

2. Investment limited. Its investment in any one ~~Maine~~ business firm shall be limited to a maximum of ~~$200,000~~ 20% of its capital;

The Maine Capital Corporation shall not invest in any firm in which a person, or his or her spouse or dependent children, owning common stock of the Maine Capital Corporation holds over a ~~25%~~ 10% interest~~;~~.

The Maine Capital Corporation shall not invest in any funds in which a director appointed by the Governor or that director's spouse or dependant children upon any common stock and any interest.

3. Maximum capitalization. Its maximum capitalization shall not exceed $1,000,000 and shall consist of 10,000 shares of common capital stock having a par value of $100 per share. All shares offered for sale by the corporation shall be for cash at their par value;

Any capitalization in excess of the initial $1,000,000 except as provided in this subsection 1 may be invested without the geographical limtitation.

4. Commencement of business. Before it commences doing business, the corporation shall have and thereafter maintain a board of 9 directors, 7 of whom shall be elected by the shareholders and 2 of whom shall be appointed by the Governor and shall represent the public interests of the State;

5. Amount of common stock held. No person, firm or corporation shall subscribe for, own or hold directly or indirectly more than ~~1,000 shares~~ 20% of the common stock of the corporation at any time. For the purposes of determining ownership hereunder, the attribution rules of section 318 of the Internal Revenue Code in effect as of the effective date of this Act shall apply;

6. Payment of dividends. It shall not declare or pay any dividends to its shareholders during its first 5 years of operation and thereafter any dividends shall be paid only on common stock whose holders are not using the credit for investment in the Maine Capital Corporation allowed under Title 36, section 5216. Dividends paid shall be limited to a maximum of 50% of retained earnings, with the balance being reinvested according to subsections 1 and 2; and

7. Financial statement. It shall cause to be prepared an audited financial statement, certified by an independent certified public accountant, within 60 days after the close of each fiscal year of its oper-

ations, which report shall be distributed to the Governor and ~~Legislative Council~~ the Committee of the Legislature having jurisdiction over Taxation and made available to the public, detailing its investment and financial activities.

Sec. 4. 10 MRSA §955 is enacted to read:

§955. Repeal

On December 31, 1988, Title 10, section 952, subsections 6 and 7; sections 953 and 954 shall be repealed.

Sec. 5. 10 MRSA §956 is enacted to read:

§956. Management and Administrative Services

The Maine Capital Corporation shall not accept any management contracts from or provide management or other administrative service's to any other venture capital investment firm whether or not associated in any way with the Maine Capital Corporation.

Sec. 6. 36 MRSA §5216, sub-§5 is enacted to read:

5. Repeal. On December 31, 1988, this section shall be repealed.

STATEMENT OF FACT

The purpose of this bill is to enable the Maine Capital Corporation to attract more venture capital and to provide for more future venture capital investment in state businesses; This bill:

1. Authorizes the Maine Capital Corporation to invest in enterprise outside the State except that the initial $1,000,000 capitalization and 1/3 of any additional capital are required to be reserved for investment in state businesses in perpetuity;

Limits the ownership of any single investor in Maine Capital Corporation to 20% of the common stock;

3. Limits the investment of Maine Capital Corporation in any single enterprise to 20% of Maine Capital Corporation capitalization;

4. Prohibits the investment of Maine Capital Corporation monies in enterprises in which the directors appointed by the Governor have an interest or the spouse or dependent children of these directors have an interest;

5. Reverses the application of the income tax credit authorized for investment in the Maine Capital Corporation to the original subscribes of common stock in the corporation. The intent of this provision is to restore the orginal legislative intent which was inadvertantly repealed in 1979 to facilitate administration of the Maine Capital Corporation law; and

6. Prohibits the Maine Capital Corporation from contracting with or providing management or administrative services to any other venture capital firm. Thus management or administrative costs of other venture capital forms cannot be passed onto the Maine Capital Corporation. The management and administrative costs of the Maine Capital Corporation will accurately reflect these costs associated with the Maine Capital Corporation.

7. Repeals the Maine Capital Corporation effective on December 31, 1988. The Maine Capital Corporation will continue under Title 13-A.

5471011884

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No.

S.P. , In Senate,

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Repeal the Maine Capital Corporation and to Incorporate it under the General Corporation Law of the State.

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

Sec. 1. 10 MRSA c. 108, as amended, is repealed.

Sec. 2. 36 MRSA §5216, sub-§1, as amended by PL 1983, c. 519, §26, is further amended to read:

1. Credit. A resident individual, resident estate or trust, or taxable corporation is entitled to a credit against the tax otherwise due under this Part equal to 50% of the amount of his or its investment in common stock of The Maine Capital Corporation or the Maine Natural Resource Capital Corporation. Twenty percent of the credit shall be taken in the taxable year of the investment and 20% in each of the next 4 taxable years. The credit allowed under this

<u>section shall be available only to subscribers of the initial $1,000,000 of capital in the common stock of the Maine Capital Corporation.</u>

Sec. 3. 36 MRSA §5216, sub-§5 is enacted to read:

<u>5. Repeal. On December 31, 1988, this section is repealed.</u>

Sec. 4. Continuation. After the effective date of this Act, the Maine Capital Corporation shall continue as a general business corporation entirely governed by the Revised Statutes, Title 13-A, except that the initial $1,000,000 of capital originally invested in Maine Capital Corporation shall always be reserved for Maine businesses, and any unused tax credits shall continue as originally provided.

STATEMENT OF FACT

This bill repeals the legislation that created the Maine Capital Corporation and provides for the firm's operation under the state's general incorporation law. This bill also revises the income tax credit created to encourage investment in Maine Capital Corporation. The income tax credit, under this bill, applies to the original subscribers of Maine Capital Corporation common stock which the original law required. Subsequent amendments to the Maine Capital Corporation law inadvertently broadened the tax credit to include any investor in the Maine Capital Corporation.

The purpose of this bill is to terminate the relationship between the State and the Maine Capital Corporation. The legislation intended to raise $1,000,000 for investment in Maine businesses in need of venture capital. An income tax credit of $500,000 has been provided to the initial subscribers to accomplish this objective. As a result of the law, $1,000,000 has been raised, of which 20% has been invested in Maine businesses and 80% has been invested in securities.

The Maine Capital Corporation has announced its intention to form a sister corporation or limited partnership to invest outside the State. Since the Maine Capital Corporation is more interested in deriving significant profits from investments in firms out-of-state which may compete with Maine businesses than it is in investing in Maine enterprise, it is no longer necessary to continue the state's relationship with the Maine Capital Corporation.

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