

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND EIGHTH LEGISLATURE

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## Legislative Document

No. 1250

H. P. 1011

House of Representatives, March 23, 1977

On Motion of Mr. Curran of South Portland referred to the Committee on State Government. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Martin of Eagle Lake.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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### AN ACT Creating The Maine Capital Corporation.

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

Sec. 1. 10 MRSA c. 108 is enacted to read:

#### CHAPTER 108

#### THE MAINE CAPITAL CORPORATION

##### § 950. Statement of legislative findings and intent

The Legislature finds that one of the limiting factors on the beneficial economic development of the State is the limited availability of capital for the long-term needs of Maine businesses and entrepreneurs. In particular, the lack of equity capital to finance new business ventures and the expansion or recapitalization of existing businesses is critical. This lack of equity capital may prevent worthwhile businesses from being established; it may also force businesses to use debt capital where equity capital would be more appropriate. This creates debt service demands which a new or expanding venture may not be able to meet successfully, causing the venture to fail because of the lack of availability of the appropriate kind of capital.

This impediment to the development and expansion of viable Maine businesses affects all the people of Maine adversely and is one factor resulting in existing conditions of unemployment, underemployment, low per capita income and resource underutilization. By restraining economic development, it sustains burdensome pressures on State Government to provide services to those citizens who are unable to provide for themselves.

To help correct this situation, it is appropriate to use the profit motive of private investors to achieve additional economic development in the State. This can be accomplished by establishing an investment corporation to provide equity capital for Maine businesses and by establishing limited tax credits for investors in the corporation to encourage the formation and use of private capital for the critical public purpose of maintaining and strengthening the state's economy.

§ 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 making equity investments in new Maine business firms or in existing Maine business firms needing equity capital for purposes of expansion in Maine.

§ 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 equity investments and related business dealing shall be restricted to Maine business firms which, for the purposes of this chapter, shall be defined as Maine corporations, 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 such 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;

2. Investment limited. Its investment in any one Maine business firm shall be limited to a maximum of \$200,000;

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;

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 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 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 and made available to the public, detailing its investment and financial activities.

§ 953. Initial organization; approval of Commissioner of Business Regulation

In order to provide for the initial organization of the corporation, the Governor shall appoint a committee to act as incorporators, consisting of 5 individuals having a business background and experience. The committee shall file with the Secretary of State the articles of incorporation of the corporation which shall reflect the purposes set forth herein. It shall further submit to the Commissioner of Business Regulation for his approval of their conformity with the limitations set forth in section 952, the proposed bylaws of The Maine Capital Corporation, which shall not be adopted or later amended without his approval.

§ 954. Subscription and sales of stock; first shareholders meetings

The committee, as and when it deems practicable, may solicit and receive subscriptions for the issuance and purchase of the shares of the common stock of The Maine Capital Corporation, provided that subscriptions for amounts exceeding 10 shares shall be reduced pro rata among subscribers subscribing for more than 10 shares in the event the issue is over-subscribed by such termination date as may be set by the committee. At any time in its discretion after the committee has received subscriptions for at least 2,500 shares, it may call and hold an organizational shareholders meeting for the purposes of adopting the proposed bylaws, electing directors and officers, issuing shares of stock and conducting any other business which may properly come before the meeting.

Sec. 2. 36 MRSA § 5129 is enacted to read:

§ 5129. Credit for investment in The Maine Capital Corporation

1. Resident individual. A resident individual shall be allowed a credit against the tax otherwise due under this Part for the taxable year for the amount of any investment in The Maine Capital Corporation.

2. Limitations on credit.

A. The credit allowed under this section shall not exceed 50% of the qualified investment.

B. The credit allowed under this section for any one taxable year shall not exceed the lesser of:

(1) 10% of the qualified investment; or

(2) 50% of the tax imposed on the individual for the taxable year.

3. Carry forward of the credit. If the amount of the credit determined under subsection 1 and subsection 2, paragraph A, exceeds the limitation provided in subsection 2, paragraph B, such excess shall be a credit carry-over to each of the 4 taxable years following the first unused credit year and shall be subject to the annual limitation provided in subsection 2, paragraph B.

4. Recapture for certain dispositions. If the taxpayer disposes of the stock in The Maine Capital Corporation within 6 years after the date on which the taxpayer acquired such stock in a transaction which gives rise to gain or loss for federal income tax purposes, then the tax imposed under this Part for the taxable year in which the disposition occurs shall be increased by an amount equal to the amount allowed as a credit in the year of disposition and all prior years.

Sec. 3. 36 MRSA § 5167 is enacted to read:

§ 5167. Credit for investment on The Maine Capital Corporation

1. Resident estate or trust. A resident estate or trust shall be allowed a credit against the tax otherwise due under this Part for the taxable year for the amount of any investment in The Maine Capital Corporation.

2. Limitation on credit.

A. The credit allowance under this section shall not exceed 50% of the qualified investment.

B. The credit allowed under this section for any one taxable year shall not exceed the lesser of:

(1) 10% of the qualified investment; or

(2) 50% of the tax imposed on the resident estate or trust for the taxable year.

3. Carry forward of the credit. If the amount of the credit determined under subsection 1 and subsection 2, paragraph A, exceeds the limitation provided in subsection 2, paragraph B, such excess shall be a credit carry-over to each of the 4 taxable years following the first unused credit year and shall be subject to the annual limitation provided in subsection 2, paragraph B.

4. Recapture for certain dispositions. If the resident estate or trust disposes of the stock in The Maine Capital Corporation within 6 years after the date on which the resident estate or trust acquired such stock in a transaction which gives rise to gain or loss for federal income tax purposes, then the tax imposed under this Part for the taxable year in which the disposition occurs shall be increased by an amount equal to the amount allowed as a credit in the year of disposition and in all prior years.

Sec. 4. 36 MRSA § 5202 is enacted to read:

§ 5202. Credit for investment in The Maine Capital Corporation

1. **Taxable corporation.** A taxable corporation shall be allowed a credit against the tax otherwise due under this Part for the taxable year for the amount of any investment in The Maine Capital Corporation.

2. **Limitation on credit.**

A. The credit allowed under this section shall not exceed 50% of the qualified investment.

B. The credit allowed under this section for any one taxable year shall not exceed the lesser of:

(1) 10% of the qualified investment, or

(2) 50% of the tax imposed on the taxable corporation for the taxable year.

3. **Carry forward of the credit.** If the amount of the credit determined under subsection 1 and subsection 2, paragraph A exceeds the limitation provided in subsection 2, paragraph B, such excess shall be a credit carry-over to each of the 4 taxable years following the first unused credit year and shall be subject to the annual limitation provided in subsection 2, paragraph B.

4. **Recapture for certain dispositions.** If the taxable corporation disposes of the stock in The Maine Capital Corporation within 6 years after the date on which the taxable corporation acquired such stock, in a transaction which gives rise to gain or loss for federal income tax purposes, then the tax imposed under this Part for the taxable year in which the disposition occurs shall be increased by an amount equal to the amount allowed as a credit in the year of disposition and all prior years.

#### STATEMENT OF FACT

This Act establishes The Maine Capital Corporation to make available private equity capital for investments in new or expanding Maine firms. The structure of the corporation provides for an appropriate relationship between the public interest and the profit motive in order to fill a crucial gap in the capital markets available to Maine businesses.

In order to encourage investors, a limited income tax credit is provided for Maine taxpayers who invest in the corporation. The maximum revenue loss to the State from the tax credit cannot exceed \$100,000 per year for 5 years, and the actual revenue loss, or net gain in revenue, will depend upon:

1. The amount of stock sold;
2. The nature of alternative investments which investors might have made;
3. The tax status of the investors; and
4. The additional taxes generated from new or expanded Maine businesses.

To safeguard the public interest in granting the tax credit and in establishing The Maine Capital Corporation, provisions are made which:

1. Restrict investment to certain Maine businesses only;
2. Limit the maximum amount of any one investment;
3. Limit the capitalization of the corporation;
4. Provide that 2 of 9 directors shall be appointed by the Governor;
5. Limit the stock any one investor can hold in the corporation; and
6. Require an audited financial statement to be provided to the Governor and the Legislative Council annually.