

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 598

H. P. 532

House of Representatives, February 3, 1981

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Jackson of Yarmouth.

Cosponsors: Senator Huber of Cumberland, Representative Kany of Waterville and Representative Dillenback of Cumberland.

STATE OF MAINE

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

AN ACT to Authorize and Encourage Private Risk Capital Corporations.

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

Sec. 1. 10 MRSA c. 109 is enacted to read:

CHAPTER 109

RISK CAPITAL CORPORATIONS

§ 971. State of legislative findings and intent

The Legislature finds that one of the limiting factors of the beneficial economic development of the State is the limited availability of investment capital for financing the development and growth of Maine businesses. This lack of investment capital for new and existing businesses may inhibit otherwise viable business expansion and may also force businesses to use financing techniques which impede capital reinvestment, thus shifting the focus from long-term growth to short-term survival.

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 authorizing the establishment of private corporations to provide investment capital to existing and proposed Maine firms with growth potential; and by establishing limited tax credits for investors in the corporation to encourage the formation and use of private capital for the critical public purposes of maintaining and strengthening the State's economy.

**§ 972. Formation; name; purposes**

There is authorized the formation, under Title 13-A, of private investment corporations, to be called risk capital corporations, for the purpose of providing investment capital to new Maine business firms or in existing Maine business firms for purposes of expansion.

**§ 973. Limitations on purposes and powers**

A risk 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 financings and related business dealings shall be restricted to 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. A risk 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. A risk capital corporation shall not invest in any firm in which a person, or his or her spouse or dependent children, owning common stock of that risk capital corporation holds over a 25% 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 sales 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 who shall be elected by the shareholders;

5. Amount of common stock held. No person, firm or corporation may subscribe for, own or hold directly or indirectly more than 1,000 shares of the common stock of any risk capital corporation at any time. For the purposes of determining ownership hereunder, the attribution rules of the United States Internal Revenue Code, Section 318, in effect as of the effective date of this chapter 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 that risk capital corporation allowed under Title 36, sections 5131, 5168 or 5202-B. 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 made available to the public, detailing its investment and financial activities.

#### § 974. Approval of Commissioner of Business Regulation

In order to provide for the initial organization of any corporation, a committee consisting of 5 individuals shall act as incorporators. The committee shall file with the Secretary of State the articles of incorporation of the corporation which shall reflect the purposes set forth in this section. It shall further submit to the Commissioner of Business Regulation for his approval of their conformity with the limitations set forth in section 973 the proposed bylaws of the corporation, which may not be adopted or later amended without his approval.

#### § 975. Subscription and sales of stock; the 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 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 MRS § 5131 is enacted to read:

#### § 5131. Credit investment in a risk 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 a risk capital corporation.

**2. Limitations on credit. The credit allowed under this section:**

- A. Shall not exceed 5% of the qualified investment.**
- B. 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; and**
- C. Shall be available only to subscribers in the common stock of the risk capital corporation.**

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

**4. Recapture for certain disposition. If the taxpayer disposes of the stock in a risk capital corporation within 6 years after the date on which the taxpayer acquired the 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 § 5168 is enacted to read:**

**§ 5168. Credit for investment in a risk 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 a risk capital corporation.**

**2. Limitation on credit. The credit allowance under this section:**

- A. Shall not exceed 50% of the qualified investment;**
- B. 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; and**
- C. Shall be available only to subscribers in the common stock of the risk capital corporation.**

**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 carryover to each of the 4 taxable years following the first unused credit year and is 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 a risk capital corporation within 6 years after the date on which the resident estate or trust acquired the 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-B is enacted to read:

**§ 5202-B. Credit for investment in a risk 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 a risk capital corporation.

**2. Limitation on credit.** The credit allowed under this section:

**A. Shall not exceed 50% of the qualified investment.**

**B. 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; and**

**C. Shall be available only to subscribers in the common stock of or risk capital corporation.**

**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 carryover to each of the 4 taxable years following the first unused credit year and is 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 a risk capital corporation within 6 years after the date on which the taxable corporation acquired the 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**

Several years ago, legislation was enacted creating the Maine Capital Corporation. The purpose was to provide a quasi-public corporation to attract funds to be used to finance the establishment and growth of Maine businesses.

This bill authorizes groups of individuals to establish entirely private risk capital corporations and provides tax incentives for participating in such

corporations. The purpose is the same as for the Maine Capital Corporation: To attract funds for financing establishment and growth of Maine businesses. The reasons for the entirely private corporations are: The Maine Capital Corporation is fully subscribed and therefore unable to increase its investments, this will provide a vehicle for additional investment; to make available entirely private corporations for those who may not wish to invest in a quasi-public corporation; and to provide incentives and opportunities for innovations in financing these ventures.

The corporations and the tax incentives in this bill are virtually identical to the structure and function of the Maine Capital Corporation and the tax incentives relating to it.

A risk capital corporation will have all the general powers of business corporations enumerated in the Maine Revised Statutes, Title 13-A, section 202, except for several provisions designed to safeguard the public interest. These include provisions which:

1. Restrict the investment of a corporation, from paid-in capital and retained earnings, to Maine businesses only;
2. Limit the maximum amount of any one investment to \$200,000;
3. Limit the stock any one investor can hold in any corporation to \$100,000;
4. Require an audited financial statement, to be available to the public;
5. Prohibit any distribution of earnings for 5 years, the duration of the tax credit; after 5 years dividends would be limited to a maximum of 50% of retained earnings, with the balance being reinvested in Maine businesses; and
6. Prohibit the corporation from investing in any firm in which a person or corporation owning common stock of the corporation holds over a 25% interest.

As an incentive to mobilize the required capital, a limited income tax credit will be offered to those Maine income taxpayers, individual or corporate, who invest in the corporation. This credit will be for up to 10% of an investor's investment in the corporation each year for 5 years, or a maximum of 50% of the investment, provided the credit never exceeds 50% of the individual's or corporation's Maine income tax liability.