

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1296

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H.P. 920

House of Representatives, April 11, 1995

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### **An Act to Increase Venture Capital Access to State Businesses.**

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KONTOS of Windham.

Cosponsored by Representatives: CAMERON of Rumford, DAVIDSON of Brunswick, DORE of Auburn, GWADOSKY of Fairfield, LIBBY of Kennebunk, POVICH of Ellsworth, REED of Dexter, ROWE of Portland, SIROIS of Caribou, Senators: BUTLAND of Cumberland, CIANCHETTE of Somerset, HARRIMAN of Cumberland.

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

2  
4 Sec. 1. 10 MRSA §1026-N is enacted to read:

6 §1026-N. Maine Economic Development Venture Capital Revolving  
Investment Program

8 1. Established. The Maine Economic Development Venture  
10 Capital Revolving Investment Program, referred to in this section  
12 as the "program," is established to provide venture capital to  
14 businesses that need assistance in order to create or retain  
16 jobs. The Maine Economic Development Venture Capital Revolving  
18 Investment Program Fund, referred to in this section as the  
"fund," is established as a revolving fund, into which must be  
deposited all amounts appropriated to the program, interest and  
investment earnings on the fund and any amounts repaid to the  
program by participating venture capital funds.

20 2. Eligible venture capital funds. Money in the fund may  
22 be invested in one or more private, professionally managed  
24 venture capital funds located in the State capable of providing  
26 venture capital to businesses in order to create and protect jobs  
and with an established track record of management success and  
risk diversification. To be eligible for investments from the  
fund, a private venture capital fund must:

28 A. Apply to the authority. The application must describe  
30 the private venture capital fund and its funding sources,  
32 the region it serves, its methods and criteria for  
34 qualifying investments, including any targeted investing and  
36 economic development strategy, its expertise in venture  
capital assistance and investing in small and emerging  
businesses, the method by which it will leverage funds from  
other sources than those received from the fund and other  
information the authority determines necessary;

38 B. Have a strategy for the creation and retention of jobs,  
40 an effective small business marketing and technical  
42 assistance plan and enough expert assistance available to it  
to underwrite, document and service investments and to  
assist the businesses in which it invests;

44 C. Be determined by the authority to be able to prudently  
and effectively administer venture capital investments; and

46 D. Propose performance standards and goals and a process  
48 for monitoring compliance with proposed measurement and  
goals.

2 3. Disbursements from fund. If an application is approved,  
the authority shall determine the amount to be invested in the  
private venture capital fund, taking into account:

4  
6 A. The size of the region served by the private venture  
capital fund and the expected demand for venture capital  
investments in that region; and

8  
10 B. The demand for venture capital investments from other  
eligible private venture capital funds in relation to the  
total amount available in the fund and whether an eligible  
private venture capital fund will serve a geographic area or  
segment of potential businesses not served by other  
14 applicants.

16 Funds must be disbursed directly to and retained by the eligible  
private venture capital fund in accordance with a contract of  
18 investment between the private venture capital fund and the  
authority. All money invested in the private venture capital  
20 fund by the authority must be held in the name of the authority.  
Investment earnings on amounts invested by the authority must be  
22 credited to the authority and periodically paid to the authority.

24 4. Investment contract. A private venture capital fund  
that has been approved for participation in the program may enter  
26 into a contract with the authority. The contract governs the  
administration of the program and the use of funds. The contract  
28 must provide that a private venture capital fund shall, at a  
minimum, conform to the following terms and conditions:

30  
32 A. The private venture capital fund shall certify that it  
will use funds only for eligible purposes;

34 B. An officer or employee of the private venture capital  
fund may not participate in any way in, or have any  
36 influence over, a decision on a project in which that  
officer, employee or member has a direct or indirect  
38 personal financial interest;

40 C. If the private venture capital fund breaches its  
contract with the authority or ceases to operate an  
42 investment program in substantial conformance with its  
proposal to the authority, the authority may require  
44 immediate repayment to the authority of any investment made  
to it from the fund; and

46  
48 D. Other terms and conditions that the authority determines  
appropriate.

2           5. Administrative costs. A private venture capital fund  
4           may not use any money disbursed from the fund by the authority  
6           for administrative expenses or load charges. The authority shall  
8           review and approve a private venture capital fund's  
          administrative expenses on an annual basis. The authority may  
          establish by rule reasonable administrative fees for its  
          administration of the fund.

10           6. Eligible investments. In order for a private venture  
12           capital fund to be eligible for venture capital investment under  
14           the program, it must invest at least 80% of its funds in  
          businesses that meet all eligibility for a tax credit certificate  
          pursuant to section 1100-T, subsection 2, paragraphs B and E.

16           7. Reports. A private venture capital fund shall report at  
18           least semiannually to the authority on the businesses in which  
20           the private venture capital fund invests and the administration  
22           of the program. The report must include a description of each  
24           business, the amount, type and terms of assistance the business  
26           received, the number of jobs that were created or retained and  
          other information the authority requires. The report must  
          contain an accounting of the investment portfolio and any  
          investments that are in default, as well as an accounting of the  
          private venture capital fund's administrative and technical  
          assistance expenses incurred and charged.

28           8. Audit. The authority shall review annually each private  
30           venture capital fund's participation in the program and, in its  
32           discretion, may require an independent audit at the expense of  
34           the private venture capital fund. If the authority determines  
          that a private venture capital fund has used funds for ineligible  
          purposes, the private venture capital fund shall repay those  
          funds to the authority for deposit into the fund.

36           9. Rules. The authority shall adopt rules governing the  
          program pursuant to Title 5, chapter 375.

38           **Sec. 2. 10 MRSA §1100-T, sub-§2, ¶D,** as amended by PL 1991, c.  
40           854, Pt. A, §8, is further amended to read:

42           D. The investment with respect to which any individual is  
44           applying for a tax credit certificate may not be more than  
46           an aggregate of \$100,000 in any one business in any 3  
          consecutive calendar years, except that this paragraph does  
          not limit other investment by any applicant for which that  
          applicant is not applying for a tax credit certificate.

48           **Sec. 3. 10 MRSA §1100-T, sub-§2-A** is enacted to read:

2 2-A. Eligibility of private venture capital funds for tax  
3 credit certificate. The authority shall adopt rules in  
4 accordance with the Maine Administrative Procedure Act to  
5 implement application of the program to investment in a private  
6 venture capital fund. Without limitation, the requirements for  
7 eligibility for a tax credit certificate for investment in a  
8 private venture capital fund include the following.

9  
10 A. A tax credit certificate may be issued in an amount not  
11 more than 30% of the amount of cash actually invested in a  
12 private venture capital fund in any calendar year.

13  
14 B. Each state business in which the private venture capital  
15 fund invests must be a manufacturer; must provide a service  
16 that is sold or rendered, or is projected to be sold or  
17 rendered, predominantly outside of the State; or must bring  
18 capital into the State, as determined by the authority.

19  
20 C. Aggregate investment eligible for tax credits may not be  
21 more than \$600,000 for any one private venture capital fund  
22 as of the date of issuance of a tax credit certificate.

23  
24 D. The investment with respect to which any individual is  
25 applying for a tax credit certificate may not be more than  
26 an aggregate of \$100,000 in any one private venture capital  
27 fund in any 3 consecutive calendar years, except that this  
28 paragraph does not limit other investment by any applicant  
29 for which that applicant is not applying for a tax credit  
30 certificate.

31  
32 E. Each business receiving an investment from a private  
33 venture capital fund must have annual gross sales of  
34 \$2,000,000 or less and the operation of the business must be  
35 the full-time professional activity of the principal owner,  
36 as determined by the authority. The principal owner and  
37 principal owner's spouse, parents, brothers, sisters and  
38 children are not eligible for a credit for investment in  
39 that business or the private venture capital fund.

40  
41 F. Each investment received by a business from a private  
42 venture capital fund must be expended on plant maintenance  
43 and construction, equipment, research and development or  
44 working capital for the business or on such other business  
45 activity as may be approved by the authority.

46  
47 G. The authority shall establish limits on repayment of the  
48 investment by an individual in and the investments made by a  
49 private venture capital fund. The investments must be at  
50 risk in the private venture capital fund and the business,  
51 respectively.

2           H. The investors qualifying for the credit must  
4           collectively own less than 1/2 of the private venture  
          capital fund and less than 1/2 of any business in which an  
6           investment is made by the private venture capital fund.

8           **Sec. 4. 10 MRSA §1100-T, sub-§4**, as amended by PL 1991, c.  
          854, Pt. A, §11, is further amended to read:

10           **4. Total of credits authorized.** The authority may issue  
12           tax credit certificates to investors eligible pursuant to  
          subsection 2 in an aggregate amount not to exceed \$2,000,000 up  
14           to and including calendar year 1996, \$3,000,000 up to and  
          including calendar year 1997, \$4,000,000 up to and including  
16           calendar year 1998, \$5,000,000 up to and including calendar year  
          1999, \$6,000,000 up to and including calendar year 2000, and not  
18           to exceed \$7,000,000 thereafter. In addition, the authority may  
          issue tax credit certificates to investors eligible pursuant to  
20           subsection 2-A in an aggregate amount not to exceed \$1,000,000.

22           **Sec. 5. 36 MRSA §5122, sub-§2, ¶G**, as enacted by PL 1989, c.  
          880, Pt. G, §4, is amended to read:

24           G. For income tax years commencing on or after January 1,  
26           1989, an amount equal to the total premiums spent for  
          insurance policies for long-term care ~~which~~ that have been  
28           certified by the Superintendent of Insurance as complying  
          with Title 24-A, chapter 68; and

30           **Sec. 6. 36 MRSA §5122, sub-§2, ¶H**, as amended by PL 1991, c.  
          591, Pt. N, §7 and affected by §8, is further amended to read:

32           H. For each taxable year subsequent to the year of the  
34           loss, an amount equal to the absolute value of any net  
          operating loss arising from tax years beginning on or after  
36           January 1, 1989, but before January 1, 1993, for which  
          federal adjusted gross income was increased in accordance  
38           with subsection 1, paragraph H and that pursuant to the  
          United States Internal Revenue Code, Section 172 was carried  
40           back for federal income tax purposes, but only to the extent  
          that:

- 42                           (1) Maine net income is not reduced below zero;
- 44                           (2) The taxable year is within the allowable federal  
46                           period for carry-over; and
- 48                           (3) The amount has not been previously used as a  
50                           modification pursuant to this subsection; and

2                   **Sec. 7. 36 MRSA §5122, sub-§2, ¶I** is enacted to read:

4                   I. For income tax years commencing on or after January 1,  
6                   1996, an amount equal to long-term capital gains that are  
8                   included in the taxpayer's federal adjusted gross income and  
                    that arise out of the sale of investments that have received  
                    tax credit certificates in accordance with Title 10, section  
                    1100-T.

10                   **Sec. 8. 36 MRSA §5200-A, sub-§2, ¶G**, as amended by PL 1991, c.  
12                   548, Pt. A, §29, is further amended to read:

14                   G. Fifty percent of the apportionable dividend income the  
16                   taxpayer received during the taxable year from an affiliated  
18                   corporation that is not included with the taxpayer in a  
                    Maine combined report, except that this modification must be  
                    phased in over 5 years in accordance with the following  
                    schedule:

20                   Taxable year beginning	Subtractable
22                   in:	dividend income:
1989	10%
24                   1990	20%
1991	30%
26                   1992	40%
1993 or thereafter	50%; and

28                   **Sec. 9. 36 MRSA §5200-A, sub-§2, ¶H**, as amended by PL 1991, c.  
30                   591, Pt. N, §12 and affected by §13, is further amended to read:

32                   H. For each taxable year subsequent to the year of the  
34                   loss, an amount equal to the absolute value of any net  
36                   operating loss arising from tax years beginning on or after  
38                   January 1, 1989 but before January 1, 1993 and that,  
                    pursuant to the United States Internal Revenue Code, Section  
                    172, was carried back for federal income tax purposes, but  
                    only to the extent that:

- 40                   (1) Maine net income is not reduced below zero;
- 42                   (2) The taxable year is within the allowable federal  
44                   period for carry-over; and
- 46                   (3) The amount has not been previously used as a  
                    modification pursuant to this subsection; and

48                   **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶I** is enacted to read:



2 I. For income tax years commencing on or after January 1,  
3 1996, an amount equal to long-term capital gains that are  
4 included in the taxpayer's federal adjusted gross income and  
5 that arise out of the sale of investments that have received  
6 tax credit certificates in accordance with Title 10, section  
7 1100-T.

8

## STATEMENT OF FACT

10

11 This bill implements the following changes recommended by  
12 the Finance Authority of Maine's study of venture capital "A  
13 Study of the Availability and Sources of Venture Capital in  
14 Maine," dated March 15, 1995.

15 1. It creates the Maine Economic Development Venture  
16 Capital Revolving Investment Fund within the Maine Economic  
17 Development Venture Capital Revolving Investment Program,  
18 designed so that if direct appropriations are ever made  
19 available, the authority would be empowered to invest them in one  
20 or more private professionally managed venture capital funds on  
21 the basis that the managers of the private funds will make real  
22 efforts to reinvest the money in the State.

24

25 2. It creates a new form of venture capital tax credit  
26 program that could be applied to investments in private venture  
27 capital funds that meet eligibility standards.

28

29 3. It amends the Maine Seed Capital Tax Credit Program by  
30 allowing eligible investors and companies to qualify for "2nd  
31 round" credits and companies that have shown significant growth  
32 and need to move to the next stage of development.

34

35 4. It increases available tax credits for the Maine Seed  
36 Capital Tax Credit Program by \$1,000,000 in each of calendar  
37 years 1997, 1998, 1999, 2000 and 2001, and provides additional  
38 tax credits of \$1,000,000 for investments in private venture  
39 capital funds.

40

41 5. It provides for the exclusion of long-term capital gains  
42 from the sale of investments receiving a tax credit certificate  
43 under the Maine Seed Capital Tax Credit Program from state income  
44 tax.