

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1831

H.P. 1337

House of Representatives, March 7, 1996

An Act to Create the Small Enterprise Growth Program.

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. (GOVERNOR'S BILL)
Cosponsored by Representative ROWE of Portland, Senator HARRIMAN of Cumberland and Representatives: CAMERON of Rumford, CAMPBELL of Holden, DAVIDSON of Brunswick, FISHER of Brewer, GWADOSKY of Fairfield, JOSEPH of Waterville, LIBBY of Kennebunk, POVICH of Ellsworth, REED of Dexter, RICHARD of Madison, RICHARDSON of Portland, ROBICHAUD of Caribou, SIROIS of Caribou, Senators: ABROMSON of Cumberland, CIANCHETTE of Somerset, GOLDTHWAIT of Hancock.

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

4 **Sec. 1. 5 MRSA §12004-F, sub-§17** is enacted to read:

6 17. Small Enterprise Expenses Only 10 MRSA §471
7 Growth Board

8 **Sec. 2. 10 MRSA c. 7**, as amended, is repealed.

10 **Sec. 3. 10 MRSA c. 13** is enacted to read:

12 **CHAPTER 13**

14 **SMALL ENTERPRISE GROWTH PROGRAM**

16 **§381. Small Enterprise Growth Program established**

18 There is established the Small Enterprise Growth Program.

20 **§382. Definitions**

22 As used in this chapter, unless the context otherwise
24 indicates, the following terms have the following meanings.

26 **1. Board.** "Board" means the Small Enterprise Growth Board.

28 **2. Fund.** "Fund" means the Small Enterprise Growth Fund.

30 **3. Program.** "Program" means the Small Enterprise Growth
32 Program.

34 **4. Qualifying small business.** "Qualifying small business"
36 means a business employing 25 or fewer employees or having gross
38 sales not exceeding \$2,000,000 within the most recent 12 months
40 for which financial statements are available.

42 **§383. Fund established**

44 **1. Creation of fund.** There is established the Small
46 Enterprise Growth Fund, which is a revolving fund used to provide
48 funding for disbursements to qualifying small businesses in the
State seeking to pursue an eligible project. The fund must be
deposited with and maintained and administered by the Finance
Authority of Maine and consists of appropriations provided for
that purpose, interest accrued on the fund balance, funds
received by the board to be applied to the fund, all funds
remaining in the Pine Tree Partnership Fund and any funds
received from repayment, interest, royalties, equities or other

2 interests in business enterprises, products or services. The
3 fund is a nonlapsing fund.

4 2. Administrative expenses. Costs and expenses of
5 maintaining and servicing the fund and administering the Small
6 Enterprise Growth Program established by this chapter may be paid
7 out of amounts in the fund.

8
9 **§384. Board**

10 1. Establishment; membership. There is established the
11 Small Enterprise Growth Board, which consists of 11 members
12 appointed by the Governor as follows:

13 A. An experienced commercial lender;

14 B. An attorney with knowledge of securities law;

15 C. Five members of the public who have knowledge and
16 experience in managing or investing in high-growth small
17 businesses;

18 D. Three members of the public who have knowledge and
19 experience in the development of technological innovation;
20 and

21 E. The Commissioner of Economic and Community Development
22 or the commissioner's designee, who shall serve as an ex
23 officio member of the board.

24 2. Chair. The board shall annually elect a chair from
25 among its members.

26 3. Terms. The members other than the Commissioner of
27 Economic and Community Development or the commissioner's designee
28 serve for one-year terms and may be reappointed.

29 4. Compensation. Members are entitled to compensation in
30 accordance with Title 5, chapter 379.

31 **§385. Duties of board**

32 The board has the following powers and duties.

33 1. Receipt of money and property. The board may accept and
34 receive gifts, grants, bequests or devises from any source,
35 including funds from the Federal Government or any subdivision of
36 the Federal Government.

2 2. Administer program. The board must administer the Small
Enterprise Growth Program and may contract with the Finance
Authority of Maine, financial institutions, educational
4 institutions, business enterprises, nonprofit institutions and
organizations or individuals for such assistance in administering
6 the program as the board may require.

8 3. Ownership interests. The board may hold an ownership
interest in a private enterprise, but only if it is determined by
10 the board that such an interest is necessary to recover amounts
due to the fund.

12 4. Rules. The board may adopt rules, in accordance with
14 the Maine Administrative Procedure Act, to carry out this chapter.

16 **§386. Eligible projects**

18 In order for a qualifying small business to be eligible for
financial assistance under the program, the following criteria
20 must be met.

22 1. Engagement; involvement. The qualifying small business
must be engaged in or involve at least one of the following:

24 A. Marine science;

26 B. Biotechnology;

28 C. Manufacturing;

30 D. Export of goods or services to locations outside the
State or activities that result in significant amounts of
32 capital being imported into the State;

34 E. Software development;

36 F. Provision or development of environmental services or
technologies;

38 G. Provision or development of financial or insurance
products or services;

42 H. Production of value-added goods from natural resources;
or

44 I. Other enterprises that the board determines will further
the purposes and intent of the program.

46 2. Growth; public benefit. The qualifying small business
48 must demonstrate the potential for high growth and public benefit.
50

2 3. Need for assistance. The qualifying small business must
3 have committed all reasonably available resources to the project
4 and have demonstrated a need for assistance from the fund to
5 realize its projected growth and achievement of public benefits.

6 4. Financing plan. The qualifying small business must
7 submit a financing plan as part of an overall business plan. The
8 proposed financing plan must include adequate mechanisms to
9 monitor the accomplishment of the business plan as proposed.

10 The disbursement may not be used to make distributions to or
11 for the benefit of an owner of the business borrowing from the
12 fund or a related entity.

13 **§387. Review of applications**

14 In order to effectively review and process applications
15 under the program, the board may delegate the authority to
16 approve or deny applications for disbursements from the fund to
17 one or more subcommittees of the members. Such delegation may
18 provide that the action of the subcommittee constitutes final
19 agency action.

20 **§388. Financing terms and conditions**

21 Disbursements may be made from program funds under the
22 following terms and conditions.

23 1. Disbursements. Disbursements may not exceed \$150,000 to
24 a qualifying small business, including an affiliated entity.

25 2. Provide evidence. The qualifying small business must
26 provide evidence satisfactory to the board of matching funds in
27 cash in an amount equal to the disbursement. Such matching funds
28 may be in the form of debt or equity, but must be at risk in the
29 qualifying small business for a minimum of 5 years.

30 3. Agreement. The board must enter into an agreement with
31 the recipient of the disbursement requiring repayment of the full
32 amount disbursed, and providing for the payment of interest at a
33 rate based on the board's assessment of the risk of the
34 disbursement. The agreement may provide for flexible payments
35 based on the financial success of the recipient. In addition, in
36 recognition of the degree of risk of the project, the agreement
37 may require royalties or additional payments based on sales, net
38 cash flow or other financial measures, or rights to equity in the
39 enterprise in the form of warrants or similar rights.

2 4. Report. The board shall require that each disbursement
3 recipient report to the board periodically on each of the
4 following factors:

5 A. Financial performance;

6 B. Job creation;

7 C. Technological progress;

8 D. Market progress; and

9 E. Any other factors as the board may require.

10 **§389. Cooperation and coordination**

11 The University of Maine System, the Small Business
12 Development Center Program, the Maine World Trade Association and
13 the Maine Science and Technology Foundation shall provide such
14 support and assistance as the board may request, within the
15 expertise of each.

16 **§390. Conflicts of interest**

17 Notwithstanding Title 5, section 18, subsection 1, paragraph
18 B, each member of the board, and each employee, contractor, agent
19 or other representative of the board is deemed an "executive
20 employee" solely for purposes of Title 5, section 18, and for no
21 other purpose. Title 17, section 3104 does not apply to any of
22 those representatives. If a member does not participate in an
23 action or deliberation with respect to a particular project, that
24 member is presumed not to have personally and substantially
25 participated in a decision of the board with respect to that
26 project. Every interest of a board member in any matter before
27 the board must be disclosed to the board in writing.

28 **§391. Disclosure and confidentiality of records**

29 1. Disclosure required. Notwithstanding subsections 2 and
30 3, and except as provided in paragraph F, the board shall make
31 available the following records, either to any person upon a
32 request that reasonably describes the records to which access is
33 sought or, if no request is made, in any manner and at any time
34 that the board may determine:

35 A. After a written application or proposal for financial
36 assistance or property transfer has been filed in a form
37 specified by or acceptable to the board:

- 2 (1) Names of recipients of or applicants for financial
assistance, including principals, where applicable;
- 4 (2) Amounts, types and general terms of financial
assistance provided to those recipients or requested by
6 those applicants;
- 8 (3) Description of projects and businesses benefiting
or to benefit from the financial assistance;
- 10 (4) Names of transferors or transferees, including
12 principals, of property to or from the board, the
14 general terms of transfer and the purposes for which
transferred property will be used; and
- 16 (5) Number of jobs and the amount of tax revenues
projected or resulting from a project;
- 18 B. Any information pursuant to a waiver determined
20 satisfactory by the board;
- 22 C. Information that, as determined by the board, has
already been made available to the public; and
- 24 D. Information necessary to comply with Title 1, section
26 407, subsection 1.

28 The board shall provide to a legislative committee the
30 information or records specified in a written request signed by
the chair of that legislative committee. The information or
32 records may be used only for the lawful purposes of the committee
and in any action arising out of any investigation conducted by
34 it.

36 **2. Confidential information.** The following records are
designated as confidential for purposes of Title 1, section 402,
38 subsection 3, paragraph A:

40 A. Any record obtained or developed by the board prior to
receipt of a written application or proposal, in a form
42 specified by or acceptable to the board, for financial
assistance to be provided by or with the assistance of the
44 board or in connection with a transfer of property to or
from the board. After receipt by the board of the
46 application or proposal, a record pertaining to the
application or proposal may not be considered confidential
48 unless it is confidential under another provision of this
subsection;

- 2 B. Any record obtained or developed by the board that:
- 4 (1) A person, including the board, to whom the record
6 belongs or pertains has requested be designated
 confidential; and
- 8 (2) The board has determined contains information that
10 gives the owner or a user an opportunity to obtain
12 business or competitive advantage over another person
14 who does not have access to the information, except
16 through board records, or access to which by others
 would result in a business or competitive disadvantage,
 loss of business or other significant detriment, other
 than loss or denial of financial assistance from the
 board in the case of a person other than the board, to
 any person to whom the record belongs or pertains;
- 18 C. Any financial statement or tax return of an individual
20 or any other record obtained or developed by the board the
22 disclosure of which would constitute an invasion of personal
 privacy, as determined by the board;
- 24 D. Any record, including any financial statement or tax
26 return obtained or developed by the board in connection with
 any monitoring or servicing activity by the board,
28 pertaining to any financial assistance provided or to be
 provided by or with the assistance of the board;
- 30 E. Any record obtained or developed by the board that
32 contains an assessment by a person who is not employed by
 the board of the creditworthiness or financial condition of
 any person or project; and
- 34 F. Any financial statement or business and marketing plan
36 in connection with any project receiving or to receive
38 financial assistance from the board, if a person to whom the
 statement or plan belongs or pertains has requested that the
 record be designated confidential.
- 40 3. Wrongful disclosure prohibited. A member, officer,
42 employee, agent, other representative of the board or other
44 person may not knowingly divulge or disclose records declared
46 confidential by this section, except that the board may, in its
 discretion, make or authorize any disclosure of information of
 the following types or under the following circumstances:
- 48 A. Impersonal, statistical or general information;

2 B. If necessary in connection with processing any
3 application for, obtaining or maintaining financial
4 assistance for any person or in connection with acquiring,
5 maintaining or disposing of property;

6 C. To a financing institution or credit reporting service;

8 D. Information necessary to comply with any federal or
9 state law or rule or with any agreement pertaining to
10 financial assistance;

12 E. If necessary to ensure collection of any obligation in
13 which it has or may have an interest;

14 F. In any litigation or proceeding in which the board has
15 appeared, introduction for the record of any information
16 obtained from records declared confidential by this section;
17 and

18 G. Pursuant to a subpoena, request for production of
19 documents, warrant or other order by competent authority, as
20 long as the order appears to have first been served on the
21 person to whom the confidential information sought pertains
22 or belongs and as long as the order appears on its face or
23 otherwise to have been issued or made upon lawful authority.

24 **§392. Governmental function**

25 The board shall administer and exercise the authority
26 granted to it by this chapter. The carrying out of its powers
27 and duties is considered the performance of an essential
28 governmental function.

29 **Sec. 4. Rules.** Any rule adopted by the Small Enterprise
30 Growth Board pursuant to this Act is a technical rule.
31

32 **STATEMENT OF FACT**

33 **40** This bill creates the Small Enterprise Growth Program, which
34 will provide financing for small businesses that show a strong
35 potential for growth to provide quality employment for people of
36 this State, but need assistance in obtaining access to necessary
37 capital.
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39 The bill creates an 11-member board consisting of persons
40 with expertise in matters relating to the financing of
41 growth-stage companies and the Commissioner of Economic and
42 Community Development.
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2 The board will administer the Small Enterprise Growth
3 Program. The board may enter into contracts with appropriate
4 entities, including the Finance Authority of Maine, to assist in
5 the administration of the program. The board may provide loans
6 up to \$150,000 to qualifying small businesses engaged in marine
7 science, biotechnology, manufacturing, activities that result in
8 a significant amount of capital being imported into the State,
9 software development, provision or development of environmental
10 services or technologies, provision or development of financial
11 or insurance products or services, or production of value-added
12 goods from natural resources, or other businesses that offer the
13 potential of significant growth and public benefits. Businesses
14 must match the loans under the program in cash on a
15 dollar-for-dollar basis.

16 The board may provide flexible repayment terms for all
17 disbursements from the fund. Repayment terms may include an
18 interest in one or more products of the enterprise assisted, a
19 percentage of sales or rights in ownership interest. These
20 rights or interests help ensure that the return from successful
21 businesses will offset losses from those that are not successful.
22

23 The purpose of this bill is to provide opportunities for
24 gainful employment to the people of the State and to encourage
25 the growth of the economy. Due to the inherent risk and other
26 factors, there is a lack of necessary capital for certain small
27 business enterprises in critical stages of growth. In order to
28 provide funds for the development and expansion of enterprises
29 that have a strong potential for growth and the provision of
30 public benefits, to provide essential employment opportunities
31 and to make the best use of the State's limited resources, the
32 Small Enterprise Growth Program is created to assist enterprises
33 in early stages of growth.