

# MAINE STATE LEGISLATURE

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S.M.C.  
P.L. 03/10

MAJORITY

L.D. 1

Date: 2-22-10

(Filing No. S-378)

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 10, L.D. 1, Bill, "An Act To Stimulate Capital Investment for Innovative Businesses in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 5 MRSA §17057, sub-§4 is enacted to read:

4. Investment activity information. Disclosure of investment activity of the retirement system, pursuant to the innovation finance program, is governed by this subsection.

A. Documentary material, data or information in the possession of the retirement system that consists of trade secrets or commercial or financial information that relates to the investments or potential investments of the retirement system pursuant to the innovation finance program under Title 10, section 1026-T is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3 if, in the sole discretion of the retirement system, the disclosure of the material, data or information may:

(1) Impair the retirement system's ability to obtain such material, data or information in the future; or

(2) May cause substantial harm to the competitive position of the retirement system or of the person or entity from whom the information was obtained.

B. The following information concerning any venture capital fund in which the retirement system is invested pursuant to the innovation finance program under Title 10, section 1026-T is not exempt from disclosure:

(1) The retirement system's total commitment to the venture capital fund;

(2) The date of the commitment to the venture capital fund;

(3) Contributions and distributions made to or received from an innovation finance program fund;

COMMITTEE AMENDMENT

- 1           (4) The market value of the investment;
- 2           (5) The name of the venture capital fund; and
- 3           (6) The interim internal rate of return of the venture capital fund.

4           **Sec. 2. 10 MRSA §963-A, sub-§47-D** is enacted to read:

5           **47-D. Retirement system.** "Retirement system" means the Maine Public Employees  
6           Retirement System, established pursuant to Title 5, chapter 421.

7           **Sec. 3. 10 MRSA §963-A, sub-§49-J** is enacted to read:

8           **49-J. Targeted technologies.** "Targeted technologies" means biotechnology,  
9           aquaculture and marine technology, composite materials technology, environmental  
10           technology, advanced technologies for forestry and agriculture, information technology  
11           and precision manufacturing technology.

12           **Sec. 4. 10 MRSA §1026-T** is enacted to read:

13           **§1026-T. Innovation finance program**

14           **1. Established.** The authority may create and oversee a state innovation finance  
15           program, referred to in this section as "the program," to increase the supply of venture  
16           capital to the economy of the State by improving access by innovative businesses in this  
17           State to venture capital funds. Investment performance of the program may be partially  
18           guaranteed by refundable tax credits issued by the authority to the retirement system.  
19           This section does not mandate or require any investment by the retirement system or give  
20           the retirement system any economic development responsibilities, its sole responsibility  
21           being to safeguard, invest and increase retirement system assets consistent with its  
22           fiduciary duty to its members.

23           **2. Investment goal; guidelines.** The goal of the program is to attract more venture  
24           capital to innovative businesses in this State by providing the retirement system with an  
25           incentive to invest in high-quality venture capital funds that evidence both a commitment  
26           to seeking investments in the State and the ability to produce favorable returns to  
27           minimize the risk of tax credit redemption. Consistent with this investment goal, the  
28           retirement system may, in the exercise of its discretion and consistent with its fiduciary  
29           duties to the beneficiaries of the retirement system, apply to the authority for approval  
30           under the program for proposed investments in venture capital funds. The authority may  
31           approve such a proposed venture capital fund investment under the program if it  
32           determines that the venture capital fund will give strong consideration to investing in  
33           businesses in this State that fall within the targeted technologies. In making this decision,  
34           the authority shall consider whether the venture capital fund:

- 35           A. Will maintain at least a periodic presence in the State;
- 36           B. Will build linkages to, and accept referrals from, at least some of the  
37           organizations promoting the State's innovation economy, including the authority, the  
38           Maine Technology Institute under Title 5, section 15302, the Small Enterprise  
39           Growth Fund under section 383, the Department of Economic and Community  
40           Development, the Maine Patent Program under section 1921, the University of Maine  
41           System and other venture capital investors within the State;

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C. Will actively prospect for investments in the State;

D. Expresses a commitment to seek investments in businesses in this State that meet its investment criteria; and

E. Demonstrates the ability to make successful venture capital investments.

3. Investment restrictions. Investments under the program are governed by this subsection.

A. The retirement system may not invest directly in individual businesses under this program but may invest only in venture capital funds that are managed to best achieve the purpose set out under subsection 2.

B. No more than \$4,000,000 of tax credits may be placed at risk with respect to any single commitment to a venture capital fund.

C. The retirement system may cooperate with the authority and other organizations promoting the State's innovation economy by encouraging participating venture capital funds to consider investments in this State consistent with their investment strategies. The retirement system may at any time be relieved of this obligation by releasing the State from its obligations under all outstanding tax credit certificates issued under the program.

4. Refundable tax credits. The authority may issue to the retirement system certificates of up to \$20,000,000 in refundable tax credits as provided by Title 36, section 5219-EE to serve as partial security against a loss of capital under the program. Certificates must be issued to expire no later than July 1, 2028.

A. Refundable tax credits as authorized by this subsection may be redeemed only as necessary to offset 80% of any realized loss of capital in the program.

B. A certificate of tax credits issued by the authority under this section is binding on the State and constitutes a solemn contractual commitment of the State protected under the contract clauses of the Constitution of Maine, Article I, Section 11 and the United States Constitution, Article I, Section 10. Once issued, as long as the retirement system is not in default under its agreement with the authority with respect to any certificate of tax credits, the certificate may not be modified, terminated or rescinded until the certificate expires, is redeemed or is released by the retirement system.

C. The authority shall register each refundable tax credit under this section with the Department of Administrative and Financial Services, Bureau of Revenue Services. The retirement system shall report annually to the authority on the status and valuation of investments secured by the certificate of tax credits and such other information as may be required pursuant to an agreement between the retirement system and the authority. The report must include details of capital calls and distributions.

D. A refundable tax credit allowed pursuant to this section is not a security under Title 32, chapter 135.

E. On the final liquidation of a venture capital fund for which a certificate of tax credits has been issued, the retirement system shall notify the authority of termination

# COMMITTEE AMENDMENT

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of the investment and certify the amount of any loss. The authority may request such information or documentation from the retirement system as it determines reasonably necessary to confirm the amount of any loss and shall promptly certify any capital loss to the Department of Administrative and Financial Services, Bureau of Revenue Services. Upon submission by the authority, the bureau shall redeem registered credits as necessary to pay 80% of the loss certified by the authority up to a maximum payment of \$4,000,000 with respect to any single venture capital fund investment or an aggregate loss under the program of \$20,000,000. For purposes of this subsection, "loss" means the total amount of investment by the retirement system into the venture capital fund less the total value of all distributions received by the retirement system from such venture capital fund, as determined by the authority.

F. Nothing in this section may be construed to place the assets of the authority at risk. Except for those rights that relate to refundable tax credits, nothing in this section may be construed to create an obligation of the State or of any political subdivision of the State, and this section may not be construed to require or mandate the retirement system to make any investments under the program.

G. The authority may charge the retirement system reasonable fees for the cost of implementing and administering the program and any tax credits authorized by this section, not to exceed the authority's out-of-pocket costs plus an annualized fee not to exceed 1% of the outstanding balance of tax credits. In addition, the authority may assess a reasonable program fee from gains received by the retirement system from investments under the program. Any such fees are subject to the approval of the retirement system and the authority.

**Sec. 5. 36 MRSA §5219-EE is enacted to read:**

**§5219-EE. Maine Public Employees Retirement System innovation finance credit**

**1. Credit allowed.** The Finance Authority of Maine is authorized to issue to the Maine Public Employees Retirement System, referred to in this section as "the retirement system," a refundable credit against the taxes imposed by this Part in an amount certified by the Finance Authority of Maine as equal either to \$4,000,000 or 80% of any loss of capital sustained in the innovation finance program established under Title 10, section 1026-T, whichever is less. Upon receipt of a certification as provided in Title 10, section 1026-T, subsection 4, paragraph E, the Department of Administrative and Financial Services, Bureau of Revenue Services shall pay the amount certified to the retirement system as provided in that subsection.

**2. Reimbursement by the retirement system.** In the event that the retirement system incurs a loss and redeems a credit under this section and the retirement system subsequently achieves an aggregate return on all of its investments under the innovation finance program under Title 10, section 1026-T that exceeds an annualized return of 8%, the retirement system shall reimburse the State in an amount equal to the total amount of credits paid to the retirement system under this section.

**3. Limitations.** A credit under this section may not be redeemed for any loss occurring after July 1, 2028. Pursuant to Title 10, section 1026-T, total credits redeemed may not exceed \$20,000,000.





# 124th MAINE LEGISLATURE

LD 1

LR 258(04)

## An Act To Stimulate Capital Investment for Innovative Businesses in Maine

**Fiscal Note for Bill as Amended by Committee Amendment "A"**  
**Committee: Business, Research and Economic Development**  
**Fiscal Note Required: Yes**

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### Fiscal Note

Potential future biennium cost increase - General Fund

#### Fiscal Detail and Notes

This bill authorizes the Finance Authority of Maine (FAME) to oversee a state innovation finance program allowing the Maine Public Employees Retirement System (MainePERS) to apply to FAME for approval of new investments in venture capital funds. FAME may issue refundable tax credits to MainePERS sufficient to offset 80% of the cost of any such investments in the event of realized losses in value. The timing and extent of any such losses will depend upon the extent of MainePERS participation in the program and the performance of any investments, with reimbursement for any such losses capped at a maximum of \$20,000,000. No current biennium impact is anticipated.

This legislation permits, but does not require, MainePERS to invest in certain venture capital funds. If MainePERS decides to participate, it is not expected to significantly affect administrative costs.

FAME will not require additional General Fund appropriations to establish and administer the state innovation finance program due to the provisions in the bill that allow it to charge MainePERS fees for the costs of implementing and administering the program.