

MAINE STATE LEGISLATURE

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Date: 6/5/09

(Filing No. S-309)

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STATE OF MAINE
SENATE
124TH LEGISLATURE
FIRST REGULAR SESSION

SENATE 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:

PART A

Sec. A-1. 10 MRSA §963-A, sub-§47-D is enacted to read:

47-D. Retirement system. "Retirement system" means the Maine Public Employees Retirement System.

Sec. A-2. 10 MRSA §1026-N, sub-§1-A is enacted to read:

1-A. Loans from the retirement system. The retirement system may lend up to \$10,000,000 to the fund upon the following terms.

A. The term of any loan may not exceed 15 years. Payments of principal may be deferred for up to 6 years or for such shorter period as the authority and the retirement system may agree.

B. A portion of the loan may be set aside in a reserve for interest payments on the loan.

C. To secure its loans, the retirement system may have a first security interest in all assets of the fund. All distributions received by the authority on investments from the fund must be applied first to pay down the outstanding balance of loans from the retirement system.

D. The authority may agree to share with the retirement system up to 20% of profits on fund investments after all refundable tax credits have either expired or been released by the retirement system.

E. If assets of the fund are inadequate to repay a loan from the retirement system in accordance with its terms, the retirement system may redeem refundable tax credits in accordance with subsection 1-B.

Sec. A-3. 10 MRSA §1026-N, sub-§1-B is enacted to read:

1 1-B. Refundable tax credits. As provided by Title 36, section 5219-EE, the
2 authority may issue to the retirement system certificates for up to \$10,000,000 in
3 refundable tax credits as follows.

4 A. Refundable tax credits authorized by this subsection may be redeemed only as
5 necessary to cure default in scheduled payments of interest or principal on debt owed
6 to the retirement system to capitalize the fund. The rate of return, whether fixed or
7 variable, must be determined by a formula stipulated in the certificate issued as
8 security. Refundable tax credits may not be redeemed prior to July 1, 2014 nor after
9 June 30, 2031. No more than \$2,500,000 of credits may be redeemed per fiscal year.

10 B. A certificate of tax credits issued under this subsection is binding on the State and
11 constitutes a solemn contractual commitment of the State protected under the contract
12 clauses of the Constitution of Maine, Article I, Section 11 and the United States
13 Constitution, Article I, Section 10. Once funds secured by a certificate are borrowed,
14 the certificate may not be modified, terminated or rescinded until the underlying debt
15 is paid or the certificate expires, is redeemed or is released by the retirement system.

16 C. The authority shall register each refundable tax credit with the Department of
17 Administrative and Financial Services, Bureau of Revenue Services and shall report
18 annually on the extent to which each credit has been extinguished through payment of
19 interest and principal on the underlying debt.

20 D. The refundable tax credits allowed by this section are not securities under Title
21 32, chapter 135.

22 E. The authority shall certify any lending default immediately to the Department of
23 Administrative and Financial Services, Bureau of Revenue Services, which shall
24 verify the amount of the default and redeem registered credits as necessary to cure the
25 default.

26 F. All obligations created under this subsection must be paid exclusively from
27 investments in the fund or by redemption of refundable tax credits. No other public
28 assets and no other assets of the authority may be placed at risk. Except for those
29 rights that relate to refundable tax credits, nothing in this section may be construed to
30 create an obligation of the State or of any political subdivision of the State.

31 **Sec. A-4. 36 MRSA §5219-EE is enacted to read:**

32 **§5219-EE. Maine Economic Development Venture Capital Revolving Investment**
33 **Program refundable tax credit**

34 **1. Credit allowed.** The Maine Public Employees Retirement System in its capacity
35 as lender to the Maine Economic Development Venture Capital Revolving Investment
36 Program, referred to in this section as "the program" and established in Title 10, section
37 1026-N, is allowed a refundable credit against the taxes imposed by this Part in an
38 amount certified by the Finance Authority of Maine as necessary to cure default in
39 scheduled payments on debt owed by the program to the retirement system.

40 **2. Transferability.** Credits authorized by this section are transferable and may be
41 redeemed by any transferee of the Maine Public Employees Retirement System.

10/2

1 3. Limitations. Refundable tax credits may not be redeemed prior to July 1, 2014
2 nor after June 30, 2034. No more than \$2,500,000 of credits may be redeemed per fiscal
3 year. Pursuant to Title 10, section 1026-N, total credits redeemed may not exceed
4 \$10,000,000.

5 4. Audit. The State Tax Assessor may audit any transactions necessary to verify the
6 amount of credits claimed or redeemed under this section. If the assessor determines that
7 a credit larger than that authorized by this section has been received, the assessor may
8 enforce repayment of the overpayment by assessment pursuant to the provisions of
9 chapter 7 or may apply the overpayment against subsequent redemptions made pursuant
10 to this section.

11 5. Repeal. This section is repealed April 16, 2035.

12 **PART B**

13 **Sec. B-1. 10 MRSA §382, sub-§1-A** is enacted to read:

14 1-A. Authority. "Authority" means the Finance Authority of Maine.

15 **Sec. B-2. 10 MRSA §382, sub-§5** is enacted to read:

16 5. Retirement system. "Retirement system" means the Maine Public Employees
17 Retirement System.

18 **Sec. B-3. 10 MRSA §383, sub-§3** is enacted to read:

19 3. Loans from the retirement system. The retirement system may lend up to
20 \$5,000,000 to the fund upon the following terms.

21 A. The term of any loan may not exceed 15 years. Payments of principal may be
22 deferred for up to 6 years or for such shorter period as the board and the retirement
23 system may agree.

24 B. A portion of the loan may be set aside in a reserve for interest payments on the
25 loan.

26 C. To secure its loans, the retirement system may have a first security interest in all
27 assets of the fund. All distributions received by the board on investments from the
28 fund must be applied first to pay down the outstanding balance on loans from the
29 retirement system.

30 D. The board may agree to share with the retirement system up to 20% of profits on
31 fund investments after all refundable tax credits have either expired or been released
32 by the retirement system.

33 E. If assets of the fund are inadequate to repay a loan from the retirement system in
34 accordance with its terms, the retirement system may redeem refundable tax credits in
35 accordance with subsection 4.

36 **Sec. B-4. 10 MRSA §383, sub-§4** is enacted to read:

1 4. Refundable tax credits. As provided by Title 36, section 5219-FF, the authority
2 may issue to the retirement system certificates for up to \$5,000,000 in refundable tax
3 credits as follows.

4 A. Refundable tax credits authorized by this subsection may be redeemed only as
5 necessary to cure a default in scheduled payments of interest or principal on debt
6 owed to the retirement system to capitalize the fund. The rate of return, whether fixed
7 or variable, must be determined by a formula stipulated in the certificate issued as
8 security. Refundable tax credits may not be redeemed prior to July 1, 2014 nor after
9 June 30, 2031. No more than \$2,500,000 of credits may be redeemed per fiscal year.

10 B. A certificate of tax credits issued under this subsection is binding on the State and
11 constitutes a solemn contractual commitment of the State protected under the contract
12 clauses of the Constitution of Maine, Article I, Section 11 and the United States
13 Constitution, Article I, Section 10. Once funds secured by a certificate are borrowed,
14 the certificate may not be modified, terminated or rescinded until the underlying debt
15 is paid or the certificate expires, is redeemed or is released by the retirement system.

16 C. The authority shall register each refundable tax credit with the Department of
17 Administrative and Financial Services, Bureau of Revenue Services and shall report
18 annually on the extent to which each credit has been extinguished through payment of
19 interest and principal on the underlying debt.

20 D. The refundable tax credits allowed by this section are not securities under Title
21 32, chapter 135.

22 E. The authority and the board shall certify any lending default immediately to the
23 Department of Administrative and Financial Services, Bureau of Revenue Services,
24 which shall verify the amount of the default and redeem registered credits as
25 necessary to cure the default.

26 F. All obligations created under this subsection must be paid exclusively from
27 investments in the fund or by redemption of refundable tax credits. No other public
28 assets and no other assets of the authority or the board may be placed at risk. Except
29 for those rights that relate to refundable tax credits, nothing in this section may be
30 construed to create an obligation of the State or of any political subdivision of the
31 State.

32 **Sec. B-5. 36 MRS §5219-FF** is enacted to read:

33 **§5219-FF. Small Enterprise Growth Fund refundable tax credit**

34 1. Credit allowed. The Maine Public Employees Retirement System in its capacity
35 as lender to the Small Enterprise Growth Fund, referred to in this section as "the fund"
36 and established in Title 10, section 383, is allowed a refundable credit against the taxes
37 imposed by this Part in an amount certified by the Finance Authority of Maine as
38 necessary to cure default in scheduled payments on debt owed by the fund to the
39 retirement system.

40 2. Transferability. Credits authorized by this section are transferable and may be
41 redeemed by any transferee of the Maine Public Employees Retirement System.

Not

1 B. No more than \$4,000,000 of tax credits may be placed at risk within any single
2 venture capital fund.

3 C. The retirement system may at any time be relieved of investment restrictions by
4 releasing the State from its obligations under all outstanding tax credit certificates
5 issued under the program.

6 **4. Refundable tax credits.** The authority may issue to the retirement system
7 certificates of up to \$20,000,000 in refundable tax credits as provided by Title 36, section
8 5219-GG to serve as partial security against a loss of capital under the program.
9 Certificates must be issued to expire on a valuation date that is no later than July 1, 2027.

10 A. Refundable tax credits as authorized by this subsection may be redeemed only as
11 necessary to offset 80% of any loss of capital in the program as appraised on the
12 valuation date.

13 B. A certificate of tax credits issued by the authority under this section is binding on
14 the State and constitutes a solemn contractual commitment of the State protected
15 under the contract clauses of the Constitution of Maine, Article I, Section 11 and the
16 United States Constitution, Article I, Section 10. Once issued, the certificate may not
17 be modified, terminated or rescinded until the certificate expires, is redeemed or is
18 released by the retirement system.

19 C. The authority shall register each refundable tax credit under this section with the
20 Department of Administrative and Financial Services, Bureau of Revenue Services.
21 The retirement system shall report annually to the authority on the state of
22 investments secured by the certificate pursuant to an agreement between the
23 retirement system and the authority.

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

26 E. On the valuation date identified in the certificate, the authority shall appraise the
27 value of investments made under the program and immediately certify any capital
28 loss to the Department of Administrative and Financial Services, Bureau of Revenue
29 Services. The bureau shall redeem registered credits as necessary to pay 80% of the
30 loss up to a maximum payment of \$20,000,000.

31 F. No assets of the authority are placed at risk by this section. Except for those rights
32 that relate to refundable tax credits, nothing in this section may be construed to create
33 an obligation of the State or of any political subdivision of the State.

34 G. The authority may charge the retirement system reasonable fees for the cost of
35 administering any tax credits authorized by this section.

36 **Sec. C-2. 36 MRSA §5219-GG is enacted to read:**

37 **§5219-GG. Maine Public Employees Retirement System innovation finance credit**

38 **1. Credit allowed.** The Finance Authority of Maine is authorized to issue to the
39 Maine Public Employees Retirement System a refundable credit against the taxes
40 imposed by this Part in an amount certified by the Finance Authority of Maine as equal to
41 80% of any loss of capital sustained in the innovation finance program established under

1 Title 10, section 1026-T. The loss of capital must be calculated as of the valuation date
2 denominated in the certificate authorizing the credit. The valuation date may be no later
3 than July 1, 2027.

4 2. Transferability. Credits authorized by this section are transferable and may be
5 redeemed by any transferee of the Maine Public Employees Retirement System.

6 3. Limitations. A credit under this section may not be redeemed for any loss
7 occurring after July 1, 2027. Pursuant to Title 10, section 1026-T, total credits redeemed
8 may not exceed \$20,000,000.

9 4. Audit. The State Tax Assessor may audit any transactions necessary to verify the
10 amount of credits claimed or redeemed under this section. If the assessor determines that
11 a credit larger than that authorized by this section has been received, the assessor may
12 enforce repayment of the overpayment by assessment pursuant to the provisions of
13 chapter 7 or may apply the overpayment against subsequent redemptions made pursuant
14 to this section.

15 5. Repeal. This section is repealed April 16, 2028.

16 **PART D**

17 **Sec. D-1. Appropriations and allocations.** The following appropriations and
18 allocations are made.

19 **FINANCE AUTHORITY OF MAINE**

20 **Finance Authority of Maine 0582**

21 Initiative: Provides one-time funds for the costs associated with rulemaking and
22 programming costs associated with providing incentives for the Maine Public Employees
23 Retirement System to use its assets for economic development in the State.

24	GENERAL FUND	2009-10	2010-11
25	All Other	\$7,500	\$0
26			
27	GENERAL FUND TOTAL	<u>\$7,500</u>	<u>\$0</u>
28			

29 **SUMMARY**

30 This amendment replaces the Maine Fund of Funds proposed in the bill with 3
31 smaller initiatives to encourage the use of assets of the Maine Public Employees
32 Retirement System for economic development in the State.

33 Part A, which establishes a secured loan of up to \$10,000,000 from the retirement
34 system to the Maine Economic Development Venture Capital Revolving Investment
35 Program administered by the Finance Authority of Maine, creates an incentive for the
36 retirement system to loan up to \$10,000,000 to the program. Amounts loaned by the
37 retirement system are secured by assets of the Maine Economic Development Venture
38 Capitol Revolving Investment Program Fund and by refundable tax credits issued by the

1 Finance Authority of Maine. Tax credits may be redeemed from the Department of
2 Administrative and Financial Services, Maine Revenue Services in future years in the
3 event of default on payment of interest or principal. The Finance Authority of Maine
4 may agree to share with the retirement system up to 20% of the profits from the venture
5 capital investments.

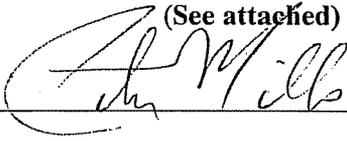
6 Part B, which establishes a secured loan of up to \$5,000,000 from the retirement
7 system to the Small Enterprise Growth Fund, creates an incentive for the retirement
8 system to loan up to \$5,000,000 to the fund. Amounts loaned are secured by assets of the
9 fund and by refundable tax credits issued by the Finance Authority of Maine. Tax credits
10 may be redeemed from Maine Revenue Services in future years in the event of default on
11 payment of interest or principal. The fund may agree to share with the retirement system
12 up to 20% of the profits from the venture capital investments.

13 Part C, which establishes an innovation finance program authorizing the Finance
14 Authority of Maine to guarantee up to 80% of certain investments by the retirement
15 system in Maine-connected venture capital funds, authorizes the Finance Authority of
16 Maine to issue refundable tax credits to guarantee up to 80% of any investments made by
17 the retirement system in venture capital funds whose strategies include meeting 5 criteria
18 for strong connections to the Maine economy. Tax credits under this program are limited
19 to \$20,000,000. No more than \$4,000,000 of tax credits may be placed at risk within any
20 single venture capital fund.

21 Part D adds an appropriations and allocations section.

22 **FISCAL NOTE REQUIRED**

23 (See attached)

24 SPONSORED BY: 

25 (Senator MILLS, P.)

26 COUNTY: Somerset



124th MAINE LEGISLATURE

LD 1

LR 258(03)

An Act To Stimulate Capital Investment for Innovative Businesses in Maine

Fiscal Note for Senate Amendment "A"

Sponsor: Sen. Mills of Somerset

Fiscal Note Required: Yes

Fiscal Note

Reduces Contingent Liability - General Fund
Removes potential revenue increase - General Fund

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Net Cost (Savings)				
General Fund	\$7,500	\$0	\$0	\$0
Appropriations/Allocations				
General Fund	\$7,500	\$0	\$0	\$0

Fiscal Detail and Notes

This amendment replaces the Maine Fund of Funds and creates the Maine Economic Development Venture Capital Revolving Investment Program, the Small Enterprise Growth Program and the Innovation Finance Program, all with the purpose of increasing the availability of venture capital to the economy of the State. Each fund will raise capital by offering as security up to \$35,000,000 in refundable tax credits, a reduction of tax credits from the original bill limit of \$80,000,00. No more than \$25,000,000 of credits may be redeemed in any single calendar year and the highest potential General Fund loss (worst case scenario) in a fiscal year would be \$30,000,000 if the credits redeemed in two calendar years (\$25,000,000 in one year and \$5,000,000 the next) are redeemed in the same fiscal year. Tax credits under the Economic Development Venture Capital Revolving Investment Program and the Small Enterprise Growth Program may not be redeemed before July 1, 2014. The Innovation Finance Program has no date on which the tax credits may first be redeemed and the maximum exposure in that program is \$20,000,000.

Language in the original bill indicating the General Fund had some potential to benefit has been removed.

This amendment includes a one-time General Fund appropriation of \$7,500 to the Finance Authority of Maine (FAME) for the costs associated with rulemaking and initial programming to create incentives to encourage the Maine Public Employees Retirement System to use its assets for economic development in the State. This fiscal note assumes that the ongoing administrative costs to FAME will be paid either through fees charged by FAME or through amounts available in the Small Enterprise Growth Fund pursuant to the Maine Revised Statutes, Title 10, §383, sub-§2.