

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1

S.P. 10

January 7, 2009

An Act To Stimulate Capital Investment for Innovative Businesses in Maine

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2 **Sec. 1. 10 MRSA §385, sub-§2**, as enacted by PL 1995, c. 699, §3, is amended to
3 read:

4 **2. Administer program.** The board ~~must~~ shall administer the Small Enterprise
5 Growth Program and, if the Maine Fund of Funds is created under chapter 15, shall
6 administer the Maine Fund of Funds and may contract with the Finance Authority of
7 Maine, financial institutions, educational institutions, business enterprises, nonprofit
8 institutions and organizations or individuals for such assistance in administering the
9 program and the fund as the board may require.

10 **Sec. 2. 10 MRSA c. 15** is enacted to read:

11 **CHAPTER 15**

12 **MAINE FUND OF FUNDS**

13 **§396. Definitions**

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

16 **1. Board.** "Board" means the Small Enterprise Growth Board established under
17 chapter 13.

18 **2. Certificate.** "Certificate" means a document executed by the board extending the
19 State's guarantee to a lender by means of a refundable tax credit.

20 **3. Director.** "Director" means the entity chosen by the board to invest fund assets in
21 a series of venture capital funds in accordance with criteria set by law and the board.

22 **4. Fund.** "Fund" means the Maine Fund of Funds established under section 397.

23 **5. Lender.** "Lender" means an entity that lends capital to the fund in exchange for a
24 return on the lender's investment that conforms to the conditions of certificates issued as
25 security for the debt.

26 **6. Refundable tax credit.** "Refundable tax credit" means the credit authorized by
27 Title 36, section 5219-DD that the State shall redeem for cash if the holder has no tax
28 liability against which to apply the credit. A refundable tax credit may be owned and
29 redeemed by the system.

30 **7. System.** "System" means the Maine Public Employees Retirement System.

31 **§397. Maine Fund of Funds; creation authorized**

32 The board may create and oversee a fund, to be known as the Maine Fund of Funds,
33 for the purpose of increasing the availability of venture capital to the economy of the

1 State. The fund is managed by the director, who is selected by the board. The board may
2 raise capital for the fund by offering as security certificates issued by the board.

3 **§398. Fund structure and management**

4 **1. Selection criteria.** The board shall select a director empowered to manage the
5 fund and to invest the fund's resources in venture capital funds. By a process of
6 competitive selection, the board shall choose a director whose plan best provides
7 experienced and qualified management at reasonable cost and achieves the investment
8 goals of subsection 6.

9 **2. Raising capital.** The board may borrow capital on notes secured by assets of the
10 fund and by refundable tax credits. The board shall raise capital for the fund by offering
11 as security refundable tax credits issued by the board. The board may raise capital from
12 one or more lenders upon terms that:

13 A. Minimize cost to the fund;

14 B. Provide flexibility in the use and investment of proceeds; and

15 C. Minimize the risk of tax credit redemption.

16 **3. Preference to the system.** The board shall give preference to the system to serve
17 as a lender. If the system elects not to participate as a lender, then the board shall obtain
18 the approval of the Governor prior to executing its first borrowing agreement with
19 another lender. The board may contract to provide the system a return on profits from
20 the fund to supplement the return guaranteed by the underlying debt instrument.

21 **4. Owner of the fund.** The board or the director, with board approval, may create a
22 nonprofit corporation, a limited liability partnership or other legal entity to serve as owner
23 of the fund. The entity created to serve as the owner of the fund is subject to the board's
24 right to change ownership and control of the entity if the director is replaced or if the fund
25 is terminated.

26 **5. Recourse.** All obligations created under the authority of this section must be paid
27 exclusively from investments in the fund and by redemption of refundable tax credits
28 authorized by section 399. No other public assets and no other assets of the board may be
29 placed at risk. Except for those rights that relate to refundable tax credits, nothing in this
30 chapter may be construed to create an obligation of the State or of any political
31 subdivision of the State.

32 **6. Investment goals; guidelines.** The purpose of the fund is to invest in a series of
33 high-quality venture capital funds managed to produce a favorable aggregate return
34 among diversified investments, to secure repayment of the amounts borrowed and to
35 minimize the risk of tax credit redemption. Consistent with these investment goals, the
36 board shall give preference to fund managers whose strategies include:

37 A. Maintaining at least a periodic presence in the State;

38 B. Actively prospecting for investments in the State;

39 C. Creating or retaining jobs in the State; and

1 D. Bringing to fruition the ideas, technologies and intellectual property produced by
2 citizens and institutions of the State.

3 7. Investment restrictions. The fund may not invest directly in individual
4 businesses but only in venture capital funds that are managed to best achieve the
5 guidelines described under subsection 6. No more than \$20,000,000 of the fund may be
6 placed in a single venture capital fund. No more than \$10,000,000 of the fund may be
7 invested in a single venture.

8 8. Maine Patent Fund. Beginning in July 2010 and each July thereafter, the fund
9 shall contribute \$30,000 to the Maine Patent Fund established by section 1921.

10 9. Audits and reports. Reports on the status of the fund are required as follows.

11 A. The director shall provide to the board a report on the status of the fund at the end
12 of each month, identifying the amounts committed to each fund in the portfolio,
13 amounts drawn and distributed, the fund's current and long-term liabilities and the
14 most recent valuation of total assets.

15 B. The director shall value assets and liabilities of the fund and report to the board at
16 least quarterly in a report that summarizes the business activities and financial status
17 of the fund for the quarter.

18 C. The director shall provide the monthly report under paragraph A and the quarterly
19 report under paragraph B to the board within 15 days of the close of the period for
20 which the report is given.

21 D. The State Auditor or an independent auditor chosen by the State Auditor shall
22 audit the fund annually.

23 E. The director shall provide an audited financial report annually to the board as
24 soon as reasonably possible after the close of each fiscal year.

25 10. Authority over the fund. The board may at any time and without a showing of
26 cause remove and replace the director and reassign the fund together with all assets,
27 liabilities, guarantees and contracts associated with the fund to another director. As may
28 be necessary to protect the interests of the State, the board may limit or control the fund
29 or may terminate the fund and wind up its affairs. Any net assets of the fund after
30 payment of obligations must be remitted to the General Fund.

31 11. Administrative expenses. Costs and expenses of maintaining, administering
32 and servicing the fund may be paid out of amounts in the fund.

33 §399. Refundable tax credits

34 The board may issue to one or more lenders certificates for up to \$80,000,000 in
35 refundable tax credits as provided by Title 36, section 5219-DD.

36 1. Redemption. Refundable tax credits may be redeemed only as necessary to offset
37 a shortfall in scheduled payments on debt incurred to capitalize the fund. The rate of
38 return, whether fixed or variable, must be determined by a formula stipulated in the
39 certificate used as security. Refundable tax credits may not be redeemed for any default

1 occurring after December 31, 2031. No more than \$10,000,000 of refundable tax credits
2 may be redeemed per calendar year.

3 **2. Binding effect.** A certificate of tax credits issued by the board under this section
4 is binding on the State and constitutes a solemn contractual commitment of the State
5 protected under the contract clauses of the Constitution of Maine, Article I, Section 11
6 and the United States Constitution, Article I, Section 10. Once funds secured by a
7 certificate are borrowed, the certificate may not be modified, terminated or rescinded
8 until the underlying debt is paid.

9 **3. Registration.** The board shall maintain a public registry that records the current
10 ownership and status of all certificates issued pursuant to this section. Any transfer of a
11 certificate or creation of a security interest in a certificate is effective only when recorded
12 in the public registry. The Department of Administrative and Financial Services, Bureau
13 of Revenue Services may rely on the registry to determine an entitlement to any credits
14 authorized under this section.

15 **4. Not securities.** The refundable tax credits allowed or transferred pursuant to this
16 section are not securities under Title 32, chapter 135.

17 **5. Procedure for redemption.** The director shall report any lending default
18 immediately to the board. The board shall verify the amount of the default and publish in
19 the public registry under subsection 3 the total amount of the default and the sum of all
20 refundable tax credits that the lender is entitled to redeem for the calendar year in which
21 the default occurs.

22 **Sec. 3. 36 MRSA §5219-DD** is enacted to read:

23 **§5219-DD. Maine Fund of Funds refundable tax credit**

24 **1. Credit allowed.** A lender to the Maine Fund of Funds as defined in Title 10,
25 section 396, subsection 5 is allowed a refundable credit against the taxes imposed by this
26 Part in an amount certified by the Small Enterprise Growth Board as established under
27 Title 10, section 384 as equal to the shortfall in scheduled payments on debt incurred to
28 provide capital to the Maine Fund of Funds.

29 **2. Limitations.** A credit under this section may not be redeemed for any default
30 occurring after December 31, 2031. No more than \$10,000,000 of credits may be
31 redeemed per calendar year. Pursuant to Title 10, section 399, total credits redeemed
32 may not exceed \$80,000,000.

33 **3. Carry-over.** Any unused portion of a credit provided by this section may be
34 carried over to the following year or years for up to 3 years, but not beyond December 31,
35 2034.

36 **4. Audit.** The State Tax Assessor may audit any transactions necessary to verify the
37 amount of credits claimed or redeemed under this section. If the assessor determines that
38 a credit larger than that authorized by this section has been received by any person, the
39 assessor may enforce repayment of the overpayment by assessment pursuant to the

1 provisions of chapter 7 or may apply the overpayment against subsequent redemptions
2 made pursuant to this section.

3 5. Repeal. This section is repealed April 15, 2035.

4 **SUMMARY**

5 This bill is modeled on statutes in Arkansas, Iowa, Michigan, Montana and Utah. It
6 authorizes the establishment of the Maine Fund of Funds within the Small Enterprise
7 Growth Board for the purpose of increasing the availability of venture capital to the
8 Maine economy. The fund is managed by a director chosen by the Small Enterprise
9 Growth Board by means of a competitive selection. The Small Enterprise Growth Board
10 has authority to close the fund if necessary to protect the State's interests. The board
11 raises capital for the fund by offering as security refundable tax credits issued by the
12 board, with the goal of attracting venture capital investment in the State's economy. The
13 board maintains regulatory control over the fund. The bill requires annual audits and
14 reports on the fund.

15 The goal of the fund is to create investments in the Maine economy, which is broadly
16 described as including the development of intellectual capital as well as job creation. The
17 director may invest outside of the State as necessary to maximize returns and reduce the
18 likelihood that tax credits will be redeemed. The bill provides that net profits from the
19 fund after payment of obligations must be remitted to the General Fund. It also provides
20 the Maine Public Employees Retirement System a preference in becoming a lender of
21 capital and a special provision that the Maine Public Employees Retirement System may
22 be granted a piece of the profits as an additional inducement to becoming a capital lender.
23 Tax credits may not be redeemed for defaults occurring later than 2031, and the bill
24 restricts tax credit redemption to \$10,000,000 per year.

25