

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 743

S.P. 281

In Senate, February 28, 2013

**An Act To Extend and Improve the Maine Seed Capital Tax Credit Program**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator VALENTINO of York.  
Cosponsored by Representative HOBBS of Saco and  
Senators: President ALFOND of Cumberland, CAIN of Penobscot, DUTREMBLE of York,  
GOODALL of Sagadahoc, WOODBURY of Cumberland, Representatives: BENNETT of  
Kennebunk, BERRY of Bowdoinham, KNIGHT of Livermore Falls.

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

2 **Sec. 1. 10 MRSA §1100-T, sub-§1-A**, as enacted by PL 2011, c. 454, §2, is  
3 amended to read:

4 **1-A. Private venture capital fund.** As used in this section, "private venture capital  
5 fund" means a professionally managed pool of capital organized ~~for a limited life~~ to make  
6 equity or equity-like investments in unrelated private companies using capital derived  
7 from multiple limited partners or members at least half of which, measured in dollar  
8 commitments, are unaffiliated and unrelated, and includes any venture capital fund  
9 licensed by the United States Small Business Administration. The authority may require  
10 such information as may be necessary or desirable for determining whether an entity  
11 qualifies as a private venture capital fund. An entity that otherwise qualifies as a private  
12 venture capital fund may elect not to be treated as a private venture capital fund for  
13 purposes of this section with respect to any proposed investment.

14 **Sec. 2. 10 MRSA §1100-T, sub-§2**, as amended by PL 2011, c. 454, §§3 and 4,  
15 is further amended to read:

16 **2. Eligibility for tax credit certificate.** The authority shall adopt rules in  
17 accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to  
18 implement the program. Without limitation, the requirements for eligibility for a tax  
19 credit certificate include the following.

20 A. For investments made in tax years beginning before January 1, 2012, a tax credit  
21 certificate may be issued in an amount not more than 40% of the amount of cash  
22 actually invested in an eligible Maine business in any calendar year or in an amount  
23 not more than 60% of the amount of cash actually invested in any one calendar year  
24 in an eligible Maine business located in a high-unemployment area, as determined by  
25 rule by the authority. For investments made in tax years beginning on or after  
26 January 1, 2012, a tax credit certificate may be issued to an investor other than a  
27 private venture capital fund in an amount not more than 60% of the amount of cash  
28 actually invested in an eligible Maine business in any calendar year. For investments  
29 made in tax years beginning on or after January 1, 2014, a tax credit certificate may  
30 be issued to an investor other than a private venture capital fund in an amount not  
31 more than 50% of the amount of cash actually invested in an eligible Maine business  
32 in any calendar year. Rules adopted pursuant to this section are routine technical  
33 rules as defined in Title 5, chapter 375, subchapter 2-A.

34 B. The Maine business must be determined by the authority to be a manufacturer or a  
35 producer of a value-added natural resource product; must provide a product or service  
36 that is sold or rendered, or is projected to be sold or rendered, predominantly outside  
37 of the State; must be engaged in the development or application of advanced  
38 technologies; or must be certified as a visual media production company under Title  
39 5, section 13090-L; or must bring capital into the State, as determined by the  
40 authority. The business must certify that the investment is necessary to allow the  
41 business to create or retain jobs in the State.

1 C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for  
2 any one business as of the date of issuance of a tax credit certificate.

3 D. The investment with respect to which any individual is applying for a tax credit  
4 certificate may not be more than an aggregate of \$500,000 in any one business in any  
5 3 consecutive calendar years, except that this paragraph does not limit other  
6 investment by any applicant for which that applicant is not applying for a tax credit  
7 certificate and except that, if the entity applying for a tax credit certificate is a  
8 partnership, limited liability company, S corporation, nontaxable trust or any other  
9 entity that is treated as a flow-through entity for tax purposes under the federal  
10 Internal Revenue Code but not as a private venture capital fund, the aggregate limit of  
11 \$500,000 applies to each individual partner, member, stockholder, beneficiary or  
12 equity owner of the entity and not to the entity itself.

13 E. ~~The~~ For investments made in tax years beginning before January 1, 2014, the  
14 business receiving the investment must have annual gross sales of \$3,000,000 or less  
15 ~~and the~~. For investments made in tax years beginning on or after January 1, 2014, the  
16 business receiving the investment must have annual gross sales of \$5,000,000 or less.  
17 The operation of the business must be the full-time a substantial professional activity  
18 of at least one of the principal owner owners, as determined by the authority. The  
19 principal owner and the principal owner's spouse are not eligible for a credit for  
20 investment in that business. A tax credit certificate may not be issued to a parent,  
21 brother, sister or child of a principal owner if the parent, brother, sister or child has  
22 any existing ownership interest in the business.

23 F. The investment must be expended on plant, equipment, research and  
24 development, or working capital for the business or such other business activity as  
25 may be approved by the authority.

26 G. The authority shall establish limits on repayment of the investment. The  
27 investment must be at risk in the business.

28 H. The investors qualifying for the credit must each own less than 1/2 of the  
29 business.

30 I. The business receiving the investment may not be in violation of the requirements  
31 of subsection 6.

32 **Sec. 3. 10 MRSA §1100-T, sub-§2-C, ¶¶B, D, E and H,** as enacted by PL  
33 2011, c. 454, §6, are amended to read:

34 B. As used in this subsection, unless the context otherwise indicates, "eligible  
35 business" means a business located in the State that has certified that an investment is  
36 necessary to allow the business to create or retain jobs in the State and that, as  
37 determined by the authority:

- 38 (1) Is a manufacturer or a producer of a value-added natural resource product;  
39 (2) Is engaged in the development or application of advanced technologies;  
40 (3) Provides a service that is sold or rendered, or is projected to be sold or  
41 rendered, predominantly outside of the State; or

1                   (4) ~~Brings capital into the State, as determined by the authority; or~~

2                   (5) Is certified as a visual media production company under Title 5, section  
3                   13090-L.

4                   D. The investment with respect to which any ~~entity~~ private venture capital fund is  
5                   applying for a tax credit certificate may not be more than an aggregate of ~~\$500,000~~  
6                   \$4,000,000 in any one eligible business invested in by a private venture capital fund  
7                   in any 3 consecutive calendar years, except that this paragraph does not limit other  
8                   investment by an applicant for which that applicant is not applying for a tax credit  
9                   certificate ~~and except that, if the entity applying for a tax credit certificate is a~~  
10                  ~~partnership, limited liability company, S corporation, nontaxable trust or any other~~  
11                  ~~entity that is treated as a flow through entity for tax purposes under the federal~~  
12                  ~~Internal Revenue Code, the aggregate limit of \$500,000 applies to each individual~~  
13                  ~~partner, member, stockholder, beneficiary or equity owner of the entity and not to the~~  
14                  ~~entity itself. This paragraph does not limit other investment by an applicant for which~~  
15                  ~~that applicant is not applying for a tax credit certificate.~~ A private venture capital  
16                  fund must certify to the authority that it will be in compliance with these limitations.  
17                  The tax credit certificate issued to a private venture capital fund may be revoked and  
18                  any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the  
19                  fund is not in compliance with this paragraph.

20                  E. ~~An~~ For investments made in tax years beginning before January 1, 2014, an  
21                  eligible business receiving an investment from a private venture capital fund, which  
22                  investment is used as the basis for the issuance of a tax credit certificate, may not  
23                  have annual gross sales of more than \$3,000,000 ~~and the.~~ For investments made in  
24                  tax years beginning on or after January 1, 2014, an eligible business receiving an  
25                  investment from a private venture capital fund, which investment is used as the basis  
26                  for the issuance of a tax credit certificate, may not have annual gross sales of more  
27                  than \$5,000,000. The operation of the business must be ~~the full time~~ a substantial  
28                  professional activity of ~~the principal owner~~ one or more individuals who are not  
29                  managers of the private venture capital fund, as determined by the authority. A tax  
30                  credit certificate may not be issued to a private venture capital fund if ~~an investor in a~~  
31                  manager of the fund is a principal owner of the eligible business or a spouse, parent,  
32                  sibling or child of a principal owner and if the spouse, parent, sibling or child has any  
33                  existing ownership interest in the business. A private venture capital fund must  
34                  certify to the authority that it will be in compliance with these limitations. The tax  
35                  credit certificate issued to a private venture capital fund may be revoked and any  
36                  credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund  
37                  is not in compliance with this paragraph.

38                  H. A private venture capital fund is not entitled to the credit if it owns in excess of  
39                  50% of ~~the~~ an eligible business, except that, if the private venture capital fund is  
40                  issued a tax credit certificate and later makes an additional investment that increases  
41                  its ownership to more than 50%, the existing tax credit certificate remains valid and is  
42                  not subject to revocation due to the ownership percentage as long as there was no  
43                  intent to take controlling ownership at the time of the initial qualified investment.

44                  **Sec. 4. 10 MRSA §1100-T, sub-§4,** as amended by PL 2011, c. 454, §7, is  
45                  further amended to read:

1           **4. Total of credits authorized.** The authority may issue tax credit certificates to  
2 investors eligible pursuant to subsections 2, 2-A and 2-C in an aggregate amount not to  
3 exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and  
4 including calendar year 1997, \$5,500,000 up to and including calendar year 1998,  
5 \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including  
6 calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up  
7 to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005,  
8 \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including  
9 calendar year 2007 and \$30,000,000 ~~thereafter~~ up to and including calendar year 2013, in  
10 addition to which, the authority may issue tax credit certificates to investors eligible  
11 pursuant to subsections 2, 2-A and 2-C in an annual amount not to exceed \$2,000,000 for  
12 investments made between June 1, 2013 and December 31, 2013, \$4,000,000 for  
13 investments made in calendar year 2014 and \$5,000,000 each year for investments made  
14 in calendar years beginning with 2015. The authority may provide that investors eligible  
15 for a tax credit under this section in a year when there is insufficient credit available are  
16 entitled to take the credit when it becomes available subject to limitations established by  
17 the authority by rule. Rules adopted pursuant to this subsection are routine technical  
18 rules as defined in Title 5, chapter 375, subchapter 2-A.

19           **Sec. 5. 36 MRSA §5216-B, sub-§2,** as amended by PL 2011, c. 454, §16, is  
20 further amended to read:

21           **2. Credit.** An investor is entitled to a credit against the tax otherwise due under this  
22 Part equal to the amount of the tax credit certificate issued by the Finance Authority of  
23 Maine in accordance with Title 10, section 1100-T and as limited by this section. Except  
24 with respect to tax credit certificates issued under Title 10, section 1100-T, subsection  
25 2-C, in the case of partnerships, limited liability companies, S corporations, nontaxable  
26 trusts and any other entities that are treated as flow-through entities for tax purposes  
27 under the Code, the individual partners, members, stockholders, beneficiaries or equity  
28 owners of such entities must be treated as the investors under this section and are allowed  
29 a credit against the tax otherwise due from them under this Part in proportion to their  
30 respective interests in those partnerships, limited liability companies, S corporations,  
31 trusts or other flow-through entities. Except as limited or authorized by subsection 3 or 4,  
32 25% of the credit must be taken in the taxable year in which the investment is made and  
33 25% per year must be taken in each of the next 3 taxable years. With respect to tax credit  
34 certificates issued under Title 10, section 1100-T, subsection 2-C, the credits are fully  
35 refundable and the investor may file a return requesting a refund for an investment for  
36 which it has received a tax credit certificate on or after January 1st of the calendar year  
37 after the calendar year in which the investment was made.

38           **Sec. 6. 36 MRSA §5216-B, sub-§4,** as enacted by PL 1987, c. 854, §§4 and 5, is  
39 amended to read:

40           **4. Carry forward.** Credits not taken because of the limitation in subsection 3 ~~shall~~  
41 must be taken in the next taxable year in which the credit may be taken, ~~provided that;~~  
42 the limitation of subsection 3 ~~shall~~ also apply applies to the carry-forward years. In no case  
43 may this carry-forward period exceed 15 years for investments made prior to June 1,  
44 2013 or 8 years for investments made on or after June 1, 2013.

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**SUMMARY**

This bill extends the Maine Seed Capital Tax Credit Program, which is approaching the statutory cap on credits that can be authorized, and makes a number of improvements and clarifications. The bill makes the amount of the tax credit the same for individual investors and venture capital funds, clarifies that producers of value-added natural resource products are eligible, removes the ambiguous eligibility for businesses that "bring capital into the State" and specifies that eligible businesses must certify that the investment is necessary to allow the business to create or retain jobs in the State. The bill increases the maximum annual sales limit of \$3,000,000, which has been in effect since 1997, to \$5,000,000 for investments made in 2014 or after. The bill authorizes additional tax credits of \$2,000,000 for investments made between June 1, 2013 and December 31, 2013, \$4,000,000 for investments made in calendar year 2014 and \$5,000,000 each year for investments made in each subsequent year. An investor in a venture capital fund requesting a refundable tax credit may not file for a refund until the calendar year after the calendar year in which the investment is made.