

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1132

S.P. 401

In Senate, March 31, 2015

### An Act To Invest in Maine Companies

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.  
Cosponsored by Representative DION of Portland and  
Senators: ALFOND of Cumberland, BREEN of Cumberland, CUSHING of Penobscot,  
DIAMOND of Cumberland, HASKELL of Cumberland, HILL of York, MASON of  
Androscoggin, PATRICK of Oxford, VOLK of Cumberland, Representatives: BRYANT of  
Windham, DAUGHTRY of Brunswick, GOODE of Bangor, HERBIG of Belfast, MARTIN of  
Eagle Lake, McCABE of Skowhegan, SHORT of Pittsfield.

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

2 **Sec. 1. 5 MRSA §12004-F, sub-§19** is enacted to read:

3 **19.**

4 Invest in Maine Capital Expenses Only 5 MRSA §13201  
5 Authority

6 **Sec. 2. 5 MRSA c. 393** is enacted to read:

7 **CHAPTER 393**

8 **BUSINESS DEVELOPMENT**

9 **§13201. Definitions**

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

12 **1. Authority.** "Authority" means the Invest in Maine Capital Authority established  
13 pursuant to section 13202.

14 **2. Fund.** "Fund" means the Invest in Maine Capital Investment Fund established  
15 pursuant to section 13203.

16 **3. Major business development project.** "Major business development project"  
17 means a project that involves the construction, development, rehabilitation,  
18 modernization or acquisition of a building, structure, system, machinery, equipment or  
19 facility that has a projected cost of at least \$50,000,000 or is projected to result in the  
20 creation or retention of at least 250 full-time employment positions that pay at least 125%  
21 of the annual average weekly wage under Title 26, section 1043, subsection 1-A.

22 **§13202. Invest in Maine Capital Authority**

23 **1. Invest in Maine Capital Authority; established.** The Invest in Maine Capital  
24 Authority, as established by section 12004-F, subsection 19, is a body both corporate and  
25 politic and a public instrumentality of the State established for the purpose of providing  
26 financial support for major business development projects.

27 **2. Membership.** The authority consists of 7 members as follows:

28 A. Two members of the Finance Authority of Maine, appointed by the chair of the  
29 Finance Authority of Maine;

30 B. Two members of the Maine Rural Development Authority Board of Trustees,  
31 appointed by the chair of the Maine Rural Development Authority Board of Trustees;

32 C. Two members with financial or business backgrounds, appointed by the  
33 Governor; and

1           D. The Commissioner of Economic and Community Development or the  
2           commissioner's designee, who serves as ex officio.

3           **3. Terms of office.** The term of office for a member of the authority appointed  
4           under subsection 2 is 4 years, and an appointed member may be removed at any time by  
5           the member's appointing authority. A member may serve multiple terms. A member  
6           appointed under subsection 2, paragraph A or B who ceases to be a member of the  
7           Finance Authority of Maine or the Maine Rural Development Authority Board of  
8           Trustees during that member's term as a member of the authority remains a member of  
9           the authority for the duration of the term for which that member was appointed. A  
10           member continues to hold office until a successor is appointed and qualified, but the term  
11           of the successor is not altered from the original termination date of the holdover member's  
12           term.

13           **4. Administration; meetings.** The membership of the authority shall elect one  
14           member to serve as chair, one member as vice-chair who shall also serve as secretary, one  
15           member as treasurer and such other officers as the membership may from time to time  
16           consider necessary. All the powers of the authority may be exercised by the membership  
17           in a lawful meeting and a majority of the members is necessary for a quorum. Regular  
18           meetings of the membership may be established by bylaw, and notice of the regular  
19           meeting does not need to be given to the members.

20           **5. Bonding authorization.** The authority may provide by resolution for the issuance  
21           of bonds for the purpose of funding the fund, or any successor to the fund, or for the  
22           purpose of funding major business development projects. The bonds of the authority do  
23           not constitute a debt of the State or of any agency or political subdivision of the State but  
24           are payable solely from the revenue of the authority, and neither the faith nor credit nor  
25           taxing power of the State or any political subdivision of the State is pledged to payment  
26           of the bonds. Notwithstanding any other provision of law, any bonds issued pursuant to  
27           this chapter are fully negotiable. If any member of the authority whose signature appears  
28           on the bond or coupons ceases to be a member of the authority before the delivery of  
29           those bonds, that signature is valid and sufficient for all purposes as if that member of the  
30           authority had remained a member of the authority until delivery.

31           **6. Limitation of liability.** A member the authority or an employee of the authority  
32           may not be subject to any personal liability for having acted within the course and scope  
33           of that person's membership or employment to carry out any power or duty under this  
34           chapter. The authority shall indemnify any member of the authority and any employee of  
35           the authority against expenses actually and necessarily incurred by that person in  
36           connection with the defense of any action or proceeding in which that person is made a  
37           party by reason of past or present association with the authority.

38           **7. Conflict of interest.** A member or employee of the authority may not acquire or  
39           hold a direct or an indirect personal financial interest in an authority activity or a contract  
40           or proposed contract in connection with an authority activity. When an acquisition of  
41           interest in connection with an authority activity is involuntary by a member or if a  
42           member of the authority or employee of the authority presently owns or controls, or  
43           owned or controlled within the preceding 2 years, a direct or an indirect interest known to  
44           be included or planned to be included in an authority activity, that member or employee

1 shall disclose this fact immediately upon discovery in writing to the authority, and the  
2 disclosure must be entered in a lawful meeting of the authority. A member of the  
3 authority or employee of the authority with an interest under this subsection may not  
4 participate in an action by the authority affecting that activity.

5 **8. Employees.** The authority may hire employees as the authority considers  
6 necessary to fulfill it purposes.

7 **9. Rules.** The authority may adopt rules as necessary to implement this chapter.  
8 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
9 chapter 375, subchapter 2-A.

### 10 **§13203. Invest in Maine Capital Fund**

11 **1. Invest in Maine Capital Fund.** The Invest in Maine Capital Fund is established  
12 as a nonlapsing revolving loan and equity fund administered by the authority to support  
13 the capital needs of major business development projects. The fund consists of sums that  
14 are appropriated by the Legislature or transferred to the fund from time to time by the  
15 State Controller, interest earned from the investment of fund balances, state bond issues,  
16 state employees' pension funds, institutional endowments, seed capital investment tax  
17 credits, income from subsection 13204, subsection 4 and other funds from any public or  
18 private source received for use for any of the purposes for which the fund has been  
19 established. Disbursements from the fund must be made pursuant to section 13204.

### 20 **§13204. Loan and equity support for major business development projects**

21 **1. Loan and equity support.** The authority shall recommend to the Finance  
22 Authority of Maine disbursements from the fund or shall provide other financial support  
23 to a qualifying applicant to support a major business development project pursuant to this  
24 section. Any financial support provided by this section must be memorialized in a written  
25 contract as determined by the authority.

26 **2. Criteria to qualify for financial support.** The authority shall provide financial  
27 support to an applicant to support a major business development project based upon the  
28 following criteria:

29 A. The creditworthiness of the applicant, considering factors such as the applicant's  
30 historical financial performance, management ability, plan to market the applicant's  
31 product or service and whether the applicant meets or exceeds industry average  
32 financial performance ratios commonly accepted in determining creditworthiness in  
33 that industry;

34 B. The sufficiency of collateral pledged by the applicant;

35 C. The sufficiency of projected revenues from the project or other sources to repay  
36 the financial obligation and meet the requirements of subsection 3 for the term of the  
37 obligation;

38 D. The level that financial support from the authority enhances the employment and  
39 wage benefits projected to be created by the major business development project;

1 E. The duration of the employment and wage benefits projected to be created by the  
2 major business development project; and

3 F. The demonstration that the financial support from the authority is necessary due to  
4 the reduced cost and increased flexibility of the financial support and not due to the  
5 applicant's inability to obtain financing from another source.

6 **3. Financial support.** The authority may provide the following financial support to  
7 a qualified applicant under subsection 2:

8 A. A direct loan of up to \$50,000,000 from the fund, which must be matched by an  
9 amount equal to at least 25% that is obtained from another source; or

10 B. Up to \$100,000,000 in bond funding for a single major business development  
11 project and up to \$200,000,000 or a qualified applicant for multiple major business  
12 development projects.

13 The authority may require other terms or conditions of financial support under this  
14 subsection as the authority determines necessary and reasonable.

15 **4. Requirements of recipient.** In addition to repayment of the financial support  
16 received under subsection 3 pursuant to the terms set by the authority, within 5 years after  
17 the completion of the major business development project the recipient shall pay to the  
18 fund an amount equal to 10% of the amount of the financial support received under  
19 subsection 3 pursuant to terms determined by the authority.

20 **Sec. 3. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 5,  
21 section 13202, subsection 3, of the initial appointments to the Invest in Maine Capital  
22 Authority, one member appointed pursuant to section 13202, subsection 2, paragraph A  
23 must be appointed to serve a term of 2 years, one member appointed pursuant to section  
24 13202, subsection 2, paragraph B must be appointed to a term of 3 years and one member  
25 appointed pursuant to section 13202, subsection 2, paragraph C must be appointed to a  
26 term of 3 years. All other members are appointed to 4-year terms.

27 **SUMMARY**

28 This bill creates the Invest in Maine Capital Authority with bonding authority to  
29 provide loans or bond funding to major business development projects, which are defined  
30 as development projects that have a projected cost of at least \$50,000,000 or are projected  
31 to result in the creation or retention of at least 250 full-time employment positions that  
32 pay at least 125% of the state annual average weekly wage.