

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1520

S.P. 469

In Senate, April 9, 2019

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**An Act To Create and Sustain Jobs through Development of  
Cooperatives and Employee-owned Businesses**

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Reference to the Committee on Innovation, Development, Economic Advancement and Business 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 LIBBY of Androscoggin.  
Cosponsored by Representative DAUGHTRY of Brunswick and  
Senators: DOW of Lincoln, HERBIG of Waldo, MOORE of Washington, POULIOT of  
Kennebec, Representatives: BICKFORD of Auburn, HICKMAN of Winthrop, PERRY of  
Calais, TUELL of East Machias.

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

2 **Sec. 1. 5 MRSA §13058, sub-§10-B** is enacted to read:

3 **10-B. Prioritization of lending or grants.** Notwithstanding any provision of law to  
4 the contrary, the commissioner shall prioritize lending or grants from any fund or  
5 program maintained by the department for the purpose of encouraging business  
6 development in this State as follows:

7 A. To employee-owned businesses;

8 B. To businesses that are becoming employee-owned through the purchase of stock  
9 or business assets; and

10 C. To start-up businesses that will be owned by substantially all of the employees.

11 **Sec. 2. 5 MRSA §13062, 2nd ¶,** as enacted by PL 1987, c. 534, Pt. A, §§17 and  
12 19, is amended to read:

13 The Office of Business Development ~~shall be~~ is responsible for the implementation  
14 of a program consisting of ~~3~~ 4 primary elements.

15 **Sec. 3. 5 MRSA §13062, sub-§4** is enacted to read:

16 **4. Encouragement of employee ownership of businesses.** The office shall:

17 A. Develop educational programs, including convening an annual conference on  
18 employee ownership issues;

19 B. Provide information about employee ownership and technical assistance to  
20 retiring business owners, employees of plants threatened with closure and  
21 entrepreneurs interested in creating businesses with broadly shared ownership;

22 C. Link Maine businesses interested in implementing employee ownership to  
23 available financial, technical and legal resources;

24 D. Assist firms and employee groups in performing preliminary feasibility studies to  
25 determine the initial feasibility of employee ownership and whether the business and  
26 employee group should perform a full feasibility study;

27 E. Help businesses interested in implementing some form of employee ownership  
28 obtain financing;

29 F. Promote best practices for operating employee-owned businesses; and

30 G. Recommend legislative or executive action to promote employee ownership.

31 **Sec. 4. 36 MRSA §191, sub-§2, ¶HHH** is enacted to read:

32 HHH. The disclosure to the joint standing committee of the Legislature having  
33 jurisdiction over taxation matters of information necessary to make the report  
34 required under section 199-F, subsection 2.

35 **Sec. 5. 36 MRSA §199-F** is enacted to read:

1 **§199-F. Transfers to cooperatives and employee-owned businesses**

2 **1. Information.** The bureau shall require taxpayers claiming the exclusion for gain  
3 on sale of a business under section 5122, subsection 2, paragraph QQ and section  
4 5200-A, subsection 2, paragraph FF and the exclusion for interest on a loan financing  
5 acquisition of a business under section 5122, subsection 2, paragraph RR, section  
6 5200-A, subsection 2, paragraph GG and section 5206 to provide information that  
7 identifies the standard industrial classification of the business that is being transferred, the  
8 total value of the transaction to which the tax expenditure relates, the average number of  
9 full-time equivalent employees employed by the business being transferred during the  
10 calendar year preceding the transfer and the number of units of housing owned or  
11 controlled by the business in question.

12 **2. Report.** By December 1st of each year beginning in 2022, the bureau shall submit  
13 a report to the Office of Program Evaluation and Government Accountability established  
14 in Title 3, section 991 and the committee identifying the United States Department of  
15 Commerce, Bureau of the Census, North American Industry Classification System code  
16 identification and location of each transaction for which a deduction was claimed under  
17 section 5122, subsection 2, paragraph RR, section 5200-A, subsection 2, paragraph GG  
18 and section 5206 during the previous calendar year, the aggregate number of full-time  
19 equivalent employees employed by the businesses for which a deduction was claimed and  
20 the aggregate number of units of housing owned or controlled by the businesses for which  
21 a deduction was claimed. Notwithstanding any other provision of law to the contrary, the  
22 reports provided under this section are public records as defined in Title 1, section 402,  
23 subsection 3.

24 **Sec. 6. 36 MRSA §5122, sub-§2, ¶¶QQ and RR** are enacted to read:

25 QQ. For taxable years beginning on or after January 1, 2020, to the extent included  
26 in federal adjusted gross income and to the extent otherwise subject to Maine income  
27 tax, an amount equal to any gain recognized on the sale by the taxpayer of a majority  
28 ownership interest in a qualified business if the business was transferred to:

29 (1) An employee stock ownership plan as defined in the Code, Section  
30 4975(e)(7);

31 (2) An S corporation organized in the State owned by an employee stock  
32 ownership plan;

33 (3) An eligible worker-owned cooperative as defined in the Code, Section  
34 1042(c)(2);

35 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;  
36 or

37 (5) If the business provides housing, a consumer cooperative or a cooperative  
38 affordable housing corporation organized under Title 13, chapter 85, subchapter  
39 1-A.

40 The deduction allowed pursuant to this paragraph may not exceed \$750,000.

1 For purposes of this paragraph, "qualified business" means a business whose  
2 securities are not publicly traded on any stock exchange and that is organized in the  
3 State or whose principal place of business is within the State including a corporation,  
4 an S corporation, a limited liability company, a limited liability partnership, a sole  
5 proprietorship and all entities that are not publicly traded and are related by common  
6 majority ownership or control.

7 RR. For taxable years beginning on or after January 1, 2020, to the extent included in  
8 federal adjusted gross income and to the extent otherwise subject to Maine income  
9 tax, an amount equal to the interest received during the taxable year by the taxpayer  
10 with respect to a qualified business acquisition loan. For purposes of this paragraph:

11 (1) "Qualified business" means a business whose securities are not publicly  
12 traded on any stock exchange and that is organized in the State or whose  
13 principal place of business is within the State including a corporation, an S  
14 corporation, a limited liability company, a limited liability partnership, a sole  
15 proprietorship and all entities that are not publicly traded and are related by  
16 common majority ownership or control; and

17 (2) "Qualified business acquisition loan," including a loan or part of a series of  
18 loans, means:

19 (a) A loan of which at least 90% of the proceeds are applied to the  
20 acquisition of majority equity ownership of a qualified business not owned  
21 by an entity under subdivisions (i) to (v) and that is given to:

22 (i) An employee stock ownership plan as defined in the Code, Section  
23 4975(e)(7);

24 (ii) An S corporation organized in the State owned by an employee stock  
25 ownership plan;

26 (iii) An eligible worker-owned cooperative as defined in the Code,  
27 Section 1042(c)(2);

28 (iv) A consumer cooperative organized under Title 13, chapter 85,  
29 subchapter 1; or

30 (v) If the business provides housing, a consumer cooperative or a  
31 cooperative affordable housing corporation organized under Title 13,  
32 chapter 85, subchapter 1-A;

33 (b) A loan to a corporation that sponsors an employee stock ownership plan  
34 if all proceeds of the loan are loaned to the employee stock ownership plan to  
35 acquire for the plan all outstanding employer securities in a qualified  
36 business and the plan's repayment terms are substantially similar to the  
37 corporation's repayment terms; or

38 (c) A loan used to refinance a qualified business acquisition loan.

39 **Sec. 7. 36 MRSA §5200-A, sub-§2, ¶¶FF and GG** are enacted to read:

40 FF. For taxable years beginning on or after January 1, 2020, to the extent included in  
41 federal taxable income and to the extent otherwise subject to Maine income tax, an

1 amount equal to any gain recognized on the sale by the taxpayer of a majority  
2 ownership interest in a qualified business if the business was transferred to:

3 (1) An employee stock ownership plan as defined in the Code, Section  
4 4975(e)(7);

5 (2) An S corporation organized in the State owned by an employee stock  
6 ownership plan;

7 (3) An eligible worker-owned cooperative as defined in the Code, Section  
8 1042(c)(2);

9 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;  
10 or

11 (5) If the business provides housing, a consumer cooperative or a cooperative  
12 affordable housing corporation organized under Title 13, chapter 85, subchapter  
13 1-A.

14 The deduction allowed pursuant to this paragraph may not exceed \$750,000.

15 For purposes of this paragraph, "qualified business" means a business whose  
16 securities are not publicly traded on any stock exchange and that is organized in the  
17 State or whose principal place of business is within the State including a corporation,  
18 an S corporation, a limited liability company, a limited liability partnership, a sole  
19 proprietorship and all entities that are not publicly traded and are related by common  
20 majority ownership or control.

21 GG. For taxable years beginning on or after January 1, 2020, to the extent included  
22 in federal taxable income and to the extent otherwise subject to Maine income tax, an  
23 amount equal to the interest received during the taxable year by the taxpayer with  
24 respect to a qualified business acquisition loan. For purposes of this paragraph:

25 (1) "Qualified business" means a business whose securities are not publicly  
26 traded on any stock exchange and that is organized in the State or whose  
27 principal place of business is within the State including a corporation, an S  
28 corporation, a limited liability company, a limited liability partnership, a sole  
29 proprietorship and all entities that are not publicly traded and are related by  
30 common majority ownership or control; and

31 (2) "Qualified business acquisition loan," including a loan or part of a series of  
32 loans, means:

33 (a) A loan of which at least 90% of the proceeds are applied to the  
34 acquisition of majority equity ownership of a qualified business not owned  
35 by an entity under subdivisions (i) to (v) and that is given to:

36 (i) An employee stock ownership plan as defined in the Code, Section  
37 4975(e)(7);

38 (ii) An S corporation organized in the State owned by an employee stock  
39 ownership plan;

40 (iii) An eligible worker-owned cooperative as defined in the Code,  
41 Section 1042(c)(2);

1                    (iv) A consumer cooperative organized under Title 13, chapter 85,  
2                    subchapter 1; or

3                    (v) If the business provides housing, a consumer cooperative or a  
4                    cooperative affordable housing corporation organized under Title 13,  
5                    chapter 85, subchapter 1-A;

6                    (b) A loan to a corporation that sponsors an employee stock ownership plan  
7                    if all proceeds of the loan are loaned to the employee stock ownership plan to  
8                    acquire for the plan all outstanding employer securities in a qualified  
9                    business and the plan's repayment terms are substantially similar to the  
10                   corporation's repayment terms; or

11                   (c) A loan used to refinance a qualified business acquisition loan.

12                   **Sec. 8. 36 MRSA §5206**, as repealed and replaced by PL 2005, c. 608, §1 and  
13                   affected by §5, is amended by adding at the end a new paragraph to read:

14                   For taxable years beginning on or after January 1, 2020, the taxpayer may for the  
15                   purposes of the tax under this section subtract from Maine net income an amount equal to  
16                   the interest received during the taxable year by the taxpayer with respect to a qualified  
17                   business acquisition loan.

18                   **Sec. 9. 36 MRSA §5206-D, sub-§13**, as amended by PL 1999, c. 414, §43 and  
19                   affected by §57, is further amended to read:

20                   **13. Maine net income.** "Maine net income" means, for any taxable year, a financial  
21                   institution's net income or loss per books required to be reported pursuant to the laws of  
22                   the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other  
23                   Internal Revenue Service form used to report net income or loss per books or, in the case  
24                   of an entity with a single owner that may be disregarded as an entity separate from its  
25                   owner pursuant to Internal Revenue Service regulations, the financial institution's net  
26                   income or loss per books determined as if the entity were required to file Internal  
27                   Revenue Service Form 1065, adjusted in accordance with section 5206, and apportioned  
28                   to this State under section 5206-E. In the case of a financial institution that is a qualified  
29                   subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's  
30                   "Maine net income" means a financial institution's net income or loss per books  
31                   determined as if the entity were required to file Internal Revenue Service Form 1120S  
32                   and apportioned to this State under section 5206-E.

33                   To the extent that a financial institution derives income from a unitary business carried on  
34                   by 2 or more members of an affiliated group, "Maine net income" is determined by  
35                   apportioning, in accordance with section 5206-E, that part of the net income of the entire  
36                   group that derives from the unitary business.

37                   **Sec. 10. 36 MRSA §5206-D, sub-§§16-A and 16-B** are enacted to read:

38                   **16-A. Qualified business.** "Qualified business" means a business whose securities  
39                   are not publicly traded on any stock exchange and that is organized in the State or whose  
40                   principal place of business is within the State including a corporation, an S corporation, a  
41                   limited liability company, a limited liability partnership, a sole proprietorship and all

1 entities that are not publicly traded and are related by common majority ownership or  
2 control.

3 **16-B. Qualified business acquisition loan.** "Qualified business acquisition loan,"  
4 including a loan or part of a series of loans, means:

5 A. A loan of which at least 90% of the proceeds are applied to the acquisition of  
6 majority equity ownership of a qualified business not owned by an entity under  
7 subparagraphs (1) to (5) and that is given to:

8 (1) An employee stock ownership plan as defined in the Code, Section  
9 4975(e)(7);

10 (2) An S corporation organized in the State owned by an employee stock  
11 ownership plan;

12 (3) An eligible worker-owned cooperative as defined in the Code, Section  
13 1042(c)(2);

14 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;  
15 or

16 (5) If the business provides housing, a consumer cooperative or a cooperative  
17 affordable housing corporation organized under Title 13, chapter 85, subchapter  
18 1-A;

19 B. A loan to a corporation that sponsors an employee stock ownership plan if all  
20 proceeds of the loan are loaned to the employee stock ownership plan to acquire for  
21 the plan all outstanding employer securities in a qualified business and the plan's  
22 repayment terms are substantially similar to the corporation's repayment terms; or

23 C. A loan used to refinance a qualified business acquisition loan.

24 **Sec. 11. Evaluation; specific public policy objective; performance**  
25 **measures.** The deductions provided under this Act are subject to ongoing legislative  
26 review in accordance with the Maine Revised Statutes, Title 3, chapter 37. The Office of  
27 Program Evaluation and Government Accountability shall report on the first evaluation of  
28 the deductions provided under this Act by February 28, 2027. In developing evaluation  
29 parameters to perform the evaluation, the Office of Program Evaluation and Government  
30 Accountability, the Government Oversight Committee and the joint standing committee  
31 of the Legislature having jurisdiction over taxation matters shall consider:

32 **1. Policy objective.** That the specific public policy objective of the deductions  
33 provided under this Act is to retain jobs in qualifying businesses that would otherwise  
34 cease operations by reducing the tax impact to business owners from qualifying sales of  
35 ownership interests in order to encourage conversion of businesses to employee and  
36 cooperative ownership and thereby allow the businesses to continue operations and retain  
37 jobs; and

38 **2. Performance measures.** Performance measures, including, but not limited to:

39 A. The number of qualifying business ownership conversions to employee or  
40 cooperative ownership;



- 1 B. The number of full-time equivalent jobs retained; and
- 2 C. Measures of fiscal impact and overall economic impact to the State.

3 **Sec. 12. Investment study by Maine Public Employees Retirement**  
4 **System.** The Maine Public Employees Retirement System, referred to in this section as  
5 "the system," shall conduct a study to determine how funds held by the system, from  
6 whatever source, may be invested responsibly in employee-owned businesses in this  
7 State. The system shall provide the results of its study and any recommendations to the  
8 Joint Standing Committee on Innovation, Development, Economic Advancement and  
9 Business no later than January 15, 2020. The committee may report out a bill to the  
10 Second Regular Session of the 129th Legislature based on the study and  
11 recommendations of the system.

12 **SUMMARY**

13 This bill supports employee-owned businesses and cooperatives in the following  
14 ways.

15 1. It excludes from Maine income tax the amount of gain, up to a maximum of  
16 \$750,000 recognized by a business owner in transferring the business to an employee  
17 stock ownership plan, eligible worker-owned cooperative, consumer cooperative or  
18 affordable housing cooperative.

19 2. It excludes from Maine income tax interest from loans that finance transfers of  
20 ownership from a business to an employee stock ownership plan, eligible worker-owned  
21 cooperative, consumer cooperative or affordable housing cooperative.

22 3. It requires the Department of Economic and Community Development, Office of  
23 Business Development to encourage and assist employee-owned businesses by requiring  
24 the office to: develop educational programs, including convening an annual conference  
25 on employee ownership issues; provide information about employee ownership and  
26 technical assistance to retiring business owners, employees of plants threatened with  
27 closure and entrepreneurs interested in creating businesses with broadly shared  
28 ownership; link Maine businesses interested in implementing employee ownership to  
29 available financial, technical and legal resources; and help businesses interested in  
30 implementing some form of employee ownership to obtain financing, as well as  
31 undertake other duties.

32 4. It requires the Commissioner of Economic and Community Development to give  
33 priority to employee-owned businesses, either established or in the process of becoming  
34 employee-owned, when providing loans or grants from funds or programs maintained by  
35 the department.

36 5. It requires the Maine Public Employees Retirement System to conduct a study to  
37 determine how funds held by the system may be invested responsibly in employee-owned  
38 businesses in this State and to report its findings to the Joint Standing Committee on  
39 Innovation, Development, Economic Advancement and Business, which is authorized to

1 report out a bill to the Second Regular Session of the 129th Legislature based on the  
2 study and recommendations of the system.