

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1276

S.P. 513

In Senate, March 21, 2023

**An Act to Create and Sustain Jobs and Affordable Housing
Through the Development of Cooperatives and Employee-owned
Businesses**

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 RENY of Lincoln.
Cosponsored by Representative STOVER of Boothbay and
Senators: DAUGHTRY of Cumberland, GROHOSKI of Hancock, POULIOT of Kennebec,
Representatives: EATON of Deer Isle, HEPLER of Woolwich.

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

2 **Sec. 1. 5 MRSA §13062, 2nd ¶**, as enacted by PL 1987, c. 534, Pt. A, §§17 and
3 19, is amended to read:

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

6 **Sec. 2. 5 MRSA §13062, sub-§4** is enacted to read:

7 **4. Encouragement of employee ownership of businesses; Maine Employee**
8 **Ownership Center.** The office shall contract with a nonprofit economic development
9 organization with relevant expertise to develop and manage an office, to be known as the
10 Maine Employee Ownership Center, that shall:

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

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

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

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

21 E. Help businesses interested in implementing some form of employee ownership
22 obtain financing;

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

24 G. Recommend legislative or executive action to promote employee ownership; and

25 H. Work with the Office of Program Evaluation and Government Accountability to
26 define the scope of data collection and to collect data and other information to facilitate
27 tax expenditure review under Title 3, chapter 37, including, but not limited to:

28 (1) The number of business ownership conversions to employee or cooperative
29 ownership;

30 (2) The number of full-time equivalent jobs retained as a result of conversions to
31 employee or cooperative ownership;

32 (3) The number of housing units converted to cooperative ownership; and

33 (4) Data and information regarding other measures of the fiscal impact and overall
34 economic development in the State as the result of conversions to employee or
35 cooperative ownership.

36 **Sec. 3. 36 MRSA §5122, sub-§2, ¶AAA** is enacted to read:

37 AAA. For taxable years beginning on or after January 1, 2024, to the extent included
38 in federal adjusted gross income and to the extent otherwise subject to Maine income
39 tax, an amount equal to any gain recognized on the sale by the taxpayer of an ownership
40 interest greater than 50% in a qualified business if the business was transferred to:

- 1 (1) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);
- 2 (2) An S corporation organized in the State owned by an employee stock
- 3 ownership plan;
- 4 (3) An eligible worker-owned cooperative as defined in the Code, Section
- 5 1042(c)(2);
- 6 (4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1;
- 7 (5) If the business provides housing, a consumer cooperative or a cooperative
- 8 affordable housing corporation organized under Title 13, chapter 85, subchapter
- 9 1-A; or
- 10 (6) A producer cooperative organized under Title 13, chapter 85, subchapter 2.

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

12 For purposes of this paragraph, "qualified business" means a business whose securities

13 are not publicly traded on any stock exchange and that is registered with the Secretary

14 of State or whose principal place of business is within the State including a corporation,

15 an S corporation, a limited liability company, a limited liability partnership, a sole

16 proprietorship and all entities that are not publicly traded and are related by common

17 majority ownership or control.

18 **Sec. 4. 36 MRSA §5122, sub-§2, ¶BBB** is enacted to read:

19 BBB. For taxable years beginning on or after January 1, 2024, to the extent included

20 in federal adjusted gross income and to the extent otherwise subject to Maine income

21 tax, an amount equal to the interest received during the taxable year by the taxpayer

22 with respect to a qualified business acquisition loan. For purposes of this paragraph:

23 (1) "Qualified business" means a business whose securities are not publicly traded

24 on any stock exchange and that is registered with the Secretary of State or whose

25 principal place of business is within the State including a corporation, an S

26 corporation, a limited liability company, a limited liability partnership, a sole

27 proprietorship and all entities that are not publicly traded and are related by

28 common majority ownership or control; and

29 (2) "Qualified business acquisition loan," including a loan or part of a series of

30 loans, means:

31 (a) A loan of which at least 90% of the proceeds are applied to the acquisition

32 of majority equity ownership of a qualified business not owned by an entity

33 under subdivisions (i) to (vi) and that is given to:

34 (i) An employee stock ownership plan as defined in the Code, Section

35 4975(e)(7);

36 (ii) An S corporation organized in the State owned by an employee stock

37 ownership plan;

38 (iii) An eligible worker-owned cooperative as defined in the Code, Section

39 1042(c)(2);

40 (iv) A consumer cooperative organized under Title 13, chapter 85,

41 subchapter 1;

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

4 (vi) A producer cooperative organized under Title 13, chapter 85,
5 subchapter 2;

6 (b) A loan to a corporation that sponsors an employee stock ownership plan if
7 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 business
9 and the plan's repayment terms are substantially similar to the corporation's
10 repayment terms; or

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

12 **Sec. 5. 36 MRSA §5200-A, sub-§2, ¶JJ** is enacted to read:

13 JJ. For taxable years beginning on or after January 1, 2024, to the extent included in
14 federal taxable income and to the extent otherwise subject to Maine income tax, an
15 amount equal to any gain recognized on the sale by the taxpayer of an ownership
16 interest greater than 50% in a qualified business if the business was transferred to:

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

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

20 (3) An eligible worker-owned cooperative as defined in the Code, Section
21 1042(c)(2);

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

23 (5) If the business provides housing, a consumer cooperative or a cooperative
24 affordable housing corporation organized under Title 13, chapter 85, subchapter
25 1-A; or

26 (6) A producer cooperative organized under Title 13, chapter 85, subchapter 2.

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

28 For purposes of this paragraph, "qualified business" means a business whose securities
29 are not publicly traded on any stock exchange and that is registered with the Secretary
30 of State or whose principal place of business is within the State including a corporation,
31 an S corporation, a limited liability company, a limited liability partnership, a sole
32 proprietorship and all entities that are not publicly traded and are related by common
33 majority ownership or control.

34 **Sec. 6. 36 MRSA §5200-A, sub-§2, ¶KK** is enacted to read:

35 KK. For taxable years beginning on or after January 1, 2024, to the extent included in
36 federal taxable income and to the extent otherwise subject to Maine income tax, an
37 amount equal to the interest received during the taxable year by the taxpayer with
38 respect to a qualified business acquisition loan. For purposes of this paragraph:

39 (1) "Qualified business" means a business whose securities are not publicly traded
40 on any stock exchange and that is registered with the Secretary of State or whose
41 principal place of business is within the State including a corporation, an S

1 corporation, a limited liability company, a limited liability partnership, a sole
2 proprietorship and all entities that are not publicly traded and are related by
3 common majority ownership or control; and

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

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

9 (i) An employee stock ownership plan as defined in the Code, Section
10 4975(e)(7);

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

13 (iii) An eligible worker-owned cooperative as defined in the Code, Section
14 1042(c)(2);

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

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

20 (vi) A producer cooperative organized under Title 13, chapter 85,
21 subchapter 2;

22 (b) A loan to a corporation that sponsors an employee stock ownership plan if
23 all proceeds of the loan are loaned to the employee stock ownership plan to
24 acquire for the plan all outstanding employer securities in a qualified business
25 and the plan's repayment terms are substantially similar to the corporation's
26 repayment terms; or

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

28 **Sec. 7. 36 MRSA §5206**, as amended by PL 2019, c. 607, Pt. C, §4, is further
29 amended by enacting at the end a new paragraph to read:

30 For taxable years beginning on or after January 1, 2024, the taxpayer may for the
31 purposes of the tax under this section subtract from Maine net income an amount equal to
32 the interest received during the taxable year by the taxpayer with respect to a qualified
33 business acquisition loan.

34 **Sec. 8. 36 MRSA §5206-D, sub-§13**, as amended by PL 1999, c. 414, §43 and
35 affected by §57, is further amended to read:

36 **13. Maine net income.** "Maine net income" means, for any taxable year, a financial
37 institution's net income or loss per books required to be reported pursuant to the laws of the
38 United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal
39 Revenue Service form used to report net income or loss per books or, in the case of an
40 entity with a single owner that may be disregarded as an entity separate from its owner
41 pursuant to Internal Revenue Service regulations, the financial institution's net income or
42 loss per books determined as if the entity were required to file Internal Revenue Service

1 Form 1065, adjusted in accordance with section 5206, and apportioned to this State under
2 section 5206-E. In the case of a financial institution that is a qualified subchapter S
3 subsidiary as defined by the Code, Section 1361, the financial institution's "Maine net
4 income" means a financial institution's net income or loss per books determined as if the
5 entity were required to file Internal Revenue Service Form 1120S and apportioned to this
6 State under section 5206-E.

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

11 **Sec. 9. 36 MRSA §5206-D, sub-§16-A** is enacted to read:

12 **16-A. Qualified business.** "Qualified business" means a business whose securities
13 are not publicly traded on any stock exchange and that is registered with the Secretary of
14 State or whose principal place of business is within the State including a corporation, an S
15 corporation, a limited liability company, a limited liability partnership, a sole
16 proprietorship and all entities that are not publicly traded and are related by common
17 majority ownership or control.

18 **Sec. 10. 36 MRSA §5206-D, sub-§16-B** is enacted to read:

19 **16-B. Qualified business acquisition loan.** "Qualified business acquisition loan,"
20 including a loan or part of a series of loans, means:

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

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

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

27 (3) An eligible worker-owned cooperative as defined in the Code, Section
28 1042(c)(2);

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

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

33 (6) A producer cooperative organized under Title 13, chapter 85, subchapter 2;

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

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

39 **Sec. 11. Evaluation; specific public policy objective; performance**
40 **measures.** The deductions provided under this Act are subject to ongoing legislative
41 review in accordance with the Maine Revised Statutes, Title 3, chapter 37. The Office of

1 Program Evaluation and Government Accountability shall include review of deductions
2 provided under this Act in its regular schedule of tax expenditure reviews. In developing
3 evaluation parameters to perform the evaluation, the Office of Program Evaluation and
4 Government Accountability, the Government Oversight Committee and the joint standing
5 committee of the Legislature having jurisdiction over taxation matters shall consider:

6 **1. Policy objective.** That the specific public policy objective of the deductions
7 provided under this Act is to preserve and expand units of affordable housing in
8 manufactured housing parks and apartment buildings and retain jobs in qualifying
9 businesses that would otherwise cease operations by reducing the tax impact to business
10 owners from qualifying sales of ownership interests in order to encourage conversion of
11 businesses to employee and cooperative ownership and thereby allow the businesses to
12 continue operations and retain jobs; and

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

14 A. The number of qualifying business ownership conversions to employee or
15 cooperative ownership;

16 B. The number of full-time equivalent jobs retained and units of affordable housing
17 created or retained;

18 C. The number of housing units converted to cooperative housing; and

19 D. Measures of fiscal impact and overall economic impact to the State.

20 SUMMARY

21 This bill does the following to support employee-owned businesses and cooperatives.

22 1. It excludes from Maine income tax the amount of gain, up to a maximum of
23 \$750,000, recognized by a business owner in transferring the business to an employee stock
24 ownership plan, eligible worker-owned cooperative, consumer cooperative, affordable
25 housing cooperative or agriculture producer cooperative.

26 2. It excludes from Maine income tax interest from loans that finance transfers of
27 ownership from a business to an employee stock ownership plan, eligible worker-owned
28 cooperative, consumer cooperative, affordable housing cooperative or agriculture producer
29 cooperative.

30 3. It requires the Department of Economic and Community Development, Office of
31 Business Development to contract with a nonprofit development organization with relevant
32 expertise to develop and manage the Maine Employee Ownership Center to provide
33 information and programs to assist businesses in the transition to employee or cooperative
34 ownership.

35 4. It specifies performance measures the Office of Program Evaluation and
36 Government Accountability, the Government Oversight Committee and the joint standing
37 committee of the Legislature having jurisdiction over taxation matters must consider in
38 developing evaluation parameters to perform the review of the deductions provided under
39 this bill as required by the Maine Revised Statutes, Title 3, chapter 37.