



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 22

H.P. 14

House of Representatives, January 4, 2011

### An Act To Improve the Maine Seed Capital Tax Credit

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative VALENTINO of Saco.  
Cosponsored by Representatives: BRYANT of Windham, CHASE of Wells, KNIGHT of  
Livermore Falls, NELSON of Falmouth, PILON of Saco, Senators: BARTLETT of  
Cumberland, COURTNEY of York, CRAVEN of Androscoggin.

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

2 **Sec. 1. 10 MRSA §1100-T, sub-§1**, as amended by PL 1991, c. 854, Pt. A, §7, is  
3 further amended to read:

4 **1. Legislative findings; authorization.** The Legislature finds that the growth of  
5 new and existing small businesses in the State results in increased job opportunities for  
6 Maine residents, produces more spending in the State and increases municipal tax bases.  
7 Businesses that export their products or services out of the State bring capital into the  
8 State and help to develop export markets for Maine products. Small new and existing  
9 businesses can provide significant economic benefits to the State if they can obtain  
10 sufficient seed equity financing to carry them from start-up through the initial  
11 development phases of a business. The jobs created by such businesses tend to pay  
12 higher wages and offer more benefits than other businesses; however, the per capita level  
13 of private venture capital investment in businesses located in the State is substantially  
14 below the national average and the average of the other New England states. In order to  
15 encourage the increased availability of risk equity capital to enterprises that have the  
16 potential for rapid growth and that bring capital into the State, the authority is authorized  
17 to issue certificates of eligibility for the seed capital investment tax credit permitted by  
18 Title 36, section 5216-B, subject to the requirements of this section. This program is  
19 known as the Maine Seed Capital Tax Credit Program.

20 **Sec. 2. 10 MRSA §1100-T, sub-§1-A** is enacted to read:

21 **1-A. Private venture capital fund.** As used in this section, "private venture capital  
22 fund" means a professionally managed pool of capital organized for a limited life to make  
23 equity or equity-like investments in unrelated private companies using capital derived  
24 from multiple limited partners or members at least half of which, measured in dollar  
25 commitments, are unaffiliated and unrelated, and includes any venture capital fund  
26 licensed by the United States Small Business Administration. The authority may require  
27 such information as may be necessary or desirable for determining whether an entity  
28 qualifies as a private venture capital fund.

29 **Sec. 3. 10 MRSA §1100-T, sub-§2, ¶A**, as amended by PL 2003, c. 451, Pt. E,  
30 §1, is further amended to read:

31 A. ~~A~~ For investments made in tax years beginning before January 1, 2012, a tax  
32 credit certificate may be issued in an amount not more than 40% of the amount of  
33 cash actually invested in an eligible Maine business in any calendar year or in an  
34 amount not more than 60% of the amount of cash actually invested in any one  
35 calendar year in an eligible Maine business located in a high-unemployment area, as  
36 determined by rule by the authority. For investments made in tax years beginning on  
37 or after January 1, 2012, a tax credit certificate may be issued to an investor other  
38 than a private venture capital fund in an amount not more than 60% of the amount of  
39 cash actually invested in an eligible Maine business in any calendar year. Rules  
40 adopted pursuant to this section are routine technical rules as defined in Title 5,  
41 chapter 375, subchapter 2-A.

1           **Sec. 4. 10 MRSA §1100-T, sub-§2, ¶H**, as enacted by PL 1987, c. 854, §§2 and  
2 5, is amended to read:

3           H. The investors qualifying for the credit must ~~collectively~~ each own less than 1/2  
4 of the business.

5           **Sec. 5. 10 MRSA §1100-T, sub-§2-A**, as amended by PL 2009, c. 470, §3, is  
6 further amended to read:

7           **2-A. Eligibility of private venture capital funds for tax credit certificate.** The  
8 authority shall adopt rules in accordance with the Maine Administrative Procedure Act to  
9 implement application of the program to investment in a private venture capital fund.  
10 ~~Without limitation, the~~ This subsection does not apply to credits claimed for tax years  
11 beginning on or after January 1, 2012. The requirements for eligibility for a tax credit  
12 certificate for investment in a private venture capital fund include the following.

13           A. ~~A~~ For investments made in tax years beginning before January 1, 2012, a tax  
14 credit certificate may be issued to an individual who invests in a private venture  
15 capital fund in an amount that:

16           (1) Is not more than 40% of the amount of cash actually invested in or  
17 unconditionally committed to a private venture capital fund in any calendar year  
18 by the individual or entity, except that with respect to fund investments that are  
19 made in eligible businesses that are located in a high unemployment area, as  
20 determined by rule of the authority under subsection 2, the tax credit certificate  
21 may not be more than 60% of the cash actually invested in or unconditionally  
22 committed to a private venture capital fund in any calendar year by the individual  
23 or entity; and

24           (2) Does not exceed 40% of the amount of cash invested by the fund in eligible  
25 businesses, except that with respect to fund investments that are made in eligible  
26 businesses that are located in a high unemployment area, as determined by rule of  
27 the authority under subsection 2, a tax credit certificate may not be more than  
28 60% of the cash invested by the fund in any calendar year in such businesses;  
29 provided that the authority may issue tax credit certificates in an amount not to  
30 exceed 20% of the amount of cash actually invested in or unconditionally  
31 committed to a private venture capital fund in any calendar year if the authority  
32 determines that the private venture capital fund is located in this State, is owned  
33 and controlled primarily by residents of this State and has designated investing in  
34 eligible businesses of this State as a major investment objective. The credit may  
35 be revoked to the extent that the private venture capital fund does not make  
36 investments eligible for the tax credit in an amount sufficient to qualify for the  
37 credits within 3 years after the date of the tax credit certificates. Notwithstanding  
38 any revocation pursuant to this subparagraph, each investor remains eligible for  
39 tax credit certificates for eligible investments as and when made by the private  
40 venture capital fund.

41           The aggregate amount of credits issued to investors in a fund may not exceed 40% of  
42 the amount of cash invested by the fund in eligible businesses, except that with  
43 respect to fund investments in eligible businesses that are located in a high

1 unemployment area, the aggregate amount of tax credits issued to investors in a fund  
2 may not exceed 60% of the cash invested by the fund in eligible businesses.

3 B. As used in this subsection, unless the context otherwise indicates, an "eligible  
4 business" means a business located in the State that:

- 5 (1) Is a manufacturer;
- 6 (2) Is engaged in the development or application of advanced technologies;
- 7 (3) Provides a service that is sold or rendered, or is projected to be sold or  
8 rendered, predominantly outside of the State;
- 9 (4) Brings capital into the State, as determined by the authority; or
- 10 (5) Is certified as a visual media production company under Title 5, section  
11 13090-L.

12 C. Aggregate investment eligible for tax credits may not be more than \$5,000,000  
13 for any one business for any one private venture capital fund as of the date of  
14 issuance of a tax credit certificate.

15 D. The investment with respect to which any individual or entity is applying for a  
16 tax credit certificate may not be more than an aggregate of \$500,000 in any one  
17 eligible business invested in by a private venture capital fund in any 3 consecutive  
18 calendar years, except that this paragraph does not limit other investment by any  
19 applicant for which that applicant is not applying for a tax credit certificate and  
20 except that, if the entity applying for a tax credit certificate is a partnership, limited  
21 liability company, S corporation, nontaxable trust or any other entity that is treated as  
22 a flow-through entity for tax purposes under the federal Internal Revenue Code, the  
23 aggregate limit of \$500,000 or \$200,000, as applicable, applies to each individual  
24 partner, member, stockholder, beneficiary or equity owner of the entity and not to the  
25 entity itself. This paragraph does not limit other investment by any applicant for  
26 which that applicant is not applying for a tax credit certificate.

27 E. Each business receiving an investment from a private venture capital fund, which  
28 investment is used as the basis for the issuance of a tax credit certificate, must have  
29 annual gross sales of \$3,000,000 or less and the operation of the business must be the  
30 full-time professional activity of the principal owner, as determined by the authority.  
31 The principal owner and principal owner's spouse, if any, are not eligible for a credit  
32 for investment in that business or for an investment by the private venture capital  
33 fund in that business. A tax credit certificate may not be issued to a parent, brother,  
34 sister or child of a principal owner if the parent, brother, sister or child has any  
35 existing ownership interest in that business or for an investment by the private  
36 venture capital fund in that business.

37 F. Each investment received by a business from a private venture capital fund,  
38 which investment is used as the basis for the issuance of a tax credit certificate, must  
39 be expended on plant maintenance and construction, equipment, research and  
40 development or working capital for the business or on such other business activity as  
41 may be approved by the authority.

1 G. The authority shall establish limits on repayment of the investment by an  
2 individual in and the investments made by a private venture capital fund, which  
3 investment is used as the basis for the issuance of a tax credit certificate. The  
4 investments must be at risk in the private venture capital fund and the business,  
5 respectively.

6 H. The investors in a private venture capital fund are not entitled to the credit for  
7 collective ownership in excess of 50% of any business. An investor in a private  
8 venture capital fund determined by the authority to be a principal owner of a business  
9 and the principal owner's spouse, if any, are not entitled to a credit with respect to  
10 investment in that business, nor are the principal owner's parents, siblings or children  
11 entitled to a credit if they have any existing ownership interest in the business.

12 **Sec. 6. 10 MRSA §1100-T, sub-§2-C** is enacted to read:

13 **2-C. Eligibility of private venture capital funds for refundable tax credit**  
14 **certificate.** This subsection applies to investments by private venture capital funds in  
15 eligible businesses made in tax years beginning on or after January 1, 2012. The  
16 authority shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter  
17 2-A to implement application of the program to investments in eligible businesses by  
18 private venture capital funds. The requirements for eligibility for a tax credit certificate  
19 for an investment by a private venture capital fund include the following.

20 A. For investments made in tax years beginning on or after January 1, 2012, a tax  
21 credit certificate may be issued to a private venture capital fund in an amount that is  
22 not more than 50% of the amount of cash actually invested in an eligible business.  
23 The tax credit certificate may be revoked and the credit recaptured pursuant to Title  
24 36, section 5216-B, subsection 5 to the extent that the authority determines that the  
25 eligible business for which the tax credit certificate was issued moves substantially  
26 all of its operations and assets outside of the State during the period ending 4 years  
27 after an investment, except in the case of an arm's length, fair value acquisition  
28 approved by the authority. A private venture capital fund that received the 20%  
29 credit certificate under subsection 2-A, paragraph A, subparagraph (2) for an  
30 investment is not eligible for a tax credit certificate under this subsection for that  
31 investment.

32 B. As used in this subsection, unless the context otherwise indicates, "eligible  
33 business" means a business located in the State that:

34 (1) Is a manufacturer;

35 (2) Is engaged in the development or application of advanced technologies;

36 (3) Provides a service that is sold or rendered, or is projected to be sold or  
37 rendered, predominantly outside of the State;

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

39 (5) Is certified as a visual media production company under Title 5, section  
40 13090-L.

1 C. Aggregate investment eligible for tax credit certificates, including investments  
2 under this subsection and under subsection 2, may not be more than \$5,000,000 for  
3 any one eligible business.

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

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

32 F. An investment received by an eligible business from a private venture capital fund  
33 for which the investment is used as the basis for the issuance of a tax credit certificate  
34 must be expended on plant maintenance and construction, equipment, research and  
35 development or working capital for the business or on such other business activity as  
36 may be approved by the authority.

37 G. The authority shall establish limits on repayment of the investments made by a  
38 private venture capital fund for which the investments are used as the basis for the  
39 issuance of tax credit certificates. The investments must be at risk in the private  
40 venture capital fund and the eligible business, respectively.

41 H. A private venture capital fund is not entitled to the credit if it owns in excess of  
42 50% of the eligible business, except that, if the private venture capital fund is issued a  
43 tax credit certificate and later makes an additional investment that increases its  
44 ownership to more than 50%, the existing tax credit certificate remains valid and is

1 not subject to revocation due to the ownership percentage as long as there was no  
2 intent to take controlling ownership at the time of the initial qualified investment.

3 **Sec. 7. 10 MRSA §1100-T, sub-§4**, as amended by PL 2003, c. 451, Pt. E, §5, is  
4 further amended to read:

5 **4. Total of credits authorized.** The authority may issue tax credit certificates to  
6 investors eligible pursuant to subsections 2 ~~and~~, 2-A and 2-C in an aggregate amount not  
7 to exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and  
8 including calendar year 1997, \$5,500,000 up to and including calendar year 1998,  
9 \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including  
10 calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up  
11 to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005,  
12 \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including  
13 calendar year 2007 and \$30,000,000 thereafter. The authority may provide that investors  
14 eligible for a tax credit under this section in a year when there is insufficient credit  
15 available are entitled to take the credit when it becomes available.

16 **Sec. 8. 10 MRSA §1100-T, sub-§6**, as enacted by PL 2001, c. 642, §10 and  
17 affected by §12, is amended to read:

18 **6. Reports.** Any business eligible to have investors receive a tax credit under this  
19 section must report to the authority, in a manner to be determined by the authority, the  
20 following information regarding its activities in the State over the calendar year in which  
21 the investment occurred and for such additional years as may be required by the  
22 authority:

- 23 A. The total amount of private investment received;
- 24 B. The total number of persons employed as of December 31st;
- 25 C. The total numbers of jobs created and retained;
- 26 D. Total annual payroll; and
- 27 E. Total sales revenue.

28 The authority shall report annually to the joint standing committee of the Legislature  
29 having jurisdiction over taxation matters on the activity under this section during the prior  
30 calendar year.

31 **Sec. 9. 36 MRSA §5122, sub-§2, ¶HH** is enacted to read:

32 HH. To the extent included in federal adjusted gross income, an amount equal to the  
33 distribution from a private venture capital fund of the refundable portion of the credit  
34 allowed under section 5216-B.

35 **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶S**, as amended by PL 2009, c. 213, Pt.  
36 ZZZ, §12 and Pt. BBBB, §14, is further amended to read:

37 S. An amount equal to the value of any prior year addition modification under  
38 subsection 1, paragraph U, but only to the extent that:

- 1 (1) Maine taxable income is not reduced below zero;
- 2 (2) The taxable year is within the allowable federal period for carryover of the  
3 net operating loss plus one year; and
- 4 (3) The amount has not been previously used as a modification pursuant to this  
5 subsection; ~~and~~

6 **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶T**, as repealed and replaced by PL 2009,  
7 c. 652, Pt. A, §56, is amended to read:

8 T. An amount equal to the value of any prior year addition modification under  
9 subsection 1, paragraph V, but only to the extent that:

- 10 (1) Maine taxable income is not reduced below zero;
- 11 (2) The taxable year is within the allowable federal period for carry-over plus the  
12 number of years that the net operating loss carry-over adjustment was not  
13 deducted as a result of the restriction with respect to tax years beginning in 2009,  
14 2010 and 2011;
- 15 (3) The amount has not been previously used as a modification pursuant to this  
16 subsection; and
- 17 (4) The modification under this paragraph is not claimed for any tax year  
18 beginning in 2009, 2010 or 2011; ~~and~~

19 **Sec. 12. 36 MRSA §5200-A, sub-§2, ¶U**, as enacted by PL 2009, c. 652, Pt. A,  
20 §57 and affected by §58, is amended to read:

21 U. An amount equal to the gross income from discharge of indebtedness previously  
22 deferred under the Code, Section 108(i) and included in federal taxable income. The  
23 total subtraction for all years under this paragraph may not exceed the amount of the  
24 addition modification under subsection 1, paragraph W for the same indebtedness;  
25 and

26 **Sec. 13. 36 MRSA §5200-A, sub-§2, ¶V** is enacted to read:

27 V. To the extent included in federal taxable income, an amount equal to the  
28 refundable portion of the credit allowed under section 5216-B and an amount equal to  
29 the distribution from a private venture capital fund of the refundable portion of the  
30 credit allowed under section 5216-B.

31 **Sec. 14. 36 MRSA §5216-B, sub-§1, ¶C**, as enacted by PL 1987, c. 854, §§4  
32 and 5, is amended to read:

33 C. "Investor" means a taxpayer ~~who~~ or private venture capital fund that has  
34 received a certificate.

35 **Sec. 15. 36 MRSA §5216-B, sub-§1, ¶D** is enacted to read:

36 D. "Private venture capital fund" has the same meaning as under Title 10, section  
37 1100-T, subsection 1-A.



