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Legislative Document

No. 1941

S.P. 682

In Senate, January 26, 2022

An Act To Clarify and Update the Maine Seed Capital Tax Credit Program

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 CURRY of Waldo.

Cosponsored by Senators: BAILEY of York, CHIPMAN of Cumberland, LIBBY of Androscoggin.

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

2 **Sec. 1. 10 MRSA §1100-T, sub-§2, ¶A**, as amended by PL 2019, c. 616, Pt. LL,
3 §1, is further amended to read:

4 A. For investments made in tax years beginning before January 1, 2012, a tax credit
5 certificate may be issued in an amount not more than 40% of the amount of cash
6 actually invested in an eligible Maine business in any calendar year or in an amount
7 not more than 60% of the amount of cash actually invested in any one calendar year in
8 an eligible Maine business located in a high-unemployment area, as determined by rule
9 by the authority. For investments made in tax years beginning on or after January 1,
10 2012, a tax credit certificate may be issued to an investor other than a private venture
11 capital fund in an amount not more than 60% of the amount of cash actually invested
12 in an eligible Maine business in any calendar year. For investments made in tax years
13 beginning on or after January 1, 2014, a tax credit certificate may be issued to an
14 investor other than a private venture capital fund in an amount not more than 50% of
15 the amount of cash actually invested in an eligible Maine business in any calendar year.
16 For investments made on or after April 1, 2020 and before October 1, 2022, a tax credit
17 certificate may be issued to an investor other than a private venture capital fund in an
18 amount not more than 40% of the amount of cash actually invested in an eligible Maine
19 business in any calendar year. For investments made on or after October 1, 2022, a tax
20 credit certificate may be issued to an investor other than a private venture capital fund
21 in an amount not more than 30% of the amount of cash actually invested in an eligible
22 Maine business in any calendar year. Rules adopted pursuant to this section are routine
23 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

24 **Sec. 2. 10 MRSA §1100-T, sub-§2, ¶B**, as amended by PL 2013, c. 438, §3, is
25 further amended to read:

26 B. The Maine business must be determined by the authority to be a manufacturer or a
27 value-added natural resource enterprise; must provide a product or service that is sold
28 or rendered, or is projected to be sold or rendered, predominantly outside of the State;
29 must be engaged in the development or application of advanced technologies; or must
30 be certified as a visual media production company under Title 5, section 13090-L.
31 Beginning October 1, 2022, an investment in a visual media production company under
32 Title 5, section 13090-L is not eligible for a tax credit certificate. The business must
33 certify that the amount of the investment is necessary to allow the business to create or
34 retain jobs in the State.

35 **Sec. 3. 10 MRSA §1100-T, sub-§2, ¶C**, as amended by PL 2021, c. 412, §1, is
36 further amended to read:

37 C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for
38 any one business as of the date of issuance of a tax credit certificate. ~~Beginning with~~
39 For investments made on or after April 1, 2020 and before October 1, 2022, aggregate
40 investment eligible for tax credits may not be more than \$3,500,000 for any one
41 business as of the date of issuance of a tax credit certificate and not more than
42 \$2,000,000 for any calendar year. Notwithstanding the other provisions of this
43 paragraph, with respect to a business that was approved by the authority as an eligible
44 business under this subsection before April 1, 2020, ~~the~~ aggregate investment eligible
45 for tax credits may not be more than \$5,000,000 for ~~that~~ any one business as of the date

1 of the issuance of the tax credit certificate, and the \$2,000,000 annual limitation does
2 not apply. For investments made on or after October 1, 2022, aggregate investment
3 eligible for tax credits under this subsection may not be more than \$6,000,000 for any
4 one business as of the date of issuance of a tax credit certificate and not more than
5 \$5,000,000 for any calendar year.

6 **Sec. 4. 10 MRSA §1100-T, sub-§2, ¶E**, as amended by PL 2013, c. 438, §3, is
7 further amended to read:

8 E. For investments made in tax years beginning before January 1, 2014, the business
9 receiving the investment must have annual gross sales of \$3,000,000 or less. For
10 investments made in tax years beginning on or after January 1, 2014, the business
11 receiving the investment must have annual gross sales of \$5,000,000 or less. The
12 operation of the business must be a substantial professional activity of at least one of
13 the principal owners, as determined by the authority. The principal owner and the
14 principal owner's spouse are not eligible for a credit for investment in that business. A
15 tax credit certificate may not be issued to a parent, ~~brother~~, ~~sister~~ sibling or child of a
16 principal owner if the parent, ~~brother~~, ~~sister~~ sibling or child has any existing ownership
17 interest in the business. Beginning with investments made on or after October 1, 2022,
18 the principal owner or the principal owner's spouse, or a parent, sibling or child of a
19 principal owner, is not eligible for a credit for investment in that business if that person
20 owns 25% or more interest in the business.

21 **Sec. 5. 10 MRSA §1100-T, sub-§2, ¶J** is enacted to read:

22 J. For investments made on or after October 1, 2022, an application for a tax credit
23 certificate must be submitted to the authority within 60 days after the date of the
24 investment on which the credit is based and within the same legislative biennium as
25 the investment.

26 **Sec. 6. 10 MRSA §1100-T, sub-§2-C, ¶A**, as amended by PL 2019, c. 616, Pt.
27 LL, §5, is further amended to read:

28 A. For investments made in tax years beginning on or after January 1, 2012, a tax
29 credit certificate may be issued to a private venture capital fund in an amount that is
30 not more than 50% of the amount of cash actually invested in an eligible business. For
31 investments made on or after April 1, 2020 and before October 1, 2022, a tax credit
32 certificate may be issued to a private venture capital fund in an amount that is not more
33 than 40% of the amount of cash actually invested in an eligible business. For
34 investments made on or after October 1, 2022, a tax credit certificate may be issued to
35 a private venture capital fund in an amount that is not more than 30% of the amount of
36 cash actually invested in an eligible Maine business. The tax credit certificate may be
37 revoked and the credit recaptured pursuant to Title 36, section 5216-B, subsection 5 to
38 the extent that the authority determines that the eligible business for which the tax
39 credit certificate was issued moves substantially all of its operations and assets outside
40 of the State during the period ending 4 years after an investment, except in the case of
41 an arm's length, fair value acquisition approved by the authority. A private venture
42 capital fund that received the 20% credit certificate under subsection 2-A, paragraph
43 A, subparagraph (2) for an investment is not eligible for a tax credit certificate under
44 this subsection for that investment.

1 **Sec. 7. 10 MRSA §1100-T, sub-§2-C, ¶B**, as amended by PL 2019, c. 616, Pt.
2 LL, §6, is further amended to read:

3 B. As used in this subsection, unless the context otherwise indicates, "eligible
4 business" means a business located in the State that has certified that the amount of the
5 investment is necessary to allow the business to create or retain jobs in the State and
6 that, as determined by the authority:

7 (1) Is a manufacturer or a value-added natural resource enterprise;

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

9 (3) Provides a product or service that is sold or rendered, or is projected to be sold
10 or rendered, predominantly outside of the State. For investments made on or after
11 October 1, 2022, for the purposes of this subparagraph, the sale or rendering of a
12 product or service is not considered to be a sale or rendering of a product or service
13 outside of the State if the business is engaged primarily in the tourism or hospitality
14 industry and the sale or rendering of the product or service is to a nonresident of
15 the State; or

16 (5) Is Prior to October 1, 2022, is certified as a visual media production company
17 under Title 5, section 13090-L. Beginning October 1, 2022, a visual media
18 production company may not be certified as an eligible business.

19 **Sec. 8. 10 MRSA §1100-T, sub-§2-C, ¶C**, as amended by PL 2021, c. 412, §2, is
20 further amended to read:

21 C. Aggregate investment eligible for tax credit certificates, including investments
22 under this subsection and under subsection 2, may not be more than \$5,000,000 for any
23 one eligible business. ~~Beginning with~~ For investments made on or after April 1, 2020
24 and before October 1, 2022, aggregate investment eligible for tax credit certificates,
25 including investments under this subsection and under subsection 2, may not be more
26 than \$3,500,000 for any one eligible business in total and not more than \$2,000,000 for
27 any calendar year. Notwithstanding the other provisions of this paragraph, with respect
28 to a business that was approved by the authority as an eligible business under this
29 subsection before April 1, 2020, the aggregate investment eligible for tax credits may
30 not be more than \$5,000,000 for that business as of the date of the issuance of the tax
31 credit certificate, and the \$2,000,000 annual limitation does not apply. For investments
32 made on or after October 1, 2022, aggregate investment eligible for tax credits under
33 this subsection may not be more than \$6,000,000 for any one business as of the date of
34 the issuance of a tax credit certificate and not more than \$5,000,000 for any calendar
35 year.

36 **Sec. 9. 10 MRSA §1100-T, sub-§2-C, ¶E**, as amended by PL 2013, c. 438, §4, is
37 further amended to read:

38 E. For investments made in tax years beginning before January 1, 2014, an eligible
39 business receiving an investment from a private venture capital fund, which investment
40 is used as the basis for the issuance of a tax credit certificate, may not have annual
41 gross sales of more than \$3,000,000. For investments made in tax years beginning on
42 or after January 1, 2014, an eligible business receiving an investment from a private
43 venture capital fund, which investment is used as the basis for the issuance of a tax
44 credit certificate, may not have annual gross sales of more than \$5,000,000. The

1 operation of the business must be a substantial professional activity of one or more
2 individuals who are not managers of the private venture capital fund, as determined by
3 the authority. A tax credit certificate may not be issued to a private venture capital fund
4 if a manager of the fund is a principal owner of the eligible business or a spouse, parent,
5 sibling or child of a principal owner and if the spouse, parent, sibling or child has any
6 existing ownership interest in the business. Beginning with investments made on or
7 after October 1, 2022, the principal owner or the principal owner's spouse, or a parent,
8 sibling or child of a principal owner, is not eligible for a credit for investment in that
9 business or for an investment by the private venture capital fund in that business if that
10 person owns 25% or more interest in the business. A private venture capital fund must
11 certify to the authority that it will be in compliance with these limitations. The tax
12 credit certificate issued to a private venture capital fund may be revoked and any credit
13 taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund is not in
14 compliance with this paragraph.

15 **Sec. 10. 10 MRSA §1100-T, sub-§2-C, ¶I** is enacted to read:

16 I. For investments made on or after October 1, 2022, an application for a tax credit
17 certificate must be submitted to the authority within 60 days after the date of the
18 investment on which the credit is based and within the same legislative biennium as
19 the investment.

20 **Sec. 11. 10 MRSA §1100-T, sub-§2-D** is enacted to read:

21 **2-D. Consideration of applications by authority.** When considering an application
22 for a tax credit certificate under subsection 2 or 2-C, the authority shall rate the application,
23 using standard grant procurement rules, based on the strength of the applicant's business
24 plan, the projected number and type of jobs to be created or retained, the projected increase
25 in municipal taxes resulting from the investment, the potential of the applicant for rapid
26 growth and the potential to advance a strategic economic sector through innovation. The
27 authority shall adopt major substantive rules that provide that the 30% credit for investment
28 is reduced to 20% for an applicant that qualifies for the credit but that receives a low rating
29 based on standard grant procurement rules.

30 **Sec. 12. 10 MRSA §1100-T, sub-§7,** as enacted by PL 2019, c. 616, Pt. LL, §11,
31 is amended to read:

32 **7. Reports.** The following reports are required regarding activities under this section.

33 A. A business eligible to have investors receive a tax credit under this section shall
34 report to the authority, in a manner determined by the authority, the following
35 information regarding that business's activities in the State over the calendar year in
36 which the investment occurred and for each additional year for which a credit is
37 claimed:

38 (1) The total amount of private investment received by the eligible business from
39 each investor eligible to receive a tax credit;

40 (2) The total number of persons employed by the eligible business as of December
41 31st;

- 1 (3) The total number and geographic location of jobs created and retained by the
- 2 eligible business stated separately for all jobs in the State and for those jobs that
- 3 would not have been created or retained in the absence of the credit;
- 4 (4) Total annual payroll of the eligible business stated separately for all employees
- 5 in the State and for those employees who would not have been employed in the
- 6 absence of the credit; ~~and~~
- 7 (5) Total sales revenue of the eligible business stated separately within and outside
- 8 the State-;
- 9 (6) Total in-state direct spending;
- 10 (7) Total municipal taxes paid within the State;
- 11 (8) Other investments, incentives and grants received from the State, including but
- 12 not limited to the Small Enterprise Growth Fund under chapter 13, the Maine
- 13 Technology Institute under Title 5, chapter 407, Pine Tree Development Zone
- 14 benefits as defined in Title 30-A, section 5250-I, subsection 14 and employment
- 15 tax increment financing under Title 36, chapter 917; and
- 16 (9) Federal grants received.

17 B. An investor eligible for a tax credit under this section shall notify the authority
18 when a business that received an investment from that investor eligible for a credit
19 under this section ceases operations in the State and the likely reasons for the cessation
20 of business.

21 C. The authority shall report annually to the joint standing committee of the Legislature
22 having jurisdiction over taxation matters and to the Office of Program Evaluation and
23 Government Accountability on all activity under this section during the prior calendar
24 year. The authority shall identify in its report businesses receiving investments eligible
25 for a credit under this section and the authority's determination as to whether the
26 investments would have been made in the absence of the credit.

27 **Sec. 13. 36 MRSA §5216-B, sub-§2**, as amended by PL 2017, c. 170, Pt. E, §3, is
28 further amended to read:

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

1 investment was made. With respect to tax credit certificates issued under Title 10, section
2 1100-T, subsection 2, for investments certified for a tax credit on or after October 1, 2022,
3 the credits are refundable and the investor shall file a return requesting a refund for an
4 investment for which it has received a tax credit certificate in the calendar year following
5 the calendar year during which the investment was made.

6 **Sec. 14. 36 MRSA §5216-B, sub-§3**, as amended by PL 2011, c. 454, §17, is
7 further amended to read:

8 **3. Limitation.** With respect to tax credit certificates issued before October 1, 2022
9 under Title 10, section 1100-T, subsection 2 or 2-A, the amount of the credit allowed under
10 this section for any one taxable year may not exceed 50% of the tax imposed by this Part
11 on the investor for the taxable year before application of the credit.

12 **Sec. 15. Review of Maine Seed Capital Tax Credit Program.** The Finance
13 Authority of Maine, the Department of Economic and Community Development and the
14 Department of Administrative and Financial Services, Maine Revenue Services shall
15 establish a working group to review the final report of the Office of Program Evaluation
16 and Government Accountability on the Maine Seed Capital Tax Credit dated August 2021.
17 The working group shall review issues identified in the report regarding the administration
18 of the program and the need to clarify aspects of the program relating to the goals of the
19 credit, the improvement of data collection required to properly evaluate the program and
20 the need for enhancement of business and authority reporting to the Legislature. The
21 working group shall solicit input from parties interested in the credit and shall submit a
22 report to the joint standing committee of the Legislature having jurisdiction over taxation
23 matters and to the Office of Program Evaluation and Government Accountability by
24 December 1, 2022.

25 SUMMARY

26 This bill makes changes to improve the effectiveness of the Maine Seed Capital Tax
27 Credit Program based upon concerns raised in the 2021 tax expenditure evaluation report
28 of the Office of Program Evaluation and Government Accountability. The bill makes the
29 following changes.

30 It reduces the tax credit from 40% to 30% of the eligible investment.

31 It raises the aggregate investment limit from \$3,500,000 to \$6,000,000 with not more
32 than \$5,000,000 in a single calendar year.

33 It removes from eligibility investments in visual media production companies.

34 It defines export activities more narrowly.

35 It provides standards for review by the Finance Authority of Maine of applications for
36 a tax credit certificate.

37 It increases the amount of information required to be provided in annual reports by
38 eligible businesses to the Finance Authority of Maine and provides a financial penalty if a
39 credit certificate is revoked for failure to report.

40 It requires an application for a tax credit certificate to be submitted within 60 days after
41 the date of the investment.

1 It prohibits credits for investors and their family members who hold more than 25%
2 interest in the business receiving the investment.

3 It provides that the tax credit for individual investors is refundable.

4 It requires the state agencies administering the seed capital tax credit to establish a
5 working group to review issues identified by the Office of Program Evaluation and
6 Government Accountability report relating to administration of the credit and submit a
7 report making recommendations for improvements to the joint standing committee of the
8 Legislature having jurisdiction over taxation matters and to the Office of Program
9 Evaluation and Government Accountability by December 1, 2022.