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No. 1300

H.P. 886

House of Representatives, April 9, 2015

An Act To Create and Sustain Jobs through Development of Cooperatives

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CHAPMAN of Brooksville.
Cosponsored by Senator LANGLEY of Hancock and
Representatives: CAMPBELL of Newfield, WARD of Dedham, Senators: JOHNSON of
Lincoln, PATRICK of Oxford.

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

2 **Sec. 1. 5 MRSA §135, first ¶**, as amended by PL 2005, c. 386, Pt. CC, §2, is
3 further amended to read:

4 The Treasurer of State may deposit the money, including trust funds of the State, in
5 any national bank or in any banking institution, trust company, state or federal savings
6 and loan association or mutual savings bank organized under the laws of this State or
7 having a location in the State except as provided in chapter 161. The Treasurer of State
8 shall place at least 1% of all deposits made under this section in an institution devoted
9 primarily to meeting the borrowing needs of cooperatives organized under Title 13,
10 chapter 85 if the institution meets the requirements of this chapter as effectively as other
11 institutions with which the Treasurer of State makes deposits and makes loans to
12 cooperatives in the State in amounts equal to at least the amount deposited by the
13 Treasurer of State. Before making a deposit, the Treasurer of State must consider the
14 rating of the banking institution, trust company, state or federal savings and loan
15 association or mutual savings bank on its most recent assessment conducted pursuant to
16 the federal Community Reinvestment Act, 12 United States Code, Section 2901 and must
17 consider whether the banking institution, trust company, state or federal savings and loan
18 association or mutual savings bank has demonstrated an ability to meet the needs of
19 cooperatives organized under Title 13, chapter 85 through representation of cooperatives
20 in a loan portfolio or through development of lending policies that address the unique
21 needs of cooperatives. The Treasurer of State may transfer funds into and out of the
22 respective funds in the cash pool as circumstances may require to meet current
23 obligations and shall request the State Controller to effect such transfers by journal entry
24 as set forth in section 131-B. When there is excess money in the State Treasury that is
25 not needed to meet current obligations, the Treasurer of State may invest, with the
26 concurrence of the State Controller or the Commissioner of Administrative and Financial
27 Services and with the consent of the Governor, those amounts in bonds, notes, certificates
28 of indebtedness or other obligations of the United States and its agencies and
29 instrumentalities that mature not more than 36 months from the date of investment or in
30 repurchase agreements that mature within the succeeding 12 months that are secured by
31 obligations of the United States and its agencies and instrumentalities, prime commercial
32 paper, tax-exempt obligations and corporate bonds rated "AAA" that mature not more
33 than 36 months from the date of investment, banker's acceptances or so-called "no-load"
34 shares of any investment company registered under the federal Investment Company Act
35 of 1940, as amended, that complies with Rule 2a-7 guidelines and maintains a constant
36 share price. The Treasurer of State may participate in the securities loan market by
37 loaning state-owned bonds, notes or certificates of indebtedness of the Federal
38 Government, only if loans are fully collateralized by treasury bills or cash. The Treasurer
39 of State shall seek competitive bids for investments except when, after a reasonable
40 investigation, it appears that an investment of the desired maturity is procurable by the
41 State from only one source. Interest earned on those investments of money must be
42 credited to the respective funds, except that interest earned on investments of special
43 revenue funds must be credited to the General Fund of the State. Effective July 1, 1995,
44 interest earned on investments of the Highway Fund must be credited to the Highway
45 Fund. Interest earned on funds of the Department of Inland Fisheries and Wildlife must
46 be credited to the General Fund. Interest earned on funds of the Baxter State Park

1 Authority must be credited to the Baxter State Park Fund. This section does not prevent
2 the deposit for safekeeping or custodial care of the securities of the several funds of the
3 State in banks or safe deposit companies in this State or any other state, nor the deposit of
4 state funds required by the terms of custodial contracts or agreements negotiated in
5 accordance with the laws of this State. All custodial contracts and agreements are subject
6 to the approval of the Governor.

7 **Sec. 2. 5 MRSA §135, 6th and 7th ¶¶**, as amended by PL 2003, c. 20, Pt. T, §3,
8 are further amended to read:

9 The Treasurer of State may deposit an amount not to exceed \$4,000,000 in each
10 calendar year with responsible financial institutions authorized to do business in the State
11 at a rate of return not more than 2% per year below the rate of return otherwise obtainable
12 had the funds been invested with such financial institutions for a similar term, as
13 determined by the treasurer, for periods not to exceed one year, ~~provided that~~ as long as
14 each such financial institution covenants with the treasurer as a condition of the deposit to
15 loan an amount at least equal to the amount so deposited with the financial institution by
16 the treasurer under this paragraph to agricultural enterprises located within the State for
17 agricultural purposes, with a preference for agricultural enterprises organized as
18 cooperatives under Title 13, chapter 85. All the loans must be at interest rates that are
19 below the interest rates the loans would have borne under existing market conditions and
20 loan standards of the financial institution but for the deposit by the treasurer under this
21 paragraph, and the interest rates must fully reflect the savings to the financial institution
22 due to the reduced interest rate paid on the deposit. Notwithstanding any provisions of
23 this section to the contrary, the treasurer is not obligated to seek competitive bids for
24 investments or deposits pursuant to this paragraph. The Finance Authority of Maine shall
25 provide assistance to the treasurer in implementing this paragraph. For purposes of this
26 section, "agricultural enterprises" means a business involving cultivating soil, producing
27 crops and raising livestock or their by-products. In adopting rules to implement this
28 paragraph, the treasurer shall consider criteria targeting loans under the program to
29 geographic areas of financial need and borrowers who are new entrants to agriculture, and
30 may establish limits on deposits to any one financial institution and limits on deposits
31 supporting loans to any one borrower.

32 The Treasurer of State may deposit an amount not to exceed \$4,000,000 in each
33 calendar year with responsible financial institutions authorized to do business in the State
34 at a rate of return not more than 2% per year below the rate of return otherwise obtainable
35 had the funds been invested with such financial institutions for a similar term, as
36 determined by the treasurer, for periods not to exceed one year, ~~provided that~~ as long as
37 each such financial institution covenants with the treasurer as a condition of the deposit to
38 loan an amount at least equal to the amount so deposited with the financial institution by
39 the treasurer under this paragraph to commercial enterprises approved by the treasurer
40 pursuant to this paragraph. All the loans must be at interest rates that are below the
41 interest rates the loans would have borne under existing market conditions and loan
42 standards of the financial institution but for the deposit by the treasurer under this
43 paragraph, and the interest rates must fully reflect the savings to the financial institution
44 due to the reduced interest rate paid on the deposit. Notwithstanding any provisions of
45 this section to the contrary, the treasurer is not obligated to seek competitive bids for

1 investments or deposits pursuant to this paragraph. The Finance Authority of Maine shall
2 provide assistance to the treasurer in implementing this paragraph. For purposes of this
3 paragraph, eligible commercial enterprises are for-profit businesses with 20 or fewer
4 employees or annual sales of less than \$2,500,000, whose sales of services or products
5 are primarily out of state or that are manufacturers, that are primarily owned and operated
6 by Maine residents or by corporations that are primarily owned and operated by Maine
7 residents, when the treasurer determines that not less than one job will be created or
8 retained per \$20,000 of deposited funds. The maximum loan to any borrower for which a
9 deposit may be applied under this paragraph is \$200,000, and businesses are eligible to
10 receive subsidies pursuant to this paragraph for a maximum of an aggregate of 24
11 months. In adopting rules to implement this paragraph, the treasurer shall consider
12 criteria targeting loans under the program to geographic areas of financial need, shall
13 prioritize access to capital for cooperatives organized under Title 13, chapter 85 and may
14 establish limits on deposits to any one financial institution, further limits on deposits
15 supporting loans to any one borrower, and further restrictions on eligibility.

16 **Sec. 3. 5 MRSA §13031, sub-§1**, as enacted by PL 1989, c. 875, Pt. L, §§2 and 4,
17 is amended to read:

18 **1. Administrative unit.** "Administrative unit" means the organization certified by
19 the federal Small Business Administration to administer the Small Business Development
20 Center Program in this State and oversee the Employee Ownership Program
21 Administrator.

22 **Sec. 4. 5 MRSA §13031, sub-§§4-A and 4-B** are enacted to read:

23 **4-A. Employee Ownership Program.** "Employee Ownership Program" means the
24 Employee Ownership Program established in section 13040.

25 **4-B. Employee Ownership Program Administrator.** "Employee Ownership
26 Program Administrator" means the organization selected by the commission to administer
27 the Employee Ownership Program.

28 **Sec. 5. 5 MRSA §13033**, as amended by PL 2007, c. 585, §1, is further amended
29 to read:

30 **§13033. Membership**

31 The commission consists of 9 members: the Chief Executive Officer of the Finance
32 Authority of Maine or the chief executive officer's designee; the Commissioner of
33 Economic and Community Development or the commissioner's designee; the House and
34 Senate chairs of the joint standing committee of the Legislature having jurisdiction over
35 business, research and economic development matters, who are ex officio, nonvoting
36 members; the chair of the Small Business Development Centers Advisory Council; and a
37 designee from the administrative unit and 3 public members with expertise and
38 knowledge in small business and entrepreneurship, at least one of whom has expertise in
39 employee-owned businesses, appointed by the commissioner.

1 **Sec. 6. 5 MRSA §13034, sub-§§1 and 2**, as amended by PL 2001, c. 142, §3, are
2 further amended to read:

3 **1. Negotiate and approve contract.** Negotiate, approve and enforce the contract
4 with the administrative unit by which state funds are provided by the administrative unit
5 to the Employee Ownership Program and small business development centers throughout
6 the State. Approval of the contract requires the approval of at least 4 members of the
7 commission;

8 **2. Evaluate small business programs.** Evaluate and make recommendations to
9 coordinate small business ~~and~~ programs, entrepreneurial programs and employee
10 ownership statewide, including ~~those~~ programs administered or overseen by the
11 department;

12 **Sec. 7. 5 MRSA §13034, sub-§3**, as amended by PL 2007, c. 585, §3, is further
13 amended to read:

14 **3. Issue reports and recommendations.** Issue reports and recommendations to the
15 commissioner, the Governor and the Legislature in regard to programs that support or
16 promote small business assistance ~~and~~, entrepreneurship and employee ownership.
17 Beginning January 15, 2009, the commission shall provide an annual report, by January
18 15th of each year, to the joint standing committee of the Legislature having jurisdiction
19 over business, research and economic development matters that includes the
20 commission's proposed quarterly meeting schedule for the year, as well as a summary of
21 the Small Business Development Center Program's and the Employee Ownership
22 Program's activities in the State that focuses on ~~its~~ collaborative efforts with other
23 economic development programs in the State; and

24 **Sec. 8. 5 MRSA §13036**, as enacted by PL 1989, c. 875, Pt. L, §§2 and 4, is
25 amended to read:

26 **§13036. Contract with administrative unit**

27 The commission shall contract with the administrative unit to provide services as
28 described in this chapter.

29 **1. Contract provisions.** The contract must contain the policies and procedures for
30 the implementation and oversight of the Small Business Development Center Program
31 and the Employee Ownership Program. The contract must include, but is not limited to:

32 A. The percentage of state funds to be allocated to the small business development
33 center subcenters;

34 B. The percentage of state funds to be allocated for administrative purposes;

35 C. The percentage of state funds to be allocated for statewide services;

36 D. The percentage of state funds to be allocated for small business research;

37 D-1. The percentage of state funds to be allocated for the Employee Ownership
38 Program. The percentage must be high enough to provide the Employee Ownership

1 Program Administrator a minimum of \$100,000 for the year, adjusted annually based
2 on the cost-of-living adjustment in Title 36, section 5402, subsection 1-B;

3 E. Evaluation and reporting requirements for the subcenters, the Employee
4 Ownership Program and the administrative unit; and

5 F. Any other provisions necessary for the implementation of this chapter.

6 **2. Annual plan.** The commission shall require the administrative unit to develop an
7 annual plan. This plan must include, but is not limited to:

8 A. The types of services to be provided by the Small Business Development Center
9 Program and the Employee Ownership Program;

10 B. The means by which services will be delivered;

11 C. Special services to be provided and the reasons these services are needed;

12 D. The location and identity of the organizations providing the regional services; and

13 E. Any other information considered by the commission to be necessary and
14 pertinent to the mission of the ~~program~~ Small Business Development Center Program
15 and the Employee Ownership Program.

16 **3. Evaluation and reporting requirements.** The commission shall establish
17 evaluation and reporting requirements for the subcenter, the Employee Ownership
18 Program and the administrative unit. These requirements, at a minimum, must include:

19 A. The types, numbers and profiles of businesses served statewide by the Employee
20 Ownership Program Administrator and by each subcenter;

21 B. The types and numbers of training programs offered through statewide services
22 by the Employee Ownership Program Administrator and by each subcenter;

23 C. An evaluation of the programs and services including the criteria by which the
24 evaluations are made; and

25 D. Any other requirements the commission considers necessary to effectively
26 evaluate the Small Business Development Center Program and the Employee
27 Ownership Program.

28 **Sec. 9. 5 MRSA §13037**, as enacted by PL 1989, c. 875, Pt. L, §§2 and 4, is
29 amended to read:

30 **§13037. Funding**

31 The commission shall provide the funds to the administrative unit and the Employee
32 Ownership Program in an expeditious manner. The administrative unit is responsible for
33 providing the funds to eligible business development centers for the purpose of providing
34 direct business counseling, technical assistance, training and other services to small
35 businesses and to the Employee Ownership Program Administrator in accordance with
36 the contract pursuant to this chapter.

37 **Sec. 10. 5 MRSA §13038**, as enacted by PL 1989, c. 875, Pt. L, §§2 and 4, is
38 amended to read:

1 **§13038. Contracts with subcenters and the Employee Ownership Program**
2 **Administrator**

3 The administrative unit shall contract with each small business development center
4 designated by the administrative unit and with the Employee Ownership Program
5 Administrator within 90 days following the completion of the administrative unit contract
6 with the commission. In completing and approving the annual contract for each small
7 business development center, the administrative unit must involve all center directors.

8 **Sec. 11. 5 MRSA §13040** is enacted to read:

9 **§13040. Employee Ownership Program**

10 **1. Employee Ownership Program established.** The Employee Ownership
11 Program is established to promote employee ownership of businesses in the State. The
12 responsibilities of the program include:

13 A. Developing educational programs relating to employee ownership;

14 B. Providing information about employee ownership and technical assistance to
15 retiring business owners, employees of businesses threatened with cessation of
16 operations and entrepreneurs interested in creating businesses with broadly shared
17 ownership;

18 C. Linking businesses in the State interested in implementing employee ownership to
19 available financial, technical and legal resources;

20 D. Assisting businesses and employee groups in performing preliminary feasibility
21 studies to determine the initial feasibility of employee ownership and whether the
22 business and employee group should undertake a full feasibility study;

23 E. Assisting businesses interested in implementing some form of employee
24 ownership to obtain financing;

25 F. Promoting best practices for operating employee-owned businesses;

26 G. Recommending legislative, executive or other action to promote employee
27 ownership; and

28 H. Coordinating efforts by public, private and nonprofit institutions to secure federal
29 grants and other funding to promote employee ownership, including funding for
30 grants to business owners and employees to perform feasibility studies regarding a
31 business's potential transition to employee ownership.

32 **2. Administration.** The commission shall select the Employee Ownership Program
33 Administrator. Funding for the Employee Ownership Program must be disbursed
34 pursuant to the commission's contract with the administrative unit. The administrative
35 unit shall oversee the Employee Ownership Program Administrator's activities.

36 **Sec. 12. 5 MRSA §13058, sub-§20** is enacted to read:

37 **20. Preference to cooperatives.** In carrying out the provisions of this chapter and in
38 particular with a program that extends credit or technical assistance, the commissioner

1 shall give preference to and act in a manner that advances the development of an
2 organization organized as a cooperative or seeking to convert to a cooperative under Title
3 13, chapter 85.

4 **Sec. 13. 7 MRSA §401-B, sub-§7** is enacted to read:

5 **7. Preference to cooperative associations.** In carrying out the provisions of this
6 chapter and in particular with a program that extends credit or technical assistance, the
7 commissioner shall give preference to and act in a manner that advances the development
8 of an organization organized as a cooperative or seeking to convert to a cooperative under
9 Title 13, chapter 85.

10 **Sec. 14. 10 MRSA §386, sub-§3, ¶B**, as enacted by PL 1995, c. 699, §3, is
11 amended to read:

12 B. A need for financial assistance from the fund to realize its projected growth and
13 achievement of public benefits or to convert to employee ownership; and

14 **Sec. 15. 10 MRSA §386, last ¶**, as enacted by PL 1995, c. 699, §3, is amended to
15 read:

16 The disbursement may not be used to make distributions to or for the benefit of an
17 owner of the business borrowing from the fund or a related entity. A qualifying small
18 business that is employee-owned or is seeking to convert to employee ownership has
19 priority for financial assistance under the program.

20 **Sec. 16. 10 MRSA §962, 2nd ¶**, as enacted by PL 1987, c. 534, Pt. B, §§5 and
21 23, is amended to read:

22 In order to fulfill these purposes and to make the best use of the State's limited
23 resources, the Finance Authority of Maine shall consider the state economic development
24 strategy and the policies and activities of the Department of Economic and Community
25 Development in implementing its powers, duties and responsibilities. In carrying out the
26 provisions of this chapter and in particular with a program that extends credit or technical
27 assistance, the Finance Authority of Maine shall give preference to and act in a manner
28 that advances the development of an organization that is employee-owned, is organized
29 as a cooperative under Title 13, chapter 85 or is seeking to convert to employee
30 ownership or a cooperative.

31 **Sec. 17. 10 MRSA §984, sub-§1**, as amended by PL 1985, c. 344, §29, is further
32 amended to read:

33 **1. Implementation of programs.** ~~The authority shall be responsible for the~~
34 ~~implementation of~~ implement the Natural Resources Financing and Marketing Programs.
35 In implementing programs under this subchapter, the authority shall give preference to
36 and act in a manner that advances the development of an organization that is employee-
37 owned, is organized as a cooperative under Title 13, chapter 85 or is seeking to convert to
38 employee ownership or a cooperative.

39 **Sec. 18. 10 MRSA §1021-A** is enacted to read:

1 **§1021-A. Preference to cooperative associations**

2 In carrying out the provisions of this subchapter, the authority shall give preference to
3 an organization that is employee-owned or organized as a cooperative under Title 13,
4 chapter 85 or seeking to convert to employee ownership or a cooperative.

5 **Sec. 19. 10 MRSA §1026-M, sub-§12** is enacted to read:

6 **12. Employee-owned businesses.** Notwithstanding subsection 7, a business that is
7 employee-owned or is seeking financing as part of a conversion to employee ownership
8 and that meets the employee and sales requirements of subsection 7, paragraph A and the
9 other criteria set out in subsection 7 is eligible for financial assistance under the program.

10 **Sec. 20. 10 MRSA c. 110, sub-c. 13** is enacted to read:

11 **SUBCHAPTER 13**

12 **COOPERATIVE DEVELOPMENT GRANTS PROGRAM**

13 **§1100-AA. Cooperative Development Grants Program**

14 **1. Program.** The Cooperative Development Grants Program, referred to in this
15 section as "the program," is created under the jurisdiction of the authority.

16 **2. Cooperative Development Grants Fund.** The Cooperative Development Grants
17 Fund, referred to in this section as "the fund," is created as a nonlapsing, interest-earning,
18 revolving fund. The fund is managed by the authority but held separate from other funds
19 of the authority and used by the authority to carry out this subchapter. Money in the fund
20 consists of the following:

- 21 A. All money appropriated or allocated for inclusion in the program;
- 22 B. Subject to any pledge, contract or other obligation, all interest, dividends or other
23 pecuniary gains from investment of money in the fund;
- 24 C. Subject to any pledge, contract or other obligation, any money that the authority
25 receives in repayment of advances from the fund; and
- 26 D. Any money available to the authority and directed by the authority to be paid into
27 the fund.

28 The authority shall seek federal grants to fund the program, in coordination with the
29 Employee Ownership Program Administrator, pursuant to Title 5, section 13040, the
30 Department of Labor, the University of Maine System and any other applicable parties.

31 **3. Application of funds.** The authority shall apply funds from the fund to provide
32 matching grants of up to \$5,000 per business to cover the cost of a technical feasibility
33 study that can help employers or employees determine the appropriateness of employee
34 ownership for the business's particular circumstances. The authority may require
35 conversion of a grant to a loan in the event of a conversion of a business to employee
36 ownership. The authority shall adopt rules to determine eligibility, which may address

1 issues such as financial condition and employee and employer interest. Rules adopted
2 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
3 subchapter 2-A. The authority shall administer the program in coordination with the
4 Employee Ownership Program Administrator selected pursuant to Title 5, section 13040,
5 subsection 2 and may contract administration of the program to the Employee Ownership
6 Program Administrator as the authority determines appropriate.

7 **Sec. 21. 36 MRSA §5122, sub-§2, ¶OO** is enacted to read:

8 OO. To the extent included in federal adjusted gross income and to the extent
9 otherwise subject to Maine income tax, for a period of up to 10 years after the taxable
10 year, an amount equal to any gain recognized on the disposition by the taxpayer of an
11 ownership interest in a business of which the taxpayer was the principal owner, to the
12 extent that the taxpayer transferred the business to an employee stock ownership plan
13 or an eligible worker-owner cooperative as defined in 26 United States Code, Section
14 1042(c)(2), and to the extent and in the amount that the owner provides equity
15 financing for the transfer or debt financing with maturity of at least 5 years for the
16 transfer, except that senior debt up to 80% of the consideration paid for the transfer is
17 not eligible for exclusion. Recognition occurs at the year that return of capital for the
18 junior financing is complete or 10 years after the taxable year, whichever occurs
19 earlier.

20 **Sec. 22. Coordination of state agencies in seeking federal funding for**
21 **development of cooperatives.** The Department of Agriculture, Conservation and
22 Forestry, the Department of Economic and Community Development, the Department of
23 Labor, the Finance Authority of Maine and the University of Maine System shall identify
24 and make best efforts to pursue federal sources of funding for development of
25 cooperatives and shall cooperate with the Employee Ownership Program Administrator
26 selected pursuant to the Maine Revised Statutes, Title 5, section 13040, subsection 2 in
27 pursuit of federal funding for development of cooperatives.

28 **Sec. 23. Application.** That section of this Act that enacts the Maine Revised
29 Statutes, Title 36, section 5122, subsection 2, paragraph OO applies to income tax years
30 beginning on or after January 1, 2016.

31 SUMMARY

32 This bill supports employee-owned businesses and cooperatives in the following
33 ways.

34 1. It requires the Treasurer of State to place 1% of deposited state funds in
35 institutions devoted to meeting the borrowing needs of cooperatives.

36 2. It creates the Employee Ownership Program and Employee Ownership Program
37 Administrator under the Department of Economic and Community Development, Maine
38 Small Business and Entrepreneurship Commission to promote employee ownership of
39 businesses.

1 3. It requires the Commissioner of Economic and Community Development to give
2 preference in Department of Economic and Community Development programs to
3 cooperatives or businesses seeking to convert to cooperatives.

4 4. It requires the Commissioner of Agriculture, Conservation and Forestry to give
5 preference in Department of Agriculture, Conservation and Forestry marketing and
6 advertising programs to cooperatives or businesses seeking to convert to cooperatives.

7 5. It requires that employee-owned businesses or businesses seeking to become
8 employee-owned be given priority in the Small Enterprise Growth Program.

9 6. It requires the Finance Authority of Maine to give preference in authority
10 programs to organizations that are employee-owned or cooperatives or organizations
11 seeking to become employee-owned or cooperatives.

12 7. It creates the Cooperative Development Grants Program.

13 8. It subtracts from the Maine income tax the amount of gain recognized by a
14 business owner in transferring the business to an employee stock ownership plan or
15 eligible worker-owner cooperative.

16 9. It requires the Department of Agriculture, Conservation and Forestry, the
17 Department of Economic and Community Development, the Department of Labor, the
18 Finance Authority of Maine and the University of Maine System to identify and make
19 best efforts to pursue federal sources of funding for development of cooperatives and to
20 cooperate with the Employee Ownership Program Administrator in pursuit of federal
21 funding for development of cooperatives.