

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create and Sustain Jobs through Development of Cooperatives

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

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

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

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

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

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

The Treasurer of State may deposit an amount not to exceed \$4,000,000 in each calendar year with responsible financial institutions authorized to do business in the State at a rate of return not more than 2% per year below the rate of return otherwise obtainable had the funds been invested with such financial institutions for a similar term, as determined by the treasurer, for periods not to exceed one year, ~~provided that~~ as long as each such financial institution covenants with the treasurer as a condition of the deposit to loan an amount at least equal to the amount so deposited with the financial institution by the treasurer under this paragraph to commercial enterprises approved by the treasurer pursuant to this paragraph. All the loans must be at interest rates that are below the interest rates the loans would have borne under existing market conditions and loan standards of the financial institution but for the deposit by the treasurer under this paragraph, and the interest rates must fully reflect the savings to the financial institution due to the reduced interest rate paid on the deposit. Notwithstanding any provisions of this section to the contrary, the treasurer is not obligated to seek competitive bids for investments or deposits pursuant to this paragraph. The Finance Authority of Maine shall provide assistance to the treasurer in implementing this paragraph. For purposes of this paragraph, eligible commercial enterprises are for-profit businesses with 20 or fewer employees or annual sales of less than \$2,500,000, whose sales

of services or products are primarily out of state or that are manufacturers, that are primarily owned and operated by Maine residents or by corporations that are primarily owned and operated by Maine residents, when the treasurer determines that not less than one job will be created or retained per \$20,000 of deposited funds. The maximum loan to any borrower for which a deposit may be applied under this paragraph is \$200,000, and businesses are eligible to receive subsidies pursuant to this paragraph for a maximum of an aggregate of 24 months. In adopting rules to implement this paragraph, the treasurer shall consider criteria targeting loans under the program to geographic areas of financial need, shall prioritize access to capital for cooperatives organized under Title 13, chapter 85 and may establish limits on deposits to any one financial institution, further limits on deposits supporting loans to any one borrower, and further restrictions on eligibility.

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

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

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

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

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

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

§ 13033.Membership

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

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

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

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

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

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

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

§ 13036. Contract with administrative unit

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

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

- A. The percentage of state funds to be allocated to the small business development center subcenters;
- B. The percentage of state funds to be allocated for administrative purposes;
- C. The percentage of state funds to be allocated for statewide services;
- D. The percentage of state funds to be allocated for small business research;
- D-1. The percentage of state funds to be allocated for the Employee Ownership Program. The percentage must be high enough to provide the Employee Ownership Program Administrator a minimum of \$100,000 for the year, adjusted annually based on the cost-of-living adjustment in Title 36, section 5402, subsection 1-B;
- E. Evaluation and reporting requirements for the subcenters, the Employee Ownership Program and the administrative unit; and
- F. Any other provisions necessary for the implementation of this chapter.

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

- A. The types of services to be provided by the Small Business Development Center Program and the Employee Ownership Program;
- B. The means by which services will be delivered;
- C. Special services to be provided and the reasons these services are needed;
- D. The location and identity of the organizations providing the regional services; and
- E. Any other information considered by the commission to be necessary and pertinent to the mission of the programSmall Business Development Center Program and the Employee Ownership Program.

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

- A. The types, numbers and profiles of businesses served statewide by the Employee Ownership Program Administrator and by each subcenter;
- B. The types and numbers of training programs offered through statewide services by the Employee Ownership Program Administrator and by each subcenter;
- C. An evaluation of the programs and services including the criteria by which the evaluations are made; and
- D. Any other requirements the commission considers necessary to effectively evaluate the Small Business Development Center Program and the Employee Ownership Program.

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

§ 13037.Funding

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

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

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

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

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

§ 13040. Employee Ownership Program

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

- A. Developing educational programs relating to employee ownership;
- B. Providing information about employee ownership and technical assistance to retiring business owners, employees of businesses threatened with cessation of operations and entrepreneurs interested in creating businesses with broadly shared ownership;
- C. Linking businesses in the State interested in implementing employee ownership to available financial, technical and legal resources;
- D. Assisting businesses and employee groups in performing preliminary feasibility studies to determine the initial feasibility of employee ownership and whether the business and employee group should undertake a full feasibility study;
- E. Assisting businesses interested in implementing some form of employee ownership to obtain financing;
- F. Promoting best practices for operating employee-owned businesses;
- G. Recommending legislative, executive or other action to promote employee ownership; and
- H. Coordinating efforts by public, private and nonprofit institutions to secure federal grants and other funding to promote employee ownership, including funding for grants to business owners and employees to perform feasibility studies regarding a business's potential transition to employee ownership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1021-A. Preference to cooperative associations

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

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

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

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

SUBCHAPTER 13

COOPERATIVE DEVELOPMENT GRANTS PROGRAM

§ 1100-AA. Cooperative Development Grants Program

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

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

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

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

3. Application of funds. The authority shall apply funds from the fund to provide matching grants of up to \$5,000 per business to cover the cost of a technical feasibility study that can help employers or employees determine the appropriateness of employee ownership for the business's particular circumstances. The authority may require conversion of a grant to a loan in the event of a conversion of a business to employee ownership. The authority shall adopt rules to determine eligibility, which may address issues such as financial condition and employee and employer interest. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The authority shall administer the program in coordination with the Employee Ownership Program Administrator selected pursuant to Title 5, section 13040, subsection 2 and may contract administration of the program to the Employee Ownership Program Administrator as the authority determines appropriate.

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

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

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

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

SUMMARY

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

1. It requires the Treasurer of State to place 1% of deposited state funds in institutions devoted to meeting the borrowing needs of cooperatives.
2. It creates the Employee Ownership Program and Employee Ownership Program Administrator under the Department of Economic and Community Development, Maine Small Business and Entrepreneurship Commission to promote employee ownership of businesses.
3. It requires the Commissioner of Economic and Community Development to give preference in Department of Economic and Community Development programs to cooperatives or businesses seeking to convert to cooperatives.
4. It requires the Commissioner of Agriculture, Conservation and Forestry to give preference in Department of Agriculture, Conservation and Forestry marketing and advertising programs to cooperatives or businesses seeking to convert to cooperatives.
5. It requires that employee-owned businesses or businesses seeking to become employee-owned be given priority in the Small Enterprise Growth Program.

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

7. It creates the Cooperative Development Grants Program.

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

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