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An Act To Invest in Maine Companies

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

Sec. 1. 5 MRSA §12004-F, sub-§19 is enacted to read:

19.

Invest in Maine Capital Authority

Expenses Only

5 MRSA §13201

Sec. 2. 5 MRSA c. 393 is enacted to read:

CHAPTER 393

BUSINESS DEVELOPMENT

§ 13201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Authority. "Authority" means the Invest in Maine Capital Authority established pursuant to section 13202.

2. Fund. "Fund" means the Invest in Maine Capital Investment Fund established pursuant to section 13203.

3. Major business development project. "Major business development project" means a project that involves the construction, development, rehabilitation, modernization or acquisition of a building, structure, system, machinery, equipment or facility that has a projected cost of at least \$50,000,000 or is projected to result in the creation or retention of at least 250 full-time employment positions that pay at least 125% of the annual average weekly wage under Title 26, section 1043, subsection 1-A.

§ 13202. Invest in Maine Capital Authority

1. Invest in Maine Capital Authority; established. The Invest in Maine Capital Authority, as established by section 12004-F, subsection 19, is a body both corporate and politic and a public instrumentality of the State established for the purpose of providing financial support for major business development projects.

2. Membership. The authority consists of 7 members as follows:

- A. Two members of the Finance Authority of Maine, appointed by the chair of the Finance Authority of Maine;
- B. Two members of the Maine Rural Development Authority Board of Trustees, appointed by the chair of the Maine Rural Development Authority Board of Trustees;
- C. Two members with financial or business backgrounds, appointed by the Governor; and
- D. The Commissioner of Economic and Community Development or the commissioner's designee, who serves as ex officio.

3. Terms of office. The term of office for a member of the authority appointed under subsection 2 is 4 years, and an appointed member may be removed at any time by the member's appointing authority. A member may serve multiple terms. A member appointed under subsection 2, paragraph A or B who ceases to be a member of the Finance Authority of Maine or the Maine Rural Development Authority Board of Trustees during that member's term as a member of the authority remains a member of the authority for the duration of the term for which that member was appointed. A member continues to hold office until a successor is appointed and qualified, but the term of the successor is not altered from the original termination date of the holdover member's term.

4. Administration; meetings. The membership of the authority shall elect one member to serve as chair, one member as vice-chair who shall also serve as secretary, one member as treasurer and such other officers as the membership may from time to time consider necessary. All the powers of the authority may be exercised by the membership in a lawful meeting and a majority of the members is necessary for a quorum. Regular meetings of the membership may be established by bylaw, and notice of the regular meeting does not need to be given to the members.

5. Bonding authorization. The authority may provide by resolution for the issuance of bonds for the purpose of funding the fund, or any successor to the fund, or for the purpose of funding major business development projects. The bonds of the authority do not constitute a debt of the State or of any agency or political subdivision of the State but are payable solely from the revenue of the authority, and neither the faith nor credit nor taxing power of the State or any political subdivision of the State is pledged to payment of the bonds. Notwithstanding any other provision of law, any bonds issued pursuant to this chapter are fully negotiable. If any member of the authority whose signature appears on the bond or coupons ceases to be a member of the authority before the delivery of those bonds, that signature is valid and sufficient for all purposes as if that member of the authority had remained a member of the authority until delivery.

6. Limitation of liability. A member the authority or an employee of the authority may not be subject to any personal liability for having acted within the course and scope of that person's membership or employment to carry out any power or duty under this chapter. The authority shall indemnify any member of the authority and any employee of the authority against expenses actually and necessarily incurred by that person in connection with the defense of any action or proceeding in which that person is made a party by reason of past or present association with the authority.

7. Conflict of interest. A member or employee of the authority may not acquire or hold a direct or an indirect personal financial interest in an authority activity or a contract or proposed contract in connection with an authority activity. When an acquisition of interest in connection with an authority activity is involuntary by a member or if a member of the authority or employee of the authority presently owns or controls, or owned or controlled within the preceding 2 years, a direct or an indirect interest known to be included or planned to be included in an authority activity, that member or employee shall disclose this fact immediately upon discovery in writing to the authority, and the disclosure must be entered in a lawful meeting of the authority. A member of the authority or employee of the authority with an interest under this subsection may not participate in an action by the authority affecting that activity.

8. Employees. The authority may hire employees as the authority considers necessary to fulfill its purposes.

9. Rules. The authority may adopt rules as necessary to implement this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 13203. Invest in Maine Capital Fund

1. Invest in Maine Capital Fund. The Invest in Maine Capital Fund is established as a nonlapsing revolving loan and equity fund administered by the authority to support the capital needs of major business development projects. The fund consists of sums that are appropriated by the Legislature or transferred to the fund from time to time by the State Controller, interest earned from the investment of fund balances, state bond issues, state employees' pension funds, institutional endowments, seed capital investment tax credits, income from subsection 13204, subsection 4 and other funds from any public or private source received for use for any of the purposes for which the fund has been established. Disbursements from the fund must be made pursuant to section 13204.

§ 13204. Loan and equity support for major business development projects

1. Loan and equity support. The authority shall recommend to the Finance Authority of Maine disbursements from the fund or shall provide other financial support to a qualifying applicant to support a major business development project pursuant to this section. Any financial support provided by this section must be memorialized in a written contract as determined by the authority.

2. Criteria to qualify for financial support. The authority shall provide financial support to an applicant to support a major business development project based upon the following criteria:

A. The creditworthiness of the applicant, considering factors such as the applicant's historical financial performance, management ability, plan to market the applicant's product or service and whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;

B. The sufficiency of collateral pledged by the applicant;

C. The sufficiency of projected revenues from the project or other sources to repay the financial obligation and meet the requirements of subsection 3 for the term of the obligation;

D. The level that financial support from the authority enhances the employment and wage benefits projected to be created by the major business development project;

E. The duration of the employment and wage benefits projected to be created by the major business development project; and

F. The demonstration that the financial support from the authority is necessary due to the reduced cost and increased flexibility of the financial support and not due to the applicant's inability to obtain financing from another source.

3. Financial support. The authority may provide the following financial support to a qualified applicant under subsection 2:

A. A direct loan of up to \$50,000,000 from the fund, which must be matched by an amount equal to at least 25% that is obtained from another source; or

B. Up to \$100,000,000 in bond funding for a single major business development project and up to \$200,000,000 or a qualified applicant for multiple major business development projects.

The authority may require other terms or conditions of financial support under this subsection as the authority determines necessary and reasonable.

4. Requirements of recipient. In addition to repayment of the financial support received under subsection 3 pursuant to the terms set by the authority, within 5 years after the completion of the major business development project the recipient shall pay to the fund an amount equal to 10% of the amount of the financial support received under subsection 3 pursuant to terms determined by the authority.

Sec. 3. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 5, section 13202, subsection 3, of the initial appointments to the Invest in Maine Capital Authority, one member appointed pursuant to section 13202, subsection 2, paragraph A must be appointed to serve a term of 2 years, one member appointed pursuant to section 13202, subsection 2, paragraph B must be appointed to a term of 3 years and one member appointed pursuant to section 13202, subsection 2, paragraph C must be appointed to a term of 3 years. All other members are appointed to 4-year terms.

SUMMARY

This bill creates the Invest in Maine Capital Authority with bonding authority to provide loans or bond funding to major business development projects, which are defined as development projects that have a projected cost of at least \$50,000,000 or are projected to result in the creation or retention of at least 250 full-time employment positions that pay at least 125% of the state annual average weekly wage.