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An Act To Create and Sustain Jobs through Development of Cooperatives and Employee-owned Businesses

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

Sec. 1. 5 MRSA §13058, sub-§10-B is enacted to read:

10-B. Prioritization of lending or grants. Notwithstanding any provision of law to the contrary, the commissioner shall prioritize lending or grants from any fund or program maintained by the department for the purpose of encouraging business development in this State as follows:

- A. To employee-owned businesses;
- B. To businesses that are becoming employee-owned through the purchase of stock or business assets; and
- C. To start-up businesses that will be owned by substantially all of the employees.

Sec. 2. 5 MRSA §13062, 2nd ¶, as enacted by PL 1987, c. 534, Pt. A, §§17 and 19, is amended to read:

The Office of Business Development ~~shall be~~ responsible for the implementation of a program consisting of ~~34~~ primary elements.

Sec. 3. 5 MRSA §13062, sub-§4 is enacted to read:

4. Encouragement of employee ownership of businesses. The office shall:

- A. Develop educational programs, including convening an annual conference on employee ownership issues;
- B. Provide information about employee ownership and technical assistance to retiring business owners, employees of plants threatened with closure and entrepreneurs interested in creating businesses with broadly shared ownership;
- C. Link Maine businesses interested in implementing employee ownership to available financial, technical and legal resources;
- D. Assist firms and employee groups in performing preliminary feasibility studies to determine the initial feasibility of employee ownership and whether the business and employee group should perform a full feasibility study;
- E. Help businesses interested in implementing some form of employee ownership obtain financing;
- F. Promote best practices for operating employee-owned businesses; and

G. Recommend legislative or executive action to promote employee ownership.

Sec. 4. 36 MRSA §191, sub-§2, ¶HHH is enacted to read:

HHH. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters of information necessary to make the report required under section 199-F, subsection 2.

Sec. 5. 36 MRSA §199-F is enacted to read:

§ 199-F. Transfers to cooperatives and employee-owned businesses

1. Information. The bureau shall require taxpayers claiming the exclusion for gain on sale of a business under section 5122, subsection 2, paragraph QQ and section 5200-A, subsection 2, paragraph FF and the exclusion for interest on a loan financing acquisition of a business under section 5122, subsection 2, paragraph RR, section 5200-A, subsection 2, paragraph GG and section 5206 to provide information that identifies the standard industrial classification of the business that is being transferred, the total value of the transaction to which the tax expenditure relates, the average number of full-time equivalent employees employed by the business being transferred during the calendar year preceding the transfer and the number of units of housing owned or controlled by the business in question.

2. Report. By December 1st of each year beginning in 2022, the bureau shall submit a report to the Office of Program Evaluation and Government Accountability established in Title 3, section 991 and the committee identifying the United States Department of Commerce, Bureau of the Census, North American Industry Classification System code identification and location of each transaction for which a deduction was claimed under section 5122, subsection 2, paragraph RR, section 5200-A, subsection 2, paragraph GG and section 5206 during the previous calendar year, the aggregate number of full-time equivalent employees employed by the businesses for which a deduction was claimed and the aggregate number of units of housing owned or controlled by the businesses for which a deduction was claimed. Notwithstanding any other provision of law to the contrary, the reports provided under this section are public records as defined in Title 1, section 402, subsection 3.

Sec. 6. 36 MRSA §5122, sub-§2, ¶¶QQ and RR are enacted to read:

QQ. For taxable years beginning on or after January 1, 2020, to the extent included in federal adjusted gross income and to the extent otherwise subject to Maine income tax, an amount equal to any gain recognized on the sale by the taxpayer of a majority ownership interest in a qualified business if the business was transferred to:

- (1) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);
- (2) An S corporation organized in the State owned by an employee stock ownership plan;
- (3) An eligible worker-owned cooperative as defined in the Code, Section 1042(c)(2);

(4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1; or

(5) If the business provides housing, a consumer cooperative or a cooperative affordable housing corporation organized under Title 13, chapter 85, subchapter 1-A.

The deduction allowed pursuant to this paragraph may not exceed \$750,000.

For purposes of this paragraph, "qualified business" means a business whose securities are not publicly traded on any stock exchange and that is organized in the State or whose principal place of business is within the State including a corporation, an S corporation, a limited liability company, a limited liability partnership, a sole proprietorship and all entities that are not publicly traded and are related by common majority ownership or control.

RR. For taxable years beginning on or after January 1, 2020, to the extent included in federal adjusted gross income and to the extent otherwise subject to Maine income tax, an amount equal to the interest received during the taxable year by the taxpayer with respect to a qualified business acquisition loan. For purposes of this paragraph:

(1) "Qualified business" means a business whose securities are not publicly traded on any stock exchange and that is organized in the State or whose principal place of business is within the State including a corporation, an S corporation, a limited liability company, a limited liability partnership, a sole proprietorship and all entities that are not publicly traded and are related by common majority ownership or control; and

(2) "Qualified business acquisition loan," including a loan or part of a series of loans, means:

(a) A loan of which at least 90% of the proceeds are applied to the acquisition of majority equity ownership of a qualified business not owned by an entity under subdivisions (i) to (v) and that is given to:

(i) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);

(ii) An S corporation organized in the State owned by an employee stock ownership plan;

(iii) An eligible worker-owned cooperative as defined in the Code, Section 1042(c)(2);

(iv) A consumer cooperative organized under Title 13, chapter 85, subchapter 1; or

(v) If the business provides housing, a consumer cooperative or a cooperative affordable housing corporation organized under Title 13, chapter 85, subchapter 1-A;

(b) A loan to a corporation that sponsors an employee stock ownership plan if all proceeds of the loan are loaned to the employee stock ownership plan to acquire for the plan all outstanding employer securities in a qualified business and the plan's repayment terms are substantially similar to the corporation's repayment terms; or

(c) A loan used to refinance a qualified business acquisition loan.

Sec. 7. 36 MRS **A §5200-A, sub-§2, ¶¶FF and GG** are enacted to read:

FF. For taxable years beginning on or after January 1, 2020, to the extent included in federal taxable income and to the extent otherwise subject to Maine income tax, an amount equal to any gain recognized on the sale by the taxpayer of a majority ownership interest in a qualified business if the business was transferred to:

(1) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);

(2) An S corporation organized in the State owned by an employee stock ownership plan;

(3) An eligible worker-owned cooperative as defined in the Code, Section 1042(c)(2);

(4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1; or

(5) If the business provides housing, a consumer cooperative or a cooperative affordable housing corporation organized under Title 13, chapter 85, subchapter 1-A.

The deduction allowed pursuant to this paragraph may not exceed \$750,000.

For purposes of this paragraph, "qualified business" means a business whose securities are not publicly traded on any stock exchange and that is organized in the State or whose principal place of business is within the State including a corporation, an S corporation, a limited liability company, a limited liability partnership, a sole proprietorship and all entities that are not publicly traded and are related by common majority ownership or control.

GG. For taxable years beginning on or after January 1, 2020, to the extent included in federal taxable income and to the extent otherwise subject to Maine income tax, an amount equal to the interest received during the taxable year by the taxpayer with respect to a qualified business acquisition loan. For purposes of this paragraph:

(1) "Qualified business" means a business whose securities are not publicly traded on any stock exchange and that is organized in the State or whose principal place of business is within the State including a corporation, an S corporation, a limited liability company, a limited liability partnership, a sole proprietorship and all entities that are not publicly traded and are related by common majority ownership or control; and

(2) "Qualified business acquisition loan," including a loan or part of a series of loans, means:

(a) A loan of which at least 90% of the proceeds are applied to the acquisition of majority equity ownership of a qualified business not owned by an entity under subdivisions (i) to (v) and that is given to:

(i) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);

(ii) An S corporation organized in the State owned by an employee stock ownership plan;

(iii) An eligible worker-owned cooperative as defined in the Code, Section 1042(c)(2);

(iv) A consumer cooperative organized under Title 13, chapter 85, subchapter 1; or

(v) If the business provides housing, a consumer cooperative or a cooperative affordable housing corporation organized under Title 13, chapter 85, subchapter 1-A;

(b) A loan to a corporation that sponsors an employee stock ownership plan if all proceeds of the loan are loaned to the employee stock ownership plan to acquire for the plan all outstanding employer securities in a qualified business and the plan's repayment terms are substantially similar to the corporation's repayment terms; or

(c) A loan used to refinance a qualified business acquisition loan.

Sec. 8. 36 MRSA §5206, as repealed and replaced by PL 2005, c. 608, §1 and affected by §5, is amended by adding at the end a new paragraph to read:

For taxable years beginning on or after January 1, 2020, the taxpayer may for the purposes of the tax under this section subtract from Maine net income an amount equal to the interest received during the taxable year by the taxpayer with respect to a qualified business acquisition loan.

Sec. 9. 36 MRSA §5206-D, sub-§13, as amended by PL 1999, c. 414, §43 and affected by §57, is further amended to read:

13. Maine net income. "Maine net income" means, for any taxable year, a financial institution's net income or loss per books required to be reported pursuant to the laws of the United States on Internal Revenue Service Form 1120, 1120S, 1065 or any other Internal Revenue Service form used to report net income or loss per books or, in the case of an entity with a single owner that may be disregarded as an entity separate from its owner pursuant to Internal Revenue Service regulations, the financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1065, adjusted in accordance with section 5206, and apportioned to this State under section 5206-E. In the case of a financial institution that is a qualified subchapter S subsidiary as defined by the Code, Section 1361, the financial institution's "Maine net income" means a financial institution's net income or loss per books determined as if the entity were required to file Internal Revenue Service Form 1120S and apportioned to this State under section 5206-E.

To the extent that a financial institution derives income from a unitary business carried on by 2 or more members of an affiliated group, "Maine net income" is determined by apportioning, in accordance with section 5206-E, that part of the net income of the entire group that derives from the unitary business.

Sec. 10. 36 MRSA §5206-D, sub-§§16-A and 16-B are enacted to read:

16-A. Qualified business. "Qualified business" means a business whose securities are not publicly traded on any stock exchange and that is organized in the State or whose principal place of business is within the State including a corporation, an S corporation, a limited liability company, a limited liability partnership, a sole proprietorship and all entities that are not publicly traded and are related by common majority ownership or control.

16-B. Qualified business acquisition loan. "Qualified business acquisition loan," including a loan or part of a series of loans, means:

A. A loan of which at least 90% of the proceeds are applied to the acquisition of majority equity ownership of a qualified business not owned by an entity under subparagraphs (1) to (5) and that is given to:

(1) An employee stock ownership plan as defined in the Code, Section 4975(e)(7);

(2) An S corporation organized in the State owned by an employee stock ownership plan;

(3) An eligible worker-owned cooperative as defined in the Code, Section 1042(c)(2);

(4) A consumer cooperative organized under Title 13, chapter 85, subchapter 1; or

(5) If the business provides housing, a consumer cooperative or a cooperative affordable housing corporation organized under Title 13, chapter 85, subchapter 1-A;

B. A loan to a corporation that sponsors an employee stock ownership plan if all proceeds of the loan are loaned to the employee stock ownership plan to acquire for the plan all outstanding employer securities in a qualified business and the plan's repayment terms are substantially similar to the corporation's repayment terms; or

C. A loan used to refinance a qualified business acquisition loan.

Sec. 11. Evaluation; specific public policy objective; performance measures. The deductions provided under this Act are subject to ongoing legislative review in accordance with the Maine Revised Statutes, Title 3, chapter 37. The Office of Program Evaluation and Government Accountability shall report on the first evaluation of the deductions provided under this Act by February 28, 2027. In developing evaluation parameters to perform the evaluation, the Office of Program Evaluation and Government Accountability, the Government Oversight Committee and the joint standing committee of the Legislature having jurisdiction over taxation matters shall consider:

1. Policy objective. That the specific public policy objective of the deductions provided under this Act is to retain jobs in qualifying businesses that would otherwise cease operations by reducing the tax impact to business owners from qualifying sales of ownership interests in order to encourage conversion of businesses to employee and cooperative ownership and thereby allow the businesses to continue operations and retain jobs; and

2. Performance measures. Performance measures, including, but not limited to:

A. The number of qualifying business ownership conversions to employee or cooperative ownership;

B. The number of full-time equivalent jobs retained; and

C. Measures of fiscal impact and overall economic impact to the State.

Sec. 12. Investment study by Maine Public Employees Retirement System. The Maine Public Employees Retirement System, referred to in this section as "the system," shall conduct a study to determine how funds held by the system, from whatever source, may be invested responsibly in employee-owned businesses in this State. The system shall provide the results of its study and any recommendations to the Joint Standing Committee on Innovation, Development, Economic Advancement and Business no later than January 15, 2020. The committee may report out a bill to the Second Regular Session of the 129th Legislature based on the study and recommendations of the system.

SUMMARY

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

1. It excludes from Maine income tax the amount of gain, up to a maximum of \$750,000 recognized by a business owner in transferring the business to an employee stock ownership plan, eligible worker-owned cooperative, consumer cooperative or affordable housing cooperative.

2. It excludes from Maine income tax interest from loans that finance transfers of ownership from a business to an employee stock ownership plan, eligible worker-owned cooperative, consumer cooperative or affordable housing cooperative.

3. It requires the Department of Economic and Community Development, Office of Business Development to encourage and assist employee-owned businesses by requiring the office to: develop educational programs, including convening an annual conference on employee ownership issues; provide information about employee ownership and technical assistance to retiring business owners, employees of plants threatened with closure and entrepreneurs interested in creating businesses with broadly shared ownership; link Maine businesses interested in implementing employee ownership to available financial, technical and legal resources; and help businesses interested in implementing some form of employee ownership to obtain financing, as well as undertake other duties.

4. It requires the Commissioner of Economic and Community Development to give priority to employee-owned businesses, either established or in the process of becoming employee-owned, when providing loans or grants from funds or programs maintained by the department.

5. It requires the Maine Public Employees Retirement System to conduct a study to determine how funds held by the system may be invested responsibly in employee-owned businesses in this State and to report its findings to the Joint Standing Committee on Innovation, Development, Economic Advancement and Business, which is authorized to report out a bill to the Second Regular Session of the 129th Legislature based on the study and recommendations of the system.