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Legislative Document

No. 1132

S.P. 401

In Senate, March 31, 2015

An Act To Invest in Maine Companies

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.
Cosponsored by Representative DION of Portland and
Senators: ALFOND of Cumberland, BREEN of Cumberland, CUSHING of Penobscot,
DIAMOND of Cumberland, HASKELL of Cumberland, HILL of York, MASON of
Androscoggin, PATRICK of Oxford, VOLK of Cumberland, Representatives: BRYANT of
Windham, DAUGHTRY of Brunswick, GOODE of Bangor, HERBIG of Belfast, MARTIN of
Eagle Lake, McCABE of Skowhegan, SHORT of Pittsfield.

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

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

3 **19.**

4 Invest in Maine Capital Expenses Only 5 MRSA §13201
5 Authority

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

7 **CHAPTER 393**

8 **BUSINESS DEVELOPMENT**

9 **§13201. Definitions**

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

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

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

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

22 **§13202. Invest in Maine Capital Authority**

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

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

28 A. Two members of the Finance Authority of Maine, appointed by the chair of the
29 Finance Authority of Maine;

30 B. Two members of the Maine Rural Development Authority Board of Trustees,
31 appointed by the chair of the Maine Rural Development Authority Board of Trustees;

32 C. Two members with financial or business backgrounds, appointed by the
33 Governor; and

1 D. The Commissioner of Economic and Community Development or the
2 commissioner's designee, who serves as ex officio.

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

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

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

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

38 **7. Conflict of interest.** A member or employee of the authority may not acquire or
39 hold a direct or an indirect personal financial interest in an authority activity or a contract
40 or proposed contract in connection with an authority activity. When an acquisition of
41 interest in connection with an authority activity is involuntary by a member or if a
42 member of the authority or employee of the authority presently owns or controls, or
43 owned or controlled within the preceding 2 years, a direct or an indirect interest known to
44 be included or planned to be included in an authority activity, that member or employee

1 shall disclose this fact immediately upon discovery in writing to the authority, and the
2 disclosure must be entered in a lawful meeting of the authority. A member of the
3 authority or employee of the authority with an interest under this subsection may not
4 participate in an action by the authority affecting that activity.

5 **8. Employees.** The authority may hire employees as the authority considers
6 necessary to fulfill it purposes.

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

10 **§13203. Invest in Maine Capital Fund**

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

20 **§13204. Loan and equity support for major business development projects**

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

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

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

34 B. The sufficiency of collateral pledged by the applicant;

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

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

