

Office of Policy and Legal Analysis

Date: May 17, 2021
To: Joint Standing Committee on Innovation, Development, Economic Advancement and Business
From: Rachel Olson, Legislative Analyst
Re: LD 1650, An Act To Create the Small Business Capital Savings Account Program (Stewart)

Bill Summary

This bill establishes the Small Business Capital Savings Account Program in the Department of Economic and Community Development to certify up to 30 businesses, within the farming, fishing, or forestry industries, eligible to claim a tax deduction for contributions made to qualifying small business capital savings accounts to be used for capital expenditures. The small business capital saving accounts are also established. The bill creates the tax deduction and establishes that withdrawals from the savings accounts are taxable income if not used for capital expenditures. Contributions to the Capital Savings Account Program end December 31, 2024. DECD will report to the Taxation Committee on this program by December 15, 2023, with the ability for the Tax committee to report out legislation related to that report.

Testimony:

Proponents: Senator Stewart, sponsor; Dana Doran, Professional Logging Contractors of Maine;

Opponents: None

Neither for nor against: None

Potential Issues or Technical Problems:

- The definition of “financial institution” refers to Title 36, section 5206-D, subsection 8. This is the definition of financial institution for the purpose of the franchise tax. According to MRS, this may be somewhat exclusive.¹ The committee could consider looking at the definitions available under Title 9-B: Financial Institutions, Chapter 13: Definitions.

8. Financial institution. "Financial institution" means:

A. A financial institution authorized to do business in this State as defined in [Title 9-B, section 131, subsection 17-A](#), including, without limitation, a trust company; [PL 1997, c. 404, §5 (NEW); PL 1997, c. 404, §10 (AFF).]

B. A bank, savings bank, industrial bank, savings and loan association or any other entity, excluding a credit union authorized to do business in this State as defined in [Title 9-B, section 131, subsection 12-A](#), that accepts deposits that are insured by an agency of the Federal Government; [PL 1999, c. 414, §42 (AMD).]

C. A bank holding company, as defined in the federal Bank Holding Company Act of 1956, 12 United States Code, Section 1841, or a savings and loan holding company, as defined in 12 United States Code, Section 1467a(a)(1)(D); or [PL 1999, c. 708, §42 (AMD).]

¹ MRS Memo, p. 2

D. A corporation or other entity more than 50% of the voting interest of which is owned, directly or indirectly, by any one or more of the organizations defined in this subsection or by a credit union authorized to do business in this State as defined in [Title 9-B, section 131, subsection 12-A](#). [PL 1997, c. 746, §16 (AMD); PL 1997, c. 746, §24 (AFF).]

[PL 1999, c. 708, §42 (AMD).]

From <http://legislature.maine.gov/legis/statutes/36/title36sec5206-D.html>>

- As currently written, the bill does not allow a deduction for contributions made to a small business savings account unless the contribution has been used for capital expenditures (Sec. 3).²
- The Small Business Capital Savings Account Program is repealed December 31, 2024. As written, no new *contribution* can be made – but it does not address withdrawals from the account. As written, the bill does not required withdrawals made after December 31, 2024 that are not used for capital expenditures to be added back to Maine taxable income (Sec. 2 and 4).³
- It may be necessary to enact an exception to Maine’s confidentiality provision in 36 M.R.S. § 191 to allow MRS to share taxpayer information with DECD for purposes of administering the program.⁴
- Sec. 1, paragraph 7 (Rules; other requirements) – It reads that DECD and DAFS “shall” adopt rules, rather than “may” adopt rules.

Information Requests:

- The Committee asked if the Maine Revenue Services could weigh in on the proposed bill. [A memo provided by MRS](#) is included below. I have pulled certain sections of relevance into this bill analysis.
- The sponsor indicated that a similar bill was brought forward in the 129th Legislature – [LD 1156 An Act To Create the Savings Account Program for Small Business](#). The bill varies from LD 1650 in many ways. Of note, the original bill established a savings account program for small business and did not limit the businesses to farming, fishing, or forestry industries. It also was not of limited duration. Additionally, LD 1156 was established within FAME, not DECD.

LD 1156 was introduced in the first regular session of the 129th Legislature. [Although initially suggested to be referred to the IDEA committee, it was then referred on the floor to Taxation](#). After 5 work sessions, the bill was tabled and then carried over to the second regular session. During the second regular session of the 129th, the bill had 2 work sessions and then [was voted ONTP on February 11, 2020 and reported out ONTP on February 13, 2020](#).
- It was asked during the public hearing if sales tax would be paid on these purchases. Currently, there is a sales tax exemption for commercial agriculture, aquaculture, fishing and wood harvesting. The [relevant tax bulletin is here](#).⁵

² MRS Memo, p. 2

³ MRS Memo, p. 2

⁴ MRS Memo, p. 3

⁵ MRS Email

Fiscal Impact: Not yet determined.

From MRS Memo: The preliminary fiscal impact estimate is not available at this time. The preliminary administrative cost of the bill is estimated to be \$66,000 during FY 2021-22 for computer programming related to modifying income tax returns. Because the program is limited to 30 businesses, other administrative costs are nominal and can be absorbed within current budgetary allotments.⁶

Additional Information & Other Considerations, including proposed Amendments:

The following memo from MRS was provided at the request of the committee:

**STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
MAINE REVENUE SERVICES
OFFICE OF TAX POLICY**

Date: May 18, 2021

To: Senator Chip Curry, Chair
Representative Tiffany Roberts, Chair
Members of the Joint Committee on Innovation, Development, Economic
Advancement and Business

From: Michael J. Allen, Associate Commissioner, Office of Tax Policy

Subject: LD 1650- An Act To Create the Small Business Capital Savings Account Program

Maine Revenue Services offers the following information and concerns related to LD 1650 - An Act To Create the Small Business Capital Savings Account Program sponsored by Sen. Stewart of Aroostook.

This bill is similar to LD 1156 proposed during the 129th Legislature.

Please note that Administration opposes the bill because the proposed tax program is overly generous and complicated for a program that will have no more than 30 businesses that qualify.

The analysis that follows is limited to the bill as it affects Maine Revenue Services (MRS).

The preliminary fiscal impact estimate is not available at this time. The preliminary administrative cost of the bill is estimated to be \$66,000 during FY 2021-22 for computer programming related to modifying income tax returns. Because the program is limited to 30 businesses, other administrative costs are nominal and can be absorbed within current budgetary allotments.

The bill establishes the Small Business Capital Savings Account Program administered by the Department of Economic and Community Development (DECD) for businesses operating in commercial agricultural production, commercial fishing, and commercial wood harvesting. DECD may certify up to 10 eligible small

⁶ MRS Memo, p. 1

businesses in each industry category that make contributions to a small business savings account, which is used for the purpose of making capital expenditures. The balance of a small business savings account may not exceed \$250,000.

For tax years beginning on or after January 1, 2021 and before January 1, 2025, amounts contributed by a certified business to a small business savings account may be claimed as a deduction from Maine taxable income in the tax year during which the contribution was made, up to \$250,000. Withdrawals from the savings account not used for capital expenditures must be added to Maine taxable income.

DECD must provide annual notification to MRS of businesses certified during the calendar year, eligible and ineligible withdrawals, and any other information necessary to determine the taxpayer's eligibility for the income tax deduction. DECD, in consultation with MRS, must adopt routine technical rules to implement the Program. The program is repealed December 31, 2024.

There are no existing tax benefits for establishing business savings accounts.

MRS notes the following:

- The bill provides multiple benefits to certified businesses for certain capital assets purchased with funds deposited to a capital savings account. As proposed, a certified business could receive a Maine income tax deduction for capital expenditures and a Maine tax deduction through depreciation, bonus recapture or a section 179 deduction related to those assets. In addition, the assets may qualify for the Maine Capital Investment Credit.
- The proposed deduction may also overlap with other Maine tax benefits that are based on business expenditures, such as the Research and Development Credit, Pine Tree Development Zone Credit, the Visual Media Production Credit, Credit for Rehabilitation of Historic Properties, and the Credit for Wellness Programs.
- The definition of financial institution is tied to the definition for purposes of the Maine franchise tax, which is somewhat exclusive.

The following are technical concerns identified by MRS:

- The bill applies to C corporations, S corporations and sole proprietorships, but not to other business types, such as partnerships.
- Clarification of important timing issues: As currently written, the bill does not allow a deduction for contributions made to a small business savings account unless the contribution has been *used* for capital expenditures.
- Clarify intent for multiple-tax benefit treatment (see above).
- The definition of an eligible small business should be amended to:
 - Define the term “full-time equivalent” in relation to employees of the business; and
 - Clarify that the business must be *taxed as* a C corporation, S corporation or sole proprietor *for federal income tax purposes*.
- The bill does not require withdrawals made after December 31, 2024 from a small business savings account that are not used for capital expenditures to be added back to Maine taxable income. The application and repeal dates in Sections 2 and 4 should be deleted.
- For clarity, the repeal dates in Sections 3 and 5 should be deleted and the application dates should be changed to apply to tax years beginning on or after January 1, 2021 and before January 1, 2025. The application date in Section 1 (5 M.R.S. § 13100-A(9)) should be similarly changed and the repeal date (5 M.R.S. § 13100-A(10)) should be replaced with the following: No contributions may be made to a small business capital savings account after December 31, 2024.

