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Legislative Document

No. 1520

S.P. 469

In Senate, April 9, 2019

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

Reference to the Committee on Innovation, Development, Economic Advancement and Business suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LIBBY of Androscoggin.
Cosponsored by Representative DAUGHTRY of Brunswick and
Senators: DOW of Lincoln, HERBIG of Waldo, MOORE of Washington, POULIOT of
Kennebec, Representatives: BICKFORD of Auburn, HICKMAN of Winthrop, PERRY of
Calais, TUELL of East Machias.

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

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

3 **10-B. Prioritization of lending or grants.** Notwithstanding any provision of law to
4 the contrary, the commissioner shall prioritize lending or grants from any fund or
5 program maintained by the department for the purpose of encouraging business
6 development in this State as follows:

7 A. To employee-owned businesses;

8 B. To businesses that are becoming employee-owned through the purchase of stock
9 or business assets; and

10 C. To start-up businesses that will be owned by substantially all of the employees.

11 **Sec. 2. 5 MRSA §13062, 2nd ¶,** as enacted by PL 1987, c. 534, Pt. A, §§17 and
12 19, is amended to read:

13 The Office of Business Development ~~shall be~~ is responsible for the implementation
14 of a program consisting of ~~3~~ 4 primary elements.

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

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

17 A. Develop educational programs, including convening an annual conference on
18 employee ownership issues;

19 B. Provide information about employee ownership and technical assistance to
20 retiring business owners, employees of plants threatened with closure and
21 entrepreneurs interested in creating businesses with broadly shared ownership;

22 C. Link Maine businesses interested in implementing employee ownership to
23 available financial, technical and legal resources;

24 D. Assist firms and employee groups in performing preliminary feasibility studies to
25 determine the initial feasibility of employee ownership and whether the business and
26 employee group should perform a full feasibility study;

27 E. Help businesses interested in implementing some form of employee ownership
28 obtain financing;

29 F. Promote best practices for operating employee-owned businesses; and

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

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

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

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

1 **§199-F. Transfers to cooperatives and employee-owned businesses**

2 **1. Information.** The bureau shall require taxpayers claiming the exclusion for gain
3 on sale of a business under section 5122, subsection 2, paragraph QQ and section
4 5200-A, subsection 2, paragraph FF and the exclusion for interest on a loan financing
5 acquisition of a business under section 5122, subsection 2, paragraph RR, section
6 5200-A, subsection 2, paragraph GG and section 5206 to provide information that
7 identifies the standard industrial classification of the business that is being transferred, the
8 total value of the transaction to which the tax expenditure relates, the average number of
9 full-time equivalent employees employed by the business being transferred during the
10 calendar year preceding the transfer and the number of units of housing owned or
11 controlled by the business in question.

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

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

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

29 (1) An employee stock ownership plan as defined in the Code, Section
30 4975(e)(7);

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

33 (3) An eligible worker-owned cooperative as defined in the Code, Section
34 1042(c)(2);

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

37 (5) If the business provides housing, a consumer cooperative or a cooperative
38 affordable housing corporation organized under Title 13, chapter 85, subchapter
39 1-A.

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

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

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

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

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

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

22 (i) An employee stock ownership plan as defined in the Code, Section
23 4975(e)(7);

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

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

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

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

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

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

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

40 FF. For taxable years beginning on or after January 1, 2020, to the extent included in
41 federal taxable income and to the extent otherwise subject to Maine income tax, an

1 amount equal to any gain recognized on the sale by the taxpayer of a majority
2 ownership interest in a qualified business if the business was transferred to:

3 (1) An employee stock ownership plan as defined in the Code, Section
4 4975(e)(7);

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

7 (3) An eligible worker-owned cooperative as defined in the Code, Section
8 1042(c)(2);

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

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

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

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

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

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

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

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

36 (i) An employee stock ownership plan as defined in the Code, Section
37 4975(e)(7);

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

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

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

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

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

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

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

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

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

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

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

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

38 **16-A. Qualified business.** "Qualified business" means a business whose securities
39 are not publicly traded on any stock exchange and that is organized in the State or whose
40 principal place of business is within the State including a corporation, an S corporation, a
41 limited liability company, a limited liability partnership, a sole proprietorship and all

1 entities that are not publicly traded and are related by common majority ownership or
2 control.

3 **16-B. Qualified business acquisition loan.** "Qualified business acquisition loan,"
4 including a loan or part of a series of loans, means:

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

8 (1) An employee stock ownership plan as defined in the Code, Section
9 4975(e)(7);

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

12 (3) An eligible worker-owned cooperative as defined in the Code, Section
13 1042(c)(2);

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

16 (5) If the business provides housing, a consumer cooperative or a cooperative
17 affordable housing corporation organized under Title 13, chapter 85, subchapter
18 1-A;

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

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

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

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

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

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

- 1 B. The number of full-time equivalent jobs retained; and
- 2 C. Measures of fiscal impact and overall economic impact to the State.

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

12 **SUMMARY**

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

15 1. It excludes from Maine income tax the amount of gain, up to a maximum of
16 \$750,000 recognized by a business owner in transferring the business to an employee
17 stock ownership plan, eligible worker-owned cooperative, consumer cooperative or
18 affordable housing cooperative.

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

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

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

36 5. It requires the Maine Public Employees Retirement System to conduct a study to
37 determine how funds held by the system may be invested responsibly in employee-owned
38 businesses in this State and to report its findings to the Joint Standing Committee on
39 Innovation, Development, Economic Advancement and Business, which is authorized to

1 report out a bill to the Second Regular Session of the 129th Legislature based on the
2 study and recommendations of the system.