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Date: 4/13/18 Report A L.D. 1461

(Filing No. S-470)

TAXATION

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STATE OF MAINE

SENATE

128TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 507, L.D. 1461, Bill, "An Act To Encourage the Construction of Affordable Housing"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'**Sec. 1. 36 MRSA §2536** is enacted to read:

§2536. Credit for low-income housing development

A taxpayer is allowed a credit against the tax otherwise due under this chapter as determined under section 5219-SS.

Sec. 2. 36 MRSA §5219-SS is enacted to read:

§5219-SS. Low-income housing development tax credit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocation certificate" means a statement issued by the authority to a qualified development under subsection 2, paragraph B certifying that a development qualifies for the credit and specifying the amount of the credit allowed.

B. "Authority" means the Maine State Housing Authority established under Title 30-A, chapter 201.

C. "Compliance period" means the period of 15 years beginning with the first taxable year of the credit period.

D. "Credit period" means the 6-year period beginning with the date a qualified development is placed in service. If a qualified development is composed of more than one building, the qualified development is placed in service on the date the last building of the qualified development is placed in service.

E. "Federal tax credit" means the federal low-income housing tax credit provided by Section 42 of the Code.

F. "Qualified allocation plan" means the qualified allocation plan adopted by the authority pursuant to Section 42(m) of the Code.

G. "Qualified basis" means the qualified basis of the development as determined pursuant to Section 42 of the Code.

H. "Qualified development" means a qualified low-income housing project, as defined in Section 42 of the Code, that is located in the State and determined by the authority to be eligible for a federal tax credit.

I. "Qualified taxpayer" means a person that owns a direct or indirect interest in a qualified development and is subject to the taxes imposed under this Part or chapter 357.

J. "Rural municipality" means a municipality in the State with a population of fewer than 30,000 individuals.

2. Allocation of credit. The authority may allocate a state tax credit in the form of an allocation certificate to a qualified development, which must be done by issuing an allocation certificate to the owner of the qualified development. A copy of each allocation certificate must be provided to the State Tax Assessor. The authority may determine the time at which the allocation certificate is issued. Unless otherwise provided in this section or the context clearly requires otherwise, the authority shall determine eligibility for a state tax credit in accordance with the standards and requirements set forth in Section 42 of the Code. The state tax credit must be in an amount determined by the authority, subject to the following:

A. The state tax credit must be necessary for the financial feasibility of the qualified development;

B. The aggregate amount over the credit period of a state tax credit allocation to a qualified development may not exceed the amount of the aggregate federal tax credit allocated to that qualified development. Notwithstanding that the federal tax credit is claimed over 10 years, the state tax credit is claimed over the 6-year credit period, except that, notwithstanding paragraph G, any amount of a credit that exceeds the tax due for a tax year may be carried forward as a tax credit against subsequent tax liability for up to 11 tax years. The federal tax credit and the state tax credit are earned over the compliance period. An annual state tax credit may exceed the annual federal tax credit for any year of the credit period;

C. The state tax credit must be made pursuant to the authority's qualified allocation plan;

D. The state tax credit combined with the federal tax credit must be in the least amount necessary to ensure the financial feasibility of a qualified development;

E. Thirty-five percent of the qualified developments awarded an allocation certificate pursuant to this subsection must be located in rural municipalities;

F. Credit allocations may be made only in calendar years 2019 and 2020. In each calendar year, the aggregate amount of state tax credit allocations awarded by the authority to qualified developments may not exceed $4,000,000 for each year of the credit period, except that in 2020 credits may also be allocated in the amount of allowable credits not allocated in 2019; and

G. The state tax credit must be claimed in equal amounts of 1/6 of the total state tax credit for each tax year that starts and ends within the credit period. For any tax year that does not fall completely within the credit period, the state tax credit must be prorated based on the number of months of the credit period contained in the tax year.

3. Tax credit. For tax years beginning on or after January 1, 2021, a state tax credit is allowed as provided in this section against taxes imposed under this Part or under chapter 357. If a credit is available for a qualified development in a tax year prior to tax year 2021, the amount available prior to tax year 2021 may be claimed in 2021 and that year must be considered the first year of the credit period for that qualified development. A credit may be taken against the taxes imposed under this Part or chapter 357 for each tax year of the credit period. The credit is not refundable.

4. Pass-through entities. If the owner of a qualified development receiving a state tax credit is a partnership, limited liability company, S corporation or similar pass-through entity, that owner may allocate the credit among the owner's partners, shareholders, members or other owners in any manner agreed to by those partners, shareholders, members or other owners. If there are multiple tiers of pass-through entities, the credit may be allocated through any number of pass-through entities in any manner agreed to by the partners, shareholders, members or other owners of those pass-through entities. An allocation of a credit through multiple pass-through entities under this subsection may not be considered a transfer. The owner of a qualified development shall:

A. Certify to the State Tax Assessor the amount of credit allocated to each partner, shareholder, member or other owner and provide a copy of the certification to the partner, shareholder, member or other owner; or

B. Notify the State Tax Assessor that the owner of the qualified development has assigned the duty of certification to one of the owner's partners, shareholders, members or other owners. That partner, shareholder, member or other owner shall provide the certification to the State Tax Assessor and provide a copy of the certification to all other partners, shareholders, members or owners.

Each partner, shareholder, member or other owner may claim as a state tax credit against its tax under this Part or chapter 357 the certified amount allocated under this subsection to that partner, shareholder, member or other owner, subject to any restrictions in this section.

5. Limitations. The authority may not allocate a state tax credit pursuant to this section unless:

A. The qualified development is subject to a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development during the compliance period; and

B. Beginning with the first tax year of the compliance period or a longer period agreed to by the authority and the owner of the qualified development, the owner of the qualified development ensures the compliance of the qualified development with the accessibility and adaptability requirements of the federal tax credit and Title VIII of the federal Civil Rights Act of 1968 as amended by the federal Fair Housing Amendments Act of 1988.

6. Recapture of credit. State tax credits allocated under this section must be recaptured as provided in this subsection.

A. If a qualified taxpayer entitled to a state tax credit under this section is subject to recapture of the federal tax credit or would be subject to recapture of the federal tax credit if the taxpayer had been allocated a federal tax credit, the tax liability of the qualified taxpayer under this Part or under chapter 357 must be increased by the state tax credit recapture amount determined under paragraph B for the tax year of the recapture.

B. The state tax credit recapture amount is an amount equal to the aggregate decrease in the state tax credit allowed to the qualified taxpayer under this section for all prior tax years calculated in the same manner as under section 42(j) of the Code.

C. If the recapture of any state tax credit under this subsection is required in any tax year, the owner of the qualified development must report to the authority for that tax year the proportion of the state tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, including in the case of any pass-through entity the identity of each partner, member, shareholder or other owner, and the amount of the state tax credit previously allocated to each such taxpayer.

D. If the recapture of any state tax credit under this subsection is required in any tax year, the owner of the qualified development shall notify each taxpayer subject to the recapture of the proportion of state tax credit required to be recaptured.

7. Filing requirements. A qualified taxpayer to which a state tax credit has been allocated under this section shall file with the qualified taxpayer's income tax return under chapter 823 a copy of the allocation certificate issued by the authority for the qualified development allowing the state tax credit. A person who has received an allocation of a state tax credit as a partner, shareholder, member or other owner of a pass-through entity shall file with the person's income tax return under chapter 823 a copy of the allocation certificate issued by the authority for the qualified development and a copy of the certification provided to the partner, shareholder, member or other owner pursuant to subsection 4. A qualified taxpayer subject to recapture under subsection 6 shall file with the qualified taxpayer's income tax return under chapter 823 a copy of the notification of recapture required pursuant to subsection 6, paragraph D.

8. Rules. The authority and the State Tax Assessor, in consultation with each other, each may adopt rules necessary to carry out the provisions of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

9. Compliance monitoring. The authority shall provide the State Tax Assessor with a copy of any notice of noncompliance the authority provides to the United States Internal Revenue Service regarding a qualified development that receives a state tax credit under this section.

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10. Report to the Legislature. By December 31st of each year in which an allocation has been made under this section, the authority shall provide a written report to the Legislature for that year. A report under this subsection must be made available to the public. A report under this subsection must:

A. Specify the number of qualified developments that have been allocated a state tax credit during that year and the total number of units supported by each development;

B. Describe for each qualified development under paragraph A the geographic location of the development, the household type and any specific demographic information available about residents intended to be served by the development, the income levels intended to be served by the development and the rents authorized for the development; and

C. Provide housing market and demographic information that demonstrates how the qualified developments under paragraph A are addressing the need for affordable housing within the communities the developments are intended to serve and information about any remaining disparities in the affordability of housing within those communities.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Revenue Services, Bureau of 0002

Initiative: Provides funding for one Staff Attorney position, one Management Analyst II position and related costs to review and process a low-income housing development tax credit.

GENERAL FUND	**2017-18**	**2018-19**
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	$0	$113,676
All Other	$0	$10,858
GENERAL FUND TOTAL	$0	$124,534

SUMMARY

This amendment is the majority report and replaces the bill. The amendment moves the allocation of the bill's low-income housing development tax credit to the chapter of the Maine Revised Statutes, Title 36 that contains income tax credits. The amendment makes changes to the bill's provisions in order to clarify and improve the administration of the credit. This amendment adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

Approved: 04/12/18 mac

128th MAINE LEGISLATURE

LD 1461 **LR 1619(02)**

An Act To Encourage the Construction of Affordable Housing

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-470)
Committee: Taxation
Fiscal Note Required: Yes

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	$0	$124,534	$196,585	$582,200
Appropriations/Allocations				
General Fund	$0	$124,534	$196,585	$202,200
Revenue				
General Fund	$0	$0	$0	($380,000)
Other Special Revenue Funds	$0	$0	$0	($20,000)

Fiscal Detail and Notes

This bill creates a low income housing development tax credit and would reduce General Fund revenue by $380,000 and Local Government Fund revenue by $20,000 in fiscal year 2020-21. When fully phased in the reduction in revenue is estimated at $24 million annually. The bill includes a General Fund appropriation of $124,534 in fiscal year 2018-19 to the Department of Administrative and Financial Services for one Staff Attorney position, one Management Analyst II position and related costs to review and process the low income housing development tax credit.

Additional costs to the Maine State Housing Authority to implement the requirements of this legislation can be absorbed within existing budgeted resources.