

MAINE STATE LEGISLATURE

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 642, L.D. 1824, Bill, "An Act to Encourage Equity Equivalent Loans or Investments in Community Development Financial Institutions"

Amend the bill by striking out the title and substituting the following:

'An Act to Encourage Equity Equivalent Loans or Investments in Nonprofit Community Economic Development Organizations'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 5 MRSA §13070-L, sub-§6 is enacted to read:

6. Equity equivalent loan credit. The department shall report annually to the commission the aggregated information received by the department regarding the equity equivalent loan credit described in Title 10, section 1100-Y. The commission shall review the information provided and may make recommendations to the Governor and the Legislature regarding the program.

Sec. 2. 10 MRSA c. 110, sub-c. XI is enacted to read:

SUBCHAPTER XI

EQUITY EQUIVALENT LOAN CREDIT

§1100-Y. Equity equivalent loan credit

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

A. "Borrower" means a local, regional or statewide nonprofit corporation located in the State that is certified by the United States Department of the Treasury as a community development financial institution or that independently or with assistance of an advisory board or committee or by contract with appropriate agencies, organizations or individuals, as determined by the authority:

(1) Is capable of providing financial assistance to businesses in order to create and protect jobs;

(2) Is able to prudently and effectively administer a direct loan fund;

(3) Is able to coordinate with other business assistance, employment training and social assistance programs;

(4) Has a strategy for the creation and retention of jobs;

(5) Has an effective small business marketing and technical assistance plan; and

(6) Has enough expert assistance available to it to underwrite, document and service and collect loans and assist its clients.

B. "Certificate" means a tax credit certificate issued by the authority under this subchapter.

C. "Equity equivalent loan" means a loan made by an investor to a borrower on terms that are substantially equivalent to an equity investment as set forth in rules established by the authority, or with the following characteristics:

(1) The loan is carried as an investment on the investor's balance sheet in accordance with generally accepted accounting principles as defined in Title 5, section 1660-D, subsection 13;

(2) It is a general obligation of the borrower that is not secured by any borrower assets;

(3) It is fully subordinated to the right of repayment of all other creditors of the borrower;

(4) It does not give the investor the right to accelerate payment unless the borrower ceases its normal operations;

(5) It carries an interest rate that is not tied to any income received by the borrower and is at least 400 basis points below the prime rate of interest as reported by the Wall Street Journal at the time the loan is made with interest-only payments during the term of the loan; and

(6) It has an original term of at least 10 years or has a rolling term and an indeterminate maturity and provides that no demand for payment may be made without 180 days' notice.

D. "Investment" means an equity equivalent loan made to a borrower.

E. "Investor" means a financial institution as defined in Title 36, section 5206-D, subsection 8 or an insurer as defined in Title 24-A, section 4.

2. Administration. The authority shall administer eligibility for credits under this section and shall adopt rules for the allocation, administration and revocation of certificates. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The authority shall certify all eligible investments and allocate certificates to eligible investors.

3. Application; certificate. An investor must file an application with the authority for a certificate before the end of the calendar year and prior to making an investment. The authority may charge an application fee of up to \$250. The certificate must authorize a total amount of tax credit over the duration of the certificate equal to 60% of the face amount of the investment. The certificate must authorize the credit to be claimed in 10 equal installments over a period of 10 years. An investor must demonstrate that the investment would not have been made in the absence of a credit and must sign an agreement with the authority that the investor will not require the investment to be repaid for 10 years, unless the borrower ceases normal operations. A certificate expires 10 years after issuance.

2 4. Limitation. The following limitations apply to
3 certificates issued under this section.

4 A. The authority may issue new certificates each fiscal
5 year from fiscal year 2000-01 to fiscal year 2004-05
6 allocating up to \$100,000 annually in new credits. A
7 certificate may not be allocated and in effect if it would
8 result in new credits eligible to be claimed by investors
9 under this section in the aggregate in excess of \$100,000 in
10 any one calendar year.

12 B. The amount of a certificate allocated under this section
13 for any one investor in any one tax year may not exceed 25%
14 of the total tax credits available for that tax year.

16 C. Investments in any one borrower may not be eligible for
17 more than 25% of the total tax credits available annually.

18 D. Certificates must be issued on a first-come first-served
19 basis, except that rules established by the authority may
20 establish reserved credits to ensure certificates are
21 distributed on a statewide basis.

24 E. Certificates may not be issued after fiscal year 2004-05.

26 F. A certificate may not be issued for an investment in a
27 borrower that has failed to provide the information required
28 in subsection 6, paragraphs A and B.

30 5. Revocation. The authority shall revoke a certificate
31 and notify the State Tax Assessor if it finds:

32 A. The investment no longer meets the requirements of this
33 section; or

36 B. The investor has failed to report to the authority as
37 required by subsection 6.

38 6. Reports. The following reports are required under this
39 section.

42 A. Each investor and borrower shall report annually to the
43 authority any information requested by the authority to
44 verify continuing eligibility for a certificate.

46 B. Each borrower shall report annually to the Department of
47 Economic and Community Development any information requested
48 by that department to verify that the proceeds of the
49 investments made under this section are directed toward
50 public benefits, including, but not limited to, job creation

and retention, quality of the jobs created and retained, community development and improvement and development and expansion of small business entrepreneurship. Information relating to jobs created and retained must include the number of jobs categorized by the major groupings of the Occupational Employment Statistics Program of the Department of Labor, the average wages of jobs created and retained and the benefits associated with those jobs. The Department of Economic and Community Development shall notify the authority if a borrower fails to report as required by this paragraph.

C. The Department of Economic and Community Development shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters by January 15, 2004 regarding the operation of this section. The report must include data concerning the numbers of investors and borrowers participating in the credit program, the value of certificates issued and the public benefit of the credit program including the information reported to the department under paragraph B.

Sec. 3. 36 MRSA §2527 is enacted to read:

§2527. Equity equivalent loan credit

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

A. "Authority" means the Finance Authority of Maine.

B. "Certificate" means a tax credit certificate issued by the authority under Title 10, chapter 110, subchapter XI.

2. Credit. A taxpayer is allowed a credit against the tax imposed by this chapter otherwise due in an amount equal to the annual credit amount authorized by a certificate issued to the taxpayer.

3. Credit nonrefundable. The credit may not reduce the tax otherwise due under this chapter below zero for any taxable year.

4. Carry-over. Credits not claimed because of the limitations in Title 10, section 1100-Y, subsection 4 may be claimed in the following taxable year in which the credit may be claimed; however, the limitations of Title 10, section 1100-Y, subsection 4 also apply to carry-over years.

2 5. Carry-back. Credits may not be carried back to prior
3 years.

4 6. Recapture. If the authority revokes a certificate, an
5 additional tax is added to the tax imposed on the taxpayer under
6 this chapter for the taxable year in which the revocation
7 occurs. The additional tax is equal to the excess of the amount
8 of the certificate revoked over the amount of certificate not yet
9 claimed.

10 Sec. 4. 36 MRSA §5216-D is enacted to read:

11 §5216-D. Equity equivalent loan credit

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

15 A. "Authority" means the Finance Authority of Maine.

16 B. "Certificate" means a tax credit certificate issued by
17 the authority under Title 10, chapter 110, subchapter XI.

18 2. Credit. A taxpayer is allowed a credit against the tax
19 imposed by this Part otherwise due in an amount equal to the
20 annual credit amount authorized by a certificate issued to the
21 taxpayer.

22 3. Credit nonrefundable. The credit may not reduce the tax
23 otherwise due under this chapter below zero for any taxable year.

24 4. Carry-over. Credits not claimed because of the
25 limitations in Title 10, section 1100-Y, subsection 4 may be
26 claimed in the following taxable year in which the credit may be
27 claimed; however, the limitations of Title 10, section 1100-Y,
28 subsection 4 also apply to carry-over years.

29 5. Carry-back. Credits may not be carried back to prior
30 years.

31 6. Recapture. If the authority revokes a certificate, an
32 additional tax is added to the tax imposed on the taxpayer under
33 this Part for the taxable year in which the revocation occurs.
34 The additional tax is equal to the excess of the amount of the
35 certificate revoked over the amount of certificate not yet
36 claimed.'

37 Further amend the bill by inserting at the end before the
38 summary the following:

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FISCAL NOTE

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2000-01

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REVENUES

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General Fund

(\$14,235)

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Other Funds

(765)

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The tax credit for certain investments in eligible nonprofit economic development organizations will decrease income, insurance premium and bank franchise tax collections by \$15,000 in fiscal year 2000-01, \$100,000 in fiscal year 2001-02 and \$200,000 in fiscal year 2002-03. The reduction of these tax collections will decrease the amounts transferred to the Local Government Fund for state-municipal revenue sharing in those years by \$765, \$5,100 and \$10,200, respectively. The resulting net reductions of General Fund revenue will be \$14,235 in fiscal year 2000-01, \$94,900 in fiscal year 2001-02 and \$189,800 in fiscal year 2002-03.

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The Bureau of Revenue Services and the Department of Economic and Community Development will incur some minor additional costs to implement this tax credit. These costs can be absorbed within the agencies' existing budgeted resources.

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The Finance Authority of Maine will incur additional costs to administer eligibility for credits under the Equity Equivalent Loan Credit program. Fees charged for applications will help offset these increased expenses. The additional costs associated with adopting rules can be absorbed by the authority utilizing existing budgeted resources.'

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SUMMARY

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This amendment replaces the original bill. The amendment proposes to establish a credit against the income tax, the insurance premium tax and the bank franchise tax for investments in eligible nonprofit economic development organizations. The credit would be equal to 6% of the face value of the investment annually for 10 years. The total aggregate additional new credits that may be authorized each year is limited to \$100,000. No new credits may be authorized after fiscal year 2004-05. Investors and borrowers are required to report annually regarding activities. Authorization for a credit may be revoked and previous credits recaptured if the investor fails to meet eligibility requirements. The amendment also adds a fiscal note to the bill.