

MAINE STATE LEGISLATURE

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M
R. S.

L.D. 430

DATE: 4-24-01

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TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 340, L.D. 430, Bill, "An Act to Encourage Equity Equivalent Loans or Investments in Nonprofit Community Economic Development Organizations"

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 and Affordable Housing 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

COMMITTEE AMENDMENT

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§1100-Y. Equity equivalent loan credit

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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 or is capable of providing financial assistance to create affordable housing;

(2) Is able to prudently and effectively administer a direct loan fund or create affordable housing;

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

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

(5) Has an effective small business marketing and technical assistance plan or is capable of providing technical assistance to create affordable housing; 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;

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- 2 (2) It is a general obligation of the borrower that is
 not secured by any borrower assets;
- 4
- 6 (3) It is fully subordinated to the right of repayment
 of all other creditors of the borrower;
- 8
- 10 (4) It does not give the investor the right to
 accelerate payment unless the borrower ceases its
 normal operations;
- 12
- 14 (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
- 18
- 20 (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.

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

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

32 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.

38

40 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 taxable
 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

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2 ceases normal operations. A certificate expires 10 years after
3 issuance.

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

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7 A. The authority may issue new certificates each fiscal
8 year from fiscal year 2001-02 to fiscal year 2005-06
9 allocating up to \$100,000 annually in new credits. A
10 certificate may not be allocated and in effect if it would
11 result in new credits eligible to be claimed by investors
12 under this section in the aggregate in excess of \$100,000 in
13 any one fiscal year.

14
15 B. The amount of a certificate allocated under this section
16 for any one investor in any one fiscal year may not exceed
17 25% of the total tax credits available for that fiscal year.

18
19 C. Investments in any one borrower may not be eligible for
20 more than 25% of the total tax credits available in a fiscal
21 year.

22
23 D. Certificates must be issued on a first-come first-served
24 basis, except that rules established by the authority may
25 establish reserved credits to ensure certificates are
26 distributed on a statewide basis.

27
28 E. Certificates may not be issued after fiscal year 2005-06.

29
30 F. A certificate may not be issued for an investment in a
31 borrower that has failed to provide the information required
32 in subsection 6, paragraphs A and B.

33
34 5. Revocation. The authority shall revoke a certificate
35 and notify the State Tax Assessor if it finds that:

36
37 A. The investment no longer meets the requirements of this
38 section; or

39
40 B. The investor has failed to report to the authority as
41 required by subsection 6.

42
43 6. Reports. The following reports are required under this
44 section.

45
46 A. Each investor and borrower shall report annually to the
47 authority any information requested by the authority to
48 verify continuing eligibility for a certificate.

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2 B. Each borrower shall report annually to the Department of
3 Economic and Community Development any information requested
4 by that department to verify that the proceeds of the
5 investments made under this section are directed toward
6 public benefits, including, but not limited to, job creation
7 and retention, quality of the jobs created and retained,
8 community development and improvement and development and
9 expansion of small business entrepreneurship. Information
10 relating to jobs created and retained must include the
11 number of jobs categorized by the major groupings of the
12 occupational employment statistics program of the United
13 States Department of Labor, the average wages of jobs
14 created and retained and the benefits associated with those
15 jobs. The Department of Economic and Community Development
16 shall notify the authority if a borrower fails to report as
17 required by this paragraph.

18 C. Each borrower that creates affordable housing shall
19 report annually to the Maine State Housing Authority any
20 information requested by the Maine State Housing Authority
21 to verify that the proceeds of the investments made under
22 this section are directed toward public benefits, including
23 the housing created, the housing needs addressed, the number
24 of affordable housing units created and the duration of
25 their affordability. The Maine State Housing Authority
26 shall notify the authority if a borrower fails to report as
27 required by this paragraph.

28 D. The Department of Economic and Community Development
29 shall report to the joint standing committee of the
30 Legislature having jurisdiction over taxation matters by
31 January 15, 2005 regarding the operation of this section.
32 The report must include data concerning the numbers of
33 investors and borrowers participating in the credit program,
34 the value of certificates issued and the public benefit of
35 the credit program including the information reported to the
36 department under paragraph B.

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

38 **§2527. Equity equivalent loan credit**

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

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

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

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

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

10 4. Carry-over. Credits not claimed because of the
limitations in Title 10, section 1100-Y, subsection 4 may be
12 claimed in the following taxable year in which the credit may be
claimed; however, the limitation of subsection 3 also applies to
14 carry-over years.

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

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

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

28 §5216-D. Equity equivalent loan credit

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

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

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

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

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

46 4. Carry-over. Credits not claimed because of the
48 limitations in Title 10, section 1100-Y, subsection 4 may be
claimed in the following taxable year in which the credit may be

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claimed; however, the limitation of subsection 3 also applies to carry-over years.

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

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

Sec. 5. Application. This Act applies to tax years beginning on or after January 1, 2001.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2001-02

FINANCE AUTHORITY OF MAINE

Finance Authority of Maine

All Other \$15,000

Provides funds for the costs associated with drafting and adopting rules, establishing the administrative process and determining applicant eligibility for the equity equivalent loan program.'

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

FISCAL NOTE

2001-02 2002-03

APPROPRIATIONS/ALLOCATIONS

General Fund \$15,000

REVENUES

