

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 430

H.P. 340

House of Representatives, February 1, 2001

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

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Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative HALL of Bristol.  
Cosponsored by Representatives: BLISS of South Portland, COTE of Lewiston, JACOBS of  
Turner, MITCHELL of Vassalboro, MORRISON of Baileyville, PINEAU of Jay,  
SKOGLUND of St. George, TRAHAN of Waldoboro.

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

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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

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

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

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

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

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

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

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

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

29                   (6) It has an original term of at least 10 years or has  
30                   a rolling term and an indeterminate maturity and  
31                   provides that no demand for payment may be made without  
32                   180 days' notice.

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

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

38           2. Administration. The authority shall administer  
39           eligibility for credits under this section and shall adopt rules  
40           for the allocation, administration and revocation of  
41           credits.

2 certificates. Rules adopted under this section are routine  
3 technical rules as defined in Title 5, chapter 375, subchapter  
4 II-A. The authority shall certify all eligible investments and  
5 allocate certificates to eligible investors.

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

19 **4. Limitation.** The following limitations apply to  
20 certificates issued under this section.

21 A. The authority may issue new certificates each fiscal  
22 year from fiscal year 2001-02 to fiscal year 2005-06  
23 allocating up to \$100,000 annually in new credits. A  
24 certificate may not be allocated and in effect if it would  
25 result in new credits eligible to be claimed by investors  
26 under this section in the aggregate in excess of \$100,000 in  
27 any one calendar year.

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

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

33 D. Certificates must be issued on a first-come first-served  
34 basis, except that rules established by the authority may  
35 establish reserved credits to ensure certificates are  
36 distributed on a statewide basis.

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

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

41 **5. Revocation.** The authority shall revoke a certificate  
42 and notify the State Tax Assessor if it finds that:

2           A. The investment no longer meets the requirements of this  
3           section; or

4           B. The investor has failed to report to the authority as  
5           required by subsection 6.

6           6. Reports. The following reports are required under this  
7           section.

8           A. Each investor and borrower shall report annually to the  
9           authority any information requested by the authority to  
10           verify continuing eligibility for a certificate.

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

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

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

37           §2527. Equity equivalent loan credit

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

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

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

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

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

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

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

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

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28                 **Sec. 4. 36 MRS §5216-D** is enacted to read:

29                 §5216-D. Equity equivalent loan credit

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

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

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

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

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

2 4. Carry-over. Credits not claimed because of the  
limitations in Title 10, section 1100-Y, subsection 4 may be  
4 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.

6  
8 5. Carry-back. Credits may not be carried back to prior  
years.

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

## 18 SUMMARY

20 This bill establishes a credit against the income tax, the  
insurance premium tax and the bank franchise tax for investments  
22 in eligible nonprofit economic development organizations. The  
credit would be equal to 6% of the face value of the investment  
24 annually for 10 years. The total of the aggregate additional new  
credits that may be authorized each year is limited to  
26 \$100,000. No new credits may be authorized after fiscal year  
2005-06. Investors and borrowers are required to report annually  
28 regarding activities. Authorization for a credit may be revoked  
and previous credits recaptured if the investor fails to meet  
30 eligibility requirements.