

MAINE STATE LEGISLATURE

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L.D. 1530

Date: 2-22-10

(Filing No. S-381)

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
124TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 590, L.D. 1530, Bill, "An Act To Facilitate Recovery Zone Facility Bonds"

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

'An Act To Facilitate Recovery Zone Facility Bonds, Recovery Zone Economic Development Bonds and Qualified Energy Conservation Bonds'

Amend the bill in the emergency preamble by striking out all of the 3rd and 4th indented paragraphs (page 1, lines 5 to 10 in L.D.) and inserting the following:

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the issuance by or on behalf of counties of recovery zone facility bonds on or before December 31, 2010, the interest on which will be exempt from federal income tax pursuant to the United States Internal Revenue Code; and

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the issuance by or on behalf of counties of recovery zone economic development bonds before December 31, 2010, which bonds provide for federal subsidies in the form of a refundable tax credit to be paid to state or local government issuers of a portion of the total interest payable to bondholders; and

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the increase of the limit on issuance by or on behalf of counties of qualified energy conservation bonds, which bonds provide for federal subsidies in the form of a refundable tax credit to be paid to bondholders in lieu of a portion of the interest otherwise payable by state or local government issuers; and

Whereas, the purpose of the American Recovery and Reinvestment Act of 2009, including its provisions regarding recovery zone facility bonds, recovery zone economic development bonds and qualified energy conservation bonds, is to provide immediate benefit to the economies of the states; and

Whereas, the State's priority is to ensure full use of the aggregated volume cap allocations of recovery zone facility bonds, recovery zone economic development bonds

COMMITTEE AMENDMENT

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1 and qualified energy conservation bonds within the State before December 31, 2010, or
2 such later time as federal law may allow, and a mechanism must be established to enable
3 reallocation of the unused volume cap in time to enable its use in another area of the State
4 before December 31, 2010, or such later time as federal law may allow; and'

5 Amend the bill in section 1 in subsection 10 in the 2nd blocked paragraph in the first
6 line (page 2, line 11 in L.D.) by inserting after the following: "Eligible project" the
7 following: 'also'

8 Amend the bill in section 1 in subsection 10 in the 2nd blocked paragraph in the last
9 line (page 2, line 15 in L.D.) by inserting after the following: "amended." the following:
10 "Eligible project" also includes any project that qualifies for financing with a qualified
11 energy conservation bond.'

12 Amend the bill by striking out all of section 4 and inserting the following:

13 'Sec. 4. 10 MRSA §963-A, sub-§44-A is enacted to read:

14 44-A. Qualified energy conservation bond. "Qualified energy conservation bond"
15 has the same meaning as in 26 United States Code, Section 54D(a), as amended.

16 Sec. 5. 10 MRSA §963-A, sub-§44-B is enacted to read:

17 44-B. Recovery zone facility bond. "Recovery zone facility bond" has the same
18 meaning as in 26 United States Code, Section 1400U-3, as amended.'

19 Amend the bill in section 5 in subsection 49 in the 3rd line (page 2, line 32 in L.D.)
20 by inserting after the following: "bond" the following: 'or qualified energy conservation
21 bond'

22 Amend the bill by inserting after section 5 the following:

23 'Sec. 6. 10 MRSA §1043, sub-§2, ¶L, as amended by PL 2009, c. 372, Pt. D, §6,
24 is further amended to read:

25 L. In the case of transmission facilities projects, the applicant is creditworthy and
26 there is a strong likelihood that the revenue obligation securities will be repaid
27 through the revenues of the project and any other source of revenues and collateral
28 pledged to the repayment of those securities. In order to make this determination, the
29 authority shall consider such factors as it considers necessary and appropriate in light
30 of the special purpose or other nature of the business entity owning the project to
31 measure and evaluate the project and the sufficiency of the pledged revenues to repay
32 the obligations, including:

33 (1) Whether the individuals or entities obligated to repay the obligations have
34 demonstrated sufficient revenues from the project or from other sources to repay
35 the obligations and a strong probability that those revenues will continue to be
36 available for the term of the revenue obligation securities;

37 (2) Whether the applicant demonstrates a strong probability that the project will
38 continue to operate and provide the public benefits projected to be created for the
39 term of the revenue obligation securities;

- 1 (3) Whether the applicant demonstrates that the benefits projected to be created
2 by the project are enhanced through the use of financing assistance from the
3 authority;
- 4 (4) Whether the applicant's creditworthiness is demonstrated by factors such as
5 its historical financial performance, management ability, plan for marketing its
6 product or service and ability to access conventional financing;
- 7 (5) Whether the applicant meets or exceeds industry average financial
8 performance ratios commonly accepted in determining creditworthiness in that
9 industry;
- 10 (6) Whether the applicant demonstrates that the need for authority assistance is
11 due to the reduced cost and increased flexibility of the financing for the project
12 that result from authority assistance and not from an inability to obtain necessary
13 financing without the capital reserve fund security provided by the authority;
- 14 (7) Whether collateral securing the repayment obligation is reasonably sufficient
15 under the circumstances;
- 16 (8) Whether the proposed project enhances the opportunities for economic
17 development;
- 18 (9) The effect that the proposed project financing has on the authority's financial
19 resources; and
- 20 (10) Whether the Northern Maine Transmission Corporation, as established in
21 section 9202, has recommended the project.

22 Upon request by the authority, state agencies, including but not limited to the Public
23 Utilities Commission, shall provide necessary assistance to the authority in evaluating
24 the feasibility of the project and its importance for northern Maine. In providing
25 assistance, the Public Utilities Commission shall consider whether the proposed
26 project enhances the competitiveness of the wholesale and retail energy market; how
27 the proposed project is likely to affect energy prices for Maine residents; whether the
28 proposed project will augment or enhance the reliability and stability of the grid; and
29 whether there is likely to be a long-term need for the product as produced by the
30 proposed project.

31 The authority may establish, pursuant to rules adopted in accordance with Title 5,
32 chapter 375, subchapter 2, application procedures, approval criteria and reasonable
33 fees for transmission facilities projects. Rules adopted by the authority under this
34 paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.
35 In addition, the authority may require the applicant to pay the reasonable costs of an
36 evaluation of the project risks by an independent consultant. If the authority directs
37 the applicant to pay for such an independent evaluation of the project, the authority
38 shall make every reasonable effort, in its discretion, to minimize the cost of the
39 evaluation and any delay such an evaluation may cause in authority action.

40 The authority may not finance any project involving an electric transmission line
41 capable of operating at 69 kilovolts or more unless the Public Utilities Commission

1 has issued a certificate of public convenience for the construction of the line pursuant
2 to Title 35-A, section 3132; and

3 **Sec. 7. 10 MRSA §1043, sub-§2, ¶M**, as enacted by PL 2009, c. 372, Pt. D, §7,
4 is amended to read:

5 M. In the case of an Efficiency Maine project, as defined in section 963-A,
6 subsection 10-A, there is a reasonable likelihood that the income, proceeds, revenues
7 and funds of Efficiency Maine Trust derived from or held for activities under Title
8 35-A, chapter 97 or otherwise pledged to payment of the bonds will be sufficient to
9 pay the principal, the interest and all other amounts that may at any time become due
10 and payable under the bonds. In making this determination, the authority shall
11 consider Efficiency Maine Trust's analysis of the proposed bond issue and the
12 revenues to make payments on the bonds and may require such information,
13 projections, studies and independent analyses as it considers necessary or desirable
14 and may charge Efficiency Maine Trust reasonable fees and expenses. The authority
15 may require that it be indemnified, defended and held harmless by Efficiency Maine
16 Trust for any liability or cause of action arising out of or with respect to the bonds.
17 The principal and interest of bonds must be made payable solely from the income,
18 proceeds, revenues and funds of Efficiency Maine Trust derived from or held for
19 activities under Title 35-A, chapter 97 or other provision of law. Payment of the
20 principal and interest of bonds may be further secured by a pledge of a loan, grant or
21 contribution from the Federal Government or other source in aid of activities of
22 Efficiency Maine Trust under Title 35-A, chapter 97-; and

23 **Sec. 8. 10 MRSA §1043, sub-§2, ¶N** is enacted to read:

24 N. In the case of recovery zone facility bonds, the project will benefit the county or
25 counties in which it is located.'

26 Amend the bill by striking out all of sections 6 to 8 and inserting the following:

27 **Sec. 6. 10 MRSA §1061-B** is enacted to read:

28 **§1061-B. Designation of issuer of recovery zone facility bonds and qualified energy**
29 **conservation bonds**

30 To the extent permitted by federal law, and to the extent not previously reallocated
31 pursuant to section 1074-A or 1074-B, the county commissioners of any county may
32 authorize the authority to issue recovery zone facility bonds or qualified energy
33 conservation bonds on behalf of that county pursuant to subchapter 3 or a municipality to
34 issue recovery zone facility bonds or qualified energy conservation bonds on behalf of
35 that county pursuant to this subchapter.

36 **Sec. 7. 10 MRSA §1074-A** is enacted to read:

37 **§1074-A. Recovery zone facility bonds**

38 **1. Recovery zones; statewide designation.** The Legislature finds that the entire
39 State is experiencing significant poverty, unemployment, increasing rate of home
40 foreclosures and general distress and, as a result, to the extent permitted by federal law,

1 designates the entire State as a recovery zone as defined under 26 United States Code,
2 Section 1400U-1, as amended.

3 **2. Reallocation.** To the extent permitted by federal law, the entire allocation to the
4 counties of the State of the national recovery zone facility bond limitation established
5 pursuant to 26 United States Code, Section 1400U-1, as amended, and as described in
6 Internal Revenue Service Notice 2009-50, Section 6.03 is reallocated to the authority, as
7 long as one half of each such allocation is further reallocated by the authority to projects
8 located within and identified by the county commissioners of the county to which such
9 allocation was originally made, if so identified on or before June 1, 2010. The remaining
10 one half of such allocations, together with any portion of an allocation initially subject to
11 reallocation at the direction of the applicable county before June 1, 2010, but not so
12 reallocated, may be reallocated by the authority for any project in any county of the
13 State. Reallocations pursuant to this subsection are considered voluntary and affirmative
14 waivers by the affected counties for the purposes of 26 United States Code, Section
15 1400U-1 et seq. and any regulations or guidance provided by the United States
16 Department of the Treasury, Internal Revenue Service thereunder.

17 **Sec. 8. 10 MRSA §1074-B** is enacted to read:

18 **§1074-B. Qualified energy conservation bonds**

19 **1. Reallocation.** To the extent permitted by federal law, 30% of the allocation to the
20 State and to the counties of the State of the national qualified energy conservation bond
21 volume limitation established pursuant to 26 United States Code, Section 54D(e), as
22 amended, and as described in Internal Revenue Service Notice 2009-29, Section 4 is
23 reallocated to the authority as the issuer of qualified energy conservation bonds, for
24 further reallocation by the authority for any project in any county of the State.
25 Reallocations pursuant to this subsection are considered voluntary and affirmative
26 waivers by the affected counties for the purposes of 26 United States Code, Section 54D
27 et seq. and any regulations or guidance provided by the United States Department of the
28 Treasury, Internal Revenue Service thereunder.

29 **Sec. 9. 10 MRSA §1074-C** is enacted to read:

30 **§1074-C. Allocation of certain national bond limitations**

31 To the extent permitted by federal law, the Governor may establish by executive
32 order a procedure for the reallocation of any allocation of a portion of a national bond
33 limitation to the State or to any issuer or governmental entity within the State pursuant to
34 26 United States Code, Sections 54D, 54E, 54F and 1400U-1 and for the reallocation of
35 any portion of a national bond limitation that is not used within the applicable time period
36 specified in federal law or that has been waived by an issuer or governmental entity
37 within the State, except that allocation of the national recovery zone facility bond
38 limitation established pursuant to 26 United States Code, Section 1400U-1, as amended,
39 and as described in Internal Revenue Service Notice 2009-50, Section 6.03, must be
40 carried out pursuant to section 1074-A, and the allocation of the national qualified energy
41 conservation bond volume limitation established pursuant to 26 United States Code,
42 Section 54D, as amended, and as described in Internal Revenue Service Notice 2009-29,
43 Section 4 must be carried out pursuant to section 1074-B and Title 30-A, section 5953-F.'

Amend the bill by inserting after section 9 the following:

'Sec. 10. 30-A MRSA §5903, sub-§8-B is enacted to read:

8-B. Qualified energy conservation bond. "Qualified energy conservation bond" has the same meaning as in 26 United States Code, Section 54D(a), as amended.

Sec. 11. 30-A MRSA §5903, sub-§8-C is enacted to read:

8-C. Recovery zone economic development bond. "Recovery zone economic development bond" has the same meaning as in 26 United States Code, Section 1400U-2, as amended.

Sec. 12. 30-A MRSA §5953-F is enacted to read:

§5953-F. Recovery zone economic development bonds; qualified energy conservation bonds

To the extent permitted by federal law, the county commissioners of any county may authorize the bank to issue recovery zone economic development bonds or qualified energy conservation bonds on behalf of that county.

1. Recovery zone economic development bonds. To the extent permitted by federal law, the allocation to counties of the national recovery zone economic development bond limitation established pursuant to 26 United States Code, Section 1400U-1, as amended, and as described in Internal Revenue Service Notice 2009-50, Section 6.03, is reallocated to the bank for further reallocation by the bank for any project in any county of the State, as long as one half of each such allocation is further reallocated by the bank to projects located within and identified by the county commissioners of the county to which such allocation was originally made, if so identified on or before July 1, 2010. The remaining one half of such allocations, together with any portion of an allocation initially subject to reallocation at the direction of the applicable county before July 1, 2010, but not so reallocated, may be reallocated by the bank for any project in any county of the State.

2. Qualified energy conservation bonds. To the extent permitted by federal law, 70% of the allocation to the State and to the counties of the State of the national qualified energy conservation bond volume limitation established pursuant to 26 United States Code, Section 54D(e), as amended, and as described in Internal Revenue Service Notice 2009-29, Section 4, is reallocated to the bank for further reallocation by the bank for any project in any county of the State, as long as one half of each such allocation is further reallocated by the bank to projects located within and identified by the county commissioners of the county to which such allocation was originally made, if so identified on or before July 1, 2011. The remaining one half of such allocations, together with any portion of an allocation initially subject to reallocation at the direction of the applicable county before July 1, 2011, but not so reallocated, may be reallocated by the bank for any project in any county of the State.

3. Waivers. Reallocations pursuant to this section are considered voluntary and affirmative waivers by the affected counties for the purposes of 26 United States Code, Section 54D et seq. and Section 1400U-1 et seq. and any regulations or guidance

1 provided by the United States Department of the Treasury, Internal Revenue Service
2 thereunder.

3 **Sec. 13. 30-A MRSA §5957**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
4 §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
5 amended to read:

6 **§5957. Allocation of state ceiling; recovery zone economic development bonds;**
7 **qualified energy conservation bonds**

8 By rulemaking under Title 5, chapter 375, subchapter H 2, the bank may establish a
9 process for allocation and carry-forward of that portion of the state ceiling on issuance of
10 tax-exempt bonds allocated to the bank under Title 10, chapter 9. The executive director
11 of the Maine Municipal Bond Bank is designated as the state official authorized to issue
12 the certification under the United States Code, Title 26, Section 149(e)(2)(F), as
13 amended, for allocations of the state ceiling allocated to the bank pursuant to Title 10,
14 chapter 9.

15 By routine technical rulemaking defined under Title 5, chapter 375, subchapter 2-A
16 the bank may establish a process for allocation of that portion of the national recovery
17 zone economic development bond limitation established pursuant to 26 United States
18 Code, Section 1400U-1, or that portion of the national qualified energy conservation bond
19 limitation established pursuant to 26 United States Code, Section 54D, waived by any
20 county or reallocated pursuant to section 5953-F and for designation by the bank of
21 recovery zone economic development bonds and qualified energy conservation bonds.'

22 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
23 section number to read consecutively.

24 **SUMMARY**

25 This amendment makes technical changes to the bill and creates a mechanism to
26 allow for a reallocation process that waives each county's allocation for facility bonds,
27 economic development bonds and qualified energy conservation bonds pursuant to the
28 federal American Recovery and Reinvestment Act of 2009 to the Finance Authority of
29 Maine and the Maine Municipal Bond Bank to enable the reallocation of the unused
30 volume cap across the State in a timely manner.

31 **FISCAL NOTE REQUIRED**

32 (See attached)



124th MAINE LEGISLATURE

LD 1530

LR 2407(02)

An Act To Facilitate Recovery Zone Facility Bonds

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Business, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Funds

Fiscal Detail and Notes

Additional costs to the Finance Authority of Maine and the Maine Municipal Bond Bank can be absorbed within existing budgeted resources provided that the Authority and the Bank can charge market rates for the issuance of bonds.