

MAINE STATE LEGISLATURE

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SMG
R. 013

L.D. 742

Date: 5-11-11

MAJORITY

(Filing No. S- 89)

TAXATION

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STATE OF MAINE

SENATE

125TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 235, L.D. 742, Bill, "An Act To Eliminate the Sunset Date of the Maine Historic Preservation Tax Credit"

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

'An Act To Amend the Maine Historic Preservation Tax Credit'

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

'Sec. 1. 27 MRSA §511, sub-§5, ¶B, as enacted by PL 2007, c. 539, Pt. WW, §1, is amended to read:

B. By January 15, 2013 and every 2 years thereafter, the Maine Historic Preservation Commission shall analyze the use of tax credits provided under Title 36, section 5219-BB as an incentive for rehabilitation of historic structures and economic development, analyze tax and other revenues generated by the rehabilitation to determine in relation to the cost of the credit if they exceed the costs of the credit and report the results of its analysis to the joint standing committee of the Legislature having jurisdiction over taxation matters with recommendations as to whether the credits under Title 36, section 5219-BB should be extended, repealed or amended. The recommendations must include specific proposals for funding the credit after fiscal year 2014-15 and appropriate transition provisions in order that projects in the development or planning states are not adversely affected. The joint standing committee may submit legislation related to the report.

Sec. 2. 30-A MRSA §4722, sub-§1, ¶DD, as enacted by PL 2009, c. 361, §4 and affected by §37, is amended to read:

DD. Certify affordable housing projects for the purpose of the income tax credit increase under Title 36, section 5219-BB, subsection 3; administer and enforce the affordability requirements set forth in this paragraph; and perform other functions described in this paragraph and necessary to the powers and duties described in this paragraph.

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(1) For purposes of this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

(b) "Affordable housing project" means a project in which:

(i) At least 50% of the aggregate square feet of the completed project is housing of which at least 50% of the aggregate square feet of the completed housing creates new affordable housing; or

(ii) At least 33% of the aggregate square feet of the completed project creates new affordable housing.

(2) An affordable housing project for which the owner of the property received the income tax credit increase under Title 36, section 5219-BB, subsection 3 must remain an affordable housing project for 30 years from the date the affordable housing project is placed in service. If the property does not remain an affordable housing project for 30 years from the date the affordable housing project is placed in service, the owner of the property shall pay to the Maine State Housing Authority for application to the Housing Opportunities for Maine Fund established under section 4853 an amount equal to the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. The affordability requirements and the repayment obligation in this subparagraph must be set forth in a restrictive covenant executed by the owner of the property and the affordable housing project for the benefit of and enforceable by the Maine State Housing Authority and recorded in the appropriate registry of deeds before the owner of the property claims the income tax credit increase under Title 36, section 5219-BB, subsection 3.

(3) If the repayment obligation in subparagraph (2) is not fully satisfied after written notice is sent by certified mail or registered mail to the owner of the property at the owner's last known address, the Maine State Housing Authority may file a notice of lien in the registry of deeds of the county in which the real property subject to the lien is located. The notice of lien must specify the amount and interest due, the name and last known address of the owner, a description of the property subject to the lien and the Maine State Housing Authority's address and the name and address of its attorney, if any. The Maine State Housing Authority shall send a copy of the notice of lien filed in the registry by certified mail or registered mail to the owner of the property at the owner's last known address and to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property that is properly recorded in the registry of deeds in which the property is located. The lien arises and becomes

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perfected at the time the notice is filed in the appropriate registry of deeds in accordance with this subparagraph. The lien constitutes a lien on all property with respect to which the owner receives the income tax credit increase under Title 36, ~~Section~~ section 5219-BB, subsection 3 and the proceeds of any disposition of the property that occurs after notice to the owner of the repayment obligation. The lien is prior to any mortgage and security interest, lien, restrictive covenant or other encumbrance recorded, filed or otherwise perfected after the notice of lien is filed in the appropriate registry of deeds. The lien may be enforced by a turnover or sale order in accordance with Title 14, section 3131 or any other manner in which a judgment lien may be enforced under the law. The lien must be in the amount of the income tax credit increase allowed under Title 36, section 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum from the date the property is placed in service until the date of payment of all amounts due. Upon receipt of payment of all amounts due under the lien, the Maine State Housing Authority shall execute a discharge lien for filing in the registry or offices in which the notice of lien was filed.

(4) Annually by every August 1st until and including August 1, 2013 2023, the Maine State Housing Authority shall review the report issued pursuant to Title 27, section 511, subsection 5, paragraph A to determine the percentage of the total aggregate square feet of completed projects that constitutes new affordable housing, rehabilitated and developed using:

- (a) Either of the income tax credits under Title 36, section 5219-BB, subsection 2; and
- (b) The income tax credit increase under Title 36, section 5219-BB, subsection 3.

If the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for a credit under Title 36, section 5219-BB, the Maine State Housing Authority and Maine Historic Preservation Commission shall notify the State Tax Assessor of this fact.

Sec. 3. 30-A MRSA §4863, sub-§2, ¶A, as enacted by PL 2009, c. 372, Pt. E, §1, is amended to read:

A. All money transferred to the fund pursuant to Title 36, section 4641-B, subsection 4-A ~~4-B~~;

Sec. 4. 36 MRSA §2531 is enacted to read:

§2531. Credit for rehabilitation of historic properties

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

Sec. 5. 36 MRSA §4641-B, sub-§4-A, as enacted by PL 2009, c. 372, Pt. E, §3, is repealed.

Sec. 6. 36 MRSA §4641-B, sub-§4-B is enacted to read:

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1 **4-B. Distribution of State's share of proceeds.** The State Tax Assessor shall pay
2 all net receipts received pursuant to this section to the Treasurer of State and shall at the
3 same time provide the Treasurer of State with documentation showing the amount of
4 revenues derived from the tax imposed by section 4641-A, subsection 1 and the amount
5 of revenues derived from the tax imposed by section 4641-A, subsection 2.

6 A. In fiscal year 2011-12, the Treasurer of State shall credit the revenues derived
7 from the tax imposed pursuant to section 4641-A, subsection 1 in accordance with
8 this paragraph.

9 (1) At the beginning of the fiscal year, the Maine State Housing Authority shall
10 certify to the Treasurer of State the amount that is necessary and sufficient to
11 meet the authority's obligations relating to bonds issued or planned to be issued
12 by the authority under Title 30-A, section 4864.

13 (2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
14 accordance with this subparagraph. The Treasurer of State shall first pay
15 revenues available under this subparagraph to the Maine State Housing
16 Authority, which shall deposit the funds in the Maine Energy, Housing and
17 Economic Recovery Fund established in Title 30-A, section 4863, until the
18 amount paid equals the amount certified by the Maine State Housing Authority
19 under subparagraph (1), after which the Treasurer of State shall credit any
20 remaining revenues available under this subparagraph to the General Fund.

21 (3) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
22 accordance with this subparagraph. The Treasurer of State shall first credit
23 \$3,830,000 of the revenues available under this subparagraph to the General
24 Fund, after which the Treasurer of State shall pay any remaining revenues
25 available under this subparagraph to the Maine State Housing Authority, which
26 shall deposit the funds in the Housing Opportunities for Maine Fund created in
27 Title 30-A, section 4853.

28 B. In fiscal year 2012-13, the Treasurer of State shall credit the revenues derived
29 from the tax imposed pursuant to section 4641-A, subsection 1 in accordance with
30 this paragraph.

31 (1) At the beginning of the fiscal year, the Maine State Housing Authority shall
32 certify to the Treasurer of State the amount that is necessary and sufficient to
33 meet the authority's obligations relating to bonds issued or planned to be issued
34 by the authority under Title 30-A, section 4864.

35 (2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
36 accordance with this subparagraph. The Treasurer of State shall first pay
37 revenues available under this subparagraph to the Maine State Housing
38 Authority, which shall deposit the funds in the Maine Energy, Housing and
39 Economic Recovery Fund established in Title 30-A, section 4863, until the
40 amount paid equals the amount certified by the Maine State Housing Authority
41 under subparagraph (1), after which the Treasurer of State shall credit any
42 remaining revenues available under this subparagraph to the General Fund.

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1 (3) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
2 accordance with this subparagraph. The Treasurer of State shall first credit
3 \$3,950,000 of the revenues available under this subparagraph to the General
4 Fund, after which the Treasurer of State shall pay any remaining revenues
5 available under this subparagraph to the Maine State Housing Authority, which
6 shall deposit the funds in the Housing Opportunities for Maine Fund created in
7 Title 30-A, section 4853.

8 C. In fiscal year 2013-14, the Treasurer of State shall credit the revenues derived
9 from the tax imposed pursuant to section 4641-A, subsection 1 in accordance with
10 this paragraph.

11 (1) At the beginning of the fiscal year, the Maine State Housing Authority shall
12 certify to the Treasurer of State the amount that is necessary and sufficient to
13 meet the authority's obligations relating to bonds issued or planned to be issued
14 by the authority under Title 30-A, section 4864.

15 (2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
16 accordance with this subparagraph. The Treasurer of State shall first pay
17 revenues available under this subparagraph to the Maine State Housing
18 Authority, which shall deposit the funds in the Maine Energy, Housing and
19 Economic Recovery Fund established in Title 30-A, section 4863, until the
20 amount paid equals the amount certified by the Maine State Housing Authority
21 under subparagraph (1), after which the Treasurer of State shall credit any
22 remaining revenues available under this subparagraph to the General Fund.

23 (3) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
24 accordance with this subparagraph. The Treasurer of State shall first credit
25 \$245,160 of the revenues available under this subparagraph to the General Fund,
26 after which the Treasurer of State shall pay any remaining revenues available
27 under this subparagraph to the Maine State Housing Authority, which shall
28 deposit the funds in the Housing Opportunities for Maine Fund created in Title
29 30-A, section 4853.

30 D. In fiscal year 2014-15, the Treasurer of State shall credit the revenues derived
31 from the tax imposed pursuant to section 4641-A, subsection 1 in accordance with
32 this paragraph.

33 (1) At the beginning of the fiscal year, the Maine State Housing Authority shall
34 certify to the Treasurer of State the amount that is necessary and sufficient to
35 meet the authority's obligations relating to bonds issued or planned to be issued
36 by the authority under Title 30-A, section 4864.

37 (2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
38 accordance with this subparagraph. The Treasurer of State shall first pay
39 revenues available under this subparagraph to the Maine State Housing
40 Authority, which shall deposit the funds in the Maine Energy, Housing and
41 Economic Recovery Fund established in Title 30-A, section 4863, until the
42 amount paid equals the amount certified by the Maine State Housing Authority

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1 under subparagraph (1), after which the Treasurer of State shall credit any
2 remaining revenues available under this subparagraph to the General Fund.

3 (3) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
4 accordance with this subparagraph. The Treasurer of State shall first credit
5 \$1,879,560 of the revenues available under this subparagraph to the General
6 Fund, after which the Treasurer of State shall pay any remaining revenues
7 available under this subparagraph to the Maine State Housing Authority, which
8 shall deposit the funds in the Housing Opportunities for Maine Fund created in
9 Title 30-A, section 4853.

10 E. In fiscal year 2015-16 and each fiscal year thereafter, the Treasurer of State shall
11 credit the revenues derived from the tax imposed pursuant to section 4641-A,
12 subsection 1 in accordance with this paragraph.

13 (1) At the beginning of the fiscal year, the Maine State Housing Authority shall
14 certify to the Treasurer of State the amount that is necessary and sufficient to
15 meet the authority's obligations relating to bonds issued or planned to be issued
16 by the authority under Title 30-A, section 4864.

17 (2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in
18 accordance with this subparagraph. The Treasurer of State shall first pay
19 revenues available under this subparagraph to the Maine State Housing
20 Authority, which shall deposit the funds in the Maine Energy, Housing and
21 Economic Recovery Fund established in Title 30-A, section 4863, until the
22 amount paid equals the amount certified by the Maine State Housing Authority
23 under subparagraph (1), after which the Treasurer of State shall credit any
24 remaining revenues available under this subparagraph to the General Fund.

25 (3) On a monthly basis, the Treasurer of State shall credit 50% of the revenues to
26 the Maine State Housing Authority, which shall deposit the funds in the Housing
27 Opportunities for Maine Fund created in Title 30-A, section 4853.

28 F. Neither the Governor nor the Legislature may divert the revenues payable to the
29 Housing Opportunities for Maine Fund to any other fund or for any other use. Any
30 proposal to enact or amend a law to allow distribution of less than 1/2 of the revenues
31 derived from the tax imposed by section 4641-A, subsection 1 to the Housing
32 Opportunities for Maine Fund established in Title 30-A, section 4853, as adjusted
33 under this subsection, must be submitted to the Legislative Council and to the joint
34 standing committee of the Legislature having jurisdiction over affordable housing
35 matters at least 30 days prior to any vote or public hearing on the proposal.

36 G. The Treasurer of State shall credit to the General Fund all of the revenues derived
37 from the tax imposed by section 4641-A, subsection 2.

38 **Sec. 7. 36 MRSA §5219-BB, sub-§1, ¶C, as amended by PL 2009, c. 361, §28**
39 **and affected by §37, is further amended to read:**

40 C. "Certified qualified rehabilitation expenditure" means a qualified rehabilitation
41 expenditure, as defined by the Code, Section 47(c)(2), made between January 1, 2008
42 and December 31, ~~2013~~ 2023. For purposes of subsection 2, paragraph B, qualified

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1 rehabilitation expenditures incurred in the certified rehabilitation of a certified
2 historic structure located in the State do not include a requirement that the certified
3 historic structure be substantially rehabilitated.

4 **Sec. 8. 36 MRSA §5219-BB, sub-§2**, as amended by PL 2009, c. 361, §28 and
5 affected by §37, is further amended to read:

6 **2. Credit allowed.** A taxpayer is allowed a credit against the tax imposed under this
7 Part:

8 A. Equal to 25% of the taxpayer's certified qualified rehabilitation expenditures for
9 which a tax credit is claimed under Section 47 of the Code for a certified historic
10 structure located in the State; or

11 B. Equal to 25% of the certified qualified rehabilitation expenditures of a taxpayer
12 who incurs not less than \$50,000 and up to \$250,000 in certified qualified
13 rehabilitation expenditures in the rehabilitation of a certified historic structure located
14 in the State and who does not claim the federal credit with regard to those
15 expenditures. The credit may be claimed for the taxable year in which the certified
16 historic structure is placed in service.

17 A taxpayer is allowed a credit under paragraph A or B but not both. A credit may not be
18 claimed for expenditures incurred before January 1, 2008 or after December 31, ~~2013~~
19 2023.

20 **Sec. 9. 36 MRSA §5219-BB, sub-§4**, as enacted by PL 2007, c. 539, Pt. WW,
21 §4, is amended to read:

22 **4. Maximum credit.** The credit allowed pursuant to this section and section 2531
23 may not exceed \$5,000,000 for each certified rehabilitation project under Section 47 of
24 the Code placed into service in the State during the taxable year for which a credit is
25 claimed under this section.'

26 **SUMMARY**

27 This amendment replaces the bill, which eliminated the sunset for the Maine historic
28 preservation tax credit, and changes the title. The amendment extends the sunset date to
29 2023. It requires the Maine Historic Preservation Commission to report to the Legislature
30 every 2 years with an analysis on the use of the credit and recommendations for funding
31 the credit after fiscal year 2014-15. It allows insurance companies investing in historic
32 preservation projects to receive the credit. It requires the Treasurer of State to first credit
33 \$245,160 in fiscal year 2013-14 and \$1,879,560 in fiscal year 2014-15 of the revenues
34 available for the state share of the proceeds from the real estate transfer tax to the General
35 Fund, after which the Treasurer of State pays any remaining revenues to the Maine State
36 Housing Authority, which deposits the funds in the Housing Opportunities for Maine
37 Fund.

38 **FISCAL NOTE REQUIRED**

39
40 (See attached)



125th MAINE LEGISLATURE

LD 742

LR 1010(02)

An Act To Eliminate the Sunset Date of the Maine Historic Preservation Tax Credit

Fiscal Note for Bill as Amended by Committee Amendment "A" S-89

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	\$0	\$0	(\$12,258)	(\$93,978)
Revenue				
General Fund	\$0	\$0	\$12,258	\$93,978
Other Special Revenue Funds	\$0	\$0	(\$257,418)	(\$1,973,538)

Fiscal Detail and Notes

Extending the sunset date for the Maine Historic Preservation Tax Credit to December 31, 2023 will reduce General Fund revenue by \$232,902 in fiscal year 2013-14 and by \$1,785,582 in fiscal year 2014-15. The credit is paid for two years by increasing the amount of real estate transfer tax transferred to the General Fund by \$245,160 in fiscal year 2013-14 and by \$1,879,560 in fiscal year 2014-15. This results in a net gain to the General Fund in fiscal years 2013-14 and 2014-15 of \$12,258 and \$93,978 respectively, which equal the amounts not reimbursed to the revenue sharing program.

This legislation reduces the amount of funds to be transferred from the real estate transfer tax to the HOME Fund within the Maine State Housing Authority (MSHA) by \$245,160 in fiscal year 2013-14 and \$1,879,560 in fiscal year 2014-15.

Additional costs to the Maine Historic Preservation Commission and the MSHA associated with submitting the required reports can be absorbed within existing budgeted resources.