

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1974

S.P. 808

In Senate, May 18, 2023

An Act to Reauthorize Maine's New Markets Tax Credit Program

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator STEWART of Aroostook.
Cosponsored by Representative PERRY of Bangor and
Senator: LIBBY of Cumberland.

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

2 **Sec. 1. 10 MRSA §1100-Z, sub-§3, ¶B-1** is enacted to read:

3 B-1. A qualified community development entity that seeks certification as a Maine
4 fund for an allocation of tax credit authority shall apply to the authority. The applicant
5 shall submit an application on a form that the authority provides.

6 (1) In addition to the requirements specified in paragraph B, subparagraphs (1)
7 and (4), the applicant shall include in the application evidence of at least one
8 executive officer whose primary residence is located in this State, who is employed
9 or engaged to manage the funds and who has a minimum of 5 years of money
10 management experience in the venture capital or private equity or lending industry.

11 (2) As used in this paragraph, "Maine fund" has the same meaning as in subsection
12 8, paragraph A, subparagraph (4).

13 **Sec. 2. 10 MRSA §1100-Z, sub-§3, ¶B-2** is enacted to read:

14 B-2. A qualified community development entity that seeks certification as a diverse
15 Maine fund for an allocation of tax credit authority shall apply to the authority. The
16 applicant shall submit an application on a form that the authority provides.

17 (1) In addition to the requirements specified in paragraph B, subparagraphs (1)
18 and (4) and paragraph B-1, the applicant shall include in the application evidence
19 the entity is:

20 (a) More than 50% owned and controlled by individuals who are racial or
21 ethnic minorities or members of a federally recognized Indian nation, tribe or
22 band in this State; or

23 (b) Is governed by a board of directors more than 50% of which is composed
24 of individuals who are racial or ethnic minorities or members of a federally
25 recognized Indian nation, tribe or band in this State.

26 (2) As used in this paragraph, "diverse Maine fund" means:

27 (a) An entity that:

28 (i) Is a Maine fund as defined in subsection 8, paragraph A, subparagraph
29 (4); or

30 (ii) Is a community development financial institution, as defined in 12
31 United States Code, Section 4702(5), with its principal place of business
32 in this State; and

33 (b) An entity that is more than 50% owned and controlled by individuals who
34 are racial or ethnic minorities or members of a federally recognized Indian
35 nation, tribe or band in this State or is governed by a board of directors more
36 than 50% of which is composed of individuals who are racial or ethnic
37 minorities or members of a federally recognized Indian nation, tribe or band in
38 this State.

39 For purposes of this paragraph, "principal place of business" has the same meaning as
40 in subsection 8, paragraph A, subparagraph (6).

1 **Sec. 3. 10 MRSA §1100-Z, sub-§3, ¶F**, as enacted by PL 2011, c. 380, Pt. Q, §1
2 and affected by §7, is amended to read:

3 F. Within 24 months with respect to program 1 tax credit authority and 6 months with
4 respect to program 2 tax credit authority, after receipt of the notice of the allocation of
5 tax credit authority, the qualified community development entity shall issue the
6 qualified equity investments or long-term debt securities and receive cash in the
7 amount of the total amount of tax credit authority that the qualified community
8 development entity was allocated. The qualified community development entity shall
9 provide the authority with evidence of the entity's receipt of the cash investment within
10 10 business days after receipt. If the qualified community development entity does not
11 issue the qualified equity investment or long-term debt security and receive the cash
12 purchase price within 24 months with respect to program 1 tax credit authority and 6
13 months with respect to program 2 tax credit authority following receipt of the tax credit
14 authority notice for any portion of its allocation, such unused allocation of tax credit
15 authority lapses and the qualified community development entity may not issue the
16 qualified equity investments or long-term debt securities without reapplying to the
17 authority for additional tax credit authority. Any tax credit authority that lapses reverts
18 back to the authority and may be reissued only in accordance with the application
19 process outlined in this section.

20 **Sec. 4. 10 MRSA §1100-Z, sub-§4**, as amended by PL 2011, c. 548, §5, is repealed
21 and the following enacted in its place:

22 **4. Limit on amount of tax credits authorized.** Tax credits issued by the authority
23 are limited as provided in this subsection.

24 A. With respect to program 1 tax credit authority, the maximum aggregate amount of
25 qualified equity investments for which the authority may issue tax credit authority
26 under this section is \$250,000,000; a tax credit claim may not exceed \$20,000,000 in
27 any one state fiscal year over the 7 years of the tax credit allowance dates as described
28 in Title 36, section 5219-HH, subsection 1, paragraph A.

29 B. With respect to program 2 tax credit authority, the maximum aggregate amount of
30 qualified equity investments for which the authority may issue tax credit authority
31 under this section is \$250,000,000; a tax credit claim may not exceed \$20,000,000 in
32 any one state fiscal year over the 7 years of the tax credit allowance dates as described
33 in Title 36, section 5219-HH, subsection 1, paragraph A.

34 **Sec. 5. 10 MRSA §1100-Z, sub-§6**, as enacted by PL 2011, c. 380, Pt. Q, §1 and
35 affected by §7, is amended to read:

36 **6. Report.** The authority shall report no later than January 1, ~~2015~~ 2027 with respect
37 to program 2 tax credit authority to the joint standing committee of the Legislature having
38 jurisdiction over appropriations and financial affairs and the joint standing committee of
39 the Legislature having jurisdiction over taxation matters on the activities of the program,
40 including, but not limited to, the amount of private investment received and the total
41 number of jobs created or retained.

42 **Sec. 6. 10 MRSA §1100-Z, sub-§7**, as enacted by PL 2011, c. 380, Pt. Q, §1 and
43 affected by §7, is amended to read:

1 7. **Rules.** By December 30, 2011, the authority shall adopt rules necessary to
2 implement this section. By December 30, 2023, the authority shall adopt rules necessary to
3 implement this section with respect to program 2 tax credit authority. Rules adopted
4 pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter
5 2-A.

6 **Sec. 7. 10 MRSA §1100-Z, sub-§8** is enacted to read:

7 **8. Impact qualified equity investments.** Impact qualified equity investments are
8 subject to the provisions of this subsection.

9 A. As used in this subsection, unless the context otherwise indicates, the following
10 terms have the following meanings.

11 (1) "Community development financial institution" has the same meaning as in 12
12 United States Code, Section 4702(5).

13 (2) "Diverse Maine fund" means:

14 (a) A Maine fund; or

15 (b) A community development financial institution that has its principal place
16 of business in this State and:

17 (i) Is more than 50% owned and controlled by individuals who are racial
18 or ethnic minorities or members of a federally recognized Indian nation,
19 tribe or band in this State; or

20 (ii) Is governed by a board of directors more than 50% of which are
21 individuals who are racial or ethnic minorities or members of a federally
22 recognized Indian nation, tribe or band in this State.

23 (3) "Impact qualified equity investment" means a qualified equity investment if the
24 cash purchase price, as defined in Title 36, section 5219-HH, subsection 1,
25 paragraph F, is used to make an investment in a qualified active low-income
26 community business.

27 (4) "Maine fund" means a qualified community development entity as defined in
28 Section 45D of the United States Internal Revenue Code of 1986, as amended,
29 except that the entity must have its principal place of business in this State.

30 (5) "Principal business operations location" means the physical location of a
31 business where at least 60% of the employees of the business work.

32 (6) "Principal place of business" means the primary physical location where an
33 entity's officer or officers direct, control and coordinate the entity's activities.

34 (7) "Qualified active low-income community business" has the same meaning as
35 in Title 36, section 5219-HH, subsection 1, paragraph G except that:

36 (a) The entity's principal business operations location must be in this State; and

37 (b) The entity is more than 50% owned by individuals who are racial or ethnic
38 minorities; women; lesbian, gay, bisexual or transgender persons; members of
39 a federally recognized Indian nation, tribe or band in this State; or veterans
40 who are disabled.

41 (8) "Qualified community development entity" means an entity that is a:

- 1 (a) Diverse Maine fund;
- 2 (b) Maine fund;
- 3 (c) Qualified community development entity as defined in Section 45D(c) of
- 4 the United States Internal Revenue Code of 1986; or
- 5 (d) Community development financial institution.

6 (9) "Qualified equity investment" means any equity investment in, or long-term
7 debt security issued by, a qualified community development entity that:

8 (a) Has at least 85% of its cash purchase price, as defined in Title 36, section
9 5219-HH, subsection 1, paragraph F, used by the issuer to make qualified low-
10 income community investments in qualified active low-income community
11 businesses located in the State by the 2nd anniversary of the initial credit
12 allowance date, as defined in Title 36, section 5219-HH, subsection 1,
13 paragraph D;

14 (b) Is acquired after December 31, 2011 at its original issuance solely in
15 exchange for cash; and

16 (c) Is designated by the issuer as a qualified equity investment and is certified
17 by the authority pursuant to subsection 3, paragraph G. "Qualified equity
18 investment" includes any qualified equity investment that does not meet the
19 provisions of subsection 3, paragraph G if the investment was a qualified
20 equity investment in the hands of a prior holder. The qualified community
21 development entity shall keep sufficiently detailed books and records with
22 respect to the investments made with the proceeds of the qualified equity
23 investments to allow the direct tracing of the proceeds into qualified low-
24 income community investments in qualified active low-income community
25 businesses in the State.

26 (10) "Qualified low-income community investment" has the same meaning as in
27 Title 36, section 5219-HH, subsection 1, paragraph J and, with respect to an
28 individual qualified active low-income community business, no more than
29 \$5,000,000 of an impact qualified equity investment may be made with the
30 proceeds of a qualified equity investment that has been certified.

31 B. A qualified active low-income community business is deemed to have its principal
32 business operations location in this State if the business agrees to use the proceeds of
33 a qualified low-income community investment in the business for:

34 (1) If the business is not located in this State at the time of application, the
35 relocation of employees to this State; or

36 (2) If the business is located in this State, the hiring of employees in this State.

37 The requirements of this paragraph must be met at least 90 days prior to receiving the
38 qualified low-income community investment or by another date as agreed to by the
39 business and the authority.

40 C. The authority shall certify \$30,000,000 in impact qualified equity investments, of
41 which 50% must be reserved for diverse Maine funds. The limitations of subsection 4
42 apply to impact qualified equity investments certified under this paragraph.

1 D. Except as specifically otherwise provided in this subsection, an impact qualified
2 equity investment is subject to the provisions of this section and Title 36, section
3 5219-HH.

4 **Sec. 8. 36 MRSA §5219-HH, sub-§1, ¶E-1** is enacted to read:

5 E-1. "Program 1 tax credit authority" means tax credit authority allocated by the
6 authority before January 1, 2023.

7 **Sec. 9. 36 MRSA §5219-HH, sub-§1, ¶E-2** is enacted to read:

8 E-2. "Program 2 tax credit authority" means tax credit authority allocated by the
9 authority on or after January 1, 2023.

10 **Sec. 10. 36 MRSA §5219-HH, sub-§1, ¶H**, as enacted by PL 2011, c. 548, §33
11 and affected by §35, is repealed and the following enacted in its place:

12 H. "Qualified community development entity" means an entity that:

13 (1) Is a Maine fund, as defined in Title 10, section 1100-Z, subsection 8, paragraph
14 A, subparagraph (4); or

15 (2) If not located in this State, is a community development entity as defined in the
16 Code, Section 45D(c), except that the entity must have entered into an allocation
17 agreement with the Community Development Financial Institutions Fund of the
18 United States Department of the Treasury with respect to credits authorized by the
19 Code, Section 45D.

20 **Sec. 11. 36 MRSA §5219-HH, sub-§7, ¶C**, as enacted by PL 2011, c. 548, §33
21 and affected by §35, is amended to read:

22 C. The qualified community development entity fails to invest at least 85% of the
23 purchase price of the qualified equity investment in qualified low-income community
24 investments in qualified active low-income community businesses located in the State
25 within 24 months of the issuance of the qualified equity investment with respect to
26 program 1 tax credit authority and within 12 months of the issuance of the qualified
27 equity investment with respect to program 2 tax credit authority and maintain this level
28 of investment in qualified low-income community investments in qualified active low-
29 income community businesses located in the State until the last credit allowance date
30 for the qualified equity investment. For purposes of calculating the amount of qualified
31 low-income community investments held by a qualified community development
32 entity, an investment is considered held by the qualified community development entity
33 even if the investment has been sold or repaid as long as the qualified community
34 development entity reinvests an amount equal to the capital returned to or recovered
35 from the original investment, exclusive of any profits realized, in another qualified
36 active low-income community business in this State within 12 months of the receipt of
37 the capital. A qualified community development entity may not be required to reinvest
38 capital returned from qualified low-income community investments after the 6th
39 anniversary of the issuance of the qualified equity investment, the proceeds of which
40 were used to make the qualified low-income community investment, and the qualified
41 low-income community investment is considered to be held by the issuer through the
42 qualified equity investment's final credit allowance date.

1 **SUMMARY**

2 This bill amends the Maine New Markets Capital Investment Program and the new
3 markets capital investment income tax credit to establish a new tax credit authority, referred
4 to as "the program 2 tax credit authority," for tax credit authority allocated by the Finance
5 Authority of Maine on or after January 1, 2023. This bill establishes an application process
6 for community development entities recognized as Maine funds and diverse Maine funds
7 to receive an allocation of tax credit authority.

8 The effect of this change on the Maine New Markets Capital Investment Program is to
9 shorten the period, from 24 months to 6 months after receipt of the notice of allocation of
10 the tax credit authority, by which a community development entity must issue the equity
11 investments or debt securities and receive cash in the total amount of tax credits authorized.
12 The limit on the amount of tax credits authorized is unchanged.

13 The effect of this change on the new markets capital investment tax credit is to shorten
14 the time, from 24 months to 12 months after issuance of the qualified equity investment,
15 by which a community development entity must invest at least 85% of the purchase price
16 of the qualified equity investment in qualified low-income community investments before
17 recapture of the credit is allowed.

18 This bill makes conforming changes to the new markets capital investment tax credit
19 provisions to integrate impact qualified equity investments into the existing provisions
20 governing the eligibility for an allocation of tax credits under the Maine New Markets
21 Capital Investment Program. The amount of impact qualified equity investments is
22 \$30,000,000, which may be made in exchange for tax credits, to be invested in historically
23 disadvantaged groups located anywhere in this State. Fifty percent of impact qualified
24 equity investments must be reserved for diverse Maine funds, which are community
25 development financial institutions that have their principal place of business in this State
26 and are more than 50% owned and controlled by individuals who are racial or ethnic
27 minorities or members of a federally recognized Indian nation, tribe or band in this State
28 or are governed by a board of directors more than 50% of which are individuals who are
29 racial or ethnic minorities or members of a federally recognized Indian nation, tribe or band
30 in this State.

31 The maximum amount of an investment made with a qualified equity investment by a
32 qualified community development entity in a qualified active low-income community
33 business is \$5,000,000.