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FIRST REGULAR SESSION-2019

Legislative Document

No. 1265

S.P. 385

In Senate, March 14, 2019

An Act To Establish a Maine Low-income Housing Tax Credit

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 POULIOT of Kennebec.
Cosponsored by Representative COLLINGS of Portland and
Senator: VITELLI of Sagadahoc.

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

2 **Sec. 1. 36 MRSA §2537** is enacted to read:

3 **§2537. Credit for low-income housing development**

4 A taxpayer is allowed a credit against the tax otherwise due under this chapter as
5 determined under chapter 916.

6 **Sec. 2. 36 MRSA c. 916** is enacted to read:

7 **CHAPTER 916**

8 **LOW-INCOME HOUSING DEVELOPMENT TAX CREDIT**

9 **§6701. Definitions**

10 As used in this chapter, unless the context otherwise indicates, the following terms
11 have the following meanings.

12 **1. Allocation certificate.** "Allocation certificate" means a statement issued by the
13 authority under section 6702, subsection 2 certifying that a development qualifies for the
14 credit and specifying the amount of the credit allowed.

15 **2. Authority.** "Authority" means the Maine State Housing Authority under Title
16 30-A, chapter 201.

17 **3. Compliance period.** "Compliance period" means the period of 15 years
18 beginning with the first taxable year of the credit period.

19 **4. Credit.** "Credit" means the low-income housing development tax credit allowed
20 pursuant to section 6702, subsection 1.

21 **5. Credit period.** "Credit period" means the period of 6 taxable years beginning
22 with the taxable year in which a qualified development is placed in service. If a qualified
23 development is composed of more than one building, the development is placed in service
24 in the taxable year during which the last building of the qualified development is placed
25 in service.

26 **6. Federal tax credit.** "Federal tax credit" means the federal low-income housing
27 tax credit provided by Section 42 of the Code.

28 **7. Qualified allocation plan.** "Qualified allocation plan" means the qualified
29 allocation plan adopted by the authority pursuant to Section 42(m) of the Code.

30 **8. Qualified basis.** "Qualified basis" means the qualified basis of the development
31 as determined pursuant to Section 42 of the Code.

32 **9. Qualified development.** "Qualified development" means a qualified low-income
33 housing project, as defined in Section 42 of the Code, that is financed with tax-exempt
34 bonds pursuant to Section 42 of the Code and that is located in the State and is

1 determined by the authority to be eligible for a federal tax credit whether or not a federal
2 tax credit is allocated to the development.

3 **10. Qualified taxpayer.** "Qualified taxpayer" means a person that owns a direct or
4 indirect interest in a qualified development and is subject to the taxes imposed by Part 8.

5 **§6702. Low-income housing development tax credit**

6 **1. Tax credit allowed.** During each calendar year, the authority may allocate a
7 credit in the form of an allocation certificate to a qualified taxpayer under subsection 2.
8 The full amount of the credit may be claimed by the qualified taxpayer against the
9 qualified taxpayer's taxes imposed by Part 8 for each taxable year of the credit period.

10 **2. Allocation certificate.** The authority shall allocate a credit to a qualified taxpayer
11 by issuing to the taxpayer an allocation certificate. The authority may determine the time
12 at which the allocation certificate is issued. Unless otherwise provided in this chapter or
13 the context clearly requires otherwise, the authority shall determine eligibility for a credit
14 and allocate credits in accordance with the standards and requirements set forth in Section
15 42 of the Code. The credit must be in an amount determined by the authority, subject to
16 the following:

17 A. The credit must be necessary for the financial feasibility of the qualified
18 development;

19 B. The credit may not exceed the amount of the federal tax credit awarded to the
20 qualified taxpayer. Notwithstanding that the federal tax credit is claimed over 10
21 years, the state credit must be claimed over the 6-year credit period. An annual credit
22 may exceed the annual federal tax credit for any year of the credit period;

23 C. The credit must be made pursuant to the qualified allocation plan; and

24 D. The credit combined with the federal tax credit must be in the least amount
25 necessary to ensure the financial feasibility of a qualified development.

26 **3. Pass-through entities.** If a qualified taxpayer receiving a credit is a partnership,
27 limited liability company, S corporation or similar pass-through entity, the taxpayer may
28 allocate the credit among its constituent taxpayers including partners, shareholders,
29 members or other constituent taxpayers in any manner agreed to by the constituent
30 taxpayers and, if there are multiple tiers of pass-through entities, the credit may be
31 allocated through any number of pass-through entities in any manner agreed to by the
32 owners of the pass-through entities. An allocation of a credit through multiple pass-
33 through entities under this subsection is not a transfer. The qualified taxpayer shall
34 certify to the State Tax Assessor the amount of credit allocated to each constituent
35 taxpayer or shall notify the State Tax Assessor that the qualified taxpayer has assigned
36 the duty of certification to a constituent taxpayer, and the constituent taxpayer shall
37 provide the certification to the State Tax Assessor. Each constituent taxpayer may claim
38 as a credit against the taxpayer's tax under Part 8 the certified amount allocated under this
39 subsection to the constituent taxpayer subject to any restrictions in this chapter.

40 **4. Recorded restrictive covenant; compliance with federal requirements.** The
41 authority may not allocate a credit pursuant to this section unless the qualified taxpayer:

1 A. Subjects the qualified development to a recorded restrictive covenant requiring
2 the development to be maintained and operated as a qualified development during the
3 compliance period; and

4 B. Beginning with the first taxable year of the compliance period or a longer period
5 agreed to between the authority and the qualified taxpayer, ensures the compliance of
6 the qualified development with the accessibility and adaptability requirements of the
7 federal tax credits and Title VIII of the federal Civil Rights Act of 1968 as amended
8 by the federal Fair Housing Amendments Act of 1988.

9 **5. Application of credit.** A credit may be taken against the taxes imposed by Part 8
10 for each taxable year of the credit period. Any amount of a credit that exceeds the tax
11 due for a taxable year may be carried forward as a tax credit against subsequent years' tax
12 liability for up to 11 tax years following the tax year in which the allocation was made
13 and must be applied first to the earliest years possible. Any amount of the credit that is
14 not used may not be refunded to the taxpayer.

15 **6. Aggregate amount of credits.** The aggregate amount of all credits allocated by
16 the authority in each calendar year may not exceed the total of:

17 A. Forty-two million dollars for credits allocated pursuant to subsection 2 and
18 section 6705;

19 B. An amount totaling all unallocated credits, if any, for the preceding calendar
20 years; and

21 C. Any credit recaptured under section 6703 or otherwise returned to the authority in
22 the calendar year.

23 **§6703. Recapture of credit**

24 **1. Recapture of credit.** On the last day of any taxable year during the compliance
25 period, if the amount of the qualified basis of a qualified development is less than the
26 amount of the qualified basis on the last day of the prior taxable year, then the amount of
27 the qualified taxpayer's tax liability under Part 8 for that taxable year must be increased
28 by the credit recapture amount under subsection 2.

29 **2. Recapture amount.** The credit recapture amount is an amount equal to the
30 aggregate decrease in the credit allowed to the qualified taxpayer for all prior taxable
31 years that would have resulted if the accelerated portion of the credit under subsection 3
32 were not allowed for all prior taxable years with respect to the reduced amount of
33 qualified basis under subsection 1.

34 **3. Accelerated portion of credit.** The accelerated portion of the credit for the prior
35 taxable years for any amount of qualified basis is the difference between:

36 A. The aggregate credit allowed under this chapter, not including this subsection, for
37 the years with the qualified basis; and

38 B. The aggregate credit that would be allowable under this chapter for the years with
39 the qualified basis if the aggregate credit that would have been allowable, not

1 including this subsection, for the entire compliance period were allowable ratably
2 over 15 years.

3 **4. Reporting of capture of credit.** If the recapture of any credit under this section is
4 required in any tax year, the qualified taxpayer must report on the taxpayer's return
5 submitted to the State Tax Assessor for that tax year the proportion of credit required to
6 be recaptured, the identity of each taxpayer subject to the recapture and the amount of
7 credit previously allocated to each taxpayer.

8 **§6704. Filing requirements**

9 A qualified taxpayer to which a credit has been allocated under section 6702,
10 subsection 2 shall file with the qualified taxpayer's income tax return under chapter 823
11 and, if applicable, chapter 825 a copy of the allocation certificate issued by the authority
12 for the qualified development allowing the credit and, if the qualified taxpayer has
13 allocated the credit to constituent taxpayers under section 6702, subsection 3, a copy of
14 the certification to the department for the allocation of the credit among the constituent
15 taxpayers. A person that has received a portion of a credit as a constituent taxpayer under
16 section 6702, subsection 3 shall file with the constituent taxpayer's income tax return
17 under chapter 823 a copy of the allocation certificate issued by the authority for the
18 qualified development allowing the credit and a copy of the certification for the allocation
19 of the credit among the constituent taxpayers.

20 **§6705. Insurance premium taxes**

21 A qualified taxpayer that is subject to a tax under chapter 357, does not pay taxes
22 under Part 8 and is otherwise eligible to claim a credit under this chapter may claim and
23 carry forward the credit against the tax under chapter 357 to the same extent as the
24 taxpayer would have been able to claim or carry forward the credit under the tax in Part 8.
25 All other provisions of this chapter apply to a credit claimed pursuant to this section.

26 **§6706. Rules**

27 The authority and the State Tax Assessor, in consultation with each other, shall adopt
28 rules, respectively, necessary to carry out the provisions of this chapter. Rules adopted
29 pursuant to this section are routine technical rules as defined by Title 5, chapter 375,
30 subchapter 2-A.

31 **§6707. Compliance monitoring**

32 The authority, in consultation with the State Tax Assessor, shall monitor and oversee
33 compliance with the provisions of this chapter and shall report specific occurrences of
34 noncompliance to the State Tax Assessor.

35 **§6708. Report to the Legislature**

36 **1. Report.** By December 31st of each year in which an allocation has been made
37 under this chapter, the authority shall provide a written report to the Legislature for that
38 year. A report under this section must be made available to the public.

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- 2. Contents of report.** A report under this section must:
- A. Specify the number of qualified developments that have been allocated a tax credit during that year and the total number of housing units supported by each development;
 - B. Describe for each qualified development under paragraph A the geographic location of the development, the household type and any specific demographic information available about residents intended to be served by the development, the income levels intended to be served by the development and the rents authorized for the development; and
 - C. Provide housing market and demographic information that demonstrates how the qualified developments under paragraph A are addressing the need for affordable housing within the communities the developments are intended to serve and information about any remaining disparities in the affordability of housing within those communities.

Sec. 3. Effective date. This Act takes effect January 1, 2020.

16 **SUMMARY**

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This bill creates a tax credit for owners of low-income housing developments that qualify for tax credits under federal law and are financed with tax-exempt bonds, located in the State and determined by the Maine State Housing Authority to be eligible for a federal tax credit whether or not a federal tax credit is allocated to the development. A taxpayer that receives the credit must agree to enter a restrictive covenant to maintain and operate the development as low-income housing and follow various federal requirements for 15 years. The state tax credit is for 6 years and has a recapture provision if the basis, as determined under federal law, of the development goes below a certain amount. An insurance company is allowed to apply the credit against the company's insurance premium tax. The Maine State Housing Authority is required annually to report various details of the qualified developments that received a credit for the prior tax year.