



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1974

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S.P. 808

In Senate, May 18, 2023

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

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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.

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## SUMMARY

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

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

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

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

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