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Date: (Filing No. S-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 112, L.D. 297, Bill, “An Act To Increase Allowed Investments under the Maine New Markets Capital Investment Program”

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

'An Act To Provide Additional Oversight of and Protections to the Maine New Markets Capital Investment Program and New Markets Capital Investment Credit'

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

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine New Markets Capital Investment Program, established by the Legislature in 2011, was enacted to supplement the federal program and encourage investments in Maine businesses that are located in economically distressed areas of the State and help retain and create jobs in these distressed areas; and

Whereas, critical changes are necessary to the Maine New Markets Capital Investment Program to ensure that the State's investments are protected and the program functions as intended by the Legislature; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §5219-HH, sub-§1, ¶B-1 is enacted to read:

B-1. "Capital at risk" means the estimated amount of a qualified low-income community investment in a qualified active low-income community business, excluding any fees charged to an investor, lender or borrower, that does not include

COMMITTEE AMENDMENT

1 any related transactions or ownership interests that reduce, mitigate or offset the
2 comprehensive risk to a person eligible to claim a tax credit under this section for a
3 qualified equity investment under Title 10, section 1100-Z.

4 **Sec. 2. 36 MRSA §5219-HH, sub-§1, ¶J**, as amended by PL 2013, c. 75, §1, is
5 further amended to read:

6 J. "Qualified low-income community investment" means any capital or equity
7 investment in, or loan to, any qualified active low-income community business made
8 after September 28, 2011, as long as no more than 5% of that investment is used to
9 refinance costs, expenses or investments incurred or paid by the qualified active low-
10 income community business, or a related party, prior to the date of the qualified low-
11 income community investment; make equity distributions from the qualified active
12 low-income community business to its owners; or acquire an existing Maine business
13 or enterprise. Except as otherwise provided in this paragraph, with respect to any one
14 qualified active low-income community business, the maximum amount of qualified
15 low-income community investments that may be made with the proceeds of qualified
16 equity investments that have been certified under Title 10, section 1100-Z, subsection
17 3, paragraph G is \$10,000,000 per project constructed, maintained or operated by the
18 qualified active low-income community business whether made by one or several
19 qualified community development entities. With respect to investments in a qualified
20 active low-income community business that is a manufacturing or value-added
21 production enterprise, the limit on the qualified low-income community investment is
22 \$40,000,000 per project constructed, maintained or operated by the qualified active
23 low-income community business. For the purposes of this paragraph, with respect to
24 projects to which the \$10,000,000 limitation applies, "project" includes all land,
25 buildings, structures, machinery and equipment located at the same location and
26 constructed, maintained or operated by the qualified active low-income community
27 business. For the purposes of this paragraph, with respect to projects to which the
28 \$40,000,000 limitation applies, "project" means, and refers separately to, each
29 manufacturing or value-added production facility that projects to create or retain
30 more than 200 jobs, including the land, buildings, structures, machinery and
31 equipment functionally related to, and integrated with, the manufacturing or
32 production process conducted on the site of that facility. "Project" does not mean or
33 include the component pieces of an integrated manufacturing or production process
34 conducted on the site of a particular facility.

35 **Sec. 3. 36 MRSA §5219-HH, sub-§1, ¶K** is enacted to read:

36 K. "Sham transaction" means any business transactions by an entity that invested
37 under this section, or by a person eligible to claim a tax credit under this section for a
38 qualified equity investment under Title 10, section 1100-Z, if the business
39 transactions giving rise to the investment and the corresponding tax credits authorized
40 under this section are determined by the State Tax Assessor to have achieved a result
41 that is inconsistent with the purpose of the Maine New Markets Capital Investment
42 Program under Title 10, section 1100-Z and its implementing rules or of the credit
43 authorized under this section and rules adopted under this section.

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

1 **8. Recapture of credits associated with sham transaction.** Notwithstanding the
2 federal recapture provisions under the Code, Section 45D or any other provisions of this
3 section, the State Tax Assessor shall recapture any tax credits issued under this section
4 that the State Tax Assessor determines to be connected with a sham transaction, including
5 but not limited to any fees charged by a qualified community development entity to an
6 investor, lender or borrower under the Maine New Markets Capital Investment Program
7 under Title 10, section 1100-Z using the tax credit under this section. The State Tax
8 Assessor shall consider the following factors when making the determination of a sham
9 transaction under this section:

10 A. Whether the qualified low-income community investment had sufficient capital at
11 risk as demonstrated by either a qualified equity investment or a loan with a 7-year
12 maturity date that is equal to or greater than the amount of the claimed investment;

13 B. Whether the capital at risk in the qualified low-income community investment
14 was used to purchase ownership interests from existing investors instead of directly
15 from the qualified active low-income community business through the issuance of
16 new stock; and

17 C. Whether the capital at risk in the qualified low-income community investment
18 was used to refinance existing loans of the qualified active low-income community
19 business instead of providing new capital to the business to support its operations.

20 **Sec. 5. Government Oversight Committee review.** The Government
21 Oversight Committee may consider whether a review of the Maine New Markets Capital
22 Investment Program established under the Maine Revised Statutes, Title 10, section
23 1100-Z and the new markets capital investment credit under Title 36, section 5219-HH
24 and all approved investments made under the program since 2011 is warranted. If the
25 Government Oversight Committee determines that a review is warranted, the committee
26 may assign this review to the Office of Program Evaluation and Government
27 Accountability. If a review is performed, the Government Oversight Committee shall
28 provide a report to the Joint Standing Committee on Labor, Commerce, Research and
29 Economic Development by February 1, 2016. The Joint Standing Committee on Labor,
30 Commerce, Research and Economic Development is authorized to report out a bill on this
31 topic to the Second Regular Session of the 127th Legislature, whether or not the Joint
32 Standing on Labor, Commerce, Research and Economic Development receives a report
33 from the Government Oversight Committee.

34 **Sec. 6. Application.** This Act applies only to applications received after the
35 effective date of this Act by the Finance Authority of Maine for the Maine New Markets
36 Capital Investment Program pursuant to the Maine Revised Statutes, Title 10, section
37 1100-Z.

38 **Sec. 7. Appropriations and allocations.** The following appropriations and
39 allocations are made.

40 **FINANCE AUTHORITY OF MAINE**

41 **Finance Authority of Maine 0582**

1 Initiative: Provides funds for the additional costs associated with the Government
2 Oversight Committee review of the Maine New Markets Capital Investment Program and
3 the State Tax Assessor review of sham transactions.

4	GENERAL FUND	2015-16	2016-17
5	All Other	\$35,000	\$10,000
6			
7	GENERAL FUND TOTAL	<u>\$35,000</u>	<u>\$10,000</u>

8 **Emergency clause.** In view of the emergency cited in the preamble, this
9 legislation takes effect when approved.'

10 **SUMMARY**

11 This amendment is the majority report of the committee. It replaces the bill and adds
12 an emergency preamble and clause. It makes the following changes to the Maine New
13 Markets Capital Investment Program and the new markets capital investment credit.

- 14 1. It adds new definitions of "sham transaction" and "capital at risk."
- 15 2. It requires the State Tax Assessor to recapture new markets capital investment
16 credits issued that are determined to be connected with a sham transaction, including fees
17 charged by an entity to an investor, lender or borrower under the Maine New Markets
18 Capital Investment Program under the Maine Revised Statutes, Title 10, section 1100-Z
19 using the tax credit.
- 20 3. It eliminates the eligibility of certain refinancing and ownership transfer
21 transactions as qualified low-income community investments for the credit if those
22 transactions exceed 5% of the investment.
- 23 4. It allows the Government Oversight Committee to consider whether a review of
24 the Maine New Markets Capital Investment Program and the new markets capital
25 investment credit and all approved investments made under the program since 2011 is
26 warranted. If the Government Oversight Committee determines that a review is
27 warranted, the committee may assign this review to the Office of Program Evaluation and
28 Government Accountability. If a review is performed, the Government Oversight
29 Committee shall provide a report to the Joint Standing Committee on Labor, Commerce,
30 Research and Economic Development by February 1, 2016. It authorizes the Joint
31 Standing Committee on Labor, Commerce, Research and Economic Development to
32 report out a bill on this topic to the Second Regular Session of the 127th Legislature,
33 whether or not the Joint Standing Committee on Labor, Commerce, Research and
34 Economic Development receives a report from the Government Oversight Committee.
- 35 5. It adds an appropriations and allocations section.

36 **FISCAL NOTE REQUIRED**
37 **(See attached)**