Testimony of John Kaminski – January 24, 2024

LD 2106 - "An Act to Accelerate the Production of Affordable Housing and Strengthen the Historic Property Rehabilitation Tax Credit"

Chair Grohoski, Chair Perry and Committee Members:

I am John Kaminski and am an attorney at Drummond Woodsum in Portland. In that role, I have been involved in many Maine historic tax credit transactions since the enactment of the present credit in 2008. I am here today in support of LD 2016.

The bill has two components. The bill's first component is to increase the per project per taxable year credit cap from its present $5 million to $10 million.

The cap has remained fixed at $5 million since 2008. During that time, there has been significant overall inflation in the economy and, as others will testify today, construction costs have more than doubled. The power of the credit to assist historic property redevelopment has been greatly reduced. This is particularly acute for affordable housing development because of the higher credit percentage for that use. An affordable housing project will hit the $5 million cap with approximately $14.3 million of construction costs. Mill rehabilitation projects for affordable housing are today routinely exceeding that amount substantially.

The response of developers of projects exceeding the $5 million per project per taxable year cap has been to work to time the project so that different phases of the project are completed in multiple taxable years. This results in delays in project completion and increased cost and risk to project developers and investors.

Typically, developers will delay starting construction to time the construction or the first phase to be completed shortly before the end of one tax year and the second phase shortly after the start of the second tax year. For example, a project with a 16 month construction period for the first phase would ideally start in July of the preceding year for completion in two separate tax years. If approvals and all other project details were ready to go before July, developers would still need to wait until July to start in order to have an efficient construction process. This delays project completion and also exposes the project to cost escalation while waiting to start. Managing the cap causes delays in the housing units being available and also increases costs.

In addition, managing the cap by planning construction completion in two separate tax years increases risk to developers and investors. If something unexpected occurs to prevent the completion of the first phase in the first planned tax year, then the project would not receive the first $5 million of tax credits for that year. If the project were then fully completed in the second tax year, the project would only receive credits in the second year and would be limited to one $5 million cap instead of two years' caps totaling $10 million. It is not difficult to imagine unexpected events that might occur during construction. For example, a material shortage or weather event could cause a delay. Recently the inability to obtain electrical switchgear has delayed completion of some large projects. The recent storms and flooding provides another example. Many of the projects are located in former mill properties that are located on rivers.

The recent photos of the flooding at the Hathaway and Lockwood Mill site in Waterville are a graphic example and the Lockwood Mill is currently under historic tax credit redevelopment as a 65 unit affordable housing project.

Increasing the credit cap to $10 million would both keep up with inflation and address these problems.

The second component of the bill seeks to improve the timing efficiency of the credit. Often the credit is allocated to a nonprofit and many of the nonprofits have tax years which are not calendar years. Currently, a nonprofit must report the credit in its tax year in which occurred the end of the project owner's tax year.

This is perhaps best illustrated by an example. Assume a project owner's tax year is a calendar year and the nonprofit's tax year ends October 31. If the project is completed in December **2024**, then the nonprofit must wait to claim the credit on its next tax return – the return for its year ending October 31, **2025.** Allowing time for return preparation and state processing, the tax credit refund would not be received until sometime in **2026**, well over a year after project completion. This delay replicates over all 4 years of the tax credit payment term. Meanwhile, the project bears the burden of interest on the project costs to be paid by the credit.

The bill addresses this problem by allowing a nonprofit allocated the credit to elect to claim it on a calendar year basis. It also makes the fix applicable to the Maine affordable housing credit which has a similar timing issue.

I urge you to act favorably on the bill.

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