Testimony of John Kaminski – February 5, 2025

LD 146 - "An Act to Increase the Maximum Amount of the Historic Property Rehabilitation Tax Credit That May be Taken in a Year"

Chair Grohoski, Chair Cloutier 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 146.

The impact of this bill will be to improve the efficiency of the Maine historic tax credit by accelerating the completion of development projects at reduced cost and reduced development risk. The bill achieves this without increasing the overall tax expenditures resulting from this credit.

Current law caps this credit at $5 million per project per taxable year. The cap has remained fixed at $5 million since the enactment of the present credit in 2008.

During that time, there has been significant overall inflation in the economy and 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 rehabilitation costs. Mill 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 in order to qualify for more than $5 million in total credit. This results in increased complexity, delays in project completion and increased cost and risk to project developers and investors.

Typically, developers will delay starting construction to time the construction of 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 housing project with a typical 16-month construction period for the first phase would ideally start in July 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 delay 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 of construction.

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 or skilled labor shortage, a weather event or flooding could cause a delay. Many of the projects are located in former mill properties that are located on rivers.

The bill addresses these inefficiencies and problems by allowing projects to claim up to $10 million in credit in the first taxable year. If $10 million in credit is claimed in the first year, then zero credit could be claimed in the second year. Also, the credit could be split between the first and second years so long as the combined total for the two years does not exceed $10 million.

Under the bill, the credit in the first two years will not exceed $10 million combined. This is the same result that could be reached under current law by physically placing the project in service in two years, so there is no additional credit received by the project. The benefit of the bill is that the delays, additional costs, uncertainty and risk of phasing construction to complete over two taxable years is eliminated.

I urge you to act favorably on the bill.

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