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No. 742

S.P. 235

In Senate, February 18, 2011

An Act To Eliminate the Sunset Date of the Maine Historic Preservation Tax Credit

Received by the Secretary of the Senate on February 18, 2011. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.

Secretary of the Senate

Presented by Senator RECTOR of Knox.
Cosponsored by Representative BERRY of Bowdoinham and
Senators: GOODALL of Sagadahoc, MARTIN of Kennebec, McCORMICK of Kennebec,
TRAHAN of Lincoln, WHITTEMORE of Somerset, WOODBURY of Cumberland,
Representatives: MOULTON of York, VALENTINO of Saco.

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

2 **Sec. 1. 27 MRSA §511, sub-§5, ¶B**, as enacted by PL 2007, c. 539, Pt. WW, §1,
3 is amended to read:

4 B. By January 15, 2013 and every 4 years thereafter, the Maine Historic Preservation
5 Commission shall analyze the use of tax credits provided under Title 36, section
6 5219-BB as an incentive for rehabilitation of historic structures and economic
7 development, analyze tax and other revenues generated by the rehabilitation to
8 determine in relation to the cost of the credit if they exceed the costs of the credit and
9 report the results of its analysis to the joint standing committee of the Legislature
10 having jurisdiction over taxation matters with recommendations as to whether the
11 credits under Title 36, section 5219-BB should be ~~extended~~ continued, repealed or
12 amended. Any such recommendations must include a specific recommendation of
13 appropriate transition provisions in order that projects in the development or planning
14 stages are not adversely affected. The joint standing committee may submit
15 legislation related to the report.

16 **Sec. 2. 30-A MRSA §4722, sub-§1, ¶DD**, as enacted by PL 2009, c. 361, §4 and
17 affected by §37, is amended to read:

18 DD. Certify affordable housing projects for the purpose of the income tax credit
19 increase under Title 36, section 5219-BB, subsection 3; administer and enforce the
20 affordability requirements set forth in this paragraph; and perform other functions
21 described in this paragraph and necessary to the powers and duties described in this
22 paragraph.

23 (1) For purposes of this paragraph, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 (a) "Affordable housing" means a decent, safe and sanitary dwelling,
26 apartment or other living accommodation for a household whose income
27 does not exceed 60% of the median income for the area as defined by the
28 United States Department of Housing and Urban Development under the
29 United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8,
30 as amended.

31 (b) "Affordable housing project" means a project in which:

32 (i) At least 50% of the aggregate square feet of the completed project is
33 housing of which at least 50% of the aggregate square feet of the
34 completed housing creates new affordable housing; or

35 (ii) At least 33% of the aggregate square feet of the completed project
36 creates new affordable housing.

37 (2) An affordable housing project for which the owner of the property received
38 the income tax credit increase under Title 36, section 5219-BB, subsection 3 must
39 remain an affordable housing project for 30 years from the date the affordable
40 housing project is placed in service. If the property does not remain an
41 affordable housing project for 30 years from the date the affordable housing

1 project is placed in service, the owner of the property shall pay to the Maine State
2 Housing Authority for application to the Housing Opportunities for Maine Fund
3 established under section 4853 an amount equal to the income tax credit increase
4 allowed under Title 36, section 5219-BB, subsection 3, plus interest on that
5 amount at the rate of 7% per annum from the date the property is placed in
6 service until the date of payment of all amounts due. The affordability
7 requirements and the repayment obligation in this subparagraph must be set forth
8 in a restrictive covenant executed by the owner of the property and the affordable
9 housing project for the benefit of and enforceable by the Maine State Housing
10 Authority and recorded in the appropriate registry of deeds before the owner of
11 the property claims the income tax credit increase under Title 36, section
12 5219-BB, subsection 3.

13 (3) If the repayment obligation in subparagraph (2) is not fully satisfied after
14 written notice is sent by certified mail or registered mail to the owner of the
15 property at the owner's last known address, the Maine State Housing Authority
16 may file a notice of lien in the registry of deeds of the county in which the real
17 property subject to the lien is located. The notice of lien must specify the amount
18 and interest due, the name and last known address of the owner, a description of
19 the property subject to the lien and the Maine State Housing Authority's address
20 and the name and address of its attorney, if any. The Maine State Housing
21 Authority shall send a copy of the notice of lien filed in the registry by certified
22 mail or registered mail to the owner of the property at the owner's last known
23 address and to any person who has a security interest, mortgage, lien,
24 encumbrance or other interest in the property that is properly recorded in the
25 registry of deeds in which the property is located. The lien arises and becomes
26 perfected at the time the notice is filed in the appropriate registry of deeds in
27 accordance with this subparagraph. The lien constitutes a lien on all property
28 with respect to which the owner receives the income tax credit increase under
29 Title 36, Section 5219-BB, subsection 3 and the proceeds of any disposition of
30 the property that occurs after notice to the owner of the repayment obligation.
31 The lien is prior to any mortgage and security interest, lien, restrictive covenant
32 or other encumbrance recorded, filed or otherwise perfected after the notice of
33 lien is filed in the appropriate registry of deeds. The lien may be enforced by a
34 turnover or sale order in accordance with Title 14, section 3131 or any other
35 manner in which a judgment lien may be enforced under the law. The lien must
36 be in the amount of the income tax credit increase allowed under Title 36, section
37 5219-BB, subsection 3, plus interest on that amount at the rate of 7% per annum
38 from the date the property is placed in service until the date of payment of all
39 amounts due. Upon receipt of payment of all amounts due under the lien, the
40 Maine State Housing Authority shall execute a discharge lien for filing in the
41 registry or offices in which the notice of lien was filed.

42 (4) Annually by every August 1st ~~until and including August 1, 2013~~, the Maine
43 State Housing Authority shall review the report issued pursuant to Title 27,
44 section 511, subsection 5, paragraph A to determine the percentage of the total
45 aggregate square feet of completed projects that constitutes new affordable
46 housing, rehabilitated and developed using:

1 (a) Either of the income tax credits under Title 36, section 5219-BB,
2 subsection 2; and

3 (b) The income tax credit increase under Title 36, section 5219-BB,
4 subsection 3.

5 If the total aggregate square feet of new affordable housing does not equal or
6 exceed 30% of the total aggregate square feet of rehabilitated and developed
7 completed projects eligible for a credit under Title 36, section 5219-BB, the
8 Maine State Housing Authority and Maine Historic Preservation Commission
9 shall notify the State Tax Assessor of this fact.

10 **Sec. 3. 36 MRSA §5219-BB, sub-§1, ¶C**, as amended by PL 2009, c. 361, §28
11 and affected by §37, is further amended to read:

12 C. "Certified qualified rehabilitation expenditure" means a qualified rehabilitation
13 expenditure, as defined by the Code, Section 47(c)(2), made ~~between~~ on or after
14 January 1, 2008 and December 31, 2013. For purposes of subsection 2, paragraph B,
15 qualified rehabilitation expenditures incurred in the certified rehabilitation of a
16 certified historic structure located in the State do not include a requirement that the
17 certified historic structure be substantially rehabilitated.

18 **Sec. 4. 36 MRSA §5219-BB, sub-§2**, as amended by PL 2009, c. 361, §28 and
19 affected by §37, is further amended to read:

20 **2. Credit allowed.** A taxpayer is allowed a credit against the tax imposed under this
21 Part:

22 A. Equal to 25% of the taxpayer's certified qualified rehabilitation expenditures for
23 which a tax credit is claimed under Section 47 of the Code for a certified historic
24 structure located in the State; or

25 B. Equal to 25% of the certified qualified rehabilitation expenditures of a taxpayer
26 who incurs not less than \$50,000 and up to \$250,000 in certified qualified
27 rehabilitation expenditures in the rehabilitation of a certified historic structure located
28 in the State and who does not claim the federal credit with regard to those
29 expenditures. The credit may be claimed for the taxable year in which the certified
30 historic structure is placed in service.

31 A taxpayer is allowed a credit under paragraph A or B but not both. A credit may not be
32 claimed for expenditures incurred before January 1, 2008 ~~or after December 31, 2013~~.

33 **SUMMARY**

34 This bill eliminates the current sunset date for the Maine historic preservation tax
35 credit and requires the Maine Historic Preservation Commission to report to the
36 Legislature in 2013 and every 4 years thereafter with an analysis on the use of the credit.