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Date: (Filing No. S-)

TAXATION

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**STATE OF MAINE
SENATE
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 311, L.D. 991, Bill, “An Act To Establish the Maine New Markets Capital Investment Program”

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

'Sec. 1. 10 MRSA c. 110, sub-c. 12 is enacted to read:

SUBCHAPTER 12

MAINE NEW MARKETS CAPITAL INVESTMENT PROGRAM

§1100-Z. Maine New Markets Capital Investment Program

1. Findings and intent. The Legislature finds that encouragement of investment in qualified businesses and developments located in economically distressed areas of the State and the creation and preservation of jobs are in the public interest and promote the general welfare of the State. The Legislature further finds that the enactment of incentives as set forth in this subchapter to promote investments is necessary in order to ensure the long-term economic vitality of this State, to preserve numerous opportunities for jobs for the people of the State and to make this State more competitive in the attraction of investment capital and thus to ensure the preservation and betterment of the economy of the State for the benefit of its people. The Legislature further finds that the foregoing benefits to the State and its people far exceed the costs to the State of providing the incentives set forth in this subchapter. The Legislature further finds that the provisions of this subchapter are necessary to accomplish these objectives.

The Legislature finds that the incentives offered by the State pursuant to this subchapter are intended to induce major investments in qualified businesses and developments located in economically distressed areas of the State and that any party who accepts and reasonably relies upon these inducements in making qualified investments is entitled to the full realization of these incentives without impairment by subsequent changes in law. The Legislature finds that when determining whether a project is financially feasible an

COMMITTEE AMENDMENT

1 investing party must rely in good faith upon the Legislature to ensure that the promised
2 incentives of this subchapter will be available for a period of 7 years following the date of
3 each qualified investment and that a party's confidence in the full realization of these
4 benefits is a critical factor in inducing the party to make the desired investment. It is the
5 intent of this Legislature that all successor Legislatures honor the commitments held out
6 by this subchapter.

7 **2. Program.** The Maine New Markets Capital Investment Program, referred to in
8 this section as "the program," is established to encourage new investment in economically
9 distressed areas of the State. For the purposes of this section, unless otherwise defined in
10 this section, all terms have the same meaning as under Title 36, section 5219-GG and
11 Section 45D of the United States Internal Revenue Code of 1986, as amended.

12 **3. Application for tax credits; allocation of tax credit authority.** Tax credit
13 authority is allocated under the program as described in this subsection.

14 A. The authority shall provide an application form, which must be available to
15 applicants no later than the date when the final rule implementing this section is
16 adopted.

17 B. A qualified community development entity that seeks an allocation of tax credit
18 authority shall apply to the authority. The qualified community development entity
19 shall submit an application on a form that the authority provides. The application
20 must include:

21 (1) The name, address and tax identification number of the entity and evidence
22 of the certification of the entity as a qualified community development entity;

23 (2) A copy of an allocation agreement executed by the qualified community
24 development entity, its controlling entity or other entity controlled by the same
25 controlling entity and the Community Development Financial Institutions Fund
26 of the United States Department of the Treasury, which includes the State in its
27 service area;

28 (3) A certificate executed by an executive officer of the qualified community
29 development entity attesting that the allocation agreement remains in effect and
30 has not been revoked or canceled by the Community Development Financial
31 Institutions Fund;

32 (4) Information regarding the amount of tax credit authority requested and the
33 proposed use of proceeds from the issuance of the qualified equity investment or
34 long-term debt security; and

35 (5) Responses to the following 5 questions, which must be answered
36 affirmatively or negatively without explanation or elaboration, to determine
37 qualification for participating in the program:

38 (a) Whether the Community Development Financial Institutions Fund has
39 awarded multiple rounds of federal New Markets Tax Credit allocation to the
40 qualified community development entity, its controlling entity or other entity
41 controlled by the same controlling entity;

1 (b) Whether the qualified community development entity, its controlling
2 entity or other entity controlled by the same controlling entity has
3 participated as a qualified community development entity in a state New
4 Markets Tax Credit program or has made an investment in this State that
5 qualifies for federal New Markets Tax Credits;

6 (c) Whether the qualified community development entity, its controlling
7 entity or other entity controlled by the same controlling entity has made an
8 investment qualified for tax credits in a business located in a nonmetropolitan
9 census tract;

10 (d) Whether the qualified community development entity, its controlling
11 entity or other entity controlled by the same controlling entity has made an
12 investment qualified for tax credits in a state where it did not previously have
13 substantial operations; and

14 (e) Whether the qualified community development entity, its controlling
15 entity or other entity controlled by the same controlling entity has explored
16 potential investment opportunities in this State that would qualify under this
17 subchapter.

18 Applicants answering affirmatively to 4 or more of the 5 questions must be
19 determined to be qualified.

20 C. In the rule implementing this subchapter, the authority shall set a nonrefundable
21 application fee, which must be paid to the authority at the time each application is
22 submitted. The authority shall also set an annual report fee and establish a payment
23 schedule along with requirements for the report pursuant to subsection 5.

24 D. Within 60 days of receipt of an application for tax credit authority, the authority
25 shall either approve the application and, as part of that approval, indicate the amount
26 of tax credit authority issued to the qualified community development entity or
27 determine that the authority intends to deny the application. If the authority intends
28 to deny the application, it shall inform the qualified community development entity
29 by written notice of the grounds for the intended denial. Upon receipt of the notice of
30 intended denial by the qualified community development entity:

31 (1) If the qualified community development entity provides any additional
32 information required by the authority or otherwise completes its application
33 within 15 days, the application must be considered complete as of the original
34 date of submission and the authority has an additional 30 days to either approve
35 or deny the application; or

36 (2) If the qualified community development entity fails to provide the
37 information or complete its application within the 15-day period, the application
38 is deemed denied and may be resubmitted in full with a new submission date.

39 E. The authority shall approve applications for tax credit authority in the order
40 applications are received by the authority. Applications received on the same day are
41 deemed to have been received simultaneously. For applications received on the same
42 day and determined to be complete, the authority shall certify, consistent with

1 remaining tax credit capacity, tax credit authority in proportionate percentages based
2 upon the ratio of the amount of tax credit authority requested in an application to the
3 total amount of tax credit authority requested in all applications received on the same
4 day. If a pending request cannot be fully certified because of the limitations
5 contained in this subchapter, the authority shall certify the portion that may be
6 certified unless the qualified community development entity elects to withdraw its
7 request rather than receive partial credit. The authority shall provide written
8 notification to each qualified community development entity of the approval of tax
9 allocation authority and the amount of tax credit authority it was allocated.

10 F. Within 24 months after receipt of the notice of the allocation of tax credit
11 authority, the qualified community development entity shall issue the qualified equity
12 investments or long-term debt securities and receive cash in the amount of the total
13 amount of tax credit authority that the qualified community development entity was
14 allocated. The qualified community development entity shall provide the authority
15 with evidence of the entity's receipt of the cash investment within 10 business days
16 after receipt. If the qualified community development entity does not issue the
17 qualified equity investment or long-term debt security and receive the cash purchase
18 price within 24 months following receipt of the tax credit authority notice for any
19 portion of its allocation, such unused allocation of tax credit authority lapses and the
20 qualified community development entity may not issue the qualified equity
21 investments or long-term debt securities without reapplying to the authority for
22 additional tax credit authority. Any tax credit authority that lapses reverts back to the
23 authority and may be reissued only in accordance with the application process
24 outlined in this section.

25 G. Upon receipt of notice that a qualified community development entity has issued
26 its qualified equity investments or long-term debt securities, the authority shall certify
27 the entity's qualified equity investments or long-term debt securities as qualified
28 equity investments and eligible for tax credits under Title 36, section 5219-GG. The
29 authority shall provide written notice, sent by certified mail or any other means
30 considered feasible by the authority, of the certification to the qualified community
31 development entity, Maine Revenue Services and the Commissioner of
32 Administrative and Financial Services. The notice must include the names of persons
33 eligible to claim the tax credits and their respective tax credit amounts. If the names
34 of the persons that are eligible to claim the tax credits change due to a transfer of a
35 qualified equity investment or a change in an allocation pursuant to this subchapter,
36 the qualified community development entity shall notify the authority of such change.

37 H. On the date designated by the authority, the authority shall begin accepting
38 applications for the full \$250,000,000 of qualified equity investments under
39 subsection 4. An applicant may not be awarded more than 25% of the total tax credit
40 authority available.

41 **4. Limit on amount of tax credits authorized.** The maximum aggregate amount of
42 qualified equity investments for which the authority may issue tax credit authority under
43 this section is \$250,000,000; a tax credit claim may not exceed \$20,000,000 in any one
44 state fiscal year over the 7 years of the tax credit allowance dates as described in Title 36,
45 section 5219-GG, subsection 1, paragraph A.

1 **5. Reporting and disclosure of information.** The authority shall require annual
2 reports of a qualified community development entity granted tax credit allocation
3 authority pursuant to subsection 3. Reports may be shared with Maine Revenue Services
4 and the Commissioner of Administrative and Financial Services. Notwithstanding
5 section 975-A, the authority may disclose any information to Maine Revenue Services
6 and the Commissioner of Administrative and Financial Services that it considers
7 necessary for the administration of the program pursuant to this section, Title 36, section
8 2531 or Title 36, section 5219-GG.

9 **6. Rules.** By December 30, 2011, the authority shall adopt rules necessary to
10 implement this section. Rules adopted pursuant to this subsection are routine technical
11 rules under Title 5, chapter 375, subchapter 2-A.

12 **Sec. 2. 36 MRSA §191, sub-§2, ¶QQ,** as amended by PL 2011, c. 211, §20, is
13 further amended to read:

14 QQ. The disclosure of registration, reporting and payment information to the
15 Department of Agriculture, Food and Rural Resources necessary for the
16 administration of Title 32, chapter 28; ~~and~~

17 **Sec. 3. 36 MRSA §191, sub-§2, ¶RR,** as enacted by PL 2011, c. 211, §21, is
18 amended to read:

19 RR. The disclosure to the Finance Authority of Maine of the cumulative value of
20 eligible premiums submitted for reimbursement pursuant to Title 10, section 1020-C;
21 and

22 **Sec. 4. 36 MRSA §191, sub-§2, ¶SS** is enacted to read:

23 SS. The disclosure of information to the Finance Authority of Maine necessary for
24 the administration of the new markets capital investment credit in sections 2531 and
25 5219-GG and to the Commissioner of Administrative and Financial Services as
26 necessary for the execution of the memorandum of agreement pursuant to section
27 5219-GG, subsection 3.

28 **Sec. 5. 36 MRSA §2531** is enacted to read:

29 **§2531. New markets capital investment credit**

30 A taxpayer subject to tax under this chapter that holds a qualified equity investment
31 certified by the Finance Authority of Maine pursuant to Title 10, section 1100-Z,
32 subsection 3, paragraph G is allowed a credit equal to the amount determined in
33 accordance with section 5219-GG against the tax otherwise due under this chapter. The
34 provisions in section 5219-GG govern the allowance of the credit and limitations on the
35 credit amount, refundability, carry-over and recapture.

36 **Sec. 6. 36 MRSA §5219-GG** is enacted to read:

37 **§5219-GG. New markets capital investment credit**

38 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
39 following terms have the following meanings.

1 A. "Applicable percentage" means 0% for each of the first 2 credit allowance dates,
2 7% for the 3rd credit allowance date and 8% for the next 4 credit allowance dates.

3 B. "Authority" means the Finance Authority of Maine.

4 C. "Commissioner" means the Commissioner of Administrative and Financial
5 Services.

6 D. "Credit allowance date" means, with respect to any qualified equity investment,
7 the date on which the investment is initially made and each of the 6 anniversary dates
8 of the date thereafter.

9 E. "Long-term debt security" means any debt instrument issued by a qualified
10 community development entity, at par value or a premium, with an original maturity
11 date of at least 7 years from the date of its issuance, with no acceleration of
12 repayment, amortization or prepayment features prior to its original maturity date.
13 The qualified community development entity that issues the debt instrument may not
14 make cash interest payments on the debt instrument during the period commencing
15 with its issuance and ending on its final credit allowance date in excess of the
16 cumulative operating income, as defined in the regulations adopted pursuant to the
17 Code, Section 45D, of the qualified community development entity for the same
18 period prior to giving effect to interest expense on such debt instrument. This
19 paragraph does not limit the holder's ability to accelerate payments on the debt
20 instrument in situations when the qualified community development entity has
21 defaulted on covenants designed to ensure compliance with this section; section 191,
22 subsection 2, paragraph SS; section 2531; and Title 10, section 1100-Z or the Code,
23 Section 45D.

24 F. "Purchase price" means the amount of the investment in the qualified community
25 development entity for the qualified equity investment.

26 G. "Qualified active low-income community business" has the same meaning as in
27 the Code, Section 45D.

28 H. "Qualified community development entity" has the same meaning as in the Code,
29 Section 45D, except that the entity must have entered into or be controlled by or
30 under common control of an entity that has entered into an allocation agreement with
31 the Community Development Financial Institutions Fund of the United States
32 Department of the Treasury with respect to credits authorized by the Code, Section
33 45D.

34 I. "Qualified equity investment" means any equity investment in, or long-term debt
35 security issued by, a qualified community development entity that:

36 (1) Has at least 85% of its cash purchase price used by the issuer to make
37 qualified low-income community investments in qualified active low-income
38 community businesses located in the State by the 2nd anniversary of the initial
39 credit allowance date;

40 (2) Is acquired after December 31, 2011 at its original issuance solely in
41 exchange for cash; and

1 (3) Is designated by the issuer as a qualified equity investment and is certified by
2 the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G.
3 "Qualified equity investment" includes any qualified equity investment that does
4 not meet the provisions of Title 10, section 1100-Z, subsection 3, paragraph G if
5 the investment was a qualified equity investment in the hands of a prior holder.
6 The qualified community development entity shall keep sufficiently detailed
7 books and records with respect to the investments made with the proceeds of the
8 qualified equity investments to allow the direct tracing of the proceeds into
9 qualified low-income community investments in qualified active low-income
10 community businesses in the State.

11 J. "Qualified low-income community investment" means any capital or equity
12 investment in, or loan to, any qualified active low-income community business made
13 after the effective date of this paragraph. With respect to any one qualified active
14 low-income community business, the maximum amount of qualified low-income
15 community investments that may be made in the business, on a collective basis with
16 all of its affiliates, with the proceeds of qualified equity investments that have been
17 certified under Title 10, section 1100-Z, subsection 3, paragraph G is \$10,000,000
18 whether made by one or several qualified community development entities.

19 **2. Credit allowed.** A person that holds a qualified equity investment certified by the
20 authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G on a credit
21 allowance date that falls within the taxable year is allowed a credit equal to the applicable
22 percentage that applies to the credit allowance date multiplied by the purchase price paid
23 for the qualified equity investment. Notwithstanding any other provision of law, other
24 than the recapture provisions of subsection 7, the person, and any subsequent person, that
25 is the holder of the credit certificate issued by the authority for a qualified equity
26 investment is entitled, in the aggregate, to the entire 39% credit amount computed with
27 respect to the 7 credit allowance dates. In no event may the credit amount in the
28 aggregate exceed 39% for any single qualified equity investment certified by the
29 authority.

30 **3. Memorandum of agreement.** Upon receipt of the authority's written notice of
31 the certification of a qualified equity investment's tax credit eligibility, the commissioner
32 shall enter into an agreement on behalf of the State with the person eligible to claim the
33 credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G. That agreement
34 must provide that the State shall, with the exception of recapture pursuant to subsection 7,
35 allow the tax credit as provided for in subsection 2 and recognize that the person named
36 as eligible for tax credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G is
37 entitled to claim the tax credits and the respective tax credit amounts in the aggregate, to
38 the entire 39% credit amount computed with respect to the 7 credit allowance dates.

39 **4. Carry-over to succeeding year.** Any unused portion of the credit may be carried
40 over to the following taxable year or years, except that the carry-over period for unused
41 credit amounts may not exceed 20 years.

42 **5. Pass-through entity; allocation of the credit.** Credits allowed pursuant to this
43 section to a partnership, limited liability company, S corporation or other similar pass-
44 through entity must be allocated to the partners, members, shareholders or other owners
45 in accordance with section 5219-G or pursuant to an executed agreement among the

1 partners, members or shareholders or other owners documenting an alternate allocation
2 method.

3 **6. Credit refundable.** The credit allowed under this section is fully refundable.

4 **7. Recapture of credits.** The assessor may recapture all of the credit allowed under
5 this section if:

6 A. Any amount of federal tax credits available with respect to a qualified equity
7 investment that is eligible for a tax credit under this section is recaptured under the
8 Code, Section 45D. In such case, the recapture must be proportionate to the federal
9 recapture with respect to the qualified equity investment;

10 B. The qualified community development entity redeems or makes a principal
11 repayment with respect to the qualified equity investment that generated the tax credit
12 prior to the final credit allowance date of the qualified equity investment. In such
13 case, the recapture must be proportionate to the amount of the redemption or
14 repayment with respect to the qualified equity investment; or

15 C. The qualified community development entity fails to invest at least 85% of the
16 purchase price of the qualified equity investment in qualified low-income community
17 investments in qualified active low-income community businesses located in the
18 State within 24 months of the issuance of the qualified equity investment and
19 maintain this level of investment in qualified low-income community investments in
20 qualified active low-income community businesses located in the State until the last
21 credit allowance date for the qualified equity investment. For purposes of calculating
22 the amount of qualified low-income community investments held by a qualified
23 community development entity, an investment is considered held by the qualified
24 community development entity even if the investment has been sold or repaid as long
25 as the qualified community development entity reinvests an amount equal to the
26 capital returned to or recovered from the original investment, exclusive of any profits
27 realized, in another qualified active low-income community business in this State
28 within 12 months of the receipt of the capital. A qualified community development
29 entity may not be required to reinvest capital returned from qualified low-income
30 community investments after the 6th anniversary of the issuance of the qualified
31 equity investment, the proceeds of which were used to make the qualified low-
32 income community investment, and the qualified low-income community investment
33 is considered to be held by the issuer through the qualified equity investment's final
34 credit allowance date.

35 The assessor shall provide written notice to the qualified community development entity
36 of any proposed recapture of tax credits pursuant to this subsection. The qualified
37 community development entity must be provided 90 days to cure any deficiency indicated
38 in the authority's original recapture notice and avoid such recapture. If the entity fails or
39 is unable to cure the deficiency within the 90-day period, the assessor shall provide the
40 qualified community development entity and the person from whom the credit is to be
41 recaptured with a final order of recapture. Any amount of tax credits for which a final
42 recapture order has been issued must be recaptured from the person that actually claimed
43 the tax credit.

