

§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 investing party must rely in good faith upon the Legislature to ensure that the promised incentives of this subchapter will be available for a period of 7 years following the date of each qualified investment and that a party's confidence in the full realization of these benefits is a critical factor in inducing the party to make the desired investment. It is the intent of this Legislature that all successor Legislatures honor the commitments held out by this subchapter. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

2. Program. The Maine New Markets Capital Investment Program, referred to in this section as "the program," is established to encourage new investment in economically distressed areas of the State. For the purposes of this section, unless otherwise defined in this section, all terms have the same meaning as under Title 36, section 5219-HH and Section 45D of the United States Internal Revenue Code of 1986, as amended. [PL 2011, c. 548, §3 (AMD).]

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

A. The authority shall provide an application form, which must be available to applicants no later than the date when the final rule implementing this section is adopted. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

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

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

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

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of the qualified community development entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

- (4) Information regarding the amount of tax credit authority requested and the proposed use of proceeds from the issuance of the qualified equity investment or long-term debt security; and
- (5) Responses to the following 5 questions, which must be answered affirmatively or negatively without explanation or elaboration, to determine qualification for participating in the program:
- (a) Whether the Community Development Financial Institutions Fund has awarded multiple rounds of federal New Markets Tax Credit allocation to the qualified community development entity, its controlling entity or other entity controlled by the same controlling entity;
 - (b) Whether the qualified community development entity, its controlling entity or other entity controlled by the same controlling entity has participated as a qualified community development entity in a state New Markets Tax Credit program or has made an investment in this State that qualifies for federal New Markets Tax Credits;
 - (c) Whether the qualified community development entity, its controlling entity or other entity controlled by the same controlling entity has made an investment qualified for tax credits in a business located in a nonmetropolitan census tract;
 - (d) Whether the qualified community development entity, its controlling entity or other entity controlled by the same controlling entity has made an investment qualified for tax credits in a state where it did not previously have substantial operations; and
 - (e) Whether the qualified community development entity, its controlling entity or other entity controlled by the same controlling entity has explored potential investment opportunities in this State that would qualify under this subchapter.

Applicants answering affirmatively to 4 or more of the 5 questions must be determined to be qualified. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

C. In the rule implementing this subchapter, the authority shall set a nonrefundable application fee, which must be paid to the authority at the time each application is submitted. The authority shall also set an annual report fee and establish a payment schedule along with requirements for the report pursuant to subsection 5. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

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

- (1) If the qualified community development entity provides any additional information required by the authority or otherwise completes its application within 15 days, the application must be considered complete as of the original date of submission and the authority has an additional 30 days to either approve or deny the application; or
- (2) If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is deemed denied and may be resubmitted in full with a new submission date. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

E. The authority shall approve applications for tax credit authority in the order applications are received by the authority. Applications received on the same day are deemed to have been received

simultaneously. For applications received on the same day and determined to be complete, the authority shall certify, consistent with remaining tax credit capacity, tax credit authority in proportionate percentages based upon the ratio of the amount of tax credit authority requested in an application to the total amount of tax credit authority requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in this subchapter, the authority shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit. The authority shall provide written notification to each qualified community development entity of the approval of tax allocation authority and the amount of tax credit authority it was allocated. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

F. Within 24 months after receipt of the notice of the allocation of tax credit authority, the qualified community development entity shall issue the qualified equity investments or long-term debt securities and receive cash in the amount of the total amount of tax credit authority that the qualified community development entity was allocated. The qualified community development entity shall provide the authority with evidence of the entity's receipt of the cash investment within 10 business days after receipt. If the qualified community development entity does not issue the qualified equity investment or long-term debt security and receive the cash purchase price within 24 months following receipt of the tax credit authority notice for any portion of its allocation, such unused allocation of tax credit authority lapses and the qualified community development entity may not issue the qualified equity investments or long-term debt securities without reapplying to the authority for additional tax credit authority. Any tax credit authority that lapses reverts back to the authority and may be reissued only in accordance with the application process outlined in this section. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

G. Upon receipt of notice that a qualified community development entity has issued its qualified equity investments or long-term debt securities, the authority shall certify the entity's qualified equity investments or long-term debt securities as qualified equity investments and eligible for tax credits under Title 36, section 5219-HH. The authority shall provide written notice, sent by certified mail or any other means considered feasible by the authority, of the certification to the qualified community development entity, the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services. The notice must include the names of persons eligible to claim the tax credits and their respective tax credit amounts. If the names of the persons that are eligible to claim the tax credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to this subchapter, the qualified community development entity shall notify the authority and the Department of Administrative and Financial Services, Bureau of Revenue Services of that transfer or change. [PL 2015, c. 300, Pt. A, §1 (AMD).]

H. On the date designated by the authority, the authority shall begin accepting applications for the full \$250,000,000 of qualified equity investments under subsection 4. An applicant may not be awarded more than 25% of the total tax credit authority available. [PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]
[PL 2015, c. 300, Pt. A, §1 (AMD).]

4. Limit on amount of tax credits authorized. The maximum aggregate amount of qualified equity investments for which the authority may issue tax credit authority under this section is \$250,000,000; a tax credit claim may not exceed \$20,000,000 in any one state fiscal year over the 7 years of the tax credit allowance dates as described in Title 36, section 5219-HH, subsection 1, paragraph A.
[PL 2011, c. 548, §5 (AMD).]

5. Reporting and disclosure of information. The authority shall require annual reports of a qualified community development entity granted tax credit allocation authority pursuant to subsection

3. Reports must be shared with the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services. Notwithstanding section 975-A, the authority may disclose any information to the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services that it considers necessary for the administration of the program pursuant to this section, Title 36, section 2533 or Title 36, section 5219-HH.

[PL 2015, c. 300, Pt. A, §2 (AMD).]

6. Report. The authority shall report no later than January 1, 2015 to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters on the activities of the program, including, but not limited to, the amount of private investment received and the total number of jobs created or retained.

[PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

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

[PL 2011, c. 380, Pt. Q, §1 (NEW); PL 2011, c. 380, Pt. Q, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 380, Pt. Q, §1 (NEW). PL 2011, c. 380, Pt. Q, §7 (AFF). PL 2011, c. 548, §§3-6 (AMD). PL 2015, c. 300, Pt. A, §§1, 2 (AMD).

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