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Public Law
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Chapter 517
S.P. 590 - L.D. 1530

An Act To Facilitate Recovery Zone Facility Bonds, Recovery Zone Economic Development Bonds and Qualified Energy Conservation Bonds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the United States Congress has enacted the American Recovery and Reinvestment Act of 2009; and

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the issuance by or on behalf of counties of recovery zone facility bonds on or before December 31, 2010, the interest on which will be exempt from federal income tax pursuant to the United States Internal Revenue Code; and

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the issuance by or on behalf of counties of recovery zone economic development bonds before December 31, 2010, which bonds provide for federal subsidies in the form of a refundable tax credit to be paid to state or local government issuers of a portion of the total interest payable to bondholders; and

Whereas, the American Recovery and Reinvestment Act of 2009 provides for the increase of the limit on issuance by or on behalf of counties of qualified energy conservation bonds, which bonds provide for federal subsidies in the form of a refundable tax credit to be paid to bondholders in lieu of a portion of the interest otherwise payable by state or local government issuers; and

Whereas, the purpose of the American Recovery and Reinvestment Act of 2009, including its provisions regarding recovery zone facility bonds, recovery zone economic development bonds and qualified energy conservation bonds, is to provide immediate benefit to the economies of the states; and

Whereas, the State's priority is to ensure full use of the aggregated volume cap allocations of recovery zone facility bonds, recovery zone economic development bonds and qualified energy conservation bonds within the State before December 31, 2010, or such later time as federal law may allow, and a mechanism must be established to enable reallocation of the unused volume cap in time to enable its use in another area of the State before December 31, 2010, or such later time as federal law may allow; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §963-A, sub-§10, as amended by PL 2009, c. 372, Pt. D, §§1 to 3, is further amended to read:

10. Eligible project. "Eligible project" means any of the following:

- A. Any eligible enterprise;
- D. Any vessel registered under the law of the United States or a state;
- E. Any energy conservation project;
- F. Any energy distribution system project;
- G. Any energy generating system project;
- H. Any pollution-control project;
- I. Any water supply system project;
- J. Any underground oil storage facility replacement project, including equipment installed to meet requirements for gasoline service station vapor control and petroleum liquids transfer vapor recovery;
- K. Any overboard discharge replacement project;
- L. Any hazardous waste or solid waste recycling or reduction project;
- M. Any aboveground oil replacement or upgrade project, including equipment installed to meet requirements for gasoline service station vapor control and petroleum liquids transfer vapor recovery;
- N. Any electric rate stabilization project;
- O. Any major business expansion project;
- P. Any workers' compensation residual market mechanism project;
- Q. Any clean fuel vehicle project;
- R. Any paper industry job retention project;
- S. Any transmission facilities project; and
- T. An Efficiency Maine project.

~~In addition to and without limiting this subsection, "eligible "Eligible project" also means includes~~ any project, the financing of which through the issuance of revenue obligation securities would result in the interest on the revenue obligation securities qualifying, as of the date of issuance, as tax-exempt under the 26 United States Code, ~~Title 26~~, Section 103, as amended.

"Eligible project" also includes any "recovery zone property," as defined under 26 United States Code, Section 1400U-3, as amended, the financing of which through the issuance of revenue obligation securities would result in the interest on the revenue obligation securities qualifying, as of the date of issuance, as tax-exempt under 26 United States Code, Section 103, as amended. "Eligible project" also includes any project that qualifies for financing with a qualified energy conservation bond.

Sec. 2. 10 MRSA §963-A, sub-§39-A is enacted to read:

39-A. Municipal officers. "Municipal officers" means municipal officers as defined in Title 30-A, section 2001, subsection 10. "Municipal officers" also means the county commissioners of any county but solely for the purpose of authorizing and facilitating the issuance of recovery zone facility bonds.

Sec. 3. 10 MRSA §963-A, sub-§40-A is enacted to read:

40-A. Municipality. "Municipality" means any municipality as defined in Title 30A, section 2001, subsection 8. "Municipality" also means any county but solely for the purpose of issuing recovery zone facility bonds.

Sec. 4. 10 MRSA §963-A, sub-§44-A is enacted to read:

44-A. Qualified energy conservation bond. "Qualified energy conservation bond" has the same meaning as in 26 United States Code, Section 54D(a), as amended.

Sec. 5. 10 MRSA §963-A, sub-§44-B is enacted to read:

44-B. Recovery zone facility bond. "Recovery zone facility bond" has the same meaning as in 26 United States Code, Section 1400U3, as amended.

Sec. 6. 10 MRSA §963-A, sub-§49, as enacted by PL 1985, c. 344, §7, is amended to read:

49. Revenue obligation security. "Revenue obligation security" or "security" means a note, bond, interim certificate, debenture or other evidence of indebtedness, including any recovery zone facility bond or qualified energy conservation bond, payment of which is secured by a pledge of revenues, as provided in section 1045A or 1065, or by assignment or pledge of other eligible collateral.

Sec. 7. 10 MRSA §1043, sub-§2, ¶L, as amended by PL 2009, c. 372, Pt. D, §6, is further amended to read:

L. In the case of transmission facilities projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other source of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary and appropriate in light of the special purpose or other nature of the business entity owning the project to measure and evaluate the project and the sufficiency of the pledged revenues to repay the obligations, including:

- (1) Whether the individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations and a strong probability that those revenues will continue to be available for the term of the revenue obligation securities;
- (2) Whether the applicant demonstrates a strong probability that the project will continue to operate and provide the public benefits projected to be created for the term of the revenue obligation securities;
- (3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;
- (4) Whether the applicant's creditworthiness is demonstrated by factors such as its historical financial performance, management ability, plan for marketing its product or service and ability to access conventional financing;
- (5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;
- (6) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority;
- (7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances;
- (8) Whether the proposed project enhances the opportunities for economic development;
- (9) The effect that the proposed project financing has on the authority's financial resources; and
- (10) Whether the Northern Maine Transmission Corporation, as established in section 9202, has recommended the project.

Upon request by the authority, state agencies, including but not limited to the Public Utilities Commission, shall provide necessary assistance to the authority in evaluating the feasibility of the project and its importance for northern Maine. In providing assistance, the Public Utilities Commission shall consider whether the proposed project enhances the competitiveness of the wholesale and retail energy market; how the proposed project is likely to affect energy prices for Maine residents; whether the proposed project will augment or enhance the reliability and stability of the grid; and whether there is likely to be a long-term need for the product as produced by the proposed project.

The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter 2, application procedures, approval criteria and reasonable fees for transmission facilities projects. Rules adopted by the authority under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2A. In addition, the authority may require the applicant to pay the reasonable costs of an evaluation of the project risks by an independent consultant. If the authority directs the applicant to pay for such an independent evaluation of the project, the authority shall make every reasonable effort, in its discretion, to minimize the cost of the evaluation and any delay such an evaluation may cause in authority action.

The authority may not finance any project involving an electric transmission line capable of operating at 69 kilovolts or more unless the Public Utilities Commission has issued a certificate of public convenience for the construction of the line pursuant to Title 35A, section 3132; and

Sec. 8. 10 MRSA §1043, sub-§2, ¶M, as enacted by PL 2009, c. 372, Pt. D, §7, is amended to read:

M. In the case of an Efficiency Maine project, as defined in section 963A, subsection 10A, there is a reasonable likelihood that the income, proceeds, revenues and funds of Efficiency Maine Trust derived from or held for activities under Title 35A, chapter 97 or otherwise pledged to payment of the bonds will be sufficient to pay the principal, the interest and all other amounts that may at any time become due and payable under the bonds. In making this determination, the authority shall consider Efficiency Maine Trust's analysis of the proposed bond issue and the revenues to make payments on the bonds and may require such information, projections, studies and independent analyses as it considers necessary or desirable and may charge Efficiency Maine Trust reasonable fees and expenses. The authority may require that it be indemnified, defended and held harmless by Efficiency Maine Trust for any liability or cause of action arising out of or with respect to the bonds. The principal and interest of bonds must be made payable solely from the income, proceeds, revenues and funds of Efficiency Maine Trust derived from or held for activities under Title 35A, chapter 97 or other provision of law. Payment of the principal and interest of bonds may be further secured by a pledge of a loan, grant or contribution from the Federal Government or other source in aid of activities of Efficiency Maine Trust under Title 35A, chapter 97: ; and

Sec. 9. 10 MRSA §1043, sub-§2, ¶N is enacted to read:

N. In the case of recovery zone facility bonds, the project will benefit the county or counties in which it is located.

Sec. 10. 10 MRSA §1061-B is enacted to read:

§ 1061-B. Designation of issuer of recovery zone facility bonds and qualified energy conservation bonds

To the extent permitted by federal law, and to the extent not previously reallocated pursuant to section 1074A or 1074B, the county commissioners of any county may authorize the authority to issue recovery zone facility bonds or qualified energy conservation bonds on behalf of that county pursuant to subchapter 3 or a municipality to issue recovery zone facility bonds or qualified energy conservation bonds on behalf of that county pursuant to this subchapter.

Sec. 11. 10 MRSA §1074-A is enacted to read:

§ 1074-A. Recovery zone facility bonds

1. Recovery zones; statewide designation. The Legislature finds that the entire State is experiencing significant poverty, unemployment, increasing rate of home foreclosures and general distress and, as a result, to the extent permitted by federal law, designates the entire State as a recovery zone as defined under 26 United States Code, Section 1400U1, as amended.

2. Reallocation. To the extent permitted by federal law, the entire allocation to the counties of the State of the national recovery zone facility bond limitation established pursuant to 26 United States Code, Section 1400U1, as amended, and as described in Internal Revenue Service Notice 2009-50, Section 6.03 is reallocated to the authority, as long as one half of each such allocation is further reallocated by the authority to projects located within and identified by the county commissioners of the county to which such allocation was originally made, if so identified on or before June 1, 2010. The remaining one half of such allocations, together with any portion of an allocation initially subject to reallocation at the direction of the applicable county before June 1, 2010, but not so reallocated, may be reallocated by the authority for any project in any county of the State. Reallocations pursuant to this subsection are considered voluntary and affirmative waivers by the affected counties for the purposes of 26 United States Code, Section 1400U1 et seq. and any regulations or guidance provided by the United States Department of the Treasury, Internal Revenue Service thereunder.

Sec. 12. 10 MRSA §1074-B is enacted to read:

§ 1074-B. Qualified energy conservation bonds

1. Reallocation. To the extent permitted by federal law, 30% of the allocation to the State and to the counties of the State of the national qualified energy conservation bond volume limitation established pursuant to 26 United States Code, Section 54D(e), as amended, and as described in Internal Revenue Service Notice 2009-29, Section 4 is reallocated to the authority as the issuer of qualified energy conservation bonds, for further reallocation by the authority for any project in any county of the State. Reallocations pursuant to this subsection are considered voluntary and affirmative waivers by the affected counties for the purposes of 26 United States Code, Section 54D et seq. and any regulations or guidance provided by the United States Department of the Treasury, Internal Revenue Service thereunder.

Sec. 13. 10 MRSA §1074-C is enacted to read:

§ 1074-C. Allocation of certain national bond limitations

To the extent permitted by federal law, the Governor may establish by executive order a procedure for the reallocation of any allocation of a portion of a national bond limitation to the State or to any issuer or governmental entity within the State pursuant to 26 United States Code, Sections 54D, 54E, 54F and 1400U1 and for the reallocation of any portion of a national bond limitation that is not used within the applicable time period specified in federal law or that has been waived by an issuer or governmental entity within the State, except that allocation of the national recovery zone facility bond limitation established pursuant to 26 United States Code, Section 1400U1, as amended, and as described in Internal Revenue Service Notice 2009-50, Section 6.03, must be carried out pursuant to section 1074A, and the allocation

of the national qualified energy conservation bond volume limitation established pursuant to 26 United States Code, Section 54D, as amended, and as described in Internal Revenue Service Notice 2009-29, Section 4 must be carried out pursuant to section 1074B and Title 30A, section 5953F.

Sec. 14. 30-A MRSA §934, as amended by PL 1999, c. 717, §1, is further amended to read:

§ 934. Loans

The county commissioners may obtain loans of money for the use of their county and cause notes, obligations or bonds, with coupons for lawful interest, to be issued for payment of the loans. These loans may not exceed \$10,000, except in Franklin County and Aroostook County as provided in sections 935 and 935-A and except to the extent authorized pursuant to Title 10, chapter 110, without first obtaining the consent of the county, substantially as provided in section 122 or by countywide referendum pursuant to section 938.

Sec. 15. 30-A MRSA §5903, sub-§8-B is enacted to read:

8-B. Qualified energy conservation bond. "Qualified energy conservation bond" has the same meaning as in 26 United States Code, Section 54D(a), as amended.

Sec. 16. 30-A MRSA §5903, sub-§8-C is enacted to read:

8-C. Recovery zone economic development bond. "Recovery zone economic development bond" has the same meaning as in 26 United States Code, Section 1400U2, as amended.

Sec. 17. 30-A MRSA §5953-F is enacted to read:

§ 5953-F. Recovery zone economic development bonds; qualified energy conservation bonds

To the extent permitted by federal law, the county commissioners of any county may authorize the bank to issue recovery zone economic development bonds or qualified energy conservation bonds on behalf of that county.

1. Recovery zone economic development bonds. To the extent permitted by federal law, the allocation to counties of the national recovery zone economic development bond limitation established pursuant to 26 United States Code, Section 1400U1, as amended, and as described in Internal Revenue Service Notice 2009-50, Section 6.03, is reallocated to the bank for further reallocation by the bank for any project in any county of the State, as long as one half of each such allocation is further reallocated by the bank to projects located within and identified by the county commissioners of the county to which such allocation was originally made, if so identified on or before July 1, 2010. The remaining one half of such allocations, together with any portion of an allocation initially subject to reallocation at the direction of the applicable county before July 1, 2010, but not so reallocated, may be reallocated by the bank for any project in any county of the State.

2. Qualified energy conservation bonds. To the extent permitted by federal law, 70% of the allocation to the State and to the counties of the State of the national qualified energy conservation bond volume limitation established pursuant to 26 United States Code, Section 54D(e), as amended, and as described in Internal Revenue Service Notice 2009-29, Section 4, is reallocated to the bank for further reallocation by the bank for any project in any county of the State, as long as one half of each

such allocation is further reallocated by the bank to projects located within and identified by the county commissioners of the county to which such allocation was originally made, if so identified on or before July 1, 2011. The remaining one half of such allocations, together with any portion of an allocation initially subject to reallocation at the direction of the applicable county before July 1, 2011, but not so reallocated, may be reallocated by the bank for any project in any county of the State.

3. Waivers. Reallocations pursuant to this section are considered voluntary and affirmative waivers by the affected counties for the purposes of 26 United States Code, Section 54D et seq. and Section 1400U1 et seq. and any regulations or guidance provided by the United States Department of the Treasury, Internal Revenue Service thereunder.

Sec. 18. 30-A MRSA §5957, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§ 5957. Allocation of state ceiling; recovery zone economic development bonds; qualified energy conservation bonds

By rulemaking under Title 5, chapter 375, subchapter H 2, the bank may establish a process for allocation and carry-forward of that portion of the state ceiling on issuance of tax-exempt bonds allocated to the bank under Title 10, chapter 9. The executive director of the Maine Municipal Bond Bank is designated as the state official authorized to issue the certification under the United States Code, Title 26, Section 149(e)(2)(F), as amended, for allocations of the state ceiling allocated to the bank pursuant to Title 10, chapter 9.

By routine technical rulemaking defined under Title 5, chapter 375, subchapter 2-A the bank may establish a process for allocation of that portion of the national recovery zone economic development bond limitation established pursuant to 26 United States Code, Section 1400U1, or that portion of the national qualified energy conservation bond limitation established pursuant to 26 United States Code, Section 54D, waived by any county or reallocated pursuant to section 5953F and for designation by the bank of recovery zone economic development bonds and qualified energy conservation bonds.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective March 17, 2010.