

MAINE STATE LEGISLATURE

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STATE OF MAINE
114th LEGISLATURE
SECOND REGULAR SESSION

A STUDY OF THE OBSTACLES
TO AFFORDABLE HOUSING IN MAINE

JOINT STANDING COMMITTEE ON HOUSING
AND ECONOMIC DEVELOPMENT

Subcommittee on Affordable Housing

Final Report

December 1, 1989

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Rep. Ronald C. Bailey
Rep. Harvey C. Donald
Rep. Conrad Heeschen
Rep. Rita B. Melendy

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Executive Summary

This study of obstacles to the development of affordable housing originated as part of the omnibus affordable housing bill LD 1765, *An Act Establishing the Affordable Housing Partnership Act*, introduced during the First Regular Session of the 114th Legislature. Originally, LD 1765 contained language authorizing the creation of an 8 member subcommittee of the Joint Standing Committee on Housing and Economic Development for the purpose of studying obstacles to affordable housing in Maine. Although the Legislature subsequently amended LD 1765 to remove the statutory authorization for such a study, the Legislative Council, on July 6, 1989, authorized a 5-member subcommittee of the Joint Standing Committee on Housing and Economic Development to undertake a similar study. A copy of the Legislative Council's letter of authorization is attached to this report as Appendix A.

During the interim period following the adjournment of the first Regular Session of the 114th Legislature, the Subcommittee to Study Obstacles to Affordable Housing held five meetings. During those meetings, the subcommittee heard extensive public testimony from non-profit and private housing developers; representatives of the manufactured housing industry; municipal representatives; land use planners; state regulatory agencies such as the Maine State Housing Authority, the Department of Environmental Protection and the Department of Economic and Community Development; members of the public and regional affordable housing advocacy groups.

As a result of the subcommittee's study, this report presents nine recommendations intended to remove certain obstacles to the development of affordable housing. Among the recommendations are two pieces of legislation.

The first, *An Act Creating an Educational Bonus for Affordable Housing and a Low Income Housing Tax Credit*, is attached as Appendix B. If enacted, this Act would do the following:

1. Establish an *educational bonus* for municipalities which create new affordable rental and single family housing units. The educational bonus would provide grants to municipalities to reduce the short term pressure on property taxes and local school budgets arising from new affordable housing development.
2. Establish a *low income housing tax credit* which would replace the expiring federal low income housing tax credit by providing state tax credits for the development of qualifying low income housing projects.

3. Establish a *fuel assistance reserve fund* to ensure that annual fuel assistance benefits for eligible elderly and low-income residents of the State are available prior to the beginning of the heating season.

The second piece of proposed legislation, *An Act to Continue the Effort to Preserve and Promote Affordable Housing and Economic Opportunities for Maine People*, is attached as Appendix C. If enacted, this Act would do the following:

1. Create a 15 member *Commission on Investment Capital* for the purpose of undertaking a comprehensive evaluation of the investment capital needs of the State.
2. Increase the Maine State Housing Authority's bonding authority to \$985 million.
3. Give the Maine State Housing Authority the first option to purchase surplus state owned land.
4. Require the Maine State Housing Authority to assess the availability and quality of data pertaining to Maine housing.

Background

The subcommittee members began this study with the understanding that Maine is facing an affordable housing crisis. This crisis has evolved simultaneously with declining federal commitments to housing, and a decade of relatively rapid and substantial increases in land and housing costs. Evidence of the combined effects of these trends on affordable housing in Maine is extensive. For example, the number of Maine State Housing Authority financed newly constructed or substantially rehabilitated Section 8 subsidized units fell from 804 in 1982, to zero in 1988; the average sales price of housing in Maine rose 73.9% between 1982 and 1987; and the price of undeveloped land parcels in excess of 40 acres rose by more than 250% between 1979 and 1988.

Maine has taken several major steps during the past two years to address the need for affordable housing. The *Comprehensive Planning and Land Use Regulation Act of 1988*¹ requires that municipal land use policies and local ordinances encourage the development of affordable housing. The *Affordable Housing Partnership Act of 1989*² established the Maine Affordable Housing Alliance; proposed that the Maine State Housing Authority assist nonprofit housing corporations in the development of affordable housing; created a 13 member

Interagency Task Force on Homelessness and Housing to advise the Legislature and the Governor on the development of land trusts; created the housing opportunity zones program, and established a land acquisition program targeted specifically at maintaining continuing affordability of housing through such mechanisms as the establishments of land trusts.

In addition to these programs, on November 7, 1989, the voters approved a \$15 million bond issue for affordable housing. By approving this referendum question, the voters of Maine have authorized the most significant commitment of State resources yet to affordable housing issues. The five components of the referendum provided:

\$5,000,000 for acquiring land for affordable housing;

\$4,000,000 for municipal infrastructure needs related to development of affordable housing;

\$3,000,000 for preserving or saving existing federally subsidized rental housing;

\$2,000,000 for restoring deteriorating residential neighborhoods;

\$1,000,000 to capitalize a mortgage insurance fund for affordable home mortgages and downpayments.

The Maine State Housing Authority has estimated that the \$15 million authorized by the referendum will leverage an additional \$198 million in private investments in housing construction, infrastructure improvements, and mortgage investments. These investments represent monies that would not otherwise have been spent in Maine and are estimated to, over the next five years, generate an additional \$20 million in tax revenue to the State.

Existing Programs for Affordable Housing

Early in the study, the subcommittee reviewed the current status of affordable housing programs in Maine and related programs which contribute to the affordability of housing. A summary of the programs available, and their 1988 accomplishments, is presented below.

- *Home Ownership Program.* Provided \$60 million in reduced interest rate loans enabling approximately 1,000 families to purchase their first home;

- *Home Start Program.* Provided an additional \$15 million to low income first time home buyers for further reductions in mortgage interest rates;

- *Home Improvement Program.* Provided \$2.5 million in 5% loans to families at or below state median income levels for home improvements;

- *Rental Loan Program.* Provided \$8 million in low interest loans, creating 184 new units of low income rental housing;

- *Rental Rehabilitation Program.* Provided \$769,000 in federal funds to rehabilitate approximately 75 sub-standards rental units;

- *MSHA/FmHA 515 Program.* Combining MSHA and FmHA funds, this program provided \$1.2 million to leverage approximately \$7.5 million in federal funds for the creation of 175 new low income rental units.

- *202 Start Program.* Provided \$670,000 in technical assistance to nonprofit organizations, helping to secure \$9 million in federal funding for the creation of 200 units for low income handicapped persons;

- *Housing Preservation Grants Program.* Provided \$1.1 million to match FmHA grants for home repair for low and very low income rural home owners;

- *Federal Low Income Housing Tax Credit.* During 1987, 1988 and 1989, this program allocated nearly \$3 million in federal tax credits, helping to create nearly 1,400 new units of affordable housing in Maine.

- *Property Tax Relief.* Qualifying families are eligible to receive up to \$400 as reimbursements for property taxes.

- *Fuel Assistance and Weatherization.* Through the Division of Community Services, more than 50,000 low income families received an average of \$300 in fuel assistance, and approximately 2500 low income households received an average of \$1,600 in weatherization services.

With respect to existing programs, the subcommittee was concerned that delays in receiving federal fuel assistance block grant monies were requiring eligible low-income and elderly Maine residents to wait until well into the heating season before receiving their fuel assistance benefit.

RECOMMENDATION. For the purpose of ensuring that fuel assistance benefits are available to eligible households prior to the beginning of the heating season, the subcommittee makes the following recommendation:

1. That LD 451, as amended with the subcommittee amendment pertaining to the establishment of a fuel assistance reserve fund, be reported out by the Committee and enacted by the Legislature.

Obstacles to Affordable Housing

The subcommittee studied the issue of obstacles to affordable housing by listening closely to concerns raised from a wide cross-section of businesses and individuals involved with affordable housing issues. From those concerns, the subcommittee identified several factors which present obstacles to the development of affordable housing in Maine, and prepared the following recommendations for addressing those obstacles.

Regulation

The subcommittee's concern regarding regulation and the regulatory review of housing development projects was the extent to which the *process of regulatory review itself* added to construction delays and cost increases in affordable housing projects.

Testimony received by the subcommittee estimated the "costs of approval", including municipal and state review, to average approximately 6% of total project development costs.

• State review

Over the past year, the Department of Environmental Protection (DEP) has received, on average, 6 applications per month for subdivision review. As of September, the DEP had approximately 130 subdivision applications under review. The Department reported that the average review time for *completed applications* has been 10 months, ranging from a minimum review time of 4 months to a maximum of between 10-14 months. Although some applications currently under review by the DEP were initially submitted more than 2 years ago, early delays in *completing the application*, prior to the beginning of departmental review, appear to account for the additional time in process.

The subcommittee learned, however, that several recent Legislative initiatives and administrative changes at the DEP, aimed at streamlining the review process, are beginning to have a demonstrable positive effect. As a result of increased DEP staffing levels at the DEP enacted by the 113th Legislature and a newly implemented administrative process within the DEP, the average review time for applications completed within the last 12 months has decreased by approximately 30%. The new administrative procedures within the department include an improved application tracking system and increased internal accountability throughout the application process. The department has also made a commitment to complete, by December 31, 1989, its review of all applications which have been under review longer than 12 months.

• *Municipal review*

To streamline review at the municipal level, the 113th Legislature also enacted amendments to Title 38 expanding upon the types of projects which may be reviewed at the municipal level. Municipalities which meet certain criteria may apply to the Board of Environmental Protection for authority to review and issue permits for some types of projects which previously required DEP review³. The powers which may be extended to municipalities include review and permitting authority for subdivisions between 20-100 acres, for structures occupying a ground area between 60,000-100,000 square feet or which have a total gross floor area between 100,000-150,000 square feet, and for structures which occupy a ground area between 3-7 acres of nonrevegetated land.

Currently, only 5 of the estimated 40-50 municipalities which could qualify for local review authority have done so. The subcommittee estimates that at least two dozen projects currently under review by the DEP could have been reviewed by local planning boards, had municipalities more fully utilized their potential review authority under Title 38.

RECOMMENDATIONS. For the purposes of streamlining the regulatory review procedure and decreasing the "costs of approval" for affordable housing, the subcommittee makes the following recommendations:

2. The DEP is encouraged to continue its efforts to streamline its review procedures, to improve its administrative procedures for tracking projects during the review process and to improve internal accountability in the review process.

3. Municipalities are encouraged to review their eligibility for local review and permitting authority under Title 38, section 489-A.

Land and Infrastructure Costs

The increasing costs of land and infrastructure are major contributors to the overall per unit cost of affordable housing developments. If the State is to meet its goal of providing homes which are affordable, methods to address these capital intensive components of total housing costs must be found.

Although accurate comprehensive data on these costs is difficult to obtain, the subcommittee estimates that land and infrastructure constitute roughly 10% and 40%-60%, respectively,

of housing development costs. Although some direct subsidy of infrastructure costs associated with affordable housing developments will be provided through monies authorized in the bond referendum, other solutions to reducing the per unit costs of land and infrastructure are available at the local level. These include zoning options such as clustering developments and the environmentally sensitive use of zoning incentives and density bonuses. Several municipalities have already used these options to successfully address their affordable housing needs. The town of Falmouth, as an example, used a density bonus zoning ordinance to create affordable housing units, and Cumberland has reserved a number of sewer hook-ups for affordable housing units. Many municipalities, however, have yet to fully explore these local options.

Reducing the per unit cost of land and infrastructure solves only part of the problem. For these efforts to be effective in assisting the creation of affordable housing, the State and the municipalities must ensure that cost reductions, *once obtained*, are passed on to the consumer. As evidenced by testimony received during this study, absent a method for ensuring that these cost reductions are passed on to the renter or the home buyer, it will be the real estate market, not the presence of zoning ordinances or the cost of concrete, that will determine housing prices.

RECOMMENDATIONS. For the purpose of reducing the per unit cost of land and infrastructure related to affordable housing units, the subcommittee makes the following recommendations:

4. Municipalities are encouraged to investigate, as part of their comprehensive planning process, options for reducing the impact of land and infrastructure costs through the use of zoning incentives such as appropriately zoned cluster developments, density bonuses and other incentive zoning techniques.

5. Relevant state and municipal review authorities must ensure that direct or indirect housing subsidies intended to create affordability in the housing market are passed on to the renter or purchaser of the unit.

Development Pressures on Local Budgets

During the First Regular Session of the 114th Legislature, the Joint Committee held over for consideration LD 451, *An Act Creating An Educational Bonus for Affordable Housing*. The purpose of LD 451 was to provide grants to municipalities that create units of affordable housing. The grants were to be used by the municipality only for educational purposes. The goal in providing these grants was to alleviate municipal concerns that new housing units burden the local school system and that the municipality is not reimbursed for the increased school costs under the school funding formula until two years after the population increase has occurred.

Although the subcommittee recognizes that the extent of the "cost" to municipalities of this funding formula lag, *as it relates to affordable housing*, is highly dependent on specific local circumstances, the perception that those costs are real and significant is, in and of itself, an obstacle to the development of affordable housing. As such, the subcommittee is recommending the adoption of LD 451, as amended and presented in this report, during the Second Session of the 114th Legislature. The amendments to the educational bonus section of the bill include replacing the fixed \$2,000 grant with grants ranging from \$2,400-\$3,000, depending on the size of the unit created and the income group to be housed and encouraging, rather than requiring, that the grants be used for educational purposes. Because the proposed legislation requires that deed restrictions, or some equally effective method of assuring continuing affordability, be placed on units for which the municipality receives a bonus, the subcommittee has required that municipalities receive the written consent of the owners of owner-built homes prior to applying for a bonus for those homes.

RECOMMENDATION. For the purpose of reducing the pressure on local budgets created by new affordable housing development, the subcommittee makes the following recommendation:

6. That LD 451, as amended with the subcommittee amendment pertaining to the creation of an educational bonus for affordable housing, be reported out by the Committee and enacted by the Legislature.

Capital Access

This study of affordable housing issues, as with studies of many other issues in Maine, takes place within the larger context of overall investment capital needs. For affordable housing, the gap between the resources available and the resources necessary to adequately address the need illustrates the larger issue of access to adequate investment capital in Maine. Historically, Maine has relied on investment capital from outside sources; sources beyond our borders and beyond our control. It is essential that the State evaluate the impacts and opportunities these investments may present. For these reasons, the subcommittee is recommending the establishment of a 15 member *Commission on Investment Capital* to undertake a comprehensive review of its capital access and investments needs, including investment needs in the affordable housing area.

RECOMMENDATION. For the purpose of reviewing investment capital needs in Maine, the subcommittee makes the following recommendation:

7. That proposed legislation, An Act to Preserve and Promote Affordable Housing and Economic Opportunities for Maine Citizens, be reported out by the Committee and enacted by the Legislature.

Apart from the long term investment capital needs of affordable housing, however, is the short term need to maintain existing investment levels. As part of the Tax Reform Act of 1986, Congress created a 3 year federal low income housing tax credit program which originally was to expire on December 31, 1989.⁴ During the three years of the credit's availability, Maine awarded a total of \$2,903,700 in federal tax credits to 53 projects around the State, creating 1,386 new units of affordable housing. Although Congress very recently extended nine additional months worth of federal credits into 1990, the longer term need for such a program has been demonstrated. The subcommittee feels strongly that tax credits of a similar nature should remain available to the development community. As such, the subcommittee has amended LD 451 further to create a *Maine low income housing tax credit*. The proposed state tax credit is similar to the federal credit except that it allows the state to rank projects by a measure of the benefits they provide, while awarding only enough credit to make each project economically viable. Using these options, the subcommittee hopes to ensure that a state tax credit program would go even further than did federal credits towards providing new affordable housing units.

RECOMMENDATION. For the purpose of continuing the availability of a low income housing tax credit in the face of the expiration of federal credits, and to supplement federal credits should they be reinstituted at some future date, the subcommittee makes the following recommendation:

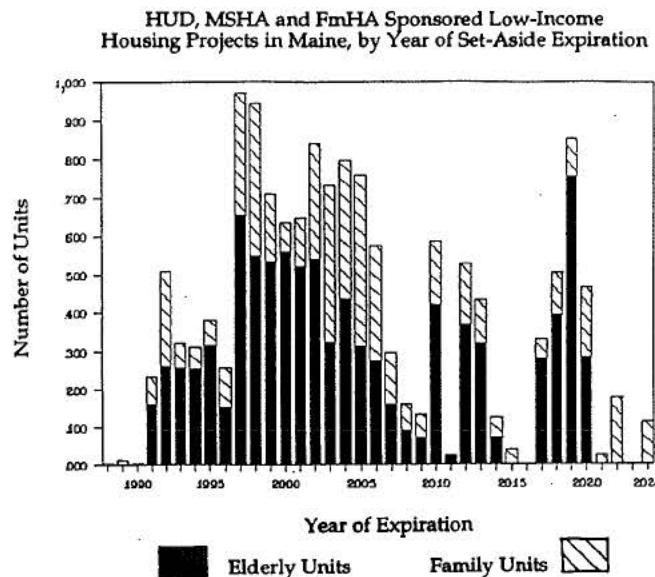
8. That LD 451, as amended with the subcommittee amendment creating a Maine low income housing tax credit, be reported out by the Committee and enacted by the Legislature.

Continuing Affordability

Creating new units of affordable housing in Maine is not enough. To ensure that newly created units remain affordable over time, the State must address the complicated issue of ensuring *continued affordability* for each newly created affordable housing unit.

An example of the social costs incurred when the issue of continuing affordability is inadequately addressed is evident in a review of the future of the more than 14,000 HUD, MSHA and FmHA sponsored low income housing units built in Maine over the past two decades.⁵ Beginning in 1991, the federal set aside requirements for significant numbers of those units will begin expiring, and large numbers of currently affordable rental units will become eligible to convert to market rate units.

As can be seen in the table below, roughly two thirds of those 14,000 units will be eligible for conversion within the next 15 years.



The subcommittee has estimated that the present value cost of replacing the rental subsidy for all of these units would be in excess of \$100 million per year. Although the State has moved to preserve some of these units, the magnitude of the cost of preserving all units that could convert to market rates is far greater than available resources. As these projects convert to market rate units, however, large numbers of Maine residents are likely to be displaced, putting even more pressure on the demand for new affordable units.

The subcommittee found that the *nature of continuing affordability obstacles differ*, depending on whether the unit is to be a rental unit or an owner occupied home, and that a separate discussion of them was appropriate.

• Rental Units

All of the currently available subsidized low income units which have provisions requiring continuing affordability in Maine are rental units. Provisions for preserving the affordability

of rental units typically consist of contractual set aside agreements between the project developer and the financing agency in exchange for direct subsidies or tax credits. In the language amending LD 451 to create a Maine low income housing tax credit for rental units, the Committee has established a minimum compliance period of 15 years, but has also established a project ranking system which gives high priority to the length of time the project will remain affordable.

Such a ranking system, which requires projects to compete against one another for available credits based partly on their length of commitment to affordability, should produce projects with substantially longer compliance periods.

• Owner Occupied Homes

The proposed legislation creating an educational bonus for affordable housing includes the requirement that municipalities ensure continuing affordability of the subsidized unit, *whether it is a rental unit or an owner occupied home*, through the inclusion of a deed covenant preserving the unit as affordable for at least 10 years. The presence of this deed restriction requires the municipality to ensure that the affordability of each subsidized unit is maintained *at the time of resale*, should the unit be sold within 10 years. By including legal provisions for ensuring the affordability of owner occupied homes, the subcommittee is moving away from the historical focus on subsidized low income rental units. This movement is supported, however, by Maine's long tradition of private home ownership.⁵ In order to ensure that options for preserving affordability in owner occupied homes by means other than deed restrictions is fully explored, the subcommittee has included language in LD 451 that allows the Department of Economic and Community Development to explore other options which meet the same goal.

RECOMMENDATION. For the purpose of ensuring the continuing affordability of newly created affordable housing units, the subcommittee makes the following recommendation:

9. The State and the municipalities are encouraged to ensure continuing affordability when developing affordable housing units, and to consider projects with longer periods of affordability as priority projects.

Proposed Legislation

LD 451, carried over from the First Regular Session of the 114th Legislature, has been amended by the subcommittee and retitled as *An Act Creating an Educational Bonus for Affordable*

Housing and a Low Income Housing Tax Credit. This proposed legislation is attached to this report as Appendix B. The subcommittee recommends that LD 451, including amendments pertaining to the educational bonus, the creation of a low income housing tax credit and a fuel assistance reserve fund, be reported out by the Committee and enacted by the Legislature during the Second Session of the 114th Legislature.

The subcommittee also proposes that the legislation attached to this report as Appendix C., *An Act to Preserve and Promote Affordable Housing and Economic Opportunities for Maine People*, be reported out by the Committee and enacted by the Legislature during the Second Session of the 114th Legislature.

Proposed appropriations for these bills are as follows:

\$3.6 million in FY'91 to the Department of Economic and Community Development for educational bonus payments to municipalities which create new affordable housing units;

\$1.5 million in FY'91 to the Maine State Housing Authority for tax credits to developers creating new units of affordable rental housing units in Maine.

\$8 million in FY'91 to the Division of Community Services to ensure that fuel assistance benefits are available to eligible households prior to the beginning of the heating season. The Division must return monies used for this purpose to the General Fund upon receipt of federal fuel assistance block grant monies.

End notes:

- 1). AN ACT to Promote Orderly Economic Growth and Natural Resource Conservation. Public Laws of Maine, 1987; Chapter 766.
- 2). AN ACT Establishing the Affordable Housing Partnership Act of 1989. Public Laws of Maine, 1989; Chapter 581.
- 3). 38 MRSA, §489-A.
- 4). Internal Revenue Code, Title 26, Section 42(c).
- 5). MSHA reported a total of 14,441 MSHA, HUD and FmHA low income units currently under set-aside requirements in Maine. This consists of a total of 9,376 Elderly Units and 5,065 Family Units.

Affordable Housing 14
Appendix A.



REP. JOHN L. MARTIN
CHAIR

SEN. DENNIS L. DUTREMBLE
VICE-CHAIR

STATE OF MAINE

114th LEGISLATURE

LEGISLATIVE COUNCIL

July 6, 1989

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SARAH C. DIAMOND
EXECUTIVE DIRECTOR

Honorable Dennis L. Dutremble, Senate Chair
Honorable Gregory G. Nadeau, House Chair
Joint Standing Committee on Housing and
Economic Development
114th Maine Legislature

Dear Senator Dutremble and Representative Nadeau:

The Legislative Council met last Saturday to establish budgets for the approved interim study requests. The Council has taken the following actions on requests from your Committee:

Affordable Housing

APPROVED

- 5 member subcommittee
- 4 subcommittee meetings
- 1 full committee meeting

The Council's action on all study requests is based on the understanding that the subcommittee will have completed its work by December 1, 1989. This means that the report and any accompanying legislation must be ready to transmit to the Legislative Council on that date.

I would ask that you send information regarding those members who will be serving on the subcommittee as soon as it is available to Sally Diamond.

We appreciate your cooperation in moving quickly to organize the study and look forward to receiving your findings and recommendations. Please call me if you have any questions.

Sincerely,

A handwritten signature of John L. Martin, written in dark ink, enclosed within a circular stamp.

John L. Martin, Chair
Legislative Council

cc: Martha Freeman, Director, Office of Policy & Legal Analysis

APPENDIX B.

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

**IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY**

**AN ACT CREATING AN EDUCATIONAL BONUS FOR AFFORDABLE HOUSING
AND A LOW INCOME HOUSING TAX CREDIT**

Be it enacted by the People of Maine as follows:

Sec. 1. 30-A MRS §4344, sub-§8 is amended to read:

8. Eligibility for other state aid. After 2 years subsequent to the applicable deadline date established in section 4343, subsection 1, a state agency responsible for administering any grant and assistance program described in paragraph A shall award funds to a municipality only when the municipality has adopted and implemented a certified local growth management program or has, at a minimum, adopted a certified comprehensive plan and implemented certified components of the implementation program that are directly related to the purposes for which the grant or assistance is provided.

A. State grants and assistance in the following areas are subject to this subsection:

(1) Assistance in the enforcement of local growth management programs including the municipal legal defense fund and technical and financial assistance in the administration and enforcement of local land use ordinances;

(2) Assistance in the acquisition of land by the municipality for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 343; and

(3) Multi-purpose community development block grants; and

(4) Educational bonuses for affordable housing as set forth in chapter 204.

Sec. 2. 30-A MRSA c. 204 is enacted to read:

CHAPTER 204

EDUCATIONAL BONUS FOR AFFORDABLE HOUSING

§5061. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Appropriation percentage. "Appropriation percentage" means the number derived by dividing the amount payable to all municipalities in a county, as calculated pursuant to section 5005, subsection 1, by the total appropriation for grants under this chapter for the fiscal year.

2. Department. "Department" means the Department of Economic and Community Development.

3. Monthly mortgage payment. "Monthly mortgage payment" means the amount of interest and principal payable each month on a loan secured by a mortgage on a unit of housing.

4. Pupil enrollment percentage. "Pupil enrollment percentage" means the number derived by dividing the resident pupil enrollment in public schools grades kindergarten to 12 in all municipalities in a county on April 1st, by the state total pupil enrollment in public schools, grades kindergarten to 12, on April 1st.

5. Ownerbuilt home. "Ownerbuilt home" means a single family residential building used as the principal residence of the person who supervised the construction of the dwelling, or who contracted with a general contractor to supervise the construction.

6. Unit. "Unit" means an apartment, condominium or single-family house which has at least two bedrooms.

7. Eligible unit of affordable housing. "Eligible unit of affordable housing" means an adequate, decent, safe and sanitary unit in which the gross rent or mortgage principle and interest cost does not exceed 30% of household income for families with incomes at or below 80% of the median income for the county in which the unit is created.

§5062. Annual Municipal Grant

Each municipality meeting the eligibility criteria set forth in this section, shall receive a grant for each unit of affordable housing created in the municipality in the year prior to the year of allocation, to be used to fund public education. Eligibility requirements are as follows:

1. Before a municipality's applicable date. Before 2 years subsequent to the applicable deadline date for a municipality as established in section 4343, subsection 1, a municipality's land use policies and ordinances must be certified by the department that they encourage affordable housing. The Office of Comprehensive Planning shall promulgate standards for determining compliance by a municipality.

2. After a municipality's applicable date. 2 years after the applicable deadline date established for a municipality in section 4343, subsection 1, a municipality must have adopted and implemented a certified local growth management program or have, at a minimum, adopted a certified comprehensive plan and implemented certified components of the implementation program that are directly related to the provision of affordable housing.

§5063. Eligibility for grant

1. Creation of unit. A unit shall be considered to be created if the unit is:

A. An eligible unit.

B. Newly constructed; or

C. A renovation of a unit which was previously:

(1) Not habitable; or

(2) Not available for rental or purchase for the cost set forth in subsection 2.

A unit shall not be considered to be created before the date on which an occupancy permit is issued for the unit.

2. Affordability. A unit of housing shall be considered affordable if the monthly rent or mortgage payment on the unit does not exceed 30% of the gross monthly income of the purchaser or renter and the income of the purchaser or renter meets the income criteria established in §5065, sub-§1.

3. Continuing affordability. A unit is not a unit of affordable housing unless the deed for the house, condominium or apartment building contains a covenant preserving the unit as a unit of affordable housing for at least 10 years after the year in which the municipality receives the grant. The municipality shall not apply for an educational bonus under this section for an ownerbuilt home without first obtaining the written consent of the owner.

4. Quality of unit. Each municipality shall determine when a unit is considered adequate, decent, safe and sanitary, and shall monitor the quality of the units for which grants are awarded. If a tenant in any rental unit believes that the unit does not meet local codes of building safety and sanitation at any time during the 10 years following the year the municipality received the grant, the tenant may submit a complaint to the department. The department shall, in cooperation with the municipality, investigate each complaint, and take such action as is necessary to assure that the unit meets standards of safety and sanitation. The department shall establish rules and fees for these complaints.

§5064. Application; evaluation

1. Application. Prior to August 31st each year, each municipality meeting the requirements set forth under section 5062, shall report to the department the number of units of housing which it believes to be units of affordable housing created in the municipality in the prior fiscal year. The municipality shall provide supporting information as required by the department.

2. Evaluation. Prior to October 31st each year, the department shall evaluate reports from the municipalities to determine whether units reported are units of affordable housing, as provided by this chapter and by any rules adopted by the department under the terms of this chapter.

3. Space and assistance. The department shall make available reasonable office space, clerical assistance and other support to insure that the purposes of this chapter are carried out.

§5065. Payment to municipality

1. Initial calculation. Each October 31st, the department shall determine the number of units of affordable housing in each municipality which qualify to receive grants under this chapter. The Director of the department shall compute the educational subsidy for each municipality by:

A. Multiplying the number of eligible units created by \$2,400.

B. Multiplying the number of eligible units containing more than two bedrooms by:

(1). \$300 for each unit affordable at 70%-80% of the median income;

(2). \$400 for each affordable at 60%-70% of the median income;

(3). \$500 for each affordable at 50%-60% of the median income;

(4). \$600 for each affordable at less than 50% of the median income.

C. Summing amounts calculated in subsections A. and B.

2. Allotment per county. If the appropriation percentage for any county exceeds the pupil enrollment percentage for that county, the amount payable to each municipality in the county shall be reduced ratably, based on the pupil enrollment of each municipality until the appropriation percentage of the county does not exceed the pupil enrollment percentage. The amount so reduced shall be available for payment to counties in which the appropriation percentage does not exceed the pupil enrollment percentage.

3. Remaining funds. Funds remaining at the end of each fiscal year shall be carried forward by the Department into subsequent years for the purpose of providing educational bonus grants pursuant to this section.

4. Time of payment. Prior to November 15th of the year in which a municipality has made application for a grant, the department shall pay the approved grants to each municipality.

\$5066. Use of funds;

1. Use. Municipalities are encouraged to use the grants provided under this section for educational purposes.

\$5067. Evaluation

The department, in consultation with municipalities, shall collect and evaluate information about the implementation of this chapter. By January 1, 1991, the commissioner shall submit a report on the program to the joint standing committee of the Legislature having jurisdiction over housing and economic development.

§5068. Rulemaking

The department shall establish criteria for low and moderate incomes, based on county median income levels in the State, shall establish the terms of deed covenants required by section 5003, shall establish rules for determining where the lack of affordable housing is most severe, and may adopt other rules as appropriate to carry out the purposes of this chapter. Rules shall set forth the required terms of a covenant and the department may, by rule, establish methods other than a deed covenant, to preserve the affordability of the units for which grants are awarded.

Sec 3. 30-A MRSA, §4741 sub-§(14) is amended to read:

15. State housing credit agency. The Maine State Housing Authority is designated the housing credit agency for the State and shall have the power to receive and allocate, according to a process established by rulemaking pursuant to Title 5, Chapter 375, subchapter II, the annual state housing credit ceiling ceilings for the federal low-income housing credit established by the United State Code, Title 26., and the state low-income housing credit established by 30-A MRSA, Subchapter 13.

Sec. 4. 30-A MRSA, Subchapter 13 is enacted to read:

Subchapter XIII

Low Income Housing Tax Credit

§4971. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Aggregate credit ceiling. "Aggregate Credit Ceiling" means the total amount of credit available for any calendar year, including the annual credit ceiling for that year plus any unallocated credit carried forward from previous years.

2. Annual credit ceiling. "Annual Credit Ceiling" means the total amount of new tax credit allocations allowed for any calendar year.

3. Applicable credit percentage. "Applicable credit percentage" means a percentage which will yield over a 10 year period an amount of credit having a present value no greater than:

A. 50 % of the qualified basis of the project for projects which are not federally subsidized, or:

B. 25 % of the qualified basis of the project for existing projects or new projects which are federally subsidized.

4. Code. "Code" has the same meaning as in Title 36, section III.

5. Compliance period. "Compliance period" means a period of at least 15 consecutive years beginning with the first taxable year of the credit period.

6. Credit. "Credit" means the low-income housing tax credit established by this subchapter.

7. Credit period. "Credit period" means a period of 10 consecutive taxable years.

8. Economic viability. "Economic viability" means that annual project revenues equal or exceed annual project operating expenses, excluding any return on investment.

9. Qualified basis. "Qualified basis" means an amount determined in accordance with Section 42(c) of the Code.

10. Qualified low-income projects. "Qualified low-income project" means any project for residential rental property which meets either of the following set-aside requirements:

A. 20% or more of the units are rent restricted units and occupied by individuals whose income is 50 percent or less of area median income.

B. 40% or more of the units are rent restricted units and occupied by individuals whose income is 60% or less of area median income.

11. Qualified non-profit. "Qualified non-profit" means an organization defined in Section 42(h)(5)(C) of the Code.

12. Rent restricted unit. "Rent restricted unit" means a unit in which the gross rent, as defined in section 42(g)(2)(B) of the Code, does not exceed 30% of the applicable income limitation under subsection 10 of this section.

§4972. State Low-Income Housing Tax Credit

There shall be allowed as a credit against the amount of net tax owed under Title 36, Part 8, a state low income housing tax credit for existing and newly constructed low-income housing projects which meet the requirements of this subchapter.

This credit shall be available January 1, 1991, and shall expire on December 31, 1993.

§4973. Rulemaking.

The Authority shall adopt rules pursuant to the Maine Administrative Procedures Act, Title 5, chapter 375, to implement this section no later than December 31, 1990 including procedures for evaluating applications and ranking projects.

With the exception of the provisions set forth in this subchapter, rules adopted by the Authority to implement the low-income housing tax credit shall be consistent with the provisions set forth in Section 42 of the Code.

§4974. State Ceiling.

1. Annual Credit Ceiling. The annual credit ceiling for the low-income housing credit established in this subchapter shall be calculated for each calendar year by multiplying \$1.25 times the number of residents of the State as determined by the most recent estimate of the State's population published by the United States Bureau of Census. Subject to the aggregate credit ceiling limitations established by this section, that portion of the annual credit ceiling which is not allocated during a calendar year shall not lapse but shall be carried over to any subsequent calendar year. 10% of the annual credit ceiling for each year shall be reserved for applicants which are qualified non-profit organizations.

2. Aggregate Credit Ceiling. The aggregate credit ceiling for the low-income housing credit established in this subchapter shall not exceed an amount equal to \$2.50 times the number of residents of the state as determined by the most recent estimate of the State's population published by the United States Bureau of Census.

§5975. Application and Evaluation

The Authority shall accept applications for credit between January 1st and July 31st of each year. Prior to October 1st of each year, the Authority shall determine which projects are to receive reservations of credit as provided for by this subchapter and by rules adopted by the Authority under the terms of this subchapter.

§4976. Applicable Credit Percentage

The applicable annual credit percentage for each qualified low-income project application shall be determined by the Authority based on its evaluation of the economic viability of the project. Subject to the limitations established by §4971, subsection 3 of this subchapter, the applicable credit percentage established for each qualified project pursuant to this subchapter shall not exceed the amount the Authority determines necessary to ensure the economic viability of the project throughout the compliance period.

In making the determination of a qualified project's applicable credit percentage, the Authority shall consider:

1. Project financing. The sources and use of funds and the total financing planned for the project;

2. Tax benefits. Any proceeds expected through federal or state tax benefits;

3. Rate of Return. The project's rate of return on cash investments.

Under no circumstances shall the Authority establish an applicable credit percentage for a project which, when summed with other state and federal tax benefits specifically for low income housing projects taken during the credit period, produces a net present value in tax benefits greater than 100% of the project qualified basis value.

§4977. Reservation of Credit

Prior to reserving credit for any project, the Authority shall rank all qualified projects according to the following criteria, weighted according to the order of the paragraphs listed below:

1. Tenant income. Projects which serve the lowest income tenants;

2. Compliance period. Projects which serve tenants for the longest period of time;

3. Preservation of Existing low-income units. Projects receiving public subsidies or mortgage assistance payments which are eligible or likely to convert to market-rate rental units.

4. Regional need. Projects which serve a demonstrated low-income housing need for a particular region.

5. Credit per unit of low income housing. Projects which provide the largest number of low-income units per dollar of credit;

Subject to the applicable state ceiling and after ranking all qualified projects according to the criteria established in this sections, reservations of credit shall be made to those qualifying projects in order of rank.

Sec. 5. 5 MRS § 3518-B is enacted to read:

§ 3518-B. Fuel Assistance Reserve Fund

The Division of Community Services shall use the Fuel Assistance Reserve Fund to ensure that fuel assistance benefits for Maine's eligible elderly and low-income residents are available prior to the beginning of the heating season.

1. Timely distribution of benefits. The Division of Community Services shall make available to local program operators and municipal administrators of the fuel assistance program, no later than October 1st of each year, funds sufficient to cover anticipated fuel assistance payments and program administrative costs for at least the months of October, November and December of each year.

2. Fuel Assistance Reserve Fund. The Division shall use funds appropriated pursuant to this section to establish and capitalize a Fuel Assistance Reserve Fund. The Division shall keep the Fuel Assistance Reserve Fund separate from all other funds managed by the Division and shall make use of the fund only, without exception, under the conditions set forth in this section.

3. Conditional use of the fund. The Division's use of the fund shall be subject to the following conditions and limitations:

A. In the event that reasonably anticipated federal fuel assistance block grant funds will not be available for distribution to the local program operators and municipal administrators by October 1st of each year, the Division shall withdraw and distribute sufficient monies from the fund as are necessary for the purposes set forth in this section. Under no circumstances shall monies be withdrawn from the fund if federal block grant funds will be available to the Division for fuel assistance payments on October 1st.

B. Monies withdrawn from the fund shall be sufficient to cover anticipated fuel assistance payments and fuel assistance program administrative costs for all local program operators and municipal administrators for the months of October, November and December.

C. The Division shall not withdraw monies from the fund between October 1st and June 30th.

D. The fund shall not be used if the Director knows, or is reasonably certain, that no federal fuel assistance monies will be received.

4. Recapitalization. In the event that monies are withdrawn from the fund for the purposes of this section, the Division shall, immediately upon receipt of federal fuel assistance block grant funding, use that portion of its federal fuel assistance block grant as is necessary to recapitalize the fund.

5. Expiration of fund. Authorization for the fund shall expire on June 30, 1991. The Division shall ensure that the fund is fully recapitalized and that all monies in the fund are transferred to the General Fund no later than June 30, 1991.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

**ECONOMIC AND COMMUNITY DEVELOPMENT,
DEPARTMENT OF**

Bonus for Affordable Housing

All Other

\$3,600,000

To provide grants to be awarded to municipalities which create affordable housing. Funds appropriated for 1990-91 may be carried over and used in 1991-92 if not used in 1990-91. It is intended that the Legislature continue to appropriate for the program each year an amount at least sufficient to fund grants for an amount of units equal to 90% of the number of units created in the prior year.

MAINE STATE HOUSING AUTHORITY

Low income Housing Tax Credit

All Other \$1,500,000

To provide tax credits for the creation of new affordable housing developments. Unallocated credit expenditures may be carried forward into subsequent years.

COMMUNITY SERVICES, DIVISION OF

Fuel Assistance Reserve Fund

All other \$8,000,000

To capitalize the Fuel Assistance Reserve Fund established by this Act.

FY'91 transfer back to General Fund (\$8,000,000)

STATEMENT OF FACT

This bill creates an educational bonus for municipalities which create new units of affordable housing, a low income housing tax credit for developers of low income rental housing projects, and a Fuel Assistance Reserve Fund to ensure the timely delivery of fuel assistance benefits to Maine's eligible low-income and elderly households.

Educational Bonus. The purpose of the educational bonus is to provide grants to municipalities that create units of affordable housing. By providing these grants, the State will alleviate concerns that municipalities have that new housing units burden the local school systems, and that the municipality is not reimbursed for the increased costs under the school funding formula for 2 years after the increase has occurred. The grant will help them pay the extra cost until the increased enrollment shows up in the school formula.

Municipalities are responsible for setting standards to assure that units are decent, safe and sanitary, and for enforcing the standards. To qualify for a grant, the municipality must apply to

the Department of Economic and Community Development for determination of whether a unit meets the standards set by law, and must report the use of the funds to the Department of Economic and Community Development and to the Department of Educational and Cultural Services.

Funds remaining after the allocation period are carried forward into the next fiscal year. The amount of the grant per unit varies, depending upon the number of bedrooms per unit and the income group being housed. Ownerbuilt homes may be exempted from this grant.

Low income housing tax credit. This bill also creates a state tax credit for owners of low-income housing projects which is similar to the federal low-income housing tax credit enacted by the Tax Reform Act of 1986. The credit would be available during 1991, 1992 and 1993.

Under the low-income tax credit program created here, owners of low-income housing projects may claim an annual tax credit each year during the first ten years after the property is placed into service.

The amount of credit authorized annually is equal to \$1.25 times the State population for that year. Unallocated credits from one year can be carried over into subsequent years, however, total available credit for any one year can not exceed \$2.50 times the State population.

The amount of credit received by any one project is variable, depending on the low income housing benefits derived from the project and its economic viability. New projects not receiving any federal subsidies could receive credits worth up to 50% of the project's value over the ten year tax credit period. Existing projects, or new projects which are federally subsidized, could receive credits worth up to 25% of the project's value over the ten years.

In order to be eligible for the tax credit, the project owner must agree to provide a minimum of 20% of the units in the project for families with incomes below 50% of median area income (the "20/50" test), or 40% of the units for families with incomes below 60% of the median income (the "40/60" test). In addition, gross rent paid by occupants of the low-income units may not exceed 30% of the applicable income level. In order to receive a tax credit, the owner must agree to comply with these set aside restrictions for at least 15 years.

The bill authorizes the Maine State Housing Authority to act as the credit allocation agency and requires them to promulgate rules to implement the credit program no later than December 31, 1989.

Fuel Assistance Reserve Fund. This bill also requires the Division of Community Services to distribute, no later than October 1st of each year, sufficient funds to the local program operators and municipal administrators of the fuel assistance program to cover anticipated program and administrative costs for at least the months of October, November and December. It appropriates \$8 million to the Division for capitalization of a Fuel Assistance Reserve Fund. The fund is to be used as start up funding for the fuel assistance program only if federal block grant funding is not received by October 1st. Should the fund be used, the Division is required to recapitalize the fund immediately upon receipt of its federal funding.

The fund expires on June 30, 1991, at which time the Division is required to transfer the fully recapitalized fund back to the General Fund.

APPENDIX C.

SECOND REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

AN ACT TO CONTINUE THE EFFORT TO PRESERVE AND PROMOTE
AFFORDABLE HOUSING AND ECONOMIC OPPORTUNITES FOR MAINE PEOPLE

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

Sec. 1. 5 MRSA §2004-I, sub-§ 6-B is enacted to read:

<u>6-B. Economic</u>	<u>Commission on</u>	<u>Expenses</u>	<u>5 MRSA</u>
<u>Development</u>	<u>Investment</u>	<u>Only</u>	<u>§13064</u>
	<u>Capital</u>		

Sec. 2. 5 MRSA § 13064 is enacted to read:

§ 13064. Commission on Investment Capital

The Commission on Investment Capital shall be composed of 15 members. The membership shall include the Commissioner of the Department of Economic and Community Development, the Director of the Maine State Housing Authority, the Chief Executive Officer of the Finance Authority of Maine, the Executive Director of the the Maine State Retirement System, 3 members of the House of Representatives, 2 members of the Senate, and 6 members of the public.

1. Appointment. The Speaker of the House and the President of the Senate shall appoint the 3 members of the House and the 2 members of the Senate. The Governor shall appoint 6 members of the public who can provide expertise in the area of capital investment.

2. Terms of Office. Members appointed by the Speaker of the House and the President of the Senate shall serve at the pleasure of these appointing authorities. The appointees of the Governor shall serve at the pleasure of the Governor.

3. Chairs. There shall be two co-chairs of the commission. The Speaker of the House and the President of the Senate shall appoint one co-chair from among the members appointed by the Speaker of the House and the President of the Senate. The Commissioner of the Department of Economic and Community Development shall be a co-chair of the commission.

4. Compensation. Members of the commission shall be compensated in accordance with Title 5, chapter 379.

5. Meetings. The commission shall meet at least four times each year at the call of the co-chairs.

6. Quorum. A quorum shall consist of 7 members. A quorum shall be necessary for the commission to conduct its business at any commission meeting.

§ 13065. Duties and responsibilities of the commission

The commission shall undertake a comprehensive evaluation of the capital investment needs of the State. This evaluation shall include an analysis of the sources and magnitude of current capital investments in all sectors of the Maine economy, an analysis of the obstacles to capital investments in the State, the identification of sources of funds in Maine which may be used to leverage new capital investments, and a review of the impact and opportunities resulting from foreign investment in Maine.

The commission shall report its activities and findings to the Governor and the joint standing committee having jurisdiction over economic development no later than July 1st following each First Regular Session of the Legislature.

§ 13066. Effective date

Authorization for the commission shall expire on July 1, 1993. In its final report, the commission shall provide its recommendations to the Governor and the Legislature as to the need for extending authorization for the commission.

Sec. 3. 30-A § 4907 sub-§ 1. is amended to read:

1. Limitations on amount of outstanding principal. The Maine State Housing Authority may not at any time have an aggregate principal amount outstanding, in excess of ~~\$885,000,000~~ \$985,000,000 of mortgage purchase bonds secured by the Housing Reserve Fund or a Capital Reserve Fund to which section 4906, subsection 3, paragraph A applies. Mortgage purchase bonds of the Maine State Housing Authority secured by capital reserve funds to which section 4906, subsection 3, paragraph A does not apply, bond or mortgage insurance, direct or indirect contract with the United States, purchase or repurchase agreement of guaranty with a banking or other financial organization or other credit arrangements securing the bonds may be issued up to \$100,000,000 per calendar year in an aggregate principal amount not to exceed \$300,000,000.

Sec. 4. 5 MRSA § 1742 sub-§23-A is enacted to read:

23-A. First option to purchase. The Maine State Housing Authority shall be offered the opportunity to purchase any land determined to be surplus before the land can be offered for sale to any other State agency, community, or other buyer. The Authority shall advise the owning agency of its interest in purchasing the land in writing within 60 days of notification. In the event the Authority offers to purchase the land, the purchase price shall be determined by the following:

A. The original acquisition price will be determined. In the event the land was originally purchased as part of a larger parcel, the original purchase price will be a pro-rata share of the price of the larger parcel.

B. To the original purchase price for the land, add 5 percent simple interest for each year the State has owned the land.

C. In no case shall the price exceed the current appraised value of the land as determined by an independent appraiser or by agreement between the Maine State Housing Authority and the owning agency.

D. In the event the land was purchased with funds which carry a requirement that the land be sold at fair market value, this requirement shall prevail over the terms of this section.

Sec. 5. 30-A MRSA § 4753, sub-§ 2 is enacted to read:

2. Assessment of housing stock. The Maine State Housing Authority shall conduct a comprehensive assessment of the availability and quality of information on Maine housing

supply, prices, condition, and age. The assessment shall include data collected by towns, the State, the Federal government, and other relevant sources.

Maine State Housing Authority shall report its findings to the Governor and the Legislature by March 1, 1991 on the adequacy of data collection and shall recommend ways to improve the the type and quality of data collected as well as any other recommendations needed to assure the State has an accurate statistical understanding of Maine housing supply, prices and condition.

STATEMENT OF FACT

This bill does the following:

1. Creates a 15 member Commission on Investment Capital. The commission is to evaluate the capital investment needs of the state and is to report to the Governor and the legislative committee having jurisdiction over economic development biennially, no later than July 1st following each First Regular Session.
2. Increases the Maine State Housing Authority's total outstanding secured bonding authority from \$885,000,000 to \$985,000,000.
3. Requires the Department of Administration, through the Bureau of Public Improvements, to offer the Maine State Housing Authority the opportunity to purchase any state owned surplus land before it can be offered for sale to any other buyer.
4. Requires the Maine State Housing Authority to assess the availability and quality of data relating to the Maine housing stock. The Authority is required to report its findings and recommendations to the Governor and the Legislature no later than March 1, 1991.