

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1266

S. P. 439

In Senate, March 11, 1971

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Johnson of Somerset.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

**AN ACT to Provide Relief from Local Restrictions Hampering
Construction of Low and Moderate Income Family Housing.**

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

R. S., T. 30, c. 239, sub-c. II, Art. 7, additional. Subchapter II of chapter 239 of Title 30 of the Revised Statutes is amended by adding a new Article 7 to read as follows:

ARTICLE 7. LOW AND MODERATE INCOME HOUSING

§ 4781. Definitions

The following words, wherever used or referred to in this article shall have the following meanings unless a different meaning clearly appears from the context:

1. Consistent with local needs. "Consistent with local needs," shall mean requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where low or moderate income housing exists which is in excess of 10% of the housing units reported in the latest decennial census of the city or town or on

sites comprising $1\frac{1}{2}\%$ or more of the total land area zoned for residential, commercial or industrial use or the application before the board would result in the commencement of construction of such housing on sites comprising more than $\frac{3}{10}$ ths of 1% of such land area or 10 acres, whichever is larger, in any one calendar year; provided, however, that land area owned by the United States, the State or any political subdivision thereof, or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs.

2. Local board. "Local board," shall mean any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.

3. Low or moderate income housing. "Low or moderate income housing," shall mean any housing subsidized by the Federal or State Government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.

4. Uneconomic. "Uneconomic," shall mean any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and unit sizes proposed by the public, nonprofit or limited dividend organizations.

§ 4782. Proceedings before State Board of Appeals on comprehensive application to build housing

Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under this article, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for recommendations and shall, within 30 days of the receipt of such application, hold a public hearing on the same. The State Board of Appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The State

Board of Appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. This section shall apply to all such hearings. The State Board of Appeals shall render a decision, based upon a majority vote of said board, within 40 days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the Superior Court.

§ 4783. Review by State Board of Appeals of denial or conditional grant of applications

Whenever an application filed under this article is denied, or is granted with such conditions and requirements as to make the building or operation of such housing uneconomic, the applicant shall have the right to appeal to the State Board of Appeals for a review of the same. Such appeal shall be taken within 20 days after the date of the notice of the decision by the local board of appeals by filing with said state board, a statement of the prior proceedings and the reasons upon which the appeal is based. The state board shall forthwith notify the local board of appeals of the filing of such petition for review and the latter shall, within 10 days of the receipt, transmit a copy of its decision and the reasons therefor to the state board. Such appeal shall be heard by the state board within 20 days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the state board shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefor within 30 days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the state board and the applicant. Such decision may be reviewed in the Superior Court in accordance with this article.

§ 4784. Limitation on issues before the state board; findings; enforcement of orders

The hearing by the state board shall be limited to the issue of whether, in the case of the denial of an application, the decision of the local board of appeals was reasonable and consistent with local needs and, in the case of an approval of an application with conditions and requirements imposed, whether such conditions and requirements make the construction or operation of such housing uneconomic and whether they are consistent with local needs. If the state board finds, in the case of a denial, that the decision of the local board of appeals was unreasonable and not consistent with local needs, it shall vacate such decision and shall direct the local board to issue a comprehensive permit or approval with conditions and requirements imposed, that the decision of the local board makes the building or operation of such housing uneconomic and is not consistent with local needs, it shall order such local board to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic and to issue any neces-

sary permit or approval; provided, however, that the state board shall not issue any order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the Federal Housing Administration or the State Housing Authority whichever agency is financially assisting such housing. Decisions or conditions and requirements imposed by a local board of appeals that are consistent with local needs shall not be vacated, modified or removed by the state board notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal uneconomic.

The state board or the petitioner shall have the power to enforce the orders of the state board at law or in equity in the Superior Court. The local board of appeals shall carry out the order of the state board within 30 days of its entry and, upon failure to do so, the order of said state board shall, for all purposes, be deemed to be the action of said local board, unless the petitioner consents to a different decision or order by such local board.

There shall be, within the State Housing Authority, a State Board of Appeals consisting of 3 members to be appointed by the director, of whom one shall be an officer or employee of the State Housing Authority, and 2 members to be appointed by the Governor for terms of one year each, of whom one shall be a member of a board of selectmen and one a member of a city council or similar governing body of a city. The members shall serve for terms of one year each, and the director shall designate the chairman. A member of the State Board of Appeals shall receive no compensation for his services, but shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his official duties. Said State Board of Appeals shall hear all petitions for review filed under this article and shall conduct said hearings in accordance with rules and regulations established by the director.

The State Housing Authority shall provide such space and clerical and other assistance as the State Board of Appeals may require.

STATEMENT OF FACT

This Act provides a State Board of Appeals when local restrictions prevent the construction of low or moderate income housing. There will be no new funds necessary to administer this section.