

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 332, L.D. 451, Bill, "An Act to Create an Educational Bonus for Affordable Housing"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act Creating an Educational Bonus for Affordable Housing, a Low-income Housing Tax Credit and a Fuel Assistance Reserve Fund'

Further amend the bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 5 MRSA §3518-B is enacted to read:

**§3518-B. Fuel Assistance Reserve Fund**

**1. Fuel Assistance Reserve Fund.** The division shall use funds appropriated pursuant to this section to establish and capitalize the Fuel Assistance Reserve Fund. The division shall keep the Fuel Assistance Reserve Fund separate from all other funds managed by the division and use the fund only, without exception, under the conditions set forth in this section. The Division of Community Services shall use the Fuel Assistance Reserve Fund to ensure that fuel assistance benefits for the State's eligible elderly and low-income residents are available prior to the beginning of the heating season.

**2. Timely distribution of benefits.** The Division of Community Services shall make available to local program operators and municipal administrators of the fuel assistance

2 program, no later than October 1st of each year, funds sufficient  
3 to cover anticipated fuel assistance payments and program  
4 administrative costs for at least the months of October, November  
5 and December.

6 3. Conditional use of the fund. The division's use of the  
7 fund is subject to the following conditions and limitations.

8  
9  
10 A. If reasonably anticipated federal fuel assistance block  
11 grant funds are not available for distribution to the local  
12 program operators and municipal administrators by October  
13 1st of each year, the division shall withdraw and distribute  
14 sufficient money from the fund as is necessary for the  
15 purposes set forth in this section. Under no circumstances  
16 may money be withdrawn from the fund if federal block grant  
17 funds are available to the division for fuel assistance  
18 payments on October 1st.

19  
20 B. Money withdrawn from the fund must be sufficient to  
21 cover anticipated fuel assistance payments and fuel  
22 assistance program administrative costs for all local  
23 program operators and municipal administrators for the  
24 months of October, November and December.

25  
26 C. The division may not withdraw money from the fund  
27 between October 1st and June 30th.

28 D. The fund may not be used if the Director of Community  
29 Services knows, or is reasonably certain, that no federal  
30 fuel assistance money will be received.

31  
32 4. Recapitalization. If money is withdrawn from the fund  
33 for the purposes of this section, the Division of Community  
34 Services shall, immediately upon receipt of federal fuel  
35 assistance block grant funding, use that portion of its federal  
36 fuel assistance block grant as is necessary to recapitalize the  
37 fund.

38  
39 5. Expiration of fund. Authorization for the fund expires  
40 on June 30, 1991. The division shall ensure that the fund is  
41 fully recapitalized and that all money in the fund is transferred  
42 to the General Fund no later than June 30, 1991.

43  
44 **Sec. 2. 30-A MRS §4344, sub-§8, as enacted by PL 1989, c.**  
45 **104, Pt. A, §45 and Pt. C, §10; and as amended by PL 1989, c.**  
46 **562, §14, is further amended to read:**

47  
48 **8. Eligibility for other state aid. After 2 years**  
49 **subsequent to the applicable deadline date established in section**  
50 **4343, subsection 1, a state agency responsible for administering**  
51 **any grant and assistance program described in paragraph A shall**  
52 **award funds to a municipality only when the municipality has**

2 adopted and implemented a certified local growth management  
3 program or has, at a minimum, adopted a certified comprehensive  
4 plan and implemented certified components of the implementation  
5 program that are directly related to the purposes for which the  
6 grant or assistance is provided.

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

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

14 (2) Assistance in the acquisition of land by the  
15 municipality for conservation, natural resource  
16 protection, open space or recreational facilities under  
17 Title 5, chapter 353; and

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

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

22 **Sec. 3. 30-A MRSA §4741, sub-§14**, as enacted by PL 1987, c.  
23 737, Pt. A, §2 and Pt. C, §106; and as amended by PL 1989, c. 6;  
24 c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to  
25 read:

26 **14. State housing credit agency.** The Maine State Housing  
27 Authority is designated the housing credit agency for the State  
28 and shall have the power to receive and allocate, according to a  
29 process established by rulemaking pursuant to Title 5, chapter  
30 375, subchapter II, the annual state housing credit ceiling  
31 ceilings for the federal low-income housing credit established by  
32 the 26 United States Code, Title-26 Section 42, and the state  
33 low-income housing credit established by chapter 201, subchapter  
34 XIII.

35 **Sec. 4. 30-A MRSA c. 201, sub-c. XIII** is enacted to read:

36 **SUBCHAPTER XIII**

37 **LOW-INCOME HOUSING TAX CREDIT**

38 **§4981. Definitions**

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

41

2 1. Aggregate credit ceiling. "Aggregate credit ceiling"  
3 means the total amount of credit as defined in subsection 6  
4 available for any calendar year, including the annual credit  
5 ceiling for that year plus any unallocated credit carried forward  
6 from previous years.

7 2. Annual credit ceiling. "Annual credit ceiling" means the  
8 total amount of new tax credit allocations allowed for any  
9 calendar year.

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

13 A. Fifty percent of the qualified basis of the qualified  
14 low-income project as defined in this section for projects  
15 that are not federally subsidized; or

16 B. Twenty-five percent of the qualified basis of the  
17 qualified low-income project for existing projects or new  
18 projects that are federally subsidized.

19 4. Code. "Code" has the same meaning as in Title 36,  
20 section 111, subsection 1-A.

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

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

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

28 8. Economic viability. "Economic viability" means annual  
29 project revenues equal or exceed annual project operating  
30 expenses, excluding any return on investments.

31 9. Owner. "Owner" means the owner of a qualified  
32 low-income housing project as defined in the Code.

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

35 11. Qualified low-income projects. "Qualified low-income  
36 project" means any project for residential rental property that  
37 meets either of the following requirements:

38 A. Twenty percent or more of the units are rent-restricted  
39 units and occupied by individuals whose income is 50% or  
40 less of the area median income for the area in which the  
41 units are located.

2 less of the median income of the county in which the unit is  
created.

4 B. Forty percent or more of the units are rent-restricted  
units and occupied by individuals whose income is 60% or  
6 less of the median income of the county in which the unit is  
created.

8  
10 12. Qualified nonprofit organization. "Qualified nonprofit  
organization" means an organization defined in Section  
12 42(h)(5)(C) of the Code.

14 13. Rent-restricted unit. "Rent-restricted unit" means a  
unit in which the gross rent, as defined in Section 42(g)(2)(B)  
16 of the Code, does not exceed 30% of the applicable income  
limitation under subsection 11.

18 **§4982. State low-income housing tax credit**

20 A state low-income housing tax credit for owners of existing  
and newly constructed low-income housing projects that meet the  
22 requirements of this subchapter is allowed as a credit against  
the amount of net tax owed under Title 36, Part 8.

24  
26 This credit is available beginning January 1, 1991, and  
expires on December 31, 1993.

28 **§4983. Rulemaking**

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

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

40  
42 **§4984. State ceiling**

44 1. Annual credit ceiling. The annual credit ceiling for the  
low-income housing credit established in this subchapter is  
46 calculated for each calendar year by multiplying \$1.25 times the  
number of residents of the State as determined by the most recent  
48 estimate of the State's population published by the United States  
Bureau of Census. Subject to the aggregate credit ceiling  
50 limitations established by this section, that portion of the  
annual credit ceiling that is not allocated during a calendar  
52 year does not lapse but is carried over to any subsequent  
calendar year. Ten percent of the annual credit ceiling for each

year must be reserved for applicants that are qualified nonprofit organizations.

2. Aggregate credit ceiling. The aggregate credit ceiling for the low-income housing credit established in this subchapter may 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.

**§4985. Application and evaluation**

The Maine State Housing Authority shall accept applications for a tax 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 a tax credit as provided for by this subchapter and by rules adopted by the authority under the terms of this subchapter.

**§4986. Applicable credit percentage**

The applicable annual credit percentage for each qualified low-income project application is determined by the Maine State Housing Authority based on its evaluation of the economic viability of the project. Subject to the limitations established by section 4981, subsection 3, the applicable credit percentage established for each qualified project pursuant to this subchapter may 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 low-income project's applicable credit percentage, the Maine State Housing 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; and

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

Under no circumstances may the Maine State Housing Authority establish an applicable credit percentage for a project that, when added to 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's qualified basis value.

**§4987. Reservation of credit**

2 Prior to reserving credit for any project, the Maine State  
4 Housing Authority shall rank all qualified low-income projects  
6 according to the following criteria, weighted according to the  
8 order of the subsections listed below:

10 1. Tenant income. Projects that serve tenants with the  
12 lowest incomes.

14 2. Commitment period. Projects that serve tenants for the  
16 longest period of time;

18 3. Preservation of existing low-income units. Projects  
20 receiving public subsidies or mortgage assistance payments that  
22 are eligible or likely to convert to market-rate rental units;

24 4. Regional need. Projects that serve a demonstrated  
26 low-income housing need for a particular region; and

28 5. Credit per unit of low-income housing. Projects that  
30 provide the largest number of low-income units per dollar of  
32 credit.

34 Subject to the applicable state ceiling and after ranking  
36 all qualified projects according to the criteria established in  
38 this section, reservations of credit must be made to those  
40 qualifying low-income projects in order of rank.

42 **Sec. 5. 30-A MRSA c. 204 is enacted to read:**

44 **CHAPTER 204**

46 **EDUCATIONAL BONUS FOR AFFORDABLE HOUSING**

48 **§5061. Definitions**

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

54 1. Appropriation percentage. "Appropriation percentage"  
56 means the number derived by dividing the amount payable to all  
58 municipalities in a county, as calculated pursuant to section  
60 5065, subsection 1, by the total appropriation for grants under  
62 this chapter for the fiscal year.

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

68 3. Eligible unit of affordable housing. "Eligible unit of  
70 affordable housing" means an adequate, decent, safe and sanitary  
72 unit in which the gross rent or mortgage principal and interest  
74 costs do not exceed 30% of the household income for families with



2 incomes at or below 80% of the median income of the county in  
which the unit is created.

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

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

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

20 7. Unit. "Unit" means an apartment, condominium or  
22 single-family house that has at least 2 bedrooms.

24 **§5062. Annual municipal grant**

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

32 1. Applicable date. Within 2 years after the applicable  
deadline date for a municipality as established in section 4343,  
34 subsection 1, a municipality's land use policies and ordinances  
must be certified by the department as encouraging affordable  
36 housing. The Office of Comprehensive Land Use Planning must  
promulgate standards for determining compliance by a municipality.  
38

2. After a municipality's applicable date. On or before  
40 the expiration of the 2-year period under subsection 1, a  
municipality must adopt and implement a certified local growth  
42 management program or, at a minimum, adopt a certified  
comprehensive plan and implement certified components of the  
44 local growth management program that are directly related to the  
provision of affordable housing.

46 **§5063. Eligibility for grant**

48 1. Creation of unit. A unit is considered created if the  
50 unit is:

2           A. An eligible unit of affordable housing;

4           B. Newly constructed; or

6           C. A renovation of a unit that was previously:

8                   (1) Not habitable; or

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

12           A unit is not considered created until the date on which an  
occupancy permit is issued for the unit.

14           2. Affordability. A unit of housing is considered  
16 affordable if the monthly rent or mortgage payment on the unit  
does not exceed 30% of the gross monthly income of the purchaser  
18 or renter and the income of the purchaser or renter falls within  
the categories established in section 5065, subsection 1.

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

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

42           §5064. Application; evaluation

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

52

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

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

11       §5065. Payment to municipality

12       1. Initial calculation. Each October 31st, the department  
13       shall determine the number of units of affordable housing in each  
14       municipality that qualify to receive grants under this chapter.  
15       The commissioner of the department shall compute the educational  
16       subsidy for each municipality by:

17       A. Multiplying the number of eligible units created by  
18       \$2,400;

19       B. Multiplying the number of eligible units containing more  
20       than 2 bedrooms by:

21       (1) \$300 for each unit affordable at 70%-80% of the  
22       median income of the county in which the unit is  
23       created;

24       (2) \$400 for each unit affordable at 60%-70% of the  
25       median income of the county in which the unit is  
26       created;

27       (3) \$500 for each unit affordable at 50%-60% of the  
28       median income of the county in which the unit is  
29       created; and

30       (4) \$600 for each unit affordable at less than 50% of  
31       the median income of the county in which the unit is  
32       created; and

33       C. Totaling amounts calculated in paragraphs A and B.

34       2. Allotment per county. If the appropriation percentage  
35       for any county exceeds the pupil enrollment percentage for that  
36       county, the amount payable to each municipality in the county  
37       must be reduced proportionately, based on the pupil enrollment of  
38       each municipality, until the appropriation percentage of the  
39       county does not exceed the pupil enrollment percentage. The  
40       amount not paid is available for payment to counties in which the  
41       appropriation percentage does not exceed the pupil enrollment  
42       percentage.



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1990-91 for this purpose may not lapse, but must be carried forward until June 30, 1992. 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.

10 DEPARTMENT OF ECONOMIC AND COMMUNITY  
11 DEVELOPMENT  
12 TOTAL \$3,600,000

14 EXECUTIVE DEPARTMENT

16 Division of Community Services

18 Fuel Assistance Reserve Fund

20 All Other \$8,000,000

22 Provides funds to capitalize the Fuel  
23 Assistance Reserve Fund established by this  
24 Act.

26 EXECUTIVE DEPARTMENT \$8,000,000  
27 TOTAL

28 TOTAL APPROPRIATIONS \$11,600,000

30 Sec. 7. Allocation. The following funds are allocated from the  
32 Fuel Assistance Reserve Fund to carry out the purposes of this  
33 Act.

34 **1990-91**

36 EXECUTIVE DEPARTMENT

38 Division of Community Services

40 Fuel Assistance Reserve Fund

42 All Other \$8,000,000

44 Authorizes expenditures from the Fuel  
46 Assistance Reserve Fund, pursuant to the  
48 Maine Revised Statutes, Title 5, section  
50 3518-B, to provide a working capital advance  
in anticipation of federal fuel assistance  
block grant funds.

EXECUTIVE DEPARTMENT  
TOTAL

\$8,000,000

FISCAL NOTE

1990-91

Total General Fund Appropriations	\$11,600,000
Total Allocations	\$8,000,000

This bill will have the following effect on revenues:

1990-91

General Fund	\$6,576,500
Local Government Fund	(\$76,500)
Fuel Assistance Reserve Fund	\$8,000,000

The Low-income Housing Tax Credit will result in a \$1,500,000 reduction in income tax revenues, resulting in a reduction of General Fund revenues of \$1,423,500 and a reduction in State-municipal revenue sharing of \$76,500.

The bill appropriates \$8,000,000 from the General Fund to capitalize the Fuel Assistance Reserve Fund. These funds are intended to be used as a working capital advance in anticipation of the receipt of Federal Block Grant Funds. It is expected that there will be sufficient Federal Block Grant Funds available to recapitalize the reserve fund and to consequently repay the \$8,000,000 General Fund appropriation.

STATEMENT OF FACT

This amendment replaces the entire bill, reflects the unanimous consent of the Joint Standing Committee on Housing and Economic Development and represents the necessary implementing legislation required by the subcommittee report on obstacles to affordable housing.

This amendment creates an educational bonus for municipalities that 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 the State's eligible low-income and elderly households.

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 the concerns of municipalities that new housing units burden the local school

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2 systems and the municipalities are not reimbursed for increased  
3 costs under the school funding formula for 2 years after the  
4 increase has occurred. The grant will help them pay the extra  
5 costs until the increased enrollment shows up in the school  
6 formula.

7  
8 Municipalities are responsible for setting standards to  
9 assure that units are decent, safe and sanitary and for enforcing  
10 the standards. To qualify for a grant, the municipality must  
11 apply to the Department of Economic and Community Development for  
12 determination of whether a unit meets the standards set by law,  
13 and must report the use of the funds to the Department of  
14 Economic and Community Development.

15  
16 Funds remaining after the allocation period are carried  
17 forward into the next fiscal year. The amount of the grant per  
18 unit varies, depending upon the number of bedrooms per unit and  
19 the income group being housed. Owner-built homes may be exempt  
20 from this grant.

21  
22 This amendment creates a state tax credit for owners of  
23 low-income housing projects that is similar to the low-income  
24 housing tax credit enacted by the federal Tax Reform Act of 1986.  
25 The state credit is available during 1991, 1992 and 1993.

26  
27 Under the low-income tax credit created in this amendment,  
28 owners of qualified low-income housing projects may claim an  
29 annual tax credit each year during the first 10 years.

30  
31 The amount of credit authorized annually is equal to \$1.25  
32 times the state population for that year. Unallocated credits  
33 from one year are carried over into subsequent years, however,  
34 total available credit for any one year can not exceed \$2.50  
35 times the State's population.

36  
37 The amount of credit received by any one project is  
38 variable, depending on the low-income housing benefits derived  
39 from the project and its economic viability. New projects not  
40 receiving any federal subsidies could receive credits worth up to  
41 50% of the project's value over the credit period. Existing  
42 projects, or new projects which are federally subsidized, could  
43 receive credits worth up to 25% of the project's value over the  
44 10 years.

45  
46 In order to be eligible for the tax credit, the project  
47 owner must agree to provide a minimum of 20% of the units in the  
48 project for families with incomes at or below 50% of the median  
49 income of the county in which the unit is created (the "20/50"  
50 test), or 40% of the units for families with incomes at or below  
51 60% of the median income of the county in which the unit is  
52 created (the "40/60" test). In addition, gross rent paid by  
53 occupants of the low-income units may not exceed 30% of the

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2 applicable income level. In order to receive a tax credit, the  
owner must agree to comply with these restrictions for at least  
4 15 consecutive years.

6 The amendment authorizes the Maine State Housing Authority  
to act as the credit allocation agency and requires them to  
8 promulgate rules to implement the tax credit no later than  
December 31, 1990.

10 This amendment requires the Division of Community Services  
to distribute, no later than October 1st of each year, sufficient  
12 funds to the local program operators and municipal administrators  
of the fuel assistance program to cover anticipated program and  
14 administrative costs for at least the months of October, November  
and December. It appropriates \$8,000,000 to the Division of  
16 Community Services for establishing and capitalizing the Fuel  
Assistance Reserve Fund. The fund is to be used as start-up  
18 funding for the fuel assistance program only if federal block  
grant funding is not received by October 1st. If the fund is  
20 used, the Division of Community Services is required to  
recapitalize the fund immediately upon receipt of federal funding.  
22

24 The fund expires on June 30, 1991, at which time the  
Division of Community Services is required to transfer the fully  
recapitalized fund back to the General Fund.  
26

Reported by the Committee on Housing and Economic Development  
Reproduced and distributed under the direction of the Clerk of the  
House

1/12/90

(Filing No. H-732)