

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 553, L.D. 749, Bill, "An Act to Provide for Affordable Cooperative Housing in the State"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 13 MRSA c. 85, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

COOPERATIVE AFFORDABLE HOUSING OWNERSHIP

§1741. Short title

This subchapter may be known and cited as the "Maine Cooperative Affordable Housing Ownership Act."

§1742. Definitions

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

1. Conversion. "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative affordable housing corporation to own property formerly rented for dwelling purposes is considered such a change in character.

2. Cooperative affordable housing corporation. "Cooperative affordable housing corporation" means a domestic corporation that is organized under or elects to be governed by the provisions of this subchapter.

COMMITTEE AMENDMENT

2 3. Cooperative interest. "Cooperative interest" means the
3 ownership interest in a cooperative affordable housing
4 corporation that is evidenced by a membership share.

6 4. Cooperative property. "Cooperative property" means the
7 real and personal property, including mobile and manufactured
8 homes, in this State owned or leased by a cooperative affordable
9 housing corporation for the primary purpose of residential use.

10 5. Lender. "Lender" includes, but is not limited to, the
11 following institutional lenders whose policies and procedures are
12 subject to governmental supervision:

14 A. A federal, state or local housing finance agency;

16 B. A bank, including savings and loan associations or
17 insured credit unions;

19 C. Insurance companies;

21 D. Pension and profit-sharing funds or trusts; or

23 E. Any combination of the lenders listed in paragraphs A to
24 D.

26 "Lender" also includes a community loan fund or similar nonprofit
27 lender to housing projects.

29 6. Limited equity cooperative. "Limited equity
30 cooperative" means a cooperative affordable housing corporation
31 organized in accordance with section 1754.

33 7. Limited equity formula. "Limited equity formula" means
34 a rule or method for determining the transfer value of a share in
35 a limited equity cooperative.

37 8. Low income. "Low income" means income that is less than
38 or equal to 80% of median income for the area, adjusted for
39 family size, in accordance with federal standards generally
40 accepted at the time of incorporation under this subchapter and
41 comparable to standards of the federal Department of Housing and
42 Urban Development in existence on the effective date of this
43 section.

45 9. Member. "Member" means a person who owns a cooperative
46 interest.

48 10. Moderate income. "Moderate income" means income that
49 is less than or equal to 100% of median income for the area,
50

2 adjusted for family size, in accordance with federal standards
4 generally accepted at the time of incorporation under this
6 subchapter and comparable to standards of the federal Department
8 of Housing and Urban Development in existence on the effective
10 date of this section.

12 11. Proprietary lease. "Proprietary lease" means an
14 agreement with a cooperative affordable housing corporation
16 governing a member's right to occupancy under which a member has
18 an exclusive possessory interest in a unit.

20 12. Resident. "Resident" means any occupant of space owned
22 by the cooperative affordable housing corporation.

24 13. Share loan. "Share loan" means an agreement entered
26 into by a member and a lender to finance the member's acquisition
28 of the member's cooperative interest.

30 14. Subscription agreement. "Subscription agreement" means
32 a written agreement between a prospective member and a
34 cooperative affordable housing corporation for the purchase and
36 sale of a cooperative interest.

38 15. Unit. "Unit" means a portion of the cooperative
40 property leased for exclusive occupancy by a member under a
42 proprietary lease or leased to a tenant by lease agreement.

44 **§1743. Application**

46 1. Nonprofit. Cooperative affordable housing corporations
48 are considered nonprofit inasmuch as they are not organized to
50 make a profit for themselves or for their members.

2. Applicability. Except as otherwise provided in this
subchapter, cooperative affordable housing corporations in the
State are governed by and have all the rights, privileges and
powers established in Title 13-A. Without limiting the
applicability of federal law to any other corporation or
unincorporated association that provides housing on a cooperative
basis, it is the intent that cooperative affordable housing
corporations governed by this subchapter qualify as cooperative
housing corporations under federal law.

3. Election. Any corporation governed by Title 13-A may
elect by a vote of 2/3 of the members voting to secure the
benefits of and be bound by this subchapter and must then amend
its articles of incorporation to conform with this subchapter.

4. Exemption. Any corporation or unincorporated
association that does not elect to be governed under this

2 subchapter may not be restricted from providing housing on a
3 cooperative basis whether as a consumer cooperative under
4 subchapter I or otherwise.

6 **§1744. Name; use of "cooperative"**

8 A person, firm, corporation or association, domestic or
9 foreign, commencing business in this State after the effective
10 date of this section may not use the word "cooperative" or
11 "co-op" as a part of its corporate name unless it has complied
12 with this subchapter or any other law of this State relating to
13 cooperative associations. A foreign association organized under
14 and complying with the cooperative laws of the state in which it
15 was created is entitled to use the term "cooperative" or "co-op"
16 in this State if it has obtained the privilege of doing business
17 or carrying on activities in this State.

18 **§1745. Property classification of cooperative interest**

20 1. Personal property. A cooperative interest is personal
21 property.

22 2. Nonseverable interest. The possessory interest
23 evidenced by a proprietary lease is a part of and may not be
24 severed from a cooperative interest.

26 **§1746. Perfection of security interests in cooperative interests**

28 1. Creation of security interest. Security interests in
29 shares of cooperative affordable housing corporations may be
30 created, perfected and enforced in the same manner as security
31 interests in certificated securities under Title 11, articles 8
32 and 9. A lender may perfect such a security interest by
33 possession of shares or by any other method under which security
34 interests in certificated securities may be perfected pursuant to
35 Title 11, article 8.

36 2. Notation of secured party. Upon the request of a
37 secured party, a cooperative affordable housing corporation shall
38 note on its books and records the interest of the secured party
39 in a cooperative interest. Such a request or notation is not
40 required to perfect a security interest in a cooperative interest.

42 **§1747. Articles of incorporation; minimum requirements**

44 Articles of incorporation of a cooperative affordable
45 housing corporation must contain the following provisions in
46 addition to those required by Title 13-A:
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2 1. One class of stock. A statement that the cooperative
affordable housing corporation has only one class of stock;

4 2. Restrictions on transfers. A statement of restrictions,
if any, upon transfers of shares;

6 3. Rate of dividend. The rate of dividend, if any,
8 allocable to membership shares, which may not exceed 6% per annum
on invested capital;

10 4. Acquire membership. The conditions, if any, under which
12 the cooperative affordable housing corporation reserves the right
to acquire membership shares;

14 5. Distribution upon dissolution. The basis for
16 distribution of assets in the event of dissolution;

18 6. Allocation of ownership and voting interests. The
method of allocation of ownership and voting interests in the
20 cooperative affordable housing corporation; and

22 7. Right of first refusal. The conditions, if any, under
which the cooperative affordable housing corporation has a right
24 of first refusal upon proposed transfers of cooperative interest.

26 **§1748. Organizational meeting**

28 Within 6 months after the first conveyance of a share to a
member, an organizational meeting of the cooperative affordable
30 housing corporation must be held for the purpose of adopting
bylaws, electing officers and transacting such other business as
32 may come before the meeting.

34 **§1749. Membership**

36 1. Capital stock. A cooperative affordable housing
corporation must be organized on a membership basis with capital
38 stock.

40 2. Requirements. A cooperative affordable housing
corporation must have one class of stock and one class of
42 members. The designation, qualifications, requirements, method
of acceptance and incidents of membership must be set forth in
44 the articles of incorporation or the bylaws.

46 3. Transfers. A member may not transfer membership except
as permitted in the articles of incorporation or the bylaws.

48 4. Termination. The articles of incorporation or the
50 bylaws may provide for termination of membership and the
conditions and terms of termination.

2 §1750. Bylaws; minimum requirements

4 The bylaws of a cooperative affordable housing corporation
6 must contain procedures under which the cooperative affordable
8 housing corporation's possessory remedy will be pursued in the
event of a member's default and the rights of a defaulting
member, in accordance with section 1755, subsection 2.

10 §1751. Membership shares; requirements

12 A cooperative affordable housing corporation shall issue
14 shares to its members as evidence of their ownership of a
16 cooperative interest. The shares must be in a form prescribed in
18 the articles of incorporation or bylaws of the cooperative
20 affordable housing corporation. Restrictions upon transfers of
22 shares must be noted on the face of the certificates representing
shares. Membership shares may not be issued under this section
and proprietary leases may not be issued under section 1755
before filing of the articles of incorporation as a cooperative
affordable housing corporation.

24 §1752. Voting

26 1. One vote per member. Except as provided in subsection
28 5, the votes in a cooperative affordable housing corporation must
be assigned so that each member has one vote.

30 2. Nonmembers on board. Nonmembers may be elected by the
32 membership of the cooperative affordable housing corporation to
34 serve on the board of directors of the cooperative affordable
housing corporation, except that no more than 1/3 of the
directors may be nonmembers.

36 3. Proxy voting. Voting by proxy may be permitted in
38 cooperative affordable housing corporations, subject to the
following limitations:

40 A. Proxies must be assigned to members; and

42 B. No more than one proxy may be voted by any member on any
question.

44 4. Absentee ballots. Voting by absentee ballots may be
46 permitted in cooperative affordable housing corporations.

48 5. Alternative voting scheme. Notwithstanding subsection
50 1, a cooperative affordable housing corporation not organized as
a limited equity cooperative pursuant to section 1754 may adopt
in its articles of incorporation or bylaws a voting scheme other

2 than one vote per member, except that decisions to merge a
4 cooperative affordable housing corporation with another entity,
to dissolve it or to amend its articles of incorporation or
bylaws must be made on the basis of one vote per member.

6 **§1753. Merger; consolidation**

8 A cooperative affordable housing corporation may not
10 consolidate or merge with another corporation other than a
cooperative affordable housing corporation. Two or more
12 cooperative affordable housing corporations may consolidate or
merge in accordance with Title 13-A, chapter 9. Cooperative
14 affordable housing corporations may not engage in mergers or
consolidation if such an action is undertaken for the purpose of
16 circumventing section 1754, 1757, 1758 or 1761.

18 **§1754. Limited equity cooperatives**

20 A cooperative affordable housing corporation may organize as
a limited equity cooperative in order to fulfill the public
22 purpose of providing and preserving housing for persons and
households of low income and moderate income at the time that
24 they purchase their memberships. In addition to safeguarding the
public purpose, a limited equity cooperative must meet the
26 following requirements.

28 **1. Sale of interest based on limited equity formula.** The
articles of incorporation must require that cooperative interests
30 be sold at no more than a transfer value determined by a limited
equity formula contained in the articles. That value must be
32 consistent with the object of maintaining long-term affordability
of cooperative interests for persons or households of low income
34 and moderate income.

36 **2. Maintenance of affordability.** A limited equity formula,
once established by a cooperative affordable housing corporation
38 in its articles of incorporation, may be amended only if that
amendment does not make the cooperative membership unaffordable
40 for classes of low-income or moderate-income households for which
the cooperative affordable housing corporation was originally
42 incorporated. A cooperative affordable housing corporation once
organized under this section may not reorganize as other than a
44 limited equity cooperative without first dissolving.

46 **3. Uphold public purpose.** A limited equity cooperative may
not sell all or substantially all of its assets if such sale is
48 intended to circumvent the public purpose of this section.

50 **4. Right to repurchase.** The articles of incorporation must
require that the cooperative affordable housing corporation has
the first right to repurchase a member's cooperative interest.

2 5. Limit on capital distribution. The articles of
incorporation must require that the total distribution of capital
4 to a member not exceed the transfer value.

6 6. Distribution upon dissolution. The articles of
incorporation must require that upon dissolution of the
8 cooperative affordable housing corporation any assets remaining
after retirement of corporate debts and distribution to members
10 must be distributed to a charitable organization described in the
Internal Revenue Code of 1986, Section 501(c)(3), as amended, a
12 public agency or another limited equity cooperative whose formula
for determining transfer value is no less restrictive than that
14 of the cooperative affordable housing corporation being dissolved.

16 7. Sublease limitations. The articles of incorporation
must require that a sublease of a unit may not require monthly
18 payments by the sublessee in excess of 100% of the monthly
payments for the unit required in the proprietary lease.

20 8. Minimum occupancy requirement. At least 80% of a
22 limited equity cooperative's occupied units must be occupied by
members.

24 9. Residents only. Voting authority may not be assigned to
26 nonresidents, except for any assignment as security for a share
loan or as security for a loan for construction, acquisition or
28 permanent financing of cooperative property.

30 **§1755. Proprietary lease**

32 Every member of a cooperative affordable housing corporation
is entitled to receive from the cooperative affordable housing
34 corporation a written proprietary lease that must include the
following:

36 1. Personal property security interest. A provision that
38 the collateral for a loan against the member's cooperative
interest is in the nature of a personal property security
40 interest and any default of such a loan entitles the lender to
treat the default in the same manner as a default of a loan
42 secured by personal property;

44 2. Remedy for default. A description of the cooperative
affordable housing corporation's possessory remedy in the event
46 of default. Good cause is required for termination of the right
of occupancy. "Good cause" includes nonpayment of loans, fees,
48 costs or assessments pertaining to the cooperative interest or
material violation of bylaws, rules or proprietary lease that
50 continues following reasonable notice and reasonable opportunity
to cure the alleged material violations; and

2 3. Maintenance and carrying charges. Provisions for
4 determining maintenance and carrying charges for the unit.

6 §1756. Offering of cooperative interests; subscription
 agreement; disclosures required

8 1. Materials provided to prospective members. In
10 conjunction with the offering of cooperative interests to
12 prospective members, a person or entity offering to sell
14 cooperative interests shall provide to a purchaser prior to the
16 execution of a subscription agreement by the purchaser a copy of
 the proposed or adopted articles of incorporation and bylaws of
 the cooperative affordable housing corporation, a subscription
 agreement or sales agreement, a proposed proprietary lease and
 the most current corporate financial statements, if any exist.

18 2. Contents of agreements. The subscription agreement or
20 sales agreement must contain:

22 A. Provisions detailing the cost of acquisition of a
24 cooperative interest, the rights and privileges of
26 membership in the cooperative affordable housing corporation
 and terms and conditions of occupancy of a unit in the
 cooperative affordable housing corporation;

28 B. Provisions, if any, under which the subscription
30 agreement or sales agreement is subordinated to other
 agreements or otherwise encumbered;

32 C. Provisions for cancellation of the agreement by either
 party; and

34 D. A legally sufficient description of the property.

36 3. Cancellation. The subscriber or purchaser has the right
38 to cancel the subscription agreement or sales agreement without
40 penalty upon provision of written notice to the offeror within 10
42 days of the date of signing the agreement. In the event of a
44 cancellation, all money paid by the subscriber or purchaser to
 the offeror must be returned to the subscriber or purchaser by
 the offeror within 14 days of receipt of the notice of
 cancellation. The offeror shall inform the subscriber or
 purchaser in writing of the right of cancellation.

46 Notwithstanding any other provision of law to the contrary,
48 the offer of membership, shares or other ownership interests in a
50 cooperative affordable housing corporation or any other
 corporation or unincorporated association organized for the
 primary purpose of providing housing on a cooperative basis as a

consumer cooperative under subchapter I or otherwise is not the offer of a security pursuant to Title 32, chapter 105 or any other provision of law.

§1757. Consumer protection; enforcement

Failure or neglect to provide to purchasers the documents and disclosures required by section 1756 is considered a violation of Title 10, chapter 206.

§1758. Dissolution

By vote of at least 80% of its members or any larger percentage specified in the articles of incorporation or bylaws, a cooperative affordable housing corporation may vote to dissolve and terminate its proprietary leases.

§1759. Loans

Any lender is authorized to make loans secured by shares in a cooperative affordable housing corporation, including limited equity cooperatives. For purposes of Title 9-A, section 1-202, subsection (8), a loan secured by shares of a cooperative affordable housing corporation must be considered a loan secured by a mortgage on real estate.

§1760. Net income; apportionment

1. Apportionment. Subject to subsection 2, the board of directors of a cooperative affordable housing corporation may apportion annually the remainder of its net income in one or more of the following ways:

A. As a reserve fund for the general operation of the cooperative affordable housing corporation; or

B. As a dividend not to exceed 6% per annum on invested capital.

2. Cost reduction. This section does not prevent a cooperative affordable housing corporation from disposing of its net income by reducing the cost of facilities or services or by applying the net income otherwise for the common benefit of its members.

§1761. Nondiscrimination

Title 5, chapter 337, subchapter IV applies to all cooperative affordable housing corporations in the State.

§1762. Property tax provisions

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3 1. Property not tax-exempt. Notwithstanding any provision
4 of law to the contrary, cooperative property does not qualify for
5 property tax exemption under Title 36, section 652, subsection 1,
6 paragraph A.

8 2. Eligibility for property tax relief. Without limiting
9 the eligibility of members of any other corporation or
10 unincorporated association that provides housing on a cooperative
11 basis for tax relief, a member of a cooperative affordable
12 housing corporation is eligible for any relief afforded to
13 property taxpayers under law.

14 3. Homestead exemption from attachment and execution.
15 Title 14, section 4422 applies to cooperative interests in
16 cooperative affordable housing corporations.

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20 **FISCAL NOTE**

21 The Maine State Housing Authority will incur some minor
22 additional costs to provide technical assistance to cooperative
23 housing corporations. These costs can be absorbed within the
24 authority's existing budgeted resources.

25 The Department of the Attorney General will incur some minor
26 additional costs to enforce the provisions of the Maine
27 Cooperative Affordable Housing Ownership Act. These costs can be
28 absorbed within the department's existing budgeted resources.

29 This bill will not appreciably affect the number of eligible
30 households under the Maine Residents Property Tax Program.'

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36 **STATEMENT OF FACT**

37 This amendment replaces the original bill. The amendment
38 makes several technical changes and clarifies that the
39 legislation is one means of providing housing on a cooperative
40 basis. The amendment specifies that any cooperative arrangement
41 is subject to property taxes. The amendment also adds a fiscal
42 note.
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Reported by the Committee on Housing and Economic Development
Reproduced and distributed under the direction of the Clerk of the
House
5/21/93

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