

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 855

H.P. 632

House of Representatives, February 20, 2003

**An Act To Establish Minimum Standards of Eligibility for the
Property Tax Exemption for Benevolent and Charitable Institutions**

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CRESSEY of Baldwin.

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

2
3 Sec. 1. 36 MRSA §652, sub-§1, ¶A, as amended by PL 2001, c.
4 596, Pt. B, §23 and affected by §25, is further amended to read:

6 A. The real estate and personal property owned and occupied
7 or used solely for their own purposes by benevolent and
8 charitable institutions incorporated by this State. Such an
9 institution may not be deprived of the right of exemption by
10 reason of the source from which its funds are derived or by
11 reason of limitation in the classes of persons for whose
12 benefit such those funds are applied.

14 For the purposes of this paragraph, "benevolent and
15 charitable institutions" include, but are not limited to,
16 nonprofit nursing homes and nonprofit boarding homes and
17 boarding care facilities licensed by the Department of Human
18 Services pursuant to Title 22, chapter 1664 or its
19 successor, nonprofit community mental health service
20 facilities licensed by the Commissioner of Behavioral and
21 Developmental Services pursuant to Title 34-B, chapter 3 and
22 nonprofit child care centers incorporated by this State as
23 benevolent and charitable institutions. For the purposes of
24 this paragraph, "nonprofit" means a facility exempt from
25 ~~taxation under Section 501(c)(3) of the Code;~~

26
27
28 (1) To qualify for the tax exemption provided by this
29 paragraph, an institution must donate or render
30 gratuitously a substantial portion of its services.
31 This subparagraph is satisfied if the institution
32 benefits the community by actually providing any of the
33 following:

34
35 (a) Goods or services to all who seek them
36 without regard to their ability to pay for what
37 they receive if all of the following apply:

38
39 (i) The institution has a written policy to
40 that effect;

41
42 (ii) The institution has published and
43 posted that policy in a reasonable manner; and

44
45 (iii) The institution provides uncompensated
46 goods or services equal to at least 75% of
47 the institution's net operating income and at
48 least 3% of the institution's total operating
49 expenses;

2 (b) Goods and services for fees that are based
4 upon the recipient's ability to pay for those
6 goods and services. The institution meets the
 requirements of this division if the municipality
 implements a written policy and written schedule
 of fees in which:

8 (i) The institution consistently applies a
10 formula to all individuals requesting
 consideration of reduced fees that is in part
 based on individual or family income;

12 (ii) At least 20% of the individuals
14 receiving goods or services from the
16 institution do not pay a fee or pay a fee
18 that is substantially lower than the cost of
 the goods or services provided by the
 institution;

20 (iii) At least 10% of the individuals
22 receiving goods or services from the
24 institution, not including the individuals
26 described in subdivision (ii), receive a
 reduction in fees of at least 10% of the cost
 of the goods or services provided to them; and

28 (iv) Individuals receiving goods or services
30 from the institution do not pay a fee that is
32 equal to or greater than the cost of the
34 goods or services provided to those
36 individuals or the goods or services provided
38 to the individuals described in subdivision
 (ii) are comparable in quality and quantity
 to the goods or services provided to those
 individuals who pay a fee that is equal to or
 greater than the cost of the goods or
 services provided to them;

40 (c) Wholly gratuitous goods or services to at
42 least 5% of those receiving goods or services
 similar to those goods or services provided in
 division (b) from the institution;

44 (d) Uncompensated goods or services that in the
46 aggregate are equal to at least 5% of the
48 institution's costs of providing goods or
 services; or

50 (e) Goods or services at no fee or reduced fees
 to nonprofit agencies or goods and services to

2 individuals eligible for government programs if
3 any of the following applies:

4 (i) The nonprofit agency is exempt from
5 income taxation pursuant to Section 501(c)(3)
6 of the Code and is licensed by the Department
7 of Human Services as a nonprofit nursing
8 home, nonprofit boarding home, nonprofit
9 boarding care facility or nonprofit child
10 care center pursuant to Title 22, chapter
11 1664;

12 (ii) The nonprofit agency receives 75% or
13 more of its gross operating revenue from
14 grants or fee-for-service payments by
15 government agencies and the aggregate amount
16 of the fee-for-service payments from
17 government agencies does not exceed 95% of
18 the nonprofit agency's costs of providing
19 goods or services to the individuals for whom
20 the fee-for-service payments are made; or

21 (iii) The nonprofit agency provides goods or
22 services to individuals with mental
23 retardation, to individuals who need mental
24 health services or to the guardian of such an
25 individual or members of such an individual's
26 family in support of those goods or services
27 or to individuals who are dependent,
28 neglected or delinquent children, as long as
29 the institution performs duties that would
30 otherwise be the responsibility of government
31 and the nonprofit agency is restricted in its
32 ability to retain revenue over expenses or
33 voluntary contributions by any one of the
34 following statutes or regulations relating to
35 conditions of participation for intermediate
36 care facilities for the mentally retarded or
37 by contractual limitations with any state
38 agency: the Social Security Act, Sections
39 1905(d) and 1915(c); 42 Code of Federal
40 Regulations, 440.150 relating to intermediate
41 care facilities services; or 42 Code of
42 Federal Regulations, Part 483, Subchapter I.

43 For purposes of this division, "nonprofit agency"
44 means an entity exempt from taxation under Section
45 501(c)(3) of the Code.
46

2 (2) An institution may elect to average the applicable
4 data for its 5 most recently completed fiscal years for
 the purposes of calculating any formula to meet any
 quantitative standard in subparagraph (1).

6 (3) As used in this paragraph, unless the context
8 otherwise indicates, the following terms have the
 following meanings.

10 (a) "Net operating income" means the amount of
12 funds remaining after all operating expenses
14 related to the provision of goods or services
 associated with an institution's charitable
16 purpose are deducted from payments received for
 providing those goods or services as determined in
18 accordance with generally accepted accounting
 principles applicable to the institution.

20 (b) "Total operating expenses" means the costs
22 related to the provision of goods or services
24 associated with an institution's charitable
 purpose as determined in accordance with generally
 accepted accounting principles applicable to the
 institution.

26 (c) "Uncompensated goods or services" means the
28 following:

30 (i) The full cost of all goods and services
32 provided by an institution for which the
34 institution has not received monetary
36 compensation or the difference between the
 full cost and any lesser fee received for the
 goods and services, including the cost of the
 goods or services provided to individuals
 unable to pay;

38 (ii) The difference between the full cost of
40 education and research programs provided by
42 or participated in by an institution and the
 payments made to the institution to support
 the education and research programs;

44 (iii) The difference between the full cost
46 of providing the goods or services and the
48 payment made to an institution under any
 government program, including goods or
 services provided to individuals covered by
50 Medicare or Medicaid;

2 (iv) The difference between the full cost of
3 the community services that an institution
4 provides or participates in and the payment
5 made to the institution to support those
6 community services;

7 (v) The reasonable value of any money,
8 property, goods or services donated by a
9 primary donor to an institution or the
10 reasonable value of the net donation made by
11 a secondary donor to a primary donor. As
12 used in this subdivision, "net donation"
13 means, in the case of a donation of money,
14 property, identical goods or services made by
15 a secondary donor, the difference between the
16 value of the donation made by the secondary
17 donor and the value of the donation made by
18 the primary donor, as long as the value is
19 positive; "primary donor" means an entity
20 that makes a donation of money, property,
21 goods or services to an institution of purely
22 public charity; and "secondary donor" means
23 an entity that receives a donation of any
24 money, property, goods or services from a
25 primary donor and then makes a donation back
26 to that primary donor within 3 years of
27 having received such a donation;

28 (vi) The reasonable value of volunteer
29 assistance donated by individuals who are
30 involved or assist in the provision of goods
31 or services by an institution. The
32 reasonable value of volunteer assistance,
33 computed on an hourly basis, may not exceed
34 the statewide average weekly wage as
35 calculated by the Department of Labor, Bureau
36 of Labor Standards; and

37 (vii) The cost of goods or services provided
38 by an institution licensed by the Department
39 of Human Services to individuals who are
40 unable to pay, as long as reasonable and
41 customary collection efforts have been made
42 by the institution.

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SUMMARY

This bill provides a property tax exemption to a nonprofit
benevolent and charitable institution only if it donates or

renders gratuitously a substantial portion of its services. The
2 charitable organization can meet that standard in one of 5 ways.
The 5 alternative ways to meet the standard are:

4
1. The institution must provide goods and services to all
6 who seek them without regard to ability to pay;

8
2. The institution must provide goods and services for fees
that are based on the recipients' ability to pay;

10
3. The institution must provide wholly gratuitous goods and
12 services to least 5% of those receiving similar goods and
services from the institution;

14
4. The institution must provide uncompensated goods or
16 services that in the aggregate are equal to at least 5% of the
institution's cost of providing goods or services; or

18
5. The institution must provide goods or services at no fee
20 or a reduced fee to nonprofit agencies or individuals eligible
for government programs.