

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION-2003

Legislative Document

No. 858

H.P. 635

House of Representatives, February 20, 2003

An Act To Establish a Municipal Affordable Housing Development District Tax Increment Financing Program

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Cornville.

Cosponsored by Representatives: KOFFMAN of Bar Harbor, SUSLOVIC of Portland.

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

4 **Sec. 1. 30-A MRSA c. 206, sub-c. 3 is enacted to read:**

6 **SUBCHAPTER 3**

8 **MUNICIPAL AFFORDABLE HOUSING**
 DEVELOPMENT DISTRICTS

10 **§5245. Findings and declaration of necessity**

12 **1. Legislative finding.** The Legislature finds that there
14 is a need for the development of affordable, livable housing and
the containment of the costs of unplanned growth in Maine
16 municipalities.

18 **2. Authorization.** For the reasons set out in subsection 1,
20 a municipality may develop a program to provide impetus for
affordable housing development within a district of the
22 municipality, as provided in the comprehensive plan adopted by
the legislative body of the municipality.

24 **3. Declaration of public purpose.** It is declared that the
actions required to assist the implementation of affordable
26 housing development programs are a public purpose and that the
execution and financing of these programs are a public purpose.

28 **§5246. Definitions**

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

34 **1. Affordable housing.** "Affordable housing" means a
decent, safe and sanitary dwelling, apartment or other living
36 accommodation for a household whose income does not exceed 120%
of the median income for the area as defined by the United States
38 Department of Housing and Urban Development under the United
States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section
40 8, as amended.

42 **2. Affordable housing development district.** "Affordable
housing development district" or "district" means a specified
44 area within the corporate limits of a municipality that has been
designated as provided under sections 5247 and 5250 to be
46 developed under an affordable housing development program and
financed under section 5250-A.

48 **3. Affordable housing development program.** "Affordable
housing development program" or "program" means a statement of

2 means and objectives designed to encourage the development and
3 maintenance of affordable housing within an affordable housing
4 development district.

5 4. Amenities. "Amenities" means items of street furniture,
6 signs and landscaping, including, but not limited to, plantings,
7 benches, trash receptacles, street signs, sidewalks and
8 pedestrian malls.

9 5. Authority. "Authority" means the Maine State Housing
10 Authority.

11 6. Captured assessed value. "Captured assessed value"
12 means the amount, as a percentage or stated sum, of increased
13 assessed value that is utilized from year to year to finance the
14 project costs contained within the affordable housing development
15 program.

16 7. Current assessed value. "Current assessed value" means
17 the assessed value of the district certified by the municipal
18 assessor as of April 1st of each year that the affordable housing
19 development district remains in effect.

20 8. Director. "Director" means the Director of the Maine
21 State Housing Authority.

22 9. Financial plan. "Financial plan" means a statement of
23 the project costs and sources of revenue required to accomplish
24 the affordable housing development program.

25 10. Increased assessed value. "Increased assessed value"
26 means the valuation amount by which the current assessed value of
27 an affordable housing development district exceeds the original
28 assessed value of the district. If the current assessed value is
29 equal to or less than the original, there is no increased
30 assessed value.

31 11. Maintenance and operation. "Maintenance and operation"
32 means all activities necessary to maintain affordable housing
33 after development and all activities necessary to operate the
34 affordable housing, including, but not limited to, informational,
35 promotional, safety and surveillance activities.

36 12. Original assessed value. "Original assessed value"
37 means the assessed value of an affordable housing development
38 district as of March 31st of the tax year preceding the year in
39 which it was designated.

40 13. Project costs. "Project costs" means any expenditures
41 or monetary obligations incurred or expected to be incurred that
42

2 are authorized by section 5249, subsection 1 and included in an
3 affordable housing development program.

4 14. Tax increment. "Tax increment" means real property
5 taxes assessed by a municipality, in excess of any state, county
6 or special district tax, upon the increased assessed value of
7 property in the affordable housing development district.

8 15. Tax shifts. "Tax shifts" means the effect on a
9 municipality's state revenue sharing, education subsidies and
10 county tax obligations that results from the designation of an
11 affordable housing development district and the capture of
12 increased assessed value.

13 16. Tax year. "Tax year" means the period of time
14 beginning on April 1st and ending on the succeeding March 31st.

15 §5247. Affordable housing development districts

16 1. Creation. A municipal legislative body may designate an
17 affordable housing development district within the boundaries of
18 the municipality in accordance with the requirements of this
19 subchapter. If the municipality has a charter, the designation of
20 an affordable housing development district may not be in conflict
21 with the provisions of the municipal charter.

22 2. Considerations for approval. Before designating an
23 affordable housing development district within the boundaries of
24 a municipality, or before establishing an affordable housing
25 development program for a designated affordable housing
26 development district, the legislative body of a municipality must
27 consider whether the proposed district or program will contribute
28 to the expansion of affordable housing opportunities within the
29 municipality or to the betterment of the health, welfare or
30 safety of the inhabitants of the municipality. Interested parties
31 must be given a reasonable opportunity to present testimony
32 concerning the proposed district or program at the hearing
33 provided for in section 5250, subsection 1. If an interested
34 party claims at the public hearing that the proposed district or
35 program will result in a substantial detriment to that party's
36 existing property interests in the municipality and produces
37 substantial evidence to that effect, the legislative body shall
38 consider that evidence. When considering that evidence, the
39 legislative body also shall consider whether any adverse economic
40 effect of the proposed district or program on that interested
41 party's existing property interests in the municipality is
42 outweighed by the contribution made by the district or program to
43 the availability of affordable housing within the municipality or
44 to the betterment of the health, welfare or safety of the
45 inhabitants of the municipality.

2 3. Conditions for approval. Designation of an affordable
3 housing development district is subject to the following
4 conditions.

6 A. At least 25%, by area, of the real property within an
7 affordable housing development district must:

8 (1) Be suitable for residential use;

10 (2) Be a blighted area; or

12 (3) Be in need of rehabilitation or redevelopment.

14 B. The affordable housing development district is subject
15 to the area cap established in section 5223, subsection 3,
16 paragraph B.

18 C. The original assessed value of a proposed affordable
19 housing development district plus the original assessed
20 value of all existing affordable housing development
21 districts within the municipality may not exceed 5% of the
22 total value of taxable property within the municipality as
23 of April 1st preceding the date of the director's approval
24 of the designation of the proposed affordable housing
25 development district.

28 D. The aggregate value of municipal general obligation
29 indebtedness financed by the proceeds from affordable
30 housing development districts within any county may not
31 exceed \$50,000,000 adjusted by a factor equal to the
32 percentage change in the United States Bureau of Labor
33 Statistics Consumer Price Index, United States City Average
34 from January 1, 2002 to the date of calculation.

36 E. The affordable housing development program must show
37 that the development meets an identified community housing
38 need. The affordable housing development program must
39 provide a mechanism to ensure the ongoing affordability for
40 a period of at least 5 years.

42 F. Acquisition, construction and installment of all
43 property improvements, buildings, structures, fixtures and
44 equipment included within the affordable housing development
45 program and financed through municipal bonded indebtedness
46 must be completed within 5 years of the director's approval
47 of the designation of the affordable housing development
48 district.

2 4. Powers of municipality. Within an affordable housing
development district and consistent with an affordable housing
4 development program, a municipality may acquire, construct,
reconstruct, improve, preserve, alter, extend, operate or
6 maintain property or promote development intended to meet the
objectives of the affordable housing development program.
8 Pursuant to the affordable housing development program, the
municipality may acquire property, land or easements through
10 negotiation or by using eminent domain powers in the manner
authorized for community development programs under section 5204.
12 The municipality's legislative body may adopt ordinances
regulating traffic in and access to any facilities constructed
14 within the affordable housing development district. The
municipality may install public improvements.

16 §5248. Affordable housing development programs

18 1. Adoption. The legislative body of a municipality shall
adopt an affordable housing development program for each
20 affordable housing development district. The affordable housing
development program must be adopted at the same time as the
22 district as part of the district adoption proceedings or, if at a
different time, in the same manner as adoption of the district,
24 with the same notice and hearing requirements of section 5250.
Before adopting an affordable housing development program, the
26 municipal legislative body shall consider the factors and
evidence specified in section 5247.

28 2. Requirements. The affordable housing development
30 program must include:

32 A. A financial plan in accordance with subsection 3;

34 B. A description of facilities, improvements or programs to
36 be financed in whole or in part by the affordable housing
development program;

38 C. Plans for the relocation of persons displaced by the
development activities;

40 D. The environmental controls to be applied;

42 E. The proposed operation of the affordable housing
44 development district after the planned improvements are
completed;

46 F. An assurance that the program complies with section
48 4349-A;

2 G. The duration of the program, which may not exceed 30
3 years from the date of designation of the district; and

4 H. All documentation submitted to or prepared by the
5 municipality under section 5247, subsection 2.

6 3. Financial plan for affordable housing development
7 district. The financial plan for an affordable housing
8 development district must include:

9 A. Cost estimates for the affordable housing development
10 program;

11 B. The amount of public indebtedness to be incurred;

12 C. Sources of anticipated revenues;

13 D. A description of the terms and conditions of any
14 agreements, contracts or other obligations related to the
15 affordable housing development program; and

16 E. For each year of the affordable housing development
17 program:

18 (1) Estimates of increased assessed values of the
19 district;

20 (2) The portion of the increased assessed values to be
21 applied to the affordable housing development program
22 as captured assessed values and resulting tax
23 increments in each year of the program; and

24 (3) A calculation of the tax shifts resulting from
25 designation of the affordable housing development
26 district.

27 4. Limitation. For affordable housing development
28 districts, a municipality may expend the tax increments received
29 for any affordable housing development program only in accordance
30 with the financial plan.

31 §5249. Project costs

32 1. Authorized project costs. The director shall review
33 proposed project costs to ensure compliance with this subsection.
34 Authorized project costs are:

35 A. Costs of improvements made within the affordable housing
36 development district, including, but not limited to:

2 (1) Capital costs, including, but not limited to:

4 (a) The acquisition of land or construction of
6 public infrastructure improvements for affordable
8 housing development;

10 (b) The demolition, alteration, remodeling,
12 repair or reconstruction of existing buildings,
14 structures and fixtures;

16 (c) Site preparation and finishing work; and

18 (d) All fees and expenses that are eligible to be
20 included in the capital cost of such improvements,
22 including, but not limited to, licensing and
24 permitting expenses and planning, engineering,
26 architectural, testing, legal and accounting
28 expenses;

30 (2) Financing costs, including, but not limited to,
32 closing costs, issuance costs and interest paid to
34 holders of evidences of indebtedness issued to pay for
36 project costs and any premium paid over the principal
38 amount of that indebtedness because of the redemption
40 of the obligations before maturity;

42 (3) Real property assembly costs;

44 (4) Professional service costs, including, but not
46 limited to, licensing, architectural, planning,
48 engineering and legal expenses;

50 (5) Administrative costs, including, but not limited
 to, reasonable charges for the time spent by municipal
 employees in connection with the implementation of an
 affordable housing development program;

(6) Relocation costs, including, but not limited to,
 relocation payments made following condemnation;

(7) Organizational costs relating to the establishment
 of the affordable housing district, including, but not
 limited to, the costs of conducting environmental
 impact and other studies and the costs of informing the
 public about the creation of affordable housing
 development districts and the implementation of project
 plans;

(8) Costs of facilities used predominantly for
 recreational purposes, including, but not limited to,

2 recreation centers, athletic fields and swimming pools;
3 and

4 (9) Costs for child care, including finance costs and
5 construction, staffing, training, certification and
6 accreditation costs related to child care located in
7 the affordable housing development district; and

8
9 B. Costs of improvements that are made outside the
10 affordable housing development district but are directly
11 related to or are made necessary by the establishment or
12 operation of the district, including, but not limited to:

13 (1) That portion of the costs reasonably related to
14 the construction, alteration or expansion of any
15 facilities not located within the district that are
16 required due to improvements or activities within the
17 district, including, but not limited to, sewage
18 treatment plants, water treatment plants or other
19 environmental protection devices; storm or sanitary
20 sewer lines; water lines; electrical lines;
21 improvements to fire stations; and amenities on streets;

22
23 (2) Costs of public safety improvements made necessary
24 by the establishment of the district;

25
26 (3) Costs of funding to mitigate any adverse impact of
27 the district upon the municipality and its
28 constituents. This funding may be used for public
29 facilities and improvements; and

30
31 (4) Costs to establish permanent housing development
32 revolving loan funds or investment funds.

33
34 2. Limitation. Tax increments received from any affordable
35 housing development program may not be used to circumvent other
36 tax laws.

37
38 §5250. Procedure

39
40 1. Notice and hearing. Before designating an affordable
41 housing development district or adopting an affordable housing
42 development program, the municipal legislative body or the
43 municipal legislative body's designee must hold at least one
44 public hearing on the proposed district. Notice of the hearing
45 must be published at least 10 days before the hearing in a
46 newspaper of general circulation within the municipality.

47
48 2. Review by director. Before final designation of an
49 affordable housing development district, the director shall
50

2 review the proposal for the district to ensure that the proposal
3 complies with statutory requirements.

4 3. Effective date. A designation of an affordable housing
5 development district is effective upon approval by the director.

6 4. Administration of district. The legislative body of a
7 municipality may create a department, designate an existing
8 department, office, agency, municipal housing or redevelopment
9 authority or enter into a contractual arrangement with a private
10 entity to administer activities authorized under this subchapter.

11 5. Amendments. A municipality may amend a designated
12 affordable housing development district or an adopted affordable
13 housing development program only after meeting the requirements
14 of this section for designation of an affordable housing
15 development district or adoption of an affordable housing
16 development program. A municipality may not amend the designation
17 of an affordable housing development district if the amendment
18 would result in the district's being out of compliance with any
19 of the conditions in section 5247, subsection 3.

20 **§5250-A. Affordable housing tax increment financing**

21 1. Designation of captured assessed value. A municipality
22 may retain all or part of the tax increment revenues generated
23 from the increased assessed value of an affordable housing
24 development district for the purpose of financing the affordable
25 housing development program. The amount of tax increment revenues
26 to be retained is determined by designating the captured assessed
27 value. When an affordable housing development program for an
28 affordable housing development district is adopted, the municipal
29 legislative body shall adopt a statement of the percentage of
30 increased assessed value to be retained as captured assessed
31 value in accordance with the affordable housing development
32 program. The statement of percentage may establish a specific
33 percentage or percentages or may describe a method or formula for
34 determination of the percentage. The municipal assessor shall
35 certify the amount of the captured assessed value to the
36 municipality each year.

37 2. Certification of assessed value. Upon or after the
38 formation of an affordable housing development district, the
39 assessor of the municipality in which the district is located
40 shall certify the original assessed value of the taxable property
41 within the boundaries of the affordable housing development
42 district. Each year after the designation of an affordable
43 housing development district, the municipal assessor shall
44 certify the amount by which the assessed value has increased or
45 decreased from the original value.

2 Nothing in this subsection allows or sanctions unequal
4 apportionment or assessment of the taxes to be paid on real
6 property in the State. An owner of real property within the
8 affordable housing development district pays real property taxes
10 apportioned equally with property taxes paid elsewhere in the
12 municipality.

14 **3. Affordable housing development program fund; affordable**
16 **housing tax increment revenues.** If a municipality has designated
18 captured assessed value under subsection 1, the municipality
20 shall:

22 **A. Establish an affordable housing development program fund**
24 **that consists of the following:**

26 (1) A project cost account that is pledged to and
28 charged with the payment of project costs that are
30 outlined in the financial plan and are paid in a manner
32 other than as described in subparagraph (2); and

34 (2) In instances of municipal indebtedness, a
36 development sinking fund account that is pledged to and
38 charged with the payment of the interest and principal
40 as the interest and principal fall due and the
42 necessary charges of paying interest and principal on
44 any notes, bonds or other evidences of indebtedness
46 that were issued to fund or refund the cost of the
48 affordable housing development program fund;

B. Annually set aside all affordable housing tax increment
revenues on captured assessed values and deposit all such
revenues to the appropriate affordable housing development
program fund account established under paragraph A in the
following order of priority:

(1) To the affordable housing development sinking fund
account, an amount sufficient, together with estimated
future revenues to be deposited to the account and
earnings on the amount, to satisfy all annual debt
service on bonds and notes issued under section 5250-D
and the financial plan; and

(2) To the affordable housing project cost account, an
amount sufficient, together with estimated future
revenues to be deposited to the account and earnings on
the amount, to satisfy all annual affordable housing
project costs to be paid from the account;

2 C. Make transfers between affordable housing development
4 program fund accounts established under paragraph A as
6 required, provided that the transfers do not result in a
balance in the affordable housing development sinking fund
account that is insufficient to cover the annual obligations
of that account; and

8 D. Annually return to the municipal general fund any tax
10 increment revenues remaining in the affordable housing
12 development sinking fund account established under paragraph
14 A in excess of those estimated to be required to satisfy the
obligations of the development sinking fund account after
taking into account any transfers made under paragraph C.
The municipality, at any time during the term of the
16 district, by vote of the municipal officers, may return to
the municipal general fund any tax increment revenues
18 remaining in the project cost account established under
paragraph A in excess of those estimated to be required to
20 satisfy the obligations of the development project cost
account after taking into account any transfer made under
22 paragraph C. In either case, the corresponding amount of
local valuation may not be included as part of the captured
24 assessed value as specified by the municipality.

26 **§5250-B. Rules**

28 The director may adopt rules necessary to carry out the
30 duties imposed by this subchapter and to ensure municipal
compliance with this subchapter following designation of an
32 affordable housing development district. Rules adopted pursuant
to this section are routine technical rules as defined in Title
5, chapter 375, subchapter 2-A.

34 **§5250-C. Grants**

36 A municipality may receive grants or gifts for any of the
38 purposes of this subchapter. The tax increment revenues within an
affordable housing development district may be used as the local
40 match for certain grant programs.

42 **§5250-D. Bond financing**

44 The legislative body of a municipality may authorize, issue
46 and sell bonds, including but not limited to general obligation
or revenue bonds or notes, that mature within 20 years from the
48 date of issue to finance all project costs needed to carry out
the affordable housing development program within the affordable
housing development district. The municipal officers authorized
50 to issue the bonds or notes may borrow money in anticipation of
the sale of the bonds for a period of up to 3 years by issuing

2 temporary notes and notes in renewal of the bonds. All revenues
3 derived under section 5250-A received by the municipality are
4 pledged for the payment of the activities described in the
5 affordable housing development program and used to reduce or
6 cancel the taxes that may otherwise be required to be expended
7 for that purpose. The notes, bonds or other forms of financing
8 may not be included when computing the municipality's net debt.
9 Nothing in this section restricts the ability of the municipality
10 to raise revenue for the payment of project costs in any manner
11 otherwise authorized by law.

12 **§5250-E. Administration**

14 1. Reports. The legislative body of a municipality must
15 report annually to the director regarding the status of an
16 affordable housing development district. The report must:

18 A. Certify that the public purpose of the affordable
19 housing district, as outlined in this subchapter, is being
20 met;

22 B. Account for any sales of property within the district;
23 and

24 C. Certify that rental units within the affordable housing
25 development district have remained affordable.

28 2. Recovery of public funds. The authority shall develop
29 by rule provisions for recovery of public revenue if conditions
30 for approval of an affordable housing development district are
31 not maintained for the duration of the district. Rules adopted by
32 the authority pursuant to this subsection must be submitted to
33 the Legislature in accordance with Title 5, chapter 375,
34 subchapter 2-A.

36 **§5250-F. Advisory board**

38 The legislative body of a municipality may create an
39 advisory board, a majority of whose members must be owners or
40 occupants of real property located in or adjacent to the
41 affordable housing development district they serve. The advisory
42 board shall advise the legislative body on the planning and
43 implementation of the affordable housing development program, the
44 construction of the district and the maintenance and operation of
45 the district after the program has been completed.

46 **§5250-G. Unorganized territory**

2 For the purposes of this subchapter, a county may act as a
4 municipality for the unorganized territory within the county and
6 may designate affordable housing development districts within the
8 unorganized territory. When a county acts under this section, the
10 county commissioners act as the municipality and as the municipal
12 legislative body, the State Tax Assessor acts as the municipal
14 assessor and the unorganized territory fund receives the funds
 designated for the municipal general fund.

SUMMARY

12 This bill creates a separate tax increment financing law for
14 affordable housing development districts.