

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1645

H.P. 1180

House of Representatives, April 25, 2019

**An Act To Create Affordable Workforce and Senior Housing and
Preserve Affordable Rural Housing**

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FECTEAU of Biddeford.
Cosponsored by Senator POULIOT of Kennebec and
Representatives: BICKFORD of Auburn, CLOUTIER of Lewiston, Speaker GIDEON of
Freeport, MILLETT of Waterford, STEWART of Presque Isle, Senators: BREEN of
Cumberland, President JACKSON of Aroostook, MOORE of Washington.

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

2 **Sec. 1. 30-A MRSA §4722, sub-§1, ¶¶EE and FF**, as enacted by PL 2017, c.
3 234, §18, are amended to read:

4 EE. Refinance a single-family mortgage loan held by the Maine State Housing
5 Authority for a homeowner whose income at the time of refinancing is no greater
6 than the income limits for qualified first-time homebuyers established under 26
7 United States Code, Section 143, or an existing loan on any owner-occupied single-
8 family residence for purposes of lowering mortgage payments or making home
9 improvements for persons of low income; ~~and~~

10 FF. Provide grants to eligible homeowners who are served by private well water that
11 shows evidence of high levels of arsenic contamination. For purposes of this
12 paragraph, "homeowner" includes an individual who occupies a single-family
13 dwelling that is located on land that is owned by a member of that individual's
14 immediate family and "immediate family" means a spouse, parent, child, sibling,
15 stepchild, stepparent and grandparent; ~~and~~

16 **Sec. 2. 30-A MRSA §4722, sub-§1, ¶GG** is enacted to read:

17 GG. In accordance with the credit for affordable housing established in Title 36,
18 section 5219-VV:

- 19 (1) Allocate the credit;
20 (2) Administer and enforce the requirements of the credit; and
21 (3) Perform other functions and duties necessary for the proper administration of
22 the credit.

23 **Sec. 3. 36 MRSA §191, sub-§2, ¶HHH** is enacted to read:

24 HHH. The disclosure of information to the Maine State Housing Authority necessary
25 for the administration of the credit for affordable housing pursuant to section
26 5219-VV.

27 **Sec. 4. 36 MRSA §2534**, as enacted by PL 2011, c. 548, §21 and affected by §36,
28 is amended to read:

29 **§2534. Credits for rehabilitation of historic properties and affordable housing**

30 A taxpayer is allowed ~~a credit~~ credits against the tax otherwise due under this chapter
31 as determined under ~~section~~ sections 5219-BB and 5219-VV.

32 **Sec. 5. 36 MRSA §5219-VV** is enacted to read:

33 **§5219-VV. Credit for affordable housing**

34 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
35 following terms have the following meanings.

1 A. "Affordable housing project" means a qualified low-income housing project, as
2 defined by Section 42(g) of the Code, located in the State.

3 B. "Area median gross income" has the same meaning as in Section 42 of the Code,
4 as adjusted for family size.

5 C. "Authority" means the Maine State Housing Authority.

6 D. "Federal low-income housing tax credit" means the federal tax credit as provided
7 in Section 42 of the Code.

8 E. "Qualified basis" has the same meaning as in Section 42(c) of the Code.

9 F. "Qualified Maine project" means an affordable housing project that is:

10 (1) Either the construction of one or more new buildings or the adaptive reuse of
11 one or more previously constructed buildings that have not been previously used
12 for residential purposes;

13 (2) Subject to a restrictive covenant requiring an income mix in which at least
14 60% of the units in the project to which credits are allocated are restricted to
15 households with income at or below 50% of area median gross income; and

16 (3) Eligible for the 30% present value credit as described in Section 42 of the
17 Code as a result of tax-exempt financing described in Section 42(h)(4)(B) of the
18 Code.

19 G. "Qualified rural development preservation project" means an affordable housing
20 project in which at least 75% of the residential units are assisted or financed under a
21 United States Department of Agriculture, Office of Rural Development, Rural
22 Housing Service rural development program.

23 H. "Senior housing" means multifamily affordable rental housing units serving
24 seniors that receive funding and project-based rental assistance under a United States
25 Department of Agriculture, Office of Rural Development, Rural Housing Service
26 rural development program or United States Department of Housing and Urban
27 Development multifamily elderly housing program or that meet the definition of
28 "housing for older persons" under the federal Fair Housing Act, 42 United States
29 Code, Section 3607(b)(2) and the Maine Human Rights Act.

30 **2. Credit allowed.** A taxpayer to which a credit is allocated by the authority
31 pursuant to this section is allowed a credit against the tax imposed under this Part:

32 A. Equal to the total federal low-income housing tax credit computed using the entire
33 federal credit period as described in Section 42(f) of the Code for all buildings in a
34 qualified Maine project; or

35 B. Equal to 50% of the qualified basis of an affordable housing project that incurs
36 not less than \$100,000 includible in eligible basis as defined in Section 42(d) of the
37 Code in the construction or rehabilitation of an affordable housing project for which a
38 credit is not claimed under Section 42 of the Code with regard to those expenditures,
39 except that a project may not be allocated more than \$500,000 in credit under this
40 paragraph.

41 An affordable housing project is allowed a credit under paragraph A or B but not both.

1 **3. Maximum credit; carry-forward.** The total credits available pursuant to this
2 section and section 2534 to be allocated by the authority for each calendar year beginning
3 on or after January 1, 2021 and ending on or before December 31, 2024 is subject to the
4 following limitations.

5 A. The total allocation may not exceed \$20,000,000. Any portion of that amount not
6 allocated in a calendar year may be carried forward and available to be allocated in
7 subsequent calendar years, except that:

8 (1) Any previously allocated credits returned by a project must be added to that
9 amount; and

10 (2) The authority may not allocate more than \$25,000,000 in any calendar year.

11 B. No more than 20% of credits allocated in any calendar year may be allocated to
12 credits pursuant to subsection 2, paragraph B.

13 C. Ten percent of credits first available to be allocated in any calendar year must be
14 set aside for the purpose of being allocated to qualified rural development
15 preservation projects pursuant to subsection 2, paragraph B. Any portion of the
16 amount under this paragraph not allocated in a calendar year must be carried forward
17 and be available to be allocated in subsequent calendar years to qualified rural
18 development preservation projects. To the extent that any amounts set aside under
19 this paragraph are not allocated on or before December 31, 2024, those amounts may
20 be allocated by the authority without regard to whether the project receiving the
21 allocation is a qualified rural development preservation project.

22 D. Only those credits that have been carried forward or returned as described in this
23 subsection may be allocated by the authority after December 31, 2024.

24 **4. Timing of allocation by authority and credit.** The authority may not make an
25 allocation of credit to a project before the date that any portion of the project is placed in
26 service for federal tax purposes.

27 A. The entire credit allowed for a project pursuant to this section must be taken in
28 the later of:

29 (1) The first taxable year in which the federal low-income housing tax credit for
30 that project is claimed for projects allocated a credit pursuant to subsection 2,
31 paragraph A; and

32 (2) The first taxable year for which the project has an allocation of credit from
33 the authority.

34 B. Notwithstanding paragraph A, the authority may allocate credit to a project for the
35 immediately preceding calendar year if:

36 (1) The project was placed in service for federal tax purposes in the immediately
37 preceding calendar year; and

38 (2) The allocation is made no later than the 60th day of the calendar year
39 following the year in which the project was placed in service.

40 **5. Credit refundable.** The credit allowed under this section is refundable.

1 **6. Allocation of credit among taxpayers.** Credits allowed to a partnership, a
2 limited liability company taxed as a partnership or multiple owners of a credit-qualified
3 affordable housing project must be passed through to the partners, members or owners
4 respectively pro rata in the same manner as under section 5219-G, subsection 1 or
5 pursuant to an executed agreement among the partners, members or owners documenting
6 an alternate allocation method. Credits may be allocated to partners, members or owners
7 that are exempt from taxation under the Code, Section 501(c)(3), Section 501(c)(4) or
8 Section 501(c)(6), and those partners, members or owners must be treated as taxpayers
9 for the purposes of this subsection. Credits allowed under subsection 2, paragraph B may
10 be claimed by a nonprofit corporation that is the owner of the affordable housing project,
11 and that nonprofit corporation must be treated as a taxpayer for purposes of this section.

12 **7. Recapture; restrictive covenant requirement; liens.** The following provisions
13 apply to the recapture of credits in the event an affordable housing project does not
14 remain qualified as specified in this section.

15 A. For purposes of this subsection, unless the context otherwise indicates, "credit-
16 qualified affordable housing project" means an affordable housing project:

17 (1) In which at least 60% of the residential units for which credits are allocated
18 are restricted to households with income at or below 50% of area median gross
19 income; or

20 (2) That is a qualified rural development preservation project.

21 B. A credit-qualified affordable housing project must remain a credit-qualified
22 affordable housing project for a total of 45 years from the date the credit-qualified
23 affordable housing project is placed in service. If the property does not remain a
24 credit-qualified affordable housing project for 15 years from the date the affordable
25 housing project is placed in service, the owner of the project shall pay to the
26 authority, for deposit in the Housing Opportunities for Maine Fund established under
27 Title 30-A, section 4853, an amount equal to the total credit allocated to the project
28 reduced by an amount equal to the product of that total credit allocated multiplied by
29 a fraction, the numerator of which is the number of months the project has remained a
30 credit-qualified affordable housing project since the date it was placed in service and
31 the denominator of which is 180, except that the amount payable by the owner of the
32 project must be prorated in proportion to the number of residential units that do not
33 remain in compliance with the income requirements and other restrictions imposed by
34 this section.

35 The requirements and the repayment obligation in this paragraph must be set forth in
36 a restrictive covenant executed by the owner of the credit-qualified affordable
37 housing project for the benefit of and enforceable by the authority and recorded in the
38 appropriate registry of deeds before the owner of the property claims the credit.

39 C. If the repayment obligation in paragraph B is not fully satisfied after written
40 notice is sent by certified mail or registered mail to the owner of the property at the
41 owner's last known address, the authority may file a notice of lien in the registry of
42 deeds of the county in which the real property subject to the lien is located. The
43 notice of lien must specify the amount and interest due, the name and last known
44 address of the owner, a description of the property subject to the lien, the authority's

1 address and the name and address of the authority's attorney, if any. The authority
2 shall send a copy of the notice of lien filed in the registry of deeds by certified mail or
3 registered mail to the owner of the property at the owner's last known address and to
4 any person who has a security interest, mortgage, lien, encumbrance or other interest
5 in the property that is properly recorded in the registry of deeds of the county in
6 which the property is located. The lien arises and becomes perfected at the time the
7 notice is filed in the appropriate registry of deeds in accordance with this paragraph.
8 The lien constitutes a lien on all property with respect to which the owner receives
9 the credit and the proceeds of any disposition of the property that occurs after notice
10 to the owner of the repayment obligation. The lien is prior to any mortgage and
11 security interest, lien, restrictive covenant or other encumbrance recorded, filed or
12 otherwise perfected after the notice of lien is filed in the appropriate registry of deeds.
13 The lien may be enforced by a turnover or sale order in accordance with Title 14,
14 section 3131 or any other manner in which a judgment lien may be enforced under
15 the law. The lien must be in the amount specified in the notice of lien. Upon receipt
16 of payment of all amounts due under the lien, the authority shall execute a discharge
17 of the lien for filing in the registry or offices in which the notice of lien was filed.

18 D. Notwithstanding paragraphs A, B and C, a credit-qualified affordable housing
19 project that fails to meet the requirements of this section due to a casualty loss is not
20 subject to recapture or lien if the loss is restored by reconstruction or replacement
21 within a reasonable period of time established by the authority.

22 **8. Allocation of credit for new rental units.** The authority in allocating the credit
23 for the construction or adaptive reuse of buildings for new rental units shall seek to
24 achieve the following targets over time:

25 A. At least 30% of the credit must be allocated to the construction or adaptive reuse
26 of buildings for new rental units of senior housing; and

27 B. At least 20% of the credit must be allocated to the construction or adaptive reuse
28 of buildings for new rental units of multifamily affordable rental housing located in
29 rural areas as defined by Section 520 of the federal Housing Act of 1949, as
30 amended.

31 In meeting these targets, senior housing that is located in rural areas may be included in
32 the percentages in both paragraphs A and B.

33 **9. Rules.** By December 30, 2019, the authority shall by rule adopt a procedure for
34 allocating the credit. The authority may adopt routine technical rules pursuant to Title 5,
35 chapter 375, subchapter 2-A consistent with and necessary to implement this section.

36 **10. Reporting.** Beginning in 2022, by March 1st annually the director of the
37 authority shall report to the bureau, to the Office of Program Evaluation and Government
38 Accountability and to the joint standing committee of the Legislature having jurisdiction
39 over taxation matters on the status of the credit if there has been new activity since the
40 previous report. The report must include, but is not limited to, the amount of the credits
41 allocated under this section, the location and cost of projects receiving credits, the
42 number and type of residential units created or improved by each project, the number and
43 type of units allocated credits in qualified rural development preservation projects and

1 senior housing projects and the amount of other investment leveraged by each project,
2 including federal low-income housing tax credits.

3 **11. Evaluation; specific public policy objective; performance measures.** The
4 credit provided under this section is subject to ongoing legislative review in accordance
5 with Title 3, chapter 37. In developing evaluation parameters to perform the review, the
6 Office of Program Evaluation and Government Accountability, the Legislature's
7 government oversight committee and the joint standing committee of the Legislature
8 having jurisdiction over taxation matters shall consider:

9 A. That the specific public policy objective of the credit provided under this section
10 is to create new affordable housing units for residents of the State, including for
11 seniors, working families and persons with disabilities, and to preserve the
12 affordability of residential units developed or operated with the financial assistance of
13 the United States Department of Agriculture, Office of Rural Development, Rural
14 Housing Service; and

15 B. Performance measures, including, but not limited to:

16 (1) The number and type of new residential units created;

17 (2) The number and type of affordable United States Department of Agriculture,
18 Office of Rural Development, Rural Housing Service residential units preserved;

19 (3) The amount of credits issued during the period being reviewed and the
20 amount of other investment leveraged by the credits; and

21 (4) The extent to which allocations of the credits have met the targets described
22 in subsection 8.

23 The Office of Program Evaluation and Government Accountability shall provide a report
24 of its evaluation under this subsection to the joint standing committee of the Legislature
25 having jurisdiction over taxation matters by February 1, 2024. Following receipt of the
26 report, the joint standing committee shall determine whether the credit provided under
27 this section is meeting its public policy objectives and whether it should be continued.
28 The joint standing committee may submit a bill to the Second Regular Session of the
29 131st Legislature to accomplish its recommendations.

30 **SUMMARY**

31 The purpose of this bill is to address Maine's shortage of safe, affordable housing by
32 creating a state affordable housing tax credit. The tax credit is administered by the Maine
33 State Housing Authority, which will allocate the state credit through a process similar to
34 its current allocation of federal housing tax credits. Ten percent of the credit must be set
35 aside for the preservation of affordable housing units that are constructed with financial
36 assistance from the United States Department of Agriculture, Office of Rural
37 Development, Rural Housing Service and at risk of losing their affordable status. In
38 addition, 30% of the credit allocated to new housing units is targeted for seniors and 20%
39 is targeted for rural areas. The credit is subject to reporting requirements and a process for
40 tax expenditure review by the Office of Program Evaluation and Government
41 Accountability.