



# PUBLIC LAWS OF MAINE

## First Regular Session of the 121st

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### CHAPTER 426 H.P. 635 - L.D. 858

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

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

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

#### SUBCHAPTER 3 MUNICIPAL AFFORDABLE HOUSING DEVELOPMENT DISTRICTS

##### §5245. Findings and declaration of necessity

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

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

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

##### §5246. Definitions

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

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

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

**3. Affordable housing development program.** "Affordable housing development program" or "program" means a statement of means and objectives designed to encourage the development and maintenance of affordable housing within an affordable housing development district.

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

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

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

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

**8. Director.** "Director" means the Director of the Maine State Housing Authority.

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

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

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

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

**13. Project costs.** "Project costs" means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249, subsection 1 and included in an affordable housing development program.

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

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

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

## **§5247. Affordable housing development districts**

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

**2. Considerations for approval.** Before designating an affordable housing development district within the boundaries of a municipality, or before establishing an affordable housing development program for a designated affordable housing development district, the legislative body of a municipality must consider whether the proposed district or program will contribute to the expansion of affordable housing opportunities within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality. Interested parties must be given a reasonable opportunity to present testimony concerning the proposed district or program at the hearing provided for in section 5250, subsection 1. If an interested party claims at the public hearing that the proposed district or program will result in a substantial detriment to that party's existing property interests in the municipality and produces substantial evidence to that effect, the legislative body shall consider that evidence. When considering that evidence, the legislative body also shall consider whether any adverse economic effect of the proposed district or program on that interested party's existing property interests in the municipality is outweighed by the contribution made by the district or program to the availability of affordable housing within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.

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

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

- (1) Be suitable for residential use;
- (2) Be a blighted area; or
- (3) Be in need of rehabilitation or redevelopment.

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

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

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

E. The affordable housing development program must show that the development meets an identified community housing need. The affordable housing development program must provide a mechanism to ensure the ongoing affordability for a period of at least 10 years for single-family, owner-occupied units and 30 years for rental units.

F. Acquisition, construction and installment of all property improvements, buildings, structures, fixtures and equipment included within the affordable housing development program and financed

through municipal bonded indebtedness must be completed within 5 years of the director's approval of the designation of the affordable housing development district.

G. The district must be primarily a residential development on which at least 33% of the dwelling units are affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development.

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

#### **§5248. Affordable housing development programs**

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

**2. Requirements.** The affordable housing development program must include:

- A. A financial plan in accordance with subsection 3;
- B. A description of facilities, improvements or programs to be financed in whole or in part by the affordable housing development program;
- C. Plans for the relocation of persons displaced by the development activities;
- D. The environmental controls to be applied;
- E. The proposed operation of the affordable housing development district after the planned improvements are completed;
- F. An assurance that the program complies with section 4349-A;
- G. The duration of the program, which may not exceed 30 years from the date of designation of the district; and
- H. All documentation submitted to or prepared by the municipality under section 5247, subsection 2.

**3. Financial plan for affordable housing development district.** The financial plan for an affordable housing development district must include:

- A. Cost estimates for the affordable housing development program;
- B. The amount of public indebtedness to be incurred;
- C. Sources of anticipated revenues;
- D. A description of the terms and conditions of any agreements, contracts or other obligations related to the affordable housing development program; and
- E. For each year of the affordable housing development program:

- (1) Estimates of increased assessed values of the district;
- (2) The portion of the increased assessed values to be applied to the affordable housing development program as captured assessed values and resulting tax increments in each year of the program; and
- (3) A calculation of the tax shifts resulting from designation of the affordable housing development district.

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

#### **§5249. Project costs**

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

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

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

- (a) The acquisition of land or construction of public infrastructure improvements for affordable housing development;
- (b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures;
- (c) Site preparation and finishing work; and
- (d) All fees and expenses that are eligible to be included in the capital cost of such improvements, including, but not limited to, licensing and permitting expenses and planning, engineering, architectural, testing, legal and accounting expenses;

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

(3) Real property assembly costs;

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

(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, recreation centers, athletic fields and swimming pools; and

(9) Costs for child care, including finance costs and construction, staffing, training, certification and accreditation costs related to child care located in the affordable housing

development district; and

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

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

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

(3) Costs of funding to mitigate any adverse impact of the district upon the municipality and its constituents. This funding may be used for funding public kindergarten to grade 12 costs and public facilities and improvements; and

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

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

### **§5250. Procedure**

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

**2. Review by director.** Before final designation of an affordable housing development district, the director shall review the proposal for the district to ensure that the proposal complies with statutory requirements.

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

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

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

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

**1. Designation of captured assessed value.** A municipality may retain all or part of the tax increment revenues generated from the increased assessed value of an affordable housing development district for the purpose of financing the affordable housing development program. The amount of tax increment revenues to be retained is determined by designating the captured assessed value. When an affordable housing development program for an affordable housing development district is adopted, the municipal legislative body shall adopt a statement of the percentage of increased assessed value to be retained as captured assessed value in accordance with the affordable housing development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The municipal assessor shall certify the amount of the captured assessed value to the municipality each year.

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

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

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

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

- (1) A project cost account that is pledged to and charged with the payment of project costs that are outlined in the financial plan and are paid in a manner other than as described in subparagraph (2); and
- (2) In instances of municipal indebtedness, a development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on any notes, bonds or other evidences of indebtedness that were issued to fund or refund the cost of the 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;

C. Make transfers between affordable housing development program fund accounts established

under paragraph A as 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

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

### **§5250-B. Rules**

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

### **§5250-C. Grants**

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

### **§5250-D. Bond financing**

The legislative body of a municipality may authorize, issue and sell bonds, including but not limited to general obligation or revenue bonds or notes, that mature within 20 years from the 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 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 temporary notes and notes in renewal of the bonds. All revenues derived under section 5250-A received by the municipality are pledged for the payment of the activities described in the affordable housing development program and used to reduce or cancel the taxes that may otherwise be required to be expended for that purpose. The notes, bonds or other forms of financing may not be included when computing the municipality's net debt. Nothing in this section restricts the ability of the municipality to raise revenue for the payment of project costs in any manner otherwise authorized by law.

### **§5250-E. Administration**

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

- A. Certify that the public purpose of the affordable housing district, as outlined in this subchapter, is being met;
- B. Account for any sales of property within the district; and
- C. Certify that rental units within the affordable housing development district have remained

affordable.

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

### **§5250-F. Advisory board**

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

### **§5250-G. Unorganized territory**

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

**Sec. 2. 36 MRSA §305, sub-§1**, as amended by PL 1995, c. 462, Pt. A, §67, is further amended to read:

**1. Just value.** Certify to the Secretary of State before the first day of February the equalized just value of all real and personal property in each municipality and unorganized place that is subject to taxation under the laws of this State, except that percentage of captured assessed value located within a tax increment financing district that is used to finance that district's development plan, the captured assessed value located within a municipal affordable housing development district and the valuation amount by which the current assessed value of commercial and industrial property within a municipal incentive development zone, as determined in Title 30-A, section 5284, exceeds the assessed value of commercial and industrial property within the zone as of the date the zone is approved by the Commissioner of Economic and Community Development, known in this subsection as the "sheltered value," up to the amount invested by a municipality in infrastructure improvements under an infrastructure improvement plan adopted pursuant to Title 30-A, section 5283. The equalized just value must be uniformly assessed in each municipality and unorganized place and be based on 100% of the current market value. It must separately show for each municipality and unorganized place the actual or estimated value of all real estate that is exempt from property taxation by law or is the captured value within a tax increment financing district that is used to finance that district's development plan, as reported on the municipal valuation return filed pursuant to section 383, or that is the sheltered value of a municipal incentive development zone. The valuation as filed remains in effect until the next valuation is filed and is the basis for the computation and apportionment of the state and county taxes;

Effective September 13, 2003, unless otherwise indicated.

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