



*Testimony of*

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*Before*

The Joint Standing Committee on Health and Human Services

*Neither for Nor Against*

**LD 1428: An Act to Increase Access to Child Care for Maine Families**

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services, I am Erik Jorgensen Senior Director of Government Relations and Communications at the Maine State Housing Authority (MaineHousing) and I am submitting this testimony neither for nor against the bill, but in opposition to SECTION 3 ONLY.

MaineHousing has been helping Maine people own, rent, repair, and heat their homes since 1969. We are an independent state authority (not a state agency) created to address the problems of unsafe, unsuitable, overcrowded, and unaffordable housing. We are authorized to issue bonds to finance single family mortgages for first time homebuyers and for affordable multi-family housing.

We are also authorized to administer a number of state and federal programs, including rental subsidies, weatherization, fuel assistance, two housing block grants, the low-income housing tax credit program, and homeless grant programs. We

receive state general fund revenue for homeless programs and receive a dedicated portion of the real estate transfer tax for the Housing Opportunities for Maine (HOME) Fund.

LD 1428 is a bill aimed at expanding access to childcare by expanding the parameters of where childcare centers may be sited. While MaineHousing has no formal opinion on Sections 1 or 2 of the bill, we do have some concerns with Section 3, which directs our agency to amend its rules to allow Low Income Housing Tax Credit (LIHTC) financed buildings to allow community rooms in these properties to be used for childcare.

We would argue that including a childcare facility in a LIHTC project is already possible, and that a change to state law is not necessary to allow that. We do not, however, think that a childcare facility, which would be of interest only to some residents of a property, is an appropriate substitute for a community room available to all.

A Community room is not an add-on, but an integral feature of a building for use by all of the residents. LIHTC projects all have community rooms. Common facilities, whether they are community rooms, exercise rooms, kitchenettes or other amenities, must be equally available to all the residents, and federal tax credit rules require that access to them be cost-free and restricted to those residents. There is currently no rule against designing a LIHTC project to include a childcare facility, and there are already different ways to accomplish that, but this would need to be in addition to (not instead of) a common room. In fact, Maine's qualified allocation plan already advantages projects that are close to certain public services, such as a family-oriented rental project being near schools or childcare.

This cannot, however, be done after the fact, once a building has been financed and constructed. This is because the developer has already received a tax benefit based on allowable uses defined as part of the financing process. Conversion of a common space to a commercial space is not permitted – this is explicitly listed in the IRS' LIHTC certification standards.

The Speaker in his testimony referred to LIHTC projects where this has been allowed in other states. The easiest way for a LIHTC project to include a childcare is for such a facility to be designed into the building from the beginning. In this way, the childcare facility can be defined and factored into the financing package.

MaineHousing would suggest that if this legislation were to move forward, the simplest solution would be to strike Section 3. We are appending for reference purposes a summary of regulations pertaining to childcare facilities in LIHTC buildings.

## REGULATORY BACKGROUND ON LIHTC and CHILDCARE FACILITIES.

The regulations governing the federal Low Income Housing Tax Credit Program (Section 42 of the Internal Revenue Code and associated Treasury Regulations) permit childcare facilities in LIHTC projects, so the mandate proposed in LD 1428 would unnecessarily restrict the use of community rooms which are intended for all tenants to use. If owners of LIHTC projects want to provide childcare facilities, they should create a space separate from the community room so that other tenants who do not need childcare can use the room.

Here is a summary of the current regulations governing childcare facilities in LIHTC projects:

1. Generally, a childcare facility is eligible for LIHTC (included in eligible basis on which the credit is calculated) if it is available to all tenants on a comparable basis and there are no fees. The facility must be limited to the tenants. It cannot be available to the public or it will be considered commercial space which is not eligible for LIHTC. Treasury Regulation 1.42-5(c)(viii).
2. If the intent is for the childcare facility to be available to the public, then the following rules apply:
  - a. The childcare facility is eligible for LIHTC if it qualifies a community service facility (Section 42(d)(4)(C) of the Code and IRS Revenue Rulings 2003-77 and 2004-82) which is any facility that is:
    - i. Located in a qualified census tract (QCT);
    - ii. designed to serve primarily individuals with income at or below 60% of area median income (AMI) which means:
      1. The facility must be used to provide services that will improve the quality of life for persons with income at or below 60% AMI in the community where the project is located;

2. the owner demonstrates (typically with a market study) the services are appropriate and helpful to persons with income at or below 60% AMI living in the area where the project is located;
  3. the facility is located on the same tract of land as the project; and
  4. the services offered are free or affordable to persons with income at or below 60% of area median income;
- iii. used throughout the year for such purpose; and
  - iv. the increase in the adjusted basis of the project cannot exceed the sum of 25% of the first \$15,000,000 of the eligible basis of the project plus 10% of the eligible basis of the project more than \$15,000,000.
- b. The childcare facility is not included in eligible basis. Even if the facility is not included in basis, the tenants can only be charged if the facility is optional (not required as a condition of occupancy) and there is a reasonable alternative in the area where the project is located. If the services are not optional or there is no reasonable alternative in the area, then any charge to tenants must be part of their gross rent (which is capped by the LIHTC rents). See Treasury Regulation 1.42-11.

The above regulations cannot be modified by State law even if they require community rooms to be used as childcare facilities.