



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

---

Legislative Document

No. 1673

---

H.P. 1244

House of Representatives, May 5, 2021

---

**An Act To Create a Comprehensive Permit Process for the  
Construction of Affordable Housing**

---

Received by the Clerk of the House on May 3, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT  
Clerk

Presented by Representative TALBOT ROSS of Portland.  
Cosponsored by Senator MIRAMANT of Knox and  
Representatives: CUDDY of Winterport, GERE of Kennebunkport, MORALES of South  
Portland, SUPICA of Bangor, SYLVESTER of Portland, Senator: BALDACCI of Penobscot.

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

2 **Sec. 1. 30-A MRSA c. 201, sub-c. 14** is enacted to read:

3 **SUBCHAPTER 14**

4 **MAINE COMPREHENSIVE PERMIT LAW**

5 **§4994-A. Maine comprehensive permit process established; definitions**

6 The Maine State Housing Authority and the municipal boards of appeals established  
7 pursuant to section 2691 shall administer the Maine comprehensive permit process as  
8 provided in this subchapter. As used in this subchapter, unless the context otherwise  
9 indicates, the following terms have the following meanings.

10 **1. Affordable housing.** "Affordable housing" means a decent, safe and sanitary  
11 dwelling, apartment or other living accommodation where the cost of housing and utilities  
12 is no more than 30% of gross household income for a household whose income does not  
13 exceed 120% of the median income for the area as defined by the United States Department  
14 of Housing and Urban Development under the United States Housing Act of 1937, Public  
15 Law 75-412, 50 Stat. 888, Section 8, as amended.

16 **2. Authority.** "Authority" means the Maine State Housing Authority.

17 **3. Board of appeals.** "Board of appeals" means a board of appeals established  
18 pursuant to section 2691.

19 **4. Committee.** "Committee" means the Affordable Housing Appeals Committee  
20 established under section 4994-C.

21 **5. Consistent with local needs.** "Consistent with local needs" means giving due  
22 consideration to the regional need for low-income or moderate-income housing as well as  
23 the need to protect the health or safety of the occupants of the proposed housing project or  
24 of the residents of the city or town, to promote better site and building design in relation to  
25 the surroundings or to preserve open space and applying that consideration equitably to  
26 both subsidized and unsubsidized housing.

27 **6. Fair housing goal.** "Fair housing goal" means, for a municipality with 500 or fewer  
28 households that would be eligible for low-income or moderate-income housing, at least  
29 10% of its housing stock is affordable housing. For a municipality with 501 to 1,000  
30 households that would be eligible for low-income or moderate-income housing, "fair  
31 housing goal" means at least 13% of its housing stock is affordable housing. For a  
32 municipality with more than 1,000 households that would be eligible for low-income or  
33 moderate-income housing, "fair housing goal" means at least 16% of its housing stock is  
34 affordable housing. Any municipality where 1.5% or more of the total land area zoned for  
35 residential, commercial or industrial use is in use as low-income or moderate-income  
36 housing is also in compliance with its fair housing goal.

37 **7. Limited dividend organization.** "Limited dividend organization" means an entity  
38 that seeks to apply for a comprehensive permit and is not a public agency or a nonprofit  
39 organization and is eligible to receive a subsidy from a subsidizing agency after a  
40 comprehensive permit has been issued and that, unless otherwise governed by a federal act

1 or regulation, agrees to accept no more than a reasonable profit for building and operating  
2 the housing project.

3 **8. Local board.** "Local board" means a municipal entity with a role in approving or  
4 supervising the construction of residential buildings or the power of enforcing municipal  
5 building laws.

6 **9. Low-income or moderate-income housing.** "Low-income or moderate-income  
7 housing" means housing subsidized by the Federal Government or State Government under  
8 a program to assist in the construction of low-income or moderate-income housing as  
9 defined in the applicable federal or state law and built or operated by a public agency or a  
10 nonprofit or limited dividend organization.

11 **10. Reasonable profit.** "Reasonable profit" means a maximum of 20% profit in for-  
12 sale developments or 10% profit per year for rental housing developments unless indicated  
13 otherwise in the subsidy program or the comprehensive permit.

14 **11. Uneconomic.** "Uneconomic" means any condition brought about by a single factor  
15 or combination of factors to the extent that it makes it impossible for a public agency or  
16 nonprofit organization to proceed in building or operating low-income or moderate-income  
17 housing without financial loss or for a limited dividend organization to realize a reasonable  
18 profit in building or operating such housing within the limitations set by the subsidizing  
19 agency without substantially changing the rent levels, unit sizes or density proposed by the  
20 public agency or the nonprofit or limited dividend organization.

21 **§4994-B. Comprehensive permits**

22 In order to facilitate timely and efficient decision making on proposed housing projects,  
23 a public agency or a nonprofit or limited dividend organization proposing to build low-  
24 income or moderate-income housing may submit to a board of appeals a single  
25 comprehensive permit application to build that housing in lieu of separate applications to  
26 the applicable local boards pursuant to this section.

27 **1. Procedures.** The following procedures govern applications for a comprehensive  
28 permit under this section.

29 A. Upon receipt of a comprehensive permit application, a board of appeals shall notify  
30 each local board whose jurisdiction is affected by the permit of the filing of the  
31 application by sending a copy of the application to each local board for its  
32 recommendations.

33 B. The board of appeals shall, within 30 days of the receipt of a comprehensive permit  
34 application under paragraph A, hold a public hearing and shall request the appearance  
35 of such representatives of local boards as are determined necessary or helpful. The  
36 board of appeals shall take into consideration the recommendations of local boards and  
37 has the authority to use the testimony of consultants.

38 C. The board of appeals in issuing a comprehensive permit has the same power to issue  
39 permits or approvals as any local board that would otherwise act with respect to an  
40 application, including but not limited to the power to attach conditions and  
41 requirements with respect to the site plan and the height, size or shape and building  
42 materials of the housing consistent with this section.

1 D. The board of appeals shall render a decision, based upon a majority vote, within 40  
2 days after the conclusion of the public hearing under paragraph B and, if favorable to  
3 the applicant, shall issue a comprehensive permit.

4 E. If a public hearing under paragraph B is not convened or a decision under paragraph  
5 D is not rendered within the time allowed, unless the time has been extended by mutual  
6 agreement between the board of appeals and the applicant, the application is deemed  
7 to have been approved and the comprehensive permit must be immediately issued.

8 F. An applicant aggrieved by the decision on a comprehensive permit application may  
9 appeal to the Affordable Housing Appeals Committee under section 4994-C.

10 G. A board of appeals shall adopt rules, not inconsistent with the purposes of this  
11 subchapter, for the conduct of its business pursuant to this subchapter and shall provide  
12 those rules to the municipal clerk.

13 **2. Waivers.** A board of appeals has authority to waive local laws or regulations in  
14 whole or in part, including but not limited to local density limitations, if that waiver results  
15 in a comprehensive permit application decision that is consistent with local needs.

16 **3. For-profit developers.** An applicant seeking a comprehensive permit for a housing  
17 project must enter a binding, verifiable obligation with the board of appeals that it agrees  
18 to accept no more than a reasonable profit on that project.

19 **4. Other state law.** Nothing in this subchapter may be interpreted to limit the  
20 application of state laws to an application for a comprehensive permit, including but not  
21 limited to laws governing land use and environmental protection.

22 **§4994-C. Affordable Housing Appeals Committee**

23 The authority shall establish and operate the Affordable Housing Appeals Committee,  
24 referred to in this section as "the committee," pursuant to this section.

25 **1. Committee members.** The committee consists of 5 members. The authority shall  
26 appoint to the committee 3 members with substantive experience in affordable housing or  
27 housing finance, including one member who is an employee of the authority. The Governor  
28 shall appoint as the remaining members of the committee 2 members with experience in  
29 municipal government. Terms of appointment are for one year and may be renewed by the  
30 appointing authority. The members serve without compensation.

31 **2. Powers and duties.** The committee is authorized to hold hearings and to consider  
32 and decide upon appeals from a board of appeals' denial under section 4994-B of a  
33 comprehensive permit or grant of a comprehensive permit with conditions rendering the  
34 housing project uneconomic, as follows.

35 A. The committee may not consider or decide upon any appeal of a comprehensive  
36 permit application for a housing project proposed to be located in a municipality that  
37 appears on the list of municipalities in good standing for low-income or moderate-  
38 income housing established by section 4994-D.

39 B. The committee may not overturn or modify the decision of a board of appeals if the  
40 board of appeals establishes that its decision is consistent with local needs.

41 C. In the case of the denial of an application, a hearing by the committee must be  
42 limited to the issue of whether the decision of the board of appeals was reasonable and

1 consistent with local needs. If the committee finds, in the case of a denial, that the  
2 decision of the board of appeals was unreasonable and not consistent with local needs,  
3 it shall vacate that decision and shall direct the board of appeals to issue a  
4 comprehensive permit to the applicant.

5 D. In the case of an approval of an application with conditions and requirements  
6 imposed, the hearing must be limited to the issues of whether those conditions and  
7 requirements make the construction or operation of that housing uneconomic and  
8 whether they are consistent with local needs. If the committee finds, in the case of an  
9 approval with conditions and requirements imposed, that the decision of the board of  
10 appeals makes the building or operation of that housing uneconomic and is not  
11 consistent with local needs, the committee shall order that board of appeals to modify  
12 or remove any condition or requirement so as to make the proposal no longer  
13 uneconomic and to issue the comprehensive permit.

14 E. The committee may not issue any order that would permit the building or operation  
15 of housing in accordance with standards less safe than requirements of state laws or  
16 rules or federal laws or regulations applicable to the proposal.

17 F. Decisions or conditions and requirements imposed by a board of appeals that are  
18 consistent with local needs may not be vacated, modified or removed by the committee,  
19 notwithstanding that those decisions or conditions and requirements have the effect of  
20 making the applicant's proposal for a comprehensive permit uneconomic.

21 G. The committee or the applicant for a comprehensive permit has the power to enforce  
22 the orders of the committee at law or in equity in Superior Court.

23 H. The board of appeals shall carry out the order of the committee within 30 days of  
24 the committee's decision and, upon failure to do so, the order of the committee is  
25 deemed to be the action of the board of appeals, unless the applicant consents to a  
26 different decision or order by the board of appeals.

27 **3. Procedure.** An applicant contesting a board of appeals' denial under section 4994-B  
28 of a comprehensive permit or grant of a comprehensive permit with conditions attached  
29 must initiate an appeal with the committee within 20 days of receiving notice of the  
30 decision of the board of appeals. The committee shall hold a hearing and shall render a  
31 written decision, based upon a majority vote, stating its findings of fact, its conclusions and  
32 the reasons for its conclusions within 30 days after the conclusion of the hearing, unless  
33 the committee and the applicant have mutually agreed upon a time extension. A decision  
34 under this subsection may be reviewed in Superior Court in accordance with the provisions  
35 of the Maine Rules of Civil Procedure, Rule 80B.

36 **§4994-D. Register of municipalities in good standing for low-income or moderate-**  
37 **income housing**

38 The authority shall maintain a register of municipalities indicating whether each  
39 municipality is in good standing for low-income or moderate-income housing as set forth  
40 in this subchapter. The authority shall establish the methodology and frequency for such  
41 determinations, which must be no less frequent than annually.

42 **1. Municipalities in compliance with fair housing goal.** The register must include  
43 any municipality that the authority determines to be in compliance with its fair housing  
44 goal.

