



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 black ink, appearing to read "R. 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.

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

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

SUBCHAPTER 14

MAINE COMPREHENSIVE PERMIT LAW

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

The Maine State Housing Authority and the municipal boards of appeals established pursuant to section 2691 shall administer the Maine comprehensive permit process as provided in this subchapter. 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 where the cost of housing and utilities is no more than 30% of gross household income 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 75-412, 50 Stat. 888, Section 8, as amended.

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

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

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

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

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

7. Limited dividend organization. "Limited dividend organization" means an entity that seeks to apply for a comprehensive permit and is not a public agency or a nonprofit organization and is eligible to receive a subsidy from a subsidizing agency after a 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.

1 **2. Municipalities making substantial progress.** The register must include any
2 municipality that the authority determines to be making substantial recent progress toward
3 meeting its fair housing goal and that has a substantial probability of meeting that goal
4 within 3 years. When determining substantial recent progress, the authority may consider
5 whether a municipality has instituted a density bonus to developers in proportion to the
6 number of affordable housing units planned for housing projects and whether the
7 municipality has adopted a local plan by which the municipality incentivizes the
8 development of affordable housing and is in compliance with that plan.

9 **3. Discount for devalued siting.** When determining a municipality's compliance with
10 its fair housing goal, the authority shall disregard 1/2 of the housing units created after
11 January 1, 2022 that are located in close proximity to major transportation infrastructure or
12 industrial facilities or that result in excessive clustering of low-income or moderate-income
13 housing. The authority may adopt rules under section 4994-E to implement this subsection.

14 **§4994-E. Rules**

15 The authority may adopt rules necessary to carry out the duties imposed by this
16 subchapter and to ensure compliance with its provisions. Rules adopted pursuant to this
17 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

18 **SUMMARY**

19 This bill establishes a comprehensive permit process to streamline the building
20 construction permitting system and promote the creation of additional affordable housing
21 by public agencies, nonprofit organizations and limited dividend organizations.