

**TESTIMONY OF THE MAINE ASSOCIATION OF PLANNERS
TO THE COMMITTEE ON HOUSING**

**WRITTEN TESTIMONY PROVIDED NEITHER FOR NOR AGAINST LD # 772
“An Act to Establish a Process to Vest Rights for Land Use Permit
Applicants”**

DATE OF HEARING: Tuesday, Nov 14, 2023

**Honorable Senator Teresa Pierce, Honorable Representative Traci Gere, Distinguished
Members of the Committee on Housing:**

We recognize the importance of providing clear rules and fair treatment of those working to make housing and commercial development take shape across the state. Further, we recognize the need to find balance between a community's right to protect its interests through ordinance amendments and the private sector's rights to protect its investments in pursuing development.

We would like to recommend the following improvements to the bill:

1. **30-A MRSA §4364-D may be the wrong location for this amendment.** 1 MRSA §302 contains the relevant statute which must be amended to implement the concepts proposed in this bill. 1 MSRA 302 states that applicant's rights vest as soon as the review authority “has conducted at least one substantive review of the application... to determine whether it complies with the review criteria and other applicable requirements of law”, however, the law court has said this can be avoided by “contrary intent embodied in a municipal ordinance.” Thus, ordinances can be drafted to have retroactive effect so long as they explicitly say they do. Retroactivity is what needs to be addressed, not simply restating the vesting language.
2. **Complete applications must be the threshold, not initial applications.** Incomplete or “junk” applications are already a process problem that plagues planning and development review today. The vesting proposed in this bill should occur once the review authority has deemed that the application is complete (ready for review) and application fees are paid.
3. **A better balance between private and public rights** should be included to balances the need of applicants to achieve an earlier vesting while preserving a communities right to protect itself from unanticipated but genuine threats to its health, safety, and welfare as has been done by law courts in other states.





Tex Haeuser, AICP
Eric Cousens
Maureen O'Meara, AICP
Matt Nazar, AICP
Susanne Paul
Shelley Norton, AICP
Christian Roadman, AICP
Eli Rubin
Damon Yakovleff, AICP

To address the above issues, we would support language such as:

“Zoning regulation which are retroactively applied may not affect or cause to be denied an application for a building or zoning permit if the permit has been or could have been lawfully issued based on the standards in place at the time the application was deemed to be a complete application, except for reasonable legislation enacted solely to protect public health, safety, and welfare and not enacted to arbitrarily or unreasonably frustrate an applicant’s plans.” *

Sincerely,

The Maine Association of Planners Legislative Policy Committee

* Language and concepts informed by the Washington Supreme Courts approach to completed-application vesting (early-vesting) and exceptions for “reasonable legislation enacted to protect public health, safety, and welfare”.

