



Testimony neither for nor against LD 1829 and LD 1921:

A set of bills to establish statewide appeals boards

Senator Curry, Representative Gere, and the distinguished members of the Committee on Housing and Economic Development, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to provide testimony neither for nor against LD 1829 and 1921.

We recognize and support these bills' underlying policy objective: to create a more efficient and consistent process for appealing municipal land use decisions that affect urgently needed housing development. As housing shortages persist across the state, especially in southern Maine and along the coast, a streamlined appeals mechanism could help alleviate regulatory barriers that discourage investment and slow construction.

That said, we urge the Committee to exercise caution in advancing this legislation in its current form, especially with respect to the sections establishing and defining the Housing Development Resolution Board (HDRB) within the Judicial Branch and vesting it with final, unreviewable authority over appeals of municipal land use decisions related to housing.

This structure raises serious constitutional concerns:

- 1. Violation of the Separation of Powers (Maine Constitution, Article VI, Section 1):**
Section 18-C blurs the lines between branches of government by creating a quasi-judicial board housed in the judicial branch—appointed and overseen by the chief justice—but performing nonjudicial administrative review functions. The Maine Constitution vests the “judicial power” exclusively in the courts; administrative adjudication of municipal permitting disputes by a board lacking traditional judicial safeguards does not qualify.
- 2. Lack of Judicial Review Denies Due Process:**
Most troubling is the provision in §18-C(19) stating, “*A final decision of the board is not appealable to a Superior Court or the Supreme Judicial Court.*” This effectively denies parties access to independent judicial review of governmental action—a core due process principle under the Maine and U.S. Constitutions. Even if the board acts under the color of law, litigants must retain some form of judicial recourse.



While we support efforts to reduce unnecessary litigation delays and regulatory red tape, a constitutional solution must preserve the rule of law and citizens' ability to challenge decisions that affect their property rights, livelihoods, or communities.

We encourage the committee to revise these bills in the following ways:

- **Move the HDRB out of the Judicial Branch** and place it under an executive agency, such as the Department of Economic and Community Development, to maintain proper separation of powers.
- **Allow for judicial review** of board decisions, particularly for errors of law, abuse of discretion, or constitutional violations. This would mirror the successful structure used by New Hampshire's Housing Appeals Board, which streamlines appeals while preserving constitutional safeguards.

Both of the proposed changes would bring this proposed board more in line with other states', such as New Hampshire's.¹ New Hampshire establishes its board as an alternative intermediate appellate option, preserving a state Supreme Court appeal option for parties to the board's decisions.

LD 1921 Specifics

LD 1921 takes a more light handed approach than 1829, though it still would benefit from the changes above. Notably it does have several advantages, as it retains the appealability option to the Maine Supreme Court, and allows more flexibility on appeal timing. It avoids preemption of local zoning policy, but still centralizes much administrative power in a single pseudo-judicial "board." Thus, it would still benefit from more similarities to New Hampshire's system.

Conclusion

Reports such as "*Under Construction*" by the Maine Policy Institute have noted that Maine's patchwork of burdensome local land use is a barrier to housing production.² However, a solution that sacrifices core constitutional principles is not the answer.

Maine can and should pursue a fair, efficient housing appeals process that withstands legal scrutiny and earns public trust. Constitutionally sound revisions to these bills would be a constructive step toward that goal. Thank you for your time and consideration.

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https://www.nhmunicipal.org/sites/default/files/uploads/webinars/look_at_new_housing_appeals_board_webinar_10.13.21.pdf

² <https://mainepolicy.org/research/under-construction/executive-summary/>