



## **Testimony in Opposition to LD 1841:**

**“An Act to Modify the Process of Selling Tax-acquired Properties”**

Senator Grohoski, Representative Cloutier, and the distinguished members of the Committee on Taxation, 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 submit testimony in opposition to LD 1841.

LD 1841 makes several changes to the process by which municipalities sell tax-acquired properties. While the bill includes several commendable reforms, such as improving notice procedures and transparency around tax foreclosures, Maine Policy Institute opposes it as currently drafted due to several deeply concerning provisions that undermine constitutional protections, the integrity of property rights, and free-market principles.

### **Violation of the Fifth Amendment: Retaining 90% of Excess Proceeds**

LD 1841 allows municipalities that retain a tax-acquired property for public use to keep 90% of the excess proceeds, providing only 10% to the former owner. This provision is unconstitutional under the U.S. Supreme Court's ruling in *Tyler v. Hennepin County* (2023), which held that government retention of value beyond the debt owed constitutes an uncompensated taking in violation of the Takings Clause of the Fifth Amendment.

In *Tyler*, Chief Justice Roberts, writing the majority opinion, stated, "A taxpayer who loses her \$40,000 house to the State to fulfill a \$15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more." The bill's proposal to divert 90% of foreclosure sale excess to municipalities—effectively penalizing the property owner—directly conflicts with that ruling and invites litigation and liability.

### **Sealed Bid Process Encourages Below-Market Sales**

While we support efforts to bring greater structure to municipal property sales, the bill's proposed sealed bid process fails to promote market efficiency. Unlike open auctions that allow bidders to outbid one another, sealed bids suppress competition and risk properties being sold below fair market value. This reduces the potential proceeds owed to the former owner and deprives taxpayers and the local economy of optimal outcomes.



Even more troubling is the provision allowing municipalities to waive the minimum bid requirement after three failed attempts. This allows for sweetheart deals, political favoritism, and opaque transactions that erode public trust and harm communities.

### **Support for Voluntary “Deed in Lieu of Foreclosure” Option**

One positive component of LD 1841 is creating a “deed in lieu of foreclosure” mechanism, allowing property owners to surrender title and voluntarily avoid foreclosure's harsh consequences. This tool empowers property owners by giving them a proactive option and reducing the burden and cost of the formal foreclosure process. It's a property-rights-friendly approach that should be preserved.

### **Advertising Cost Deductions Pose Risk of Abuse**

We also object to the provision permitting municipalities to deduct advertising and publication costs from the former owner's share of proceeds. While reasonable administrative costs are appropriate, publication costs—especially in monopolized or politically aligned local media—may be inflated, non-transparent, or unnecessary. This creates perverse incentives for municipalities to favor certain vendors or inflate their claims at the expense of vulnerable former property owners.

### **Conclusion**

At its core, LD 1841 fails to adequately safeguard the property rights of Mainers, opening the door to constitutional violations, market inefficiencies, and potential abuse by municipal governments. Reforms should seek to restore fairness and transparency, not authorize government profit from private misfortune.

Maine Policy Institute urges the Committee to reject this bill unless it is significantly amended to ensure full return of excess proceeds to rightful property owners and to prevent municipalities from circumventing open and competitive market principles. Thank you for your time and consideration.