



Maine Municipal Association

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Testimony of the Maine Municipal Association

In Opposition to

LD 620 – An Act to Promote Free Trade by Preventing Municipalities from Prohibiting the Sale of Legal Goods

And

LD 662- An Act to Prohibit Municipal Flavored Tobacco Bans on State-licenses Tobacco Retailers
And

LD 894 - An Act to Preserve Heating and Energy Choice by Prohibiting a Municipality from Prohibiting a Particular Energy System or Energy Distributor

March 15, 20223

Sen. Nangle, Rep. Stover, and distinguished members of the State and Local Government Committee, my name is Rebecca Graham, and I am submitting testimony in strong opposition LD 620, *An Act to Promote Free Trade by Preventing Municipalities from Prohibiting the Sale of Legal Goods*, LD 662, *An Act to Prohibit Municipal Flavored Tobacco Bans on State-licenses Tobacco Retailers*, and LD 894, *An Act to Preserve Heating and Energy Choice by Prohibiting a Municipality from Prohibiting a Particular Energy System or Energy Distributor*, on behalf of the Maine Municipal Association, which represents the interests of municipal government before the Legislature.

Each one of these bills attacks the core democratic principles and removes agency from our residents' ability to shape their communities, priorities and comfort in favor of business interests that may or may not be local community residents. This is a slippery slope that acts against Maine voters have routinely acted in the best interests of their communities and lead the way in removing harmful products that have historically posed burdens on public safety, health and welfare.

Laws are reactive not proactive and municipal government is the nimblest level of government to address localized pressures which is why Maine voters codified the importance of home rule in our Constitution. Just as it is nimble to adopt law, it is nimble to amend and repeal as well. The actions of one community that are the targets of at least one of these bills, should be addressed in that community in direct consultation with their residents and not roll over the rights and ability for all communities to address local issues.

In 1969, a public referendum to amend the State Constitution was successfully approved by Maine's voters. The resulting amendment is found in Article VIII, Part 2, Section 1 of the Maine Constitution and provides:

“The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.”

The people of Maine have been clear, they value and desire for this body to allow self determination for what business activity is appropriate in their communities.

It was Maine’s municipalities that rang the alarm bells for the dangers to child health and welfare and the burden on public safety from impacts of “legal” synthetic cannabis long before the state or federal governments banned the substances. In 2013, cities began banning the sale of a legal “zombie” drug that not only caused extreme hallucinations, acute respiratory depression and death but was also highly addictive and not banned at the state until three years later. Despite a now federal ban on some elements in the products, in 2018 manufacturers found additional legal products such as brodifacoum, a very long-acting anticoagulant commonly used in rat poison, and the FDA sent notice of a rise in contaminated blood supplies as a result. They remain illegal in Maine while continuing to poison other communities.

While LD 662 is born from actions in one particular municipality, it is best addressed in that municipality through council elections, not by using a state platform to strip other municipalities of their tools. There are also tools in existing law that provide options to challenge newly adopted ordinances if they interfere unjustly with business activities. The legislature was clear and specific about retaining the ability for municipalities to adopt such an ordinance under MRS 22 §1556 which additionally requires public notice and public hearing by which all residents may weigh in. While understandably frustrating for the sponsor, the bill suggests that the path to resolution is to roll over voter majority rather than work to undo it.

Officials do not believe such action will become widespread because it is too difficult to enforce.

LD 620 would have significant unintended consequences of devaluing the carefully constructed concerns of communities who decided certain legal activities had no place in their community or should occur only in designated areas. For instance, while a community may have allowed an alcohol establishment to operate in its borders, it may not allow adult entertainment in the same area or in the entire municipality. As drafted, LD 620 would mean that the perfectly legal offering of adult entertainment under state law could not be prohibited, regardless of a local ordinance, if it occurred in a licensed alcohol establishment.

Communities are best able to decide what types of activity belong in their communities and where. Legality of an activity or product is only one test to consider.

LD 894 would remove the ordinance tools for communities to meet their federal environmental permit obligations, meet locally important climate goals by prioritizing or prohibiting certain types of particulate producing outdoor boilers in densely populated areas where they are least appropriate. It seeks to solve a problem that doesn’t exist, disrespects Mainers and their common sense approach to adopting local ordinances, and is part of a national effort from the oil and gas lobby to stymie local climate efforts and prohibit local decisions. Such bills have been introduced across the nation, initiated, in part in response to efforts by some local officials in Texas to ban hydraulic fracturing.

Mainers are capable of making decisions on their own without national influence and removing community tools to decide how energy is received or heat is delivered are equally problematic when restricted by building code as when they are preempted by unnecessary law. If the sponsors are concerned

about specific activities in their own communities, officials would encourage them to engage in the conversation with their neighbors, join an ordinance committee, or introduce a local ballot before town meeting with support and signatures from their neighbors.

Preemption of municipal home rule cuts both ways. The difference is by protecting it, every individual has equal footing to enact change, and repeal past efforts with which they disagree, without undermining their neighboring municipalities. Officials ask that you vote ought not to pass on all three of these bills.