

Testimony in favor of LD 1672, “An Act to Establish an Affordable Housing Permitting Process”

Josie Phillips, Policy Fellow | January 5, 2024

Good morning, chairs Gere and Pierce, and all members of the Housing committee. My name is Josie Phillips, and I am representing Maine Center for Economic Policy. I’m testifying in favor of LD 1672 because it would streamline the production of affordable housing and help municipalities meet the housing goals included in their comprehensive growth plans.

While LD 1672 does not set up an appeal process for affordable housing permits, it would act similarly to housing appeals statutes in other states by allowing developers to receive permits from the state if local ordinances are found to be unnecessarily exclusionary. Although many details vary between each state, six states — California, Connecticut, Illinois, Massachusetts, New Hampshire, and Rhode Island^{1 2}— have some form of process by which housing developers can appeal a local decision to deny or modify a building permit. Most of these processes are explicitly for affordable housing developments, although New Hampshire and California apply their statutes to all housing.

These appeals laws have quantifiably contributed to the construction of many affordable housing units. As reported by the Washington University Law Review, Massachusetts’ appeals program had created over 60,000 affordable housing units by the end of 2020; a majority of Rhode Island communities had made “good” or “excellent” progress towards meeting their housing goals; and in a five-year period, 22 Illinois communities had achieved their housing goal of 10 percent of all housing being considered affordable. Less quantifiably, these appeals statutes have also contributed to the local adoption of more permissive zoning regulations by demonstrating strong state support for affordable housing development.³ These laws are no panacea, and the states that have adopted them have much more work to do to truly meet the housing needs of their residents, but giving affordable housing developers a streamlined alternative to local permitting can increase the financial viability of affordable housing projects and reduce the amount of time it takes to get housing onto the market.

LD 1672 differs favorably from other states’ housing appeals processes by circumventing the local permitting process entirely, while still respecting the unique needs and preferences of each community. Instead of waiting to be rejected by a local permitting board before appealing a decision, like in other states, affordable housing developers in Maine under LD 1672 could apply directly to the state review board, which could shave

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weeks or even months from an already long, expensive, and technically complicated development process. Streamlining the permitting process would reduce the “soft” costs of development and make projects more financially viable. This is critical to increasing affordable housing production, as soft costs already take up 20-30 percent of total development costs in straightforward projects on average and can eat up far more time and money if subject to obstacles at the local level.⁴

Another strength of LD 1672 is it considers the desire of many people to have housing that matches the specific needs and character of their community. The bill maintains that a project seeking a permit from the state review board must be in alignment with both the comprehensive plan adopted by the relevant municipality and the neighborhood standards of the surrounding buildings. In fact, a developer may only apply for permits through the state review board if the local regulations are demonstrably at odds with the municipality's comprehensive plan. If a municipality's building codes allow for enough housing to meet its residents' needs as defined in their comprehensive plan, then the municipality would retain full permitting power over the development. LD 1672 adds further incentive to developers for aligning the project design with the surrounding local character by providing an expedited timeline for projects using pre-approved building types, which are explicitly designed with local characteristics in mind.

Mainers desperately need more housing, and LD 1672 would help to quickly and efficiently meet that need in a way that recognizes development cannot take a “one size fits all” approach. LD 1672 would give recourse to developers who are struggling against municipal regulations fundamentally at odds with the housing needs of the community, while still respecting the indispensable role local governments play in deciding where housing should be located and what it should look like. Because this bill would help Maine meet its housing goals while facilitating “smart,” locally-planned growth, I encourage this committee to vote yes on LD 1672.

¹ Washington University Law Review, “Combating Exclusion & Achieving Affordable Housing: The Case for Broad Adoption of Housing Appeals Statutes.” March, 2022. <https://wustllawreview.org/2022/03/30/combating-exclusion-achieving-affordable-housing-the-case-for-broad-adoption-of-housing-appeals-statutes/>

² National Associations of Home Builders, “State Survey of Housing Appeals Statutes.” May, 2021. <https://www.localhousingsolutions.org/wp-content/uploads/2021/05/state-survey-of-housing-appeals-statutes-201706.pdf>

³ Washington University Law Review, “Combating Exclusion & Achieving Affordable Housing: The Case for Broad Adoption of Housing Appeals Statutes.” March, 2022. <https://wustllawreview.org/2022/03/30/combating-exclusion-achieving-affordable-housing-the-case-for-broad-adoption-of-housing-appeals-statutes/>

⁴ Brookings Institute, “Making apartments more affordable starts with understanding the costs of building them.” May, 2020.

<https://www.brookings.edu/articles/making-apartments-more-affordable-starts-with-understanding-the-costs-of-building-them/>