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Testimony of the Maine Municipal Association

Neither For Nor Against

LD 1976- An Act to Update the Growth Management Program Laws

November 14, 2023

Sen. Peirce, Rep. Gere and distinguished members of the The Joint Select Committee on Housing, my name is Rebecca Graham and I am submitting testimony neither for nor against LD 1976 on behalf of Maine Municipal Association's 70 member Legislative Policy Committee.

While the Association is not submitting simple opposition to this initiative, we are deeply concerned about the legal language in the bill that among many issues, assigns new authority for a largely unelected volunteer committee of residents who undertake these efforts for their community. To that end, we met with the stakeholders and sponsor of the bill to advise them of a number of the significant issues identified by both our members and our legal staff. The amended language makes some changes from that consultation, there remain some significant barriers that will not only be a challenge for even well-resourced communities to accomplish and do not seem to be addressing known problems with the statute.

To that end, we would encourage the committee to consider a broader group of municipal practitioners to be included in any revisions to this statute. There are areas for improvement but the language of the bill introduces more problems than it solves for the communities undertaking this work and will produce a barrier to encouraging more communities to adopt a comprehensive plan.

It is also important to note that communities across Maine are undertaking this work and are either in the middle of an effort that takes roughly two years to complete, just began or have just finished this work and are awaiting department review of their efforts. Many communities have spent tens of thousands of dollars for professional consultants to guide them with this work. As this bill proposes significant changes that would upend those plans or cause immediate rewrites for those already robust public processes, it's a moral imperative that financial means for those communities in the waiting pipeline for department review, recently adopted entirely, or currently in process, accompany any portions of this amended version of the bill you chose to advance.

With this in mind, an appropriate framing for our testimony needs to begin with explaining what a comprehensive planning committee does, the purpose of a plan, and why it is important to not have expressly prescriptive language on many points in LD 1976 to make this process achievable for all communities.

The legislative goals for this purpose are defined in statute and already well established by M.R.S 30-A, §4312:

of choices should be left to Maine's individual municipalities because each municipality is fundamentally and wonderfully, different.

In other states, individual municipalities have in-depth community conversations about how that municipality wants to define its placetypes and/or zoning districts. The way one community defines its placetypes and/or zones are deeply personal to that community and they differ from community to community. By including a finite list of "placetypes" and limiting what a "downtown" must look like, this section removes the ability of municipalities to define for themselves who and what they are.

The definition of "rural areas" in 14-B includes a historical narrative that does not belong in statute but is how a community may look at their rural areas, some of which may have sidewalks and now because of recent concerns about PFAS contamination in historically rural areas, may need public infrastructure to maintain their very rural nature. This section should not be changed from the current statute. The same analysis is applied to the language for "rural area, adjacent rural lands", "rural area, rural road", "rural backlands "and "suburban areas", etc. . The definitions limit, confine and not power or enable a community to use the filter broadly. Amendments to 35§4324 "Responsibility for growth management" are incredibly problematic. This language seems to put authority for implementation/ordinance enactment in the planning committee - which is a significant change in the authority of that body in current practice. Comprehensive plans are "implemented" through the enactment of ordinances. Legislative bodies have authority to enact ordinances, not an ad hoc committee who is constituted every ten years. It is appropriate for a planning committee to draft an ordinance that it then recommends but the planning committee should not and cannot be enacting municipal laws.

The existing language contemplates the planning committee recommending both the comprehensive plan and specific ordinances implementing that plan. The recommendation from the committee around implementation would be to provide draft ordinances codifying the broad guidelines outlined in comprehensive plan. MMA recommends keeping that structure.

The prescriptive process for public engagement outlined in the amended version of LD 1976 are all existing components of public hearings. These are fine requirements to impose but the requirements already exist - and, again, by listing specific requirements, this may give municipalities that they are limited to these options for a public process. It might be more effective to offer these possibilities as guidance documents for towns embarking on the planning process.

Under the "state participation" section, many of the data sets do come from state resources where they exist, but municipalities often use additional more lot specific data sets created on their own. This section of language would limit their ability to do so and does not allow for a process of disputing the validity of a data set with additional "ground truthing". It would be better to provide this type of data more robustly by investing in those state resources to be available to communities in a more detailed way not by requiring it's use, particularly when mapping needs are not readily available beyond high level views from existing resources.

Sec. 8 language around "public hearing requirements" is already a requirement under FOAA and does not need to be included, but it's important to note that not all municipalities have a website let alone one that meets all the required accessibility needs for residents assumes that such a notice delivers to all residents, many of whom do not have internet access.

The plan is the guidance document, municipal ordinances implement vision contained in the plan. So, unless this is an intentional change in that long-standing and pretty universal structure, these changes should be reconsidered. MMA recommends keeping current language. Additionally, the "implementation program" or ordinances implement the comprehensive plan not the provisions of this statute. This language would negate all of the "permissive" language and require towns to affirmatively adopt the "plans, policies, and strategies described in this chapter. The law already requires that ordinances be consistent with the whole of the comprehensive. plan. By calling out these specific areas of focus, this might suggest that consistency with only these topics is needed. MMA suggests just removing this to avoid confusion.

There are multiple other areas where the language is problematic at best. The Association, municipal officials and comprehensive planning committees hope that the committee will encourage the stakeholders to work together on improving the language to promote the goals of wider comprehensive plan adoption instead of adopting the language as presented. There is significant experience with these efforts that could better inform amendments to the growth management act and officials remain committed to working with the stakeholder to advance achievable changes to the comprehensive plan process.