



Senator Curry, Representative Gere, and honorable members of the committee,

My name is Peter Connell, and I'm here today on behalf of the Manufactured Housing Association of Maine, representing hundreds of community owners, small businesses, and families who provide and live in one of the most affordable housing options in the state — manufactured homes.

We respectfully oppose LD 365 because, despite its intentions, it raises serious legal, constitutional, and economic concerns, particularly for the manufactured housing sector.

First, the bill risks creating what could amount to an ex post facto law by retroactively imposing new mandates or restrictions on existing properties, leases, or land use rights. Many of our members have operated in good faith under Maine's longstanding regulatory framework. Changing the rules after investments have been made, loans secured, and homes built — potentially limiting current and future property sales — disrupts established expectations and creates legal uncertainty.

Second, LD 365 raises the specter of an unconstitutional taking. If private property is restricted in its use or value — whether through rent caps, resale restrictions, or mandated affordability terms — without compensation, it could be found to violate the takings clause of both the Maine and U.S. Constitutions. Manufactured housing communities, especially those owned by small, local operators, cannot absorb such losses without risking closure or disinvestment.

Third, the bill would impose a direct negative economic impact on property owners, particularly on the mom-and-pop park owners and small businesspeople who make up a large part of our membership. These individuals often rely on selling their properties for retirement or to maintain affordable rents. If resale values are suppressed or restrictions

applied retroactively, it will discourage new investment and threaten the long-term viability of affordable manufactured housing communities.

Finally, the estate tax implications for small property owners could be devastating. If an owner passes away while their property is bound by restrictive covenants or affordability mandates, the estate may be assessed at full market value while the owner has no realistic ability to sell or borrow against it—potentially forcing the sale of family-run communities or homes to cover a tax bill based on an inflated value.

LD 365 may be motivated by good intentions, but it risks infringing on constitutionally protected property rights, destabilizing the state's most affordable housing sector, and imposing unjust burdens on the very communities that provide housing without taxpayer subsidy. If Maine is serious about preserving and expanding affordable housing, manufactured housing should be part of the solution, not collateral damage. We urge the legislature to focus on incentives, collaboration with municipalities, and infrastructure support, rather than mandates that override local control and put individual property owners at risk.

For these reasons, the Manufactured Housing Association of Maine strongly urges a vote of Ought Not to Pass on LD 365.

Thank you for your time and consideration.



## 1. Retroactive Legislation & Ex Post Facto Concerns

Although the Ex Post Facto Clause (U.S. Const. art. I, § 10, cl. 1) applies strictly to criminal legislation, the **Maine Constitution (Art. I, § 11)** provides broader protections. Maine courts have consistently cautioned against retroactive laws that impair vested rights or impose new obligations based on past conduct. If LD 365 retroactively applies long-term affordability mandates, resale restrictions, or lease modifications to existing properties or communities, it may violate **due process under both the Maine and U.S. Constitutions**.

## 2. Unconstitutional Takings – U.S. Const. amend. V; Me. Const. art. I, § 21

Under the **Takings Clause of the Fifth Amendment**, as applied to the states through the Fourteenth Amendment, no private property may be taken for public use without **just compensation**. Similarly, the **Maine Constitution, Art. I, § 21**, provides the same protection. In *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), the U.S. Supreme Court reaffirmed that even **regulatory actions**—not just direct seizure—can constitute takings if they interfere with the “right to exclude” or otherwise diminish property use or value.

LD 365’s potential mandates—such as affordability covenants or resale price controls—risk crossing into **regulatory takings**, especially where the economic impact is severe, expectations are disrupted, and no compensation is provided. See also *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

## 3. Negative Economic Impact on Small Property Owners

Manufactured housing community owners—many of whom are local and family-owned operations—depend on the fair market value of their land and homes to secure financing, support infrastructure, and maintain affordability. Imposing resale price limitations or use restrictions can chill investment and lead to reduced maintenance, deferred capital improvements, or even community closure.

Such economic harm is not theoretical. Regulatory uncertainty or loss of property value due to mandated affordability terms may constitute a **partial or total taking** under the **Lucas v. South Carolina Coastal Council**, 505 U.S. 1003 (1992) standard, if it deprives the owner of all economically viable use of their land.

## 4. Estate Tax Implications if the Owner Dies During Restriction Period

If LD 365 imposes restrictive covenants or affordability controls that depress the **liquid market value** of a manufactured housing property, but the property is still **assessed** at or



near full value for estate tax purposes, small business owners or heirs may face severe financial consequences. This creates a **valuation mismatch** that could force heirs to sell under duress or dissolve multi-generational family holdings — particularly damaging for rural and working-class families.

This concern is compounded by the federal and Maine estate tax thresholds, which currently exempt \$13.61 million federally (2024) but only **\$6.41 million** in Maine. Assets encumbered by affordability restrictions are hard to value and harder to liquidate, leading to legal disputes and liquidity crises for estates.

