



Testimony Neither For, Nor Against
L.D. 1473, An Act to Protect Certain Unfiltered Drinking Water Sources

May 01, 2023

Senator Brenner, Representative Gramlich, and distinguished members of the Joint Select Committee on Environment and Natural Resources, my name is Ryan Fecteau and I am the Senior Advisor on Community Development and Strategic Initiatives in the Governor's Office of Policy Innovation and the Future. I am here today to offer testimony neither for, nor against **L.D. 1473, An Act to Protect Certain Unfiltered Drinking Water Sources**.

There are nine drinking water sources in Maine with waivers from filtration. There are fifty filtration waivers in total nationwide. This bill proposes to exempt lots located within watersheds that have these filtration waivers from some of the provisions of law related to zoning. These provisions were part of legislation, now known commonly as L.D. 2003, passed by bipartisan majorities in both chambers during the 130th Legislature. L.D 1473 seeks to exempt these lots from the following requirements:

- **Density Bonus:** A density bonus of 2.5x the base density for affordable housing projects which must be in growth areas according to a town's comprehensive plan, multi-family housing must already be allowed by the town, and there must be access to public sewer and public water. It's not clear how many lots within these watersheds meet such requirements, but it's likely relatively few.
- **Unit Increase:** An allowance of up to 2-units of housing on empty lots outside of growth areas (contained in a single structure). An allowance of up to 4-units of housing on empty lots within growth areas or where public sewer/public water exists (contained in a single structure). It's likely most empty lots zoned for residential use in these watersheds would qualify for the up to 2-units, but not the up to 4-units.
- **Accessory Dwelling Units:** An allowance for accessory dwelling units (ADUs) to be added on lots where single-family homes already exist. The allowance removes most requirements that would otherwise be applied to constructing a new structure. Lots with single-family homes within these watersheds would be granted the allowance of an ADU.

There are two notable watersheds that would be impacted by the passage of this law: the watershed around Lake Auburn and the watershed around Sebago Lake. It appears this bill exists due to real concerns about the former, Lake Auburn, and the future of its filtration waiver. As the committee knows, a filtration system would cost millions. Residents and leaders served by water from Lake Auburn are concerned that activity around the lake could impact its quality and thus future approval of its filtration waiver.



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The Drinking Water Program (DWP) at the Maine Center for Disease Control and Prevention (CDC) oversees the filtration waivers and monitors the quality of the water source. They have provided a letter with additional background which I would encourage the committee to consider.

It's important to note that the activities exempted by this bill could still occur if approved by local authorities. In other words, the bill does not prohibit residential development from occurring within the watershed boundaries. It seems a provision of federal law is the impetus for L.D. 1473. The federal law states in part, "The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that **it can control all human activities which may have an adverse impact on the microbiological quality of the source water.**" It could be argued that the compulsory nature of L.D. 2003 runs up against the idea of "control[ing] all human activities" described by federal law. It's not clear this is the case, however. Local jurisdictions do retain control over several requirements as outlined in L.D. 2003 including water and wastewater requirements, design standards, and dimensional requirements such as setbacks, and more. Whether this is enough control to meet the spirit of the federal law is murky. However, given the cost of a filtration system and the importance of the drinking water source, it makes sense that major concerns exist in Lewiston/Auburn regarding the implications of L.D. 2003.

What is clear is that residential development itself is not an activity that causes disapproval of filtration waivers. Residential development has occurred within watersheds where filtration waivers exist. Of course, overtime, residential activities from construction to day-to-day activities like gardening could impact the water source's quality. We also know the need for housing is significant in areas like Lewiston/Auburn and the Sebago region. This bill could impact the availability of housing in areas where filtration waivers have been granted.

Given the complex nature of this proposal, we offer a position neither for, nor against L.D. 1473. The committee could consider a few approaches regarding this bill including an amendment to focus on the Lake Auburn watershed which appears to be the driving force behind the bill. Whichever way the committee would like to proceed, we are happy to be a resource and can answer any questions you might have. Thank you.