

Kate Dufour  
Maine Municipal Association  
LD 2003

To: Senator Daughtry  
Representative Sylvester  
Members of the Labor and Housing Committee  
Speaker Fecteau

From: Kate Dufour, Director, Advocacy and Communications

Date: Wednesday, March 16, 2022

Re: Municipal Officials' Feedback on the Amended Version of LD 2003

My apologies, but due to a scheduling conflict I'm unable to participate in this morning's work session on LD 2003.

However, on behalf of MMA's Legislative Policy Committee, I want to thank Speaker Fecteau for responding to the issues raised at the public hearing on LD 2003, An Act to Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions. As a result of those efforts and conversations with interested parties, the Committee is in possession of an amended version of the bill for its consideration.

While the changes proposed have addressed some of the issues raised by the Legislative Policy Committee, it is clear that municipal officials remain concerned with the approaches promoted in the amended version of LD 2003.

Key among the municipal concerns is the erosion of regulatory and decision-making authority, as well as the one-size-fits all approach.

Attached to this memo are the verbatim responses from the policy committee members who elected to provide comments on the amended version of the bill. I hope you will seriously consider the feedback offered by "in the field" practitioners, as well as the comments prepared by the Maine Association of Planners, as you deliberate the merits of the proposal and the impacts on municipalities of all populations, geographic locations, and fiscal capacities.

Thank you.

LPC Member Comments Regarding LD 2003 As Amended

While better, there are concerns with state potential to interfere with home rule particularly in affordable housing and density. We all know that once the camel's nose is under the tent...

We need collective action on affordable housing. This bill ensures that municipalities all participate. Those of us who have been trying to take independent action on affordable housing know that creating affordable housing in only one community concentrates elevated need within that community and creates bad outcomes all around. The loss of local control is well worth a unified, state-wide approach.

I would oppose this bill, even in its amended form. The erosion of local control is continuing to grow. Augusta does not necessarily know what is best for the State of Maine. This from its inception as an emergency although now tamped down reminds one of Sir Humphrey Appleby's syllogism on political crisis decision-making: 1) We must do something. 2) This is something. 3) Therefore, we must do this.

We remain opposed. Loss of local control. What may fit in some places may not fit in others, let the locals decide. None of this can fix the part of the housing issue that represents folks with next to no income. What is an affordable house if you have less than \$1,000 a month income? This is just a future mess being made. It should lead to more gated communities.

I'm not ready to support it but we should be at the table and part of the conversation.

I am pleased to see my two biggest concerns, date of implementation and insurance of ongoing affordability, addressed in this revised bill. I think a NFNA would be best since I don't think there is any way the LPC votes to support.

My biggest concern is with the loss of home rule and our community starting to look like the big cities with houses on top of each other.

Taking away home rule authority will never set well with communities; ADUs not having to meet setback requirements. I understand the need to for additional housing, we are all seeing the boom in housing prices, and have heard the concerns from our residents desperate to find affordable housing for their families. Basic economics state you either increase supply, or lower the demand to reduce costs, the demand is not slowing down. However, this bill has a lot of issues that raise concerns with me. There is still work to be done and let's not be hasty in our decision-making process while we are trying to meet the housing demand, taking away home rule and eliminating setback requirements is not the right way.

Home rule should not be usurped.

While I am strongly in favor of improving affordable housing because we do have a statewide problem, I am opposed to such a substantial weakening of home rule and a city or town's control of our zoning and densities. Since time is short in this short legislative session, perhaps the best thing for LD 2003 is to extend it into the next full session.

Retain the incentives and technical assistance and remove all encroachments on home rule.

I urge our support of LD 2003 as amended.

1. I don't support the parking provisions for 2 off street spaces per 3 units. That can work if the development is located close to services and downtowns and has access to public transportation. It will not work where services and public transit are not accessible. 2. I have a real concern with accessory dwelling units (ADU's) being used for short term rental purposes (AirBnB) in tourist dependent communities. That does not meet the intent of the bill to increase housing availability. The bill should specify that ADU's may not be rented for less than 30 days. 3. Continuing with ADUs, detached structures should still have to meet existing setbacks for the underlying zone.

I vote to oppose. Home rule is important and it should not be cast aside to quickly say politically we are solving the housing problem.

It still undermines home rule and threatens rural areas of all municipalities by forcing them to increase housing densities.

I hate the State coming in and usurping home rule but, in this case, I think it's needed so I support.

NFNA still goes against comp plan, subdivisions, and shore land. You know I'm in favor of affordable housing, but this broad-brush approach only works in communities like the sponsor comes from, that already has density.

Why not make LD 2003 apply only to towns over 4000, consistent with MUBEC rules?

This bill usurps home rule authority and attempts to address affordable housing issues via one solution fits all towns approach.

It still changes subdivision law and will impact shoreland zoning.

The new amendment - Municipal Role in Statewide Housing Goals (new 30-A MRSA 4363-E) will expose municipalities to expensive and nearly unwinnable enforcement lawsuits by the Federal Government (much like the prior HUD experience with the Affirmatively Furthering Fair Housing Rule.) In addition, the bill still mandates elimination of single-family zoning and permits all towns to ban Airbnb. This all represents an unprecedented overreach into local land use/growth management by the Maine state government.

MMA should oppose state-level efforts to meddle with local zoning. The problem that the Speaker is trying to address may not be a municipal issue at all – at least, not in most rural communities. The rules for municipal Comprehensive Plans require examination of housing affordability and strategies to develop it. But if the strategies are carried through to local zoning and affordable housing still isn't developed, then

perhaps the problem isn't the municipality and its zoning. Our Zoning Ordinance (which is consistent with our Comprehensive Plan) permits duplexes in all zones except Commercial, multi-family housing in all of those zones except Rural, and also contains density incentives for affordable housing projects. In our recent Comprehensive Planning effort, we heard (loud and clear) that the reasons more housing has not been developed in the targeted areas is that infrastructure costs (building subdivision roads) are prohibitive relative to the anticipated sale price of the lots that would be created, and that building costs continue to rise astronomically. These are not zoning-related problems – they are market-related problems. I remember not that long ago that affordable housing was being created in Portland through use of historic preservation grants, which news articles accurately pointed out was an absurdly expensive way of creating housing on a per-unit basis, yet those subsidies made it possible for units to be developed, gave developers a reasonable profit and preserved neighborhood character. It was a back door solution, but it got the job done. I would strongly encourage exploration of other solutions that are more likely to solve the housing affordability issue before taking yet another crack at municipal home rule – especially when the municipality is already in compliance with state guidelines.

I testified in favor of this bill on behalf of the mayor's coalition. Maine needs this and I strongly urge MMA to support this bill.

The amendments are a step in the right direction, but still a too heavy-handed approach towards removal of local control. Each community has a vision of what they should look like and have spent countless hours on Comprehensive Plans and zoning to work towards that goal. The State seems to think it's perfectly fine to simply say "we don't care what your vision is", we know best. This needs more work, it's too big of an issue to settle on the first or second possible solution presented. HASTE MAKES WASTE.

This bill is requiring that local ordinances are amended. That will require, often times, concurrence of the Planning Board, to make a recommendation (sometimes), and Council or voters, through public hearing to amend by ordinance. That is a risky proposition as in fact this is a zone change and requires participation of those impacted in a rezoning. If such an amendment fails, without an appeals board, instances of conflict between state law and local ordinance enforced by the code enforcement officer will be sorted out by the court and will incur significant legal expense on behalf of the municipality being challenged and the challenger. These issues will fester for a long time and will be resolved through case law necessitating further amendments of ordinance. No issue with Section 3 and 4, this is a good addition to clarify the intent. There seems to be no objection to the State doing what the State wants to do within its own organization. Section 9 should be aware of the unintended consequences of this section as it could have the effect of prohibiting affordable housing projects, "before approving an affordable housing development..." under 3. long-term affordability. Section 9, 2. Density requirements, could end up requiring creating a "false floor" in zones with permissive zoning (how if fact would a density bonus be granted?) from 2.5 times more and should unit provision be rounded up or down? Section 10 is problematic in general. Term "permitted" should be avoided, prefer "allow." Term "housing" should be avoided, this is an antiquated term to use in this bill, use "residential." Section 10, 5. This is the savings clause/ red herring, and tosses the whole section out the door for municipalities that have adopted subdivision standards. This has the unintended consequence of exacerbating the stated problems this bill intends to fix that has yet to be clearly articulated balanced against sprawl and the creation of SFR subdivision developments here specifically authorized. Isn't the problem the economic burden of building housing and in some municipalities the regulatory cost-burden of building housing and meeting the regulatory standards in place? This is not addressed. Section 10, proposes instead, staff-level permit review of housing projects in lieu of planning board review in zones where authorized. Don't touch zoning, it is too messy. End at that. Section 11, 3.

Zoning, B. As written, this obligates the rezoning of land, automatically creates spot SFR zones and would just be contrary to zoning, in general with no articulated purpose. Section 11, in general, accessory dwellings, no less than one, seems to be the palatable part of this bill. 3. Zoning, G. establishes a minimum floor area. There is no reason for this standard to be added. There is no reason to reference MUBEC. Throughout Shoreland Zoning and Water and Wastewater provisions references to “application and permitting processes,” enforcement of zoning and references to variances are unnecessary and will create unnecessary local regulations and regulatory changes. Municipalities may regulate short-term rentals is unnecessary, as under home-rule it is allowed. There is no dispute of this matter and neither that a municipality may regulate rented housing of any kind or abandoned buildings. Leave it out.

I am for NFNA. I think we want to stay at the table on this important policy goal, but I hope we will settle on incentivized goals as opposed to one size fits all mandates.

The amended bill is certainly a significant improvement, and we should recognize that fact. However, I am still in favor of a NFNA position. I definitely do not think the association should go on record as opposed. There is obviously a wide range of opinion in the LPC on this amended bill and we should probably acknowledge that in testimony.