

LD 2003, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions.*

This emergency bill implements several recommendations of Speaker Fecteau's Housing Commission. The commission was tasked with reviewing: (1) data on housing shortages in the state for low-income and middle-income households; (2) state laws that affect the local regulation of housing, including municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and (3) efforts in other states and municipalities to address housing shortages, increase housing options and assess the role race and racism play in zoning policies.

The proposed bill:

Housing as a Human Right (Secs. 1-3). Amends Maine's housing discrimination laws to prevent a municipality or government entity from restricting the construction or development of housing units in areas based on criteria that refers to the character of a location, overcrowding of land or the over concentration of the population. This section of the bill also defines those terms to mean the unique characteristics of a municipality; the density of the population within a specific area of the municipality; and the density of residential dwellings or other developments within a specific area of the community, respectively.

Prohibits Housing Caps (Secs. 4-6). Prohibits municipalities from adopting ordinances that cap the number of building or development permits issued each year for any residential dwellings, including but not limited to permits for affordable housing.

Technical Assistance and Grant Program (Sec. 7). Directs the Department of Economic and Community Development (DECD) to provide technical assistance to municipalities for the purpose of developing and implementing zoning and land use ordinances that conform with state and federal laws and review municipal building and development permits. This section further directs the department to provide grants from the Municipal Planning Assistance Grant and Incentive Program Fund to contract for services and hire staff to help administer municipal housing related responsibilities.

Municipal Incentive Program (Sec. 8). Directs DECD to provide a grant of up to \$25,000 for each year a municipality participates in the incentive program. In order to be eligible for the grant a municipality must: (1) in the first year, establish a working group to review municipal zoning and land use ordinance impacts on housing availability; (2) in the second year, adopt or amend zoning and land use ordinances to promote the availability of housing, based on the recommendations of the working group; and (3) in the third year, provide information to DECD about current or prospective housing developments or permits issued for the construction of housing resulting from the implementation of related land use and zoning changes.

Affordable Housing Density (Sec. 9). On or after April 20, 2022, municipalities are required to use an affordable housing density standard for qualifying affordable housing developments that is equal to 2.5 times the density that is otherwise allowed in the zone where the development is located and are prohibited from requiring more than two off-street parking spaces for every three

units. (This would allow a project like Auburn Housing to increase units from 24 to 60 units only allowing the Town to require 40 off street parking spots. Where would the remaining 80 vehicles park? Up and down Maine Street or Hines Rd. This would work in cities like Portland or Lewiston where on street parking and public transportation is common but not in smaller communities.) Before approving an affordable housing development, the developer must agree to ensure that for at least 30 years occupancy will remain limited to households at or below 80% of the local area median income for rental units and for owned housing to remain limited to households at or below 120% of local area median income. In addition, the developer is prohibited from renting units for a period of less than 30 days.

Prohibits Establishment of Single Family Only Zones (Sec. 10). Provides that notwithstanding a law to the contrary, on or after April 20, 2023, all zones where housing is permitted must allow for the development of structures with up to four dwelling units. Municipal residential housing ordinances may not establish dimensional size requirements or setbacks distances that are greater than those required for single-family structures. This section also requires the owner of a housing unit to provide written verification to the municipality that the unit is connected to adequate water and wastewater services before the municipality can issue an occupancy permit. In the process of adopting an ordinance, a municipality is authorized to: (1) establish an application and permitting process; (2) impose fines for violations of building, zoning and utility requirements; and (3) establish alternative criteria that are less restrictive utility requirements, but only if a variance is allowed. This section requires ordinances to comply with the minimum shoreland zoning requirements set by the Department of Environmental Protection (DEP). (Four units in shoreland could only cause problems with short term rentals and there is no indication that this would replace the need for subdivision review for more than two units in a 5 year period.)

Accessory Dwelling Units (ADUs) (Sec.11). Provides that an ADU is allowed on the same lot as a single-family dwelling in any zone in which housing is permitted. An ADU is defined in existing law as a self-contained dwelling unit located within, attached to, or detached from an existing dwelling unit. This section allows an ADU to be constructed if: (1) within an existing structure on the lot; (2) attached to or sharing a wall with a single-family unit; or (3) is a new structure on the lot for the primary purpose of creating an ADU. A related municipal ordinance must: (1) allow for at least one ADU on any lot where a single-family unit is the primary structure; (2) require lots where a single-family dwelling unit is the primary unit and an ADU has been constructed to be zoned as single-family; (3) exempt an ADU from any density requirements; (4) require the setbacks and dimensional requirements to be the same as the requirement for a single-family dwelling unit, if the ADU is located within the single-family unit; (5) exempt an ADU from meeting additional parking requirements, beyond that applied to the single-family unit; (6) require an ADU to comply with DEP shoreland zoning requirements and Maine Uniform Building Code requirements; and (7) prohibit a rental term of less than 30 days for units constructed or permitted on or after April 20, 2022. (Who is enforces this?) The owner of an ADU must provide written verification to the municipality that the unit is connected to adequate water and wastewater services before the municipality can issue an occupancy permit. In the process of adopting an ordinance, a municipality is authorized to: (1) establish an application and permitting process; (2) impose fines for violations of building, zoning, and utility requirements; and (3) establish alternative criteria that are less restrictive utility requirements, but only if a variance is allowed. (There are no indications of size limits for the ADU. This would lead to second home that could be larger than the existing home on lots that were never designed for that purpose. Most of the housing under this section would not lead to

more affordable housing. These proposals could potentially double the population of Poland. Who picks up the cost for added services and new schools?)

Municipal Housing Development Permit Review Board (Sec. 12). Establishes a seven-member board, appointed by the governor to hear complaints against the final decisions of a local board denying a housing project. Upon receipt of a complaint, the board must provide written notice of the hearing at least 20 days in advance to the person seeking review and the

municipality that denied the application and allow both the opportunity to provide testimony before the board. If the board determines that the project should have been approved, the municipality that denied the project must approve the development.

Priority Development Zones (Sec. 13). Requires municipalities to designate an area within the municipality as a priority development zone (PDZ) located in an area that has significant potential for housing development and located near community resources, as determined by DECD. A PDZ is defined as a zone in which owned or rented multifamily housing composed of both market and affordable housing units is permitted at a specified density that is greater than the density allowed in other zones. Community resources are defined as available services, including transportation, schools, and recreational, employment and business opportunities. Prior to adopting the development zone, DECD must review the proposal to ensure compliance with adopted state agency rules. Adoption of the PDZ is delayed for two years following the adoption of agency rules.

Staggered Review Board Terms (Sec. 14). Provides that the terms of the review board established in Section 12 are staggered with two members serving for one year; two members serving for three years; and three members serving the full five-year term.

Fiscal Note (Sec. 15). Provides: (1) \$79,762 in ongoing funds for one position to provide technical assistance to the Municipal Housing Development Permit Review Board; (2) \$89,760 in ongoing funds for one position to implement a municipal land use and zoning ordinance review incentive program and provide technical assistance to municipalities; (3) \$3 million in ongoing funds for grants to municipalities to review land use and zoning ordinances; (4) \$115,500 in ongoing revenue for one position to serve as a municipal planning coordinator to provide expertise in zoning and land use to municipalities; and (5) \$1.3 million in ongoing funds to assist municipalities in the development and implementation of zoning and land use ordinances.

Matthew Garside
Poland
LD 2003

Attached is the LD 2003 write up with our comments in red. Bottom line, we do not support this bill. In addition to the practical challenges our CEO has outlined, this is a serious infringement on municipalities ability to regulate their zoning and land use code.

Maine is a large state with diverse geography, communities and local needs. Instituting top down direction in a one size fits all bill does not take that into account. I believe this will have an adverse impact on adjacent property owners. I also believe this will restrict municipalities, those closest to the problem and best suited to offer a solution, from doing so.