

**LD 1365 An Act To Prohibit Municipalities from Prohibiting Short-term Rentals (Faulkingham)**

To: Members, Joint Standing Committee on State and Local Government

From: Lynne Caswell, Esq., Legislative Analyst

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*electronic  
record*<http://legislature.maine.gov/ctl/SLG/04-23-2021?panel=2&time=0&sortdir=0&sortby=2>**SUMMARY**

This bill enacts a new section in Title 30-A to prevent a municipality from enacting or enforcing an ordinance, rule or order prohibiting short-term accommodation rentals.

**TESTIMONY\*****Sponsor:** Representative Faulkingham

- Times when state must act in local area to protect personal property rights from infringement

**Proponents:** Caitlin Davis; Ned Payne; Andrea LaPointe; Kenneth Capron

- Restrictions on short-term rentals affect local economy and financial health of individual property owners
- Level the playing field – all towns should regulate the same

**Opponents:** MMA by Rebecca Graham; Karen Snyder

- Home rule authority
- This will prevent local health and safety ordinances from protecting residents and visitors
- Long history of local regulation of lodging industry
- Short-term rentals destabilize neighborhoods
- Allow owner-occupied short-term rentals

**NFNA:** Hospitality Maine by Gregory Dugal

- Short-term vacation rentals are important part of state's tourist economy

**written only:** Abby Garrison; Abigail Gordon; Alex Bakman; Alex Gramling; Alexandra Parisi; Alicia Kozuch; Allyson Jordan; Amanda Getman; Amy Meader; Anastasia Alley; Andrea Gleason; Andrew Komar; Andrew McRichards, Honest Property Management; Andrew Rubenstein; Angela Moen; Ann MacAusland; Anne Bassett; Anny Seavey, Anthony Bonomo; Barbara Muller; Barry Godowsky; Becka Gagne; Benjamin Bubar; Bethany Clarke; Bonnie Thiemens; Brenda Schultz, Brian Harward; Corea; Bruce McLean; Carl Ripaldi, Carol Welsh, Carolee Duncan; Caron Murray; atherin Kiernan; Cathie Reyes, Cathy Durham; Celeste Law; Chia-Ray Chang; Chris Faulhaber; Chris Guinness; Christine Merriman; Clive Johnson; Colleen Cannata; Colleen Wallace, Corrinne Watkin, Courtney Bell; Courtney Ramey, Craig Dickson; Dana Dakers, Biddeford/Kennebunk; Dana Grant; Dana Howland; Daniel Clark; Daniel Falkenberg; Daniel Freund; Daniele Rogers, Salt & Shine Vacation Rentals; David Eddleman; David Grant; Dean Grant; Deana Cavan; Debby Murray, Portland; Deborah Jacobs; Deborah Trevarrow, Debra Brown; Debra Hart; Denis Blashkov; Denise Smith, Dianna Byrnes; Doc Wallace; Donna Crossway Hodges; Douglas Ward, Dr. Howard; Eddie Gonnella; Eden Cowart; Elizabeth Berg, Elizabeth Herdrich; Elle Hallenbeck; Ellen Berry; Ellen Grant; Elsa Brown; Emily Burke; Emma Salisbury, Eric Braciska; Eric Gothberg; Evan Murphy, Ogunquit; Frances Hannon; Francis Gagnon; Frank Schifano, Gail Mercier; Gary Langlais; Gary Torosian, York; George Vercelli, Gorham; Gerald Fowles; Gerald Laplante, Portland; Gillian Roy,

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\* The section is not intended to reflect all comments and may include unintentionally errors.

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### **PRIOR SESSION**

In the 129<sup>th</sup> Legislature, this committee considered LD 209, An Act to Prohibit Municipalities from Prohibiting Short-term Rentals. That bill proposed a new §3903 into the part of Title 30-A governing Innkeepers, Victualers and Lodging Houses. Like this bill, LD 209 prevented municipalities from prohibiting or restricting the use of short-term rentals. Unlike the bill, LD 209 contained an except that allowed municipalities enact narrowly tailored regulations to protect the public health and safety.

LD 209 was reported out of this committee ONTP(11)/OTPA(2). The amendment removed the ability of a municipality to regulate health and safety of short-term rentals and limited the definition of a short-term rental to the rental of a residential dwelling unit for less than 30 days.

LD 209 did not have a fiscal cost.

### **INFORMATION / INFORMATION REQUESTS**

#### STATES THAT LIMIT LOCAL CONTROL

At least 6 states have enacted legislation limiting local authority to restrict short-term rental (AZ, FL, ID, TN, WI)

EXAMPLES OF LOCAL CONTROL IN OTHER STATES

- Allows short term rental of rooms in owner occupied building (NYC)
- Prohibits short-term rentals of “multiple residential dwelling unit for less than 30 consecutive days unless a licensed BnB, hotel, or other similar business (NYC)
- Short-term rentals may not be located within 200 feet of each other in the same block (San Luis Obispo County)
- Permits short-term rentals permitted if registered with municipality
- Permits short-term rentals when licensed or permitted w/fees or taxes
- Must be a resident to rent on a short-term basis and then for no more than 90 days per year (San Francisco)
- Restrictions on advertising short-term rentals
- Only full-time residents may rent property for short-terms (San Francisco)

MAINE MUNICIPAL REGULATIONS - EXAMPLES

- Rockland:
  - allows short-term rentals with proper permits;
  - rental application filed with code enforcement office;
  - application fee of \$100/unit;
  - rentals limited to single-family, multi-family or mixed-use properties;
  - permission of Zoning & Planning Commission required for rentals in trailers, accessory dwelling units or separate structures.
- Bar Harbor:
  - Permitted in single-family, double-family and certain apartment buildings
  - Registration required on annual basis
  - Fee required
  - Inspection by Fire chief and CEO
- Other cities with regulations include Lewiston and Portland
- Cape Elizabeth has a pending ordinance
- York requires a certain number of parking spaces for “transient rentals” (less than 30 days per calendar year) which includes hotels/motels, B&B Inns, Boarding Houses, ADUs, etc.

LEGAL CHALLENGES TO SHORT-TERM RENTALS BANS

Is it possible to enact an outright ban on short-term rentals? Two possible challenges to such an approach include:

- Impermissible Taking of private property rights. The value of the property at the time of the governmental restriction compared to the value afterwards is the relevant analysis. Whether the diminution, if any, is “so substantial as to strip the property of all practical value.” Other beneficial uses of property that remain available to the landowner despite the restrictive regulation or ordinance are relevant.
- Violation of Equal Protection - Zoning ordinance, when facially attacked, will not be found to violate equal protection if facts may reasonably be conceived to justify it.

QUESTIONS POSED TO OTHERS

- How are taxes collected? Sponsor will provide answer at work session.
- How does “change in use” apply when a residence becomes a short-term rental? Mayor will provide answer.

**MATTERS FOR CONSIDERATION**

1. What is meant by the phrase “short-term”? Less than 30 days; Less than 7 consecutive days? Or something else?

**FISCAL IMPACT - Preliminary (OFPR)**

None provided as of this date.