



Testimony in Opposition to LD 2003: “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”

Senator Daughtry, Representative Sylvester, and the distinguished members of the Committee on Labor and Housing, my name is Nick Murray and I serve as policy analyst for Maine Policy Institute, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify neither for nor against LD 2003.

We commend the sponsors of this bill and the members of the Commission on Zoning and Housing for taking on the difficult task of balancing local control with encouraging residential development. Understanding that many of the hurdles to increasing development lie in municipal processes, we believe that the state has a role to play to impose reasonable limitations on municipalities where local ordinances may infringe on the rights of property owners. Maine's tradition of local control is an important one, though, and must be weighed carefully against any reasonable state interest like ensuring an adequate supply of housing for future growth.

First and foremost, the government should exist to protect individuals' rights, our lives, liberty, and property. Individual property ownership derives from the use of one's physical faculties (life) combined with how one directs one's time (liberty). Where economic problems exist, lawmakers should first look to where existing laws, rules, and regulations limit the free flow of information and resources across the economy before declaring a “market failure” and imposing stricter government controls. By declaring housing a “right,” some distort the idea of rights themselves. A right is something that everyone can experience equally and simultaneously. No person can have a right to another's labor or resources. The current state of the housing market is an economic problem, and must be solved in such a way that makes use of economic forces, not stifles them.

We agree with bill sponsors that the predominant limiting factor in Maine's housing market is overregulation, which is by-and-large directed from the local level. And we believe that some ideas in this bill—like the growth caps in sections 5 and 6, and the single-family lot density and accessory dwelling unit (ADU) ordinances in sections 9, 10, and 11—can empower individual property owners and help spur development. That said, we do not support the mandatory nature of these provisions and propose to amend them to become voluntary, with increased incentives for municipalities which follow through.

Look to the City of Auburn. They took on this challenge by bringing together the community and aligning the interests of local government with those of individual property owners. Auburn’s comprehensive look at not only zoning, but licensing fees and other local regulation should be a shining example for any Maine municipality looking to set itself up for sustainable development.

There are other portions of LD 2003 which would create unnecessarily complex liability for Maine towns and cities. For instance, the expansion of the definition of “unfair housing discrimination” in section 3 reaches well beyond the intent of that section of the Maine Human Rights Act, which deals with discrimination based on factors like race, sex, and gender in the buying, selling, and financing of housing.¹ It could also lead to a massive amount of unintended litigation, as the new definition would leave the door wide open for legal action taken by municipalities, simply based on a municipality’s rationale for denying a certain housing building permit.

This committee should strike the local ordinance assistance mandate in Sec. 7 that, in effect, positions the Departments of Economic and Community Development (DECD) as a central land use planning bureau for the State of Maine, a role defined by DECD’s own rule-making. Housing this section within current land use regulations would simply be an unprecedented state incursion into home rule authority.

We also propose to strike the state-level permit review board in section 12 because every municipality would be subject to its ruling, no matter whether a town’s voters overwhelmingly supported the local decision being overturned by the board. Little safeguards exist against abuse of this power so no criteria are set out in the bill to guide the board in making its rulings, which are binding and final. The people, through their elected representatives, should not have their power taken and given to unelected bureaucrats at the state level.

We do not believe that the additional requirements for building affordable housing projects and setting out “priority development districts” proposed here would necessarily be an issue if they were based on consent instead of top-down force.

Voluntary change is more sustainable, thus we offer some ideas for amendments in order to better facilitate a cooperative approach to local deregulation. For instance, look at increasing the grant amounts in the municipal incentive program in section 7(2) for municipalities which voluntarily establish the ordinances mentioned in this bill (ADUs, other density allowances, removing residential growth caps, priority development zones, etc.). \$75,000 over three years won’t match most town’s costs to comply with the incentive program’s requirements. Tying greater funds to voluntary initiation of more

¹ [Title 5, §4581-A: Unlawful housing discrimination](#)

specific reforms would have a more focused, concentrated effect and foster a more cooperative relationship between the state and municipalities. Town officials and the MMA will be less likely to see this as an unworkable, unfunded mandate from the state onto them.

Mandating that every municipality institute a suite of ordinances, which must be submitted to DECD for compliance, is a sort of one-size-fits-all approach which is unreasonable to impose on every corner of Maine. While the overall attempt is understandable, this bill simply goes too far as currently written.

Please take into account the many possible avenues presented to amend this bill in order to reduce unfunded costs on municipalities and ensure the protection of individual property rights. Thank you for your time and consideration.