



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 2003

H.P. 1489

House of Representatives, March 2, 2022

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

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on February 28, 2022. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Speaker FECTEAU of Biddeford.
Cosponsored by Senator HICKMAN of Kennebec and
Representative: ARATA of New Gloucester.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the Commission To Increase Housing Opportunities in Maine by Studying
4 Zoning and Land Use Restrictions published its final report in December 2021 and the
5 information within that report indicates an urgent need to address the availability of
6 affordable housing in Maine; and

7 **Whereas,** the recommendations within that report are essential to addressing the
8 availability of affordable housing in Maine; and

9 **Whereas,** the provisions in this legislation are based upon the recommendations in
10 that report; and

11 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
12 the meaning of the Constitution of Maine and require the following legislation as
13 immediately necessary for the preservation of the public peace, health and safety; now,
14 therefore,

15 **Be it enacted by the People of the State of Maine as follows:**

16 **Sec. 1. 5 MRSA §4581-A, sub-§3, ¶B,** as amended by PL 2021, c. 366, §10 and
17 c. 476, §3, is further amended to read:

18 B. Discriminate in the granting of financial assistance, or in the terms, conditions or
19 privileges relating to obtaining or the use of any financial assistance, against any
20 applicant because of race or color, sex, sexual orientation or gender identity, physical
21 or mental disability, religion, ancestry, national origin, familial status or any previous
22 actions seeking and receiving an order of protection under Title 19-A, section 4007; ~~or~~

23 **Sec. 2. 5 MRSA §4581-A, sub-§4,** as enacted by PL 2011, c. 613, §11 and affected
24 by §29, is amended to read:

25 **4. Receipt of public assistance.** For any person furnishing rental premises or public
26 accommodations to refuse to rent or impose different terms of tenancy to any individual
27 who is a recipient of federal, state or local public assistance, including medical assistance
28 and housing subsidies, primarily because of the individual's status as recipient; or

29 **Sec. 3. 5 MRSA §4581-A, sub-§5** is enacted to read:

30 **5. Housing development.** For any municipality or government entity to restrict the
31 construction or development of housing accommodations in any area based upon criteria
32 that refers to the character of a location, the overcrowding of land or the undue
33 concentration of the population. For the purposes of this subsection, the following terms
34 have the following meanings.

35 A. "Character of a location" means the unique characteristics of a municipality or
36 specific area within a municipality or other political subdivision.

37 B. "Concentration of the population" means the density of the population within a
38 municipality or specific area within a municipality or other political subdivision being
39 too high.

1 C. "Overcrowding of land" means the density of residential dwellings or other
2 development in a municipality or specific area within a municipality or other political
3 subdivision being too high.

4 **Sec. 4. 5 MRSA §12004-B, sub-§11** is enacted to read:

5 **11.**

6 Municipal Housing Development Permit Expenses Only 30-A MRSA
7 Review Board §4364-E

8 **Sec. 5. 30-A MRSA §4360, sub-§3**, as amended by PL 2007, c. 77, §§1 and 2 and
9 c. 155, §1 and affected by c. 466, Pt. B, §§20 and 21, is further amended to read:

10 **3. Ordinance requirements.** A municipality may adopt a rate of growth ordinance
11 only if:

12 A. The ordinance is consistent with section 4314, subsection 3; and

13 ~~B. The ordinance sets the number of building or development permits for new~~
14 ~~residential dwellings, not including permits for affordable housing, at 105% or more~~
15 ~~of the mean number of permits issued for new residential dwellings within the~~
16 ~~municipality during the 10 years immediately prior to the year in which the number is~~
17 ~~calculated. The mean is determined by adding together the total number of permits~~
18 ~~issued, excluding permits issued for affordable housing, for new residential dwellings~~
19 ~~for each year in the prior 10 years and then dividing by 10;~~

20 ~~C. In addition to the permits established pursuant to paragraph B, the ordinance sets~~
21 ~~the number of building or development permits for affordable housing at no less than~~
22 ~~10% of the number of permits set in the ordinance pursuant to paragraph B; and~~

23 ~~D. The number of building or development permits for new any kind of residential~~
24 ~~dwellings, including but not limited to building or development permits for affordable~~
25 ~~housing, allowed under the ordinance is recalculated every 3 years not restricted.~~

26 **Sec. 6. 30-A MRSA §4360, sub-§4** is enacted to read:

27 **4. Growth caps prohibited.** A municipality may not adopt an ordinance that caps the
28 number of building or development permits each year for any kind of residential dwellings,
29 including but not limited to building or development permits for affordable housing.

30 **Sec. 7. 30-A MRSA §4364** is enacted to read:

31 **§4364. Technical assistance to municipalities related to zoning and land use**
32 **ordinances**

33 The Department of Economic and Community Development, referred to in this section
34 as "the department," shall make technical assistance for the purposes of developing and
35 implementing zoning ordinances and land use ordinances available to municipalities in
36 accordance with this section.

37 **1. Technical assistance program.** The department shall develop a program to provide
38 technical assistance to municipalities for the purposes of developing and implementing
39 zoning ordinances and land use ordinances in accordance with this chapter, including but
40 not limited to:

1 A. Ensuring that zoning ordinances and land use ordinances developed by
2 municipalities conform with state and federal laws; and

3 B. Assisting in the formal review of municipal building and development permits.

4 **2. Grant program.** The department shall develop a program to provide grants from
5 the Municipal Planning Assistance Grant and Incentive Program Fund established under
6 subsection 3 to municipalities for the purposes of contracting for services and hiring staff
7 to help administer municipal responsibilities under this chapter. The department shall adopt
8 rules outlining the application process and criteria for a municipality to receive a grant
9 under this subsection. Approved uses of grants issued under this subsection include but are
10 not limited to the following:

11 A. Contracting for the services of a regional planning organization or other private
12 entity for assistance in the development and implementation of zoning ordinances and
13 land use ordinances under this chapter; and

14 B. Hiring municipal employees to oversee or assist in the development and
15 implementation of zoning ordinances and land use ordinances under this chapter.

16 **3. Municipal Planning Assistance Grant and Incentive Program Fund.** The
17 Municipal Planning Assistance Grant and Incentive Program Fund is established as an
18 ongoing, nonlapsing General Fund program account within the department. The fund
19 receives funds appropriated by the Legislature for the purposes of providing grants under
20 subsection 2 and funding any staffing positions in the department necessary to administer
21 this section.

22 **4. Rules.** The department shall adopt rules to administer this section. Rules adopted
23 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,
24 subchapter 2-A.

25 **Sec. 8. 30-A MRSA §4364-A** is enacted to read:

26 **§4364-A. Municipal incentive program**

27 The Department of Economic and Community Development, referred to in this section
28 as "the department," shall develop a program to incentivize review of municipal zoning
29 ordinances and land use ordinances. A municipality may participate in the program for up
30 to 3 years.

31 **1. Municipal incentives.** The department shall provide a grant of up to \$25,000 to a
32 municipality for each year the municipality participates in the program. To be eligible for
33 a grant under the program, a municipality must commit to:

34 A. In the first year, establishing a working group to review how the municipality's
35 zoning ordinances and land use ordinances may impact the availability of housing in
36 the municipality. A municipality may satisfy the requirements of this paragraph by
37 creating a joint working group with one or more other municipalities;

38 B. In the 2nd year, adopting or amending the municipality's zoning ordinances and
39 land use ordinances to promote the availability of housing in the municipality, based
40 upon the recommendations of the working group described in paragraph A, as
41 determined by the department; and

1 C. In the 3rd year, providing information to the department about current or
2 prospective housing developments, or permits issued for the construction of housing,
3 that resulted from the zoning ordinances or land use ordinances the municipality
4 adopted or amended under paragraph B.

5 **2. Rules.** The department shall adopt rules to administer this section. Rules adopted
6 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
7 subchapter 2-A.

8 **Sec. 9. 30-A MRSA §4364-B** is enacted to read:

9 **§4364-B. Affordable housing density**

10 For an affordable housing development approved on or after April 20, 2022, a
11 municipality shall apply density requirements in accordance with this section.

12 **1. Definition.** For the purposes of this section, "affordable housing development"
13 means:

14 A. For rental housing, a development in which a household with an income at 80% of
15 the local area median income can afford a majority of the units without spending more
16 than 30% of the household's monthly income on housing costs; and

17 B. For owned housing, a development in which a household with an income at 120%
18 of the local area median income can afford a majority of the units without spending
19 more than 30% of the household's monthly income on housing costs.

20 **2. Density requirements.** A municipality shall allow an affordable housing
21 development to have a dwelling unit density of at least 2 1/2 times the density that is
22 otherwise allowed in the zone where the affordable housing development is located and
23 may not require more than 2 off-street parking spaces for every 3 units.

24 **3. Long-term affordability.** Before approving an affordable housing development, a
25 municipality shall require that the person proposing the affordable housing development
26 has agreed to ensure that for at least 30 years:

27 A. For rental housing, occupancy of the development will remain limited to households
28 at or below 80% of the local area median income and, for owned housing, occupancy
29 of the development will remain limited to households at or below 120% of the local
30 area median income; and

31 B. A unit will not be rented to a person for less than a 30-day period.

32 **4. Rules.** The Department of Economic and Community Development shall adopt
33 rules to administer and enforce this section. The rules must include criteria for a
34 municipality to use in calculating local area median income and housing costs. Rules
35 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
36 375, subchapter 2-A.

37 **Sec. 10. 30-A MRSA §4364-C** is enacted to read:

38 **§4364-C. Residential zones, generally; up to 4 dwelling units permitted**

39 Notwithstanding any provision of law to the contrary, for any zone in which housing
40 is permitted, a municipality shall permit structures with up to 4 dwelling units.

1 For any zone in which housing is permitted, municipal ordinances must comply with
2 the following conditions.

3 **1. Dimensional and setback requirements.** Municipal ordinances may not establish
4 dimensional size requirements or setback distances for multifamily housing structures that
5 are greater than dimensional or setback requirements for single-family housing structures.

6 **2. Water and wastewater.** Municipal ordinances must provide that the owner of a
7 housing structure must provide written verification to the municipality that the structure is
8 connected to adequate water and wastewater services before the municipality may certify
9 the structure for occupancy. Written verification under this subsection must include:

10 A. If a housing structure is connected to the municipal sewer system, proof of adequate
11 service to support any additional flow created by the structure and proof of payment
12 for the connection to the municipal sewer system;

13 B. If a housing structure is connected to a septic system, proof of adequate sewage
14 disposal for subsurface wastewater. The septic system must be verified as adequate by
15 a local plumbing inspector under section 4221. Plans for subsurface wastewater
16 disposal must be prepared by a licensed site evaluator in accordance with subsurface
17 wastewater disposal rules adopted under Title 22, section 42;

18 C. If a housing structure is connected to a public water system, the volume and supply
19 of water required for the structure; and

20 D. If a housing structure is connected to a well, proof of access to potable water. Any
21 tests of an existing well or proposed well must indicate that the water supply is potable
22 and acceptable for domestic use.

23 **3. Municipal implementation.** In adopting an ordinance, a municipality may:

24 A. Establish an application and permitting process for housing structures;

25 B. Impose fines for violations of building, zoning and utility requirements for housing
26 structures; and

27 C. Establish alternative criteria that are less restrictive than the requirements of
28 subsection 2 for the approval of a housing structure only in circumstances in which the
29 municipality would be able to provide a variance under section 4353, subsection 4,
30 4-A, 4-B or 4-C.

31 **4. Shoreland zoning.** Municipal ordinances must require that housing structures
32 comply with minimum shoreland zoning requirements set by the Department of
33 Environmental Protection under Title 38, chapter 3.

34 **5. Implementation.** A municipality is not required to implement the requirements of
35 this section until April 20, 2023.

36 **Sec. 11. 30-A MRS §4364-D** is enacted to read:

37 **§4364-D. Accessory dwelling units**

38 **1. Use permitted.** A municipality shall allow an accessory dwelling unit to be located
39 on the same lot as a single-family dwelling unit in any zone in which housing is permitted.
40 For the purposes of this section, "accessory dwelling unit" has the same meaning as in
41 section 4301, subsection 1-C.

- 1 **2. Restrictions.** An accessory dwelling unit may be constructed only:
2 A. Within an existing structure on the lot;
3 B. Attached to or sharing a wall with a single-family dwelling unit; or
4 C. As a new structure on the lot for the primary purpose of creating an accessory
5 dwelling unit.

6 This subsection does not restrict the construction or permitting of accessory dwelling units
7 constructed and certified for occupancy prior to April 20, 2023.

8 **3. Zoning.** With respect to accessory dwelling units, municipal zoning ordinances
9 must comply with the following conditions:

10 A. At least one accessory dwelling unit must be allowed on any lot where a single-
11 family dwelling unit is the primary structure;

12 B. A lot where a single-family dwelling unit is the primary structure and an accessory
13 dwelling unit has been constructed must be zoned as single-family;

14 C. A municipality shall exempt an accessory dwelling unit from any density
15 requirements or calculations related to the zone in which the accessory dwelling unit is
16 constructed;

17 D. For an accessory dwelling unit located within the same structure as a single-family
18 dwelling unit, the setback requirements and dimensional requirements must be the
19 same as the setback requirements and dimensional requirements of the single-family
20 dwelling unit;

21 E. An accessory dwelling unit may not be subject to any additional parking
22 requirements beyond the parking requirements of the single-family dwelling unit on
23 the lot where the accessory dwelling unit is located;

24 F. An accessory dwelling unit must comply with minimum shoreland zoning
25 requirements set by the Department of Environmental Protection under Title 38,
26 chapter 3;

27 G. An accessory dwelling unit must meet the minimum size for a dwelling unit set by
28 the Maine Uniform Building Code, adopted by the Technical Building Codes and
29 Standards Board under Title 10, section 9722; and

30 H. An accessory dwelling unit may not be rented to a person for a period of less than
31 30 days. This paragraph does not apply to an accessory dwelling unit constructed or
32 permitted prior to April 20, 2022.

33 **4. Water and wastewater.** The owner of an accessory dwelling unit must provide
34 written verification to the municipality that the accessory dwelling unit is connected to
35 adequate water and wastewater services before the municipality may certify the accessory
36 dwelling unit for occupancy. Written verification under this subsection must include:

37 A. If an accessory dwelling unit is connected to the municipal sewer system, proof of
38 adequate service to support any additional flow created by the accessory dwelling unit
39 and proof of payment for the connection to the municipal sewer system;

40 B. If an accessory dwelling unit is connected to a septic system, proof of adequate
41 sewage disposal for subsurface wastewater. The septic system must be verified as

1 adequate by a local plumbing inspector under section 4221. Plans for subsurface
2 wastewater disposal must be prepared by a licensed site evaluator in accordance with
3 subsurface wastewater disposal rules adopted under Title 22, section 42;

4 C. If an accessory dwelling unit is connected to a public water system, the volume and
5 supply of water required for the accessory dwelling unit; and

6 D. If an accessory dwelling unit is connected to a well, proof of access to potable
7 water. Any tests of an existing well or proposed well must indicate that the water supply
8 is potable and acceptable for domestic use.

9 **5. Municipal implementation.** In adopting an ordinance under this section, a
10 municipality may:

11 A. Establish an application and permitting process for accessory dwelling units;

12 B. Impose fines for violations of building, zoning and utility requirements for
13 accessory dwelling units; and

14 C. Establish alternative criteria that are less restrictive than the requirements of
15 subsection 3, paragraph C, D, E, F or G or subsection 4 for the approval of an accessory
16 dwelling unit only in circumstances in which the municipality would be able to provide
17 a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

18 **6. Implementation.** A municipality is not required to implement the requirements of
19 this section until April 20, 2023.

20 **Sec. 12. 30-A MRSA §4364-E** is enacted to read:

21 **§4364-E. Municipal Housing Development Permit Review Board**

22 The Municipal Housing Development Permit Review Board, established in Title 5,
23 section 12004-I, subsection 30-C and referred to in this section as "the board," is
24 responsible for the review of municipal housing development permit decisions.

25 **1. Organization.** The board consists of 7 members appointed by the Governor for
26 terms of 5 years. A member may continue to serve on the board after the end of the
27 member's term until the member's replacement is designated. In making appointments
28 under this subsection, the Governor shall make 2 appointments based upon
29 recommendations from the President of the Senate and 2 appointments based upon
30 recommendations from the Speaker of the House of Representatives. After all members
31 have been appointed, the board shall convene an initial meeting to elect a chair by majority
32 vote. If a vacancy occurs on the board, the Governor may appoint a replacement to serve
33 the remainder of the term.

34 **2. Meetings.** The chair shall convene meetings of the board as necessary. A majority
35 of the board's members constitutes a quorum. The chair shall preside at all meetings of the
36 board and is the official spokesperson of the board.

37 **3. Review of municipal decisions.** A person that has received a final decision from a
38 municipality denying an application for a housing project may file a complaint to the board
39 requesting review of that decision. Upon receipt of a complaint, the board shall set a time
40 and place to convene and hold a hearing. The board shall give written notice of the hearing
41 at least 20 days in advance of the hearing to the person that submitted the complaint and
42 the municipality that denied the application. During the hearing, the board shall invite the

1 person that submitted the complaint and representatives from the municipality to provide
2 testimony regarding the project under review. After the hearing, the board shall issue an
3 opinion determining whether the project should have been approved. The board shall issue
4 the opinion in writing to the person that submitted the complaint and to the municipality.
5 If the board determines that a project should have been approved, the municipality that
6 denied the project shall approve the project. A determination issued under this subsection
7 is a final agency action as defined in Title 5, section 8002, subsection 4.

8 **4. Staff.** The chair may hire one full-time staff person to assist the board in performing
9 its duties under this section. The primary responsibilities of that staff person include, but
10 are not limited to, performing administrative tasks and conducting research.

11 **Sec. 13. 30-A MRSA c. 206, sub-c. 7** is enacted to read:

12 **SUBCHAPTER 7**

13 **PRIORITY DEVELOPMENT ZONES**

14 **§5250-U. Priority development zones required**

15 A municipality shall designate an area within the municipality as a priority
16 development zone. A priority development zone must be located in an area that has
17 significant potential for housing development and is located near community resources, as
18 determined by the Department of Economic and Community Development. A priority
19 development zone must comply with the requirements of this section and any rules adopted
20 under subsection 3.

21 **1. Definitions.** For the purposes of this section, the following terms have the following
22 meanings.

23 A. "Community resources" means services available to the community within a
24 municipality, including but not limited to transportation, schools, recreational
25 opportunities and any other services provided by the municipality. "Community
26 resources" also includes business and employment opportunities within the
27 municipality.

28 B. "Priority development zone" means a zone in which owned or rented multifamily
29 housing composed of both market rate units and units that meet the definition of
30 "affordable housing" under section 4301, subsection 1 is permitted at a specified
31 density that is greater than the density allowed in other zones within the municipality.

32 **2. Review.** Prior to adopting an ordinance designating a priority development zone, a
33 municipality shall submit a draft ordinance for review to the Department of Economic and
34 Community Development. Upon receipt of a draft ordinance, the department shall conduct
35 a review to ensure compliance with this section and any applicable rules adopted under
36 subsection 3.

37 **3. Rules.** The Department of Economic and Community Development shall adopt
38 rules to administer the requirements of this section. Rules adopted under this subsection
39 must include but are not limited to:

- 1 A. Criteria to evaluate whether an area has significant potential for housing
- 2 development;
- 3 B. Criteria to evaluate whether an area is located near community resources;
- 4 C. Minimum density requirements for an area to qualify as a priority development
- 5 zone; and
- 6 D. Minimum criteria to evaluate whether an ordinance incentivizes the development
- 7 of multifamily housing within a priority development zone, including but not limited
- 8 to establishing reduced parking requirements.

9 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
 10 chapter 375, subchapter 2-A.

11 4. Application; compliance. A municipality is not required to comply with the
 12 requirements of this section until 2 years following the adoption of rules under subsection
 13 3.

14 **Sec. 14. Initial appointments; staggered terms.** Notwithstanding the Maine
 15 Revised Statutes, Title 30-A, section 4364-E, subsection 1, with regard to the initial
 16 appointments to the Municipal Housing Development Permit Review Board, the Governor
 17 shall appoint 2 members for a term of one year, 2 members for a term of 3 years and 3
 18 members for a term of 5 years.

19 **Sec. 15. Appropriations and allocations.** The following appropriations and
 20 allocations are made.

21 **ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF**
 22 **Municipal Housing Development Permit Review Board N414**

23 Initiative: Provides ongoing funds for one Planning and Research Assistant position to
 24 provide assistance to the Municipal Housing Development Permit Review Board including
 25 performing administrative tasks and conducting research.

26 GENERAL FUND	2021-22	2022-23
27 POSITIONS - LEGISLATIVE COUNT	0.000	1.000
28 Personal Services	\$0	\$72,262
29 All Other	\$0	\$7,500
30		
31 GENERAL FUND TOTAL	\$0	\$79,762

32 **Municipal Land Use and Zoning Ordinances Review Incentive Program N412**

33 Initiative: Provides ongoing funds for one Public Service Coordinator I position to
 34 implement a municipal land use and zoning ordinances review incentive program and to
 35 provide technical assistance to municipalities.

36 GENERAL FUND	2021-22	2022-23
37 POSITIONS - LEGISLATIVE COUNT	0.000	1.000
38 Personal Services	\$0	\$82,260
39 All Other	\$0	\$7,500
40		
41 GENERAL FUND TOTAL	\$0	\$89,760

- 1 1. Amends the fair housing provisions of the Maine Human Rights Act to define the
2 terms "character of a location," "overcrowding of land" and "concentration of the
3 population" and to prohibit municipalities and government entities from using these criteria
4 to restrict the construction or development of housing accommodations in any area;
- 5 2. Establishes the Municipal Housing Development Permit Review Board, which is
6 responsible for the review of municipal housing development permit decisions;
- 7 3. Prohibits municipalities from adopting any ordinance that caps the number of
8 building or development permits each year for any kind of residential dwellings;
- 9 4. Requires the Department of Economic and Community Development to develop a
10 program to provide technical assistance to municipalities for the purposes of developing
11 and implementing zoning and land use ordinances;
- 12 5. Requires the Department of Economic and Community Development to implement
13 a program to provide grants to municipalities for the purposes of contracting for services
14 and hiring staff to help administer municipal responsibilities in developing and
15 implementing zoning and land use ordinances and appropriates \$1,294,680 for that
16 program in fiscal year 2022-23;
- 17 6. Requires the Department of Economic and Community Development to create an
18 incentive program that a municipality may participate in for up to 3 years and receive grants
19 of up to \$25,000 per year for fulfilling certain requirements related to reviewing how its
20 zoning and land use ordinances may impact the availability of housing;
- 21 7. Defines "affordable housing development," requires municipalities to allow
22 affordable housing developments to be built at certain densities and sets certain criteria to
23 ensure that an affordable housing development remains affordable for at least 30 years;
- 24 8. Requires, for any zone in which housing is permitted, that a municipality permit
25 structures with up to 4 dwelling units and creates general requirements for municipal
26 ordinances governing residential zones;
- 27 9. Beginning April 20, 2023, requires municipalities to allow the construction of
28 accessory dwelling units and sets out specific requirements for the permitting and
29 construction of accessory dwelling units; and
- 30 10. Requires that a municipality designate an area within the municipality as a priority
31 development zone, which is defined as a zone in which multifamily housing is permitted at
32 a greater density, and requires the priority development zone to be located in an area that
33 has significant potential for housing development and is located near community resources.
34 Municipalities are not required to designate a priority development zone until 2 years
35 following adoption of rules by the Department of Economic and Community Development.