



# LEGISLATIVE BULLETIN

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## Preemption of Home Rule is Community Theft

Pierre-Joseph Proudhon made a meme worthy controversial statement in his “What Is Property?” query, arguing that private property is a form of theft because it allows individuals to exploit the labor and resources of others without contributing directly. He believed that the ability to profit from property without working or contributing to society was a form of exploitation and theft. Critics, such as the private property rights theorists, argue that private property is essential for economic freedom and individual autonomy.

This legislative session, however, it is easy to apply both the proponents’ and opponents’ arguments to Proudhon’s claim to the actions of the Legislature, who through the consistent erosion of the constitutional provisions of home rule, eagerly embrace exploiting the labor and resources of municipal government without contributing directly to the work, needs, or challenges in any way for the benefit of enabling feelings of accomplishment. More problematic is their willingness to do so claiming property rights over community rights and voices, largely via offmic discussions.

What follows is a smattering of the work proposed to be bestowed upon municipal officials by the Housing and Economic Development Committee this week as they pivoted to language reviews, reconsiderations and public performances for the benefit of social media posts. To characterize the committee’s recent activity as a convergence of municipal preemption and private equity influence, framed by an urgency to address housing challenges, would be a polite understatement.

**Growth Management.** The final work session on the competing bills seeking to amend the Growth Management Act—LD 1751 and LD 1940—revealed the influence of those shaping both the committee’s direction and the future of policy governing growth management, state oversight, and local community development. The amended versions of the two bills reflect starkly different origins: one developed in collaboration with planning practitioners, the other advanced by proponents of a uniform planning approach,

already possible, that overlooks the contextual factors and historical evolution of local governance and shoves a single approach toward planning onto all communities.

The committee’s approach to this work session appeared to reflect a predetermined outcome, masked by a carefully staged public performance. Committee chairs restricted participation to only the co-sponsors of LD 1940, repeatedly denying requests to hear from the Maine Office of Community Affairs and the Maine Association of Planners—despite their clear relevance in distinguishing the key differences between the two bills.

In a particularly telling moment, the sponsor of LD 1751, who was attending a medical appointment, joined remotely and requested that a knowledgeable individual present in the room be allowed to speak on her behalf regarding the amended language. That request was also denied.

The committee then moved swiftly to vote both bills—LD 1751 and LD 1940—out of committee as “ought to pass as amended,” despite the fact that the two bills were in clear conflict. The only motion for reconsideration came on LD 1751, with Representatives Malon (Biddeford), Yusef

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## Home Rule Isn’t Child’s Play

As described in the May 16 edition of the *Legislative Bulletin*, LD 1482, *An Act to Increase Access to Child Care for Maine Families*, sponsored by Speaker Fecteau (Biddeford), requires municipalities to allow childcare facilities within areas zoned for residential uses, despite several communities having already passed ordinances prohibiting such potentially incompatible land uses.

Since the Department of Health and Human Services oversees the licensing of childcare facilities, the bill was referred to the Health and Human Services (HHS) Committee, as opposed to Housing and Economic Development, which is the committee that traditionally vets land-use

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(Portland), and Julia (Waterville) reversing their positions to support LD 1940 (co-sponsored by the committee chairs) and to oppose LD 1751.

**Building Family Housing.** The cherry on the pro-nonresident-developer cupcake this week was the discourse during the final work session on LD 1829, *An Act to Build Housing for Maine Families and Attract Workers to Maine Businesses by Amending the Laws Governing Municipal Land Use Decisions*, sponsored by Speaker Fecteau (Biddeford) and now named, *An Act to Build Housing for Maine Families and Attract Workers to Maine Businesses by Amending the Laws Governing Housing Density*. While amended to remove the provision that sought to conflate the roles of two branches of government by establishing a statewide board to hear appeals of local planning board decisions on housing developments, the unanimously passed bill is a significant mandate on municipal government and a slap in the face to the work that

communities just accomplished.

Because it was unanimously passed, LD 1829 will go on the consent calendar unless the mandate preamble is applied. Putting the problematic and significant preemptions aside, both the committee and the sponsor seemed to diminish the impact of needing to adopt ordinances all over again, because making additional adjustments would result in a mere “update,” suggesting that costs would be discounted although the process used to amend and “update” ordinances are the same.

More egregiously, the sponsor and supporters—including former legislators who provided text message testimony to the same committee through the sponsor—sought amendments to municipal ordinances, required to be amended under the recently enacted provisions from the notorious LD 2003, also sponsored by Speaker Fecteau, that they did not like. To add insult to injury, the text message testimony was provided after denying members of the public an opportunity to provide

information on the two bills discussed just previously. The amended version of the bill is truly nothing more than a value judgement on communities that certain representatives do not live in supported by those who desire to interrupt the protections the adopted ordinances provide.

While the list is not exhaustive, the amended version of LD 1829 introduces extensive municipal preemptions and requirements, including but not limited to: (1) barring municipalities from applying National Fire Protection Association standards to accessory dwelling units (ADUs), even though single-family homes remain subject to them; (2) including units attached to multi-unit structures, shifting from a definition based on expansion to one of reclassification; (3) requiring municipalities to permit additional floors on affordable dwellings, regardless of whether local fire departments have the equipment to reach those floors; (4) mandating subdivisions of up to four units per lot (served by water and sewer) without review, exempting the first two units from lot coverage calculations, and capping minimum lot sizes and setbacks in growth areas; (5) mandating training for planning boards while simultaneously removing their authority to review certain development proposals; (6) prohibiting municipalities from requiring ADUs to be on owner-occupied properties—compromising a key safeguard against short-term rental conversions and second-home dominance and restricting local ability to regulate rental durations for ADUs; and (7) requiring needed ordinance amendments to be completed by July 1, 2027.

Despite the public hearing testimony from the State Fire Marshal highlighting a viable collective path to

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## **To Quote Mariah Carey...“It’s Time!”**

With the Legislature’s focus on a June 18 adjournment date, bills are quickly moving through the engrossment and enactment processes. As a result, this will be the last *Legislative Bulletin* of the 2025 session. While we understand this is tremendously upsetting news, please do not fret. We will continue to post an updated LD List on the website every Friday until the end of the session, detailing all bills of municipal interest with their latest dispositions.

Additionally, over the next several weeks MMA staff will be communicating with town and city leaders via

action alerts providing updates on key initiatives of municipal importance. These email alerts will also include a word or two encouraging municipal officials to reach out to House and Senate members to inform them of how their decisions impact the communities they represent. Your ongoing conversations with state leaders are a vital part of MMA’s advocacy efforts.

Thank you for your ongoing support. Please look to the July edition of the *Maine Town & City* for a comprehensive recap of the session, including a summary of all recently enacted legislation.

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## Preemption of Home Rule is Community Theft .....cont'd

adoption of a Maine residential sprinkler standard that balances cost and safety, enabling general contractors to install systems that protect residents and firefighters alike, the committee failed to meaningfully address fire safety concerns. Whether by omission or indifference, the result undermines both public safety and the operational capacity of local fire services.

It is important to note that mandates enacted without adherence to constitutional requirements—specifically, the failure to fund 90% of the actual cost or to override that funding requirement with a two-thirds vote of both legislative chambers—are, by definition, voluntary for municipalities to implement. Despite this, municipal officials often feel compelled to comply with such mandates, even when the Legislature has not met its legal

or fiscal obligations.

If mutual respect between state and local government cannot be demonstrated this session, municipalities may need to reevaluate their automatic acceptance of newly enacted laws following adjournment. Compliance should not be assumed when the process itself lacks transparency and funding.

Municipal officials are strongly encouraged to meet directly with their local legislators—face-to-face—if they have concerns about the bills discussed in this article or to make phone calls. Written testimony and emails are too often overlooked, while public comment is frequently minimized. It is time to raise the volume and increase the pressure. A clear, united response from local leaders may be the only way to cut through the fog of disengagement and restore accountability.

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## Home Rule Isn't Child's Play.....cont'd

bills. During a work session held last Thursday, the HHS committee voted unanimously in support of an amended version of LD 1482.

Sadly, the amendments to the bill do not address municipal concerns regarding the unintended consequences that result when land use and zoning is determined by a one-size-fits all state statute, rather than via ordinances developed and adopted by the community's residents, which are at times informed by a state certified comprehensive plan. Also falling by the wayside were concerns that the bill's preemption of home rule authority could increase the costs of providing municipal services, including managing the public relations issues that can occur when incompatible land uses are authorized to collocate. Adding fuel

to the fire, while a preliminary fiscal impact statement provides \$30,000 for department system upgrades, no allowance is made for technical or financial assistance to municipalities that will now be required to amend comprehensive plans and land use ordinances.

With a unanimous committee report, it is unlikely that a floor debate will occur, and this bill will be enacted under the hammer.

However, municipal officials who are troubled by the growing number of proposals seeking to erode local decision-making authority should contact members of the House and Senate to ensure the municipal perspective on this issue is understood by all legislators and not only those serving on committees of jurisdiction.

## RG Is Moving On...

It is with mixed emotions that the advocacy team announces that Rebecca Graham, Senior Legislative Advocate, will end her eight-year career with MMA on June 25 to join the Maine State Police as Director of Policy, FOAA and Legislative Affairs. The advocacy team, as well as the greater MMA family, will miss her sense of humor, dedication to the association and members, hard work, and highly entertaining and informative contributions to the *Legislative Bulletin*.

While she may be leaving MMA, Rebecca's municipal roots run deep, as she will continue to serve on the Edgecomb Planning Board. Please join us in wishing RG the best of luck with her new adventure.

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