



# LEGISLATIVE BULLETIN

A publication of the Maine Municipal Association • Vol. XLV No. 21 • JUNE 9, 2023

## Sunk Cost Bias: Housing and LD 1706

This week, the attempt to fix and clarify some provisions of last year's LD 2003 affordable housing and accessory dwelling unit preemptions on local planning ordinances was introduced on the floor of the House and Senate, which, without any discussion, initially supported an amended version of the bill. LD 1706, *An Act to Clarify Statewide Laws Regarding Affordable Housing and Accessory Dwelling Units*, sponsored by Rep. Marc Malon of Biddeford, was sent to the chambers with three divided reports that varied only in the level of respect for the testimony of municipal officials, code enforcement officers, and economic development professionals, all of whom live and breathe housing policy on a regular basis, and their requested needs.

Only one of the amended versions honored and understood the needs of municipalities of all sizes. Unfortunately, it was one of the two minority reports, neither of which were advanced. All versions were printed with the emergency preamble, requiring a two-thirds vote from both bodies to enable the provisions in the bill to become effective law upon Governor Mills' signature.

The bill will be before both chambers in the coming weeks for final enactment.

The original LD 2003 bill, enacted in the 130<sup>th</sup> Legislature without the mandate preamble, thus requiring the state to reimburse 90% of the costs, requires municipalities to comply with the new law by July 1, 2023. However, without honoring that constitutional requirement to date, municipal compliance is voluntary. While the original deadline looms, and many communities either have existing ordinances that have been amended or have started the significant effort towards compliance, no funds for efforts communities have already shouldered to meet next month's deadline have been received.

All the amended versions of LD 1706 include some form of delay to the implementation deadline, but each take wildly different paths to determining who needs the

delay, and who does not, in some cases arbitrarily. The majority amendment, Committee Amendment A, provides municipalities with a council form of government a six-month delay for compliance until January 1, 2024, and town meeting communities with a delayed deadline until July 1, 2024.

Despite the overwhelming municipal testimony to the contrary asking for a delay to make the goals achievable under the original bill, some members of the Housing Committee insist that communities operating with volunteer councils and planning boards can draft the new

*(continued on page 2)*

## Last Bulletin for 2023

With nearly all legislative committees expected to complete their work this week, the advocacy team's focus will now turn to chamber debates. This is the final stage of the process, as members of the House and Senate will convene daily to discuss committee reports and decide the fate of several hundred bills. Because the pace of this phase is unpredictable, MMA will use action alerts to keep members apprised of the Legislature's response to bills of municipal significance. Please keep an eye on your email inbox for updates and calls to connect with legislators.

Depending on the legislature's adjournment date, currently rumored to be late-June, a complete recap of the session including descriptions of the newly enacted laws and details on summer and fall working groups and task forces, as well as carryover bills will be published in either the July or August/September edition of the *Maine Town & City* magazine.

Thank you for your ongoing support of MMA's advocacy efforts. Your participation in the state-level decision making process via public hearings, the submission of testimony, and through conversations with legislators has been invaluable to MMA staff.

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## Sunk Cost Bias: Housing and LD 1706...cont'd

ordinances and amend old ones for compliance in only five meetings. Somewhat ironically, it has taken more than a year for the state with full-time staff to draft the rules and start to offer Q&A sessions to municipalities and it took the committee three months to provide a divided report for the legislature to debate.

Perhaps municipalities should take over state government.

Irony aside, there are important reasons why the delay in the majority version is an empty gesture for many municipalities. The majority report, Committee Amendment A, provides only a six-month delay for communities with a council form of government to achieve the work assuming that all of those communities have planning staff capacity. DECD staff have advised municipalities that they will need to re-open the rule-making process yet again if any version of LD 1706 is enacted. Department rulemaking has a 90 day statutorily required process for adoption, leaving those communities with three months following the final rule adoption, assuming a perfect world, to make any necessary changes

to the work they have accomplished to date. The proposed delay ignores municipally and statutorily required public engagement processes, and the need for legal review.

While the twelve-month delay for town meeting communities may seem more reasonable, this too has been shortened by the rulemaking reality, and the required technical support that will not be in place until fall – a full 18 months after it was needed to meet the original July 2023 deadline. If the unflinching entrenched views on the deadline were not absurd enough, stir in the constitutionally mandated funding for 90% of the costs to municipalities to take on the duties.

A shortened deadline out of step with the range of town meeting dates for a majority of communities means special town meetings and extra expenses for state government and towns that could be avoided entirely by a reasonable extension.

Which begs the question: what on earth is the problem with listening to municipal practitioners?

A delay in deadline for implementation doesn't stop a town from enacting what they already had the power to enact, and many already did, albeit efforts that may need to be amended to comply with newly enacted statutes.

A delay in deadlines will not produce more construction professionals to build units that only the highly capitalized can afford in the current market, nor will it change the number of available rental units. All communities have a form of in-law apartment provisions, and paths to requesting variances for additional units, and many have liberal ADU ordinances in place already, but few have been constructed. Ordinances are not like baseball fields, in that

if they exist magically construction follows. They do generate work for attorneys, though.

Supplemental income to help afford taxes is another popular myth as to why some legislators are driving deadlines, even though the date doesn't preclude adopting local rules now if they have the capacity. Individuals struggling to afford property taxes have no disposable income to assume construction debt in a market with the highest construction costs since statehood. Municipalities would certainly benefit from additional property values such improvements would generate, however.

Individuals decide where they want to live by placing demands on housing inventories in certain communities and available resources and building capital flows to those locations. Evidence of this, and how incentives adopted locally to promote more affordable housing are easily ignored, can be seen in a recent luxury condominium project in Portland that paid \$1.2 million to the city's housing trust fund to avoid complying with an inclusionary zone requirement rather than make any unit in the development "affordable." Without any caveat at all for providing affordable housing via ADUs in statute, luxury development is the true beneficiary of both speed and ire towards municipal volunteers.

*Here's the municipal reality.* Without the constitutionally required funding and support for the mandated activities in LD 2003, the entire process is voluntary for municipalities to accomplish. Yet, even without it, there is no shortage of communities that have been cranking out work to comply with the current law. They have filled meetings held by DECD, sent pleas for assistance to the department, and asked for real world advice on how to

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A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to:

*Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. 207-623-8428. Website: [www.memun.org](http://www.memun.org)

**Editorial Staff:** Kate Dufour, Rebecca Graham, Rebecca Lambert and Laura Ellis of Advocacy & Communications.

**Layout:** Sue Bourdon, Advocacy & Communications



apply oddly constructed language in land use ordinances, that in many cases can't be answered by the department.

If municipal officials were "obstinate" or simply "afraid of change," terms being kicked around under the dome, why are they trying to comply with voluntary state law and spending thousands on legal fees to interpret vague statute? Maybe because they have been struggling far more intimately with housing and homelessness far longer than the Legislature and looking for all ways to address it.

Regardless, they deserve a modicum of respect and acceptance that their request for functional delay is founded in a reality seeking to achieve the goals, not stop it.

To that end, the Association has asked our members to reach out to their legislators and ask them to defeat enactment of Committee Amendment A and advance and support Committee Amendment B, offered by Rep. Richard Campbell of Orrington. Report B brings in all the requested amendments in the majority report but extends the deadline for compliance for all municipalities to July 1, 2025. This provides the department with the time necessary to redraft rules, establish appropriate technical support, roll out the grant program for regional planning support, and saves communities and the state money by allowing communities to use their annual town meetings to pass ordinance changes with adequate time for legal review and ability to educate residents without controversy.

Interested officials can find the names and contact information of their legislators here via an alphabetical town listing: <https://legislature.maine.gov/senate/find-your-state-senator/9392> and here: <https://legislature.maine.gov/house/house/MemberProfiles/ListAlphaTown>.

## Tax Acquired Property Update

On Tuesday, the Taxation Committee voted unanimously to support an amended version of LD 101, *An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property*, sponsored by Rep. Chad Perkins of Dover-Foxcroft. As noted in the June 2 edition of the bulletin, the bill presents a vehicle for addressing the U.S. Supreme Court's unanimous decision on *Tyler v. Hennepin County, Minnesota*, providing a former owner a right to a portion of the proceeds from the sale of tax acquired property, when excess revenues are generated.

As amended by the committee, and with feedback from advocates for low-income individuals and seniors, MMA and municipal attorneys, the bill heavily amends an existing statute (MRS Title 36, §943-C) that provides an alternative approach for disposing of tax acquired property previously owned by qualifying senior homeowners.

In summary, the amendment to LD 101 requires municipalities to send notice to the former owner, regardless of age, income, or assets, expressing the intent to sell tax acquired property and of the former owner's right to require the municipality to sell the property according to the process prescribed in statute. Under the provisions of the amended bill, if the former owner submits a written demand within 90 days of the receiving notice of the intent to sell, the property must be listed with a licensed real estate broker at a price that anticipates the property selling within six months and sold via quitclaim deed at the highest price possible.

Once sold, the municipality is

required to return excess revenue to the former owner, which is calculated as the proceeds from the sale of the property less allowable deductions. The allowable deductions include: (1) taxes owed; (2) property taxes that would have been assessed on the property during the period following foreclosure, when in possession of the municipality; (3) cost of the lien and foreclosure process, including but not limited to, reasonable attorney's fees; (4) unpaid sewer, water or other utility charges and fees imposed by the municipality; (5) all accrued interest; (6) fees, including property listing and real estate broker's fees; and (7) any other expense incurred by the municipality in selling or maintaining the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed and reasonable attorney's fees.

The amendment also provides that if the municipality is unable to list or sell the property, or if the former owner fails to require the process established in statutes to be used, then the municipality may sell the property in a manner authorized by the legislative body and return the excess proceeds, if any, to the former owner.

At the request of a committee member, the amended version of LD 101 also includes the creation of a working group, represented by interested parties, including MMA, which is directed to discuss other unresolved issues, with a particular focus on the interests of mortgagees.

The amended version of the bill will soon be considered by members of the House and Senate.



**MAINE MUNICIPAL**  
ASSOCIATION SINCE 1936

60 Community Drive  
Augusta, ME 04330

## Clarification – Property Tax Stabilization Act

In the June 2 edition of the bulletin, MMA reported on the Taxation Committee’s divided report on LD 130, *An Act to Eliminate Senior Citizen Property Tax Stabilization and Expand the Homestead Property Tax Exemption*, sponsored by Sen. Richard Bennett of Oxford County. LD 130 is the vehicle the committee selected to advance amendments to the Senior Property Tax Stabilization Act.

Although the title of the bill suggests that an increased homestead exemption is in the mix, that provision has been struck from both the majority and minority amendments. For that reason, it is highly probable that when the amendment is finalized and printed, the bill’s title will be amended as well.

As a reminder, the majority report sunsets the current stabilization program after the April 1, 2023 property

tax year, and in its place advances amendments to the state funded and administered Senior Property Tax Deferral and Property Tax Fairness Credit income tax programs to target greater relief to Maine homeowners and renters most in need.

Although the minority report retains the stabilization program, it removes the annual application requirement. Additionally, the minority report includes a provision requiring participants to reenroll in the program if any future improvements to a property, such as the addition of a garage, increases the assessed value by more than \$20,000, or if the municipality asks the property owner to reapply.

Please keep an eye out for emailed updates on the progression of LD 130 and other bills of municipal interest.