LETTER OF CONCERN

Date: **July 28, 2022**

To: Senators and Representatives of the 130th Legislature **(per Distribution List Below)**

Regarding: Pub Law 2021, Ch. 672 – *(LD 2003, An Act To Increase Housing Opportunities In Maine)*

We are an association of officials and residents of Maine municipalities deeply concerned about the legality and long-term negative impacts of LD2003 (***Pub Law 2021, Ch. 672***). The purpose of this letter is to share our concerns with current State representation, County District Attorneys, and regional planning and legislative advocacy partners in the hopes of a viable solution on this law: A mutual agreement by all stakeholders that maintains local control while encouraging affordable housing that is within the capabilities, capacity, and comprehensive planning of diverse political subdivisions throughout the State.

We offer the following for your consideration:

LD2003, ***"An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions",*** now public law (*Pub Law 2021, Ch. 672*), has already imposed cost burdens on municipalities, including, but not limited to:

- The administrative costs comparing functional local designs, Comprehensive Plans, and existing legislation with a new law that includes significant omissions, ambiguities, and legal conflicts,
- The cost of establishing town meetings to initiate new protection measures or moratoria against the pending negative impacts of this law on a majority of our low-tax-base communities throughout Maine; and
- Expenditures seeking legal counsel to proactively understand this law.

LD2003 (***Pub Law 2021, Ch. 672***) is inconsistent with the legal construct of this state, interfering with local decision-making and legal municipal obligations to provide competent and reasonable:

- Growth and rate of growth management,
- Land use zoning,
- Administration and enforcement of subdivision law,
- Regulation of tiny homes, manufactured housing, and mobile home parks

These functions assure sustainability, minimize environmental impact, and are local and municipal in character.

This law discounts to the fact that most communities in Maine *DO NOT* have cohesive community services, labor demand, walkable communities, public transportation, or public parking, that most communities in Maine *DO NOT* have law enforcement services to police right-of-way and parking infringements, and that it is a well-publicized fact that most communities in Maine have *struggled with summer and winter maintenance of their own town ways for generations*. Unilaterally increasing density on all lots in all communities by a factor of 2.5 to 4.0 with an indifference to limited infrastructure, resources, capability, or capacity, while also having no plan for funding the long-term negative impacts of this mandate is dangerous.

This letter is also provided pursuant to the inherent, inalienable, and fundamental rights of the citizens of Maine Towns and their right to self-government and their application of Home Rule under the authority recognized as belonging to the people of the Towns by all relevant state and federal laws including, but not limited to the following:

The Declaration of Independence of the United States of America, which declares that governments are instituted to secure peoples' rights, and that government derives its just powers from the consent of the governed.
Article I, §1 of the Constitution of the State of Maine. Natural rights. "All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness".
Article I, §2 of the Constitution of the State of Maine. "All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and indefeasible right to institute government and to alter, reform, or totally change the same when their safety and happiness require it."
Article VIII, Part Second of the Constitution of the State of Maine, which establishes Home Rule: "The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character."

The following articles of the State Constitution outlay the constitutional obligation, authority, and duty of the Legislature, regarding the creation of reasonable law, the creation of laws imposing fiscal burdens on Mainers, and how to resolve when unreasonable and conflicting laws that are repugnant to the State Constitution have been created:

ARTICLE IV Part Third Section 1 of the Constitution of the State of Maine, which states, The Legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.

Article X, Section 3 of the Constitution of the State of Maine, which states, Laws now in force continue until repealed. All laws now in force in this State, and not repugnant to this Constitution, shall remain, and be in force, until altered or repealed by the Legislature, or shall expire by their own limitation.

Article IX section 21 of the Constitution of the State of Maine, which states, for the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the vote of 2/3 of all members elected to each House. This section must be liberally construed.

The following existing statutes relating to the attempted integration of conflicting enactments in LD2003 (***Pub Law 2021, Ch. 672***), as well as pre-existing local authority and obligation within the legislative construct include, but are not limited to:

M.R.S.A. 1 §91. Definitions - Conflicting enactments. "Conflicting enactments" means multiple enactments, amendments, repeals, reallocations or reenactments, or any combination of these actions, that affect the same statutory unit and that have been adopted by multiple Acts passed within one legislative session or within a regular legislative session and any special sessions preceding the next regular legislative session that do not refer to each other.

M.R.S.A 30-A §3001 of Title 30-A of the Maine Revised Statutes, which implements Home Rule and grants municipalities all powers necessary to protect the health, safety, and welfare of the residents of the Town where those powers have been conferred on the towns by the Legislature or not otherwise limited.

M.R.S.A 30-A §4323. Local authority for growth management *(Home Rule undermined)* "Through the exercise of its Home Rule authority, subject to the express limitations and requirements of this subchapter, every municipality may:

1. Planning. Plan for its future development and growth.
2. Growth management program. Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with the procedures, goals and guidelines established in this subchapter

M.R.S.A. 30-A §4324. Responsibility for growth management *(Growth Management distorted)*

1. Growth management program. Each municipality or multi-municipal region may prepare a growth management program in accordance with this section or may amend its existing comprehensive plan and existing land use ordinances to comply with the procedures, goals and guidelines in this subchapter.

And of other Sections, abbreviated as follows:

M.R.S.A 30-A §4326 1G, H, and K *(Growth Management distorted)*
M.R.S.A 30-A §4326 3-A A2, B, C, D, G*, J, K, L *(Growth Management distorted)*

M.R.S.A 30-A §4351 *(Home Rule undermined)*

M.R.S.A 30-A §4352 *(Zoning distorted)*

M.R.S.A 30-A §4353 *(Zoning distorted)*

M.R.S.A 30-A §4358 §3 *(Regulation of Mobile Home Parks undermined and distorted)*

M.R.S.A 30-A §4403 *(Subdivision review undermined and distorted)*

This new law will inevitably reduce safety and happiness of the citizenry by increasing civil disputes, appeals, and lawsuits within our communities, as a municipality's ability to protect watersheds, manage and direct phosphorous loads, protect natural resources & farmland, abate nuisances (*e.g. parking, traffic, noise, septic malfunctions, etc.*), and appropriately direct growth have been distorted or overridden altogether. There appears to be no clear plan or adequate funding in place by the State to mitigate the negative repercussions of this incomplete law, which will likely include substantive unfunded mandates created though regulatory capture that will also require expanding municipal services such as road infrastructure, law enforcement, and school budgeting.

It is evident that this law LD2003 (***Pub Law 2021, Ch. 672***) was intended to be overtly reformative and will result in substantive financial impacts, yet it does not stand on its own merits as the structural integrity needed to be a reasonable law has been left to regulatory capture through legislation by an unelected agency. It is also misaligned with the legislative construct (*approximately 21 existing statutes*) to the point that the scopes of work of political subdivisions within Maine and their relationship with the State have been substantively compromised. A number of State agencies as well as regional planning and legislative advocacy groups over the past five months have also either expressed deep concerns, admittedly do not understand the law, or have not even begun to evaluate the legal conflicts and long-term negative impacts.

We respectfully ask that the following items be considered:

1.) Judicial discretion and interpretation are needed to reconcile and give effect to the many conflicting statutes and sections of Maine law and this new law,
2.) The State may have established the required mandate preamble but does not have the fiscal resources to cover the statutorily required 90% of unintended negative impacts on many of our smaller low-tax-base municipalities. The $100,000.00 earmarked will currently cover approximately ***$200*** in local impact, per political subdivision, and the full fiscal impact through creating definition has not yet occurred,
3.) Without defining *''affirmatively furthering'', ''density requirements'', ''accessory dwelling unit'', and ''single-family dwelling unit''* within the law, it does not have the structural integrity to stand on its own merits, and risks substantive fiscal impacts that were not created by the legislature *(regulatory capture through unelected agency rule-making*). The <u>legislature</u> must create reasonable law and account for fiscal impacts.
4.) This new law severely impedes the existing legislative construct, and will likely result in negative impacts on our environment, municipal solvency, tax burdens, and individual constitutional rights.
5.) Given the number of agencies and planning and legislative advocacy groups that either do not understand this law, do not comprehend its long-term negative impacts on the natural resources they are required to protect, or are aware of the disparity in the law and have deep concerns, it is competent and reasonable that small local governments will likely incur substantive fiscal damages and find it significantly more difficult to attempt to manage.

6.) Injunction (*to repeal or serve pause to amend the law by including proper definitions created BY the legislature (not regulatory capture), adequate funding (to account for actual definition and a complete law), and reasonable proportionality (e.g. an exemption for communities under **15,000** in population*)), local moratoria, or testing constitutionality in the courts are all viable, competent, reasonable, and warranted directions to take on this matter.

7.) **Pub Law 2021, Ch. 672** (LD2003) is construed to be an unreasonable, conflicting, and disproportionate law as currently written, and requires amendment or repeal through the legislature, or testing of constitutionality in the courts.

The signatory parties to this letter, all concerned residents, municipal officials, land use planners, are provided hereafter on multiple, separate sheets.

Thank you for your attention. For response, please contact:

Thomas R. Carabine

Denmark Planning Board Chair

TCarabine@aol.com

207-452-2748

The municipalities listed on the attached signature sheets include:

XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXX
XXXXXXXXXXXX	XXXXXXX	XXXXXXXXXXXXX
XXXXXXXXXXXXXXXX	XXXXXXXXX	XXXXX

(TO BE COMPLETED UPON RETURN OF ALL SIGNATURE SHEETS)

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