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**The Housing Opportunity Program: A Report to the Governor, Joint Select
Committee on Housing, and the Joint Standing Committee on Innovation,
Development, Economic Advancement and Business**

P.L. 2021, ch. 635, Sec. U-2.

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ECONOMIC & COMMUNITY
DEVELOPMENT

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Introduction

In April of 2022, Governor Janet Mills signed into law PL 2021, ch. 672 (LD 2003), a landmark piece of housing legislation requiring municipalities to update and create land use and zoning ordinances to increase housing development in Maine. Broadly, LD 2003 requires municipalities to allow additional density for affordable developments in certain areas; multiple dwelling units on lots designated for residential use; and one accessory dwelling unit located on the same lot as a single-family dwelling unit.¹ Furthermore, municipalities are required to ensure that local ordinances “affirmatively further” the Maine Human Rights Act and the Fair Housing Act.² Finally, the legislation required the Department of Economic and Community Development (the Department) and Maine State Housing Authority to establish housing goals to increase the affordability and availability of all types of housing.³

To support implementation of LD 2003 and the creation of statewide housing goals, the Housing Opportunity Program was created within the Department. Two coordinators were hired in November 2022 to administer the program and provide technical and financial assistance to municipalities implementing LD 2003.

The 130th Legislature required the Department to submit a report to the Governor and the joint standing committees having jurisdiction over economic development and housing matters about the Housing Opportunity Program.⁴ In addition, the Department must provide any recommendations for statutory changes to improve the program and delivery of services to municipalities. The following report outlines the work and priorities of the Housing Opportunity Program and provides recommendations on future legislation based on extensive stakeholder feedback.

Rulemaking

P.L. 2021, ch. 672 gave the Department rulemaking authority to adopt rules to assist municipalities with LD 2003 implementation.⁵ All rules related to this legislation are routine technical.⁶ The Department opened the proposed rule on February 8, 2023, for public comment, and held a public hearing on March 1, 2023. The Department received 78 comments from 30 commenters. The commenters included representatives from regional councils, municipal planning board members, code enforcement officials, and land use/municipal attorneys. The rule, codified at 19-100 C.M.R. ch. 5, was adopted by the Department on April 18, 2023.

In June of 2023, Governor Mills signed LD 1706, legislation which amended portions of LD 2003. This legislation amended LD 2003 for clarity and extended the implementation deadline for municipal compliance to January 1, 2024, for municipalities that adopt ordinances through

¹ 30-A M.R.S. §§ 4364 to 4364-B.

² 30-A M.R.S. § 4364-C(1).

³ 5 M.R.S. § 13056(9).

⁴ P.L. 2021, ch. 635, Sec. U-2.

⁵ 30-A M.R.S. §§ 4364(8), 4364-A(9), 4364-B(12).

⁶ 30-A M.R.S. §§ 4364(8), 4364-A(9), 4364-B(12).

town/city council and July 1, 2024, for municipalities that adopt ordinances through a town meeting.⁷

Following the enactment of LD 1706, the Department amended its rule to comply with the changes in LD 1706. The Department opened the rule for public comment on August 2, 2023. The comment period remained open until September 11, 2023. The Department did not receive comments on its proposed rule. The final rule became effective on October 1, 2023.

In addition, the Department created a new rule for its Housing Opportunity Grant Program. This rule outlines the procedures, criteria, and program review requirements governing the Housing Opportunity Program Grants. This rule became effective on April 18, 2023, and is codified at 19-100 C.M.R. ch. 4.

Financial Assistance

The 130th Legislature allocated funding to the Housing Opportunity Program to support municipalities with community housing planning and implementation projects.⁸ To assist municipalities with implementation of LD 2003 and to encourage housing development, the Department created three funding opportunities for municipalities and service providers working with municipalities.

Municipal Payments

The first funding opportunity provides up to \$10,000 dollars to each eligible municipality to assist with LD 2003 related expenses. Municipalities with and without zoning may request funding, but municipalities without zoning (or only shoreland zoning) must provide the Department land use documents and a letter explaining why funding is requested. Qualifying expenses for this funding include legal fees, public meetings costs, and staff and volunteer time. Municipalities may ask for reimbursement for already spent funds or apply for the funding prior to incurring expenses, with the expectation that any unspent funds be returned to the Department.

As of December 2023, over 50 municipalities have received funding to assist with LD 2003 expenses. As of the date of this report, the Department has not set a deadline for applying for municipal funding, anticipating that many municipalities will apply for funding assistance in the spring and summer of 2024.

Service Provider Grants

The second funding opportunity is grants to service providers to assist municipalities with initiatives to increase housing development. The Department opened the newly created grant program for service provider applications in June 2023. The Department received 13 applications. The Department awarded funding to all 13 service providers totaling over \$800,000 in awarded funds. Awarded service providers include regional councils, non-profit entities, and for-profit entities. Some of the awarded projects include LD 2003 educational forums, feasibility

⁷ P.L. 2023, ch. 192, Sec. 3.

⁸ 30-A M.R.S. § 13056-J(2).

studies for affordable housing, form-based code toolkits for municipal adoption, comprehensive plan guidance, and GIS mapping services.

The 13 service providers must provide the Department with an initial progress report on April 30, 2024, providing an update on the progress of the individual projects.

Municipal Grants

The final funding opportunity is a municipal grant program to assist municipalities with community housing planning and implementation projects. The Department anticipates opening this grant program for municipal applications in late January 2024 and contracting with grantee municipalities in early spring/late summer 2024.

Technical Assistance

The Housing Opportunity Program has prioritized outreach to municipalities, especially smaller municipalities, to ensure that municipalities are aware of LD 2003 and have the necessary tools to implement the law. As of December 2023, the Department has delivered 31 presentations on LD 2003. Most of the presentations have been to municipalities, either individual planning boards or regional groups of municipalities. The Department also has presented to other interested parties including community members, real estate groups, and non-profit entities.

In addition, the Department has hosted numerous in-person and online question and answer sessions to provide an opportunity for municipal officials, community members, planning board members, and developers to ask questions about the Housing Opportunity Program and LD 2003. As of December 2023, the Department has conducted 9 on-line sessions and 7 in-person sessions in 6 counties. The Department has also scheduled 9 additional in-person sessions in 9 different counties in January and February of 2024.

Statewide Housing Production Goals

In addition to establishing requirements for municipalities, P.L. 2021, ch. 672 also required the Department, in coordination with the Maine State Housing Authority, to establish statewide and regional housing production goals that increase the availability and affordability of all types of housing across the state.⁹

To begin this process, the Department, MaineHousing, and the Governor's Office of Policy Innovation and the Future commissioned a housing needs study and report to provide further analysis and technical assistance to address housing affordability and availability in Maine. The State of Maine Housing Production Needs Study analyzes Maine's housing needs to meet present demands, due to factors such as historical underproduction and recent population growth, and forecasts housing needs based on longer-term state demographic trends and economic and workforce projections through 2030.¹⁰ The report was created to help inform future planning by the state, legislature, and local officials to address housing needs in Maine.

⁹ P.L. 2021, ch. 672, Sec. 3.

¹⁰ State of Maine Housing Production Needs Study, MaineHousing, Governor's Office of Policy Innovation and the Future, Maine Department of Economic and Community Development, October 2023,

Using this report as a starting point, the Department, MaineHousing, and the Governor’s Office of Policy Innovation and the Future are in the process of establishing an advisory committee to advise on the housing goals. With the support of the advisory committee, the Department anticipates creating housing goals by summer 2024.

Department of Housing and Urban Development PRO Housing Grant

In the fall of 2023, the Department of Housing and Urban Development (HUD) opened a grant program, Pathways to Removing Obstacles to Housing (PRO Housing),¹¹ to help state and local governments remove barriers to affordable housing development. The Department applied for this grant funding in November 2023. In its application,¹² the Department proposed to create a new grant program for municipalities to increase the development of accessory dwelling units (ADUs). This proposed competitive grant program would provide funding to municipalities to (1) provide low-and moderate-income homeowners with pre-development and construction funding to build ADUs; and (2) contract with architectural and design entities to create ADU design types. The goal of Maine’s proposed project is to increase the number of ADUs across the state, especially for low-and moderate-income Maine homeowners by removing some of the financial and procedural barriers to starting and finishing an ADU project.

The Department is anticipating a response about the application from HUD early in 2024. If the Department were to receive funding, it anticipates starting this new project in the spring of 2024.

Maine Zoning Atlas

In the spring of 2023, the Housing Opportunity Program and the Governor’s Office of Policy Innovation and the Future were introduced to a land use and zoning mapping project started by a graduate student at the University of Southern Maine. This student’s project aimed to map zoning codes in portions of Cumberland County in an online, user-friendly map, with the goal of creating a statewide zoning map known as the Maine Zoning Atlas.¹³ This student’s work is a part of a broader, national effort, known as the National Zoning Atlas,¹⁴ to map zoning codes and land use ordinances across the county to (1) make land use and zoning information easier to understand and access; (2) increase public participation in land use decisions at the municipal level; (3) and better inform policy makers about regional and statewide land use trends.

The Maine Zoning Atlas is in the initial stages of collecting zoning data to inform the creation of a statewide atlas which would map zoning and land use ordinances across the state. Team members include representatives from the Governor’s Office of Policy Innovation and the Future; Maine Department of Economic and Community Development; Maine Department of Agriculture, Conservation and Forestry; and Southern Maine Planning and Development

https://mainehousing.org/docs/default-source/default-document-library/state-of-maine-housing-production-needs-study_full_final-v2.pdf.

¹¹ More information about the PRO Housing Grant can be found at https://www.hud.gov/program_offices/comm_planning/pro_housing.

¹² The Department’s application can be found at <https://www.maine.gov/decd/sites/maine.gov/decd/files/inline-files/DECD%20HUD%20Pro%20Housing%20Grant%20Application.pdf>.

¹³ More information about the Maine Zoning Atlas can be found at <https://www.zoningatlas.org/maine>.

¹⁴ More information about the National Zoning Atlas can be found at <https://www.zoningatlas.org/>.

Commission. The Maine Zoning Atlas anticipates kicking off this new project and recruiting volunteers in the new year.

Recommendations

As of January 1, 2024, municipalities that adopt ordinances through town/city council are required to update and create ordinances to comply with LD 2003 and LD 1706. The Department is aware of 20 municipalities thus far that have updated and created ordinances to comply with this deadline. The majority of municipalities, however, are still working on updates to comply with the second deadline of July 1, 2024.

At this point in time, the Department does not have widespread data on the impact of LD 2003 or the development occurring as a result of the legislation. However, the Department has received feedback relative to implementation from municipal officials, developers, planners, the legal community, and community members over the course of the year. The Department offers this stakeholder input and feedback for further reform of zoning laws in Maine to increase housing availability and affordability across the state. The Department does not take a position on any of these suggestions but wanted to highlight the significant number of external stakeholders that reached out to make these particular suggestions.

The most common suggestions the Department received from stakeholders to further reform zoning laws in Maine are:

- Establishing mandatory minimum lot size requirements, especially for designated growth areas, to increase the number of units permitted on a lot;
- Establishing mandatory municipal requirements to reduce restrictions on building accessory dwelling units including removal of owner-occupancy requirements, removal of family member occupancy requirements, elimination of burdensome permitting procedures, and maximum size requirements; and
- Establishing state enforcement procedures to ensure municipal compliance with LD 2003 and the state's forthcoming housing production goals.

Other suggestions received from stakeholders include:

- Funding and maintaining a statewide zoning atlas to map zoning and land use codes to better inform homeowners, developers, and policymakers about land use in Maine.
- Developing a statewide data system to obtain accurate building data from municipalities including building permits, demolition permits, and certificates of occupancy to better track the state's housing production goal progress;¹⁵
- Access to additional training and educational resources for code enforcement officials;
- Continued financial support to municipalities for comprehensive planning and land use planning to ensure that a municipality's growth areas reflect current trends and community views but encourage municipalities to maximize development in areas that can support additional housing units;

¹⁵ This recommendation was included in the 2023 State of Maine Housing Production Needs Study.

- Financial support for municipalities interested in updating outdated water and sewer infrastructure;
- Financial and educational support to increase development of ADUs, duplexes, and other LD 2003 allowed development; and
- Creation of a use category in state law for a property wholly used as a short-term rental (STR) into a separate category for property tax assessment purposes to reduce the impact on residential assessments and create a distinction between owner-occupied rental units and non-owner-occupied rental units.¹⁶

¹⁶ This recommendation was also recommended by the 130th Legislature’s Commission to Increase Housing Opportunities in Maine by Studying Land Use Regulations and Short-term Rentals, November 2022, page 15, <https://legislature.maine.gov/doc/9239>.