

# MAINE STATE LEGISLATURE

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MAINE STATE LEGISLATURE  
Augusta, Maine 04333

*Commission on Land Conservation and Economic Development*

February 15, 1988

President Pray  
Speaker Martin  
State House  
Augusta, ME 04333

Dear President Pray and Speaker Martin:

Maine is today faced with inexorable growth pressures extending up from the south, along the coast and into the western mountains. Even Aroostook County has not escaped the attention of speculative land dealers. Maine, its cities and towns must act together to plan for this growth; channelling its development and capturing its economic benefits for our citizens. At the same time, we must move to preserve those special elements of Maine life that make this state our own. Change is coming and we cannot stop it. However, with all of our concerted efforts, the new Maine of the 1990's will still be a home of which we can all be proud. We feel that there is no issue before the Legislature in this session which has such profound implications for the future of Maine and the well-being of its citizens.

The Commission on Land Conservation and Economic Development is pleased to submit its legislative recommendations to the Legislature pursuant to P.L. 1987, c.514. The Commission is recommending action on the four attached bills to address various aspects of the growth management problem in Maine.

The Commission recommends passage of AN ACT to Promote Orderly Economic Growth and Natural Resource Conservation as the central element in Maine's efforts to effectively manage

President Pray  
Speaker Martin  
2/15/88  
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growth. While individual members differ over specific components of the proposal, the Commission is unanimous in its recommendations to:

1. Establish state goals and guidelines for local planning;
2. Provide a substantial increase in state assistance to municipalities in support of their planning, economic development and growth management activities, and;
3. Provide for state coordination and review of local planning efforts.

The Commission also submits three pieces of tax legislation. The first, a minority report, would place a tax on the capital gains resulting from speculative land transactions. The second, a unanimous report, would provide municipalities with the option of a local tax on the transfer of real estate with an exemption for the first \$77,000 on primary residences. The third, a unanimous report, is recommended for referral to the Joint Standing Committee on Taxation as a vehicle for needed revisions to the Farm and Open Space Tax.

The Commission's final report will be printed and distributed in the near future.

  
Sen. Donald Twitchell, Chair

Sincerely,

  
Rep. Michael Michaud, Chair

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Glidden  
2/10/88

COMMISSION ON LAND CONSERVATION AND ECONOMIC DEVELOPMENT

Status: Final draft; majority (6) favors - minority (3) opposes  
(no minority bill) (2/9/88) Pursuant to PL 1987, c.514

AN ACT to Promote Orderly Economic Growth and  
Natural Resource Conservation

Sec. 1. 1 MRSA §302 is amended to read:

§302 Construction and effect of repealing and amending Acts.

The repeal of an Act, resolve or municipal ordinance passed after the 4th day of March, 1870 does not revive any statute or ordinance in force before the Act, resolve or ordinance took effect. The repeal or amendment of an Act or ordinance does not affect any punishment, penalty or forfeiture incurred before the repeal or amendment takes effect, or any action or proceeding pending at the time of the repeal or amendment, for an offense committed or for recovery of a penalty or forfeiture incurred under the Act or ordinance repealed or amended. Actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby. For the purposes of this section, a proceeding shall include but not be limited to petitions or applications for licenses or permits required by law at the time of their filing. For the purposes of this section and regardless of any other action taken by the reviewing authority, an application for a license or permit required by law at the time of its filing shall be considered to be a pending proceeding when the reviewing authority has conducted at least one substantive review of the application and not before. For the purposes of this section, a substantive review of an application for a license or permit required by law at the time of application shall consist of a review of that application to determine whether it complies with the review criteria and other applicable requirements of law.

Sec. 2. 5 MRSA 12004, sub§5, ¶A, sub¶4 is enacted to read:

(4) Board of Plan Appeals	Legislative	30 MRSA §4960-D
	Per diem	

Sec. 3. 5 MRSA 12004, sub§10, ¶A, sub¶23-C is enacted to read:

(23-C) Planning Advisory Council	expenses only	30 MRSA §4960-D
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Sec. 4. 30 MRSA, chapter 239, subchapter VI, title is amended to read:

Subchapter VI  
Planning and ~~Zoning~~ Land Use Regulation

Sec. 5. 30 MRSA, section 4960 through 4960-F are enacted to read:

§4960 Short title

This subchapter shall be known and may be cited as the "Comprehensive Planning and Land Use Regulation Act".

§4960-A Statement of Findings, Purpose & Goals

1. Legislative findings. The Legislature finds that:

A. The natural resources of the state, including its forests, agricultural lands, wetlands, waters, fisheries, wildlife, minerals and other related resources, are the underpinnings of the state's economy;

B. These same natural resources and their traditional patterns of development have defined the quality of life which the citizens of the State treasure and seek to protect;

C. The pace of land speculation and development has accelerated and outstripped the capacity of the State and municipalities to manage this growth under existing state and local laws;

D. This unplanned growth threatens the integrity of the State's natural resource base, the ability of local and state government to provide necessary public services, the affordability of decent housing, the long-term economic viability of the state's economy and the quality of life presently enjoyed by Maine's citizens;

E. Continued application of the current reactive, case-by-case system of land use regulation is detrimental to the public health, safety and welfare;

F. The State must take appropriate measures to protect and manage certain areas and natural resources which are of statewide significance and concern; and

G. The State has a vital interest in ensuring that a comprehensive system of comprehensive land use planning and development management is established as quickly as

possible which, while building on the strong foundation of local land use planning, also protects unique aspects of the state's heritage and environment, encourages appropriate uses of the state's natural resources, guides sound economic development and ensures prosperity for Maine citizens in all regions of the state.

2. Legislative purpose. The Legislature declares that it is the purpose of this Act to:

A. Establish, in each municipality of the State, local comprehensive planning and land use management according to the schedule contained in this subchapter and consistent with the goals and policies of the state;

B. Provide municipalities with the tools, powers and resources, in addition to those afforded under Home Rule, to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

C. Ensure, through state technical and financial assistance and oversight, that local land use ordinances, tools and policies are based on local comprehensive plans that are prospective and inclusive of all matters determined by the Legislature to be in the best interests of the State;

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development;

E. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests; and

F. Encourage the widest possible involvement by the citizens of the State in all aspects of the planning and state oversight process, in order to ensure that the plans developed by municipalities and reviewed by the State have had the benefit of citizen input.

3. State goals. The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the state, it is in the best interests of the state to achieve the following goals:

- A. To encourage orderly growth and development in appropriate areas of each community, while protecting the state's rural character, making efficient use of public services and preventing development sprawl;
- B. To promote an economic climate which increases high quality job opportunities and overall economic well-being;
- C. To provide affordable, decent housing opportunities for all Maine citizens;
- D. To protect the quality of the state's water resources, including lakes, aquifers, estuaries, rivers and coastal areas;
- E. To protect the state's other critical natural resources, including without limitation, wetlands, great ponds, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas, and unique natural areas;
- F. To safeguard the state's marine resources industry infrastructure, including the state's ports and harbors, from development which threatens that infrastructure;
- G. To safeguard the state's agricultural and forest resources from development which threatens those resources;
- H. To preserve the state's historic and archeological resources; and
- I. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens including access to surface waters.

4. Guidelines. To assist municipalities and state agencies in interpreting the goals established in this section, the following guidelines are established.

A. To encourage orderly growth and development and to promote an economic climate which increases high-quality job opportunities and overall economic well-being, each municipality shall, at a minimum, identify and designate two basic types of geographic areas: growth areas and rural areas.

(1) Growth areas are those areas suitable for orderly residential, commercial and industrial development in an amount sufficient to accommodate planned development forecast over the next ten years. Each municipality shall:

- (a) establish standards describing the requirements for such developments;
- (b) establish permitting procedures which enable development proposals that satisfy these requirements to be reviewed in a timely manner;
- (c) ensure, through capital investment planning, that needed public services are available within the growth area but do not encourage development beyond the growth area; and
- (d) prevent inappropriate development in natural hazard areas including flood plains and areas of high erosion.

(2) Rural areas are those where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall identify valuable lands in these categories and adopt land use policies and ordinances to discourage incompatible development and maintain these values. Such policies and ordinances may include, without limitation, density limits; cluster or special zoning; acquisition of land or development rights; performance standards; or other effective mechanisms.

B. To protect the quality of the state's water resources, each municipality shall inventory all surface and ground water resources located within its jurisdiction using information and methodologies established by the Bureau. Each municipality shall assess the vulnerability of these waters to degradation from development. Each municipality shall adopt policies and land use ordinances which protect and maintain the water quality of each water body pursuant to 38 MRSA §464 et seq., and allow the water quality to be improved over time where waters are currently below their classification or, in the judgment of the municipality, otherwise warrant improvement.

C. To protect the state's other critical natural resources, each municipality shall identify and protect the following: coastal and freshwater wetlands; high mountain areas; significant scenic vistas identified by the municipality; identified critical wildlife and plant habitat; heritage coastal areas identified in Title 5, §3316; coastal islands; sand dunes and shoreland zones. Each municipality may rely primarily on information provided by the Bureau or any other state agency or regional council with special expertise. Each municipality shall ensure that its land use policies and ordinances are consistent with the requirements of applicable state law regarding these

resources. This requirement shall not preclude any municipality from adopting protective ordinances more stringent than the applicable state law to protect these resources.

D. To protect the state's marine resources industry, each coastal municipality shall identify and adopt land use policies and ordinances to ensure the continued availability of those ports, harbors and related public and commercial infrastructure used by the marine resources industry within the municipality. Each municipality shall also seek to preserve public access to coastal waters necessary for shellfishing, worming and commercial mooring, docking and related parking facilities. Each municipality shall ensure that new development be compatible with uses related to the marine resources industry.

E. To protect the state's agricultural and forest industry, each municipality shall identify and adopt land use policies and ordinances to ensure the protection of agricultural and forest resources. Each municipality shall ensure that new development be compatible with uses related to the agricultural and forest industry.

F. To provide affordable, decent housing opportunities, each municipality shall identify the housing needs within the community, taking into account regional and other projections of housing needs. Each municipality shall ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community. Provisions for affordable housing may include, without limitation, government assisted housing, housing for low- and moderate-income families, manufactured housing, multi-family housing, and group and foster care facilities. The municipality is encouraged to seek creative approaches to assist in the development of affordable housing including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes, and increasing densities. The municipality shall seek a level of ten percent of new residential development meeting the definition of affordable housing price criteria;

G. To protect the state's historic and archeological resources, each municipality shall identify those resources of statewide, regional and local concern located within its jurisdiction. Resources of statewide significance shall be identified by the Bureau in cooperation with other appropriate agencies. Each municipality shall ensure that the value of these resources is recognized in the planning process and that protection is afforded to those resources

identified in the planning process as meriting such protection.

H. To protect the availability of outdoor recreation opportunities, each municipality shall implement land use policies and ordinances to protect the availability of and access to traditional outdoor recreation opportunities including, without limitation, hunting, boating, fishing, and hiking. Each municipality shall identify and seek to protect such high value, undeveloped shoreland and other areas as are identified in the local planning process as meriting such protection. Each municipality may rely primarily on information provided by the Bureau or any other state agency with special expertise.

5. Limitation on state rule-making authority. The provisions of this section shall not be construed to grant any separate regulatory authority to any state agency beyond that necessary to review municipal comprehensive plans for consistency with this subchapter.

#### §4960-B Definitions

As used in this subchapter, unless the context clearly indicates otherwise, the following terms have the following meanings:

1. Affordable housing. "Affordable housing" means decent, safe and sanitary dwellings, apartments or other living accommodations for households making 80% of the median household income as determined by the Department of Economic and Community Development.

2. Board. "Board" means the Board of Plan Appeals as established in section 4960-D.

3. Bureau. "Bureau" means the Bureau of Land Use Planning in the State Planning Office.

4. Coastal areas. "Coastal areas" means all municipalities and unorganized townships contiguous with tidal waters and all coastal islands. The inland boundary of the coastal area is the inland line of any coastal town line.

5. Comprehensive plan or comprehensive land use plan. "Comprehensive plan" or "comprehensive land use plan" means a document containing the components described in §4960-C, including the implementation program which is consistent with the goals and guidelines established by this subchapter.

6. Development. "Development" means a change in land use involving alteration of the land, water, vegetation or the addition or alteration of structures or other construction not naturally occurring.

7. Director. "Director" means the director of the Bureau of Land Use Planning within the State Planning Office.

8. Functionally water-dependent uses. "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal waters and which therefore cannot be located away from these waters. These uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site and uses which primarily provide general public access to marine or tidal waters.

9. Functionally land-dependent uses. "Functionally land-dependent uses" means those uses that require for their primary purposes location on settings having certain soils, climates and other site-specific attributes for the purposes of production of food and fiber and other natural products, or which require large expanses of suitable land, such as agriculture and forest enterprises, and which cannot be located on other lands due to the absence of the natural attributes required by the specific use. These uses include, but are not limited to, commercial forest and agriculture enterprises; mineral, sand and gravel extraction; and those facilities required for storage and processing of such products.

10. Implementation program. "Implementation program" means that component of a comprehensive plan specified in section 4960-C which includes the policies, procedures and ordinances or other land use regulations which carry out the purposes, and general policy statements of the comprehensive plan in a manner consistent with the goals and guidelines of this subchapter.

11. Land use ordinance. "Land use ordinance" means a rule or statute of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for such uses.

12. Local planning committee. "Local planning committee" means the committee established by a municipality or combination of municipalities which has the general responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the municipal legislative body.

13. Moratorium. "Moratorium" means a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers or delays development by withholding any authorization or approval necessary for development.

14. Municipal legislative body. "Municipal legislative body" means

- A. The town meeting in a town;
- B. The city council in a city; or
- C. That part of a municipal government that exercises legislative powers under a statute or charter.

15. Municipal reviewing authority. "Municipal reviewing authority" means the municipal planning board, agency or office, or if none, the municipal officers.

16. Person. "Person" means an individual, corporation, governmental agency, municipality trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

17. Regional council. "Regional Council" means a regional planning commission or a council or governments established under chapter 204-A.

18. Zoning. "Zoning" means a land use control device which segregates incompatible land uses into separate geographic zones or areas; within each zone controls are placed on the types of use and structure allowed, and more detailed standards, such as minimum setback and building bulk, may be included.

#### §4960-C Local Comprehensive Planning

There is established a program of local comprehensive planning to accomplish the goals of this subchapter.

1. Local Authority for Comprehensive Planning. Through exercise of its power and responsibility pursuant to the Constitution of Maine, Article VIII, Part 2, § 1, and subject

to the express limitations and requirements of this subchapter, each municipality shall:

- A. Plan for its future development and growth;
- B. Adopt and amend comprehensive plans including implementation programs consistent with the provisions of this subchapter; and
- C. Do all other things necessary to carry-out the purposes of this subchapter.

2. Local Responsibility for Comprehensive Plans.

A. Pursuant to the schedule established under this subchapter, each municipality shall prepare a comprehensive plan which is consistent with the goals, guidelines and other provisions of this subchapter, or shall amend its existing comprehensive plan and existing land use ordinances to conform with the requirements of this subchapter.

B. Submission of plan. Each municipality shall submit its proposed comprehensive plan or its proposed amended, existing comprehensive plan and existing land use ordinances, to the Bureau according to the schedule established by this subchapter.

C. Submission of amendments. Each municipality shall submit any amended comprehensive plan to the Bureau as provided by this subchapter.

3. Coordination of Municipal Planning Activities.

A. A municipality shall exercise its planning authority over the total land area within its jurisdiction.

B. Any combination of contiguous municipalities may conduct joint planning and regulatory programs to fulfill the responsibilities established under this subchapter upon formal adoption of an official comprehensive planning and enforcement agreement by the municipal legislative bodies involved. The municipalities shall agree:

(1) On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;

(2) On the manner of representation on any such joint land use body; and

(3) On the amount of contribution from each municipality for any costs incurred in the development of the plan and land use ordinances.

C. The agreement shall be in writing, approved in appropriate official action by the municipal legislative bodies and forwarded to the Bureau.

4. Comprehensive plan; components. A comprehensive plan shall, at a minimum, include the following components:

A. An analysis of economic and demographic data describing the municipality and the region within which it is located. The analysis shall include local and regional projections of growth in population and commercial and industrial activity forecast to occur over the next ten years;

B. An inventory and analysis, based on information provided by the Bureau, of natural resources within the municipality, including water resources, such as lakes, aquifers, estuaries, rivers and coastal areas, including islands; and other critical natural resources, such as wetlands, wildlife and fisheries habitat, sand dunes, shorelands and unique natural areas;

C. An inventory of land which is suitable for commercial forestry and agricultural use, based on soil types, or is in actual commercial forestry and agricultural uses;

D. An inventory of existing recreation, park, and open space areas within a municipality. This component shall include an assessment of the adequacy of existing facilities and areas;

E. An assessment of the existing transportation system including the locations, extent and capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities. This assessment shall be sufficient to allow the municipality to consider the impact of the transportation system on growth and development patterns within the municipality;

F. An inventory of residential housing stock including affordable housing such as, but not limited to, government assisted housing, housing for low and moderate income families, manufactured housing, multi-family housing, and group and foster care facilities;

G. Provisions for growth and development for a variety of activities including, without limitation, commercial and industrial development, water- and land-dependent uses, and residential development. Consistent with the goals and guidelines established by this subchapter and the municipality's implementation program, this component shall identify geographic areas suitable for each general type of development and sufficient in scope to accommodate a reasonable share of the increase in each type of development activity as anticipated in ¶A;

H. A capital investment plan which shall contain the following elements.

(1) An assessment of all public facilities and services, such as, but not limited to, roads, sewers, schools, parks and open space, fire and police;

(2) A plan for the replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet the growth and development provisions set forth in ¶G of this subsection. The capital investment plan shall include projections of when and where such facilities will be required; and

(3) An assessment of the anticipated costs for replacement, expansion, or construction of public facilities, an identification of revenue sources available to meet these costs, and recommendations for meeting costs required to implement the plan.

The capital investment plan shall be updated as necessary. The municipal reviewing authority established pursuant to §4956 shall develop and adopt a capital investment budget which is consistent with this component and which is updated biennially;

I. Provision for coordinating land uses with contiguous municipalities and other municipalities as appropriate, including the management of resources and facilities that extend beyond municipal boundaries such as rivers, aquifers, transportation facilities and others. This component shall demonstrate consistency with the comprehensive plans of contiguous municipalities and other municipalities as appropriate;

J. An implementation program that is consistent with the other components of the plan and that ensures that the goals and guidelines established by this subsection are

met. The implementation program may, without limitation, consist of land use ordinances, affordable housing strategies, public facilities investment, and land acquisition programs and any other approaches as are authorized by the Maine Constitution, Article VIII, part 2, §1 and section 1917 of this title; and

K. A description of how each of the state's goals and guidelines have been met by the comprehensive plan and its implementation program. For those municipalities in the coastal area, a comprehensive plan must also address the nine coastal management policies cited in 38 MRSA § 1801.

5. Monitoring and Revision. A municipality shall periodically review and revise its plan in a timely manner to account for changes caused by growth and development. At a minimum, a municipality shall update its comprehensive plan at least once every five years.

6. Preparation of Comprehensive Plan. The preparation of a comprehensive plan shall be conducted according to the following provisions in addition to any other that may be required by law.

A. A municipality or combination of municipalities shall designate and establish a local planning committee which shall have the general responsibility for the conduct of the comprehensive planning program including:

(1) Conduct of public hearings and any other methods to solicit and strongly encourage citizen input into the comprehensive planning process; and

(2) Preparation of the comprehensive plan, including the implementation program component, and recommendations to the municipal legislative body regarding the adoption of such plan, or amendment.

The municipal legislative body may designate any planning board or district established under section 4956 or a prior and repealed statute as the comprehensive planning committee. Planning boards established under repealed section 4952, subsection 1, shall continue to be governed by those provisions to the extent that those provisions do not conflict with the requirements of this subchapter and until they are superseded by municipal charter or ordinance.

B. In order to encourage citizen participation in the comprehensive planning process, comprehensive planning committees and municipalities are directed to adopt

comprehensive plans and land use ordinances only after soliciting and considering a broad range of public input. The intent of this paragraph is to provide for broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination, and consideration of and response to public comments.

C. A comprehensive plan will be considered to have been adopted when it has been accepted by the municipal legislative body of the municipality pursuant to the provisions of chapter 209.

D. The planning committee shall conduct all of its meetings in open, public session with prior notice posted in one or more conspicuous places designed to provide public notice. The planning committee shall hold at least one public hearing on its proposed comprehensive plan. Notice of any public hearing shall be published in a newspaper of general circulation in the municipality at least twice with the date of the first publication to be at least 30 days prior to the hearing. A copy of the proposed comprehensive plan shall be made available for public inspection at the municipal office or other convenient location with regular public hours at least 30 days prior to the hearing.

#### §4960-D State Role in Comprehensive Planning

There is established a program of comprehensive planning review to promote the preparation and implementation of local comprehensive plans and to provide technical and financial assistance to accomplish this purpose. The program shall also ensure that all local comprehensive plans and state agency activities are consistent with the state goals and guidelines established by this subchapter.

1. Review agency designated. There is created in the State Planning Office, the Bureau of Land Use Planning which is responsible for carrying out the provisions of this section and ensuring that the objectives of this subchapter are achieved.

2. Planning Advisory Council; established. There is established a Planning Advisory Council composed of 7 members. The Bureau shall consult with the Council on the development of all rules, standards and guidelines for the implementation of this subchapter.

A. Members of the Council shall be appointed by the Governor subject to review by the joint standing committee of the Legislature with jurisdiction over natural resources and to confirmation by the Legislature.

B. Members shall be selected on the basis of their knowledge of planning, local government, land conservation and land development.

C. Members shall serve for staggered 4-year terms. Initial members shall have terms as follows: 3 members for 2-year terms; 3 members for 3-year terms and 1 member for a 4-year term. A member may serve no more than 2 consecutive 4-year terms.

D. Members shall not be compensated but shall be reimbursed for all expenses directly related to their participation in Council business.

E. 4 members shall constitute a quorum for the conduct of business by the Council.

F. The Council shall elect a chair from amongst its members.

G. The Council shall report by January 1, 1990, and every two years thereafter to the Governor and the Legislature on any changes that may be required to accomplish the purposes of this subchapter.

3. Appeals Board; established. There is established a five member, independent Board of Plan Appeals to hear the appeal by any aggrieved party of a decision of the Bureau to approve or disapprove a comprehensive plan.

A. Members of the board shall be appointed by the Governor subject to review by the joint standing committee of the Legislature with jurisdiction over natural resources and to confirmation by the Legislature.

B. The members shall represent a broad geographical cross section of the state. At least 2 of the members shall have demonstrated expertise in local government and land use planning.

C. Members shall serve for staggered 4-year terms. initial members shall have terms as follows: 2 members for 2-year terms; 2 members for 3-year terms and 1 member for a 4-year term. A member may serve no more than 2 consecutive 4-year terms.

D. Members shall be compensated according to the provisions of Title 3, §2.

E. 3 members shall constitute a quorum for the conduct of business by the Board.

F. The Board shall elect a chair from amongst its members.

G. The Board shall adopt rules of practice and procedure for parties appearing before it, including, without limitation, rules designed to eliminate ex parte contacts with Board members.

#### §4960-E State Planning Review Program

1. Coordination; state agencies. Each state agency with regulatory or other authority affecting the goals established in this subchapter shall submit to the Bureau prior to January 1, 1990, a written report which addresses how each agency has incorporated the goals of this subchapter into its planned activities. This report shall be revised as necessary but in no case less than once every two years. After January 1, 1990, such agencies shall conduct their respective activities in a manner consistent with the goals established under this subchapter. Without limiting the application of this subsection to other state agencies, the following agencies shall comply with the provisions of this section:

- A. Department of Conservation;
- B. Department of Economic and Community Development;
- C. Department of Environmental Protection;
- D. Department of Food, Agriculture and Rural Resources;
- E. Department of Inland Fisheries and Wildlife;
- F. Department of Marine Resources;
- G. Department of Transportation;
- H. Finance Authority of Maine; and
- I. Maine State Housing Authority.

2. Standards for goal incorporation. The Bureau shall develop standards to assist towns in the incorporation of the state goals into local comprehensive plans and to guide the Bureau's review of local comprehensive plans and state agency activity plans. The Bureau shall adopt no later than July 1, 1989, the standards by rule and with the advice of the Planning Advisory Council. The Bureau shall base the standards on the state goals and the related guidelines contained in this subchapter.

3. Provision of natural resource and other planning information. The Bureau shall develop and make readily available to all municipalities natural resource and other planning information necessary for the preparation of local comprehensive plans. The Bureau shall make maximum use of existing information available from other state agencies including, without limitation, the Department of Conservation, the Department of Inland Fisheries and Wildlife, the Department

of Environmental Protection, the State Planning Office and the Department of Economic and Community Development. The Bureau may contract with regional councils to develop the necessary planning information at a regional level and with other state agencies as necessary to provide support for local planning efforts. By July 1, 1990, the Bureau shall have completed an inventory of the state's natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance.

4. Review of local comprehensive plans; schedule. Municipalities shall submit their comprehensive plans to the Bureau according to the following schedule:

A. Municipalities, which have experienced population growth of 10% or more since 1980 and which have total populations in excess of 500 persons, based on population estimates provided by the State Planning Office, by January 1, 1991;

B. Municipalities, which have experienced population growth of 5% or more since 1980, based on population estimates provided by the State Planning Office, by January 1, 1993; and

C. All other municipalities by January 1, 1996.

5. Review of local comprehensive plans. The Bureau shall review any comprehensive plan submitted to it for consistency with the goals and guidelines established in this subchapter.

A. The Bureau shall, with appropriate public notice, solicit comments on any comprehensive plan from regional and state agencies, from all municipalities contiguous to the municipality submitting a comprehensive plan and any interested parties. The comment period shall extend for 60 days after the Bureau's receipt of the proposed comprehensive plan.

B. Each regional council shall review and submit comments on the proposed comprehensive plan of any municipality within its defined planning region. The comments shall be submitted to the Bureau and shall contain an analysis of how the proposed plan addresses identified regional needs and whether the proposed plan is consistent with those of other municipalities which may be affected.

C. The Bureau shall provide ample opportunity for the municipality submitting a comprehensive plan to respond to and correct any identified deficiencies in the plan.

D. The Bureau shall approve or disapprove of the comprehensive plan no more than 180 days from the initial submittal of the plan to the Bureau.

E. In the event of disapproval, the Bureau shall issue findings specifically describing the deficiencies in the submitted plan and the recommended measures for remedying the deficiencies. The Bureau shall also establish, at the time of disapproval, a reasonable schedule, not to exceed 180 days in length after the date of initial disapproval, by which the municipality may submit a revised plan for final approval.

F. The municipality or any aggrieved party may appeal the final decision of the Bureau to the Board of Plan Appeals. Such appeal must be made within 30 days of the final Bureau decision. The Board of Plan Appeals shall hold a hearing on the appeal, shall make findings of fact and shall affirm or reverse the Bureau's decision. The Board shall render its decision within 90 days of receipt of the appeal. The municipality, appellant or Bureau may appeal the decision of the Board to Superior Court. Such appeal must be made within 30 days of the Board's decision.

G. Upon approval by the Bureau, unless on appeal such approval is reversed by the Board, the municipality shall be eligible for all benefits and incentives conditioned on adoption of an approved comprehensive plan pursuant to this subchapter.

6. Updates; amendment of local comprehensive plans. Each municipality shall submit any amended comprehensive plans, revised pursuant to this subchapter, including proposed amendments to the implementation program component of such a plan, to the Bureau for review and approval in the same manner as provided for review of new comprehensive plans. The Bureau may provide an expedited review procedure for those submissions which represent amendments to comprehensive plans approved by it after January 1, 1989.

7. Compliance. The Bureau shall adopt, for the municipality in question, a suitable comprehensive plan which satisfies the requirements of this subchapter when the following conditions are met:

A. The municipality has failed to submit a comprehensive plan in accordance with the provisions of this subchapter; or

B. The Bureau has disapproved a comprehensive plan and that decision has been affirmed by the Board.

The Bureau shall adopt such a plan within 180 days of the final decision of the Board of Plan Appeals unless the municipality appeals the decision of the Board of Appeals within 30 days to Superior Court. The municipality shall be responsible for the administration and enforcement of the plan. If a municipality fails to administer and enforce its comprehensive plan, the Bureau shall seek a finding from the Board of Plan Appeals that the municipality has failed to fulfill its responsibilities under this subchapter. Such a finding shall make the municipality ineligible for certain financial and technical assistance pursuant the provisions of section 4960-F.

8. Rulemaking authority. The Bureau is authorized to adopt rules necessary to carry out the purposes of this chapter subject to the provisions of Title 5, chapter 375, subchapter II.

9. Transition; savings. The application of existing comprehensive plans and land use ordinances in effect prior to the effective date of this subchapter is governed by the provisions of this subsection.

A. Any comprehensive plan adopted by a municipality before the effective date of this subchapter shall remain in effect until amended or repealed subject to the provisions of this subchapter. A plan adopted before the effective date of this subchapter and not approved according to this subchapter shall be without force after January 1, 1998, regardless of any outstanding appeal.

B. Any land use ordinance or other form of land use regulation adopted under a prior and repealed statute shall remain in effect until amended or repealed subject to the provisions of this section. Any property or use existing in violation of such ordinance or regulation is a nuisance. Any ordinance or land use regulation adopted before the effective date of this subchapter and not consistent with a comprehensive plan approved according to this subchapter shall be without force after January 1, 1998, regardless of any outstanding appeal.

C. Prior to the approval by the Bureau of a municipality's comprehensive plan, land use permitting decisions made by the municipality under comprehensive plans and land use ordinances in effect prior to the effective date of this subchapter or pursuant to other provisions of state law shall be consistent with the goals and guidelines established under this subchapter.

§4960-F State technical and financial assistance

There is established a program of technical and financial assistance and incentives to regional councils and municipalities to encourage and facilitate the adoption and implementation of comprehensive planning throughout the state. The program shall be administered by the Bureau.

1. Municipal planning assistance. The Bureau shall develop and administer a grants program to provide direct financial assistance to municipalities in the preparation of comprehensive plans pursuant to this subchapter. The Bureau shall establish provisions for matching municipal funds to conduct activities under this section. The maximum required municipal cost share may not exceed 25%. Such grants may be expended for any purpose directly related to the preparation of a municipal comprehensive plan including, without limitation, the conduct of surveys, inventories and other data-gathering activities, the hiring of planning and other technical staff, the retention of planning consultants, contracts with regional councils for planning and related services, and other related purposes. In order to provide sufficient economies of scale and to build planning capacity at the regional level, the Bureau shall establish a preference in the grants program for the utilization of services provided by regional councils.

2. Municipal technical assistance. The Bureau shall establish a program of technical assistance utilizing its own staff, the staff of other state agencies and the resources of regional councils to help municipalities in the development of comprehensive plans. No later than January 1, 1990, the Bureau shall develop a set of model land use ordinances and other mechanisms consistent with the goals and guidelines of this subchapter.

3. Enforcement assistance program. The Bureau shall administer a program of training and financial assistance to support full-time code enforcement officers. The Bureau shall provide matching grants of 50% of the total salary of a qualifying code enforcement officer who performs code enforcement activities full-time for one or more municipalities. Two or more municipalities may jointly hire a qualifying code enforcement officer to provide a total of full-time code enforcement employment and qualify for the subsidy. A code enforcement officer shall qualify for this program when the officer has been certified under section 4967 or when the officer is in training to become certified. Such training period may extend for a maximum of three years or until January 1, 1993 whichever is the shorter period. The matching grants shall be reduced to 25% of the total salary of

a qualifying code enforcement officer after January 1, 1993. This program shall be terminated on January 1, 1996.

4. Municipal implementation assistance. The Bureau shall develop and administer a grants program to provide direct financial assistance to municipalities for the implementation and administration of those comprehensive plans that have been approved under this subchapter. Such grants may be expended for any purpose directly related to the implementation of an approved comprehensive plan and the enforcement of related land use ordinances. Eligible activities include, without limitation, assistance in the development of ordinances, retention of technical and legal expertise for permitting activities, and the updating of comprehensive plans and their implementation program components.

5. Regional council assistance. The Bureau shall develop and administer a program to develop regional assessments of public infrastructure, inventories of agricultural and commercial forest lands, housing needs, recreation and open space needs, and projections of regional growth and economic development. The Bureau shall establish guidelines to ensure methodological consistency among the state's regional councils. The Bureau shall also develop and administer a series of contracts with regional councils to support the involvement of the regional councils in the review of local comprehensive plans by the Bureau.

6. Eligibility for other state aid. State agencies responsible for administering grant and financial assistance programs to municipalities shall allocate funds only when the municipality has adopted and implemented a comprehensive plan approved under this subchapter or is otherwise in compliance with the schedule established under section 4962-A. Where the assistance in question relates to a subject not directly addressed by the state goals, the comprehensive plan must include statements of policy or program guidelines directly related to the purposes for which the assistance is provided. The state grants and financial assistance in the following areas are subject to the provisions of this section:

- A. Assistance designed to accommodate additional growth and development, not including school expansions;
- B. Assistance in the acquisition of land by the municipality for conservation, natural resource protection, open space or recreational facilities; and
- C. Assistance for economic development projects or community development.

7. Loss of eligibility. If the Board of Plan Appeals finds, pursuant to an appeal under this subchapter, that a municipality has failed to fulfill its responsibilities under this subchapter, the municipality shall not be eligible for any state assistance or grant governed by subsections 4 and 6. The Board may reinstate the municipality's eligibility upon finding that the municipality is prepared to fulfill its responsibilities under this subchapter. The Board of Plan Appeals shall serve as the final administrative arbiter of any disputes arising under this subsection.

8. Assistance set-aside. The Bureau shall set aside a minimum of 30% of available technical and financial assistance resources to be made available to those areas of the state experiencing slower than average growth rates.

Sec. 6. 30 MRS §4961 is repealed.

Sec. 7. 30 MRS §4961-A is enacted to read:

§4962-D Land use regulation

The provisions of this section constitute express limitations on the home rule powers granted to all municipalities under the Constitution, Art. VIII, Part Second, and chapter 201-A of this Title.

1. Zoning ordinances. The following requirements apply to all zoning ordinances and amendments to zoning ordinances adopted by municipalities pursuant to home rule powers.

A. In the preparation of a zoning ordinance the public shall be given an adequate opportunity to be heard.

B. The ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipality's legislative body and approved according to this subchapter.

C. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated therein. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

D. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing the Public Utilities Commission has determined that such

exemption is reasonably necessary for public welfare and convenience.

E. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

F. Any zoning ordinance shall be advisory with respect to the State.

G. Any property or use existing in violation of any zoning ordinance is a nuisance.

H. Any zoning ordinance may provide that when a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

I. For the purposes of this subchapter, "zoning" is defined as the division of a municipality into districts and the prescription and reasonable application of different regulations in each district.

J. Any zoning ordinance may include provisions for conditional or contract zoning or any other form of zoning consistent with this subchapter. For the purposes of this subchapter, "conditional zoning" means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of his property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties. All rezoning under this paragraph shall:

(1) Be consistent with the municipal comprehensive plan which is approved according to this subchapter;

(2) Establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and

(3) Only include conditions and restrictions which relate to the physical development or operation of the property.

The municipal reviewing authority, as defined in section 4956, subsection 2, shall conduct a public hearing prior to any property being rezoned under this paragraph. Notice of this hearing shall be posted in the municipal office at least 14 days prior to the public hearing and shall be published in a newspaper of general circulation within the municipality at least 2 times, the date of the first publication to be at least 7 days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned. Any rezoning conducted under this section is subject to review and approval by the Bureau pursuant to this subchapter.

2. Zoning adjustment  
(Use Current 30 MRSA @4963)

3. Impact fees. A municipality may require, by ordinance, the construction of on-site or off-site capital improvements, or may require payment of impact fees in lieu of construction.

A. Such requirements may include construction of or impact fees in lieu of capital improvements including the expansion or replacement of existing infrastructure facilities, and the construction of new infrastructure facilities.

(1) Infrastructure facilities include, but are not limited to, sewage and treatment facilities, municipal water facilities, solid waste facilities, fire protection facilities, roads and traffic control devices, parks and other open space or recreational areas and any other facility which benefits the public.

B. Any ordinance which imposes or provides for the imposition of impact fees must meet the following requirements.

(1) The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements necessitated by the development.

(2) Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.

(3) The ordinance must establish a reasonable schedule under which the municipality is obliged to use the funds in a manner consistent with the capital investment component of the comprehensive plan.

(4) The ordinance must establish a mechanism by which the municipality can refund impact fees, or a portion of impact fees, actually paid which exceed the municipality's actual costs or which were not expended according to the schedule under this paragraph.

(5) The ordinance must be adopted as part of and consistent with a comprehensive plan, including the component regarding capital investment, meeting the requirements of this subchapter.

3. Application fees. Any application fee charged by a municipality for an application for any permit issued by the municipality may not exceed the reasonable cost of processing and review of the application by the municipality and its consultants and the administration of any requirement for a certificate of compliance with any permit conditions.

4. Moratoria. Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements.

A. The moratorium must be needed:

(1) To prevent a shortage or overburdening of public facilities which would otherwise occur during the effective period of the moratorium or which is reasonably foreseeable as a result of any proposed or anticipated development; or

(2) Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable law, if any, is inadequate to prevent irreparable public harm from residential, commercial or industrial development in the affected geographic area.

B. The moratorium must be of a definite term, not to exceed 180 days, except that the moratorium may be extended for additional 180-day periods provided that the municipality adopting the moratorium:

(1) Finds that the problem giving rise to the need for the moratorium still exists; and

(2) Finds that reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium.

Sec. 8. 30 MRSA §§4962 through 4964 are repealed.

Sec. 9. 30 MRSA §4967 and 4968 are enacted to read:

§4967 Training and certification for code enforcement officers

1. Certified code enforcement officer required. Beginning January 1, 1993, it shall be unlawful for any person to perform the duties of code enforcement officer without being certified by the Bureau.

2. Waiver. The Bureau may grant a waiver from the requirements of subsection 1 for a period not exceeding one year in the event that the certification requirements cannot be met without imposing a hardship on the municipality employing the person.

3. Penalty. Any person who violates this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day in violation constitutes a separate offense.

4. Certification; terms. The Bureau shall certify persons as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations. Such certification shall be valid for a period of 5 years.

5. Training and certification of code enforcement officers. In cooperation with the Vocational Technical Institute System and the Department of Human Services, the Bureau shall establish a continuing education program for people engaged in code enforcement. This program shall provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification, including, but not limited to, plumbing inspection, soils and site evaluation, electrical inspection, state and federal environmental requirements, zoning ordinances, court techniques, Rule 80K procedures and other enforcement information.

6. Examination. The Bureau shall hold at least one examination each year for the purpose of examining candidates for certification or recertification at a time and place

designated by it. Additional examination dates may be held by the Bureau to carry out the purposes of this subchapter.

7. Certification standards. The Bureau shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification and recertification of individuals to act as code enforcement officers.

8. Certificates. The Bureau shall issue certificates attesting to the competency of individuals to act as code enforcement officers. Certificates are valid for a period of 5 years unless revoked by the Administrative Court.

A. The Administrative Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 25, when it finds that the code enforcement officer has practiced fraud or deception; that reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement officer's ability was not used in the performance of the duties of the office; or that the code enforcement officer is incompetent or unable properly to perform the duties of the office.

B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided they are newly certified as provided in this section.

C. This subchapter shall not be construed to affect or prevent the practice of any other legally recognized profession.

#### §4968 Citizen remedies

1. Appeal to Board of Plan Appeals. Any aggrieved party may appeal any land use planning or permitting decision made by a municipal authority to the Board of Plan Appeals as being inconsistent with the municipality's comprehensive plan which is approved according to this subchapter. Such appeal may be made only after exhausting any remedy provided under section 4961-A, sub§2. The Board of Plan Appeals shall review the action in question to determine consistency with the plan and the State goals and guidelines. The Board of Plan Appeals may reverse, affirm or modify the action. Any aggrieved party may appeal the decision of the Board of Plan Appeals to the Superior Court.

**Sec. 10. 38 MRSA §344-A is enacted to read:**

**38 MRSA §344-A Certificates of compliance**

No person may occupy or use any project licensed or permitted by the Department without a certificate of compliance. The Department shall inspect the completed project for which it has issued a license or permit and determine whether or not the project has been completed according to the approved plans and the permit. If the completed project complies with the plan and permit requirements, the Department shall issue a certificate of compliance.

**Sec. 11. Application.** The provisions of section 1 shall apply to all applications before any municipal or state reviewing authority at the time of the effective date of this Act.

**Statement of Fact**

This bill is the majority report of the Commission on Land Conservation and Economic Development pursuant to PL 1987, c.514. This bill is the central element in a package of four bills related to growth management issues. The remaining three bills concern tax policy for speculative land sales, local option real estate transfer taxes and the Farm and Open Space Tax.

This bill establishes a system of local comprehensive planning with state goals and guidelines. The purpose of this system is to build on the strengths on Maine's tradition of local control, adding state financial and technical assistance, in order to better anticipate and guide the development of land in the state's communities. This bill also creates a mechanism for state review of local planning efforts to ensure that the state goals are addressed at the local level and to provide a coordinating mechanism for regional needs and issues.

Basic authority and responsibility remains at the local level. The bill strongly reaffirms the home rule principals in land use regulation. The role of regional councils in providing technical assistance is substantially increased along with the councils' role in planning for regional needs and assessing the regional trends in economic development. The state is given an active role in comprehensive planning through increased technical and financial assistance programs for municipalities and through review of local plans.

The following description outlines the intent of each section.

Section 1 clarifies the concept of "pending application". It is the intent of the Legislature that any application under consideration by a municipal or state reviewing authority be subject to any changes in law including, without limitation, temporary and lawfully declared moratoria, when the application in question has not yet received substantive review from the reviewing authority. The filing or receipt of a written application or the initial reviews necessary to determine the completeness of an application do not, in and of themselves, constitute "substantial review".

Sections 2 and 3 establish two new entities in the comprehensive listing of boards and commissions in Title 5. Their purposes are explained below in Section 5.

Section 4 amend the name of the existing Planning and Zoning subchapter in Title 30.

Section 5 provides a complete overhaul and update of municipal planning and zoning statutes. This section establishes a clear set of legislative findings and purposes to form the foundation for a statement of state goals and guidelines. These goals and guidelines form the basis of all future comprehensive planning by municipalities and state agencies. The goals and guidelines identify areas of paramount importance to the state, including economic development, protection of historical and natural resources, maintenance of public and private infrastructure needed for future growth, affordable housing and outdoor recreation. Definitions of specific terms are provided.

Section 5 also provides a reaffirmation of home rule authority over local land use regulation. It is the intent of the Legislature that this bill constitute express limitations on home rule and in no way is intended to be construed as a preemption of municipal home rule authority granted under the Maine Constitution.

Section 5 further provides definition of the components that must be included in any municipal comprehensive plan. It is within the context of these plan components that a municipality will address its vision of its future and will also address the steps it will take to meet the state goals. It is important to note that the implementation component, consisting of local policies, programs and ordinances, is an integral part of the comprehensive plan and cannot be developed separately from the plan. It is the intent of the Legislature that the relationship between planning goals and implementing actions be as clear and as close as possible. The bill provides for a five year revision cycle of municipal plans.

Section 5 further provides for inter-town cooperation on planning and land use regulation. The bill stresses the importance of high public participation in the planning process and provides the technical and financial resources necessary to make this participation a reality.

Section 5 also provides for a state assistance and review mechanism. The bill proposes the establishment of a separate Bureau in the State Planning Office to oversee this effort. An advisory council with expertise in planning, local government, land conservation and development is created to provide input to the Bureau's efforts. An appeals board is also established to provide a more flexible, administrative appeals process for municipalities and others disputing the Bureau's decisions on the adequacy of local plans.

The Bureau is responsible for ensuring that all state agencies incorporate the state goals in their programs and activities. The Bureau is also responsible for overseeing a program of technical and financial assistance to municipalities and regional councils to help in land use planning and implementation efforts. The Bureau will conduct reviews of local planning efforts through a process of assistance, public input, consultation with municipalities and resolution of disagreements. It is the intent of the Legislature that the Bureau and municipalities have the flexibility to creatively incorporate the requirements of this legislation in the municipal plans. The Legislature seeks to stress and encourage local initiative through a constructive, problem-solving approach to Maine's growth management issues.

Section 5 provides a schedule for the submission of local plans. The schedule stretches over an eight year period, concentrating on the larger, high-growth towns first. Compliance provisions are established which require the adoption of a minimum acceptable comprehensive plan including an implementation component to be administered by the municipality with state financial assistance. Eligibility for certain growth- and economic development-related state funding is linked to the municipality's efforts. School aid and state revenue sharing are not included in this provision.

Section 6 repeals obsolete language concerning comprehensive planning.

Section 7 establishes express conditions for the use by municipalities of zoning (using existing statutory language virtually verbatim), impact fees, application fees, and land use moratoria. Beyond the requirement of consistency with an approved comprehensive plan, it is the intent of the

Legislature that this legislation establishes no other restraints or limits on the use of any other land use regulatory device.

Section 8 repeals existing statutes concerning zoning. Most of the repealed language is retained in Section 7.

Section 9 establishes a training and certification procedure for local code enforcement officers. This section also provides for an appeal of local permitting decisions by aggrieved parties to the Board of Plan Appeal established above in Section 5.

Section 10 establishes a requirement for any development approved by the Department of Environmental Protection to be certified by the Department as being in compliance with the terms and conditions of the development's permit before the development can be used or occupied.

Section 11 applies the amendments to Title 1, section 302 regarding "pending applications" to any existing situations.

3861  
Glidden  
2/9/88

COMMISSION ON LAND CONSERVATION AND ECONOMIC DEVELOPMENT

Status: Final draft; majority (7) opposes - minority (2) favors  
Pursuant to PL 1987, c. 514

AN ACT to Impose a Tax on Capital Gains  
from Speculative Land Sales.

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

36 M.R.S.A. c. 716 is enacted as follows:

CHAPTER 716  
TAX ON GAINS FROM CERTAIN SALES OR EXCHANGES OF LAND

§4760. Legislative findings and purposes.

The Legislature finds that Maine is experiencing rapidly accelerating and uncontrolled numbers of land transactions made for speculative purposes; that land speculation is detrimental to the economy of the State and produces no economic benefit to the people of Maine; that land speculation destabilizes the marketplace for real property in the State, artificially inflates prices for such property, threatens the availability of affordable housing, undermines community values and rural character, creates a severe burden on the local real property tax system and the ability of Maine citizens to pay property taxes, and imposes a long-term threat to the natural resource land base upon which Maine's forestry, agricultural and recreational industries, as well as her quality of life, depend. Therefore, it is the purpose of the Legislature to impose a reasonable but progressive tax on capital gains from speculative transactions in land in order to offset the adverse consequences of land speculation, to restore stability to the real estate marketplace, and to raise public revenues to be distributed to local governments and used for land use planning, growth management and other programs designed to alleviate the adverse effects of land speculation.

§4761. Definitions.

For purposes of this chapter, the following terms shall have the following meanings unless the context otherwise requires.

1. "Taxable land" means all land, whether or not improved, except as exempted hereunder.

A. "Taxable land" does not include buildings, structures or other improvements constructed or installed upon land but does include land which underlies such improvements except as exempted hereunder.

B. "Taxable land" does not include land, not exceeding ten acres in area, underlying a building occupied as the principal residence of the seller, or to be occupied within six months and continuing for at least one year following the date of purchase, as the principal residence of the buyer. If zoning or other land use laws require a minimum of more than ten acres for residential use, the minimum number of acres so required, instead of ten acres, shall be excluded from the definition of "taxable land" under this subparagraph, except that not more than 25 acres shall be excluded for this reason.

C. "Taxable land" does not include any land, not exceeding 10 acres in area except as enlarged as provided by subparagraph (B) of this paragraph, which is purchased for purposes of constructing thereon building(s) which will be occupied as principal residence(s); provided that such principal residence(s) must be occupied for that purpose within three years of the date of the purchase and must continue to be so occupied for at least one year.

D. "Taxable land" does not include any land sold by an agency or instrumentality of the State of Maine, or of a municipality or county thereof or of the United States of America, or by a non-profit development corporation or non-profit organization qualifying under §501(c)(3) of the Internal Revenue Code, provided that the income from the sale is exempt from taxation under the Internal Revenue Code.

E. "Taxable land" does not include land sold to an agency or instrumentality of the State of Maine, or of a municipality or county thereof or of the United States of America, or to a non-profit organization qualifying under §501(c)(3) of the Internal Revenue Code, provided that the property shall be used by the buyer or its designee for at least a period of ten years for purposes of preserving lands for agricultural, forestry, open space, or public outdoor recreation purposes.

F. "Taxable land" does not include agricultural land sold or transferred by a farmer to a member of his or her family, provided that the land shall be used by the transferee as agricultural land for a period of time which, when added to the time the land was used for agricultural purposes by the transferor, equals or exceeds five years. For purposes of this paragraph, "family" means persons in a relationship to the transferor of grandparent, parent, step-parent, brother or sister, or natural or adopted child.

2. "Principal residence" means the principal dwelling of a person whose domicile is in the State of Maine. A principal residence may include a dwelling where the resident lives and also carries out a home occupation or similar commercial activity which is secondary to use as a principal residence.

3. "Sale or exchange" means any transfer of ownership or ownership interest or equivalent rights in taxable land for consideration. Without limitation, a sale or exchange occurs when title passes to the buyer, or upon entry into an installment sale contract, an option agreement, or any other contract or agreement, the substance of which is to pass to the buyer an interest in taxable land, provided that some consideration has passed to the seller. A mere promise to purchase and sell, accompanied by amounts paid by the buyer as earnest money or on deposit but to which the seller has no immediate right, does not constitute a sale or exchange. A sale or exchange does not include any of the following: a bona fide gift; a transfer by reason of death or distribution by an estate in accordance with a probated will, intestate succession or operation of law; a transfer to a spouse under a decree of divorce; a transfer pursuant to a partition among co-tenants of land previously held in common by them; a corrective deed; or any other transfer for which no consideration is due or received. A lease shall be deemed a sale or exchange where its term is 99 years or longer or is perpetual, or the lease is otherwise substantially the equivalent of a sale or exchange. A sale of mineral rights or timber rights for a limited duration of time is not a sale or exchange of land. A sale or exchange of shares in a corporation, or of comparable interests in any other form of organization or legal entity, which effectively entitles the purchaser of such shares or interests to the personal use or occupancy of taxable land, constitutes a sale or exchange of taxable land.

4. "Installment sale" means a sale or exchange of land, the payments for which are made in installments on dates other than the date of closing and passing of title.

5. "Person" means an individual, firm, corporation, partnership, trust, association or other legal entity.

6. "Buyer" means a person buying or otherwise acting as the transferee of any land. Where there is more than one person involved as a buyer in a transaction, each such person shall be deemed the buyer, both jointly and severally.

7. "Seller" means a person selling, conveying or otherwise acting as the transferor of any land. Where there is more than one person involved as a seller in a transaction,

each such person shall be deemed the seller, both jointly and severally.

8. "Basis" means the tax basis for land as determined under the Internal Revenue Code except as otherwise provided in this chapter. Land on which there are improvements shall have a basis which is computed on the cost of the land, excluding the cost or fair market value of the improvements as of the time acquired.

9. "Consideration" means the full actual sales price, together with all other valuable consideration, computed in dollar value, whether paid or to be paid, including the dollar amount of any liens or encumbrances on the land as it will be conveyed to the buyer. Where land to be sold or exchanged is improved, the total consideration paid or agreed to be paid by the buyer shall be allocated between the value of the improvements and the value of the land, according to their respective fair market values as of the date of the sale or exchange.

10. "Gain" means the full consideration received, to be received or otherwise realized by the seller from a sale or exchange of taxable land, less the seller's basis in the land, and further reduced by the seller's reasonable, out-of-pocket commissions and expenses of sale. If the seller has owned the land for less than one year, the aggregate amount of commissions and expenses of sale which may be deducted in computing gain shall not exceed 12% of the consideration. In the event that a sale or exchange includes both taxable land and improvements thereon, selling expenses and gain shall be allocated between the land and improvements on the basis of their respective fair market values. The gain from any sale or exchange shall not be reduced by any losses incurred in other transactions.

11. "Holding period" means the period of time during which the seller held title to the land or, in the context of a sale or exchange where the seller does not have title, a beneficial ownership interest in land held by the seller. Unless the context otherwise requires in this chapter, "holding period" shall be determined in accordance with the provisions of the Internal Revenue Code.

#### §4762. Tax Imposed.

1. Tax rate schedule. There is imposed a tax on the gain from the sale or exchange of taxable land in Maine. A single flat rate of tax shall apply to all of the gain realized or to be realized, and shall be determined by the percentage which the entire gain is of the basis, in accordance with the following schedule:

TAX RATE SCHEDULE

<u>Holding period of seller</u>  <u>more</u>	<u>Gain, as a percentage of basis</u>		
	<u>0-99%</u>	<u>100-199%</u>	<u>200% or</u>
Less than 6 months	60%	70%	80%
6 months or more, but less than one year	30%	45%	60%
1 year or more, but less than 2	20%	30%	40%
2 years or more, but less than 3	15%	25%	30%
3 years, or more, but, less than 4	10%	20%	25%
4 years or more, but less than 5	5%	15%	20%

2. Application to certain transactions. When a sale or exchange of taxable land occurs, the entire tax due on the sale becomes due and payable as provided under this chapter, regardless of whether the transaction between the seller and buyer is an installment sale, or a sale or exchange which is not recognized under the Internal Revenue Code unless that transaction is also exempted from tax under this chapter.

§4763. Liability for tax.

1. General rule; liability of seller. Except as otherwise provided in this chapter, the person liable for the tax is the seller in any sale or exchange.

2. Exception; liability of buyer. Whenever this chapter provides that a transfer of land is free from the imposition of tax on account of the claimed status of the buyer or the intended use of the land in the hands of the buyer, and such status subsequently proves to be incorrect or such intended use fails to occur, then the tax otherwise due from the seller shall become the liability of, and shall be paid by, the buyer. In the event that the transfer of land initially determined to be tax-free subsequently becomes taxable, a lien in the amount of the tax which should have been paid is automatically imposed on the land, with the lien having priority over all subsequent liens and attachments as of the date of the sale or exchange. The provisions of this paragraph shall not apply to a buyer which is an agency or instrumentality of government.

§4764. Filings and payment.

1. Withholding by buyer. The buyer of any taxable land which was held by the seller for less than five years shall withhold 10% of all consideration paid or to be paid to the seller. Any amount so withheld shall be remitted to the State Tax Assessor at the time of sale or exchange, together with such form, signed by the seller and the buyer, as prescribed by the Assessor.

2. Return by seller. Within 30 days of the sale or exchange of taxable land, the seller shall file a return with the State Tax Assessor, in a form prescribed by him, setting forth the calculation of the amount of gain and tax due on the sale or exchange and the amount withheld by the buyer and previously remitted to the Assessor. The seller shall either remit with the return the balance of the tax due or make a claim for refund, as appropriate. For good cause shown and upon conditions set by him, the Assessor may extend the time for filing the return and paying the tax.

3. Declarations. In any case where a sale, exchange or other transfer of land is free from the imposition of a tax under this chapter, the seller and the buyer shall file a declaration to that effect with the State Tax Assessor, on a form prescribed by him, in order to show why the sale or exchange is free of tax and to establish the amount of tax liability in the event that the transfer is subsequently found to be taxable. In the event that any matter reported on any such declaration proves to be false or misleading, or that any intended use of land so reported fails to occur, any person who made such declaration shall promptly file an amended declaration with the State Tax Assessor. The requirement of filing a declaration may be waived under rules adopted by the Assessor as to transactions where he determines that no significant purpose will be served by the filing of a declaration.

§4765. Administration of tax.

1. Enforcement under income tax laws. All laws, enforcement procedures, penalties and remedies provided under this title for the collection and enforcement of Part 8 shall apply to the tax imposed by this chapter.

2. Public disclosure. Notwithstanding the provisions of section 191, all declarations, returns and other filings received by the State Tax Assessor under this chapter shall be subject to the Maine Freedom of Access Law, 1 M.R.S.A. §401 et seq.

3. Monitoring and report to Legislature. The State Tax Assessor shall monitor compliance with this chapter, including audits of returns and declarations filed hereunder in order that compliance with this chapter is reasonably assured. The State Tax Assessor shall report to the Legislature by January 1, 1990 and every two years thereafter on amounts of revenue received under this chapter, the extent and results of audit and other compliance monitoring efforts and other matters relating to the extent to which the tax imposed hereunder is meeting the legislative objectives stated in §4760.

§4766. Use of tax proceeds.

All taxes collected under this chapter shall be deposited in the General Fund.

#### STATEMENT OF FACT

This bill is a minority report from the Commission on Land Conservation and Economic Development pursuant to PL 1987, c. 514.

The purpose of this legislation is to impose a reasonable but progressive tax on gains realized from land speculation in Maine. The legislative policies and goals supporting this enactment are set forth in the declaration of findings and purpose in the first section of the legislation.

The tax is carefully designed to address land speculation but to avoid purchases and sales of property used or to be used as a principal residence as well as other transfers of land which the Legislature determines have no speculative purpose. While the tax imposed on gains from taxable transfers is designed to be progressive, with the highest tax rate applicable to rapid turnovers in land at very high profits, the tax rate is decreased for longer holding periods and at lower gains. No tax is applied to any transaction where the seller held the land for more than 5 years.

The revenues raised by this tax will be distributed to municipalities in order to help them undertake growth management programs, designed to alleviate problems caused by land speculation and development pressures.

This tax structure is based upon that which has been working in the State of Vermont for more than a decade.

3773  
Glidden  
2/9/88

COMMISSION ON LAND CONSERVATION AND ECONOMIC DEVELOPMENT

Status: Final draft; unanimous (2/9/88)  
Pursuant to to PL 1987, c.514

AN ACT Enabling Municipalities  
to Establish Municipal Investment and Land Banks  
Funded by a Local Option Real Estate  
Transfer Tax.

36 MRSA c. 712-A is enacted to read:

CHAPTER 712-A

LOCAL OPTION REAL ESTATE TRANSFER TAX

§4661. Local real estate transfer tax

A municipality adopting a municipal investment and land bank pursuant to this chapter may impose a real estate transfer tax on both the transferor and the transferee of real estate according to the following procedure and limitations.

1. Referendum. A local real estate transfer tax may be imposed by a municipality if it is approved by referendum conducted according to the provisions of Title 30, section 2061.

2. Rate of tax. The referendum question shall specify the rate of the tax which may not exceed 0.4% of the taxable base of the property subject to the tax.

3. Taxable base. The base to which the tax is applied is the amount subject to tax under Title 36, chapter 711-A, less \$77,000 if the property subject to the tax is the primary residence of the transferor or will be the primary residence of the transferee. Transfers which are exempt from the tax under chapter 711-A are also exempt from the tax authorized by this chapter.

4. Liability. The transferor of property is liable for 1/2 of the tax. The transferee is liable for the remaining half.

5. Payment. The tax shall be paid to the municipal tax collector within 30 days of the transfer of property.

6. Lien. If the tax is not paid within 30 days of the transfer, the municipality may establish and enforce a lien in the same manner as a lien pursuant to Title 38, section 1208.

7. Use of revenues. All revenues received by a municipality from the tax authorized by this chapter shall be deposited in a municipal investment and land bank account and may be used only for the purposes permitted under this chapter.

8. Failure to pay the tax. Failure to pay the tax provided by this chapter shall be subject to a penalty, in addition to the tax, equal to the amount of the tax and interest at the rate determined pursuant to Title 36, section 186. Penalties and interest due under this chapter shall be paid to the municipality in which the tax is due. Penalties and interest may be recovered by the municipality in a civil suit.

#### §4662. Municipal investment and land bank

A municipality imposing a local real estate transfer tax shall establish a municipal investment and land bank and shall previously have adopted a comprehensive plan pursuant to the requirements of Title 30, chapter 239, subchapter VI.

1. Referendum. The municipal investment and land bank must be approved by referendum according to the provisions of Title 30, section 2061. It may be approved as part of the referendum adopting a local real estate transfer tax or as a separate measure.

2. Administration. The referendum shall provide that the municipal investment and land bank will be administered by a commission and shall specify number, qualifications, terms of office and powers and duties of commission members.

3. Limitation. Funds in a municipal investment and land bank are restricted to the following uses:

A. Acquisition or management of interests in land within the municipality for the purposes of:

(1) preserving it in an undeveloped state;

(2) conserving natural or scenic resources or preserving wildlife habitat; or

(3) maintaining or improving recreational opportunities within the municipality;

B. Capital investments for the development of affordable housing for municipal residents. The term, "affordable housing", means decent, safe and sanitary dwellings,

apartments or other living accommodations for households making 80% of the median household income as determined by the Department of Economic and Community Development;

C. Creation of new or expansion of existing public facilities to accommodate growth. Public facilities may include, without limitation, sewage and treatment facilities, municipal water facilities, solid waste facilities, fire protection facilities, roads and traffic control devices, parks and other open space or recreational areas and any other facility which benefits the public; and

D. Any other purposes which are incidental to the purposes permitted by this section, including administrative costs and the costs of employing staff but not including costs of maintaining or improving recreation or open space land.

#### STATEMENT OF FACT

This bill is the unanimous recommendation of the Commission on Land Conservation and Economic Development as a result of its study of growth management problems in the state. The bill closely parallels a similar bill recommended by the Municipal Land Bank Study Committee in 1987.

The bill permits a municipality to impose a local real estate transfer tax for the purpose of funding a municipal investment and land bank. The municipality would have to have adopted a comprehensive plan under the relevant provisions of Title 30. The municipality would also be required to hold a referendum on imposition of the tax. The tax would be limited to 0.4% of the taxable base of property transferred within the municipality to be paid one half by the transferor and one half by the transferee. The first \$77,000 of the value of primary residences would be exempt from the tax. The tax would be collected by the county registrars of deeds at the same time as the State real estate transfer tax.

Revenues obtained through a local real estate transfer tax would be restricted to the acquisition or management of land for the purposes of preserving undeveloped land, conserving natural or scenic resources or wildlife habitat, maintaining or improving recreational opportunities, providing affordable housing, making needed investments in local infrastructure or other incidental purposes, including administrative costs but not including land maintenance.

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SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document No. 0

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Commission on Land Conservation and Economic Development

Status: Final draft; unanimous  
Pursuant to PL 1987, c.514

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-EIGHT

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AN ACT to Amend the Farm and Open Space Tax  
Law.

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16  
17

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

18  
19

Sec. 1. 36 MRSA §1102, sub-§4, as enacted by PL 1975, c. 726, §2, is amended to read:

20

4. Farmland. "Farmland" means any tract or

1 tracts of land, including woodland and wasteland of at  
2 least ~~±0~~ 5 contiguous acres on which farming or  
3 agricultural activities have produced a gross income  
4 of at least \$2,000 per year in one of the 2 or 3 of  
5 the 5 calendar years preceding the date of application  
6 for classification ~~of-at-least~~.

7 A. ~~---\$1,000-for-10-acres, and~~

8 B. \$100 per acre for each acre over ~~±0~~, with  
9 the ~~total-income-required-not-to-exceed-\$2,000~~.

10 Gross income as used in this section includes the  
11 value of commodities produced for consumption by the  
12 farm household. Any applicant for assessment under  
13 this subchapter bears the burden of proof as to his  
14 qualification.

15 Sec. 2. 36 MRSa §1103, as amended by PL 1977,  
16 c. 467, §2, is further amended to read:

17 §1103. Owner's application

18 An owner of farmland or open space land may apply  
19 for taxation under this subchapter for the calendar  
20 year ~~±978~~ 1988, and for subsequent calendar years,  
21 at his election by filing with the assessor the  
22 schedule provided for in section 1109. The election  
23 to apply shall require the unanimous consent of all  
24 owners of an interest in that farmland or open space  
25 land.

26 Sec. 3. 36 MRSa §1105, as repealed and replaced  
27 by PL 1977, c. 467, §3, is repealed and the following  
28 enacted in its place:

29 §1105. Valuation of farmland and open space land

30 1. Valuation rules. The Department of  
31 Agriculture, Food and Rural Resources and Bureau of  
32 Taxation shall establish no later than January 1,  
33 1989, through rulemaking pursuant to the Maine  
34 Administrative Procedure Act, Title 5, chapter 375,  
35 subchapter II, the value per acre of various  
36 categories of farmland for each county in the State.

1 The valuation standards shall be based on soil types,  
2 farmland quality, topography, degree days and other  
3 relevant considerations. These standards shall be  
4 updated no less than every 5 years.

5 2. Notification of assessors. The standards  
6 shall be sent to each municipal assessor in the State.

7 3. Transition. Until rules establishing the  
8 valuation categories have been promulgated pursuant to  
9 subsection 1, subsection 4 shall continue to be used  
10 to guide the assessment of farmland. Upon  
11 promulgation of the rules establishing the valuation  
12 categories pursuant to subsection 1, subsection 4 is  
13 repealed.

14 4. Valuation; method. The municipal assessor,  
15 chief assessor or State Tax Assessor for the  
16 unorganized territory shall establish the 100%  
17 valuation per acre for good cropland, good orchard  
18 land and good pastureland and open space. The 100%  
19 valuations per acre shall be based on the current use  
20 value of farmland used for agricultural purposes and  
21 open space land used for open space purposes. These  
22 valuations shall reflect neither the potential for  
23 development of farmland or open space for purposes  
24 other than for agriculture or open space nor the value  
25 attributable to road or shore frontage.

26 Subsequent to the determination of 100% valuations  
27 per acre, the municipal assessor, chief assessor or  
28 the State Tax Assessor for the unorganized territory  
29 shall determine the valuation of each parcel of  
30 farmland classified under this subchapter, on a  
31 schedule provided by the State Tax Assessor, by  
32 adjusting the 100% valuation by the following ratios  
33 to reflect the value of very good, good and poor  
34 farmland.

	<u>Very Good</u>	<u>Good</u>	<u>Poor</u>
36 <u>Cropland</u>	<u>1.2</u>	<u>1.0</u>	<u>.8</u>
37 <u>Orchard Land</u>	<u>1.2</u>	<u>1.0</u>	<u>.8</u>
38 <u>Pastureland</u>	<u>1.2</u>	<u>1.0</u>	<u>.8</u>

1        The 100% valuations per acre for farm and open  
2 space woodland within a parcel classified under this  
3 subchapter shall be the 100% valuation per acre for  
4 each forest type established for each county pursuant  
5 to subchapter II-A. Areas other than woodland,  
6 pastureland, orchard land, cropland or open space  
7 located within any parcel of farmland or open space  
8 classified under this subchapter shall be valued on  
9 the basis of just value.

10        **Sec. 4. 36 MRS** §1108, as amended by PL 1979,  
11 c. 666, §23, is further amended to read:

12        §108. Assessment of tax; municipal compensation

13        1. Organized areas.        The municipal assessors  
14 shall adjust the 100% valuations per acre for farmland  
15 for their jurisdiction by whatever ratio, or  
16 percentage of current just value, is then being  
17 applied to other property within the municipality to  
18 obtain the assessed values. Commencing April 1,  
19 1978, land in the organized areas subject to taxation  
20 under this subchapter shall be taxed at the property  
21 tax rate applicable to other property in the  
22 municipality, which rate shall be applied to the  
23 assessed values so determined.

24        2. Unorganized territory.        The State Tax  
25 Assessor shall adjust the 100% valuations per acre for  
26 farmland for the unorganized territory by such ratio  
27 or percentage as is then being used to determine the  
28 state valuation applicable to other property in the  
29 unorganized territory to obtain the assessed values.  
30 Commencing April 1, 1978, land in the unorganized  
31 territory subject to taxation under this subchapter  
32 shall be taxed at the state property tax rate  
33 applicable to other property in the unorganized  
34 territory, which rate shall be applied to the assessed  
35 values so determined.

36        3. Municipal compensation. Upon application by a  
37 municipality to the Bureau of Taxation on a yearly  
38 basis, on forms to be developed by the bureau, each  
39 municipality in the State shall be entitled to  
40 reimbursement in full from the General Fund for

1 revenues from property taxation that would otherwise  
2 be due except for the classification of farmland under  
3 this chapter.

4       Sec. 5. 36 MRSA §1109, sub-§2, as amended by PL  
5 1977, c. 509, §26, is further amended to read:

6       2. Provisional classification. The owner of a  
7 parcel of land, including woodland and wasteland of at  
8 least ~~10~~ 5 contiguous acres on which farming or  
9 agricultural activities have not produced the gross  
10 income required in section 1102, subsection 4, per  
11 year for one of the 2 or 3 of the 5 preceding calendar  
12 years, may apply for a 2-year provisional  
13 classification as farmland by submitting a signed  
14 schedule in duplicate, on or before April 1st of the  
15 year for which provisional classification is  
16 requested, identifying the land to be taxed hereunder,  
17 listing the number of acres of each farmland  
18 classification, showing the location of the land in  
19 each classification and representing that the  
20 applicant intends to conduct farming or agricultural  
21 activities upon that parcel. Upon receipt of the  
22 schedule, the land shall be provisionally classified  
23 as farmland and subjected to taxation under this  
24 subchapter. If, at the end of the 2-year period, the  
25 land does not qualify as farmland under section 1102,  
26 subsection 4, the owner shall pay a penalty which  
27 shall be an amount equal to the taxes which would have  
28 been assessed had the property been assessed at its  
29 fair market value on the first day of April for the 2  
30 preceding tax years less the taxes paid on the  
31 property over the 2 preceding years and interest at  
32 the legal rate from the dates on which those amounts  
33 would have been payable.

34       Sec. 6. 36 MRSA §1109, sub-§4, as amended by PL  
35 1977, c. 509, §27, is further amended to read:

36       4. Investigation. The assessor shall notify the  
37 landowner of his determination as to the applicability  
38 of this subchapter by June 1st following receipt of a  
39 signed schedule meeting the requirements of this  
40 section. ~~If such notification is not given, except~~  
41 ~~for-an-application-for-provisional-classification-as~~

1 farmland, the assessor shall be deemed to have  
2 denied taxation hereunder at that time unless the land  
3 was taxed under this subchapter in the preceding year,  
4 in which case the assessor shall be deemed to have  
5 permitted taxation hereunder. The assessor shall then  
6 notify the landowner that the application has been  
7 accepted or denied. If the application is denied, the  
8 assessor shall state the reasons for the denial and  
9 provide the landowner an opportunity to amend the  
10 schedule to conform to the requirements of this  
11 chapter.

12 The assessor or the assessor's duly authorized  
13 representative may enter and examine the lands under  
14 this subchapter for tax purposes and may examine into  
15 any information submitted by the owner or owners.

16 Upon notice in writing by certified mail, return  
17 receipt requested, any owner or owners shall be  
18 required, within 60 days of the receipt of such  
19 notice, to respond to such written questions or  
20 interrogatories as the assessor may deem necessary to  
21 obtain material information about those lands. Should  
22 the assessor determine that he cannot reasonably  
23 obtain the required material information regarding  
24 those lands through such written questions or  
25 interrogatories, the assessor may require any owner or  
26 owners, upon notice in writing by certified mail,  
27 return receipt requested, or by such other method as  
28 provides actual notice, to appear before the assessor  
29 at such reasonable time and place as the assessor may  
30 designate and answer such questions or interrogatories  
31 as the assessor may deem necessary to obtain material  
32 information about those lands.

33 Sec. 7. 36 MRSA §1112, as amended by PL 1983,  
34 c. 400, §§2 and 3, is further amended to read:

35 §1112. Recapture penalty

36 Any change in use disqualifying land for  
37 classification under this subchapter shall cause a  
38 penalty to be assessed by the assessors of the  
39 municipality in which the land is located, or by the  
40 State Tax Assessor if the land is not within a

1 municipality, in addition to the annual tax in the  
2 year of disqualification except when the change is  
3 occasioned by a transfer resulting from the exercise  
4 or the threatened exercise of the power of eminent  
5 domain.

6 Such penalty shall be an amount computed by  
7 multiplying the amount, if any, by which the fair  
8 market value of the real estate on the date of  
9 withdrawal exceeds the 100% valuation of the real  
10 estate pursuant to this subchapter on the preceding  
11 April 1st by the following rates: Ten percent for  
12 land which has been taxed under this subchapter for 5  
13 years or less, 20% for land which has been taxed under  
14 this subchapter for more than 5 years but less than 10  
15 years and 30% for land which has been taxed under this  
16 subchapter ~~for 10 years or more.~~

17 Notwithstanding the percentages specified under  
18 the preceding paragraph, beginning April 1, 1988, the  
19 penalty shall not be less than 20% and beginning April  
20 1, 1993, the penalty shall not be less than 30%. If  
21 the real estate was subject to valuation under this  
22 subchapter for more than 10 years prior to the date of  
23 withdrawal, the rate, whether calculated under this  
24 paragraph or the preceding one, shall be adjusted by  
25 deducting 1% from 30% for each full year beyond 10  
26 years that the real estate was subject to valuation  
27 under this subchapter prior to the date of withdrawal  
28 until a rate of 20% is reached. In no event may the  
29 penalty be less than the minimum required by the  
30 ~~Constitution of Maine, Article IX, Section 8.~~

31 For land classified under this chapter for less  
32 than 5 years, the penalty shall be equal to 40% of its  
33 assessed fair market value at the time the land is  
34 removed from the program. For land that has been  
35 classified under this chapter for 5 years or longer,  
36 the penalty shall be equal to the sum of the taxes  
37 that would have been paid on the land for the past 5  
38 years if it had not been classified under this  
39 chapter, less all taxes that were actually paid during  
40 those 5 years, and interest at the rate charged during  
41 those 5 years for United States Treasury notes, plus  
42 3%.

1 No penalty may be assessed at the time of a change  
2 of use from one classification of land subject to  
3 taxation under this subchapter to another  
4 classification of land subject to taxation under this  
5 subchapter nor ~~shall~~ may any penalty be assessed  
6 upon the withdrawal of land from taxation under this  
7 subchapter if the owner applies for and is accepted  
8 for classification as timberland under subchapter  
9 II-A, provided that in the event a penalty is later  
10 assessed under subchapter II-A the period of time that  
11 the land was taxed as farmland or open space land  
12 under this subchapter shall be included for purposes  
13 of establishing the amount of the penalty.

14 If land is taken out of agricultural production  
15 due to the owner's death or permanent disability  
16 within 5 years of its classification under this  
17 chapter, the penalty assessed shall be the minimum  
18 required by the Constitution of Maine, Article IX,  
19 Section 8.

20 The penalties set forth in this section shall  
21 apply to all farmland classified under this chapter on  
22 the effective date of this paragraph and to all  
23 farmland subsequently enrolled.

24 **Sec. 8.** 36 MRSA §§1119 and 1120 are enacted to  
25 read:

26 §1119. Program promotion

27 By January 1, 1989, the Department of Agriculture,  
28 Food and Rural Resources and the Bureau of Taxation  
29 shall produce written materials designed to inform  
30 municipal assessors, farmers and Maine citizens about  
31 the farm and open space tax program. These materials  
32 shall be in a form that are attractive, easily  
33 understandable and designed to interest the public in  
34 the program. The department and the bureau shall  
35 ensure that these written materials are made available  
36 and distributed as widely as possible throughout the  
37 State.

