

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND FOURTH LEGISLATURE

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**Legislative Document**

**No. 1372**

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H. P. 1042

House of Representatives, March 12, 1969

Referred to Committee on Natural Resources. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Bragdon of Perham.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-NINE

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### **AN ACT to Create a Use Regulation Commission.**

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**Preamble.** Whereas, the State of Maine has committed itself to the principle of sound planning at state, county and municipal levels of government; and

Whereas, general enabling legislation exists to allow counties to become members of regional planning commissions and municipalities to zone, to adopt and amend an official map and to regulate the subdivision of land; and

Whereas, areas of the State are being made increasingly accessible by the construction and improvement of public roads; and public demand for and utilization of lands and waters may lead to the short-sighted, unplanned and destructive use of woodland areas and great pond areas located in the State; and

Whereas, in the judgment of the Legislature, it is desirable to extend the principles of sound planning, zoning and subdivision control in order to preserve public peace, health, safety and general welfare and to prevent the further spread of unplanned residential, recreational, commercial and industrial development, detrimental to the uses or value of surrounding land; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along major public roads of substandard structures or structures located in too close a proximity to such roads; and to prevent the despoliation, pollution and inappropriate use of woodland areas and great pond areas.

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

**R. S., T. 12, c. 206-A, additional.** Title 12 of the Revised Statutes is amended by adding a new chapter 206-A, to read as follows:

**CHAPTER 206-A**  
**USE REGULATION**  
**SUBCHAPTER I**  
**GENERAL PROVISIONS**

**§ 681. Definitions and scope**

1. Great pond. "Great pond" shall mean a pond with a surface area of more than 10 acres below the natural low-water mark created by the natural formation of land at a particular place.

2. Major road. "Major road" shall signify any state or county public way.

3. Multiple use. "Multiple use" means the care of all the various renewable surface resources of the natural forests so that they can be utilized in the combinations that will best meet the needs of the public and shall include the management of forest lands for timber harvests, watershed protection, wildlife protection and for recreation.

4. Remote great pond. A "remote great pond" is one no part of which lies within 600 feet of any major road.

5. Scope. This chapter shall apply only to unorganized and deorganized townships and the mainland plantations.

6. Tree farm. "Tree farm" is an area of privately-owned, taxpaying forest land dedicated by its owner to the growing and harvesting of repeated forest crops.

7. Zoned area. "Zoned area" shall include all land within 300 feet of the traveled edge of any major road and within 300 feet of the normal shoreline of any great pond, except remote great ponds. Zoned area shall include the surface of the waters of any great pond of less than 640 acres, except the surface of the waters of any remote great pond.

**SUBCHAPTER II**  
**USE REGULATION COMMISSION**

**§ 682. Use Regulation Commission**

There is created a Use Regulation Commission, hereinafter in this chapter called the "commission." The commission shall consist of 3 permanent members: The Director of Parks and Recreation, the Forest Commissioner and the State Planning Officer; and 4 members serving staggered 4-year terms to be appointed by the Governor with the advice and consent of the Council. The latter 4 members shall respectively represent the public, conservation interests, forest product industry interests and general landowner interests. The initial appointee to the commission representing the public shall be appointed for a one-year period; the initial appointee representing conservation interests shall be appointed for a 2-year period; the initial appointee representing forest product industry interests shall be appointed for a 3-year period: and the

initial appointee representing general landowner interests shall be appointed for a 4-year period.

§ 683. Officers, meetings and regulations

The commission shall elect annually, from its own membership, a chairman and secretary and such other officers it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than  $\frac{1}{2}$  of the membership. Such meetings shall be held no less frequently than 4 times a year. The commission may adopt whatever regulations it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the commission, which minutes shall be public record available and on file in the office of the commission.

§ 684. Budget, financing and executive director

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks and meet such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to hire an executive director of the commission. The executive director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The executive director, with the approval of the commission, may hire whatever competent professional personnel and other staff he deems necessary, and he may obtain office space, goods and services as required.

### SUBCHAPTER III POWERS AND DUTIES

§ 685. Zoning

1. Comprehensive plan. The commission shall prepare, adopt and may amend a comprehensive plan containing its recommendations for the development of the unorganized and deorganized townships and mainland plantations. Among other things, the plan may include the proposed general character, location, use, construction, layout, extent, size, open spaces and population density of all real estate in the zoned area and the proposed method for rehabilitating blighted districts and eliminating slum areas therein, if any. The commission shall hold a public hearing on its tentative proposals, before it adopts the plan or an amendment of it. Once adopted by the commission, the plan becomes a public record. It shall be filed in the office of the commission as well as in the office of the Secretary of State.

2. Adoption and amendment. After the commission has adopted the plan, based on principles of sound and comprehensive planning, the commission shall upon a majority vote of its members adopt and from time to time may

amend a zoning ordinance which is applicable in any subarea or group of subareas within the zoned area. The zoning ordinance may regulate the following within the zoned area:

- A. Location and use of real estate for agricultural, industrial, commercial, forestry, recreational, residential and other purposes;
- B. Type of construction, height, width, minimum floor area and bulk of all structures;
- C. Lot size and size of open space or unbuilt upon area of all real estate parcels;
- D. Setback of structures along major roads and along the shores of great ponds;
- E. Use of boats and size of outboard motors on great ponds of less than 640 acres.

Among other things, the ordinance shall be designed to encourage the most appropriate use of land; to prevent overcrowding or substandard development of real estate; to prevent development from polluting great ponds; to preserve natural conditions where appropriate or beneficial; to protect forest resources and timber reserves for industrial use; to encourage tree farms; and to encourage the policy of multiple use of forest and timber resources.

3. Notice of intent to zone. At least 6 months before public hearing on any proposed zoning ordinance, the commission shall give notice of its intent to zone any portion of zoned area by first class mail directed to the owners of land according to their names and addresses as shown on the records of the State Bureau of Taxation. Such notice shall reasonably define the portion of the zoned area to be involved and shall invite the owner thereof to submit to the commission a description of the use or uses to which this land within the zoned area is being put, and a plan of the use or uses to which he intends to put it in the future.

4. Notice of hearing. After 6 months' notice of intent to zone has been given, notice of zoning hearing, which shall be open to the public, shall be given in a similar manner as described in subsection 3 to landowners in the zoned area to be affected. Such notice shall state the date, time and place of the hearing, which shall be in the county where the area affected lies, shall reasonably define the portion of the zoned area to be involved, and shall be mailed at least 14 days before the hearing is scheduled.

5. Considerations. In adopting a zoning ordinance with respect to any portion of the zoned area, the commission shall give consideration to public and private planning reports and other data available to it, and where not inconsistent with the spirit and intent of this chapter shall give weight to existing uses of the land and to any reasonable plan of its owners and its future use.

- A. In any event, land in the zoned area used or held for either forest product or agriculture uses, if so stated by the owner thereof, shall at the re-

quest of the owner be zoned for such use and shall not be zoned otherwise without the owner's consent. Nothing in this chapter or in any ordinance adopted shall in any way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings or other structures used primarily for agricultural or forest products industry purposes in the zoned area.

B. In addition, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State to encourage the well managed multiple use of the privately owned forest and timber resources and to the making of these lands available to the people of this State and visitors to it, in their common pursuit of various out-of-doors recreational activities, including hunting, fishing, boating, hiking and camping.

6. Amendments. The commission may from time to time upon its own motion, or upon the application of the owner of land in a zoned area, amend such zoning ordinance as it applies to any subarea. Public hearing on any amendment shall be held after giving 3 weeks' notice in a similar manner as described in subsection 3, to all owners in the case of a great pond, owning land on the shore thereof, or in the case of land on a public road, to all roadside owners within one mile of the parcel to be affected by such proposed amendment.

7. Map. Before adoption of a zoning ordinance or amendment, the commission shall prepare a zoning map outlining each zone to be established or modified. These maps shall be on file and available for inspection by any interested party in the offices of the commission. After adoption, the maps shall be recorded in the appropriate registry of deeds of the county in which the land lies.

8. Application. No ordinance shall apply to structures and uses existing at the time the ordinance is adopted, but shall apply to new structures and uses and to substantial changes in structures and uses made after passage, provided that year-round occupied single family residences and operating farms presently in existence and use shall be exempt from the ordinance while so used to the extent that new accessory buildings or renovations of existing buildings are necessary to the satisfactory and comfortable continuation of these exempt residential and farm categories. The changes in structure and use to which a zoning ordinance applies may be defined in the ordinance. No ordinance shall apply to or prohibit use of land as a tree form or for forestry purposes or for lumbering or woodcutting operations of any kind. No ordinance shall be enacted contrary to subsection 5, paragraphs A and B, and if enacted contrary to said paragraphs, it shall not apply to nor prohibit the uses outlined in said paragraphs.

9. Exemptions. Real estate used or to be used by a public service corporation may be wholly or partially exempted from an ordinance when, upon timely petition to the commission and after a hearing, the commission determines that such exemption is necessary or desirable for the public's welfare or convenience.

10. **Governments.** Any zoned area which subsequently becomes a part of an organized municipal entity and which formerly was zoned pursuant to this enabling legislation shall continue to be regulated by the zoning ordinance until such time as the new municipal entity of which the territory is a part shall amend the existing zoning ordinance. The zoning ordinance shall be only advisory with respect to actions of the State Government.

11. **Building permit.** Any individual or corporation who would build upon zoned land, except land provided for by subsection 5 paragraph A, must apply to the commission for a permit for such building or structure. A permit application shall be in writing and shall be signed by the applicant and directed to the executive director of the commission. It shall show with reasonable clarity the type and location on the lot of the proposed building or structure and shall note in all respects the compliance of the proposed building or structure with the zoning ordinance in effect. The executive director, with the approval of the commission, shall approve or disapprove each application. Failure of the executive director to issue a written notice of his decision, directed to the applicant, within 30 days from the date of filing the application constitutes a disapproval or refusal of the permit.

12. **Nuisance.** Any real estate or personal property existing in violation of an ordinance enacted pursuant to this enabling legislation is a nuisance.

13. **Inspection.** For purposes of inspection and to insure compliance with a zoning ordinance, any member of the commission, the executive director, appointed staff or consultant personnel of the commission may obtain access at reasonable hours to any zoned lands and structures thereon.

14. **Taxation.** For purposes of property tax assessment, it shall be presumed that any zoning classification hereunder is permanent in the absence of clear proof to the contrary. The State Tax Assessor shall consider the effect upon value of any restrictions to which the use of the land is subjected. Restrictions shall include, but are not necessarily limited to, zoning restrictions and any recorded contractual provisions limiting the use of land entered into with the Federal or State Government or any subdivision or agency thereof.

#### § 686. Subdivision control

1. **Subdivision control ordinance.** The commission, based on standards of health, safety and general welfare as these standards apply to the process of subdividing land, and after adoption of a zoning ordinance for the zoned area or any portion thereof, may upon a majority vote of its members adopt, and from time to time amend, a subdivision control ordinance which shall be applicable in that portion of the zoned area. The subdivision control ordinance shall be consistent with the zoning ordinance and may regulate to achieve minimum standards in the development of subdivided land with particular attention to such factors as utilities, drainage, pollution control, water supply, lot sizes and other improvements.

2. **Publication.** A subdivision control ordinance or any amendment thereto shall become effective 30 days after the filing of a certified copy thereof in the registry of deeds of the applicable county.

3. **Governments.** Any zoned area which subsequently becomes a part of an organized municipal entity and which formerly was subject to a subdivision control ordinance validly adopted pursuant to this enabling legislation shall continue to be regulated by such ordinance until such time as the new municipal entity of which the territory is a part shall adopt a zoning ordinance.

4. **Subdivision.** A subdivision shall be defined as a division of an existing parcel of land into 3 or more parcels within any 5-year period whether this division is accomplished by platting and recording a subdivision plat of the land, or by a sale of the land by metes and bounds except where no one of such parcels is less than 10 acres in size. Any individual or corporation who would subdivide lands, any part of which are subject to a subdivision control ordinance adopted pursuant to this enabling legislation, must apply to the commission for a permit allowing such subdivision. An application for a subdivision permit shall be in writing signed by the applicant and directed to the executive director of the commission. It shall show with reasonable clarity the full scope of the proposed subdivision and shall note in all respects the compliance of the proposed subdivision with the subdivision control ordinance in effect. The executive director, with the approval of the commission, shall approve or disapprove each application. Failure of the executive director to issue a written notice of his decision, directed to the applicant, within 30 days from the date of filing the application constitutes a disapproval or refusal of the permit.

5. **Recording.** A register of deeds shall not record any plat of a subdivision unless the commission's approval is evidenced thereon.

The recording of a plat or plan in violation of this subsection is void.

#### SUBCHAPTER IV

### ZONING AND SUBDIVISION CONTROL BOARDS OF APPEALS

#### § 687. Zoning and subdivision control boards of appeals

1. **Separate boards of appeals.** There shall be established a separate zoning and subdivision control board of appeals for each county in which land subject to this chapter is located.

2. **Membership.** The boards of appeals shall consist of 5 members, one of whom shall be a member of the commission or its staff, and one of whom shall be a resident of the county appointed by the commission. The remaining 3 shall be the county commissioners of the county. The board of appeals shall choose an alternate member to act in the absence of a regular member. The member appointed by the commission and the alternate member shall serve for a term of 3 years. The board shall elect a chairman and secretary each year from its own membership.

3. **Appeal.** An appeal must be filed in any case within 60 days after refusal of an application for a building permit or a subdivision permit, by any person aggrieved thereby. The appeal must be in writing, directed to the county commissioners of the appropriate county and must state the grounds



upon which the appeal is being made. The failure of the board to issue a written notice of its decision, directed to the appellant, within 30 days from the date of the filing of the appeal constitutes a denial of the appeal, an affirmance of the commission's decision.

4. **Basis.** An appeal may be taken from the refusal to grant a permit on the grounds that it:

- A. Is unreasonable;
- B. Creates an undue hardship; or
- C. In inconsistent with the intent of this chapter.

An appeal may be taken from the failure to grant a subdivision permit on the grounds that:

- A. The commission's action was unreasonable;
- B. The conditions upon which the permit was granted was unreasonable; or
- C. It creates an undue hardship, and reversal of the action will not cause a substantial departure from the intent of the ordinance.

5. **To Superior Court.** A decision of the zoning and subdivision control board of appeals may be appealed to the Superior Court within 45 days of the decision by either the appellant before the board or by the commission. Notice of the appeal shall be ordered by the court and the appeal shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. Costs may be awarded to the prevailing party by the court as justice requires.