

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1289

S. P. 415

In Senate, March 16, 1979

Referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

Presented by Senator McBreairty of Aroostook.

Cosponsors: Senators Carpenter of Aroostook, O'Leary of Oxford and R. Martin of Aroostook.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Conform Land Use Regulation in the Unorganized Territory to
Statewide Standards.**

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

Sec. 1. 12 MRSA § 683, first ¶, as amended by PL 1975, c. 771, § 136, is further amended by adding at the end a new sentence to read:

A majority of the public members shall reside in areas subject to the commission's jurisdiction.

Sec. 2. 12 MRSA § 685-A, sub-§ 1, as last amended by PL 1977, c. 694, § 222, is further amended by adding at the end 2 new paragraphs to read:

No protection district may be established for the protection of deer wintering areas, unless there is substantial evidence that a significant population of deer exist in the vicinity of a shelter area. The shelter area itself may not exceed 250 acres. No more than 2 deer wintering area protection subdistricts may be established on land owned by the same landowner or landowners in any township.

No district may be established for the protection of recreational resources on privately owned land without the landowner's permission. Recreation protection

districts for remote ponds may not exceed $\frac{1}{4}$ mile around the body of water and no more than 2 such districts may be established in any township.

Sec. 3. 12 MRSA § 685-A, sub-§ 3, as last amended by PL 1977, c. 694, § 223, is repealed and the following enacted in its place:

3. Land use standards. The commission, acting on principles of sound land use planning and development, shall prepare land use standards prescribing standards for the use of air, lands and waters. No standards may be more restrictive than state requirements for municipalities.

In addition to the purposes set forth in section 681, the land use standards shall:

- A. Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan, minimizing economic impact and regulatory burdens on property owners and promoting energy conservation and efficiency;
- B. Protect public health by reduction of noise, air pollution and other environmental intrusions;
- C. Protect and preserve unusually significant natural, scenic and historic features where appropriate, beneficial and consistent with the comprehensive plan; where a demonstrated need exists for that protection;
- D. Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation;
- E. Provide for safe and appropriate loading, parking and circulation of land, air and water traffic; and
- F. Reflect a consideration of the availability and capability of the natural resources base, including soils, topography or sufficient healthful water supplies.

Sec. 4. 12 MRSA § 685-A, sub-§ 4, as last amended by PL 1977, c. 390, § 2, is repealed and the following enacted in its place:

4. Land use standards as minimum requirements. Land use standards shall be interpreted and applied by the commission as minimum requirements, adopted to reasonably and effectively promote health, safety and general welfare and insure compliance with state plans and policies.

Whenever the requirements of the adopted land use standards are at variance with the requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed restrictions or covenants, the more protective of existing natural, recreation and historic resources shall govern.

Any portion of a land use district, which subsequently becomes an organized municipality or part of an organized municipality or any plantation which adopts planning, zoning and subdivision control as provided in Title 30, section 5621, may continue to be regulated by the Maine Land Use Regulation Commission pursuant

to this chapter by vote of the municipal legislative body. The municipality or plantation shall continue to be regulated by the Maine Land Use Regulation Commission until such time as the municipality or plantation of which the regulated district is then a part, shall adopt shoreland zoning in conformance with chapter 424.

Sec. 5. 12 MRSA § 685-A, sub-§ 5, as amended by PL 1973, c. 569, § 10, is repealed and the following enacted in its place:

5. **Considerations, application and exemptions.** No land use standard shall deprive any owner or lessee, or subsequent owner or lessee, of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single family residences and operating farms in existence and in use as of September 23, 1971, while so used and new accessory buildings or structures or renovations of the buildings or structures which are, or may be, necessary to the satisfactory and comfortable continuation of these residential and farm uses, shall be exempt from any requirements contained in section 685-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts shall in no 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 and other structures used primarily for agricultural or commercial forest product purposes, including tree farms.

Land use standards shall allow for the harvest and salvage of timber in all districts where the harvest and salvage is compatible with the purposes of this chapter.

In adopting district boundaries and land use standards, or in amending the boundaries or standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land, to any reasonable plan of its owner as to future use, to the economic benefits for the owner or the State and to energy conservation.

Sec. 6. 12 MRSA § 685-A, sub-§ 7, first ¶, as amended by PL 1973, c. 569, § 10, is repealed.

Sec. 7. 12 MRSA § 685-A, sub-§ 7, 2nd ¶, as amended by PL 1973, c. 569, § 10, is further amended to read:

At least 30 120 days prior to holding a public hearing on proposed land use district boundaries, the commission shall give notice of said hearing to the owners of directly affected lands by mail, according to their names and addresses as shown on the records of the Bureau of Taxation and plantation tax assessors. **Hearings shall be at a time and place convenient to persons affected.**

Sec. 8. 12 MRSA § 685-A, sub-§ 9, as amended by PL 1973, c. 569, § 10, is further amended to read:

9. Periodic review of district boundaries and land use standards. At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of **landowners and appropriate state agencies** shall be secured in making this review and public hearings shall be held in accordance with the requirements set forth in subsection 7.

Sec. 9. 12 MRSA § 685-B, sub-§ 1, as last amended by PL 1977. c. 213, §§ 1 and 2, is repealed and the following enacted in its place:

1. Review and approval required. Except as provided:

A. No structure or part thereof shall be erected, converted or wholly or partially altered or enlarged in its use or structural form other than normal maintenance or repair, without a permit issued by the commission;

B. No person shall commence development of or construction on any lot or parcel within any subdivision or sell or offer for sale any interest in any lot or parcel within any subdivision without a permit issued by the commission; and

C. No person shall commence any construction or operation of any development without a permit issued by the commission.

No permit shall be required for the well-managed harvesting of timber or crops or the construction, maintenance or reconstruction of year-round or seasonal single family residences so long as these residences are located at least 75 feet from the mean high water mark of any great pond or major stream, 25 feet from the property sidelines and are not located in a wetlands area and are in conformity with all other applicable laws and regulations. The commission may require notice of these activities before their commencement.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards, rules and regulations adopted by the commission shall be a sufficient basis to support, but shall not require a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422 or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet the requirements of the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807-4807-G,

the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422 or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of that decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. These procedures shall, to the extent practicable, ensure: That availability to the public of necessary information concerning land use permits; the provision of assistance to applicants in obtaining these permits from those agencies; and the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. The permit issuing agencies shall cooperate with the commission in the development and effectuation of the coordination and assistance procedures.

STATEMENT OF FACT

The bill would reduce the regulatory burden imposed on property owners by the Maine Land Use Regulation Commission. The 4 basic premises of the bill are: Regulation in the unorganized territory should be no stricter than in the organized; protection districts which greatly limit the owners use of the land should be closely scrutinized and limited, with the burden being on Maine Land Use Regulation Commission to justify the existence of these districts; general standards, as opposed to a permit process should be encouraged; and economic impact and property rights should be given more consideration than Maine Land Use Regulation Commission has given in the past.