

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 FIRST REGULAR SESSION  
3

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4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

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6 Legislative Document

No. 1251

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8 S.P. 448

In Senate, April 4, 1985

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

11 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator McBreairty of Aroostook.

12 Cosponsored by Representative Harper of Lincoln and Representative  
Ridley of Shapleigh.

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13 STATE OF MAINE  
14

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15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-FIVE  
17

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18 AN ACT to Restructure the Duties and Funding  
19 of the Maine Land Use Regulation Commission.  
20

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21 Emergency preamble. Whereas, Acts of the Legis-  
22 lature do not become effective until 90 days after  
23 adjournment unless enacted as emergencies; and

24 Whereas, under the current funding law for the  
25 Maine Land Use Regulation Commission, changes for  
26 services and activities of the commission are delayed  
27 until July 1, 1985; and

28 Whereas, this legislation proposes changes in the  
29 funding formulas; and

30 Whereas, unless this legislation is enacted as  
31 emergency legislation those changes will not take ef-  
32 fect until after the charges are due; and

33 Whereas, in the judgment of the Legislature,  
34 these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following  
2 legislation as immediately necessary for the preser-  
3 vation of the public peace, health and safety; now,  
4 therefore,

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

7 Sec. 1. 12 MRSA §683, first ¶, as amended by PL  
8 1983, c. 812, §75, is further amended to read:

9 The Maine Land Use Regulation Commission, as es-  
10 tablished by Title 5, section 12004, subsection 5, to  
11 carry out the purposes stated in section 681, is cre-  
12 ated within the Department of Conservation, and in  
13 this chapter called the "commission." The commission  
14 is charged with implementing this chapter in all of  
15 the unorganized and deorganized areas of the State.  
16 The commission shall consist of 7 public members,  
17 none of whom shall be state employees, who shall be  
18 appointed by the Governor, subject to review by the  
19 Joint Standing Committee on Natural Resources and to  
20 confirmation by the Legislature, for staggered 4-year  
21 terms. Among the public members, there shall be 4  
22 who shall be knowledgeable in at least one of each of  
23 the following areas: Commerce and industry; fisheries  
24 and wildlife; forestry; and conservation. ~~Of the po-~~  
25 ~~tential appointees to the commission, the Governor~~  
26 ~~shall give consideration to persons residing in or~~  
27 ~~near the unorganized areas of the State. Among the~~  
28 appointed members, at least one member must be a res-  
29 ident of the unorganized territory of the State and  
30 at least one member must be a resident of a town or  
31 plantation being served by the commission.

32 Sec. 2. 12 MRSA §685-A, sub-§4, as amended by PL  
33 1983, c. 862, §34, is further amended to read:

34 4. Land use standards considered as minimum re-  
35 quirements. Land use standards shall be interpreted  
36 and applied by the commission as minimum require-  
37 ments, adopted to reasonably and effectively promote  
38 health, safety and general welfare and insure compli-  
39 ance with state plans and policies.

1 If the commission adopts standards which are more  
2 stringent than those required by state law, those  
3 standards must be approved by the voters of a town or  
4 plantation at an election before those standards are  
5 applied to that town or plantation.

6 Whenever the requirements of the adopted land use  
7 standards are at variance with the requirements of  
8 any other lawfully adopted rules, regulations, stan-  
9 dards, ordinances, deed restrictions or covenants,  
10 the more protective of existing natural, recreation  
11 and historic resources shall govern.

12 Any portion of a land use district which subsequently  
13 becomes an organized municipality or part of an or-  
14 ganized municipality or any plantation which adopts  
15 planning, zoning and subdivision control as provided  
16 in Title 30, section 5621, shall continue to be regu-  
17 lated by the Maine Land Use Regulation Commission  
18 pursuant to this chapter until such time as the mu-  
19 nicipality or plantation of which the regulated dis-  
20 trict is then a part, shall adopt land use plans and  
21 regulations ~~not less protective of the existing natu-~~  
22 ~~ral, recreational or historic resources than those~~  
23 ~~adopted by the commission that meet minimum state~~  
24 ~~standards and reasonably protect the municipality's~~  
25 ~~existing natural, recreational or historic resources.~~

26 Any municipality organized after September 23, 1971,  
27 or any plantation which adopts planning, zoning and  
28 subdivision control as provided in Title 30, section  
29 5621, may submit to the commission ~~and receive the~~  
30 ~~approval of the commission~~ of the following:

31 A. A comprehensive land use plan for such  
32 plantation or proposed city or town;

33 B. Standards for determining land use district  
34 boundaries and uses permitted within such dis-  
35 tricts in such plantation or proposed city or  
36 town;

37 C. A land use district boundary map for such  
38 plantation or proposed city or town; and

39 D. Such other proposed regulations or standards  
40 as ~~the commission deems to be~~ necessary to

1 achieve the purpose, intent and provisions of  
2 this chapter; and.

3 E. Upon request of the municipality or  
4 plantation, the commission shall prepare such  
5 plans, maps, regulations and standards as it may  
6 deem necessary to meet minimum planning and zoning  
7 standards for its approval thereof.

8 If a municipality or plantation meets the standards  
9 set out in paragraphs A to D, the commission shall  
10 issue its approval. Upon obtaining the foregoing ap-  
11 proval, the plantation, city or town shall thereafter  
12 adopt, administer and enforce such approved plans,  
13 maps, regulations and standards.

14 From time to time, the commission may review the ad-  
15 ministration and enforcement of local land use plans  
16 and regulations by plantations and municipalities  
17 which have adopted land use plans, maps, regulations  
18 and standards approved by the commission. If, fol-  
19 lowing the review, the commission finds that any of  
20 the following have occurred, the commission may rees-  
21 tablish its jurisdiction over that plantation or mu-  
22 nicipality:

23 A. A plantation or municipality has repealed the  
24 land use plan, maps, standards or regulations  
25 necessary to satisfy the requirements of this  
26 subsection or has substantially modified the land  
27 use plan, maps, standards or regulations so that  
28 the resources of the plantation or municipality  
29 are not reasonably protected;

30 B. A plantation or municipality has abolished or  
31 does not have functioning the administrative  
32 bodies and officers necessary to implement the  
33 land use program as approved by the commission,  
34 normally a planning board, board of appeals and  
35 code enforcement officer are included, but this  
36 may vary depending on the local program; or

37 C. A plantation or municipality has not adminis-  
38 tered or enforced its land use plan, maps, stan-  
39 dards or regulations in a manner which reasonably  
40 protects the resources in the plantation or mu-  
41 nicipality involved.

1 The action by the commission shall conform with the  
2 provisions for rulemaking of the Maine Administrative  
3 Procedure Act, Title 5, chapter 375.

4 Action taken by the commission to reestablish its ju-  
5 risdiction over a plantation or municipality shall be  
6 ~~effective immediately, but shall be~~ submitted to the  
7 current or next regular session of the Legislature  
8 for approval or disapproval. ~~If the Legislature~~  
9 ~~fails to act, the action shall continue in effect.~~

10 Sec. 3. 12 MRSA §685-B, sub-§2, ¶B, as repealed  
11 and replaced by PL 1977, c. 564, §51, is amended to  
12 read:

13 B. The fee prescribed by the commission rules,  
14 such fee to be the greater of ~~\$10~~ \$25 or 1/10 of  
15 1% of the total construction costs;

16 Sec. 4. 12 MRSA §685-C, sub-§3, as amended by PL  
17 1977, c. 694, §234, is further amended to read:

18 3. Schedule of fees. The Except as specifically  
19 provided in this subsection and section 685-B, the  
20 commission shall establish and amend a schedule of  
21 reasonable fees for the administration of this chap-  
22 ter. The fees shall be adopted and amended, in ac-  
23 cordance with procedures for the establishment of  
24 rules and regulations pursuant to Title 5, chapter  
25 375, subchapter II.

26 No approval, certificate, special exception, or vari-  
27 ance shall be issued, unless or until such fees es-  
28 tablished by the commission have been paid in full,  
29 nor shall any action be taken on proceedings before  
30 the commission, unless or until preliminary fees have  
31 been paid in full.

32 The following fees shall be assessed for the follow-  
33 ing activities.

34 A. The fee for the issuance of any advisory rul-  
35 ing or opinion shall be \$15.

36 B. The fee for any activity performed by the  
37 commission which is comparable to an activity  
38 conducted by the Department of Environmental Pro-

1 tection or another state agency outside of the  
2 unorganized territory, shall be the same as the  
3 fee which is charged by the department or that  
4 other agency.

5 Sec. 5. 12 MRSA §685-D, as repealed and replaced  
6 by PL 1983, c. 827, §2, is repealed and the following  
7 enacted in its place:

8 §685-D. Funding

9 1. Definitions. As used in this section, unless  
10 the context otherwise indicates, the following terms  
11 have the following meanings.

12 A. "Area" means the total area of each category  
13 being served by the commission.

14 2. Unorganized and deorganized areas. Services  
15 and activities of the commission which benefit the  
16 unorganized and deorganized areas of the State shall  
17 be charged to the Unorganized Territory Educational  
18 and Services Tax established in Title 36, chapter  
19 115.

20 3. Plantations, towns and cities. Beginning  
21 with fiscal year 1985-86, services and activities of  
22 the commission which benefit plantation, town and  
23 city areas only shall be paid from the General Fund  
24 which shall be reimbursed by charges made by the com-  
25 mission directly to the plantations, towns and cities  
26 receiving the benefit. Charges made by the commis-  
27 sion directly to plantations, towns and cities shall  
28 be made by June 30th of the fiscal year in which the  
29 activities and services were provided.

30 4. Total area of the State. Activities and ser-  
31 vices of the commission which benefit the total area  
32 of the State and are carried out in the organized ar-  
33 reas of the State by other state departments or agen-  
34 cies and funded by the General Fund shall be charged  
35 to the General Fund.

36 5. Charges. All commission charges for activi-  
37 ties and services performed for each area will be  
38 based directly on the percentage of total activities  
39 and services performed by the commission within each  
40 area.

