

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 506

H.P. 384 House of Representatives, February 23, 1987
Reported by Representative CARROLL from the Committee on
State and Local Government. Sent up for concurrence and
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Reported from the Joint Standing Committee on State and
Local Government under Joint Rule 19.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

1 AN ACT to Clarify the Home Rule Authority of
2 Municipalities.
3

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

7 Whereas, several court decisions have shown that
8 municipal home rule is not being implemented to the
9 extent originally intended by the Legislature; and

10 Whereas, the effective implementation of municipi-
11 pal home rule is of vital importance to municipali-
12 ties in the State, as well as, to the health, safety
13 and well being of the citizens of the State; and

1 Whereas, a recodification of the local govern-
2 ment laws of the State is pending, and it is desir-
3 able to enact legislation clarifying the home rule
4 authority of municipalities before the recodification
5 is enacted in order to provide a smooth transition
6 under the recodification; and

7 Whereas, in the judgment of the Legislature,
8 these facts create an emergency within the meaning of
9 the Constitution of Maine and require the following
10 legislation as immediately necessary for the preser-
11 vation of the public peace, health and safety; now,
12 therefore,

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

15 Sec. 1. 23 MRSA §3651, sub-§1 is enacted to
16 read:

17 1. Legal objects not defects. Trees, structures
18 and other things which exist in accordance with mu-
19 nicipal ordinances are not defects in a public way.

20 Sec. 2. 26 MRSA §612-A is enacted to read:

21 §612-A. Municipal licensing

22 This subchapter shall not be construed to prevent
23 a municipality from acting under its home rule au-
24 thority granted by Title 30, section 2151-A and by
25 the Constitution of Maine, Article VIII, Part Second,
26 to license or regulate the business of employment
27 agencies or to require a bond.

28 Sec. 3. 26 MRSA §613, sub-§2, as enacted by PL
29 1985, c. 623, §1, is amended to read:

30 2. Civil action. An action may be brought by the
31 injured party, the Attorney General, the Department
32 of Labor or any municipality which has issued a li-
33 cense to the employment agency ~~under Title 30, sec-~~
34 ~~tion 2601-A~~ in accordance with section 612-A.

35 Sec. 4. 30 MRSA §1901, sub-§4-A is enacted to
36 read:

1 4-A. Home rule authority. "Home rule authority"
2 means the powers granted to municipalities under
3 chapter 201-A, section 2151-A and the Constitution of
4 Maine, Article VIII, Part Second.

5 Sec. 5. 30 MRSA §1903, first ¶, is amended to
6 read:

7 A municipality may receive This section governs a
8 municipality's receipt of money or other property in
9 trust for any specified municipal, benevolent, reli-
10 gious or educational purpose.

11 Sec. 6. 30 MRSA §1904, first ¶, is amended to
12 read:

13 A municipality may accept This section governs a
14 municipality's receipt of a conditional gift for any
15 specified municipal, benevolent, religious or educa-
16 tional purpose.

17 Sec. 7. 30 MRSA §1913, sub-§5, as amended by PL
18 1975, c. 329, §4, is further amended to read:

19 5. Hearings, reports, time limits. Within 30
20 days after its organizational meeting the charter
21 commission shall hold a public meeting for the pur-
22 pose of receiving information, views, comments and
23 other pertinent material relative to its functions.

24 Within 9 months after its election, the charter com-
25 mission shall prepare a preliminary report including
26 the text of the charter or charter revision which the
27 commission intends shall be submitted to the voters
28 and any explanatory information the commission deems
29 desirable, shall cause such report to be printed and
30 circulated throughout the municipality, and shall
31 provide sufficient copies of the preliminary report
32 to the municipal clerk to permit its distribution to
33 each voter requesting same.

34 Within 12 months after its election, the charter com-
35 mission shall submit to the municipal officers its
36 final report, which shall include the full text and
37 an explanation of the proposed new charter or charter
38 revision, such comments as the commission deems de-
39 sirable, an indication of the major differences be-

1 tween the current and proposed charters and a written
2 opinion by an attorney admitted to the bar of this
3 State that the proposed charter or charter revision
4 is not in conflict with does not contain any provi-
5 sion prohibited by the Constitution of Maine or the
6 general laws. Minority reports if filed shall not
7 exceed 1,000 words.

8 The time limits on the preparation and submission of
9 preliminary and final reports of the charter commis-
10 sion may be extended by the municipal officers, but
11 in no event for longer than 24 months after the elec-
12 tion of the charter commission, if such extension
13 shall be necessary to properly complete such reports,
14 or to have them printed or circulated or to secure
15 the written opinion of an attorney.

16 All public hearings before a charter commission shall
17 be held within the municipality at such times and
18 places as may be specified in a notice published at
19 least 10 days prior to the hearing in a newspaper
20 having general circulation in the municipality, but
21 hearings may be adjourned from time to time without
22 further published notice.

23 Sec. 8. 30 MRSA §1914, sub-§4, ¶B, as amended by
24 PL 1981, c. 687, §3, is further amended to read:

25 B. Within 7 days after the public hearing, the
26 municipal officers or the committee appointed by
27 them shall file with the municipal clerk a report
28 containing the final draft of the proposed amend-
29 ment and a written opinion by an attorney admit-
30 ted to the bar of this State that the proposed
31 amendment is not in conflict with does not con-
32 tain any provision prohibited by the general laws
33 or the Constitution of Maine or the Constitution
34 of the United States. In the case of a committee
35 report, a copy shall be filed with the municipal
36 officers.

37 Sec. 9. 30 MRSA §1917, as enacted by PL 1969, c.
38 563, is repealed.

39 Sec. 10. 30 MRSA §1995-B, sub-§1, as enacted by
40 PL 1985, c. 765, §5, is amended to read:

1 1. Expenses. The governing bodies of the member
2 governments may appropriate funds under their home
3 rule authority to meet the expenses of the council.
4 Services of personnel, use of equipment and office
5 space and other necessary services may be accepted
6 from members as part of their financial support.

7 Sec. 11. 30 MRSA §2060, first ¶, is amended to
8 read:

9 The Unless otherwise provided by charter, the
10 following provisions apply to the choice and qualifi-
11 cations of town officials:

12 Sec. 12. 30 MRSA §2151, as amended by PL 1983,
13 c. 802, §§1-4, is repealed.

14 Sec. 13. 30 MRSA §2151-A, is enacted to read:

15 §2151-A. Ordinance power

16 Any municipality may, by the adoption, amendment
17 or repeal of ordinances or bylaws, exercise any power
18 or function which the Legislature has power to confer
19 upon it, which is not denied either expressly or by
20 clear implication, and exercise any power or function
21 granted to the municipality by the Constitution of
22 Maine, general law or charter.

23 1. Liberal construction. This section, being
24 necessary for the welfare of the municipalities and
25 their inhabitants, shall be liberally construed to
26 effect its purposes.

27 2. Presumption of authority. There is a rebut-
28 table presumption that any ordinance enacted under
29 this section is a valid exercise of a municipality's
30 home rule authority.

31 3. Standard of preemption. The Legislature
32 shall not be held to have implicitly denied any power
33 granted to municipalities under this section, unless
34 the municipal ordinance in question would frustrate
35 the purpose of any state law.

36 4. Penalties accrue to municipality. All penal-
37 ties established by ordinance shall be recovered on
38 complaint to the use of the municipality.

1 Sec. 14. 30 MRSA §2151-B is enacted to read:

2 §2151-B. Ordinance requirements

3 The power to enact ordinances under section
4 2151-A is subject to the following provisions.

5 1. Limitation on affecting municipal officials.
6 No change in the composition, mode of election or
7 terms of office of the municipal legislative body,
8 the mayor or the manager of any municipality may be
9 accomplished by bylaw or ordinance.

10 2. Parking ordinances. The following provisions
11 apply to any parking ordinance enacted by a municipi-
12 pality.

13 A. Illegal parking of a vehicle in violation of
14 any ordinance is a traffic infraction.

15 B. The fact that any vehicle is illegally parked
16 or is in a metered space when the time signal on
17 the parking meter for that space indicates no
18 parking permitted without the deposit of a coin
19 or coins is prima facie evidence that the vehicle
20 has been parked illegally by the person in whose
21 name the vehicle is registered.

22 C. The revenue collected from parking meters
23 shall be used:

24 (1) To purchase, maintain and police the
25 meters;

26 (2) To construct and maintain public ways;

27 (3) To acquire, construct, maintain and op-
28 erate public parking areas; and

29 (4) For no other purpose.

30 D. The municipality's charges for metered park-
31 ing must be reasonable.

32 E. Any motor vehicle registered by a handicapped
33 person is exempt from any parking meter fare when
34 that vehicle properly displays special designat-

1 ing plates or a placard issued under Title 29,
2 sections 252 and 252-A, and may park a length of
3 time which does not exceed twice the time limit
4 otherwise applicable.

5 3. Use of public ways for sidewalks. The fol-
6 lowing provisions apply to any ordinance enacted by a
7 municipality setting off portions of its public ways
8 for sidewalks and regulating their use; providing for
9 the removal of snow and ice from the sidewalks by the
10 owner, occupant or agent having charge of the abut-
11 ting property; establishing crosswalks and safety
12 zones for pedestrians; or regulating pedestrian traf-
13 fic in the public ways.

14 A. Any violation of any such ordinance is a
15 traffic infraction.

16 4. Handicapped parking ordinances. The follow-
17 ing provisions apply to any ordinance enacted by a
18 municipality providing for the establishment of park-
19 ing spaces for handicapped persons.

20 A. The number of spaces set aside must be ade-
21 quate and any on-street spaces must be in appro-
22 priate locations for the use of handicapped per-
23 sons.

24 B. The municipality must post any of the follow-
25 ing signs adjacent to and visible from each hand-
26 icapped parking space:

27 (1) A sign consisting of a profile view of
28 a wheelchair with an occupant in white on a
29 blue background with a printed inscription.
30 The inscription shall read: "Handicapped
31 Parking: Special Plate Required. Unautho-
32 riized vehicles are subject to a fine"; or

33 (2) A sign consisting of a profile view of
34 a wheelchair with an occupant in white on a
35 blue background which may bear an inscrip-
36 tion.

37 C. Any new sign erected or any sign replaced af-
38 ter April 11, 1983, must conform to the signs de-
39 scribed in paragraph B. Any existing posted

1 signs that do not comply with paragraph B and
2 which were erected before April 11, 1983, are
3 valid for enforcement purposes.

4 D. Any vehicle parked in a parking space desig-
5 ned by a municipality as a handicapped parking
6 space that does not bear a special registration
7 plate or placard issued under Title 29, section
8 252, or a similar plate issued by another state,
9 shall be cited for a penalty not to exceed \$25
10 unless otherwise established by local ordinance.

11 E. Owners of off-street parking may enter into
12 agreements with local or county law enforcement
13 agencies for the policing of stalls and spaces
14 dedicated for handicapped persons' vehicles, un-
15 der which agreements unauthorized vehicles will
16 be tagged. Where service facilities are estab-
17 lished on the Maine Turnpike and on the inter-
18 state highway system in this State, the State Po-
19 lice shall enforce any handicapped parking re-
20 strictions at those facilities.

21 5. Buildings, structures, trailers and equipment
22 ordinances. The following provisions apply to any
23 ordinance enacted by a municipality concerning build-
24 ings, structures, trailers and equipment.

25 A. Any building, structure, trailer parking fa-
26 cility or equipment existing in violation of such
27 an ordinance is a nuisance.

28 6. Falling ice and snow. The following provi-
29 sions apply to any ordinance enacted by a municipali-
30 ty to protect persons and property from injury by re-
31 quiring building owners or lessees to install roof
32 guards to prevent the fall of snow and ice from the
33 roofs of their buildings.

34 A. The municipal officers shall send a written
35 notice to the owner or lessee who fails to comply
36 with such an ordinance.

37 B. If the owner or lessee does not install ef-
38 fective roof guards within 14 days after notice
39 is sent, he is liable for all injury caused by
40 his failure to do so.

1 C. After the 14-day period expires, the municipi-
2 pal officers may have proper roof guards in-
3 stalled at the municipality's expense, the rea-
4 sonable charges for which may be recovered from
5 the owner or lessee by special assessment as pro-
6 vided by Title 25, section 2393.

7 D. Any building existing in violation of such an
8 ordinance is a nuisance.

9 7. Regulation of retail sales. The following
10 provisions apply to any ordinance enacted by a munic-
11 ipality regulating the business of hawking and ped-
12 dling of merchandise at retail.

13 A. No such ordinance may apply to persons sell-
14 ing merchandise by sample, list or catalogue for
15 future delivery; farm, dairy, orchard, fish and
16 forest products of their own production; or news-
17 papers and religious literature.

18 8. Pension system. The following provisions ap-
19 ply to any ordinance enacted by a municipality to es-
20 tablish and maintain a general system of contributory
21 pensions for the benefit of its officials and employ-
22 ees.

23 A. Money appropriated by any municipality for
24 the operation of a pension system together with
25 money contributed by any person eligible to par-
26 ticipate in the system shall be administered by a
27 board created for that purpose and shall be kept
28 in a separate fund to be invested and disbursed
29 by the board.

30 B. A municipality which establishes such a sys-
31 tem may contract with any insurance company li-
32 icensed to do business in the State for the pay-
33 ment of pension benefits.

34 C. Any pension funds held by a municipality or
35 by a board established by it are exempt from at-
36 tachment or trustee process.

37 9. Public telephones. The following provisions
38 apply to any ordinance enacted by a municipality or
39 contract entered into under such an ordinance which

1 regulates the placing and maintenance of public ped-
2 estal telephones along the public ways within the
3 compact or built-up section of the municipality as
4 defined in Title 23.

5 A. The contracts may be made for terms not ex-
6 ceeding 3 years.

7 B. Pedestal telephones shall be located in ac-
8 cordance with applicable municipal ordinances and
9 within areas covered by municipal parking ordi-
10 nances.

11 C. Telephones located in accordance with these
12 ordinances and contracts are not defects in pub-
13 lic ways.

14 D. Telephone booths may be located in the manner
15 provided for pedestal phones, provided that they
16 be placed on sidewalks at least 4 feet from any
17 curb.

18 E. Revenues received from telephone contracts
19 shall be credited to general funds.

20 Sec. 15. 30 MRSA §2152, as amended by PL 1973,
21 c. 680, §4, is repealed.

22 Sec. 16. 30 MRSA §2152-C is enacted to read:

23 §2152-C. Authority of municipal officers to enact
24 ordinances

25 1. Authority to enact ordinances. The municipal
26 officers may enact ordinances in the following areas.

27 A. The municipal officers may establish a method
28 by which pedestrians charged with the violation
29 of regulations for their protection on the public
30 ways may waive all court action by payment of
31 specified fees within stated periods of time.

32 B. The municipal officers may provide for the
33 regulation of motor vehicles as defined in Title
34 29, section 1, subsection 7, on icebound inland
35 lakes during the hours from sunset to sunrise of
36 the following day. The Maine Land Use Regulation

1 Commission shall regulate motor vehicles on ice-
2 bound inland lakes which are completely encom-
3 passed by unorganized territories. A village
4 corporation and a plantation shall have the same
5 powers and duties as a municipality under this
6 subsection. Motor vehicles on icebound inland
7 lakes which are abutted by an unorganized terri-
8 tory and either one or more municipalities, vil-
9 lage corporations or plantations, in any combina-
10 tion, shall be regulated by those municipalities,
11 village corporations or plantations, as provided
12 in subparagraphs (1) and(2).

13 No ordinance authorized by this paragraph is val-
14 id unless;

15 (1) Each municipality abutting a lake has
16 enacted an identical local ordinance, in
17 which case the ordinance of any municipality
18 is in effect on the entire lake and any law
19 enforcement officer from any of those munic-
20 ipalities may enforce the ordinance on any
21 portion of the lake; or

22 (2) In cases where a lake is divided by an
23 easily identifiable boundary into 2 or more
24 nearly separate bodies, each municipality
25 abutting one of the distinguishable portions
26 of the lake has enacted an identical local
27 ordinance. The ordinance of any municipali-
28 ty is in effect only on that distinguishable
29 portion of the lake and any law enforcement
30 officer from any of those municipalities may
31 enforce the ordinance anywhere on that por-
32 tion of the lake.

33 2. Exclusive authority. The municipal officers
34 have the exclusive authority to enact ordinances in
35 the following areas.

36 A. The municipal officers may regulate the oper-
37 ation of all vehicles in the public ways and on
38 publicly owned property.

39 (1) The municipal officers may establish a
40 method by which persons charged with the vi-
41 olation of parking regulations may waive all

1 court action by payment of specified fees
2 within stated periods of time.

3 (2) The municipal officers may establish
4 specially designated parking areas for motor
5 vehicles operated by handicapped persons.

6 (3) The violation of any ordinance autho-
7 riized by this paragraph is a traffic infrac-
8 tion.

9 B. The municipal officers may regulate or estab-
10 lish a licensing authority which may regulate
11 rates of fare, routes and standing places of ve-
12 hicles for hire, except where jurisdiction rests
13 with the Public Utilities Commission and may re-
14 quire an owner or operator of a vehicle for hire
15 to carry a liability insurance policy in amount
16 and form satisfactory to the licensing authority
17 as a condition precedent to the granting of a li-
18 cence to operate.

19 C. A village corporation shall have the same
20 powers and duties as a municipality under this
21 subsection.

22 3. Method of enactment. When enacting ordi-
23 nances under this section, the municipal officers
24 shall give 7 days' notice of the meeting at which the
25 ordinances are to be proposed in the manner provided
26 for town meetings. Unless otherwise provided, these
27 ordinances take effect immediately.

28 Sec. 17. 30 MRSA §2156, sub-§2, as amended by PL
29 1973, c. 788, §137, is further amended to read:

30 2. Adoption and amendment of codes by reference.
31 Any municipality may ~~adept er repeal~~ an ordinance
32 which ~~incorporates~~ adopted or repealed by a municipi-
33 ality under its home rule authority may incorporate
34 by reference any code or portions of any code, or any
35 amendment thereof, properly identified as to date and
36 source, without setting forth the provisions of such
37 code in full. At least 3 copies of such code, por-
38 tion or amendment, which is incorporated or adopted
39 by reference, shall be filed in the office of the
40 clerk of the municipality and there kept available

1 for public use, inspection and examination. The fil-
2 ing requirements prescribed shall not be deemed to be
3 complied with unless the required copies of such
4 codes, portion or amendment or public record are
5 filed with the clerk of such municipality for a peri-
6 od of 30 days prior to the adoption of the ordinance
7 which incorporates such code, portion or amendment by
8 reference. If such a code, portion or amendment is
9 promulgated by a metropolitan or regional agency, the
10 adopting municipality must be within the territorial
11 boundaries of the agency. The filing requirements
12 for ordinances adopted pursuant to the Mandatory
13 Shoreland Zoning and Subdivision Control Act shall be
14 deemed to be met if said codes are on file in the of-
15 fice of municipal clerk by July 1, 1974.

16 Sec. 18. 30 MRSA §2253, sub-§4 is enacted to
17 read:

18 4. Home rule authority. Under its home rule au-
19 thority, a municipality may apply different provi-
20 sions governing the existence of vacancies in municipi-
21 pal offices and the method of filling those vacancies
22 as follows:

23 A. Any change in the provisions of this section
24 relating to municipal officers must be accom-
25 plished by charter; and

26 B. Any change in the provisions of this section
27 relating to any other municipal office may be ac-
28 complished by charter or ordinance.

29 Sec. 19. 30 MRSA §2256, as amended by PL 1983,
30 c. 664, is further amended to read:

31 §2256. Municipal functions

32 In addition to those offices and departments re-
33 quired by general law, a municipality may provide, by
34 ordinance, under its home rule authority for the per-
35 formance of all necessary any municipal functions
36 function. Except where specifically provided by
37 statute, municipal charter or municipal ordinance,
38 the municipal officers shall appoint all town offi-
39 cials and employees required by general law, by mu-
40 nicipal charter or by municipal ordinance and may re-

1 move such officials and employees for cause, after
2 notice and hearing. Except as specifically provided
3 otherwise by charter or ordinance, any reference to
4 cause and hearing in this Title shall only apply to
5 an employee who has completed a reasonable period of
6 probation as established by the municipality. Such
7 periods of probation shall never exceed 6 calendar
8 months or the length of time in effect in a munici-
9 pality on January 1, 1984, whichever is greater. Un-
10 less otherwise specified, the term of all municipal
11 officials shall be one year.

12 Sec. 20. 30 MRSA §2315, as enacted by PL 1969,
13 c. 438, §1, is repealed.

14 Sec. 21. 30 MRSA §2352, last ¶, is amended to
15 read:

16 A If a municipality may provide provides for a
17 salary to be paid to the clerk as full compensation,
18 ~~in which case the fees accrue to the municipality.~~

19 Sec. 22. 30 MRSA §2361, sub-§1, as amended by PL
20 1979, c. 104, is further amended to read:

21 1. Appointment. Except as provided in municipal
22 charter, municipal ordinance or section 2317, subsec-
23 tion 1, paragraph F, the municipal officers may ap-
24 point for a definite term, control and fix the com-
25 pensation of police officers, ~~unless the municipality~~
26 ~~has provided otherwise under section 2152, subsection~~
27 2. Police officers, including chiefs of police, may
28 be removed for cause after notice and hearing.

29 Sec. 23. 30 MRSA §2361, sub-§2, as amended by PL
30 1975, c. 430, §73, is further amended to read:

31 2. Powers. Police officers shall be empowered to
32 serve criminal and traffic infraction processes and
33 to arrest and prosecute offenders of the law. Except
34 for the purpose of retaking a prisoner whom he has
35 arrested and who has escaped, or for the purpose of
36 taking a person before the District Court, or for the
37 purpose of executing a mittimus given to him by such
38 court, or for the purpose of pursuing a person who
39 has gone into another municipality and for whose ar-
40 rest a police officer has a warrant, no police offi-

1 cer shall have any authority in criminal or traffic
2 infraction matters beyond the limits of the municipi-
3 pality in which he is appointed. A police officer has
4 all the statutory powers of a constable, except as
5 limited by municipal ordinance or charter.

6 Sec. 24. 30 MRSA §2362, as amended by PL 1979,
7 c. 115, is further amended to read:

8 §2362. Special police officers

9 Special police officers of limited jurisdiction
10 may be appointed for a term of not more than one year
11 and as provided in section 2361, subsection 1 and
12 shall have all powers of a police officer, except as
13 specifically provided by municipal ordinance, charter
14 or the certificate of appointment. A constable's
15 certificate of appointment shall state whether or not
16 he is allowed to carry a weapon, concealed or
17 unconcealed, in the performance of his duties. If a
18 constable is restricted in carrying a weapon, this
19 prohibition shall not be affected by any weapon's li-
20 cense the individual may possess.

21 Sec. 25. 30 MRSA §2411, sub-§1, as amended by PL
22 1979, c. 218, §3, is further amended to read:

23 1. Establishment. A municipality may establish a
24 board of appeals under its home rule authority and,
25 unless provided otherwise by municipal charter or
26 ordinance, the municipal officers shall appoint the
27 members and determine their compensation. It is in-
28 tended that all boards of appeals established subse-
29 quent to September 23, 1971 be governed by this sec-
30 tion.

31 Sec. 26. 30 MRSA §2411, sub-§2, ¶E, as amended
32 by PL 1975, c. 770, §165, is further amended to read:

33 E. Municipalities may by ordinance provide under
34 their home rule authority for a board of appeals
35 with associate members not to exceed 3 in number.
36 In the event there are 2 or 3 associate members,
37 the chairman shall designate which shall serve in
38 the stead of the absent member.

39 Sec. 27. 30 MRSA §2411, sub-§4, as amended by PL
40 1977, c. 501, §2, is further amended to read:

1 4. Jurisdiction. Any municipality establishing a
2 board of appeals ~~under this section~~ may vest the
3 board with the power to hear any appeal by any per-
4 son, affected directly or indirectly, from any deci-
5 sion, order, rule or failure to act of any officer,
6 board, agency or other body where such appeal is nec-
7 essary, proper or required. No board ~~created under~~
8 ~~this section~~ may assert jurisdiction over any matter
9 unless the municipality has by ordinance or charter
10 specified the precise subject matter that may be ap-
11 pealed to the board and the official or officials
12 whose action or nonaction may be appealed to the
13 board. Any board of appeals ~~operating under this~~
14 ~~section~~ shall hear any appeal submitted to the board
15 in accordance with Title 28, section 702.

16 Sec. 28. 30 MRSA §2454, sub-§5, as amended PL
17 1985, c. 305, is further amended to read:

18 5. Rules and regulations. No permit may be
19 granted for an automobile graveyard or junkyard that
20 is not in conformity with the rules promulgated under
21 section 2459; municipal officers or county commis-
22 sioners as provided for in section 2452 may apply
23 more stringent restrictions, limitations and condi-
24 tions in considering whether to grant or to deny any
25 permit for an automobile graveyard or junkyard adja-
26 cent to any highway. Nothing in this chapter may be
27 construed to ~~prevent a municipality from enacting~~
28 limit a municipality's home rule authority to enact
29 ordinances with respect to automobile graveyards and
30 junkyards which concern such other standards as the
31 municipality determines reasonable, including, but
32 not limited to: Conformance with state and federal
33 hazardous waste regulations; fire safety; traffic
34 safety; levels of noise which can be heard outside
35 the premises; distance from existing residential or
36 institutional uses; and the effect on ground water
37 and surface water, provided that municipal ordinances
38 on ground water are no less stringent than or incon-
39 sistent with rules adopted by the Department of Envi-
40 ronmental Protection concerning automobile graveyards
41 and junkyards. Municipal officers or county commis-
42 sioners may consider compliance with these local or-
43 dinances in deciding whether to grant or deny a per-
44 mit for an automobile graveyard or junkyard and in
45 attaching conditions of approval to the grant of a
46 permit.

1 A. As used in this subsection, "building used
2 for public assembly" means a room or space in or
3 on any structure which is used for the gathering
4 of 100 or more persons for any purpose, and in-
5 cludes any connecting room or space on the same
6 level, above or below, which has a common en-
7 trance.

8 §2482. Nuisance

9 Any building, structure, trailer parking facility
10 or equipment existing in violation of an ordinance
11 subject to this subchapter is a nuisance.

12 §2483. Permits

13 The provisions of this section apply to any ordi-
14 nance described in section 2481.

15 1. Applicability. The provisions of the ordi-
16 nance which pertain to buildings apply equally to all
17 structures including, wharves, piers and pilings and
18 parts of them.

19 2. Licensing authority. The building inspector
20 is the licensing authority, unless otherwise provided
21 by the the municipality.

22 3. Application; issuance of permit. An applica-
23 tion for a permit must be in writing and shall be
24 signed by the applicant and directed to the building
25 inspector. The failure of the building inspector to
26 issue a written notice of his decision, directed to
27 the applicant, within 30 days from the date when the
28 application is filed constitutes a refusal of the
29 permit. The building inspector may not issue any
30 permit for a building or use for which the applicant
31 is required to obtain a license under Title 38, sec-
32 tion 413 until the applicant has obtained that li-
33 cence; nor may the building inspector issue any per-
34 mit for a building or use within a land subdivision,
35 as defined in section 4956, unless that subdivision
36 has been approved in accordance with that section.

37 4. Powers and duties of enforcement officers.
38 Ordinances defining the duties of the building in-
39 spector and other enforcement officers, not contrary

1 to Title 25, chapter 313, may be enacted under a
2 municipality's home rule authority. All enforcement
3 officers designated by ordinance shall be given free
4 access at reasonable hours to all parts of buildings
5 regulated by ordinance.

6 5. Appeal. An appeal may be taken from any or-
7 der issued by the building inspector or from the li-
8 censing authority's refusal to grant a permit to the
9 municipal officers or to a board of appeals estab-
10 lished under section 2411.

11 A. On an appeal in writing to the municipal of-
12 ficers, they shall at their next meeting affirm,
13 modify or set aside the decision of the building
14 inspector according to the terms of the pertinent
15 ordinance. They may permit a variance from the
16 terms of an ordinance where necessary to avoid
17 undue hardship, provided that there is no sub-
18 stantial departure from the intent of the ordi-
19 nance. They may permit an exception to an ordi-
20 nance only when the terms of the exception have
21 been specifically set forth by the municipality.
22 The failure of the municipal officers to issue a
23 written notice of their decision, directed to the
24 appellant, within 30 days from the date of filing
25 of the appeal constitutes a denial of the appeal.
26 If a municipality has by ordinance required that
27 all such appeals be taken to a board of appeals,
28 the procedure shall be the same as in appeals di-
29 rected to the municipal officers, unless the mu-
30 nicipality has provided otherwise.

31 B. A further appeal may, within 30 days, be
32 taken by any party to Superior Court from any or-
33 der, relief or denial in accordance with Maine
34 Rules of Civil Procedure, Rule 80B. The hearing
35 before the Superior Court shall be a trial de no-
36 vo without a jury.

37 §2484. Public building violation; liability

38 1. Written order sent. The building inspector
39 shall send a written order to the owner or lessee of
40 a building used for public assembly, requiring any
41 conditions which exist in violation of an ordinance
42 to be corrected within 30 days after the order is
43 sent.

1 2. Liability. After the expiration of the
2 30-day period, the owner or lessee is liable for all
3 injury caused by his failure to correct any condi-
4 tions cited in the order under subsection 1, and the
5 building inspector shall order the building vacated.

6 Sec. 31. 30 MRSA §2555, first ¶ is amended to
7 read:

8 The governing body of any city or any town, at a
9 town meeting duly called therefor, may provide by
10 resolution or ordinance under its home rule authority
11 for the inspection of electrical installations within
12 the limits of such municipality and may appoint an
13 electrical inspector who shall enforce this subchap-
14 ter and any applicable resolution or ordinance within
15 his jurisdiction. Any city or town may join with one
16 or more other cities or towns in paying for the ser-
17 vices of said electrical inspector, provided said
18 cities or towns have duly authorized the appointment
19 of such inspector. Said ordinance or resolution shall
20 declare whether the electrical inspection in said
21 town or city shall be applicable to all or any of the
22 following:

23 Sec. 32. 30 MRSA c. 215, sub-c. IV as amended is
24 repealed.

25 Sec. 33. 30 MRSA §3221, sub-§1, as repealed and
26 replaced by PL 1985, c. 612, §4, is amended to read:

27 1. Municipal ordinances. Municipalities may
28 adopt ~~and, if adopted, shall enforce~~ ordinances under
29 their home rule authority which are more restrictive
30 than rules governing plumbing or subsurface waste wa-
31 ter disposal systems adopted by the Department of Hu-
32 man Services. The department may provide technical
33 assistance to municipalities in the development and
34 adoption of ordinances under this subchapter. The
35 municipality shall enforce any such ordinance.

36 Sec. 34. 30 MRSA §3221, sub-§4, as repealed and
37 replaced by PL 1985, c. 612, §4, is amended to read:

38 4. Subsurface waste water disposal system. "Sub-
39 surface waste water disposal system" means any system
40 for disposing of wastes or waste waters on or beneath

1 the surface of the earth, including, but not limited
2 to, septic tanks, drainage fields, grandfathered
3 cesspools, holding tanks or any other fixture, mecha-
4 nism or apparatus used for those purposes, but does
5 not include any discharge system licensed under Title
6 38, section 414, surface waste water disposal system
7 or any municipal or quasi-municipal sewer or waste
8 water treatment system.

9 No person may erect a structure that requires a sub-
10 surface waste water disposal system until documenta-
11 tion has been provided to the municipal officers that
12 the disposal system can be constructed in compliance
13 with regulations promulgated under Title 22, section
14 42, and this section.

15 For purposes of this section, "expansion" means the
16 enlargement or change in use of a structure using an
17 existing subsurface waste water disposal system that
18 brings the total structure into a classification that
19 requires larger subsurface waste water disposal sys-
20 tem components under regulations promulgated by Title
21 22, section 42, and this section.

22 No person may expand a structure using a subsurface
23 waste water disposal system until documentation has
24 been provided to the municipal officers and a notice
25 of the documentation recorded in the appropriate reg-
26 istry of deeds that, in the event of a future mal-
27 function of the system, the disposal system can be
28 replaced and enlarged to comply with the rules
29 promulgated under Title 22, section 42, and any
30 municipal ordinances promulgated under this section
31 governing subsurface waste water disposal systems. No
32 requirements of these rules and ordinances may be
33 waived for an expanded structure. The department
34 shall prescribe the form of the notice to be recorded
35 in the registry of deeds. The notice shall include a
36 site plan showing the exact location of the replace-
37 ment system, the approximate location of lot lines
38 and the exact location of existing wells serving the
39 lot on which the replacement system will be located
40 and those located on abutting lots. Copies of the no-
41 tice shall be sent by certified mail, return receipt
42 requested, to all owners of abutting lots. The person
43 seeking to expand a structure shall be responsible
44 for providing that notice. Following recording of

1 notice as provided in this subsection, it is a viola-
2 tion of this section for any abutting landowner to
3 install a well on his property in a location which
4 would prevent the installation of the replacement
5 septic system. The owner of the lot on which the re-
6 placement system will be installed may not erect any
7 structure on the proposed site of the replacement
8 system or conduct any other activity which would pre-
9 vent the use of the designated site for the replace-
10 ment system. Any person who violates this section
11 shall be penalized in accordance with section 4966.
12 The municipality or the department may seek to enjoin
13 violations of this section. In the prosecution of a
14 violation by a municipality, the court may award rea-
15 sonable attorneys' fees to a municipality if that mu-
16 nicipality is the prevailing party, unless the court
17 finds that special circumstances make the award of
18 these fees unjust.

19 Sec. 35. 30 MRSa §3552 is repealed.

20 Sec. 36. 30 MRSa §3601 is repealed.

21 Sec. 37. 30 MRSa §3751, as amended by PL 1979,
22 c. 545, §6, is repealed.

23 Sec. 38. 30 MRSa §3751-A is enacted to read:

24 §3751-A. Municipal forests

25 Under its home rule authority, a municipality may
26 acquire lands for the purpose of forestation, or for
27 reclaiming and planting forest trees on those lands.

28 Sec. 39. 30 MRSa §§3752, 3753 and 3754 are re-
29 pealed.

30 Sec. 40. 30 MRSa §3755, as repealed and replaced
31 by PL 1983, c. 634, is repealed.

32 Sec. 41. 30 MRSa §3756 is repealed.

33 Sec. 42. 30 MRSa §3373, sub-§1, as enacted by PL
34 1973, c. 680, §5, is amended to read:

35 1. Term; compensation. Unless otherwise provided
36 by contract or, municipal ordinance, or charter,

1 fire chiefs shall be appointed for an indefinite
2 term. The compensation of the fire chief shall be de-
3 termined by the municipal officers.

4 Sec. 43. 30 MRSA §3773, sub-§2, ¶B, as enacted
5 by PL 1973, c. 680, §5, is amended to read:

6 B. Unless otherwise provided by administrative
7 ordinance or charter, be authorized to employ all
8 municipal firefighters, appoint a deputy and oth-
9 er officers in a municipal fire department; and
10 remove them for cause after notice and hearing;

11 Sec. 44. 30 MRSA §3777, as enacted by PL 1973,
12 c. 680, §5, is amended to read:

13 §3777. Fire aid to other municipalities

14 Unless otherwise provided by municipal ordinance
15 or charter, the municipal officers may authorize the
16 municipal fire department to aid in extinguishing
17 fires in other municipalities. Municipal and volun-
18 teer firefighters when assisting other municipalities
19 shall have the same privileges and immunities as when
20 acting in their own municipality. Any municipality
21 may compensate an aiding municipality or incorporated
22 volunteer fire associations for damage to the aiding
23 department or associations' property and to any
24 firefighter or to his widow or dependents on account
25 of injury or death sustained in the course of render-
26 ing aid to that municipality.

27 Sec. 45. 30 MRSA §3801, as amended by PL 1965,
28 c. 203, §1, is repealed.

29 Sec. 46. 30 MRSA §3851, first ¶, as amended by
30 PL 1977, c. 52, §1, is further amended to read:

31 Municipalities Unless otherwise provided under
32 their home rule authority, municipalities may estab-
33 lish conservation commissions as provided in this
34 section. The municipal officers may appoint not less
35 than 3, nor more than 7 conservation commissioners.
36 The terms of office initially shall be one, 2 and 3
37 years, such that the terms of approximately 1/3 of
38 the members shall expire each year, or until the ap-
39 pointment of their successors, and their successors

1 shall be appointed for terms of 3 years each. Any
2 commissioner presently serving a term greater than 3
3 years may serve until his term expires. The appoint-
4 ment of his successor shall be for a term of 3 years.
5 Such commission may have the care and superintendence
6 of the public parks and, subject to the approval of
7 the municipal officers, direct the expenditure of all
8 moneys appropriated for the improvement of the same.
9 Such commission shall conduct research, in conjunc-
10 tion with the planning board, if any, into the local
11 land areas and shall seek to coordinate the activi-
12 ties of conservation bodies organized for similar
13 purposes and may advertise, prepare, print and dis-
14 tribute books, maps, charts, plans and pamphlets
15 which in its judgment it deems necessary. It shall
16 keep an index of all open areas, publicly or private-
17 ly owned, within the municipality, including open
18 marsh lands, swamps and other wet lands, for the pur-
19 pose of obtaining information pertinent to proper
20 utilization, protection, development or use of such
21 open areas and may recommend to the municipal offi-
22 cers or any municipal body or board, or any body polit-
23 ic or public agency of the State of Maine a program
24 for the better utilization, protection, development
25 or use of such areas, which may include the acqui-
26 sition of conservation easements. Any body politic or
27 public agency of the State of Maine conducting plan-
28 ning operations with respect to open areas within a
29 municipality having a conservation commission shall
30 notify such conservation commission of all plans and
31 planning operations at least 30 days prior to the im-
32 plementation of any action thereunder. A conserva-
33 tion commission may acquire land in the name of the
34 municipality for any of the purposes set forth in
35 this section with the approval of the legislative
36 body. A commission may receive gifts in the name of
37 the municipality for any of its purposes and shall
38 administer the same for such purposes subject to the
39 terms of the gift. It shall keep records of its
40 meetings and activities and shall make an annual re-
41 port to the municipality to be published as part of
42 the annual municipal report.

43 Sec. 47. 30 MRSa §3861, first ¶, as enacted by
44 PL 1981, c. 122, is repealed and the following en-
45 acted in its place:

1 Unless otherwise provided under their home rule
2 authority, municipalities may establish energy com-
3 missions as provided in this section.

4 Sec. 48. 30 MRSA §3902, as amended by PL 1971,
5 c. 378, is repealed.

6 Sec. 49. 30 MRSA §4257, as repealed and replaced
7 by PL 1985, c. 612, §14, is amended to read:

8 §4257. Sewer connections

9 As may be required by municipal ordinance under a
10 municipality's home rule authority, the owner of
11 each lot or parcel of land upon which a building has
12 been constructed which abuts upon a street or public
13 way containing a sewer shall connect that building
14 with the sewer and shall cease to use any other meth-
15 od for the disposal of waste water. All such connec-
16 tions shall comply with the applicable municipal or-
17 dinance which may provide for a reasonable charge for
18 making the connections.

19 Sec. 50. 30 MRSA §4263, as repealed and replaced
20 by PL 1967, c. 429, §5, is amended to read:

21 §4263. Alternative method

22 This chapter shall not be construed to limit a
23 municipality's home rule authority. Sections 4251 to
24 4262 shall be deemed considered to provide an addi-
25 tional and alternative method for the doing of the
26 things authorized described and shall be regarded as
27 supplemental and additional to powers conferred by
28 other laws, and shall not be regarded as in deroga-
29 tion of or as repealing any powers now existing under
30 any other law, either general, special or local; pro-
31 vided the issuance of revenue bonds or revenue re-
32 funding bonds under said sections need not comply
33 with the requirements of any other general or special
34 law applicable to the issuance of bonds.

35 Sec. 51. 30 MRSA §4962, sub-§1, as amended by PL
36 1983, c. 170, is further amended to read:

37 1. Terms. Any zoning ordinance, or provision
38 thereof, adopted pursuant to the home rule power

1 granted to all municipalities under the Constitution,
2 Article VIII, Part Second and chapter 201-A, specifically
3 section 1917, under a municipality's home rule
4 authority shall be subject to the following. In the
5 preparation of a zoning ordinance the public shall be
6 given an adequate opportunity to be heard.

7 A. Such ordinance or provision shall be pursuant
8 to and consistent with a comprehensive plan
9 adopted by its legislative body.

10 B. A zoning map describing each zone established
11 or modified shall be adopted as part of the zoning
12 ordinance or incorporated therein. Any conflict
13 between said zoning map and a description
14 by metes and bounds shall be resolved in favor of
15 the description by metes and bounds.

16 C. Real estate used or to be used by a public
17 service corporation shall be wholly or partially
18 exempted from an ordinance only where on petition,
19 notice and public hearing the Public Utilities
20 Commission has determined that such exemption
21 is reasonably necessary for public welfare
22 and convenience.

23 D. County and municipal governments, and districts
24 shall be governed by the provisions of any
25 zoning ordinance.

26 E. Any zoning ordinance shall be advisory with
27 respect to the State.

28 F. Any property or use existing in violation of
29 any zoning ordinance is a nuisance.

30 G. Any zoning ordinance may provide that when a
31 person petitions for rezoning of an area for the
32 purpose of development in accordance with an architect's
33 plan, the area shall not be rezoned unless the petitioner
34 posts a performance bond equal to at least 25% of the
35 estimated cost of the development. The bond shall become
36 payable to the municipality, if the petitioner fails to
37 begin construction in a substantial manner and in
38 accordance with the plan within one year of the
39 effective date of the rezoning.
40

1 H. For the purposes of this subchapter, "zoning"
2 is defined as the division of a municipality into
3 districts and the prescription and reasonable ap-
4 plication of different regulations in each dis-
5 trict.

6 I. Any zoning ordinance may include provisions
7 for conditional or contract zoning. For the pur-
8 poses of this subchapter, "conditional zoning"
9 means the process by which the municipal legisla-
10 tive body may rezone property to permit the use
11 of that property subject to conditions not gener-
12 ally applicable to other properties similarly
13 zoned. "Contract zoning" means the process by
14 which the property owner, in consideration of the
15 rezoning of his property, agrees to the imposi-
16 tion of certain conditions or restrictions not
17 imposed on other similarly zoned properties. All
18 rezoning under this paragraph shall:

19 (1) Be consistent with the municipal com-
20 prehensive plan;

21 (2) Establish rezoned areas which are con-
22 sistent with the existing and permitted uses
23 within the original zones; and

24 (3) Only include conditions and restric-
25 tions which relate to the physical develop-
26 ment or operation of the property.

27 The municipal reviewing authority, as defined in
28 section 4956, subsection 2, shall conduct a pub-
29 lic hearing prior to any property being rezoned
30 under this paragraph. Notice of this hearing
31 shall be posted in the municipal office at least
32 14 days prior to the public hearing and shall be
33 published in a newspaper of general circulation
34 within the municipality at least 2 times, the
35 date of the first publication to be at least 7
36 days prior to the hearing. Notice shall also be
37 sent to the owners of all property abutting the
38 property to be rezoned at their last known ad-
39 dress. This notice shall contain a copy of the
40 proposed conditions and restrictions, with a map
41 indicating the property to be rezoned.

1 Sec. 52. 30 MRSA §4963, sub-§3, as amended by PL
2 1977, c. 630, §6, is further amended to read:

3 3. Variance. A variance may be granted by the
4 board only where strict application of the ordinance,
5 or a provision thereof, to the petitioner and his
6 property would cause undue hardship. The words "undue
7 hardship" as used in this subsection mean:

8 A. That the land in question cannot yield a rea-
9 sonable return unless a variance is granted;

10 B. That the need for a variance is due to the
11 unique circumstances of the property and not to
12 the general conditions in the neighborhood;

13 C. That the granting of a variance will not al-
14 ter the essential character of the locality; and

15 D. That the hardship is not the result of action
16 taken by the applicant or a prior owner.

17 A Under its home rule authority, a municipality may,
18 in a zoning ordinance, adopt additional limitations
19 on the granting of a variance, including, but not
20 limited to, a provision that a variance may only be
21 granted for a use permitted in a particular zone.

22 Sec. 53. 30 MRSA §5101 is amended to read:

23 §5101. General authority

24 A municipality may raise or appropriate money for
25 any public purpose, including, but not limited to,
26 the purposes specified in sections 5102 to 5108.

27 Sec. 54. 30 MRSA §5106, sub-§2, ¶A, is repealed.

28 Sec. 55. 30 MRSA §5106, sub-§5, ¶A, is repealed.

29 Sec. 56. 30 MRSA §5106, sub-§8, ¶A, is repealed.

30 Sec. 57. 30 MRSA §5109, first ¶, as repealed and
31 replaced by PL 1975, c. 389, §2, is repealed and the
32 following enacted in its place:

33 A municipality's acceptance of grants is gov-
34 erned by this section.

1 Sec. 58. 30 MRSA §5621, as enacted by PL 1977,
2 c. 390, §4, is amended to read:

3 §5621. Planning, zoning and subdivision control

4 Plantations may ~~exercise the powers~~ enact plan-
5 ning and zoning ordinances, subject to the same
6 guidelines and standards which are granted apply to
7 municipalities in chapter 239, subchapters V and VI,
8 and shall adopt ordinances or regulations necessary
9 to exercise and enforce these powers including the
10 adoption of ordinances providing for the regulation
11 of buildings and equipment. Such ordinances shall
12 comply with the provisions in section 5622.

13 Sec. 59. 30 MRSA §§5623 to 5629 are enacted to
14 read:

15 §5623. Licensing ordinance power

16 A plantation has the same power to enact ordi-
17 nances with respect to licenses or permits issued un-
18 der chapter 215 as a municipality.

19 §5624. Recreation

20 A plantation may acquire and maintain real estate
21 and personal property for recreational purposes, and
22 may establish and conduct a recreational program.

23 1. Joint operation. A plantation may act joint-
24 ly with another plantation or a municipality to es-
25 tablish and conduct a recreational program and may
26 contract with another plantation or a municipality
27 for its operation.

28 §5625. Employment of historian

29 A plantation may appoint a historian and deter-
30 mine his duties and compensation.

31 §5626. Plantation forest

32 A plantation may acquire land by purchase, gift
33 or bequest for the purpose of forestation or to re-
34 claim and plant forest trees upon that land. The as-
35 sessors may appoint a forester whose duties are to

1 make and enforce all necessary regulations and to
2 care for and maintain the land as a forest producing
3 area. A plantation may establish a plantation forest
4 reserve account to fund the operation and maintenance
5 of the forest in accordance with sections 5201 and
6 5202.

7 §5627. Devises and gifts for open areas, public
8 parks and playgrounds

9 Any plantation may receive, hold and manage de-
10 vises, bequests or gifts for the establishment, in-
11 crease or maintenance of public parks and playgrounds
12 and open areas, as defined in section 3851, by plan-
13 tation meeting vote. If any plantation receives any
14 such bequest or gift, and that plantation is later
15 incorporated into a town, the bequests and gifts and
16 their proceeds fully vest in that town.

17 §5628. Conservation and energy commissions

18 Plantations may provide for a conservation com-
19 mission or an energy commission as described in sec-
20 tions 3851 and 3861.

21 §5629. Sewers and drains

22 A plantation may enact ordinances with respect to
23 sewers and drains subject to the restrictions that
24 apply to municipalities under chapter 237.

25 Sec. 60. 38 MRSA §401, as amended by PL 1985, c.
26 465, §1, is further amended by adding to the end a
27 new paragraph to read:

28 This article is not intended to limit a
29 municipality's power to enact ordinances under Title
30 30, section 2151-A, to protect and conserve the qual-
31 ity and quantity of ground water.

32 Sec. 61. Savings clause. Nothing in this Act
33 may be construed to affect any substantive right or
34 obligation gained by any person under the provisions
35 of any law repealed or amended by this Act. All sub-
36 stantive rights and obligations created under the
37 provisions of any law repealed or amended by this Act
38 continue in effect.

1 rule statutes with the concept of local control em-
2 bodied in home rule. This bill attempts to achieve
3 that integration by rewriting the provisions of Title
4 30 against the broad backdrop of the concept of home
5 rule.

6 The committee's guiding principle in drafting
7 this bill was the idea that the grant of home rule
8 ordinance power to municipalities in the current Ti-
9 tle 30, section 1917, is a plenary grant of power; no
10 further grants of power need be given to municipali-
11 ties. The only legislative action that should be
12 taken concerning municipalities is to determine when
13 that power should be limited. This bill attempts to
14 implement that concept through 3 basic methods:

15 1. The bill repeals all asserted grants of power
16 to municipalities that do not contain a limita-
17 tion on that power, except where the grant may
18 serve as an example of how a municipality may
19 choose to use its home rule power;

20 2. Provisions which do not limit home rule pow-
21 er, but may serve as a useful guide to municipali-
22 ties are retained, but with an express recogni-
23 tion of municipal home rule authority to act oth-
24 erwise; and

25 3. Finally, express limitations on home rule au-
26 thority are retained wherever they represent a
27 legitimate state interest. Former limitations
28 which do not further legitimate state interests
29 are repealed to allow municipalities freedom to
30 act under their home rule authority.

31 It is not the intent of this bill to deny munici-
32 palities any power which they currently have under
33 their home rule authority. This bill retains many
34 statutory provisions as examples to provide guidance
35 to a municipality in exercising its home rule author-
36 ity. This bill also retains many provisions where a
37 municipality's home rule authority is recognized as
38 the source of power to perform a certain action.
39 These changes are not intended to deny a
40 municipality's home rule authority to enact ordi-
41 nances in any area in which they presently may act.
42 They are intended to clarify a municipality's present

1 home rule authority, not to reduce it. It is the in-
2 tent of the Legislature that the standard of review
3 established under section 13 of this bill shall be
4 followed in determining when an implied denial of
5 power to municipalities exists. Consistent with
6 this intent, express acknowledgement of a
7 municipality's home rule powers in one area is not to
8 be interpreted as an implied denial of power to act
9 in any other area; nor is the appearance of a model
10 which municipalities may follow under their home rule
11 authority to be interpreted as a denial of power to
12 act otherwise.

13 One additional method of clarifying home rule
14 power applied in this bill was to redraft the origi-
15 nal grant of home rule power in an attempt to clarify
16 its plenary grant of authority. This includes the
17 addition of a standard of review by which the concept
18 of home rule will be interpreted by the judiciary.
19 That standard first provides a presumption that any
20 action taken by a municipality is a valid exercise of
21 its home rule authority. The court starts from the
22 base that the municipality does have the power to en-
23 act any given ordinance. Second, the court will move
24 from this base and invalidate a municipal ordinance
25 only where the municipal ordinance will frustrate the
26 purpose of any state law, or where the Legislature
27 expressly denies a municipality the power to act in
28 some area. This standard reaffirms the fundamental
29 principle of home rule, that municipalities have been
30 given a plenary grant of power, while recognizing
31 that this authority is subject to the State's ability
32 to limit that power in the furtherance of legitimate
33 state interests. Only where the municipal ordinance
34 prevents the efficient accomplishment of a defined
35 state purpose should a municipality's home rule power
36 be restricted, otherwise they are free to act to pro-
37 mote the well-being of their citizens.

38 Section 1 of the bill reenacts a provision of the
39 Maine Revised Statutes, former Title 30, section
40 2151, which is repealed under section 12 of this
41 bill. That provision provides that things which ex-
42 ist in accordance with municipal ordinances, such as
43 street signs and utility poles, are not defects in a
44 public way. This section reallocates that provision
45 to the laws dealing with highway defects so it will
46 be more readily found.

1 Sections 2 and 3 reenact the provisions contained
2 in Title 30, chapter 215, subchapter IV which are
3 repealed by section 31 of this bill. In order to
4 better reflect the application of municipal home
5 rule, these provisions were moved to Title 26 where
6 employment agencies are regulated. The provisions
7 provide an express legislative recognition that the
8 Title 26 statutes do not preempt municipal home rule
9 authority to enact additional regulations of employ-
10 ment agencies which do not frustrate the state poli-
11 cies expressed in Title 26.

12 Section 4 provides a general definition of "home
13 rule authority" as that term is used in Title 30,
14 Part 2. It recognizes the basic home rule grants
15 found in the Constitution of Maine, and Title 30,
16 chapter 201-A and Title 30, section 2151-A of this
17 bill. Section 2151-A is enacted by section 13 of
18 this bill and replaces the provisions of Title 30,
19 section 1917 which is repealed by section 9 of this
20 bill.

21 Sections 5 and 6 rewrite language which
22 assertedly grants a municipality the power to receive
23 gifts in trust or conditional gifts, with certain re-
24 strictions on their use. Since a municipality al-
25 ready has these powers under its home rule authority,
26 it is not necessary to "give" a municipality these
27 powers again. These sections rewrite the language as
28 a limitation on a municipality's general home rule
29 authority.

30 Section 7 replaces language in the provisions
31 governing the submission of a municipal charter com-
32 mission's final report. The present language re-
33 quires that the report be accompanied by an attor-
34 ney's opinion that the proposed charter "is not in
35 conflict with" the general laws or the Constitution
36 of Maine. The actual standard set out in the Consti-
37 tution of Maine, Article VIII, Part Second is that a
38 charter may not "contain any provision prohibited by"
39 the Constitution of Maine or the general laws. This
40 section replaces the present language with language
41 tracking the constitutional provisions.

42 Section 8 similarly replaces the present "in con-
43 flict with" language with language tracking the Con-

1 stitution of Maine for legal opinions accompanying a
2 proposed amendment to a municipal charter.

3 Section 9 repeals the present grant of home rule
4 ordinance authority to municipalities contained in
5 Title 30, section 1917. It is redrafted and reen-
6 acted by section 13 of this bill.

7 Section 10 recognizes that a municipality already
8 has the power to appropriate funds to a council of
9 governments under its home rule authority. The grant
10 language in the present provision is amended by add-
11 ing an explicit reference to the true source of the
12 authority, municipal home rule.

13 Section 11 amends the present statutory provision
14 governing the qualifications and method of election
15 of town officials. It provides an express legislative
16 recognition that a municipality has the power to al-
17 ter these statutory requirements through municipal
18 charter provisions adopted under its home rule au-
19 thority.

20 Section 12 repeals Title 30, section 2151. This
21 section of the statutes is perhaps the worst offender
22 in terms of failing to recognize the adoption of home
23 rule for municipalities. It contains most of the
24 former legislative grants of ordinance power which
25 were necessary before home rule. The adoption of
26 home rule has rendered major portions of it totally
27 obsolete. Those provisions which represent limita-
28 tions on municipal home rule authority were retained;
29 most are reenacted by sections 14 and 16 of this
30 bill. Provisions which are not reenacted, but are
31 repealed in their entirety since they are already in-
32 cluded in the grant of home rule authority, include
33 the following provisions of Title 30, section 2151:

- 34 1. Subsection 1, which contains the general po-
35 lice power grant of authority;
- 36 2. Subsection 2, paragraph A, which grants power
37 to regulate public ways and other public proper-
38 ty;
- 39 3. Subsection 2, paragraph B, which grants power
40 to regulate things placed on public ways and

- 1 other public property, except that subparagraph
2 (1) was moved to another section of the statutes
3 under section 1 of this bill;
- 4 4. Subsection 2, paragraph C, which grants power
5 to regulate pedestrian traffic and sidewalks, ex-
6 cept that subparagraphs (1) and (2) are retained
7 under sections 14 and 16 , respectively, of this
8 bill;
- 9 5. Subsection 2, paragraph E, which grants power
10 to control Dutch Elm disease;
- 11 6. Subsection 2, paragraph G, which grants power
12 to protect and preserve historical buildings and
13 places;
- 14 7. Subsection 5, paragraph A, which grants power
15 to regulate pawnbrokers and secondhand dealers;
- 16 8. Subsection 5, paragraph B, which grants power
17 to regulate junkyards and the sale of junk;
- 18 9. Subsection 5, paragraph D, which grants power
19 to regulate dance halls;
- 20 10. Subsection 5, paragraph E, which grants pow-
21 er to require a license and fee for certain com-
22 mercial operations; and
- 23 11. Subsection 5, paragraph F, which grants pow-
24 er to regulate itinerant vendors.

25 Section 13 enacts the new version of former Title
26 30, section 1917, which is repealed under section 9
27 of the bill. The new provisions contain the same
28 original grant of home rule authority that currently
29 appears in section 1917, but are moved to place them
30 under chapter 209. This was done to reemphasize that
31 the grant of ordinance home rule power is a separate
32 and distinct aspect of a municipality's total home
33 rule power in Maine. The Constitution of Maine, Ar-
34 ticle VIII, Part Second, contains the general charter
35 home rule grant of authority. Title 30, chapter
36 201-A contains the implementing laws for the charter
37 home rule grant. Despite its current placement in
38 the midst of chapter 201-A, the ordinance home rule

1 grant is not part of the charter home rule implement-
2 ing legislation. It stands on its own as a separate
3 legislative grant of home rule authority to enact ordi-
4 nances for any purpose not denied by the Legisla-
5 ture. Its placement in Title 30, chapter 209, which
6 contains the provisions related to municipal ordi-
7 nance authority, is designed to reflect the two-fold
8 composition of municipal home rule in Maine, charter
9 home rule and ordinance home rule.

10 In addition to simply moving the grant of ordinance
11 home rule authority, section 13 of this bill also re-
12 tains the original requirement that its provisions be
13 construed liberally. By moving this provision into a
14 new chapter, it is isolated from the provision re-
15 quiring liberal construction found in Title 30, sec-
16 tion 1920. That requirement is written into the new
17 section 2151-A. A presumption that any municipal ordi-
18 nance is a valid exercise of a municipality's home
19 rule authority was also added in this section, and a
20 standard of preemption was added which requires that
21 a court must find that a municipal ordinance frus-
22 trates the purpose of a state law before it may in-
23 validate the ordinance as being implicitly denied by
24 the Legislature. These provisions establish a stan-
25 dard of review to be applied by the courts in resolv-
26 ing home rule questions. Finally, the provision that
27 all penalties established by ordinance will accrue to
28 the municipality was moved here from the present Ti-
29 tle 30, section 2151. The requirement that a munici-
30 pality must impose fines for the violation of any ordi-
31 nance authorized by that section of the laws was
32 deleted since there is no legitimate state interest
33 to be served by such a provision.

34 Section 14 reenacts those provisions of present
35 Title 30, section 2151 which serve as limitations on
36 municipal home rule authority. The limitation on
37 changes relating to certain municipal officers con-
38 tained in present Title 30, section 1917 was moved to
39 this new section in order to isolate the grant of
40 home rule authority in the section enacted under sec-
41 tion 13 of this bill, and to collect those provisions
42 which limit that authority in the new statutory sec-
43 tion enacted by this section of the bill. Provisions
44 which are reenacted in this section as limitations on
45 a municipality's home rule authority include the fol-
46 lowing provisions of Title 30, section 2151:

1 1. Subsection 2, paragraph D, which limits a
2 municipality's home rule authority regarding
3 parking meters;

4 2. Subsection 2, paragraph H, which limits a
5 municipality's home rule authority regarding pub-
6 lic pedestal telephones;

7 3. Subsection 2, paragraph K, which limits a
8 municipality's home rule authority regarding
9 handicapped parking ordinances;

10 4. Subsection 4, paragraph D, which limits a
11 municipality's home rule authority regarding or-
12 dinances to protect persons and property from
13 damage due to falling ice and snow;

14 5. Subsection 5, paragraph C which limits a
15 municipality's home rule authority regarding the
16 regulation of hawking and peddling of certain
17 merchandise at retail; and

18 6. Those provisions of subsection 2, paragraph
19 C, subparagraph (2) and subsection 4, paragraph
20 E, subparagraph (1), which provide that viola-
21 tions of certain ordinances are declared to be
22 public nuisances.

23 Section 14 also provides that the provisions relating
24 to municipal pension systems presently found in Title
25 30, section 2152, subsection 1, are collected with
26 other limitations on municipal ordinance home rule
27 authority under the new Title 30, section 2151-B.

28 Section 15 repeals the present Title 30, section
29 2152 which contains the provisions concerning ordi-
30 nances regulating municipal pension systems and ad-
31 ministrative regulation of police and fire depart-
32 ments. Since there are no limitations on the power
33 to enact ordinances establishing regulations on po-
34 lice and fire departments, those provisions are sim-
35 ply repealed since they are included within the home
36 rule authority of municipalities. The provisions
37 dealing with pension systems do limit home rule au-
38 thority, and are reenacted under section 14 of this
39 bill which places them in the new Title 30, section
40 2151-B, which collects limitations on a
41 municipality's ordinance home rule authority.

1 Section 16 enacts a new Title 30, section 2152-C
2 which collects those ordinance powers which are given
3 by statute to the municipal officers of a municipali-
4 ty. These provisions may use grant language without
5 violating the principle of home rule since they actu-
6 ally do grant power because they give it to the mu-
7 nicipal officers rather than the municipality. Pro-
8 visions which are moved under this section since they
9 are grants of ordinance power to the municipal offi-
10 cers, include the following provisions of Title 30,
11 section 2151:

12 1. Subsection 2, paragraph C, subparagraph (1),
13 which allows them to establish certain procedural
14 provisions regarding the enforcement of pedestri-
15 an traffic ordinances;

16 2. Subsection 3, which allows them to regulate
17 the operation of vehicles on the public way and
18 the operation of vehicles for hire; and

19 3. Subsection 7, which allows them to regulate
20 the operation of motor vehicles on icebound in-
21 land lakes.

22 Section 17 eliminates language purportedly grant-
23 ing municipalities the power to adopt ordinances
24 which incorporate certain codes by reference. Since
25 a municipality has the home rule authority to do this
26 already, the section actually acts as a limitation on
27 home rule authority by defining which types of codes
28 may be incorporated by reference. For that reason it
29 is retained, but language is added to explicitly rec-
30 ognize that the ordinances are enacted under a
31 municipality's home rule authority.

32 Section 18 enacts a new subsection to the statu-
33 tory section governing the existence and filling of
34 vacancies in municipal offices. The new provisions
35 recognize a municipality's home rule authority to
36 provide additional or different regulations in this
37 area, subject to certain limitations. Any change in
38 the statutory provisions governing vacancies in the
39 office of municipal officer must be done by charter,
40 but a change in the statutory provisions can be done
41 by charter or ordinance in the case of any other mu-
42 nicipal official. This distinction was made to en-

1 sure that any change regarding the terms and office
2 of the chief municipal officials, the municipal offi-
3 cers, will not be made lightly, but are subject to
4 the more stringent charter adoption or amendment pro-
5 cess.

6 Section 19 replaces language purporting to grant
7 a municipality the ordinance power to provide for
8 "all necessary municipal functions" which are not
9 provided for under law. Because the provision may
10 serve to advise municipalities of this power, it is
11 retained in the laws; however, since a municipality
12 already has this power under its home rule authority,
13 the new language explicitly recognizes that home rule
14 is the source of this power, and also allows a munic-
15 ipality to provide for municipal functions by
16 charter as well as ordinance. The latter change is
17 probably required by the provisions of the Constitu-
18 tion of Maine, Article VIII, Part Second, in any
19 event. Finally, the word "necessary" is deleted.
20 There is no substantial state interest served by lim-
21 iting a municipality's ability to deal with its prob-
22 lems to situations where it is "necessary." The mu-
23 nicipality itself is best suited for determining the
24 desirability of undertaking municipal functions; the
25 State need not impose any higher standard.

26 Section 20 repeals a section of the statutes that
27 purports to grant towns the ordinance power to pro-
28 vide for any municipal functions necessary to conduct
29 the town's business after adoption of the town man-
30 ager plan provided in Title 30, chapter 213, subchap-
31 ter II-A. This section is superfluous in light of a
32 municipality's home rule authority, as described in
33 Title 30, section 2256, as amended by section 19 of
34 this bill.

35 Section 21 replaces language purporting to grant
36 a municipality the power to pay a clerk a salary.
37 That authorization is no longer needed since the
38 adoption of home rule, so the law is rewritten to
39 avoid the grant language.

40 Section 22 replaces a reference to a statutory
41 section repealed by section 15 of this bill. The
42 statute purports to grant municipalities the power to
43 enact ordinances establishing regulations for police

1 and fire departments. That power is included within
2 the broad home rule authority or municipalities to
3 enact ordinances, so the statutory cross reference is
4 replaced with a simple reference to any "municipal
5 ordinance," which may be enacted under its home rule
6 authority.

7 Section 23 recognizes a municipality's home rule
8 authority to limit the powers of a police officer by
9 charter, as well as by ordinance, as presently al-
10 lowed.

11 Section 24 adds a provision acknowledging municipi-
12 pal home rule authority to determine the powers of
13 special police officers by charter, as well as by or-
14 dinance, as presently allowed.

15 Section 25 adds language expressly acknowledging
16 municipal home rule as the source of a municipality's
17 power to establish a board of appeals. This section
18 also amends present law which allows the method of
19 appointment and compensation of the board members to
20 be established by charter by allowing these changes
21 to be accomplished by ordinance as well. There does
22 not appear to be any compelling reason to limit the
23 method of altering these provisions to charter provi-
24 sions, and to so limit that ability denies the power
25 to towns that do not have a charter, but do have gen-
26 eral home rule ordinance powers.

27 Section 26 replaces grant language concerning the
28 appointment of associate members of a board of ap-
29 peals with an explicit reference to a municipality's
30 general home rule authority. This change makes this
31 provision consistent with other municipal powers re-
32 garding boards of appeal by allowing the provisions
33 to be enacted in a municipality's charter, as well as
34 by ordinance, as presently allowed, correcting the
35 inconsistency which presently exists.

36 Section 27 also maintains consistency regarding a
37 municipality's ability to enact provisions applicable
38 to a board of appeals by allowing a municipality to
39 define the appellate jurisdiction of the board by
40 charter, as well as by ordinance, as presently al-
41 lowed. Language referring to Title 30, section 2411
42 as the source of a municipality's power to adopt a

1 board of appeals is deleted since the source of that
2 power is actually the municipality's home rule au-
3 thority.

4 Section 28 adds language which expressly refer-
5 ences as municipality's home rule authority in a pro-
6 vision of the automobile graveyard and junkyard law
7 that permits municipalities to regulate those
8 junkyards by ordinances.

9 Section 29 reenacts a provision of the present
10 Title 30, section 2151 which is repealed by section
11 12 of this bill. It is moved to the municipal li-
12 censing chapter of Title 30 because it deals with the
13 municipal licensing authority, not a municipality's
14 ordinance power.

15 Section 30 reenacts the provisions of Title 30,
16 section 2151, subsection 4, paragraphs A through C
17 and moves them to the municipal licensing chapter of
18 Title 30 because they deal with the permit procedure
19 for building regulations. The language is redrafted
20 to clarify that these provisions do not regulate the
21 adoption of home rule ordinances that regulate build-
22 ings, rather they actually regulate certain aspects
23 of the permit procedure to be employed in this area.

24 Section 31 adds language to clarify that a
25 municipality's source of power to require electrical
26 inspections is its home rule authority.

27 Section 32 repeals the provisions relating to mu-
28 nicipal licensing of employment agencies. Those pro-
29 visions are redrafted and moved to Title 26 under
30 sections 2 and 3 of this bill.

31 Sections 33 and 34 add language explicitly recog-
32 nizing that the source of power enabling municipali-
33 ties to enact waste water disposal ordinances is
34 their home rule authority and replace language which
35 asserted that those ordinances were enacted under the
36 authority of that specific statutory section.

37 Section 35 repeals the statutory provision pur-
38 porting to give municipalities the power to acquire
39 property for recreational purposes and to conduct
40 recreational programs, independently or jointly.

1 This power is inherent in a municipality's general
2 home rule authority; no further grant is needed.
3 Since no limitation on that authority appears in the
4 law, and it is not useful as a model for municipali-
5 ties, it is repealed entirely.

6 Section 36 repeals a law purportedly authorizing
7 municipalities to hire a historian. This power is
8 inherent in a municipality's home rule authority.
9 Since no limitation appears and the law is not useful
10 as a model for municipalities, it is repealed entire-
11 ly.

12 Sections 37, and 39 through 41 repeal statutory
13 provisions dealing with the establishment and opera-
14 tion of municipal forests. A municipality already
15 has this power under its home rule authority and the
16 limitations contained in the provisions, such as re-
17 quiring a 2/3 vote to establish the forest, providing
18 that a municipal forester need not be a resident of
19 the town and requiring general fiscal restrictions to
20 apply, do not serve any overriding state interests.
21 For these reasons, the provisions were repealed, but
22 a new statutory section is enacted by section 38 of
23 this bill to serve as a model for municipalities in
24 this area. That section provides that a municipality
25 may acquire lands for a municipal forest under its
26 home rule authority, but does not limit a
27 municipality's home rule authority to define how to
28 acquire and maintain those lands. The new provisions
29 provide an example of how municipalities may choose
30 to exercise their home rule authority, but leave the
31 municipalities free to work out the details for them-
32 selves on a local basis to meet local needs.

33 Sections 42, 43 and 44 parallel the changes made
34 regarding police officers in sections 22, 23 and 24
35 of this bill, establishing consistency among the pro-
36 visions. Section 42 adds an explicit recognition
37 that municipalities may set a term of office for fire
38 chiefs by charter provision, as well as by ordinance,
39 as presently allowed. Section 43 similarly recog-
40 nizes a municipality's ability to define the duties
41 of a fire chief by charter, as well as by ordinance.
42 Section 44 does the same regarding limitations on
43 providing assistance in extinguishing fires in other
44 municipalities.

1 Section 45 repeals a statutory provision which
2 purports to authorize municipalities to accept and
3 hold land for open areas and public parks and play-
4 grounds in the municipality. This authority is al-
5 ready included within a municipality's home rule au-
6 thority. The section imposes no limitations on the
7 municipality's acceptance and use of these lands and
8 is not useful as a model for municipalities so it is
9 repealed entirely.

10 Sections 46 and 47 amend the statutory sections
11 regarding conservation and energy commissions by add-
12 ing an explicit acknowledgement that home rule is the
13 source of a municipality's authority to create such
14 commissions. Although the statutory sections are not
15 intended to preempt or limit a municipality's home
16 rule authority to act otherwise in this area, they do
17 serve as a useful model of how a municipality may
18 choose to exercise its home rule powers and are re-
19 tained for that reason.

20 Section 48 repeals a statutory section that pur-
21 ports to grant municipalities the power to appropri-
22 ate money to compensate tree wardens and to acquire
23 and care for shade trees. This power is inherent in
24 a municipality's home rule authority. The section
25 does not contain any limitation on that authority nor
26 serve as a useful model for municipal action, so it
27 is repealed entirely.

28 Section 49 adds language which replaces a pur-
29 ported grant of power to enact ordinances which re-
30 quire landowners to connect with municipal sewer
31 lines. The new language recognizes municipal home
32 rule as the source of the power to enact such an or-
33 dinance.

34 Section 50 updates a provision of the Revenue
35 Producing Municipal Facilities Act which declared
36 that its provisions were additional and supplemental
37 to all other municipal powers. This section adds
38 language replacing grant language and providing that
39 the Revenue Producing Municipal Facilities Act will
40 not be construed to preempt municipal home rule au-
41 thority.

1 Section 51 simply replaces existing language
2 which recognizes municipal home rule as the source of
3 authority in regard to zoning ordinances with the
4 term "home rule authority," a definition of which is
5 provided in section 4 of this bill.

6 Section 52 adds language which recognizes home
7 rule as the source of a municipality's power to enact
8 a zoning ordinance with limitations on the granting
9 of a variance additional to those imposed by the
10 State.

11 Section 53 is intended to clarify that the adop-
12 tion of home rule authority gives municipalities the
13 power to appropriate money for any valid public pur-
14 pose. This section does not add an explicit refer-
15 ence to a municipality's home rule authority because
16 a municipality's ability to raise money has been
17 largely preempted by the State, removing its home
18 rule authority to act in that area; however, no such
19 preemption has occurred with respect to a
20 municipality's ability to appropriate money. The
21 various purposes listed in Title 30, sections 5101 to
22 5108, with only a few exceptions which actually do
23 establish limitations on a municipality's spending
24 authority, are merely examples of proper municipal
25 public purposes for which municipal funds may be ex-
26 pended. There was no legislative intent behind the
27 enactment of these sections to limit a municipality's
28 ability to expend funds under its home rule authority
29 to only those purposes actually enumerated in Title
30 30, sections 5101 to 5108. This section amends sec-
31 tion 5101 to explicitly recognize a municipality's
32 power under its home rule authority to appropriate
33 and expend funds for any valid public purpose. It
34 also clarifies that the purposes listed in the stat-
35 utes are merely examples, except where specific limi-
36 tations on the expenditure of municipal funds are ex-
37 plicitly stated.

38 Sections 54 to 56 repeal specific limitations on
39 municipal spending powers that no longer serve any
40 useful state interest. They repeal the provisions
41 that limit the amount of money a municipality can
42 spend on advertising the resources of the State and
43 the municipality, propagating and protecting fish
44 and assisting conventions in the municipality. These

1 limitations are repealed since the State has no com-
2 pelling reason to limit these expenditures by any mu-
3 nicipality that chooses to make them. How a municipi-
4 pality decides to spend its tax income is best left
5 up to the persons who contributed those taxes, and
6 that is done best on a local level.

7 Section 57 replaces language which purports to
8 grant municipalities the power to accept grants with
9 neutral language that avoids any suggestion that a
10 grant of power is intended. A municipality already
11 has this power under its home rule authority.

12 Section 58 replaces language which grants planta-
13 tions the same powers that "are granted to municipali-
14 ties" under Title 30, chapter 239, subchapters V and
15 VI, regarding planning and zoning. Those statutory
16 provisions do not actually grant municipalities any
17 power; the power to enact those ordinances is inher-
18 ent in a municipality's home rule authority. All
19 that those statutory provisions do is limit a
20 municipality's home rule authority to enact planning
21 and zoning ordinances. In order to carry out the
22 original intent of this section, the language is re-
23 placed to simply grant plantations similar powers to
24 enact planning and zoning ordinances, subject to the
25 same statutory restrictions that apply to cities and
26 towns. The grant of power is necessary in this in-
27 stance since plantations, unlike cities and towns, do
28 not have general home rule powers.

29 Sections 59 enacts new sections which reenact
30 provisions repealed or rewritten elsewhere in this
31 bill to avoid home rule complications for cities and
32 towns; however, because plantations do not have home
33 rule authority, whenever a home rule problem was re-
34 solved, it often reduced a plantations's powers in
35 those sections of Title 30 which apply to planta-
36 tions, as well as to towns and cities. This section
37 is intended to restore those powers to plantations.

38 Section 60 reenacts the provisions of Title 30,
39 section 2151, subsection 6, dealing with municipal
40 ground water ordinances, which were repealed under
41 section 12 of this bill. These provisions were moved
42 to the ground water law in Title 38 and rewritten to
43 explicitly recognize municipal home rule as the
44 source of the power.

1 Section 61 provides a general savings clause to
2 ensure a smooth transition upon enactment of this
3 bill. The purpose of the savings clause is to ensure
4 that:

5 1. The passage of this bill will have no legal
6 effect, procedural or substantive, upon any event
7 that occurred before the bill's effective date;

8 2. No official action taken by any municipality
9 before the effective date of this bill, including
10 the selection of municipal officials and employ-
11 ees, will be affected in any way by the passage
12 of this bill, except as provided below; and

13 3. The provisions of this bill, including the
14 new standard of review created for municipal or-
15 dinances enacted under the municipality's home
16 rule authority, will apply to any case which
17 arises out of operative events which occur after
18 the effective date of this bill, regardless of
19 when the ordinance in question was enacted.

20 This section will ensure that ordinances and reg-
21 ulations adopted by municipalities before the effec-
22 tive date of this bill will not be voided by the pas-
23 sage of this bill, and that municipal officials and
24 employees will not be inadvertently displaced by the
25 passage of this bill. It also ensures that the new
26 substantive home rule provisions will apply to all
27 actions which arise out of events occurring after the
28 bill's effective date.

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