

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

L.D. 2317

(Filing No. H- 727)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317,
Bill, "AN ACT to Promote Orderly Economic Growth and
Natural Resource Conservation."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 1 MRSA §302, as repealed and replaced
by PL 1973, c. 146, is amended to read:

§302. Construction and effect of repealing and
amending Acts

The repeal of an Act, resolve or municipal
ordinance passed after the 4th day of March, 1870 does
not revive any statute or ordinance in force before
the Act, resolve or ordinance took effect. The repeal
or amendment of an Act or ordinance does not affect
any punishment, penalty or forfeiture incurred before
the repeal or amendment takes effect, or any action or
proceeding pending at the time of the repeal or
amendment, for an offense committed or for recovery of
a penalty or forfeiture incurred under the Act or
ordinance repealed or amended. Actions and
proceedings pending at the time of the passage,
amendment or repeal of an Act or ordinance are not
affected thereby. For the purposes of this section, a
proceeding shall include but not be limited to
petitions or applications for licenses or permits

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 required by law at the time of their filing. For the
2 purposes of this section and regardless of any other
3 action taken by the reviewing authority, an
4 application for a license or permit required by law at
5 the time of its filing shall be considered to be a
6 pending proceeding when the reviewing authority has
7 conducted at least one substantive review of the
8 application and not before. For the purposes of this
9 section, a substantive review of an application for a
10 license or permit required by law at the time of
11 application shall consist of a review of that
12 application to determine whether it complies with the
13 review criteria and other applicable requirements of
14 law.

15 Sec. 2. 5 MRSA §12004, sub-§10, ¶A, sub-¶(23-C)
16 is enacted to read:

17	(23-C)	Environment:	Planning	Expenses	30 MRSA
18		Natural	Advisory	Only	\$4960-D
19		Resources	Council		

20 Sec. 3. 30 MRSA, c. 239, sub-c. VI, first 2
21 lines are repealed and the following enacted in their
22 place:

23 SUBCHAPTER VI

24 PLANNING AND LAND USE REGULATION

25 Sec. 4. 30 MRSA §§4960 to 4960-F are enacted to
26 read:

27 §4960. Short title

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

31 §4960-A. Statement of findings, purpose and goals

32 1. Legislative findings. The Legislature finds
33 that:

34 A. The natural resources of the State, including
35 its forests, agricultural lands, wetlands, waters,

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

- 1 fisheries, wildlife, minerals and other related
2 resources, are the underpinnings of the State's
3 economy;
- 4 B. These same natural resources and traditional
5 patterns of development have defined the quality
6 of life which the citizens of the State treasure
7 and seek to protect;
- 8 C. The pace of land speculation and development
9 has accelerated and outstripped the capacity of
10 the State and municipalities to manage this growth
11 under existing state and local laws;
- 12 D. This unplanned growth threatens the integrity
13 of the State's natural resource base, the ability
14 of local and State Government to provide necessary
15 public services, the affordability of decent
16 housing, the long-term economic viability of the
17 State's economy and the quality of life presently
18 enjoyed by Maine's citizens;
- 19 E. The most effective land use planning can only
20 occur at the local level of government and
21 comprehensive plans and land use ordinances
22 developed and implemented at the local level are
23 the key in planning for Maine's future;
- 24 F. Continued application of the current reactive,
25 case-by-case system of land use regulation is
26 detrimental to the public health, safety and
27 welfare;
- 28 G. The State must take appropriate measures to
29 protect and manage certain areas and natural
30 resources which are of statewide significance and
31 concern; and
- 32 H. The State has a vital interest in ensuring
33 that a comprehensive system of land use planning
34 and growth management is established as quickly as
35 possible which, while building on the strong
36 foundation of local land use planning, also
37 protects unique aspects of the State's heritage
38 and environment, encourages appropriate uses of
39 the State's natural resources, guides sound
40 economic development and ensures prosperity for

- 1 Maine citizens in all regions of the State.

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

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

- 9 B. Provide municipalities with the tools and
10 resources to effectively plan for and manage
11 future development within their jurisdictions with
12 a maximum of local initiative and flexibility;

- 13 C. Encourage, through state and regional
14 technical and financial assistance and review,
15 local land use ordinances, tools and policies that
16 are based on local comprehensive plans that are
17 prospective and inclusive of all matters
18 determined by the Legislature to be in the best
19 interests of the State;

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

- 24 E. Create a strong partnership between State
25 Government and local government, while clarifying
26 the respective roles of each, to improve land use
27 planning and management;

- 28 F. Provide for continued direct state regulation
29 of development proposals that occur in areas of
30 statewide concern, that directly impact natural
31 resources of statewide significance or that by
32 their scale or nature otherwise affect vital state
33 interests;

- 34 G. Encourage the widest possible involvement by
35 the citizens of each municipality in all aspects
36 of the planning and implementation process, in
37 order to ensure that the plans developed by
38 municipalities and reviewed by the State have had
39 the benefit of citizen input; and

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 H. Assure predictable, timely and cost-effective
2 land use decision making that is coordinated and
3 consistent between State Government and local
4 governments and that minimizes unnecessary
5 duplication.

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

15 A. To encourage orderly growth and development in
16 appropriate areas of each community, while
17 protecting the State's rural character, making
18 efficient use of public services and preventing
19 development sprawl;

20 B. To plan for, finance and develop an efficient
21 system of public facilities and services to
22 accommodate anticipated growth and economic
23 development;

24 C. To promote an economic climate which increases
25 job opportunities and overall economic well-being;

26 D. To encourage and promote affordable, decent
27 housing opportunities for all Maine citizens;

28 E. To protect the quality and manage the quantity
29 of the State's water resources, including lakes,
30 aquifers, great ponds, estuaries, rivers and
31 coastal areas;

32 F. To protect the State's other critical natural
33 resources, including without limitation, wetlands,
34 wildlife and fisheries habitat, sand dunes,
35 shorelands, scenic vistas and unique natural areas;

36 G. To protect the State's marine resources
37 industry, ports and harbors, from incompatible
38 development and to promote access to the shore for

1 commercial fishermen and the public;

2 H. To safeguard the State's agricultural and
3 forest resources from development which threatens
4 those resources;

5 I. To preserve the State's historic and
6 archeological resources; and

7 J. To promote and protect the availability of
8 outdoor recreation opportunities for all Maine
9 citizens, including access to surface waters.

10 4. Limitation on state rule-making authority.
11 The provisions of this section shall not be construed
12 to grant any separate regulatory authority to any
13 state agency beyond that necessary to implement this
14 subchapter.

15 §4960-B. Definitions

16 As used in this subchapter, unless the context
17 otherwise indicates, the following terms have the
18 following meanings.

19 1. Affordable housing. "Affordable housing"
20 means decent, safe and sanitary dwellings, apartments
21 or other living accommodations for households making
22 the full range of incomes at or below 80% of the
23 median household income as determined by the
24 Department of Economic and Community Development.
25 Affordable housing includes, but is not limited to,
26 government assisted housing, housing for low-income
27 and moderate-income families, manufactured housing,
28 multi-family housing and group and foster care
29 facilities.

30 2. Coastal areas. "Coastal areas" means all
31 municipalities and unorganized townships contiguous
32 with tidal waters and all coastal islands. The inland
33 boundary of the coastal area is the inland line of any
34 coastal town line.

35 3. Comprehensive plan. "Comprehensive plan"
36 means a document or interrelated documents containing
37 the elements established under section 4960-C
38 subsection 4, paragraphs A to D, including the

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 strategies for an implementation program which are
2 consistent with the goals and guidelines established
3 under this subchapter.

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

8 5. Implementation program. "Implementation
9 program" means that component of a local growth
10 management program which includes the policies and
11 ordinances or other land use regulations which carry
12 out the purposes and general policy statements and
13 strategies of the comprehensive plan in a manner
14 consistent with the goals and guidelines of this
15 subchapter.

16 6. Land use ordinance. "Land use ordinance"
17 means a rule or law of general application adopted by
18 the municipal legislative body which controls, directs
19 or delineates allowable uses of land and the standards
20 for such uses.

21 7. Local growth management program. "Local growth
22 management program" means a document containing the
23 components described in section 4960-C subsection 4,
24 including the implementation program, which is
25 consistent with the goals and guidelines established
26 by this subchapter.

27 8. Local planning committee. "Local planning
28 committee" means the committee established by the
29 municipal officers of a municipality or combination of
30 municipalities which has the general responsibility
31 established under section 4906-C.

32 9. Moratorium. "Moratorium" means a land use
33 ordinance or other regulation approved by a municipal
34 legislative body which temporarily defers or delays
35 development by withholding any authorization or
36 approval necessary for development.

37 10. Municipal reviewing authority. "Municipal
38 reviewing authority" means the municipal planning
39 board, agency or office, or if none, the municipal
40 officers.

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 11. Office. "Office" means the Office of
2 Comprehensive Land Use Planning in the Department of
3 Economic and Community Development.

4 12. Person. "Person" means an individual,
5 corporation, governmental agency, municipality, trust,
6 estate, partnership, association, 2 or more persons
7 having a joint or common interest or any other legal
8 entity.

9 13. Regional council. "Regional council" means a
10 regional planning commission or a council of
11 governments established under chapter 204-A.

12 14. Zoning. "Zoning" means the division of a
13 municipality into districts and the prescription and
14 reasonable application of different regulations in
15 each district.

16 §4960-C. Local comprehensive planning

17 There is established a program of local growth
18 management to accomplish the goals of this subchapter.

19 1. Local authority for growth management.
20 Through exercise of power and responsibility under its
21 home rule authority and subject to the express
22 limitations and requirements of this subchapter, each
23 municipality shall:

24 A. Plan for its future development and growth;

25 B. Adopt and amend local growth management
26 programs, including comprehensive plans and
27 implementation programs consistent with the
28 provisions of this subchapter; and

29 C. Do all other things necessary to carry out the
30 purposes of this subchapter.

31 2. Local responsibility for growth management. A
32 municipality's responsibility for the preparation or
33 amendment of its local growth management program is
34 governed by the provisions of this subsection. Where
35 procedures for local adoption of comprehensive plans
36 and ordinances are governed by other provisions of

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 this Title or municipal charter or ordinance, the
2 municipality may modify the procedural requirements of
3 this subsection as long as a broad range of
4 opportunity for public comment and review is preserved.

5 A. Pursuant to the schedule established under
6 this subchapter, each municipality shall prepare a
7 local growth management program which is
8 consistent with the goals, guidelines and other
9 provisions of this subchapter, or shall amend its
10 existing comprehensive plan and existing land use
11 ordinances to conform with the requirements of
12 this subchapter.

13 B. Each municipality shall submit its proposed
14 comprehensive plan and zoning ordinance or its
15 amended, existing comprehensive plan and existing
16 zoning ordinance, to the office according to the
17 schedule established by this subchapter for review.

18 C. Each municipality shall submit any
19 comprehensive plan and zoning ordinance amended
20 pursuant to subsection 5 to the office for review.

21 D. The municipal officers of a municipality or
22 combination of municipalities shall designate and
23 establish a local planning committee which shall
24 have the general responsibility for the
25 development and maintenance of a comprehensive
26 plan and for the initial development of a proposed
27 zoning ordinance or initial revision of an
28 existing zoning ordinance, including:

29 (1) Conduct of public hearings and any other
30 methods to solicit and strongly encourage
31 citizen input; and

32 (2) Preparation of the comprehensive plan,
33 proposed zoning ordinance and recommendations
34 to the municipal reviewing authority and
35 municipal legislative body regarding the
36 adoption and implementation of the program or
37 amended program.

38 The municipal officers may designate any planning
39 board or district as the local planning committee,
40 which board or district was established under

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 section 4956 or a former similar provision.
2 Planning boards established under former section
3 4952, subsection 1, shall continue to be governed
4 by those provisions until they are superseded by
5 municipal charter or ordinance.

6 E. In order to encourage citizen participation in
7 the development of a local growth management
8 program, municipalities are directed to adopt
9 local growth management programs only after
10 soliciting and considering a broad range of public
11 review and comment. The intent of this paragraph
12 is to provide for broad dissemination of proposals
13 and alternatives, opportunity for written
14 comments, open discussions, information
15 dissemination and consideration of and response to
16 public comments.

17 F. The local planning committee shall conduct all
18 of its meetings in open, public session with prior
19 notice posted in one or more conspicuous places
20 designed to provide public notice. The local
21 planning committee shall hold at least one public
22 hearing on its proposed comprehensive plan.
23 Notice of any public hearing shall be published in
24 a newspaper of general circulation in the
25 municipality at least twice with the date of the
26 first publication to be at least 30 days prior to
27 the hearing. A copy of the proposed comprehensive
28 plan shall be made available for public inspection
29 at the municipal office or other convenient
30 location with regular public hours at least 30
31 days prior to the hearing.

32 G. At least 60 days prior to any public hearing
33 required in paragraph F, the local planning
34 committee shall forward its proposed comprehensive
35 plan, to the office and to the applicable regional
36 council for review and comment.

37 H. At least 60 days prior to the initial adoption
38 of any zoning ordinance or revision pursuant to
39 subsection 5, the local planning committee or
40 municipal reviewing authority, as appropriate,
41 shall forward its proposed ordinance to the office
42 and to the applicable regional council for review
43 and comment. Notice, hearing and other procedural

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 requirements for adoption shall be governed by
2 applicable provisions of this Title, municipal
3 ordinance or charter.

4 I. Any comments and suggested revisions received
5 from the office within the time limits established
6 by this subchapter shall be considered by the
7 local planning committee or municipal reviewing
8 authority, as appropriate, and may be adopted.
9 The comments and suggested revisions received from
10 the office shall be made available for public
11 inspection with the proposed comprehensive plan or
12 land use ordinance as required in this
13 subsection. The notices required in this
14 subsection shall also contain a statement to the
15 effect that the comments have been received from
16 the office and will be available for distribution
17 prior to and for discussion at the public hearing.

18 J. The office shall submit its comments and
19 suggested revisions within 60 days of the
20 municipality's submission of the proposed
21 comprehensive plan or land use ordinance.

22 K. A comprehensive plan or land use ordinance
23 shall be considered to have been adopted as part
24 of a local growth management program when it has
25 been accepted by the municipal legislative body of
26 the municipality.

27 L. Municipalities within the jurisdiction of the
28 Maine Land Use Regulation Commission are not
29 subject to the requirements of this section and
30 section 4960-E, subsection 3.

31 3. Coordination of municipal growth management
32 activities. Cooperative local growth management
33 efforts conducted by 2 or more municipalities shall
34 comply with the provisions of this subsection.

35 A. A municipality shall exercise its land use
36 planning and management authority over the total
37 land area within its jurisdiction.

38 B. Any combination of contiguous municipalities
39 may conduct joint planning and regulatory programs
40 to fulfill the responsibilities established under

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 this subchapter upon adoption of a written
2 comprehensive planning and enforcement agreement
3 by the municipal legislative bodies involved. The
4 municipalities shall agree:

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

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

10 (3) On the amount of contribution from each
11 municipality for any costs incurred in the
12 development, implementation and enforcement
13 of the plan and land use ordinances.

14 C. The agreement shall be in writing, approved by
15 the municipal legislative bodies and forwarded to
16 the office.

17 4. Local growth management program. A local
18 growth management program shall include, without
19 limitation, a comprehensive plan, as described in
20 paragraphs A to D, and an implementation program as
21 described in paragraph E. A municipality shall
22 develop and adopt a comprehensive plan which shall be
23 consistent with the goals established under this
24 subchapter and subsequently implement the plan.

25 A. A comprehensive plan shall include an
26 inventory and analysis section addressing state
27 goals under this subchapter and issues of regional
28 or local significance that the municipality
29 considers important. The inventory shall be based
30 on information provided by the State, regional
31 councils and other relevant local sources. The
32 analysis shall include 10-year projections of
33 local and regional growth in population and
34 residential, commercial and industrial activity;
35 the projected need for public facilities; and the
36 vulnerability of and potential impacts on natural
37 resources.

38 The inventory and analysis section shall include,
39 but not be limited to:

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

- 1 (1) Economic and demographic data describing
2 the municipality and the region within which
3 it is located;

- 4 (2) Significant water resources such as
5 lakes, aquifers, estuaries, rivers and
6 coastal areas and where applicable their
7 vulnerability to degradation;

- 8 (3) Significant or critical natural
9 resources, such as wetlands, wildlife and
10 fisheries habitat, significant plant habitat,
11 coastal islands, sand dunes, scenic areas,
12 shorelands, heritage coastal areas as defined
13 under Title 5, section 3316, and unique
14 natural areas;

- 15 (4) Marine-related resources and facilities
16 such as ports, harbors, commercial mooring,
17 commercial docking facilities and related
18 parking, and shellfishing and worming areas;

- 19 (5) Commercial forestry and agricultural
20 land;

- 21 (6) Existing recreation, park and open space
22 areas and significant points of public access
23 to shorelands within a municipality;

- 24 (7) Existing transportation systems,
25 including the capacity of existing and
26 proposed major thoroughfares, secondary
27 routes, pedestrian ways and parking
28 facilities;

- 29 (8) Residential housing stock, including
30 affordable housing;

- 31 (9) Historical and archeological resources;

- 32 (10) Land use information which describes
33 current and protected development patterns;
34 and

- 35 (11) An assessment of capital facilities and
36 public services necessary to support growth
37 and development and to protect the

1 environment and health, safety and welfare of
2 the public and the costs of those facilities
3 and services.

4 B. A comprehensive plan shall include a policy
5 development section which relates the findings
6 contained in the inventory and analysis section to
7 the state goals. The policies shall:

8 (1) Promote the state goals under this
9 subchapter;

10 (2) Address any conflicts between state
11 goals under this subchapter;

12 (3) Address any conflicts between regional
13 and local issues; and

14 (4) Address the State's coastal policies.

15 C. A comprehensive plan shall include an
16 implementation strategy section which contains a
17 timetable for the implementation program,
18 including land use ordinances, that ensures that
19 the goals established under this subchapter are
20 met. These implementation strategies shall be
21 consistent with state laws and shall actively
22 promote policies developed during the planning
23 process. The timetable shall identify
24 significant ordinances to be included in the
25 implementation program. Those ordinances shall be
26 adopted within one year of the plan. The
27 strategies shall guide the subsequent adoption of
28 policies, programs and land use ordinances. In
29 developing its strategies and subsequent policies,
30 programs and land use ordinances, each
31 municipality shall employ the following guidelines
32 consistent with the goals of this subchapter:

33 (1) Identify and designate at least 2 basic
34 types of geographic areas: Growth areas and
35 rural areas.

36 (a) Growth areas are those areas
37 suitable for orderly residential,
38 commercial and industrial development
39 forecast over the next 10 years. Each

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 municipality shall:

2 (i) Establish standards for such
3 developments;

4 (ii) Establish timely permitting
5 procedures;

6 (iii) Ensure that needed public
7 services are available within the
8 growth area; and

9 (iv) Prevent inappropriate
10 development in natural hazard
11 areas, including flood plains and
12 areas of high erosion.

13 (b) Rural areas are those areas where
14 protection should be provided for
15 agricultural, forest, open space and
16 scenic lands within the municipality.
17 Each municipality shall adopt land use
18 policies and ordinances to discourage
19 incompatible development.

20 These policies and ordinances may include,
21 without limitation, density limits; cluster
22 or special zoning; acquisition of land or
23 development rights; or performance standards;

24 (2) Develop a capital investment plan for
25 financing the replacement and expansion of
26 public facilities and services required to
27 meet projected growth and development;

28 (3) Protect, maintain and, where warranted,
29 improve the water quality of each water body
30 pursuant to Title 38, chapter 3, subchapter
31 I, article 4-A;

32 (4) Ensure that its land use policies and
33 ordinances are consistent with applicable
34 state law regarding critical natural
35 resources. A municipality may adopt
36 ordinances more stringent than applicable
37 state law;

1 (5) Ensure the preservation of access to
2 coastal waters necessary for commercial
3 fishing, commercial mooring, docking and
4 related parking facilities. Each coastal
5 municipality shall discourage new development
6 that is incompatible with uses related to the
7 marine resources industry;

8 (6) Ensure the protection of agricultural
9 and forest resources. Each municipality
10 shall discourage new development that is
11 incompatible with uses related to the
12 agricultural and forest industry;

13 (7) Ensure that its land use policies and
14 ordinances encourage the siting and
15 construction of affordable housing within the
16 community. The municipality shall seek to
17 achieve a level of 10% of new residential
18 development, based on a 5-year historical
19 average of residential development in the
20 municipality, meeting the definition of
21 affordable housing. The municipality is
22 encouraged to seek creative approaches to
23 assist in the development of affordable
24 housing, including, but not limited to,
25 cluster zoning, reducing minimum lot and
26 frontage sizes and increasing densities;

27 (8) Ensure that the value of historic and
28 archeological resources is recognized and
29 that protection is afforded to those
30 resources that merit it; and

31 (9) Encourage the availability of and access
32 to traditional outdoor recreation
33 opportunities, including, without limitation,
34 hunting, boating, fishing and hiking. Each
35 municipality shall identify and encourage the
36 protection of undeveloped shoreland and other
37 areas identified in the local planning
38 process as meriting such protection.

39 D. A regional coordination program shall be
40 developed with other municipalities to manage
41 shared resources and facilities, such as rivers,
42 aquifers, transportation facilities and others.

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 This program shall provide for consistency with
2 the comprehensive plans of other municipalities
3 for these resources and facilities.

4 E. An implementation program shall be adopted
5 that is consistent with the strategies in
6 paragraph C. Significant components of the
7 implementation strategy as identified under
8 paragraph C shall be adopted within one year of
9 the plan with the remainder of the strategies
10 adopted according to the timetable set in the plan.

11 5. Monitoring and revision. A municipality shall
12 periodically review and revise its local growth
13 management program in a timely manner to account for
14 changes caused by growth and development. At a
15 minimum, a municipality shall update the program at
16 least once every 5 years in accordance with the
17 provisions of this section.

18 §4960-D. State role in growth management

19 There is established a program of local growth
20 management assistance and review to promote the
21 preparation and implementation of local growth
22 management programs and to provide technical and
23 financial assistance to accomplish this purpose. The
24 program shall also promote the objective that all
25 local growth management programs and state agency
26 activities be consistent with the State's goals and
27 guidelines established by this subchapter.

28 1. Review agency designated. The Office of
29 Comprehensive Land Use Planning in the Department of
30 Economic and Community Development is responsible for
31 carrying out the provisions of this section and
32 ensuring that the objectives of this subchapter are
33 achieved.

34 2. Biennial progress report. The office shall
35 prepare a biennial progress report on local and state
36 growth management efforts. The report shall be
37 submitted to the joint standing committee of the
38 Legislature having jurisdiction over appropriations
39 and financial affairs and the joint standing committee
40 of the Legislature having jurisdiction over natural
41 resources for their review. The first report shall be

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 submitted on or before January 1, 1990; the 2nd report
2 on January 1, 1991; and biennially thereafter on or
3 before January 1st.

4 In preparing the report, the office shall survey the
5 state agencies and municipalities for growth
6 management activities conducted pursuant to this
7 subchapter. The office shall provide data describing
8 the level of comprehensive planning activity at the
9 state, regional and local level, the implementation of
10 local growth management programs, including both
11 regulatory and nonregulatory approaches, and the costs
12 incurred by the State and municipalities in the
13 conduct of these efforts.

14 The office shall include in the report a summary of
15 experience to date in the technical and financial
16 assistance program, the review and comment program and
17 the voluntary certification program. This summary
18 shall include a quantitative and qualitative analysis
19 of these programs.

20 The office shall also include in the report any
21 recommendations it may have for statutory changes in
22 this subchapter or other relevant areas of law. The
23 office shall also include in its recommendations a
24 proposal for the appropriations needed over the
25 following one-year, 2-year and 5-year periods to
26 accomplish the objectives of this subchapter.

27 3. Planning Advisory Council; established. There
28 is established a Planning Advisory Council composed of
29 7 members. The office shall consult with the council
30 on the development of all rules, guidelines and
31 reports for the implementation of this subchapter.

32 A. Members of the council shall be appointed by
33 the Governor.

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

37 C. Members shall serve for staggered 4-year
38 terms. Initial members shall have terms as
39 follows: Three members for 2-year terms; 3
40 members for 3-year terms; and one member for a

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 4-year term. A member may serve no more than 2
2 consecutive 4-year terms.

3 D. Members shall not be compensated but shall be
4 reimbursed for all expenses directly related to
5 their participation in council business.

6 E. Four members shall constitute a quorum for the
7 conduct of business by the council.

8 F. The council shall elect a chairman from among
9 its members.

10 G. The council shall report by January 1, 1989,
11 and every 2 years thereafter to the Governor and
12 the Legislature on any changes that may be
13 required to accomplish the purposes of this
14 subchapter.

15 §4960-E. State planning review program

16 1. Coordination; state agencies. Each state
17 agency with regulatory or other authority affecting
18 the goals established in this subchapter shall submit
19 to the office prior to January 1, 1990, a written
20 report which addresses how each agency has
21 incorporated the goals of this subchapter into its
22 planned activities. This report shall be revised as
23 necessary but in no case less than once every 2
24 years. After January 1, 1990, these agencies shall
25 conduct their respective activities in a manner
26 consistent with the goals established under this
27 subchapter. Without limiting the application of this
28 subsection to other state agencies, the following
29 agencies shall comply with the provisions of this
30 section:

31 A. Department of Conservation;

32 B. Department of Economic and Community
33 Development;

34 C. Department of Environmental Protection;

35 D. Department of Agriculture, Food and Rural
36 Resources;

- 1 E. Department of Inland Fisheries and Wildlife;
- 2 F. Department of Marine Resources;
- 3 G. Department of Transportation;
- 4 H. Finance Authority of Maine; and
- 5 I. Maine State Housing Authority.

6 2. Provision of natural resource and other
7 planning information. The office shall develop and
8 supply to all municipalities available natural
9 resource and other planning information for use in the
10 preparation of local growth management programs. The
11 office shall make maximum use of existing information
12 available from other state agencies including, without
13 limitation, the Department of Conservation, the
14 Department of Inland Fisheries and Wildlife, the
15 Department of Marine Resources, the Department of
16 Environmental Protection, the State Planning Office
17 and the Department of Economic and Community
18 Development. The office may contract with regional
19 councils to develop the necessary planning information
20 at a regional level and with other state agencies as
21 necessary to provide support for local planning
22 efforts. By July 1, 1990, the office shall complete
23 an inventory of the State's natural resources
24 sufficient to ensure adequate identification and
25 protection of critical natural resources of statewide
26 significance.

27 3. Review of local growth management programs;
28 schedule. Subject to the provisions of this
29 subsection and the availability of state assistance as
30 established pursuant to section 4960-F, municipalities
31 shall submit their comprehensive plans to the office
32 according to the following schedule:

33 A. By January 1, 1991, those municipalities which
34 have experienced population growth of 10% or more
35 between 1980 and 1987 and which have total
36 populations in excess of 500 persons, based on
37 population estimates provided by the State
38 Planning Office;

39 B. By January 1, 1993, those municipalities which

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 have experienced population growth of 5% or more
2 between 1980 and 1987, based on population
3 estimates provided by the State Planning Office;
4 and

5 C. All other municipalities by January 1, 1996.

6 The office shall revise the schedule deadlines under
7 this subsection for a municipality based on the
8 availability of state assistance and the
9 municipality's rank in the priorities set forth in
10 section 4960-F, subsection 1. Nothing in this
11 subsection may bar a municipality from submitting its
12 plan or other program component in advance of this
13 schedule.

14 Each municipality shall submit for review a zoning
15 ordinance proposed as part of its implementation
16 program within one year of its submission of its
17 comprehensive plan under this subsection. Other
18 components of the municipality's implementation
19 program not submitted for review shall be adopted in
20 accordance with the timetable provided in the
21 municipality's comprehensive plan.

22 4. Review of local growth management program.
23 The office shall review any comprehensive plan and
24 zoning ordinance submitted to it for consistency with
25 the goals and guidelines established in this
26 subchapter.

27 A. The office shall solicit written comments on
28 any proposed comprehensive plan or zoning
29 ordinance from regional councils, state agencies,
30 all municipalities contiguous to the municipality
31 submitting a comprehensive plan or zoning
32 ordinance and any interested residents of the
33 municipality or of contiguous municipalities. The
34 comment period shall extend for 45 days after the
35 office's receipt of the proposal. Each state
36 agency reviewing the proposal shall designate a
37 person or persons responsible for coordinating the
38 agency's review of the proposal.

39 B. Each regional council shall review and submit
40 written comments on the proposal of any
41 municipality within its defined planning region.

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 The comments shall be submitted to the office and
2 shall contain an analysis of how the proposal
3 addresses identified regional needs and whether
4 the proposal is consistent with those of other
5 municipalities which may be affected.

6 C. The office shall prepare all written comments
7 from all sources in a form to be forwarded to the
8 municipality.

9 D. The office shall submit the comments on the
10 proposal to the municipality within 60 days of
11 receipt of the proposal. The office shall also
12 forward its comments and suggested revisions to
13 the applicable regional council.

14 E. If warranted, the office shall issue findings
15 specifically describing the deficiencies in the
16 submitted plan or ordinance and the recommended
17 measures for remedying the deficiencies.

18 5. Updates; amendment of comprehensive plans and
19 zoning ordinances. Each municipality shall submit any
20 amended comprehensive plans and zoning ordinances,
21 revised pursuant to section 4960-C, subsection 5 to
22 the office for review in the same manner as provided
23 for review of new programs. The office shall provide
24 an expedited review procedure for those submissions
25 which represent amendments to local growth management
26 programs reviewed by it after January 1, 1989. After
27 the initial review, municipalities shall file copies
28 of any amendment to a zoning ordinance with the office
29 within 30 days of adoption.

30 6. Voluntary certification of local growth
31 management programs. Any municipality may at any time
32 request a certificate of consistency for its local
33 growth management program. The office, upon request,
34 shall review the program and base its certification
35 decision on the program's consistency with the goals
36 and guidelines established in this subchapter.

37 A. The office shall solicit written comments on
38 any proposed local growth management program from
39 regional and state agencies, all municipalities
40 contiguous to the municipality submitting the
41 proposed program and any interested residents of

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

- 1 the municipality or contiguous municipalities.
- 2 B. Any regional council commenting on a proposed
3 program or program component shall determine
4 whether the proposed program or program component
5 is compatible with those of other municipalities
6 which may be affected and with regional needs
7 identified by the regional council.
- 8 C. Within 90 days of the municipal request, the
9 office shall issue a certificate of consistency or
10 request revisions to the proposed program. In the
11 event that the same local growth management
12 program or program component has been previously
13 reviewed by the office pursuant to subsection 4,
14 denial of certification or requested revisions
15 must be based on written comments received or
16 prepared by the office at that time.
- 17 D. In the event of a request for revisions, the
18 office shall provide the municipality with
19 findings specifically describing the deficiencies
20 in the submitted program or portion of the program
21 and the recommended measures for remedying the
22 deficiencies.
- 23 E. The office shall provide ample opportunity for
24 the municipality submitting a local growth
25 management program to respond to and correct any
26 identified deficiencies in the program.
- 27 F. Upon issuance of a certificate of consistency,
28 the municipality shall be eligible for all
29 benefits and incentives conditioned on the
30 certification of a local growth management program.
- 31 G. The office shall provide an expedited review
32 and certification procedure for those submissions
33 which represent minor amendments to local growth
34 management programs certified by it after January
35 1, 1989.
- 36 7. Rule-making authority. The office is
37 authorized to adopt rules, with the advice of the
38 Planning Advisory Council, necessary to carry out the
39 purposes of this subchapter subject to the provisions
40 of Title 5, chapter 375, subchapter II.

1 8. Final agency action. The office's decision on
2 certification constitutes final agency action.

3 9. Transition; savings. Except as otherwise
4 provided in this subsection, any comprehensive plan or
5 land use regulation or ordinance adopted or amended by
6 a municipality before the applicable date established
7 under subsection 3 shall remain in effect until
8 amended or repealed subject to this subchapter.

9 Any zoning, subdivision, site review or impact fee
10 regulation or ordinance adopted or amended before the
11 applicable date established under subsection 3 and not
12 consistent with a comprehensive plan adopted according
13 to this subchapter shall be without force one year
14 after the applicable date established under subsection
15 3.

16 Any other land use regulation or ordinance adopted or
17 amended before the applicable date established under
18 subsection 3 and not consistent with a local growth
19 management program adopted according to this
20 subchapter shall be without force after January 1,
21 1998.

22 Any property or use existing in violation of a land
23 use ordinance or regulation is a nuisance.

24 \$4960-F. State technical and financial assistance

25 There is established a program of technical and
26 financial assistance and incentives to regional
27 councils and municipalities to encourage and
28 facilitate the adoption and implementation of local
29 growth management programs throughout the State. The
30 program shall be administered by the office.

31 1. Municipal assistance priorities. With
32 assistance from regional councils and municipalities,
33 the office shall develop a priority list and establish
34 funding levels for planning and technical assistance
35 grants to municipalities. Priority for assistance
36 shall be based on a municipality's:

37 A. Scheduled comprehensive plan development under

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 section 4960-E, subsection 3; and

2 B. Population growth rates, seasonal population
3 estimates, commercial and industrial development
4 rates, the existence and quality of a
5 comprehensive plan and other relevant factors.

6 The office shall submit biennial budget requests for
7 this section sufficient to meet the statutory schedule
8 established under section 4960-E, subsection 3.

9 2. Municipal planning assistance. The office
10 shall develop and administer a grants program to
11 provide direct financial assistance to municipalities
12 in the preparation of comprehensive plans pursuant to
13 this subchapter. The office shall establish
14 provisions for municipal matching funds, not to exceed
15 25%, to conduct activities under this section. Grants
16 may be expended for any purpose directly related to
17 the preparation of a municipal comprehensive plan as
18 the municipality and the office may agree, including,
19 without limitation, the conduct of surveys,
20 inventories and other data gathering activities, the
21 hiring of planning and other technical staff, the
22 retention of planning consultants, contracts with
23 regional councils for planning and related services
24 and other related purposes.

25 3. Municipal technical assistance. The office
26 shall establish a program of technical assistance
27 utilizing its own staff, the staff of other state
28 agencies and the resources of regional councils to
29 help municipalities in the development of local growth
30 management programs. No later than January 1, 1990,
31 the office shall develop a set of model land use
32 ordinances and other mechanisms consistent with the
33 goals and guidelines of this subchapter.

34 4. Municipal implementation assistance. The
35 office shall develop and administer a matching grants
36 program to provide direct financial and technical
37 assistance to municipalities for the implementation
38 and administration of those local growth management
39 programs that have been certified under this
40 subchapter. The maximum municipal cost share may not
41 exceed 25%. The grants may be expended for any
42 purpose directly related to the implementation of a

1 local growth management program and the administration
2 and enforcement of related land use ordinances adopted
3 as part of a certified growth management program.
4 Eligible activities include, without limitation,
5 assistance in the development of ordinances, retention
6 of technical and legal expertise for permitting
7 activities and the updating of local growth management
8 programs or components of the program.

9 5. Regional council assistance. The office shall
10 develop and administer a program to develop regional
11 education and training programs, regional policies to
12 address state goals and regional assessments. These
13 assessments may include, but not be limited to, public
14 infrastructure, inventories of agricultural and
15 commercial forest lands, housing needs, recreation and
16 open space needs, and projections of regional growth
17 and economic development. The office shall establish
18 guidelines to ensure methodological consistency among
19 the State's regional councils. The office shall also
20 develop and administer a series of contracts with
21 regional councils to support the involvement of the
22 regional councils in the review of local growth
23 management programs by the office.

24 6. Enforcement assistance program. The office
25 shall administer a program of training and financial
26 assistance for municipal code enforcement officers.
27 For a period not to exceed 12 months for any municipal
28 code enforcement officer, the program shall provide
29 funding for educational expenses leading to
30 certification under section 4967 and salary
31 reimbursement while in training.

32 7. Municipal legal defense fund. The office
33 shall develop and administer a municipal legal defense
34 fund to assist municipalities with legal expenses
35 related to the enforcement and defense of land use
36 ordinances adopted as part of a certified local growth
37 management program in accordance with this
38 subchapter. Grants shall be targeted to cases of
39 statewide significance.

40 8. Eligibility for other state aid. After the
41 applicable deadline date established in section
42 4960-E, subsection 3, a state agency responsible for
43 administering any grant and assistance program

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 described in subsection 9 shall award funds to a
2 municipality only when the municipality has adopted
3 and implemented a certified local growth management
4 program or has, at a minimum, adopted a certified
5 comprehensive plan and implemented certified
6 components of the implementation program that are
7 directly related to the purposes for which the grant
8 or assistance is provided.

9 9. State grants and assistance; certification.
10 State grants and assistance in the following areas are
11 subject to the provisions of subsection 8:

12 A. Assistance in the enforcement of local growth
13 management programs including the municipal legal
14 defense fund and technical and financial
15 assistance in the administration and enforcement
16 of local land use ordinances;

17 B. Assistance in the acquisition of land by the
18 municipality for conservation, natural resource
19 protection, open space or recreational facilities
20 under Title 5, chapter 353; and

21 C. Multi-purpose community development block
22 grants.

23 10. Other state grants and assistance. Except
24 for the programs specified in subsection 9, state
25 agencies responsible for administering grant and
26 direct or indirect financial assistance programs to
27 municipalities designed to accommodate or encourage
28 additional growth and development; to improve, expand
29 or construct public facilities; to acquire land for
30 conservation, recreation or resource protection; or to
31 assist in planning or managing for specific economic
32 and natural resource concerns shall allocate funds
33 only to a municipality with an adopted comprehensive
34 plan and implementation program which includes
35 statements of policy or program guidelines directly
36 related to the purposes for which the grant or
37 financial assistance is provided. The content of the
38 plan, policies and guidelines shall be considered by
39 state agencies in awarding financial assistance to a
40 municipality.

41 Sec. 5. 30 MRSa §4961, as amended by PL 1985,

1 c. 794, Pt. A, §3, is repealed.

2 Sec. 6. 30 MRSA §4961-A is enacted to read:

3 §4961-A. Land use regulation

4 The provisions of this section constitute express
5 limitations on the home rule powers granted to all
6 municipalities under home rule authority.

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

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

14 B. The ordinance must be pursuant to and
15 consistent with a comprehensive plan adopted by
16 the municipality's legislative body.

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

23 D. Real estate used or to be used by a public
24 service corporation shall be wholly or partially
25 exempted from an ordinance only when on petition,
26 notice and public hearing the Public Utilities
27 Commission has determined that such exemption is
28 reasonably necessary for public welfare and
29 convenience.

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

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

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

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

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

12 I. Any zoning ordinance may include provisions
13 for conditional or contract zoning or any other
14 form of zoning consistent with this subchapter.
15 For the purposes of this subchapter, "conditional
16 zoning" means the process by which the municipal
17 legislative body may rezone property to permit the
18 use of that property subject to conditions not
19 generally applicable to other properties similarly
20 zoned. "Contract zoning" means the process by
21 which the property owner, in consideration of the
22 rezoning of the owner's property, agrees to the
23 imposition of certain conditions or restrictions
24 not imposed on other similarly zoned properties.
25 All rezoning under this paragraph shall:

26 (1) Be consistent with the local growth
27 management program adopted according to this
28 subchapter;

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

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

35 The municipal reviewing authority, as defined in
36 section 4956, subsection 2, shall conduct a public
37 hearing prior to any property being rezoned under
38 this paragraph. Notice of this hearing shall be
39 posted in the municipal office at least 14 days
40 prior to the public hearing and shall be published
41 in a newspaper of general circulation within the

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 municipality at least 2 times, the date of the
2 first publication to be at least 7 days prior to
3 the hearing. Notice shall also be sent to the
4 owners of all property abutting the property to be
5 rezoned at their last known addresses. This
6 notice shall contain a copy of the proposed
7 conditions and restrictions, with a map indicating
8 the property to be rezoned.

9 2. Zoning adjustment. The municipality shall
10 establish a board of appeals which is subject to the
11 provisions of this subsection.

12 A. A board of appeals shall be established in any
13 municipality which adopts a zoning ordinance. The
14 board of appeals shall hear appeals from actions
15 or failure to act of the official or board charged
16 with the enforcement of the zoning ordinance,
17 unless only a direct appeal to Superior Court has
18 been provided by municipal ordinance. That board
19 of appeals shall be governed by section 2411,
20 except that section 2411, subsection 2 shall not
21 apply to boards existing on September 23, 1971.

22 B. In deciding any appeal:

23 (1) The board may interpret the provisions
24 of the ordinance which are called into
25 question;

26 (2) The board may approve the issuance of a
27 special exception permit or conditional use
28 permit in strict compliance with the
29 ordinance; and provided that, if the
30 municipality has authorized the planning
31 board, agency or office to issue these
32 permits, an appeal from the granting or
33 denial of such a permit may be taken directly
34 to Superior Court if required by local
35 ordinance; and

36 (3) The board may grant a variance in strict
37 compliance with paragraph C.

38 C. A variance may be granted by the board only
39 when strict application of the ordinance, or a
40 provision of the ordinance, to the petitioner and

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 the petitioner's property would cause undue
2 hardship. The term "undue hardship" as used in
3 this paragraph means:

4 (1) The land in question cannot yield a
5 reasonable return unless a variance is
6 granted;

7 (2) The need for a variance is due to the
8 unique circumstances of the property and not
9 to the general conditions in the neighborhood;

10 (3) The granting of a variance will not
11 alter the essential character of the
12 locality; and

13 (4) The hardship is not the result of action
14 taken by the applicant or a prior owner.

15 A municipality may, in a zoning ordinance, adopt
16 additional limitations on the granting of a
17 variance, including, but not limited to, a
18 provision that a variance may only be granted for
19 a use permitted in a particular zone. In
20 addition, whenever the board grants a variance
21 under this subsection, a certificate indicating
22 the name of the current property owner,
23 identifying the property by reference to the last
24 recorded deed in its chain of title, and
25 indicating the fact that a variance, including any
26 conditions on the variance, has been granted and
27 the date of the granting, shall be prepared in
28 recordable form and shall be recorded in the local
29 registry of deeds within 30 days of final approval
30 of the variance or the variance shall be invalid.
31 No rights may accrue to the variance recipient or
32 the recipient's heirs, successors or assigns
33 unless and until the recording is made within 30
34 days.

35 D. The board shall reasonably notify of any
36 hearing the petitioner, the planning board, agency
37 or office and the municipal officers and such
38 persons shall be made parties to the action. All
39 interested persons shall be given a reasonable
40 opportunity to have their views expressed at any
41 hearing.

1 3. Impact fees. A municipality may require, by
2 ordinance, the construction of off-site capital
3 improvements or may require payment of impact fees in
4 lieu of construction. After the applicable deadlines
5 established under section 4960-E, subsection 3, any
6 impact fee ordinance must have been adopted as part of
7 a certified local growth management program.

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

13 (1) Infrastructure facilities include, but
14 are not limited to, waste water collection
15 and treatment facilities, municipal water
16 facilities, solid waste facilities, fire
17 protection facilities, roads and traffic
18 control devices, parks and other open space
19 or recreational areas.

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

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

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

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

37 (4) The ordinance must establish a mechanism
38 by which the municipality may refund impact
39 fees, or a portion of impact fees, actually

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 paid which exceed the municipality's actual
2 costs or which were not expended according to
3 the schedule under this paragraph.

4 (5) The ordinance must be adopted as part of
5 and consistent with a local growth management
6 program, including the component regarding
7 capital investment, meeting the requirements
8 of this subchapter.

9 4. Application fees. Any application fee charged
10 by a municipality for an application for any land use
11 permit issued by the municipality may not exceed the
12 reasonable cost of processing and review of the
13 application by the municipality and its consultants
14 and the administration of any requirement for a
15 certificate of compliance with any permit conditions.

16 5. Moratorium. Any moratorium adopted by a
17 municipality on the processing or issuance of
18 development permits or licenses must meet the
19 following requirements.

20 A. The moratorium must be needed:

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

27 (2) Because the application of existing
28 comprehensive plans, land use ordinances or
29 regulations or other applicable laws, if any,
30 is inadequate to prevent serious public harm
31 from residential, commercial or industrial
32 development in the affected geographic area.

33 B. The moratorium must be of a definite term, not
34 to exceed 180 days, except that the moratorium may
35 be extended for additional 90-day periods
36 provided that the municipality adopting the
37 moratorium:

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

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

4 C. In municipalities where the municipal
5 legislative body is the town meeting, the
6 municipal officers are authorized to extend the
7 moratorium as provided for and in compliance with
8 paragraph B after notice and hearing.

9 Sec. 7. 30 MRSA §4962, as amended by PL 1983,
10 c. 170, is repealed.

11 Sec. 8. 30 MRSA §4963, as amended by PL 1987,
12 c. 182, §2, is repealed.

13 Sec. 9. 30 MRSA §4964, as amended by PL 1979,
14 c. 218, §4, is repealed.

15 Sec. 10. 30 MRSA §§4967 and 4968 are enacted to
16 read:

17 §4967. Training and certification for code
18 enforcement officers

19 1. Certification required. Beginning January 1,
20 1993, it shall be unlawful for a municipality to
21 employ any person to perform the duties of a code
22 enforcement officer who is not certified by the
23 office, except that the person shall have 12 months
24 from the date of employment to be trained and
25 certified in accordance with this section.

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

31 3. Penalty. Any municipality that violates this
32 section commits a civil violation for which a
33 forfeiture of not more than \$100 may be adjudged.
34 Each day in violation constitutes a separate offense.

35 4. Certification; terms. The office shall
36 certify persons as to their competency to successfully

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 enforce ordinances and other land use regulations and
2 permits granted under those ordinances and
3 regulations. Such certification shall be valid for a
4 period of 5 years.

5 5. Training and certification of code enforcement
6 officers. In cooperation with the
7 Vocational-Technical Institute System and the
8 Department of Human Services, the office shall
9 establish a continuing education program for people
10 engaged in code enforcement. This program shall
11 provide basic and advanced training in the technical
12 and legal aspects of code enforcement necessary for
13 certification, including, but not limited to, plumbing
14 inspection, soils and site evaluation, electrical
15 inspection, state and federal environmental
16 requirements, zoning ordinances, court techniques and
17 other enforcement information.

18 6. Examination. The office shall hold at least
19 one examination each year for the purpose of examining
20 candidates for certification or recertification at a
21 time and place designated by it. Additional
22 examination dates may be held by the office to carry
23 out the purposes of this subchapter.

24 7. Certification standards. The office shall
25 establish by rule the qualifications, conditions and
26 licensing standards and procedures for the
27 certification and recertification of individuals to
28 act as code enforcement officers. A code enforcement
29 officer need only be certified in the areas of actual
30 job responsibilities. The rules established by the
31 office under this subsection shall identify standards
32 for each of the areas of training under subsection 5,
33 in addition to general standards that apply to all
34 code enforcement officers.

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

40 A. The Administrative Court may revoke the
41 certificate of a code enforcement officer, in
42 accordance with Title 4, chapter 25, when it finds

1 that the code enforcement officer has practiced
2 fraud or deception; that reasonable care, judgment
3 or the application of a duly trained and
4 knowledgeable code enforcement officer's ability
5 was not used in the performance of the duties of
6 the office; or that the code enforcement officer
7 is incompetent or unable to perform properly the
8 duties of the office.

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

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

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

20 FISCAL NOTE

21 This bill requires General Fund appropriations of
22 \$3,467,050 in the current biennium. These
23 appropriations have been included in the supplemental
24 budget.

25 The cost of the local growth management program
26 will increase in future years as the program expands
27 to assist more municipalities and provides additional
28 services.'

29 STATEMENT OF FACT

30 This amendment is the unanimous report of the
31 Joint Standing Committee on Energy and Natural
32 Resources. It is a complete replacement for the
33 original bill.

34 This amendment establishes a system of local
35 comprehensive planning with state goals and

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 guidelines. The purpose of this system is to build on
2 the strengths of Maine's tradition of local control,
3 adding state financial and technical assistance, in
4 order to better anticipate and guide the development
5 of land in Maine's communities. This amendment also
6 creates a mechanism for state review and comment on
7 local planning efforts to encourage the incorporation
8 of the state goals in these local efforts and to
9 provide a coordinating mechanism for regional needs
10 and issues.

11 Basic authority and responsibility remain at the
12 local level. The amendment strongly reaffirms the
13 home rule principle in land use regulation. The role
14 of regional councils in providing technical assistance
15 is substantially increased along with the councils'
16 role in planning for regional needs and assessing the
17 regional trends in economic development. The State is
18 given an active role in comprehensive planning through
19 increased technical and financial assistance programs
20 for municipalities and through review and comment on
21 local plans and zoning ordinances.

22 The amendment also establishes a set of financial
23 incentives to encourage local adoption of growth
24 management programs. These incentives are carefully
25 designed to focus only on growth-related state
26 financial assistance. Basic forms of state
27 assistance, such as revenue sharing and school aid,
28 are in no way connected to this effort. The forms of
29 state assistance that are offered as incentives are:

30 1. Financial and technical assistance for the
31 administration, enforcement and legal defense of local
32 growth management programs, primarily land use
33 ordinances;

34 2. Assistance in the municipal purchase of open
35 space and recreation lands with any funds that may
36 become available from the Land for Maine's Future
37 Program; and

38 3. Planning and economic development assistance
39 in the form of multi-purpose community development
40 block grants.

41 The following description outlines the intent of

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 each section.

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

14 Section 2 establishes a new advisory panel in the
15 comprehensive listing of boards and commissions in the
16 Maine Revised Statutes, Title 5. The purpose of this
17 panel is explained in section 4.

18 Section 3 amends the name of the existing planning
19 and zoning subchapter in Title 30.

20 Section 4 provides a complete overhaul and update
21 of municipal planning and zoning laws. This section
22 establishes a clear set of legislative findings and
23 purposes to form the foundation for a statement of
24 state goals. These goals form the basis of all future
25 comprehensive planning by municipalities and state
26 agencies. The goals identify areas of paramount
27 importance to the State, including economic
28 development, protection of historical and natural
29 resources, maintenance of public and private
30 infrastructure needed for future growth, affordable
31 housing and outdoor recreation. Definitions of
32 specific terms are provided.

33 Section 4 also provides a reaffirmation of home
34 rule authority over local land use regulation. It is
35 the intent of the Legislature that this amendment
36 constitutes express limitations on home rule and in no
37 way is intended to be construed as a preemption of
38 municipal home rule authority granted under the
39 Constitution of Maine.

40 Section 4 further provides definition of the
41 components that must be included in any local growth

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 management program. It is within the context of these
2 program components that a municipality will address
3 its vision of the future and the steps it will take to
4 meet the state goals. It is important to note that a
5 piece of the overall effort, the implementation
6 program, consisting of local policies, programs and
7 ordinances, is an integral part of the town's overall
8 local growth management program. It is the intent of
9 the Legislature that the relationship between planning
10 goals and implementing actions be as clear and as
11 close as possible. The amendment provides for a
12 5-year revision cycle of municipal plans and zoning
13 ordinances.

14 Section 4 further provides for intertown
15 cooperation on planning and land use regulation. The
16 amendment stresses the importance of high public
17 participation in the planning process and provides the
18 technical and financial resources necessary to make
19 this participation a reality.

20 Section 4 also provides for a state assistance and
21 review mechanism. A new office in the Department of
22 Economic and Community Development will oversee this
23 effort. An advisory council with expertise in
24 planning, local government, land conservation and
25 development is created to provide input to the
26 office's efforts.

27 The office is responsible for ensuring that all
28 state agencies incorporate the state goals in their
29 programs and activities. The office is also
30 responsible for overseeing a program of technical and
31 financial assistance to municipalities and regional
32 councils to help in land use planning and
33 implementation efforts. The office will conduct
34 reviews of local planning efforts through a process of
35 assistance, public input and consultation with
36 municipalities. It is the intent of the Legislature
37 that the office and municipalities have the
38 flexibility to creatively incorporate the requirements
39 of this legislation in the municipal plans. The
40 Legislature seeks to stress and encourage local
41 initiative through a constructive, problem-solving
42 approach to Maine's growth management issues.

43 Section 4 provides a schedule for the submission

COMMITTEE AMENDMENT "A" to H.P. 1688, L.D. 2317

1 and review of local plans and zoning ordinances.
2 Municipal adoption of the state comments is voluntary
3 and entirely at the town's discretion. The schedule
4 stretches over an 8-year period, concentrating on the
5 high-growth towns first. Eligibility for a limited
6 number of growth and economic development-related
7 state funding programs is linked to the municipality's
8 efforts. School aid and state revenue sharing are not
9 included in this provision.

10 Section 5 repeals obsolete language concerning
11 comprehensive planning.

12 Section 6 establishes express conditions for the
13 use by municipalities of zoning, using existing
14 statutory language, impact fees, application fees and
15 land use moratoria.

16 Sections 7 to 9 repeal existing laws concerning
17 zoning. Most of the repealed language is retained in
18 section 6.

19 Section 10 establishes a training and
20 certification procedure for local code enforcement
21 officers.

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

25

5607041788

Reported by the Committee on Economic Development
Reproduced and distributed under the direction of the Clerk of the
House
4/18/88 (Filing No. H-727)