

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2317

H.P. 1688 House of Representatives, February 22, 1988
Reported by Representative HOGLUND for the Maine
Commission on Land Conservation and Economic Development
pursuant to Public Law 1987, Chapter 514, Section 3.
Reference to the Joint Standing Committee on Energy and
Natural Resources suggested and printing ordered under Joint
Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

1 AN ACT to Promote Orderly Economic Growth and
2 Natural Resource Conservation.
3

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

6 Sec. 1. 1 MRSA §302, as repealed and replaced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

8 §302. Construction and effect of repealing and

1 amending Acts

2 The repeal of an Act, resolve or municipal
3 ordinance passed after the 4th day of March, 1870 does
4 not revive any statute or ordinance in force before
5 the Act, resolve or ordinance took effect. The repeal
6 or amendment of an Act or ordinance does not affect
7 any punishment, penalty or forfeiture incurred before
8 the repeal or amendment takes effect, or any action or
9 proceeding pending at the time of the repeal or
10 amendment, for an offense committed or for recovery of
11 a penalty or forfeiture incurred under the Act or
12 ordinance repealed or amended. Actions and
13 proceedings pending at the time of the passage,
14 amendment or repeal of an Act or ordinance are not
15 affected thereby. For the purposes of this section, a
16 proceeding shall include but not be limited to
17 petitions or applications for licenses or permits
18 required by law at the time of their filing. For the
19 purposes of this section and regardless of any other
20 action taken by the reviewing authority, an
21 application for a license or permit required by law at
22 the time of its filing shall be considered to be a
23 pending proceeding when the reviewing authority has
24 conducted at least one substantive review of the
25 application and not before. For the purposes of this
26 section, a substantive review of an application for a
27 license or permit required by law at the time of
28 application shall consist of a review of that
29 application to determine whether it complies with the
30 review criteria and other applicable requirements of
31 law.

32 Sec. 2. 5 MRSA §12004, sub§-5, ¶A, sub-¶(4) is
33 enacted to read:

34	<u>(4) Board of Plan</u>	<u>Legislative</u>	<u>30 MRSA</u>
35	<u>Appeals</u>	<u>Per diem</u>	<u>\$4960-D</u>

36 Sec. 3. 5 MRSA §12004, sub-§10, ¶A, sub-¶(23-C)
37 is enacted to read:

38	<u>(23-C) Planning</u>	<u>Expenses Only</u>	<u>30 MRSA</u>
39	<u>Advisory</u>		<u>\$4960-D</u>
40	<u>Council</u>		

1 E. Continued application of the current reactive,
2 case-by-case system of land use regulation is
3 detrimental to the public health, safety and
4 welfare;

5 F. The State must take appropriate measures to
6 protect and manage certain areas and natural
7 resources which are of statewide significance and
8 concern; and

9 G. The State has a vital interest in ensuring
10 that a comprehensive system of comprehensive land
11 use planning and development management is
12 established as quickly as possible which, while
13 building on the strong foundation of local land
14 use planning, also protects unique aspects of the
15 State's heritage and environment, encourages
16 appropriate uses of the State's natural resources,
17 guides sound economic development and ensures
18 prosperity for Maine citizens in all regions of
19 the State.

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

22 A. Establish, in each municipality of the State,
23 local comprehensive planning and land use
24 management according to the schedule contained in
25 this subchapter and consistent with the goals and
26 policies of the State;

27 B. Provide municipalities with the tools, powers
28 and resources, in addition to those afforded under
29 Home Rule, to effectively plan for and manage
30 future development within their jurisdictions with
31 a maximum of local initiative and flexibility;

32 C. Ensure, through state technical and financial
33 assistance and oversight, that local land use
34 ordinances, tools and policies are based on local
35 comprehensive plans that are prospective and
36 inclusive of all matters determined by the
37 Legislature to be in the best interests of the
38 State;

1 D. Incorporate regional considerations into local
2 planning and decision making so as to ensure
3 consideration of regional needs and the regional
4 impact of development;

5 E. Provide for continued direct state regulation
6 of development proposals that occur in areas of
7 statewide concern, that directly impact natural
8 resources of statewide significance or that by
9 their scale or nature otherwise affect vital state
10 interests; and

11 F. Encourage the widest possible involvement by
12 the citizens of the State in all aspects of the
13 planning and state oversight process, in order to
14 ensure that the plans developed by municipalities
15 and reviewed by the State have had the benefit of
16 citizen input.

17 3. State goals. The Legislature hereby
18 establishes a set of state goals to provide overall
19 direction and consistency to the planning and
20 regulatory actions of all state and municipal agencies
21 affecting natural resource management, land use and
22 development. The Legislature declares that, in order
23 to promote and protect the health, safety and welfare
24 of the citizens of the State, it is in the best
25 interests of the State to achieve the following goals:

26 A. To encourage orderly growth and development in
27 appropriate areas of each community, while
28 protecting the State's rural character, making
29 efficient use of public services and preventing
30 development sprawl;

31 B. To promote an economic climate which increases
32 high quality job opportunities and overall
33 economic well-being;

34 C. To provide affordable, decent housing
35 opportunities for all Maine citizens;

36 D. To protect the quality of the State's water
37 resources, including lakes, aquifers, estuaries,

1 rivers and coastal areas;

2 E. To protect the State's other critical natural
3 resources, including without limitation, wetlands,
4 great ponds, wildlife and fisheries habitat, sand
5 dunes, shorelands, scenic vistas and unique
6 natural areas;

7 F. To safeguard the State's marine resources
8 industry infrastructure, including the State's
9 ports and harbors, from development which
10 threatens that infrastructure;

11 G. To safeguard the State's agricultural and
12 forest resources from development which threatens
13 those resources;

14 H. To preserve the State's historic and
15 archeological resources; and

16 I. To promote and protect the availability of
17 outdoor recreation opportunities for all Maine
18 citizens, including access to surface waters.

19 4. Guidelines. To assist municipalities and
20 state agencies in interpreting the goals established
21 in this section, the following guidelines are
22 established.

23 A. To encourage orderly growth and development
24 and to promote an economic climate which increases
25 high-quality job opportunities and overall
26 economic well-being, each municipality shall, at a
27 minimum, identify and designate 2 basic types of
28 geographic areas: Growth areas and rural areas.

29 (1) Growth areas are those areas suitable
30 for orderly residential, commercial and
31 industrial development in an amount
32 sufficient to accommodate planned development
33 forecast over the next 10 years. Each
34 municipality shall:

35 (a) Establish standards describing the
36 requirements for such developments;

1 (b) Establish permitting procedures
2 which enable development proposals that
3 satisfy these requirements to be
4 reviewed in a timely manner;

5 (c) Ensure, through capital investment
6 planning, that needed public services
7 are available within the growth area but
8 do not encourage development beyond the
9 growth area; and

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

13 (2) Rural areas are those where protection
14 should be provided for agricultural, forest,
15 open space and scenic lands within the
16 municipality. Each municipality shall
17 identify valuable lands in these categories
18 and adopt land use policies and ordinances to
19 discourage incompatible development and
20 maintain these values. Such policies and
21 ordinances may include, without limitation,
22 density limits; cluster or special zoning;
23 acquisition of land or development rights;
24 performance standards; or other effective
25 mechanisms.

26 B. To protect the quality of the State's water
27 resources, each municipality shall inventory all
28 surface and ground water resources located within
29 its jurisdiction using information and
30 methodologies established by the bureau. Each
31 municipality shall assess the vulnerability of
32 these waters to degradation from development.
33 Each municipality shall adopt policies and land
34 use ordinances which protect and maintain the
35 water quality of each water body pursuant to Title
36 38, chapter 3, subchapter I, article 4-A, and
37 allow the water quality to be improved over time
38 where waters are currently below their
39 classification or, in the judgment of the
40 municipality, otherwise warrant improvement.

1 C. To protect the State's other critical natural
2 resources, each municipality shall identify and
3 protect the following: coastal and freshwater
4 wetlands; high mountain areas; significant scenic
5 vistas identified by the municipality; identified
6 critical wildlife and plant habitat; heritage
7 coastal areas identified in Title 5, section 3316;
8 coastal islands; sand dunes; and shoreland zones.
9 Each municipality may rely primarily on
10 information provided by the bureau or any other
11 state agency or regional council with special
12 expertise. Each municipality shall ensure that
13 its land use policies and ordinances are
14 consistent with the requirements of applicable
15 state law regarding these resources. This
16 requirement shall not preclude any municipality
17 from adopting protective ordinances more stringent
18 than the applicable state law to protect these
19 resources.

20 D. To protect the State's marine resources
21 industry, each coastal municipality shall identify
22 and adopt land use policies and ordinances to
23 ensure the continued availability of those ports,
24 harbors' and related public and commercial
25 infrastructures used by the marine resources
26 industry within the municipality. Each
27 municipality shall also seek to preserve public
28 access to coastal waters necessary for
29 shellfishing, worming and commercial mooring,
30 docking and related parking facilities. Each
31 municipality shall ensure that new development be
32 compatible with uses related to the marine
33 resources industry.

34 E. To protect the State's agricultural and forest
35 industry, each municipality shall identify and
36 adopt land use policies and ordinances to ensure
37 the protection of agricultural and forest
38 resources. Each municipality shall ensure that
39 new development be compatible with uses related to
40 the agricultural and forest industry.

41 F. To provide affordable, decent housing

1 opportunities, each municipality shall identify
2 the housing needs within the community, taking
3 into account regional and other projections of
4 housing needs. Each municipality shall ensure
5 that its land use policies and ordinances
6 encourage the siting and construction of
7 affordable housing within the community.
8 Provisions for affordable housing may include,
9 without limitation, government assisted housing,
10 housing for low-income and moderate-income
11 families, manufactured housing, multi-family
12 housing and group and foster care facilities. The
13 municipality is encouraged to seek creative
14 approaches to assist in the development of
15 affordable housing, including, but not limited to,
16 cluster zoning, reducing minimum lot and frontage
17 sizes and increasing densities. The municipality
18 shall seek a level of 10% of new residential
19 development meeting the definition of affordable
20 housing price criteria.

21 G. To protect the State's historic and
22 archeological resources, each municipality shall
23 identify those resources of statewide, regional
24 and local concern located within its
25 jurisdiction. Resources of statewide significance
26 shall be identified by the bureau in cooperation
27 with other appropriate agencies. Each
28 municipality shall ensure that the value of these
29 resources is recognized in the planning process
30 and that protection is afforded to those resources
31 identified in the planning process as meriting
32 such protection.

33 H. To protect the availability of outdoor
34 recreation opportunities, each municipality shall
35 implement land use policies and ordinances to
36 protect the availability of and access to
37 traditional outdoor recreation opportunities,
38 including, without limitation, hunting, boating,
39 fishing and hiking. Each municipality shall
40 identify and seek to protect such high value,
41 undeveloped shoreland and other areas as are
42 identified in the local planning process as
43 meriting such protection. Each municipality may

1 rely primarily on information provided by the
2 bureau or any other state agency with special
3 expertise.

4 5. Limitation on state rule-making authority.
5 The provisions of this section shall not be construed
6 to grant any separate regulatory authority to any
7 state agency beyond that necessary to review municipal
8 comprehensive plans for consistency with this
9 subchapter.

10 §4960-B. Definitions

11 As used in this subchapter, unless the context
12 otherwise indicates, the following terms have the
13 following meanings.

14 1. Affordable housing. "Affordable housing"
15 means decent, safe and sanitary dwellings, apartments
16 or other living accommodations for households making
17 80% of the median household income as determined by
18 the Department of Economic and Community Development.

19 2. Board. "Board" means the Board of Plan Appeals
20 as established in section 4960-D.

21 3. Bureau. "Bureau" means the Bureau of Land Use
22 Planning in the State Planning Office.

23 4. Coastal areas. "Coastal areas" means all
24 municipalities and unorganized townships contiguous
25 with tidal waters and all coastal islands. The inland
26 boundary of the coastal area is the inland line of any
27 coastal town line.

28 5. Comprehensive plan or comprehensive land use
29 plan. "Comprehensive plan" or "comprehensive land use
30 plan" means a document containing the components
31 described in section 4960-C, including the
32 implementation program which is consistent with the
33 goals and guidelines established by this subchapter.

34 6. Development. "Development" means a change in
35 land use involving alteration of the land, water,
36 vegetation or the addition or alteration of structures

1 or other construction not naturally occurring.

2 7. Director. "Director" means the director of
3 the Bureau of Land Use Planning within the State
4 Planning Office.

5 8. Functionally water-dependent uses.
6 "Functionally water-dependent uses" means those uses
7 that require, for their primary purpose, location on
8 submerged lands or that require direct access to, or
9 location in, coastal waters and which therefore cannot
10 be located away from these waters. These uses
11 include, but are not limited to, commercial and
12 recreational fishing and boating facilities, finfish
13 and shellfish processing, fish storage and retail and
14 wholesale marketing facilities, dock and port
15 facilities, shipyards and boat-building facilities,
16 marinas, navigation aids, basins and channels,
17 industrial uses dependent upon water-borne
18 transportation or requiring large volumes of cooling
19 or processing water that cannot reasonably be located
20 or operated at an inland site and uses which primarily
21 provide general public access to marine or tidal
22 waters.

23 9. Functionally land-dependent uses.
24 "Functionally land-dependent uses" means those uses
25 that require for their primary purposes location on
26 settings having certain soils, climates and other
27 site-specific attributes for the purposes of
28 production of food and fiber and other natural
29 products, or which require large expanses of suitable
30 land, such as agriculture and forest enterprises, and
31 which cannot be located on other lands due to the
32 absence of the natural attributes required by the
33 specific use. These uses include, but are not limited
34 to, commercial forest and agriculture enterprises;
35 mineral, sand and gravel extraction; and those
36 facilities required for storage and processing of such
37 products.

38 10. Implementation program. "Implementation
39 program" means that component of a comprehensive plan
40 specified in section 4960-C which includes the
41 policies, procedures and ordinances or other land use

1 regulations which carry out the purposes, and general
2 policy statements of the comprehensive plan in a
3 manner consistent with the goals and guidelines of
4 this subchapter.

5 11. Land use ordinance. "Land use ordinance"
6 means a rule or law of general application adopted by
7 the municipal legislative body which controls, directs
8 or delineates allowable uses of land and the standards
9 for such uses.

10 12. Local planning committee. "Local planning
11 committee" means the committee established by a
12 municipality or combination of municipalities which
13 has the general responsibility to prepare a
14 comprehensive plan and make recommendations concerning
15 that plan to the municipal legislative body.

16 13. Moratorium. "Moratorium" means a land use
17 ordinance or other regulation approved by a municipal
18 legislative body which temporarily defers or delays
19 development by withholding any authorization or
20 approval necessary for development.

21 14. Municipal legislative body. "Municipal
22 legislative body" means:

23 A. The town meeting in a town;

24 B. The city council in a city; or

25 C. That part of a municipal government that
26 exercises legislative powers under a law or
27 charter.

28 15. Municipal reviewing authority. "Municipal
29 reviewing authority" means the municipal planning
30 board, agency or office, or if none, the municipal
31 officers.

32 16. Person. "Person" means an individual,
33 corporation, governmental agency, municipality trust,
34 estate, partnership, association, 2 or more persons
35 having a joint or common interest or any other legal
36 entity.

1 17. Regional council. "Regional council" means a
2 regional planning commission or a council or
3 governments established under chapter 204-A.

4 18. Zoning. "Zoning" means a land use control
5 device which segregates incompatible land uses into
6 separate geographic zones or areas; within each zone
7 controls are placed on the types of use and structure
8 allowed, and more detailed standards, such as minimum
9 setback and building bulk, may be included.

10 §4960-C. Local comprehensive planning

11 There is established a program of local
12 comprehensive planning to accomplish the goals of this
13 subchapter.

14 1. Local authority for comprehensive planning.
15 Through exercise of its power and responsibility
16 pursuant to the Constitution of Maine, Article VIII,
17 Part Second, Section 1, and subject to the express
18 limitations and requirements of this subchapter, each
19 municipality shall:

20 A. Plan for its future development and growth;

21 B. Adopt and amend comprehensive plans, including
22 implementation programs consistent with the
23 provisions of this subchapter; and

24 C. Do all other things necessary to carry out the
25 purposes of this subchapter.

26 2. Local responsibility for comprehensive plans.
27 A municipality's responsibility for the preparation or
28 amendment of its comprehensive plan is governed by the
29 provisions of this subsection.

30 A. Pursuant to the schedule established under
31 this subchapter, each municipality shall prepare a
32 comprehensive plan which is consistent with the
33 goals, guidelines and other provisions of this
34 subchapter, or shall amend its existing
35 comprehensive plan and existing land use

1 ordinances to conform with the requirements of
2 this subchapter.

3 B. Each municipality shall submit its proposed
4 comprehensive plan or its proposed amended,
5 existing comprehensive plan and existing land use
6 ordinances, to the bureau according to the
7 schedule established by this subchapter.

8 C. Each municipality shall submit any amended
9 comprehensive plan to the bureau as provided by
10 this subchapter.

11 3. Coordination of municipal planning
12 activities. Cooperative planning efforts conducted by
13 2 or more municipalities shall comply with the
14 provisions of this subsection.

15 A. A municipality shall exercise its planning
16 authority over the total land area within its
17 jurisdiction.

18 B. Any combination of contiguous municipalities
19 may conduct joint planning and regulatory programs
20 to fulfill the responsibilities established under
21 this subchapter upon formal adoption of an
22 official comprehensive planning and enforcement
23 agreement by the municipal legislative bodies
24 involved. The municipalities shall agree:

25 (1) On procedures for joint action in the
26 preparation and adoption of comprehensive
27 plans and land use regulations;

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

30 (3) On the amount of contribution from each
31 municipality for any costs incurred in the
32 development of the plan and land use
33 ordinances.

34 C. The agreement shall be in writing, approved in
35 appropriate official action by the municipal
36 legislative bodies and forwarded to the bureau.

1 4. Comprehensive plan; components. A
2 comprehensive plan shall, at a minimum, include the
3 following components:

4 A. An analysis of economic and demographic data
5 describing the municipality and the region within
6 which it is located. The analysis shall include
7 local and regional projections of growth in
8 population and commercial and industrial activity
9 forecast to occur over the next 10 years;

10 B. An inventory and analysis, based on
11 information provided by the bureau, of natural
12 resources within the municipality, including water
13 resources, such as lakes, aquifers, estuaries,
14 rivers and coastal areas, including islands; and
15 other critical natural resources, such as
16 wetlands, wildlife and fisheries habitat, sand
17 dunes, shorelands and unique natural areas;

18 C. An inventory of land which is suitable for
19 commercial forestry and agricultural use, based on
20 soil types, or is in actual commercial forestry
21 and agricultural uses;

22 D. An inventory of existing recreation, park, and
23 open space areas within a municipality. This
24 component shall include an assessment of the
25 adequacy of existing facilities and areas;

26 E. An assessment of the existing transportation
27 system, including the locations, extent and
28 capacity of existing and proposed major
29 thoroughfares, secondary routes, pedestrian ways
30 and parking facilities. This assessment shall be
31 sufficient to allow the municipality to consider
32 the impact of the transportation system on growth
33 and development patterns within the municipality;

34 F. An inventory of residential housing stock,
35 including affordable housing such as, but not
36 limited to, government-assisted housing, housing
37 for low-income and moderate-income families,
38 manufactured housing, multi-family housing and

1 group and foster care facilities;

2 G. Provisions for growth and development for a
3 variety of activities, including, without
4 limitation, commercial and industrial development,
5 water-dependent and land-dependent uses and
6 residential development. Consistent with the
7 goals and guidelines established by this
8 subchapter and the municipality's implementation
9 program, this component shall identify geographic
10 areas suitable for each general type of
11 development and sufficient in scope to accommodate
12 a reasonable share of the increase in each type of
13 development activity as anticipated in paragraph A;

14 H. A capital investment plan which shall contain
15 the following elements:

16 (1) An assessment of all public facilities
17 and services, such as, but not limited to,
18 roads, sewers, schools, parks and open space,
19 fire and police;

20 (2) A plan for the replacement and expansion
21 of existing public facilities or the
22 construction of such new facilities as are
23 required to meet the growth and development
24 provisions set forth in paragraph G. The
25 capital investment plan shall include
26 projections of when and where such facilities
27 will be required; and

28 (3) An assessment of the anticipated costs
29 for replacement, expansion or construction of
30 public facilities; an identification of
31 revenue sources available to meet these
32 costs; and recommendations for meeting costs
33 required to implement the plan.

34 The capital investment plan shall be updated as
35 necessary. The municipal reviewing authority
36 established pursuant to section 4956 shall develop
37 and adopt a capital investment budget which is
38 consistent with this component and which is
39 updated biennially;

1 I. Provision for coordinating land uses with
2 contiguous municipalities and other municipalities
3 as appropriate, including the management of
4 resources and facilities that extend beyond
5 municipal boundaries, such as rivers, aquifers,
6 transportation facilities and others. This
7 component shall demonstrate consistency with the
8 comprehensive plans of contiguous municipalities
9 and other municipalities as appropriate;

10 J. An implementation program that is consistent
11 with the other components of the plan and that
12 ensures that the goals and guidelines established
13 by this subsection are met. The implementation
14 program may, without limitation, consist of land
15 use ordinances, affordable housing strategies,
16 public facilities investments, land acquisition
17 programs and any other approaches as are
18 authorized by section 1917 and the Constitution of
19 Maine, Article VIII, Part Second, Section 1; and

20 K. A description of how each of the State's goals
21 and guidelines have been met by the comprehensive
22 plan and its implementation program. For those
23 municipalities in the coastal area, a
24 comprehensive plan must also address the 9 coastal
25 management policies cited in Title 38, section
26 1801.

27 5. Monitoring and revision. A municipality shall
28 periodically review and revise its plan in a timely
29 manner to account for changes caused by growth and
30 development. At a minimum, a municipality shall
31 update its comprehensive plan at least once every 5
32 years.

33 6. Preparation of comprehensive plan. The
34 preparation of a comprehensive plan shall be conducted
35 according to the following provisions in addition to
36 any others that may be required by law.

37 A. A municipality or combination of
38 municipalities shall designate and establish a
39 local planning committee which shall have the

1 general responsibility for the conduct of the
2 comprehensive planning program, including:

3 (1) Conduct of public hearings and any other
4 methods to solicit and encourage strongly
5 citizen input into the comprehensive planning
6 process; and

7 (2) Preparation of the comprehensive plan,
8 including the implementation program
9 component, and recommendations to the
10 municipal legislative body regarding the
11 adoption of the plan or amendment.

12 The municipal legislative body may designate any
13 planning board or district established under
14 section 4956 or a former similar provision as the
15 comprehensive planning committee. Planning boards
16 established under former section 4952, subsection
17 1, shall continue to be governed by those
18 provisions to the extent that those provisions do
19 not conflict with the requirements of this
20 subchapter and until they are superseded by
21 municipal charter or ordinance.

22 B. In order to encourage citizen participation in
23 the comprehensive planning process, comprehensive
24 planning committees and municipalities are
25 directed to adopt comprehensive plans and land use
26 ordinances only after soliciting and considering a
27 broad range of public input. The intent of this
28 paragraph is to provide for broad dissemination of
29 proposals and alternatives, opportunity for
30 written comments, open discussions, information
31 dissemination and consideration of and response to
32 public comments.

33 C. A comprehensive plan will be considered to
34 have been adopted when it has been accepted by the
35 municipal legislative body of the municipality
36 pursuant to chapter 209.

37 D. The planning committee shall conduct all of
38 its meetings in open, public session with prior
39 notice posted in one or more conspicuous places

1 designed to provide public notice. The planning
2 committee shall hold at least one public hearing
3 on its proposed comprehensive plan. Notice of any
4 public hearing shall be published in a newspaper
5 of general circulation in the municipality at
6 least twice with the date of the first publication
7 to be at least 30 days prior to the hearing. A
8 copy of the proposed comprehensive plan shall be
9 made available for public inspection at the
10 municipal office or other convenient location with
11 regular public hours at least 30 days prior to the
12 hearing.

13 §4960-D. State role in comprehensive planning

14 There is established a program of comprehensive
15 planning review to promote the preparation and
16 implementation of local comprehensive plans and to
17 provide technical and financial assistance to
18 accomplish this purpose. The program shall also
19 ensure that all local comprehensive plans and state
20 agency activities are consistent with the State's
21 goals and guidelines established by this subchapter.

22 1. Review agency designated. There is created in
23 the State Planning Office, the Bureau of Land Use
24 Planning which is responsible for carrying out the
25 provisions of this section and ensuring that the
26 objectives of this subchapter are achieved.

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

32 A. Members of the council shall be appointed by
33 the Governor subject to review by the joint
34 standing committee of the Legislature having
35 jurisdiction over natural resources and to
36 confirmation by the Legislature.

37 B. Members shall be selected on the basis of
38 their knowledge of planning, local government,
39 land conservation and land development.

1 C. Members shall serve for staggered 4-year
2 terms. Initial members shall have terms as
3 follows: Three members for 2-year terms; 3
4 members for 3-year terms and one member for a
5 4-year term. A member may serve no more than 2
6 consecutive 4-year terms.

7 D. Members shall not be compensated but shall be
8 reimbursed for all expenses directly related to
9 their participation in council business.

10 E. Four members shall constitute a quorum for the
11 conduct of business by the council.

12 F. The council shall elect a chairman from among
13 its members.

14 G. The council shall report by January 1, 1990,
15 and every 2 years thereafter to the Governor and
16 the Legislature on any changes that may be
17 required to accomplish the purposes of this
18 subchapter.

19 3. Board of Plan Appeals; established. There is
20 established a 5-member, independent Board of Plan
21 Appeals to hear the appeal by any aggrieved party of a
22 decision of the bureau to approve or disapprove a
23 comprehensive plan.

24 A. Members of the board shall be appointed by the
25 Governor subject to review by the joint standing
26 committee of the Legislature having jurisdiction
27 over natural resources and to confirmation by the
28 Legislature.

29 B. The members shall represent a broad
30 geographical cross section of the State. At least
31 2 of the members shall have demonstrated expertise
32 in local government and land use planning.

33 C. Members shall serve for staggered 4-year
34 terms. Initial members shall have terms as
35 follows: Two members for 2-year terms; 2 members
36 for 3-year terms and one member for a 4-year term.

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

3 D. Members shall be compensated according to the
4 provisions of Title 3, section 2.

5 E. Three members shall constitute a quorum for
6 the conduct of business by the board.

7 F. The board shall elect a chairman from among
8 its members.

9 G. The board shall adopt rules of practice and
10 procedure for parties appearing before it,
11 including, without limitation, rules designed to
12 eliminate ex parte contacts with board members.

13 §4960-E. State planning review program

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

29 A. Department of Conservation;

30 B. Department of Economic and Community
31 Development;

32 C. Department of Environmental Protection;

33 D. Department of Agriculture, Food and Rural
34 Resources;

35 E. Department of Inland Fisheries and Wildlife;

1 F. Department of Marine Resources;

2 G. Department of Transportation;

3 H. Finance Authority of Maine; and

4 I. Maine State Housing Authority.

5 2. Standards for goal incorporation. The bureau
6 shall develop standards to assist towns in the
7 incorporation of the state goals into local
8 comprehensive plans and to guide the bureau's review
9 of local comprehensive plans and state agency activity
10 plans. The bureau shall adopt no later than July 1,
11 1989, the standards by rule and with the advice of the
12 Planning Advisory Council. The bureau shall base the
13 standards on the state goals and the related
14 guidelines contained in this subchapter.

15 3. Provision of natural resource and other
16 planning information. The bureau shall develop and
17 make readily available to all municipalities natural
18 resource and other planning information necessary for
19 the preparation of local comprehensive plans. The
20 bureau shall make maximum use of existing information
21 available from other state agencies including, without
22 limitation, the Department of Conservation, the
23 Department of Inland Fisheries and Wildlife, the
24 Department of Environmental Protection, the State
25 Planning Office and the Department of Economic and
26 Community Development. The bureau may contract with
27 regional councils to develop the necessary planning
28 information at a regional level and with other state
29 agencies as necessary to provide support for local
30 planning efforts. By July 1, 1990, the bureau shall
31 have completed an inventory of the State's natural
32 resources sufficient to ensure adequate identification
33 and protection of critical natural resources of
34 statewide significance.

35 4. Review of local comprehensive plans;
36 schedule. Municipalities shall submit their
37 comprehensive plans to the bureau according to the
38 following schedule:

- 1 A. Municipalities which have experienced
2 population growth of 10% or more since 1980 and
3 which have total populations in excess of 500
4 persons, based on population estimates provided by
5 the State Planning Office, by January 1, 1991;
- 6 B. Municipalities which have experienced
7 population growth of 5% or more since 1980, based
8 on population estimates provided by the State
9 Planning Office, by January 1, 1993; and
- 10 C. All other municipalities by January 1, 1996.
- 11 5. Review of local comprehensive plans. The
12 bureau shall review any comprehensive plan submitted
13 to it for consistency with the goals and guidelines
14 established in this subchapter.
- 15 A. The bureau shall, with appropriate public
16 notice, solicit comments on any comprehensive
17 plan from regional and state agencies, from all
18 municipalities contiguous to the municipality
19 submitting a comprehensive plan and any interested
20 parties. The comment period shall extend for 60
21 days after the bureau's receipt of the proposed
22 comprehensive plan.
- 23 B. Each regional council shall review and submit
24 comments on the proposed comprehensive plan of any
25 municipality within its defined planning region.
26 The comments shall be submitted to the bureau and
27 shall contain an analysis of how the proposed plan
28 addresses identified regional needs and whether
29 the proposed plan is consistent with those of
30 other municipalities which may be affected.
- 31 C. The bureau shall provide ample opportunity for
32 the municipality submitting a comprehensive plan
33 to respond to and correct any identified
34 deficiencies in the plan.
- 35 D. The bureau shall approve or disapprove the
36 comprehensive plan no more than 180 days from the
37 initial submittal of the plan to the bureau.

1 E. In the event of disapproval, the bureau shall
2 issue findings specifically describing the
3 deficiencies in the submitted plan and the
4 recommended measures for remedying the
5 deficiencies. The bureau shall also establish, at
6 the time of disapproval, a reasonable schedule,
7 not to exceed 180 days after the date of initial
8 disapproval, by which the municipality may submit
9 a revised plan for final approval.

10 F. The municipality or any aggrieved party may
11 appeal the final decision of the bureau to the
12 board. The appeal must be made within 30 days of
13 the final bureau decision. The board shall hold a
14 hearing on the appeal, make findings of fact and
15 affirm or reverse the bureau's decision. The
16 board shall render its decision within 90 days of
17 receipt of the appeal. The municipality,
18 appellant or bureau may appeal the decision of the
19 board to Superior Court. This appeal must be made
20 within 30 days of the board's decision.

21 G. Upon approval by the bureau, unless on appeal
22 that approval is reversed by the board, the
23 municipality shall be eligible for all benefits
24 and incentives conditioned on adoption of an
25 approved comprehensive plan pursuant to this
26 subchapter.

27 6. Updates; amendment of local comprehensive
28 plans. Each municipality shall submit any amended
29 comprehensive plans, revised pursuant to this
30 subchapter, including proposed amendments to the
31 implementation program component of such a plan, to
32 the bureau for review and approval in the same manner
33 as provided for review of new comprehensive plans.
34 The bureau may provide an expedited review procedure
35 for those submissions which represent amendments to
36 comprehensive plans approved by it after January 1,
37 1989.

38 7. Compliance. The bureau shall adopt, for the
39 municipality in question, a suitable comprehensive
40 plan which satisfies the requirements of this
41 subchapter when the following conditions are met:

1 A. The municipality has failed to submit a
2 comprehensive plan in accordance with the
3 provisions of this subchapter; or

4 B. The bureau has disapproved a comprehensive
5 plan and that decision has been affirmed by the
6 board.

7 The bureau shall adopt such a plan within 180 days of
8 the final decision of the board, unless the
9 municipality appeals the decision of the board within
10 30 days to Superior Court. The municipality shall be
11 responsible for the administration and enforcement of
12 the plan. If a municipality fails to administer and
13 enforce its comprehensive plan, the bureau shall seek
14 a finding from the board that the municipality has
15 failed to fulfill its responsibilities under this
16 subchapter. Such a finding shall make the
17 municipality ineligible for certain financial and
18 technical assistance pursuant to the provisions of
19 section 4960-F.

20 8. Rule-making authority. The bureau is
21 authorized to adopt rules necessary to carry out the
22 purposes of this chapter subject to the provisions of
23 Title 5, chapter 375, subchapter II.

24 9. Transition; savings. The application of
25 existing comprehensive plans and land use ordinances
26 in effect prior to the effective date of this
27 subchapter is governed by the provisions of this
28 subsection.

29 A. Any comprehensive plan adopted by a
30 municipality before the effective date of this
31 subchapter shall remain in effect until amended or
32 repealed subject to the provisions of this
33 subchapter. A plan adopted before the effective
34 date of this subchapter and not approved according
35 to this subchapter has no effect after January 1,
36 1998, regardless of any outstanding appeal.

37 B. Any land use ordinance or other form of land
38 use regulation adopted under a prior and repealed

1 law shall remain in effect until amended or
2 repealed subject to the provisions of this
3 section. Any property or use existing in
4 violation of such ordinance or regulation is a
5 nuisance. Any ordinance or land use regulation
6 adopted before the effective date of this
7 subchapter and not consistent with a comprehensive
8 plan approved according to this subchapter shall
9 be without force after January 1, 1998, regardless
10 of any outstanding appeal.

11 C. Prior to the approval by the bureau of a
12 municipality's comprehensive plan, decisions
13 regarding land use permits made by the
14 municipality under comprehensive plans and land
15 use ordinances in effect prior to the effective
16 date of this subchapter or pursuant to other
17 provisions of state law shall be consistent with
18 the goals and guidelines established under this
19 subchapter.

20 §4960-F. State technical and financial assistance

21 There is established a program of technical and
22 financial assistance and incentives to regional
23 councils and municipalities to encourage and
24 facilitate the adoption and implementation of
25 comprehensive planning throughout the State. The
26 program shall be administered by the bureau.

27 1. Municipal planning assistance. The bureau
28 shall develop and administer a grants program to
29 provide direct financial assistance to municipalities
30 in the preparation of comprehensive plans pursuant to
31 this subchapter. The bureau shall establish
32 provisions for matching municipal funds to conduct
33 activities under this section. The maximum required
34 municipal cost share may not exceed 25%. Such grants
35 may be expended for any purpose directly related to
36 the preparation of a municipal comprehensive plan w
37 including, without limitation, the conduct of surveys,
38 inventories and other data-gathering activities, the
39 hiring of planning and other technical staff, the
40 retention of planning consultants, contracts with
41 regional councils for planning and related services

1 and other related purposes. In order to provide
2 sufficient economies of scale and to build planning
3 capacity at the regional level, the bureau shall
4 establish a preference in the grants program for the
5 utilization of services provided by regional councils.

6 2. Municipal technical assistance. The bureau
7 shall establish a program of technical assistance
8 utilizing its own staff, the staff of other state
9 agencies and the resources of regional councils to
10 help municipalities in the development of
11 comprehensive plans. No later than January 1, 1990,
12 the bureau shall develop a set of model land use
13 ordinances and other mechanisms consistent with the
14 goals and guidelines of this subchapter.

15 3. Enforcement assistance program. The bureau
16 shall administer a program of training and financial
17 assistance to support full-time code enforcement
18 officers. The bureau shall provide matching grants of
19 50% of the total salary of a qualifying code
20 enforcement officer who performs code enforcement
21 activities full-time for one or more municipalities.
22 Two or more municipalities may jointly hire a
23 qualifying code enforcement officer to provide a total
24 of full-time code enforcement employment and qualify
25 for the subsidy. A code enforcement officer shall
26 qualify for this program when the officer has been
27 certified under section 4967 or when the officer is in
28 training to become certified. Such training period
29 may extend for a maximum of 3 years or until January
30 1, 1993, whichever is the shorter period. The
31 matching grants shall be reduced to 25% of the total
32 salary of a qualifying code enforcement officer after
33 January 1, 1993. This program shall be terminated on
34 January 1, 1996.

35 4. Municipal implementation assistance. The
36 bureau shall develop and administer a grants program
37 to provide direct financial assistance to
38 municipalities for the implementation and
39 administration of those comprehensive plans that have
40 been approved under this subchapter. Such grants may
41 be expended for any purpose directly related to the
42 implementation of an approved comprehensive plan and

1 the enforcement of related land use ordinances.
2 Eligible activities include, without limitation,
3 assistance in the development of ordinances, retention
4 of technical and legal expertise for permitting
5 activities, and the updating of comprehensive plans
6 and their implementation program components.

7 5. Regional council assistance. The bureau shall
8 develop and administer a program to develop regional
9 assessments of public infrastructure, inventories of
10 agricultural and commercial forest lands, housing
11 needs, recreation and open space needs, and
12 projections of regional growth and economic
13 development. The bureau shall establish guidelines to
14 ensure methodological consistency among the State's
15 regional councils. The bureau shall also develop and
16 administer a series of contracts with regional
17 councils to support the involvement of the regional
18 councils in the review of local comprehensive plans by
19 the bureau.

20 6. Eligibility for other state aid. State
21 agencies responsible for administering grant and
22 financial assistance programs to municipalities shall
23 allocate funds only when the municipality has adopted
24 and implemented a comprehensive plan approved under
25 this subchapter or is otherwise in compliance with the
26 schedule established under section 4960-E. When the
27 assistance in question relates to a subject not
28 directly addressed by the state goals, the
29 comprehensive plan must include statements of policy
30 or program guidelines directly related to the purposes
31 for which the assistance is provided. The state
32 grants and financial assistance in the following areas
33 are subject to the provisions of this section:

34 A. Assistance designed to accommodate additional
35 growth and development, not including school
36 expansions;

37 B. Assistance in the acquisition of land by the
38 municipality for conservation, natural resource
39 protection, open space or recreational facilities;
40 and

1 C. Assistance for economic development projects
2 or community development.

3 7. Loss of eligibility. If the board finds,
4 pursuant to an appeal under this subchapter, that a
5 municipality has failed to fulfill its
6 responsibilities under this subchapter, the
7 municipality shall not be eligible for any state
8 assistance or grant governed by subsections 4 and 6.
9 The board may reinstate the municipality's eligibility
10 upon finding that the municipality is prepared to
11 fulfill its responsibilities under this subchapter.
12 The board shall serve as the final administrative
13 arbiter of any disputes arising under this subsection.

14 8. Assistance set-aside. The bureau shall set
15 aside a minimum of 30% of available technical and
16 financial assistance resources to be made available to
17 those areas of the State experiencing slower than
18 average growth rates.

19 Sec. 6. 30 MRSA §4961, as amended by PL 1985, c.
20 794, Pt. A, §3, is repealed.

21 Sec. 7. 30 MRSA §4961-A is enacted to read:

22 §4961-A. Land use regulation

23 The provisions of this section constitute express
24 limitations on the home rule powers granted to all
25 municipalities under chapter 201-A and the
26 Constitution of Maine, Article VIII, Part Second.

27 1. Zoning ordinances. The following requirements
28 apply to all zoning ordinances and amendments to
29 zoning ordinances adopted by municipalities pursuant
30 to home rule powers.

31 A. In the preparation of a zoning ordinance, the
32 public shall be given an adequate opportunity to
33 be heard.

34 B. The ordinance must be pursuant to and
35 consistent with a comprehensive plan adopted by
36 the municipality's legislative body and approved

1 according to this subchapter.

2 C. A zoning map describing each zone established
3 or modified must be adopted as part of the zoning
4 ordinance or incorporated therein. Any conflict
5 between the zoning map and a description by metes
6 and bounds shall be resolved in favor of the
7 description by metes and bounds.

8 D. Real estate used or to be used by a public
9 service corporation shall be wholly or partially
10 exempted from an ordinance only when on petition,
11 notice and public hearing the Public Utilities
12 Commission has determined that such exemption is
13 reasonably necessary for public welfare and
14 convenience.

15 E. County and municipal governments, and
16 districts shall be governed by the provisions of
17 any zoning ordinance.

18 F. Any zoning ordinance shall be advisory with
19 respect to the State.

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

22 H. Any zoning ordinance may provide that when a
23 person petitions for rezoning of an area for the
24 purpose of development in accordance with an
25 architect's plan, the area shall not be rezoned
26 unless the petitioner posts a performance bond
27 equal to at least 25% of the estimated cost of the
28 development. The bond shall become payable to the
29 municipality if the petitioner fails to begin
30 construction in a substantial manner and in
31 accordance with the plan within one year of the
32 effective date of the rezoning.

33 I. For the purposes of this subchapter, "zoning"
34 is defined as the division of a municipality into
35 districts and the prescription and reasonable
36 application of different regulations in each
37 district.

1 J. Any zoning ordinance may include provisions
2 for conditional or contract zoning or any other
3 form of zoning consistent with this subchapter.
4 For the purposes of this subchapter, "conditional
5 zoning" means the process by which the municipal
6 legislative body may rezone property to permit the
7 use of that property subject to conditions not
8 generally applicable to other properties similarly
9 zoned. "Contract zoning" means the process by
10 which the property owner, in consideration of the
11 rezoning of the owner's property, agrees to the
12 imposition of certain conditions or restrictions
13 not imposed on other similarly zoned properties.
14 All rezoning under this paragraph shall:

15 (1) Be consistent with the municipal
16 comprehensive plan which is approved
17 according to this subchapter;

18 (2) Establish rezoned areas which are
19 consistent with the existing and permitted
20 uses within the original zones; and

21 (3) Only include conditions and restrictions
22 which relate to the physical development or
23 operation of the property.

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

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

4 A. A board of appeals is established in any
5 municipality which adopts a zoning ordinance. The
6 board of appeals shall hear appeals from actions
7 or failure to act of the official or board charged
8 with the enforcement of the zoning ordinance,
9 unless only a direct appeal to Superior Court has
10 been provided by municipal ordinance. Such board
11 of appeals shall be governed by section 2411,
12 except that section 2411, subsection 2 shall not
13 apply to boards existing on September 23, 1971.

14 B. In deciding any appeal:

15 (1) The board may interpret the provisions
16 of the ordinance which are called into
17 question;

18 (2) The board may approve the issuance of a
19 special exception permit or conditional use
20 permit in strict compliance with the
21 ordinance; and provided that, if the
22 municipality has authorized the planning
23 board, agency or office to issue these
24 permits, an appeal from the granting or
25 denial of such a permit may be taken directly
26 to Superior Court if required by local
27 ordinance; and

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

30 C. A variance may be granted by the board only
31 where strict application of the ordinance, or a
32 provision thereof, to the petitioner and the
33 petitioner's property would cause undue hardship.
34 The words "undue hardship" as used in this
35 paragraph mean:

36 (1) That the land in question cannot yield a
37 reasonable return unless a variance is

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granted;

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

(3) That the granting of a variance will not alter the essential character of the locality; and

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

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

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

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3. Impact fees. A municipality may require, by

1 ordinance, the construction of on-site or off-site
2 capital improvements or may require payment of impact
3 fees in lieu of construction.

4 A. Such requirements may include construction of
5 or impact fees in lieu of capital improvements,
6 including the expansion or replacement of existing
7 infrastructure facilities and the construction of
8 new infrastructure facilities.

9 (1) Infrastructure facilities include, but
10 are not limited to, sewage and treatment
11 facilities, municipal water facilities, solid
12 waste facilities, fire protection facilities,
13 roads and traffic control devices, parks and
14 other open space or recreational areas and
15 any other facility which benefits the public.

16 B. Any ordinance which imposes or provides for
17 the imposition of impact fees must meet the
18 following requirements.

19 (1) The amount of the fee must be reasonably
20 related to the development's share of the
21 cost of infrastructure improvements
22 necessitated by the development.

23 (2) Funds received from impact fees must be
24 segregated from the municipality's general
25 revenues. The municipality shall expend the
26 funds solely for the purposes for which they
27 were collected.

28 (3) The ordinance must establish a
29 reasonable schedule under which the
30 municipality is obliged to use the funds in a
31 manner consistent with the capital investment
32 component of the comprehensive plan.

33 (4) The ordinance must establish a mechanism
34 by which the municipality can refund impact
35 fees, or a portion of impact fees, actually
36 paid which exceed the municipality's actual
37 costs or which were not expended according to
38 the schedule under this paragraph.

1 (5) The ordinance must be adopted as part of
2 and consistent with a comprehensive plan,
3 including the component regarding capital
4 investment, meeting the requirements of this
5 subchapter.

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

13 5. Moratorium. Any moratorium adopted by a
14 municipality on the processing or issuance of
15 development permits or licenses must meet the
16 following requirements.

17 A. The moratorium must be needed:

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

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

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

36 (1) Finds that the problem giving rise to
37 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 Sec. 8. 30 M RSA §4962, as amended by PL 1983,
5 c. 170, is repealed.

6 Sec. 9. 30 M RSA §4962-A, as amended by PL 1987,
7 c. 316, §§1 to 5, is repealed.

8 Sec. 10. 30 M RSA §4962-B, as enacted by PL
9 1985, c. 822, §1, is repealed.

10 Sec. 11. 30 M RSA §4963, as amended by PL 1987,
11 c. 182, §2, is repealed.

12 Sec. 12. 30 M RSA §4964, as amended by PL 1979,
13 c. 218, §4, is repealed.

14 Sec. 13. 30 M RSA §§4967 and 4968 are enacted to
15 read:

16 §4967. Training and certification for code
17 enforcement officers

18 1. Certified code enforcement officer required.
19 Beginning January 1, 1993, it shall be unlawful for
20 any person to perform the duties of code enforcement
21 officer without being certified by the bureau.

22 2. Waiver. The bureau may grant a waiver from
23 the requirements of subsection 1 for a period not
24 exceeding one year in the event that the certification
25 requirements cannot be met without imposing a hardship
26 on the municipality employing the person.

27 3. Penalty. Any person who violates this section
28 commits a civil violation for which a forfeiture of
29 not more than \$100 may be adjudged. Each day in
30 violation constitutes a separate offense.

31 4. Certification; terms. The bureau shall
32 certify persons as to their competency to successfully
33 enforce ordinances and other land use regulations and

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

4 5. Training and certification of code enforcement
5 officers. In cooperation with the
6 Vocational-Technical Institute System and the
7 Department of Human Services, the bureau shall
8 establish a continuing education program for people
9 engaged in code enforcement. This program shall
10 provide basic and advanced training in the technical
11 and legal aspects of code enforcement necessary for
12 certification, including, but not limited to, plumbing
13 inspection, soils and site evaluation, electrical
14 inspection, state and federal environmental
15 requirements, zoning ordinances, court techniques,
16 Rule 80K of the Maine Rules of Civil Procedure and
17 other enforcement information.

18 6. Examination. The bureau 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 bureau to carry
23 out the purposes of this subchapter.

24 7. Certification standards. The bureau 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.

29 8. Certificates. The bureau shall issue
30 certificates attesting to the competency of
31 individuals to act as code enforcement officers.
32 Certificates are valid for a period of 5 years unless
33 revoked by the Administrative Court.

34 A. The Administrative Court may revoke the
35 certificate of a code enforcement officer, in
36 accordance with Title 4, chapter 25, when it finds
37 that the code enforcement officer has practiced
38 fraud or deception; that reasonable care, judgment
39 or the application of a duly trained and
40 knowledgeable code enforcement officer's ability

1 was not used in the performance of the duties of
2 the office; or that the code enforcement officer
3 is incompetent or unable to perform properly the
4 duties of the office.

5 B. Code enforcement officers whose certificates
6 are invalidated under this subsection may be
7 issued new certificates provided that they are
8 newly certified as provided in this section.

9 C. This subchapter shall not be construed to
10 affect or prevent the practice of any other
11 legally recognized profession.

12 §4968. Citizen remedies

13 1. Appeal to board. Any aggrieved party may
14 appeal any land use planning or permitting decision
15 made by a municipal authority to the board as being
16 inconsistent with the municipality's comprehensive
17 plan which is approved according to this subchapter.
18 Such appeal may be made only after exhausting any
19 remedy provided under section 4961-A, subsection 2.
20 The board shall review the action in question to
21 determine consistency with the plan and the State's
22 goals and guidelines. The board may reverse, affirm
23 or modify the action. Any aggrieved party may appeal
24 the decision of the board to the Superior Court.

25 Sec. 14. 38 MRS §344-A is enacted to read:

26 §344-A. Certificate of compliance

27 No person may occupy or use any project licensed
28 or permitted by the department without a certificate
29 of compliance. The department shall inspect the
30 completed project for which it has issued a license or
31 permit and determine whether or not the project has
32 been completed according to the approved plans and the
33 permit. If the completed project complies with the
34 plan and permit requirements, the department shall
35 issue a certificate of compliance.

36 Sec. 15. Application. The provisions of
37 section 1 shall apply to all applications before any

1 municipal or state reviewing authority at the time of
2 the effective date of this Act.

3 STATEMENT OF FACT

4 This bill is the majority report of the Maine
5 Commission on Land Conservation and Economic
6 Development pursuant to Public Law 1987, chapter 514.
7 This bill is the central element in a package of 4
8 bills related to growth management issues. The
9 remaining 3 bills concern tax policy for speculative
10 land sales, local option real estate transfer taxes
11 and the Farm and Open Space Tax.

12 This bill establishes a system of local
13 comprehensive planning with state goals and
14 guidelines. The purpose of this system is to build on
15 the strengths of Maine's tradition of local control,
16 adding state financial and technical assistance, in
17 order to better anticipate and guide the development
18 of land in the State's communities. This bill also
19 creates a mechanism for state review of local planning
20 efforts to ensure that the state goals are addressed
21 at the local level and to provide a coordinating
22 mechanism for regional needs and issues.

23 Basic authority and responsibility remain at the
24 local level. The bill strongly reaffirms the home
25 rule principle in land use regulation. The role of
26 regional councils in providing technical assistance is
27 substantially increased along with the councils' role
28 in planning for regional needs and assessing the
29 regional trends in economic development. The State is
30 given an active role in comprehensive planning through
31 increased technical and financial assistance programs
32 for municipalities and through review of local plans.

33 The following description outlines the intent of
34 each section.

35 Section 1 clarifies the concept of "pending
36 application." It is the intent of the Legislature
37 that any application under consideration by a

1 municipal or state reviewing authority be subject to
2 any changes in law including, without limitation,
3 temporary and lawfully declared moratoria, when the
4 application in question has not yet received
5 substantive review from the reviewing authority. The
6 filing or receipt of written applications or the
7 initial reviews necessary to determine the
8 completeness of an application do not, in and of
9 themselves, constitute "substantial review."

10 Sections 2 and 3 establish 2 new entities in the
11 comprehensive listing of boards and commissions in
12 Title 5 of the Maine Revised Statutes. Their purposes
13 are explained in section 5.

14 Section 4 amends the name of the existing Planning
15 and Zoning subchapter in Title 30.

16 Section 5 provides a complete overhaul and update
17 of municipal planning and zoning statutes. This
18 section establishes a clear set of legislative
19 findings and purposes to form the foundation for a
20 statement of state goals and guidelines. These goals
21 and guidelines form the basis of all future
22 comprehensive planning by municipalities and state
23 agencies. The goals and guidelines identify areas of
24 paramount importance to the State, including economic
25 development, protection of historical and natural
26 resources, maintenance of public and private
27 infrastructure needed for future growth, affordable
28 housing and outdoor recreation. Definitions of
29 specific terms are provided.

30 Section 5 also provides a reaffirmation of home
31 rule authority over local land use regulation. It is
32 the intent of the Legislature that this bill
33 constitutes express limitations on home rule and in no
34 way is intended to be construed as a preemption of
35 municipal home rule authority granted under the
36 Constitution of Maine.

37 Section 5 further provides definition of the
38 components that must be included in any municipal
39 comprehensive plan. It is within the context of these
40 plan components that a municipality will address its

1 vision of its future and will also address the steps
2 it will take to meet the state goals. It is important
3 to note that the implementation component, consisting
4 of local policies, programs and ordinances, is an
5 integral part of the comprehensive plan and cannot be
6 developed separately from the plan. It is the intent
7 of the Legislature that the relationship between
8 planning goals and implementing actions be as clear
9 and as close as possible. The bill provides for a
10 5-year revision cycle of municipal plans.

11 Section 5 further provides for intertown
12 cooperation on planning and land use regulation. The
13 bill stresses the importance of high public
14 participation in the planning process and provides the
15 technical and financial resources necessary to make
16 this participation a reality.

17 Section 5 also provides for a state assistance and
18 review mechanism. The bill proposes the establishment
19 of a separate bureau in the State Planning Office to
20 oversee this effort. An advisory council with
21 expertise in planning, local government, land
22 conservation and development is created to provide
23 input to the bureau's efforts. An appeals board is
24 also established to provide a more flexible,
25 administrative appeals process for municipalities and
26 others disputing the bureau's decisions on the
27 adequacy of local plans.

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

1 problem-solving approach to Maine's growth management
2 issues.

3 Section 5 provides a schedule for the submission
4 of local plans. The schedule stretches over an 8-year
5 period, concentrating on the larger, high-growth towns
6 first. Compliance provisions are established which
7 require the adoption of a minimum acceptable
8 comprehensive plan including an implementation
9 component to be administered by the municipality with
10 state financial assistance. Eligibility for certain
11 growth and economic development-related state funding
12 is linked to the municipality's efforts. School aid
13 and state revenue sharing are not included in this
14 provision.

15 Section 6 repeals obsolete language concerning
16 comprehensive planning.

17 Section 7 establishes express conditions for the
18 use by municipalities of zoning (using existing
19 statutory language virtually verbatim), impact fees,
20 application fees, and land use moratoria. Beyond the
21 requirement of consistency with an approved
22 comprehensive plan, it is the intent of the
23 Legislature that this legislation establishes no other
24 restraints or limits on the use of any other land use
25 regulatory device.

26 Sections 8 to 12 repeal existing statutes
27 concerning zoning. Most of the repealed language is
28 retained in section 7.

29 Section 13 establishes a training and
30 certification procedure for local code enforcement
31 officers. This section also provides for an appeal of
32 local permitting decisions by aggrieved parties to the
33 Board of Plan Appeal.

34 Section 14 establishes a requirement for any
35 development approved by the Department of
36 Environmental Protection to be certified by the
37 department as being in compliance with the terms and
38 conditions of the development's permit before the
39 development can be used or occupied.

1 Section 15 applies the amendments to Title 1,
2 section 302 regarding "pending applications" to any
3 existing situations.

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