

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 631, L.D. 854, Bill, "An Act To Amend the Growth Management Laws"

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

Sec. 1. 30-A MRSA §4301, sub-§§1, 3 and 10, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

1. Affordable housing. "Affordable housing" means decent, safe and sanitary dwellings, apartments or other living accommodations for low and moderate-income households which ~~earn an income at or below 80% of the median household income~~ as defined by rule by the Department of Economic and Community Development in consultation with the Maine State Housing Authority. Affordable housing includes, but is not limited to:

- A. Government assisted housing;
- B. Housing for low-income and moderate-income families;
- C. Manufactured housing;
- D. Multi-family housing; and
- E. Group and foster care facilities.

3. Comprehensive plan. "Comprehensive plan" means a document or interrelated documents containing the elements established under section 4324 ~~4326~~, subsections 1 to 4, including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II.

1 10. Local planning committee. "Local planning committee"
3 means the committee established by the municipal officers of a
5 municipality or combination of municipalities which has the
general responsibility established under sections 4324
and 4326.

7 Sec. 2. 30-A MRSA §4313, as enacted by PL 1989, c. 104, Pt.
9 A, §45 and Pt. C, §10, is amended to read:

11 §4313. Transition; savings clause

13 Except as otherwise provided in this section, any
15 comprehensive plan or land use regulation or ordinance adopted or
amended by a municipality before the applicable date established
under section 4343 shall remain in effect until amended or
repealed subject to this subchapter.

17 ~~Any zoning, subdivision, site review or impact fee~~
19 ~~regulation or ordinance adopted or amended before the applicable~~
21 ~~date established under section 4343 and not consistent with a~~
23 ~~comprehensive plan adopted according to this subchapter is void~~
~~one year after the applicable date established under section 4343.~~

25 ~~Any other land use regulation or ordinance adopted or~~
27 ~~amended before the applicable date established under section 4343~~
~~and not consistent with a local growth management program adopted~~
~~according to this subchapter is void after January 1, 1998.~~

29 1. Comprehensive plan. Any comprehensive plan not
31 consistent with the requirements, goals and guidelines of this
subchapter is void 6 months after the applicable date established
under section 4343, subsection 1.

33 2. Zoning ordinances. Any zoning ordinance not consistent
35 with a comprehensive plan adopted according to this subchapter is
void 18 months after the applicable date established under
37 section 4343, subsection 1.

39 3. Subdivision, site review and impact fee ordinances.
41 Notwithstanding any provision of a municipal timetable adopted
under section 4326, subsection 3, any subdivision, site review or
43 impact fee regulation or ordinance not consistent with a
comprehensive plan adopted according to this subchapter is void 2
45 years after the applicalbe date established under section 4343,
subsection 1.

47 4. Other land use ordinances. Any other land use
49 regulation or ordinance not consistent with a comprehensive plan
adopted according to this subchapter is void after January 1,
51 1998.

1 Sec. 3. 30-A MRSA §4324, sub-§5, ¶¶A and B, as enacted by PL
2 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

3
4 A. At least 60 75 days before any public hearing required
5 in subsection 8, the local planning committee shall forward
6 its proposed comprehensive plan to the office and to any
7 applicable regional council for review and comment.

8
9 B. At least 60 75 days before the initial adoption of any
10 zoning ordinance or any revision under section 4327, the
11 local planning committee or municipal reviewing authority,
12 as appropriate, shall forward its proposed ordinance to the
13 office and to any applicable regional council for review and
14 comment. Notice, hearing and other procedural requirements
15 for adoption are governed by applicable provisions of this
16 Title, municipal charter or ordinance.

17
18 Sec. 4. 30-A MRSA §4324, sub-§7, as enacted by PL 1989, c.
19 104, Pt. A, §45 and Pt. C, §10, is amended to read:

20
21 7. Comments and revisions. The local planning committee or
22 municipal reviewing authority shall consider and may adopt any
23 comments and suggested revisions received from the office within
24 the time limits established by this subchapter. The comments and
25 suggested revisions received from the office shall be made
26 available for public inspection upon receipt with the proposed
27 comprehensive plan or zoning ordinance as required in subsection
28 8.

29
30 Sec. 5. 30-A MRSA §4324, sub-§8, ¶A, as enacted by PL 1989, c.
31 104, Pt. A, §45 and Pt. C, §10, is amended to read:

32
33 A. Notice of any public hearing shall be published in a
34 newspaper of general circulation in the municipality at
35 least 2 times. The date of the first publication must be at
36 least 30 days before the hearing. This notice shall also
37 contain a statement that the comments ~~have-been-received~~ are
38 expected from the office and will be available for
39 distribution before, and for discussion at, the public
40 hearing.

41
42 Sec. 6. 30-A MRSA §4326, sub-§§3 and 5, as enacted by PL 1989,
43 c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

44
45 3. Implementation strategy. A comprehensive plan shall
46 include an implementation strategy section which contains a
47 timetable for the implementation program, including land use
48 ordinances, ensuring that the goals established under this
49 subchapter are met. These implementation strategies must be
50 consistent with state law and shall actively promote policies
51 developed during the planning process. The timetable shall
identify significant ordinances to be included in the

COMMITTEE AMENDMENT "A" to H.P. 631, L.D. 854

1 implementation program. The strategies and timetable shall guide
2 the subsequent adoption of policies, programs and land use
3 ordinances. In developing its strategies and subsequent
4 policies, programs and land use ordinances, each municipality
5 shall employ the following guidelines consistent with the goals
6 of this subchapter:

7

8 A. Identify and designate at least 2 basic types of
9 geographic areas:

10 (1) Growth areas which are those areas suitable for
11 orderly residential, commercial and industrial
12 development forecast over the next 10 years. Each
13 municipality shall:

14

15 (a) Establish standards for these developments;

16

17 (b) Establish timely permitting procedures;

18

19 (c) Ensure that needed public services are
20 available within the growth area; and

21

22 (d) Prevent inappropriate development in natural
23 hazard areas, including flood plains and areas of
24 high erosion; and

25

26 (2) Rural areas which are those areas where protection
27 should be provided for agricultural, forest, open space
28 and scenic lands within the municipality. Each
29 municipality shall adopt land use policies and
30 ordinances to discourage incompatible development.

31

32 These policies and ordinances may include, without
33 limitation: density limits; cluster or special zoning;
34 acquisition of land or development rights; or performance
35 standards;

36

37 B. Develop a capital investment plan for financing the
38 replacement and expansion of public facilities and services
39 required to meet projected growth and development;

40

41 C. Protect, maintain and, when warranted, improve the water
42 quality of each water body pursuant to Title 38, chapter 3,
43 subchapter I, article 4-A;

44

45 D. Ensure that its land use policies and ordinances are
46 consistent with applicable state law regarding critical
47 natural resources. A municipality may adopt ordinances more
48 stringent than applicable state law;

49

50 E. Ensure the preservation of access to coastal waters
51 necessary for commercial fishing, commercial mooring,

1 docking and related parking facilities. Each coastal
2 municipality shall discourage new development that is
3 incompatible with uses related to the marine resources
4 industry;

5
6 F. Ensure the protection of agricultural and forest
7 resources. Each municipality shall discourage new
8 development that is incompatible with uses related to the
9 agricultural and forest industry;

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

21
22 H. Ensure that the value of historical and archeological
23 resources is recognized and that protection is afforded to
24 those resources that merit it; and

25
26 I. Encourage the availability of and access to traditional
27 outdoor recreation opportunities, including, without
28 limitation, hunting, boating, fishing and hiking; and
29 encourage the creation of greenbelts, public parks, trails
30 and conservation easements. Each municipality shall
31 identify and encourage the protection of undeveloped
32 shoreland and other areas identified in the local planning
33 process as meriting such protection.

34
35 5. Implementation program. An implementation program shall
36 be adopted that is consistent with the strategies in subsection
37 3. A zoning ordinance shall be adopted within ~~one year of the~~
38 ~~adoption of a comprehensive plan~~ 18 months of the applicable
39 deadline date established in section 4343, subsection 1, with the
40 remainder of the strategies adopted according to the timetable
41 set in the plan and the provisions of section 4313.

42
43 Sec. 7. 30-A MRSA §4341, sub-§3, ¶F, as enacted by PL 1989, c.
44 104, Pt. A, §45 and Pt. C, §10, is amended to read:

45
46 F. The council shall report annually by January 1, ~~1989,~~
47 ~~and every 2 years thereafter,~~ 1st to the Governor and the
48 joint standing committee of the Legislature having
49 jurisdiction over natural resources on any changes that may
50 be required to accomplish the purposes of this subchapter.
51

1 Sec. 8. 30-A MRSA §4343, sub-§1, ¶B, as enacted by PL 1989, c.
2 104, Pt. A, §45 and Pt. C, §10, is repealed.

3
4 Sec. 9. 30-A MRSA §4343, sub-§1, ¶C, as enacted by PL 1989, c.
5 104, Pt. A, §45 and Pt. C, §10, is amended to read:

7 C. The office shall revise the schedule deadlines under
8 paragraph A for a municipality based on the availability of
9 state assistance and the municipality's rank in the
10 priorities set forth in section 4344, subsection 1. Nothing
11 in this subsection prevents a municipality from submitting
12 its plan ~~or other program component~~ in advance of this
13 schedule.

15 Sec. 10. 30-A MRSA §4343, sub-§§1-A to 1-C are enacted to read:

17 1-A. Comprehensive plans; transition. No comprehensive
18 plan or amendment to a comprehensive plan adopted by a
19 municipality between August 4, 1988 and the applicable date
20 established under subsection 1 may be found to be void before the
21 date established under section 4313, subsection 1, for failure to
22 comply with this subchapter except that adoption of the plan or
23 amendment after September 1, 1989 must comply with the
24 requirements for public hearing under section 4324, subsection 8.

25 1-B. Zoning ordinances; schedule. Each municipality shall
26 submit for review a zoning ordinance proposed as part of its
27 implementation program within one year of the applicable date for
28 submission of the comprehensive plan established under subsection
29 1. Each municipality shall adopt a zoning ordinance consistent
30 with an adopted comprehensive plan within 18 months after that
31 applicable date established under subsection 1.

32 1-C. Other land use ordinances; schedules. Subject to
33 section 4313, components of the municipality's implementation
34 program other than the zoning ordinance shall be adopted in
35 accordance with the timetable provided in the municipality's
36 comprehensive plan under section 4326, subsection 3.

37
38 Sec. 11. 30-A MRSA §4343, sub-§3, ¶E, as enacted by PL 1989, c.
39 104, Pt. A, §45 and Pt. C, §10, is amended to read:

40 E. If warranted, the office shall issue findings
41 specifically describing the ~~deficiencies~~ in how the
42 submitted plan or ordinance is not consistent with this
43 subchapter and the recommended measures for remedying the
44 deficiencies. In its findings, the office shall clearly
45 indicate its position on any point in the event that there
46 are significant conflicts between the written comments on
47 that point submitted to the office.

1 Sec. 12. 30-A MRSA §4343, sub-§4, as enacted by PL 1989, c.
2 104, Pt. A, §45 and Pt. C, §10, is amended to read:

3
4 4. Updates; amendment of comprehensive plans and zoning
5 ordinances. Each municipality shall submit any comprehensive
6 plans and zoning ordinances revised proposed to be amended under
7 section 4327 to the office for review in the same manner as
8 provided for the review of new plans and ordinances. The office
9 shall provide an expedited review procedure for those submissions
10 which represent amendments to local growth management programs
11 reviewed by it after January 1, 1989. After the initial review,
12 municipalities shall file copies of any amendment to a zoning
13 ordinance with the office within 30 days after adopting the
14 amendment.

15 Sec. 13. 30-A MRSA §4343, sub-§5, ¶C, as enacted by PL 1989,
16 c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

17
18 C. Within 90 days after receiving the municipal request,
19 the office shall issue a certificate of consistency or
20 request revisions to the proposed program. If the same
21 local growth management program or program component has
22 been previously reviewed by the office under subsection 3,
23 denial of certification or requested revisions must be based
24 on ~~written comments--received--or~~ findings prepared by the
25 office at that time.

26
27 Sec. 14. 30-A MRSA §4344, sub-§§3, 4, 7, 8 and 9, as enacted by PL
28 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

29
30 3. Municipal technical assistance. The office shall
31 establish a program of technical assistance using its own staff,
32 the staff of other state agencies and the resources of regional
33 councils to help municipalities develop, administer and enforce
34 local growth management programs. By January 1, 1990, the office
35 shall develop a set of model land use ordinances and other
36 mechanisms consistent with the goals and guidelines of this
37 subchapter.

38
39 4. Municipal implementation assistance. The office shall
40 develop and administer a matching grant program to provide direct
41 financial and technical assistance to municipalities for the
42 development and implementation and administration of local growth
43 management programs ~~certified under section 4343, subsection 5.~~
44 The maximum municipal cost share may not exceed 25%. The grants
45 may be expended for any purpose directly related to the
46 ~~implementation of a local growth management program and the~~
47 ~~administration and enforcement of related~~ preparation of
48 policies, programs and land use ordinances adopted as part of a
49 ~~certified growth management program~~ implementing a comprehensive

1 plan that is consistent with this subchapter. Eligible
activities include, but are not limited to:

3

A. Assistance in the development of ordinances;

5

7 B. Retention of technical and legal expertise for
permitting activities; and

9

C. The updating of local growth management programs or
components of the program.

11

13 7. Municipal legal defense fund. The office shall develop
and administer a nonlapsing municipal legal defense fund to
assist municipalities with legal expenses related to the
15 enforcement and defense of land use ordinances ~~adopted as part of~~
~~a certified local growth management program in accordance with~~
17 ~~this subchapter.~~ Grants shall be targeted to cases of statewide
significance. After 2 years subsequent to the applicable
19 deadline dates established under section 4343, subsection 1,
assistance under this subsection is limited to the enforcement
21 and defense of land use ordinances adopted as part of a certified
local growth management program in accordance with this
23 subchapter.

25

8. Eligibility for other state aid. After 2 years
subsequent to the applicable deadline date established in section
27 4343, subsection 1, a state agency responsible for administering
any grant and assistance program described in paragraph A shall
29 award funds to a municipality only when the municipality has
adopted and implemented a certified local growth management
31 program or has, at a minimum, adopted a certified comprehensive
plan and implemented certified components of the implementation
33 program that are directly related to the purposes for which the
grant or assistance is provided.

35

37 A. State grants and assistance in the following areas are
subject to this subsection:

39

(1) Assistance in the enforcement of local growth
management programs including the municipal legal
41 defense fund and technical and financial assistance in
the administration and enforcement of local land use
43 ordinances;

45

(2) Assistance in the acquisition of land by the
municipality for conservation, natural resource
47 protection, open space or recreational facilities under
Title 5, chapter 353; and

49

(3) Multi-purpose community development block grants.

51

1 9: Other state grants and assistance. Except for the
2 programs specified in subsection 8, and after 2 years subsequent
3 to the applicable deadline date established in section 4343,
4 subsection 1, state agencies responsible for administering grant
5 and direct or indirect financial assistance programs to
6 municipalities designed to accommodate or encourage additional
7 growth and development; to improve, expand or construct public
8 facilities; to acquire land for conservation, recreation or
9 resource protection; or to assist in planning or managing for
10 specific economic and natural resource concerns shall allocate
11 funds only to a municipality with an adopted comprehensive plan
12 and implementation program which includes statements of policy or
13 program guidelines directly related to the purposes for which the
14 grant or financial assistance is provided. State agencies shall
15 consider the content of the plan, policies and guidelines in
16 awarding financial assistance to a municipality.

17 **Sec. 15. 30-A MRSA §4344, sub-§10 is enacted to read:**

19 **10. Assistance from housing authorities.** Notwithstanding
20 any other provision of law, the Maine State Housing Authority and
21 municipal housing authorities may provide technical assistance to
22 municipalities with respect to housing components of
23 comprehensive plans developed under this subchapter.

25 **Sec. 16. 30-A MRSA §4354, first ¶, as enacted by PL 1989, c.**
26 **104, Pt. A, §45 and Pt. C, §10, is amended to read:**

29 A municipality may enact an ordinance under its home rule
30 authority requiring the construction of off-site capital
31 improvements or the payment of impact fees instead of the
32 construction. After No later than 2 years after the applicable
33 deadlines established under section 4343, subsection 1, any
34 impact fee ordinance must have been adopted as part of a
35 certified local growth management program.

37 **Sec. 17. 30-A MRSA §4354, sub-§2, ¶D, as enacted by PL 1989, c.**
38 **104, Pt. A, §45 and Pt. C, §10, is amended to read:**

39 D. The ordinance must establish a mechanism by which the
40 municipality may shall refund impact fees, or a that portion
41 of impact fees, actually paid that exceed the municipality's
42 actual costs or that were not expended according to the
43 schedule under this subsection.

45 **Sec. 18. 30-A MRSA §4354, sub-§2, ¶E, as enacted by PL 1989, c.**
46 **104, Pt. A, §45 and Pt. C, §10, is repealed.'**

1 Further amend the bill by inserting after the emergency
clause and before the statement of fact the following:

3
5 **FISCAL NOTE**

7 This bill will convert the Municipal Legal Defense Fund
administered by the Office of Comprehensive Land Use Planning to
9 a nonlapsing fund. Future unencumbered balances in the fund will
no longer be transferred to General Fund unappropriated surplus.'

11
13 **STATEMENT OF FACT**

15 The purpose of this amendment is to conform the provisions
17 of the original bill with the new format of municipal law in the
Maine Revised Statutes, Title 30-A. This amendment deletes
19 provisions of the bill dealing with slow-growth ordinances. The
amendment also removes language related to geographic-based
21 information systems and thus removes the need for the
appropriation required by the original bill.

Reported by the Committee on Energy and Natural Resources
Reproduced and distributed under the direction of the Clerk of the
House
5/15/89 (Filing No. H-192)