

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1487


H.P. 1100

House of Representatives, May 10, 1993

**An Act to Improve Environmental Protection and Support Economic
Development under the State's Land Use Laws.**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.
Cosponsored by President DUTREMBLE of York and
Representatives: ANDERSON of Woodland, CLARK of Millinocket, COLES of Harpswell,
DEXTER of Kingfield, GOULD of Greenville, GWADOSKY of Fairfield, KONTOS of
Windham, LORD of Waterboro, MARSH of West Gardiner, MARTIN of Eagle Lake,
MELENDY of Rockland, MICHAUD of East Millinocket, PARADIS of Augusta, POULIN of
Oakland, Senators: BUTLAND of Cumberland, CIANCHETTE of Somerset, ESTY of
Cumberland, HARRIMAN of Cumberland, LUDWIG of Aroostook, PARADIS of Aroostook.

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

2
4 Sec. 1. 5 MRSA c. 314 is enacted to read:

6 CHAPTER 314

8 COMMISSION ON LAND CONSERVATION AND
 DEVELOPMENT ACT

10 §3325. Short title

12 This chapter may be known and cited as the "Commission on
14 Land Conservation and Development Act."

16 §3326. Commission on Land Conservation and Development

18 There is established in the Executive Department the
20 Commission on Land Conservation and Development to coordinate and
22 develop the land planning, management and regulatory
 responsibilities of State Government, local governments and
 regional planning and economic development entities in accordance
 with Title 38, chapter 22.

24 1. Responsibility. The Commission on Land Conservation and
26 Development is directly responsible to the Governor and serves as
 an advisory, consultative, coordinating, administrative and
 research agency as specified in subsection 5.

28 2. Composition. The Commission on Land Conservation and
30 Development is composed of 11 members, appointed by the Governor
32 and confirmed by the Senate after review by the joint standing
34 committee of the Legislature having jurisdiction over natural
36 resources matters. The Governor shall select members on the
 basis of their knowledge of planning, local government, regional
 councils, natural resource conservation, land development,
 forestry and agriculture and general business. At least 3
 members must be residents of the First Congressional District and
 at least 3 members must be residents of the Second Congressional
 District. The Governor shall appoint as members the Commissioner
 of Transportation, the Commissioner of Economic and Community
 Development, the Commissioner of Environmental Protection and the
 Commissioner of Conservation or their designees.

44 3. Terms; chair; quorum. Appointments to the Commission on
46 Land Conservation and Development are for staggered 4-year
48 terms. Initial members serve as follows: Three members for
 2-year terms; 3 members for 3-year terms; and one member for a
 4-year term. A member other than a commissioner or a
 commissioner's designee, may not serve more than 2 consecutive
50 4-year terms.

2 The Commission on Land Conservation and Development shall elect a
3 chair from among its members.

4
5 Six members constitute a quorum as long as 1/3 of the members
6 present are members other than the commissioners or directors of
7 state agencies or their designees.

8
9 4. Staffing. The Commission on Land Conservation and
10 Development shall appoint a qualified director to serve at its
11 pleasure. Clerical support must be provided to the director from
12 the funds allocated to the commission. Other professional staff
13 required to carry out the duties described in subsection 5 must
14 be provided as needed by the state agencies affected by the
15 commission's activities, including the Department of
16 Environmental Protection, the Department of Economic and
17 Community Development, the Department of Transportation and the
18 Department of Conservation. The director of the commission,
19 working jointly with the approval and within the available
20 budgeted resources of the state agencies affected by the
21 commission's activities, shall prepare an annual work plan that
22 identifies the necessary work tasks and staff assignments for the
23 year.

24
25 5. Duties. The Commission on Land Conservation and
26 Development shall:

27 A. Coordinate the state, regional and local roles in land
28 use planning, regulation and development consistent with the
29 land planning, management and regulatory policies contained
30 in Title 38, chapter 22;

31
32 B. Establish performance goals, measurable when possible,
33 further clarifying the state goals of the land planning,
34 management and regulatory policies contained in Title 38,
35 chapter 22;

36
37 C. Advise the Department of Economic and Community
38 Development in developing criteria for determining viable
39 regional boundaries and regional boards and for certifying
40 municipalities as regional partners, in accordance with
41 Title 30-A, section 2346;

42
43 D. Advise the Department of Economic and Community
44 Development in developing criteria for certifying local
45 growth management programs that meet the requirements of
46 Title 30-A, chapter 187, subchapter II and the land
47 planning, management and regulatory policies contained in
48 Title 38, chapter 22;

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2 E. Advise the Department of Environmental Protection in
4 developing criteria for natural resources plans that meet
6 the requirements of Title 38, section 480-V and the land
8 planning, management and regulatory policies contained in
10 Title 38, chapter 22;

12 F. Advise all state agencies that have authority to finance
14 or develop capital improvements in developing criteria for
16 capital investment plans and programs consistent with the
18 land planning, management and regulatory policies contained
20 in Title 38, chapter 22;

22 G. Advise all state agencies that provide funding to
24 municipalities to finance capital improvements on the
26 establishment of discretionary funds that may be used to
28 implement regional capital investment plans developed under
30 Title 30-A, chapter 119, subchapter III; and

32 H. Monitor the overall performance of the State's land use
34 laws in meeting the land planning, management and regulatory
36 policies and report annually to the Governor and the
38 Legislature by January 1st, the first report being due
40 January 1, 1995.

42 5. Rulemaking. The Commission on Land Conservation and
44 Development does not have separate rule-making authority but is
46 authorized to initiate amendments to rules of other state
48 agencies when amendments are necessary to meet the commission's
50 responsibilities under this section. The state agency, not the
commission, is responsible for complying with the requirements of
the Maine Administrative Procedure Act, except that costs
associated with rule-making notices must be paid by the
commission.

6. Meetings open to public. All meetings of the Commission
on Land Conservation and Development are open to the public and
must be conducted in accordance with Title 1, chapter 13,
subchapter I.

Sec. 2. 5 MRSA §12004-I, sub-§24-E is enacted to read:

<u>24-E.</u>	<u>Commission</u>	<u>Expenses</u>	<u>5 MRSA</u>
<u>Environment</u>	<u>on Land</u>	<u>Only</u>	<u>§3326</u>
	<u>Conservation</u>		
	<u>and Develop-</u>		
	<u>ment</u>		

Sec. 3. 30-A MRSA c. 119, sub-c. III is enacted to read:

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SUBCHAPTER III

REGIONAL CAPITAL INVESTMENT PLANNING

§2346. Regional Capital Investment Planning

1. Legislative findings. The Legislature finds that it is in the public interest to foster and encourage interlocal planning and a high level of state and local coordination to address the issues of affordable housing, transportation and economic development and that these issues should be addressed from a regional perspective in order to achieve the land management and regulatory policies under Title 38, chapter 22.

2. Definition of region. The regional planning and development districts designated by the Governor under subchapter II must serve as regions for the purposes of this subchapter. Regional transportation plans must comply with the terms and regional boundaries developed under the State's Sensible Transportation Policy Act.

3. Components of regional capital investment plan. A regional capital investment plan must:

A. Inventory and assess the existing capital facilities and public services in the region necessary to support an effective system of transportation, to provide housing to meet the region's diverse housing needs and to support jobs and the economy of the region. The inventory and assessment must rely as much as possible on the inventories contained in local comprehensive plans developed under chapter 187;

B. Include a policy section that relates the findings of the inventory and assessment section to the land management and regulatory policies and to the goals of the region; and

C. Include a capital investment plan that prioritizes the replacement and expansion of public facilities and services required to accommodate the growth and development planned in the region's growth areas.

4. Certification by Commission on Land Conservation and Development. In those regional planning and development districts not currently served by a regional council, a regional capital investment plan may not serve as the plan necessary under Title 38, section 488, subsection 10 to exempt development projects from state jurisdiction under the site location and development laws unless the planning jurisdiction of the combined municipalities and the plan meet the criteria of the Department of Economic and Community Development and the Commission on Land

2 Conservation and Development. The criteria must include, without
4 limitation, that the region encompass within its planning area at
6 least one complete labor market area. Municipalities that are
8 certified by the Commission on Land Conservation and Development
10 as regional partners are eligible for the following:

12 A. Bonus discretionary funds in transportation, community
14 and economic development, and growth management as
16 coordinated by the Commission on Land Conservation and
18 Development;

20 B. The opportunity to participate in deciding how
22 discretionary funds will be allocated within the region
24 through the regional board; and

26 C. Primary land use regulatory jurisdiction over larger
28 development projects, as defined in Title 38, section 488,
30 subsection 10.

32 **Sec. 3. 30-A MRSA §4326, sub-§1, as amended by PL 1991, c.**
34 **722, §7 and affected by §11, is further amended by amending the**
36 **first paragraph to read:**

38 **1. Inventory and analysis.** A comprehensive plan shall must
40 include an inventory and analysis section addressing state goals
42 under this subchapter and issues of regional or local
44 significance the municipality considers important. The inventory
46 must be based on information provided by the State, regional
48 councils and other relevant local sources. Data regarding
50 significant natural resources required by paragraphs B and C must
be provided by the State and used to identify and designate
growth and rural areas, as required in subsection 3. Any locally
significant natural resource to be protected by local ordinance
must be inventoried and analyzed in accordance with this
section. The analysis must include 10-year projections of local
and regional growth in population and residential, commercial and
industrial activity; and the projected need for public
facilities; ~~and the vulnerability of and potential impacts on~~
natural resources.

Sec. 4. 30-A MRSA §4326, sub-§2, ¶A, as enacted by PL 1989, c.
104, Pt. A, §45 and Pt. C, §10, is amended to read:

A. Promote the state goals under this subchapter. With
respect to the natural resources protection goals contained
in section 4312, subsection 3, paragraphs E and F,
comprehensive plans must be consistent with applicable state
law governing the protection of these resources but may
contain policies to protect locally significant natural
resources not protected by state law or regulations;

2 **Sec. 5. 30-A MRSA §4348, first ¶**, as enacted by PL 1991, c.
4 780, Pt. E, §2, is amended to read:

6 A municipality may at any time request a certificate of
8 consistency for its local growth management program. Upon a
10 request for review under this section, the office shall review
12 the program, under rules developed with the advice of the
14 Commission on Land Conservation and Development, and determine
16 whether the program is consistent with the local growth
18 management goals and guidelines established in this subchapter.
20 During the time between September 1, 1993 and adoption of a
22 natural resources plan or a segment of a natural resources plan
24 under Title 38, section 480-V, the rule for voluntary
26 certification must ensure adequate protection of natural
28 resources of state and regional significance, as identified in
30 the state goals.

32 **Sec. 6. 38 MRSA §480-V** is enacted to read:

34 **§480-V. Natural resources planning**

36 The department, with the advice of the Commission on Land
38 Conservation and Development, shall prepare and adopt a natural
40 resources plan for the organized and unorganized territories of
42 the State. The natural resources plan, as it affects areas under
44 the jurisdiction of the Maine Land Use Regulation Commission,
46 must be developed by the Maine Land Use Regulation Commission, in
48 consultation with the department and the Commission on Land
50 Conservation and Development.

52 **1. Watershed plans.** The natural resources plan must be
54 completed in segments, based on major state watersheds. The
56 department shall establish a schedule for development and
58 completion of the natural resources plan, giving priority to the
60 development of plans for those watershed areas that are the most
62 vulnerable to the impacts of unplanned development. The schedule
64 must call for completion of the first segment of the plan for the
66 watershed of highest priority by January 1, 1995 and for the
68 completion of the plan for the entire State by January 1, 2000.

70 **2. Plan components.** The natural resources plan must
72 address rivers and streams, great ponds, fragile mountain areas,
74 freshwater wetlands, significant wildlife habitat, coastal
76 wetlands, coastal sand dunes, estuaries, flood plains, scenic
78 areas, fisheries, plant habitat, shorelands and ground water.
80 The plan must include the following:

82 **A.** An inventory, and to the extent possible, identification
84 of the natural resources to be addressed by the plan;

- 2 B. An assessment of the relative value of these resources;
- 4 C. Classification of the resources by significance, with
6 Class A resources being the most significant and in need of
 the greatest protection;
- 8 D. Identification of management and use requirements for
10 protecting each resource classification, relying to the
 extent practicable on permit-by-rule, best management
12 practices, education and technical assistance to protect the
 resources addressed by the plan; and
- 14 E. Identification of appropriate compliance and enforcement
 mechanisms for violations.

16 **3. Coordination with shoreland zoning.** The natural
18 resources plan must address shoreland areas and include
20 strategies for replacing the mandatory shoreland zoning laws with
 state performance standards with all zoning matters relating to
22 shoreland areas addressed in local growth management programs.

24 **4. Public participation.** The department shall solicit a
26 broad range of public participation in all phases of the natural
 resources plan's development. Input from interested parties,
28 including other state agencies, federal agencies, municipalities,
 regional councils, general business interests, development
30 interests, conservation interests and landowners, and from the
 general public must be sought.

32 **5. Final adoption; amendment.** The natural resources plan
34 or its segments must be adopted by the department under the
 provisions of the Maine Administrative Procedure Act. The
36 jurisdiction of the department over the natural resources
 protected under the terms and conditions of this article may not
 be expanded without express authority by amendment of this
38 article by the Legislature.

40 **Sec. 7. 38 MRSA §482, sub-§§2-G and 2-H are enacted to read:**

42 **2-G. Large industrial use.** "Large industrial use" means
44 any structure that occupies a ground area in excess of 150,000
 square feet and that is used for the basic processing and
46 manufacturing of materials or products predominately from
 extracted or raw materials.

48 **2-H. Development of statewide significance.** "Development
 of statewide significance" means any project in which the
 buildings, parking lots, roads, paved areas, wharves or areas to

2 be stripped or graded and not revegetated within a calendar year
3 occupy a ground area in excess of 7 acres.

4 **Sec. 8. 38 MRSA §488, sub-§§9 and 10** are enacted to read:

6 **9. Exemption for certain projects in certified**
7 **municipalities or in compact areas.** In those municipalities with
8 growth management programs certified under Title 30-A, section
9 4348 or in the compact areas of municipalities, as defined by the
10 Department of Transportation under Title 23, section 1001 on
11 January 1, 1993, the following projects are exempt from review
12 under this article:

14 A. Subdivisions as described in section 482, subsection 5
15 of more than 20 acres but less than 100 acres; and

16 B. Structures as described in section 482, subsection 6,
17 paragraph B in excess of 3 acres but less than 7 acres.

20 **10. Exemption for certain projects in areas with regional**
21 **capital investment plans; state site permit.** In those
22 municipalities that have been certified as regional partners by
23 the Commission on Land Conservation and Development under Title
24 30-A, section 2346, all projects except as specified under this
25 subsection are exempt from review under this article.

26 A. Because of their nature and scale, the following
27 projects require review under this article even when the
28 project is proposed for location in a municipality with a
29 certified local growth management program or in the compact
30 area of a municipality and even when the municipality may be
31 certified as a regional partner:

34 (1) A development that is a mining or exploration
35 activity as defined in section 482;

36 (2) A development that is a large industrial use as
37 defined in section 482; and

38 (3) A development of statewide significance as defined
39 in section 482.

40 B. Reviews for projects that require both a state site
41 permit under this article and a natural resources protection
42 permit under article 5-A must be coordinated and the 2
43 permits consolidated under the state site permit.

44 **Sec. 9. 38 MRSA c. 22** is enacted to read:

45 **CHAPTER 22**

LAND PLANNING, MANAGEMENT AND
REGULATORY POLICIES

§1941. Findings and declaration of land planning, management and regulatory policies

1. Legislative findings. The Legislature finds that:

A. A system of coordinated land use planning, management and regulation is necessary to protect critical aspects of the State's heritage and environment; to guide and encourage sound development that promotes overall economic well-being; and to sustain healthy communities by developing and maintaining an efficient and affordable system of capital services and facilities;

B. The State's system of land planning, management and regulation requires the creation of a strong partnership between State Government and local government based on clearly identified roles and responsibilities;

C. The primary role of local government in a land planning, management and regulatory system is to guide the location of development in accordance with a local growth management program;

D. The primary role of State Government in a land planning, management and regulatory system is to protect significant natural resources in the regions and the State in accordance with a state natural resources protection plan;

E. A function of State Government and local government is to encourage and collaborate in regional efforts to plan for and invest in capital improvements that ensure consideration of regional needs and the regional impact of development on public facilities and services and to coordinate state-financed capital investments with local growth management programs; and

F. The State's system of land use planning, management and regulation must fairly allocate costs, recognizing society's responsibility to protect the common good and holding the consumers and producers of impacts accountable for the costs associated with development and fairly balance public welfare and private land ownership rights.

2. State policies. To provide consistent direction to the land management activities of all state and municipal agencies affecting natural resources management, land use planning and

2 regulation and to the location and extent of capital investments
3 that influence the location of development, the Legislature
4 declares it is the policy of this State:

5 A. To encourage orderly growth and development in
6 appropriate areas of each community, while protecting the
7 State's rural character, making efficient use of public
8 services and preventing development sprawl;

9 B. To promote an economic climate that increases job
10 opportunities and overall economic well-being;

11 C. To protect the State's critical natural resources,
12 including lakes, aquifers, great ponds, estuaries, rivers,
13 coastal areas, wetlands, fisheries, wildlife habitat, sand
14 dunes, shorelands, scenic vistas and unique natural areas;

15 D. To ensure that state capital investments such as
16 transportation systems, public sewer and water facilities
17 and affordable housing are directed to appropriate places
18 where growth is planned and can be supported;

19 E. To encourage a system of regional capital investment
20 planning that coordinates local comprehensive planning and
21 state capital investment planning; and

22 F. To ensure predictable, timely and cost-effective land
23 use decisions that provide coordination and consistency
24 between State Government and local governments and that
25 minimize unnecessary duplication.

26 3. Coordination. State agencies with regulatory authority
27 over land uses, authority over capital investment decisions or
28 other authority affecting the goals established in this chapter
29 shall conduct their respective programs and activities in a
30 manner consistent with the policies established under this
31 chapter. Without limiting the application of this section to
32 other state agencies, the following agencies are governed by this
33 chapter:

34 A. The Department of Environmental Protection;

35 B. The Department of Conservation;

36 C. The Department of Economic and Community Development;

37 D. The Department of Human Services, Division of Health
38 Engineering;

39 E. The Department of Agriculture, Food and Rural Resources;

- 2 F. The Department of Inland Fisheries and Wildlife;
- 4 G. The Department of Marine Resources;
- 6 H. The Department of Transportation;
- 8 I. The Maine State Housing Authority;
- 10 J. The Finance Authority of Maine; and
- 12 K. The Department of Education, Division of School
14 Facilities.

14 **Sec. 10. Report; amendment of state site review process.** By
16 February 15, 1994 the Department of Environmental Protection
18 shall submit recommendations and implementing legislation to the
20 Joint Standing Committee on Energy and Natural Resources to amend
22 the site location of development laws; for review of projects in
24 those municipalities that do not have certified growth management
26 programs; and to focus on issues that affect the location of
28 development such as highway functioning, rural character, storm
water erosion and sedimentation control, with issues affecting
natural resources addressed under the natural resources
protection laws. The department shall include in its report an
analysis and recommendations regarding the use of permit-by-rule
for smaller projects.

28 **Sec. 11. Report; amendment of natural resources protection laws.**
30 By January 1, 2001 the Department of Environmental Protection
32 shall submit recommendations and implementing legislation to the
34 joint standing committee of the Legislature having jurisdiction
36 over natural resources matters, proposing amendment of the
natural resources protection laws to make them consistent with
the natural resources plan developed and adopted under the Maine
Revised Statutes, Title 38, section 480-V.

38
40 **STATEMENT OF FACT**

40 The purpose of this bill is to create a system of land use
42 regulation that is unified, clear, fair, affordable and
44 accountable by relying on better foresight and planning;
46 consolidation of permits; integration of planning, regulation and
48 infrastructure investments; greater use of methods other than
traditional regulation to achieve environmental protection goals;
and the provision of an overall policy context for all land use
regulations.

2 Specifically, the bill prioritizes the role of the State in
3 regulating land use as that of protecting natural resources. The
4 role of local governments in the land use regulatory system is to
5 guide the location of development. Where those roles are
6 currently confused and duplicated, this bill proposes that they
7 be streamlined. State jurisdiction under the site location of
8 development laws and the mandatory shoreland zoning laws will be
9 phased out and replaced with local plans and ordinances. State
10 and regionally significant natural resources will become the sole
11 jurisdiction of the State once a natural resources plan is
12 completed.

13
14 This bill directs state and local governments to develop
15 plans that rely more on permit-by-rule, best management practices
16 and education and technical assistance rather than traditional
17 forms of permitting to achieve stated land use goals.

18 This bill creates the Commission on Land Conservation and
19 Development and a series of land planning, management and
20 regulatory policies that will serve to link all the various
21 state, regional and local roles in the land use regulatory system
22 and eliminate the confusion and duplication in the State's
current land use laws.