

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1654

S.P. 574

In Senate, March 3, 1999

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**An Act to Improve the Efficiency of Environmental Regulation in the  
Unorganized and Deorganized Areas of the State.**

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Submitted by the Department of Conservation pursuant to Joint Rule 204.  
Reference to the Committee on Agriculture, Conservation and Forestry suggested and  
ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln.  
Cosponsored by Representative COWGER of Hallowell and  
Senators: CASSIDY of Washington, NUTTING of Androscoggin, PARADIS of Aroostook,  
TREAT of Kennebec, Representatives: CROSS of Dover-Foxcroft, KNEELAND of Easton,  
MARTIN of Eagle Lake, McKEE of Wayne.

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

2  
3       **Sec. 1. 12 MRSA §682, sub-§1**, as amended by PL 1973, c. 569,  
4       §2, is further amended to read:

6       **1. Unorganized and deorganized areas.** "~~Unorganized and~~  
7       ~~deorganized areas" shall--include~~ includes all areas--~~located~~  
8       ~~within--the--jurisdiction--of--the--State--of--Maine,--except--areas~~  
9       ~~located---within---organized---cities---and---towns,---and---Indian~~  
10       ~~reservations~~ unorganized and deorganized townships, plantations  
11       ~~that have not received commission approval under section 685-A,~~  
12       ~~subsection 4 to implement their own land use controls, towns that~~  
13       ~~have organized since 1971 but have not received commission~~  
14       ~~approval under section 685-A, subsection 4 to implement their own~~  
15       ~~land use controls and all other areas of the State that are not~~  
16       ~~part of an organized municipality except Indian reservations.~~

18       **Sec. 2. 12 MRSA §682, sub-§4**, as amended by PL 1979, c. 631,  
19       §1, is further amended to read:

20       **4. Structure.** "~~Structure" shall--mean~~ means anything  
21       constructed or erected with a fixed location on or in the ground,  
22       or attached to something having a fixed location on or in the  
23       ground, including, but not limited to, buildings, mobile homes,  
24       retaining walls, fences, billboards, signs, piers and floats. It  
25       ~~shall~~ does not include a wharf, fish weir or trap that may be  
26       licensed under Title 38, chapter 9.

28       **Sec. 3. 12 MRSA §683**, as amended by PL 1997, c. 683, Pt. B,  
29       §6 and affected by §7, is further amended to read:

32       **§683. Creation of Maine Land Use Regulation Commission**

34       The Maine Land Use Regulation Commission, as established by  
35       Title 5, section 12004-D, subsection 1 to carry out the purposes  
36       stated in section 681, is created within the Department of  
37       Conservation, and in this chapter called the "commission." The  
38       commission is charged with implementing this chapter in all of  
39       the unorganized and deorganized areas of the State. The  
40       commission consists of 7 public members, none of whom may be  
41       state employees, who must be appointed by the Governor, subject  
42       to review by the joint standing committee of the Legislature  
43       having jurisdiction over conservation matters and to confirmation  
44       by the Legislature, for staggered 4-year terms. ~~Of the potential~~  
45       ~~appointees to the commission, the Governor shall actively seek~~  
46       ~~and give consideration to persons who are knowledgeable in~~  
47       ~~commerce and industry, fisheries and wildlife, forestry, and~~  
48       ~~conservation. In addition the Governor shall actively seek and~~  
49       ~~give consideration to persons residing in or near the unorganized~~  
50       ~~areas of the State and to persons residing on unorganized coastal~~

islands, ~~At least 4 members must be residents within the~~  
2 ~~commission's jurisdiction.~~ A county commissioner, county  
employee, municipal official or municipal employee is not  
4 considered to hold an incompatible office for purposes of  
simultaneous service on the commission. If a county or  
6 municipality is a participant in an adjudicatory proceeding  
before the commission, a commissioner, official or employee from  
8 that county or municipality may not participate in that  
proceeding.

10  
12 Appointees to the commission must be familiar with the needs  
and issues affecting the commission's jurisdiction. All  
14 appointees must reside in the commission's jurisdiction; work in  
the commission's jurisdiction; be a former resident or be retired  
16 after working within the commission's jurisdiction for a minimum  
of 5 years; or have expertise in commerce and industry, fisheries  
and wildlife, forestry or conservation issues as they affect the  
18 commission's jurisdiction. In selecting appointees, the Governor  
shall actively seek and give consideration to persons residing in  
20 or near the unorganized and deorganized areas of the State and to  
persons residing on coastal islands within the commission's  
22 jurisdiction.

24 ~~Of the initial appointees, 2 shall be appointed for one-year~~  
terms, ~~2 shall be appointed for 2-year terms and 3 shall be~~  
26 ~~appointed for 3-year terms. Thereafter, appointees shall~~  
Appointees must be appointed to serve staggered 4-year terms. One  
28 ~~of the members shall be elected annually by the members as~~  
chairman.

30  
32 Any member who has not been renominated by the Governor  
~~within 90 days of~~ prior to the expiration of his that member's  
term shall may not continue to serve on the commission, unless  
34 the Governor notifies the Legislature in writing ~~and within 90~~  
~~days of~~ prior to the expiration of that member's term ~~of his~~  
36 ~~finding~~ that extension of that member's term is required to  
ensure fair consideration of specific major applications pending  
38 before the commission. That member's term shall ~~end~~ ends upon  
final commission decisions on the specific applications  
40 identified in the Governor's communication. Any member  
renominated by the Governor prior to the expiration of that  
42 member's term shall continue to serve on the commission until the  
nomination is acted upon by the Legislature. A vacancy during an  
44 unexpired term shall ~~be~~ is filled as provided in this section,  
but only for the unexpired portion of the term.

46  
48 **Sec. 4. 12 MRSA §684, as amended by PL 1985, c. 737, Pt. A,**  
§22, is further amended to read:

50 **§684. Commission officers, meetings and rules; hearings**

2 The commission shall elect annually, from its own  
membership, a secretary chair and such other officers it deems  
3 considers necessary. Meetings shall ~~be~~ are held at the call of  
4 the ~~chairman~~ chair or at the call of more than 1/2 of the  
membership. ~~These public meetings shall be held at least once a~~  
5 ~~month.~~ The commission, acting in accordance with the procedures  
6 set forth in Title 5, chapter 375, subchapter II, may adopt  
7 whatever rules it deems considers necessary for the conduct of  
8 its business. The secretary commission shall keep minutes of all  
9 proceedings ~~of the commission~~, which minutes ~~shall be~~ are  
10 a public record available and on file in the office of the  
11 commission. Members of the commission, ~~except state employees,~~  
12 ~~shall be~~ are compensated as provided in Title 5, chapter 379. A  
13 quorum of the commission for the transaction of business shall ~~be~~  
14 is 4 members. No action may be taken by the commission unless  
15 upon approval by a vote of 4 members.

18 Whenever the commission is required or empowered to conduct  
a hearing pursuant to any provision of law, ~~sueh~~ the hearing may  
19 be held and conducted by the commission or by any member of the  
20 commission or by any qualified employee or representative of the  
21 commission as the commission ~~chairman~~ chair may determine. If the  
22 hearing is conducted by a single commissioner or qualified  
23 employee or representative, ~~sueh~~ the commissioner, employee or  
24 representative shall report his the findings of fact and  
25 conclusions to the commission together with a transcript of the  
26 hearing and all exhibits. ~~Sueh~~ The findings of fact and  
27 conclusions shall become a part of the record. The commission  
28 shall is not be bound by ~~sueh~~ the findings or conclusions when  
29 acting upon ~~sueh~~ the record, but shall take ~~sueh~~ action, issue  
30 ~~sueh~~ orders and make ~~sueh~~ decisions as if it had held and  
31 conducted the hearing itself.

34 When the commission elects to hold multiple public hearings  
35 on any matter under this chapter, all hearings held within a  
36 45-day period are considered one hearing for administrative  
37 purposes.

38 **Sec. 5. 12 MRSA §685, 2nd ¶**, as enacted by PL 1987, c. 508, is  
39 amended to read:

42 The commission shall ~~establish and maintain at least 2~~  
regional field offices, ~~one in Greenville and one in Ashland,~~  
43 designed principally to provide assistance to the public on  
44 permit applications and to carry out such other functions of the  
45 commission as appropriate. These field offices shall must be  
46 established in locations chosen to provide the maximum benefit to  
47 the public residents of the unorganized and deorganized areas  
48 while minimizing costs. Historic levels of permitting activity,  
49 the convenience of access and the availability and cost of office  
50

2 facilities shall must be considered in choosing the field office  
3 locations. Each office shall must be open on a part-time  
4 full-time basis ~~at least 2 days a month or as to the extent~~  
5 needed to accommodate public demand ~~for the services of such~~  
6 ~~field offices~~ and as resources allow. Whenever  
7 practicable, the commission shall make use of existing personnel  
8 to staff these field offices.

9  
10 **Sec. 6. 12 MRSA §685-A, sub-§1**, as amended by PL 1977, c. 694,  
11 §222, is further amended to read:

12 **1. Classification and districting of lands.** The  
13 commission, acting on principles of sound land use planning and  
14 development, shall determine the boundaries of areas within the  
15 unorganized and deorganized ~~portions~~ areas of the State that fall  
16 into land use districts and designate each area in one of the  
17 following major district classifications: ~~Protection~~ protection,  
18 management and development. The commission, acting in accordance  
19 with the procedures set forth in Title 5, chapter 375, subchapter  
20 II, shall ~~enact~~ adopt regulations for determining the boundaries  
21 of each major type of district in accordance with the following  
22 standards:

23  
24 A. Protection districts: Areas where development would  
25 jeopardize significant natural, recreational and historic  
26 resources, including, but not limited to, flood plains,  
27 precipitous slopes, wildlife habitat and other areas  
28 critical to the ecology of the region or State;

29  
30 B. Management districts: Areas ~~which~~ that are appropriate  
31 for commercial forest product or agricultural uses or for  
32 the extraction of nonmetallic minerals and for which plans  
33 for additional development are not presently formulated nor  
34 additional development anticipated; and

35  
36 D. Development districts: Areas discernible as having  
37 patterns of intensive residential, recreational, commercial  
38 or industrial use, or commercial removal of metallic  
39 ~~minerals or other natural resources~~, and areas appropriate  
40 for designation as development districts when measured  
41 against the purpose, intent and provisions of this chapter.

42  
43 In addition to delineating the major district classifications  
44 listed, the commission may delineate such subclassifications as  
45 may be ~~deemed~~ necessary and desirable to carry out the intent of  
46 this chapter.

47  
48 **Sec. 7. 12 MRSA §685-A, sub-§6**, as amended by PL 1991, c. 308,  
49 is repealed.

2           **Sec. 8. 12 MRSA §685-A, sub-§7**, as amended by PL 1991, c. 653  
and 1997, c. 526, §14, is repealed.

4           **Sec. 9. 12 MRSA §685-A, sub-§7-A** is enacted to read:

6           **7-A. Procedure for adoption or amendment of land use**  
8           **district standards, district boundaries and land use maps. This**  
          subsection governs procedures for the establishment and amendment  
10           of land use district standards and boundaries and the amendment  
          of the commission's land use maps.

12           A. The commission or its staff may initiate and any state  
14           or federal agency, any county or municipal governing body or  
          any property owner or lessee may petition for adoption or  
16           amendment of land use district standards, district  
          boundaries or land use maps.

18           B. Adoption and amendment of land use district standards,  
20           district boundaries and land use maps are rule-making  
          procedures subject to the requirements of Title 5, chapter  
22           375, subchapter II, except that the requirements of Title 5,  
          section 8052, subsections 5, 5-A and 7; section 8053-A;  
24           section 8056, subsections 1, 3 and 4; section 8056-A;  
          section 8057, subsection 2; section 8057-A; section 8060;  
26           section 8062; and section 8064 do not apply. The  
          requirements of Title 5, chapter 375, subchapter II are  
28           further modified by the following provisions.

30           (1) Public notice of proposals to adopt or amend land  
          use district standards, district boundaries or land use  
32           maps must state the time and the place where copies of  
          the proposal may be inspected prior to the hearing.

34           (2) The commission shall give notice of hearings to  
          amend district boundaries, by mail, to appropriate  
36           state and federal agencies and the owners of directly  
          affected and abutting properties, according to their  
38           names and addresses as shown on the records of Maine  
          Revenue Services or plantation or town tax assessors.  
40           If the number of owners of directly affected and  
          abutting properties is more than 50, notice may instead  
42           be by publication conforming to the requirements for  
          newspaper publication of hearings under Title 5,  
44           chapter 375, subchapter IV.

46           (3) At any time prior to the date of adoption of  
          proposed land use district standards, land use  
48           boundaries or land use maps, the commission may elect  
          to reopen the public hearing record and extend the time

2 period for public comment to such date as it may  
designate.

4 (4) The commission must act to adopt or not to adopt  
proposed land use district standards, land use  
6 boundaries or land use maps within 120 days after the  
date of final closure of the public hearing.

8  
10 (5) Land use district boundaries and land use maps  
become effective 15 days after adoption or amendment by  
12 the commission, as long as the boundaries and maps are  
available in the appropriate registry of deeds for each  
14 county. Notice of adoption or amendment of land use  
district boundaries and land use maps must be given by  
16 publication one time in a newspaper of general  
circulation published in the area affected.

18 (6) Permanent land use standards adopted by the  
commission are effective immediately, but must be  
20 submitted to the next regular or special session of the  
Legislature for approval or modification. If the  
22 Legislature fails to act, those standards continue in  
full force and effect.

24 **Sec. 10. 12 MRSA §685-A, sub-§8, as repealed and replaced by**  
26 **PL 1995, c. 462, Pt. A, §30, is repealed.**

28 **Sec. 11. 12 MRSA §685-A, sub-§§8-A and 8-B are enacted to read:**

30 **8-A. Criteria for adoption or amendment of land use**  
**district boundaries. A land use district boundary may not be**  
32 **adopted or amended unless there is substantial evidence that:**

34 **A. The proposed land use district is consistent with the**  
**comprehensive land use plan and the purpose, intent and**  
36 **provisions of this chapter; and**

38 **B. The proposed land use district would satisfy**  
**demonstrated need in the community or area or a new district**  
40 **designation is more appropriate for the protection and**  
**management of existing uses and resources within the**  
42 **affected area.**

44 District boundaries adopted or amended under these provisions to  
accommodate specific development proposals do not become  
46 effective until the commission or the Department of Environmental  
Protection authorizes the project, based upon a finding that the  
48 project will not have an undue adverse impact on existing uses or  
resources.



2           **8-B. Criteria for amendment of land use standards.**  
3           Adoption or amendment of land use standards may not be approved  
4           unless there is substantial evidence that the proposed land use  
5           standards would serve the purpose, intent and provisions of this  
6           chapter and would be consistent with the comprehensive land use  
7           plan.

8  
9           **Sec. 12. 12 MRSA §685-A, sub-§9,** as amended by PL 1973, c.  
10          569, §10, is further amended to read:

11           **9. Periodic review of district boundaries and land use**  
12           **standards.** At the end of each 5 years following initial adoption  
13           of permanent land use standards and districts, the commission  
14           shall make a comprehensive review of the classification and  
15           delineation of districts of the land use standards. The  
16           assistance of appropriate state agencies shall must be secured in  
17           making this review and public hearings shall must be held in  
18           accordance with the requirements set forth in subsection 7 7-A.

19  
20           **Sec. 13. 12 MRSA §685-B, sub-§1,** as amended by PL 1991, c. 46,  
21          §1, is repealed and the following enacted in its place:

22           **1. Review and approval required.** Except as provided in  
23           this section or by commission rule:

24           **A. A structure or part of a structure may not be erected,**  
25           **changed, converted or wholly or partly altered or enlarged**  
26           **in its use or structural form other than for normal**  
27           **maintenance or repair without a permit issued by the**  
28           **commission;**

29           **B. A person may not commence development of or construction**  
30           **on any lot, parcel or dwelling unit within any subdivision**  
31           **or sell or offer for sale any interest in any lot, parcel or**  
32           **dwelling unit within any subdivision without a permit issued**  
33           **by the commission; or**

34           **C. A person may not commence any construction or operation**  
35           **of any development without a permit issued by the commission.**

36  
37           **Sec. 14. 12 MRSA §685-B, sub-§§1-A and 1-B** are enacted to read:

38           **1-A. Exceptions.** Except as provided in this section or by  
39           commission rule:

40           **A. A permit is not required for the repair and maintenance**  
41           **of an existing road culvert or for the replacement of an**  
42           **existing road culvert, as long as the replacement culvert is:**

- 2           (1) No more than one standard culvert size wider in  
3           diameter than the culvert being replaced;  
4  
5           (2) No more than 25% longer than the culvert being  
6           replaced; and  
7  
8           (3) No longer than 75 feet.

10           Ancillary culverting activities, including excavation and  
11           filling, are included in this exemption. A person  
12           repairing, replacing or maintaining an existing culvert  
13           under this paragraph shall ensure that erosion control  
14           measures are taken to prevent sedimentation of the water and  
15           that the crossing does not block fish passage in the water  
16           course; or

18           B. A permit is not required for those aspects of a  
19           development proposal that have been reviewed and approved by  
20           the Department of Environmental Protection if the activities  
21           are an allowed use within the subdistricts for which they  
22           are proposed. Developments covered by this exemption  
23           include those subject to review within the unorganized and  
24           deorganized areas under the following provisions of Title 38:

- 26           (1) The water pollution control laws, sections 411 to  
27           424;  
28  
29           (2) The natural resources protection laws, sections  
30           480-A to 480-Z;  
31  
32           (3) The site location of development laws, sections  
33           481 to 490;  
34  
35           (4) Performance standards for excavations, sections  
36           490-A to 490-M;  
37  
38           (5) Performance standards for quarries, sections 490-W  
39           to 490-EE;  
40  
41           (6) The oil discharge prevention laws, sections 541 to  
42           560;  
43  
44           (7) The underground oil storage laws, sections 561 to  
45           570;  
46  
47           (8) The hydropower permit laws, sections 630 to 637;  
48           and  
49  
50           (9) The waste management laws, sections 1301 to 1319.

2           1-B. Delegation to staff. The commission may establish  
3 standards by which authority may be delegated to its staff, to  
4 approve with reasonable conditions or deny applications  
5 submitted. Any person aggrieved by a decision of the staff has  
6 the right to a review of that decision by the commission. A  
7 request for such a review must be made within 30 days of the  
8 staff decision.

10           **Sec. 15. 12 MRSA §685-B, sub-§3, as repealed and replaced by**  
11 **PL 1987, c. 653, §4, is repealed.**

12           **Sec. 16. 12 MRSA §685-B, sub-§3-A is enacted to read:**

13           3-A. Hearings and procedures. Hearings and procedures in  
14 connection with the review and approval of a permit application  
15 are subject to this subsection.

16           A. The commission may determine on its own motion to hold a  
17 hearing on the application.

18           B. If the commission determines to act upon a permit  
19 application without a hearing, the commission, within 120  
20 days after receiving the complete application, shall make  
21 findings of fact and issue an order either granting  
22 approval, subject to reasonable terms and conditions that  
23 the commission determines appropriate in order to fulfill  
24 the requirements and intent of this chapter, the  
25 comprehensive land use plan and the commission's standards,  
26 or denying approval of the application as proposed.

27           C. Any person aggrieved by a decision of the commission or  
28 its staff concerning any permit application upon which no  
29 hearing was held may, within 30 days of that decision,  
30 petition the commission for a hearing. The commission is  
31 not required to hold a hearing, but shall respond within 60  
32 days of receipt of the petition by notifying the petitioner  
33 in writing of the date, time and place set for the requested  
34 hearing or of the denial of the request.

35           D. Within 90 days after the commission adjourns any hearing  
36 held under this subsection, it shall make findings of fact  
37 and issue an order either granting approval, subject to  
38 reasonable terms and conditions that the commission  
39 determines appropriate in order to fulfill the requirements  
40 and intent of this chapter, the comprehensive land use plan  
41 and the commission's standards, or denying approval of the  
42 application as proposed.

2           **Sec. 17. 12 MRSA §685-B, sub-§4, ¶A**, as amended by PL 1989, c.  
430, §2, is further amended to read:

4           A. Adequate technical and financial provision has been made  
6           for complying with the requirements of the state's State's  
7           air and water pollution control and other environmental  
8           laws, and those standards and regulations adopted with  
9           respect thereto, including without limitation the minimum  
10           lot size laws, sections 4807 to 4807-G, the Site-Location-of  
11           Development-Law site location of development laws, Title 38,  
12           sections 481 to 488 490, the-Minimum-Lot-Size-Law,-secti  
13           4807-to-4807-G, and the natural resource protection laws,  
14           Title 38, chapter-3,-subchapter-I,-article-5-A, sections  
15           480-A to 480-Z, and adequate provision has been made for  
16           solid waste and sewage disposal, for controlling of  
17           offensive odors and for the securing and maintenance of  
18           sufficient healthful water supplies; and

19           **Sec. 18. 12 MRSA §685-B, sub-§4, ¶D**, as enacted by PL 1971, c.  
20           457, §5, is amended to read:

21           D. ~~Uses-of-topography,-soils-and-subsoils-meet-standards-of~~  
22           ~~the-current-soil-suitability-guide-for-land-use-planning-in~~  
23           ~~Maine,-or-which-are-adaptable-to-the-proposed-use-pursuant~~  
24           ~~to-said-guide-and~~ The proposal will not cause unreasonable  
25           soil erosion or reduction in the capacity of the land to  
26           absorb and hold water,-and and suitable soils are available  
27           for a sewage disposal system if sewage is to be disposed  
28           on-site;

29           **Sec. 19. 12 MRSA §685-D**, as repealed and replaced by PL 1985,  
30           c. 459, Pt. A, §1, is amended to read:

31           **§685-D. Funding**

32           ~~Beginning-with-fiscal-year-1985-86,-funding~~ Funding for the  
33           services and activities of the commission shall ~~come~~ comes from  
34           the General Fund and is not be allocated to the unorganized  
35           territory under Title 36, chapter 115. ~~It-is-also-the-intent-of~~  
36           ~~the-Legislature-that-no-charges-may-be-made-to-plantations,-towns~~  
37           ~~or-cities-for-fiscal-years-1983-84-or-1984-85.~~

38           **Sec. 20. 38 MRSA §480-E, first ¶**, as affected by PL 1989, c.  
39           890, Pt. A, §40 and amended by Pt. B, §73, is further amended to  
40           read:

41           The department shall process all permits under this article,  
42           except as provided in subsection 9, in accordance with chapter 2,  
43           subchapter I, and the following requirements.

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Sec. 21. 38 MRSA §480-E, sub-§9 is enacted to read:

9. Activities within jurisdiction of Maine Land Use Regulation Commission. The Maine Land Use Regulation Commission shall process all permits under this article for activities that are wholly within its jurisdiction and are not subject to review and approval by the department under any other section of this Title. The Maine Land Use Regulation Commission shall process these permits in accordance with the provisions of Title 12, Sections 681 to 689 and rules and standards adopted under those sections.

Permits for an activity located within an area subject to the jurisdiction of the Maine Land Use Regulation Commission that does not meet these criteria must be processed by the department, but may not be approved unless the commission certifies that the activity is in an appropriate subdistrict or that the commission has approved a rezoning application for the project contingent upon development approval by the department. The certification or rezoning approval is considered a required comment pursuant to section 344-B, subsection 3, paragraph B, subparagraph (2) for purposes of processing periods.

Sec. 22. 38 MRSA §480-V, sub-§1, as enacted by PL 1993, c. 721, Pt. F, §4 and affected by Pt. H, §1, is amended to read:

1. Exemptions. This article does not apply to:

A. Significant wildlife habitat not within another protected natural resource, unless that significant wildlife habitat is identified on a map adopted by the board; and,

~~B. These portions of fragile mountain areas, deer wintering areas, seabird nesting islands and great ponds, rivers, streams and brooks within the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A. The commission, in consultation with the department, shall periodically review land use standards adopted by the commission for these resources to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.~~

Sec. 23. 38 MRSA §488, sub-§9, as amended by PL 1997, c. 502, §9, is further amended to read:

9. Development within jurisdiction of Maine Land Use Regulation Commission. A development structure, from 3 acres up to and including 7 acres, or a subdivision located entirely within an area subject to the jurisdiction of the Maine Land Use

2 Regulation Commission, ~~other than a metallic mineral mining or~~  
3 ~~advanced exploration activity or an oil terminal facility, and~~  
4 ~~regulated pursuant to Title 12, sections 685 to 689,~~ is exempt  
5 from the requirements of this article. For those developments  
6 within the commission's jurisdiction, the Director of the Maine  
7 Land Use Regulation Commission may request and obtain technical  
8 assistance and recommendations from the department. The  
9 commissioner shall respond to the requests in a timely manner.  
10 The recommendations of the department must be considered by the  
11 Maine Land Use Regulation Commission in acting upon a development  
12 application.

13  
14 A development located within an area subject to the jurisdiction  
15 of the Maine Land Use Regulation Commission that is not exempt  
16 from the requirements of this article may not be approved by the  
17 department pursuant to this article unless the commission  
18 certifies that the development is in an appropriate subdistrict  
19 or that the commission has approved a rezoning application for  
20 the project contingent upon development approval by the  
21 department. The certification or rezoning approval is considered  
22 a required comment pursuant to section 344-B, subsection 3,  
23 paragraph B, subparagraph (2) for purposes of processing periods.

24 **Sec. 24. 38 MRSA §490-B, sub-§2,** as repealed and replaced by  
25 PL 1995, c. 700, §22, is repealed.

26  
27 **Sec. 25. 38 MRSA §490-D, sub-§15** is enacted to read:

28  
29 15. Excavations for borrow, clay, topsoil or silt within  
30 jurisdiction of Maine Land Use Regulation Commission. Within the  
31 jurisdiction of the Maine Land Use Regulation Commission,  
32 excavations for borrow, clay, topsoil or silt, whether alone or  
33 in combination, may not be established or expanded above 5 acres  
34 in size unless the commission certifies that the development is  
35 in an appropriate subdistrict or that the commission has approved  
36 a rezoning application for the project contingent upon  
37 development approval by the department. The certification or  
38 rezoning approval is considered a required comment pursuant to  
39 section 344-B, subsection 3, paragraph B, subparagraph (2) for  
40 purposes of processing periods.

41  
42 **Sec. 26. 38 MRSA §490-X, 2nd ¶,** as enacted by PL 1995, c. 700,  
43 §35, is repealed.

44  
45 **Sec. 27. 38 MRSA §490-Z, sub-§15** is enacted to read:

46  
47 15. Quarries within jurisdiction of Maine Land Use  
48 Regulation Commission. Quarries within the jurisdiction of the  
49 Maine Land Use Regulation Commission may not be established or  
50 expanded above one acre in size unless the commission certifies

2 that the quarry is in an appropriate subdistrict or that the  
3 commission has approved a rezoning application for the project  
4 contingent upon development approval by the department. The  
5 certification or rezoning approval is considered a required  
6 comment pursuant to section 344-B, subsection 3, paragraph B,  
7 subparagraph (2) for purposes of processing periods.

8 **Sec. 28. 38 MRSA §631, sub-§2**, as enacted by PL 1983, c. 458,  
9 §18, is amended to read:

10 **2. Policy and purpose.** The Legislature declares that  
11 hydropower justifies singular treatment. The Legislature further  
12 declares that it is the policy of the State to support and  
13 encourage the development of hydropower projects by simplifying  
14 and clarifying requirements for permits, while assuring  
15 reasonable protection of natural resources and the public  
16 interest in use of waters of the State. It is the purpose of this  
17 subarticle to require a single application and permit for the  
18 construction of all hydropower projects and for the  
19 reconstruction or structural alteration of certain projects,  
20 including water storage projects. The permit application process  
21 shall must be administered by the Department of Environmental  
22 Protection, ~~except that, for hydropower projects within the~~  
23 ~~jurisdiction of the Maine Land Use Regulation Commission, the~~  
24 ~~commission shall administer the permit application process under~~  
25 ~~this subarticle.~~

26 **Sec. 29. 38 MRSA §632, sub-§1**, as enacted by PL 1983, c. 458,  
27 §18, is amended to read:

28 **1. Board.** "Board" means the Board of Environmental  
29 Protection, ~~except that, for any hydropower project within the~~  
30 ~~jurisdiction of the Maine Land Use Regulation Commission,~~  
31 ~~"board" means the Maine Land Use Regulation Commission.~~

32 **Sec. 30. 38 MRSA §632, sub-§1-A**, as affected by PL 1989, c.  
33 890, Pt. A, §40 and enacted by Pt. B, §180, is amended to read:

34 **1-A. Commissioner.** "Commissioner" means the Commissioner  
35 of Environmental Protection, ~~except that, for any hydropower~~  
36 ~~project within the jurisdiction of the Maine Land Use Regulation~~  
37 ~~Commission, "commissioner" means the Director of the Maine Land~~  
38 ~~Use Regulation Commission.~~

39 **Sec. 31. 38 MRSA §632, sub-§2**, as affected by PL 1989, c. 890,  
40 Pt. A, §40 and amended by Pt. B, §181, is further amended to read:

41 **2. Department.** "Department" means the Department of  
42 Environmental Protection, ~~except that, for any hydropower project~~

2 within--the--jurisdiction--of--the--Maine--Land--Use--Regulation  
Commission,--"department"--means--the--Maine--Land--Use--Regulation  
4 Commission.

6 **Sec. 32. 38 MRSA §634, sub-§3**, as affected by PL 1989, c. 890,  
Pt. A, §40 and amended by Pt. B, §183, is further amended to read:

8 **3. Application review.** Within 10 working days of receiving  
a completed application, the commissioner shall notify the  
10 applicant of the official date on which the application was  
accepted.

12 The commissioner shall circulate the application among the  
14 Department of Environmental Protection, Department of  
Conservation, Department of Inland Fisheries and Wildlife,  
16 Department of Marine Resources, Department of Transportation,  
Maine Historic Preservation Commission, State Planning Office,  
18 Public Utilities Commission and the municipal officials of the  
municipality in which the project is located. The State Planning  
20 Office and the Public Utilities Commission shall submit written  
comments on section 636, subsection 7, paragraph F. For The  
22 application must also be circulated to the Maine Land Use  
Regulation Commission for projects within the its jurisdiction of  
24 the--Maine--Land--Use--Regulation--Commission,--the--director--may  
request--and--obtain--technical--assistance--and--recommendations--from  
26 the--staff--of--the--department. The--Commissioner--of--Environmental  
Protection--shall--respond--to--the--requests--in--a--timely--manner. The  
28 recommendations of the Commissioner--of--Environmental--Protection  
Maine Land Use Regulation Commission must be considered by the  
30 commissioner in acting upon a project an application  
for a project within the commission's jurisdiction.

32 **Sec. 33. 38 MRSA §635-A, 2nd ¶**, as amended by PL 1985, c. 362,  
34 §1, is repealed.

36 **Sec. 34. 38 MRSA §1310-N, first ¶**, as repealed and replaced by  
PL 1993, c. 680, Pt. A, §37, is amended to read:

38 No A person may not locate, establish, construct, expand the  
40 disposal capacity of or operate any solid waste facility unless  
approved by the department under the provisions of this chapter.  
42 When--the--proposed--facility--is--located--within--the--jurisdiction--of  
the--Maine--Land--Use--Regulation--Commission,--in--addition--to--any  
44 other--requirement,--the--department--shall--require--compliance--with  
existing--standards--of--the--commission.

46 **Sec. 35. 38 MRSA §1310-N, sub-§2-G** is enacted to read:  
48



2           2-G. Within another jurisdiction. A facility located  
3 within an area subject to the jurisdiction of the Maine Land Use  
4 Regulation Commission that is not exempt from the requirements of  
5 this article may not be approved by the department pursuant to  
6 this article unless the commission certifies that the facility is  
7 in an appropriate subdistrict or that the commission has approved  
8 a rezoning application for the project contingent upon  
9 development approval by the department. The certification or  
10 rezoning approval is considered a required comment pursuant to  
11 section 344-B, subsection 3, paragraph B, subparagraph (2) for  
12 purposes of processing periods.

13           **Sec. 36. 38 MRSA §1310-S, sub-§5,** as enacted by PL 1987, c.  
14 557, §3, is amended to read:

15           **5. Unincorporated townships and plantations.** For the  
16 purposes of this section, county commissioners shall act as  
17 municipal officers for unincorporated townships, and assessors of  
18 plantations shall act as municipal officers for plantations. A  
19 copy of the application must be provided to the Maine Land Use  
20 Regulation Commission for projects within its jurisdiction.  
21 Review comments of the Maine Land Use Regulation Commission must  
22 be considered by the commissioner in acting upon a project  
23 application.

24           **Sec. 37. PL 1993, c. 383, §42, sub-§3** is amended to read:

25           3. A permit issued by the department Department of  
26 Environmental Protection for a development--within--unorganized  
27 territory,--other--than--a--permit--for--metallic--mineral--mining--or  
28 advanced--exploration--activity,--may--be--modified--by--the--Maine--Land  
29 Use--Regulation--Commission,---Modification--of--a--permit--for--a  
30 metallic--mineral--mining--or--advanced--exploration--activity--requires  
31 approval--by--the--department--and--the--Maine--Land--Use--Regulation  
32 Commission structure that is from 3 acres up to and including 7  
33 acres or a subdivision located on a parcel entirely within an  
34 area subject to the jurisdiction of the Maine Land Use Regulation  
35 Commission, and any conditions of that permit, continues in  
36 effect and may be enforced by the department until the permit  
37 expires or is modified by the Maine Land Use Regulation  
38 Commission. Any modifications are only allowed when the total  
39 area of all modifications does not cause the structure to exceed  
40 7 acres in total. The Maine Land Use Regulation Commission may  
41 enforce a permit it has modified.

42           A permit issued by the Maine Land Use Regulation Commission for a  
43 structure in excess of 7 acres, a development that occupies a  
44 land or water area in excess of 20 acres or a development that  
45 generates 100 or more passenger car equivalents at peak hour  
46 continues in effect and may be enforced by the Maine Land Use  
47 Regulation Commission.

2 Regulation Commission until the permit expires or is modified by  
3 the department. The permit may not be modified by the department  
4 if the modification is for a subdivision or for a structure that  
5 will not exceed 7 acres. The department may enforce a permit it  
6 has modified.

7 **Sec. 38. Transitional language; natural resources protection laws.**

8 A permit issued by the Department of Environmental Protection  
9 prior to the effective date of this Act for an activity altering  
10 or adjacent to a protected natural resource within the  
11 jurisdiction of the Maine Land Use Regulation Commission and any  
12 conditions of that permit continue in effect and may be enforced  
13 by the department until the permit expires or is modified by the  
14 Maine Land Use Regulation Commission. The Maine Land Use  
15 Regulation Commission may enforce a permit it has modified.

16 **Sec. 39. Transitional language; extractions and quarries.**

17 An owner or operator of a quarry or excavation for borrow, clay, topsoil  
18 or silt, whether alone or in combination, that is subject to the  
19 jurisdiction of the Maine Land Use Regulation Commission prior to  
20 the effective date of this Act, and that has been approved  
21 pursuant to the Maine Revised Statutes, Title 12, sections 685 to  
22 689, may continue to operate in compliance with the terms and  
23 conditions of the permit. Any modification of the permit must be  
24 in conformance with Title 12, sections 685 to 689. The Maine  
25 Land Use Regulation Commission may enforce the terms of the  
26 permit.

27  
28 An owner or operator with a permit under Title 12, sections  
29 685 to 689 may file a notice of intent to comply pursuant to  
30 Title 38, chapter 3, subchapter I, article 7, Performance  
31 Standards for Excavations for Borrow, Clay, Topsoil or Silt, or  
32 article 8-A, Performance Standards for Quarries, with the  
33 Department of Environmental Protection. The approval issued  
34 under Title 12, sections 685 to 689 lapses as of the date a  
35 complete notice of intent is filed with the Department of  
36 Environmental Protection. If the permittee chooses to substitute  
37 a notification, the Department of Environmental Protection may  
38 incorporate any terms or conditions that applied to the permit  
39 issued pursuant to Title 12 into the notification approved  
40 pursuant to Title 38, chapter 3, subchapter I, article 7 or 8-A.

41 **Sec. 40. Transitional language; hydropower permit laws.**

42 A permit  
43 issued by the Maine Land Use Regulation Commission under the  
44 Maine Revised Statutes, Title 38, section 633 prior to the  
45 effective date of this Act continues in effect and may be  
46 enforced by the Maine Land Use Regulation Commission until the  
47 permit expires or is modified by the Department of Environmental  
48 Protection. The department may enforce a permit it has modified.

2

## SUMMARY

4

6 This bill eliminates redundancy in the permitting process  
8 between the Maine Land Use Regulation Commission and the  
10 Department of Environmental Protection. It alters the  
12 relationship between the 2 agencies to more closely parallel the  
relationship between municipalities and the Department of  
Environmental Protection and brings the functions of the Maine  
Land Use Regulation Commission more closely in line with those of  
a municipal planning board.

14 Under provisions of this bill, large development activities  
16 that require sophisticated technical expertise to review will be  
18 regulated by the Department of Environmental Protection  
regardless of their location in the State. Within the  
unorganized and deorganized areas of the State, routine  
20 permitting decisions and all zoning considerations will be made  
22 by the Maine Land Use Regulation Commission. All activities  
governed by the natural resources protection laws, including the  
24 alteration of wetlands, will be regulated exclusively by the  
Maine Land Use Regulation Commission within the unorganized and  
deorganized areas of the State.

26 The bill also modifies the membership requirements to serve  
28 on the Maine Land Use Regulation Commission. Rather than  
requiring that 4 members be residents of the commission's  
30 jurisdiction, the bill would require that all 7 members reside  
in, work in or have special knowledge of the needs and issues  
affecting the unorganized and deorganized areas of the State.

32

34 The bill amends the process by which rezoning requests may  
be approved by the commission. The bill expands the requirements  
36 to maintain regional field offices for the benefit of residents  
of the unorganized and deorganized areas.

38 The bill also makes many minor revisions to the statutes of  
40 the Maine Land Use Regulation Commission to delete or update  
obsolete language or unnecessary provisions and to clarify the  
commission's process for rulemaking and public hearings.