

# MAINE STATE LEGISLATURE

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NATURAL RESOURCES

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 547, L.D. 1693, Bill, "An Act to Amend the Comprehensive Planning and Land Use Regulation Laws"

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

Sec. 1. 30-A MRSA §4301, sub-§§6-B and 13-A as enacted to read:

6-B. Impact fee ordinance. "Impact fee ordinance" means an ordinance that establishes the applicability, formula and means by which impact fees are assessed.

13-A. Rate of growth ordinance. "Rate of growth ordinance" means a land use ordinance or other rule that limits the number of building or development permits issued by a municipality or other jurisdiction over a designated time frame.

Sec. 2. 30-A MRSA §4312, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Limitation on state rule-making authority. The office is authorized to adopt rules necessary to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. This section shall may not be construed to

grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

**Sec. 3. 30-A MRSA §4314**, as amended by PL 1993, c. 721, Pt. A, §1 and affected by Pt. H, §1, is further amended to read:

**§4314. Transition; savings clause**

**1. Comprehensive plan.** A municipal comprehensive plan or land--use--regulation--or--ordinance adopted or amended by a municipality under former Title 30, chapter 239, subchapter V or VI remains in effect until amended or repealed in accordance with this subchapter.

**2. Shoreland zoning ordinances.** Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that regulates land use beyond that the area required by Title 38, chapter 3, subchapter I, article 2-B and that is not consistent with a comprehensive plan adopted under this subchapter is void no longer in effect 24 months after adoption of the plan or by July 1, 1994, whichever date is later.

**3. Rate of growth, zoning and impact fee ordinances.** Any ~~land--use--ordinance--not--consistent--with--a--comprehensive--plan adopted--according--to--this--subchapter--is--void~~ After January 1, 2003, any portion of a municipality's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted under this subchapter. The portion of a rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan is no longer in effect unless:

~~A.--After January 1, 1998, in any municipality that received a planning assistance grant and an implementation assistance grant under former section 4344, subsection 4 prior to December 23, 1991, and~~

~~B.--After January 1, 2003, in all other municipalities.~~

C. The ordinance or portion of the ordinance is exempted under subsection 2;

D. The municipality is under contract with the office to prepare a comprehensive plan or implementation program, in which case the ordinance or portion of the ordinance remains valid for up to 4 years after receipt of the first installment of its first planning assistance grant or for up to 2 years after receipt of the first installment of its first implementation assistance grant, whichever is earlier;

2 E. The ordinance or portion of the ordinance conflicts with  
3 a newly adopted comprehensive plan or plan amendment adopted  
4 under this subchapter, in which case the ordinance or  
5 portion of the ordinance remains in effect for a period of  
6 up to 24 months immediately following adoption of the  
7 comprehensive plan or plan amendment; or

8 F. The municipality applied for and was denied financial  
9 assistance for its first planning assistance or  
10 implementation assistance grant under this subchapter due to  
11 lack of state funds on or before January 1, 2003. If the  
12 office subsequently offers the municipality its first  
13 planning assistance or implementation assistance grant, the  
14 municipality has up to one year to contract with the office  
15 to prepare a comprehensive plan or implementation program in  
16 which case the municipality's ordinances will be subject to  
17 paragraph D.

18 **4. Encumbered balances at year-end.** At the end of each  
19 fiscal year, all encumbered balances in accounts for financial  
20 assistance and regional planning grants may be carried twice.

21 **Sec. 4. 30-A MRSA §4326, sub-§3, ¶A,** as amended by PL 1999, c.  
22 776, §8, is further amended to read:

23 A. Identify and designate at least 2 basic types of  
24 geographic areas:

25 (1) Growth areas, which are those areas suitable for  
26 orderly residential, commercial and industrial  
27 development or any combination of those types of  
28 development, forecast over the next 10 years. Each  
29 municipality shall:

- 30 (a) Establish standards for these developments;
- 31 (b) Establish timely permitting procedures;
- 32 (c) Ensure that needed public services are  
33 available within the growth area; and
- 34 (d) Prevent inappropriate development in natural  
35 hazard areas, including flood plains and areas of  
36 high erosion; and

37 (2) Rural areas, which are those areas where  
38 protection should be provided for agricultural, forest,  
39 open space and scenic lands within the municipality.  
40 Each municipality shall adopt land use policies and  
41 ordinances to discourage incompatible development.

2           These policies and ordinances may include, without  
4           limitation: density limits; cluster or special zoning;  
          acquisition of land or development rights; or performance  
          standards.

6  
8           A municipality is not required to identify growth areas for  
          residential, commercial or industrial growth if it  
10           demonstrates that it is not possible to accommodate future  
          residential, commercial or industrial growth in these areas  
12           because of severe physical limitations, including, without  
          limitation, the lack of adequate water supply and sewage  
14           disposal services, very shallow soils or limitations imposed  
          by protected natural resources; or it demonstrates that the  
          municipality has experienced minimal or no residential,  
16           commercial or industrial development over the past decade  
          and this condition is expected to continue over the 10-year  
18           planning period. A municipality exercising the discretion  
          afforded by this paragraph shall review the basis for its  
20           demonstration during the periodic revisions undertaken  
          pursuant to section 4327;

22  
24           **Sec. 5. 30-A MRSA §4346, 2nd ¶**, as amended by PL 1993, c. 721,  
          Pt. A, §7 and affected by Pt. H, §1, is further amended to read:

26           The office may enter into financial assistance grants only  
28           to the extent that funds are available. In making grants, the  
          office shall consider the need for planning in a municipality,  
30           the proximity of the municipality to other towns that are  
          conducting or have completed the planning process and the  
32           economic and geographic role of the municipality within a  
          regional context. The office may consider other criteria in  
34           making grants, as long as the criteria support the goal of  
          encouraging and facilitating the adoption and implementation of a  
36           local growth management program consistent with the provisions of  
          this article. In order to maximize the availability of the  
38           technical and financial assistance program to all municipalities  
          and regional councils, financial assistance programs administered  
40           competitively under this article are exempt from rules adopted by  
          the Department of Administrative and Financial Services pursuant  
42           to Title 5, section 1825-C for use in the purchase of services  
          and the awarding of grants and contracts. The office shall  
44           publish a program statement describing its grant program and  
          advertising its availability to eligible applicants.

46           **Sec. 6. 30-A MRSA §4346, sub-§2-A**, as enacted by PL 1993, c.  
48           721, Pt. A, §10 and affected by Pt. H, §1, is amended to read:

2           **2-A. Financial assistance grants.** A contract for a financial assistance grant must:

4           A. Provide for the payment of a specific amount for the purposes of planning and preparing a comprehensive plan;

6           B. Provide for the payment of a specific amount for the purposes of implementing that plan; and

8           C. Include specific timetables governing the preparation and submission of products by the municipality.

10           The office may not require a municipality to provide matching funds in excess of 25% of the value of that municipality's financial assistance contract for its first planning assistance grant and implementation assistance grant. The office may require a higher match for other grants, including, but not limited to, grants for the purpose of updating comprehensive plans. This match limitation does not apply to distribution of federal funds that the office may administer.

12           **Sec. 7. 30-A MRSA §4346, sub-§2-C** is enacted to read:

14           **2-C. Program evaluation.** Any recipient of a financial assistance grant shall cooperate with the office in performing program evaluations required under section 4331.

16           **Sec. 8. 30-A MRSA §4346, sub-§5,** as enacted by PL 1991, c. 780, Pt. E, §2, is amended to read:

18           **5. Coordination.** State agencies with regulatory or other authority affecting the goals established in this subchapter shall conduct their respective activities in a manner consistent with the goals established under this subchapter, including, but not limited to, coordinating with municipalities, regional councils and other state agencies in meeting the state goals; providing available information to regions and municipalities as described in section 4326, subsection 1; cooperating with efforts to integrate and provide access to geographic information system data; making state investments and awarding grant money as described in section 4349-A; and conducting reviews of growth management programs as provided in section 4347-A, subsection 3, paragraph A. Without limiting the application of this section to other state agencies, the following agencies shall comply with this ~~section~~ subchapter. The Land and Water Resources Council shall periodically, but in no event less than biannually, review the effectiveness of agency coordination efforts, including, but not limited to, those in section 4349-A:

20           A. Department of Conservation;

- 2 B. Department of Economic and Community Development;
- 4 C. Department of Environmental Protection;
- 6 D. Department of Agriculture, Food and Rural Resources;
- 8 E. Department of Inland Fisheries and Wildlife;
- 10 F. Department of Marine Resources;
- 12 G. Department of Transportation;
- 14 G-1. Department of Human Services;
- 16 G-2. Executive Department, State Planning Office;
- 18 H. Finance Authority of Maine; and
- 20 I. Maine State Housing Authority.

22 **Sec. 9. 30-A MRSA §4347**, as amended by PL 1993, c. 166, §§9  
24 and 10, is repealed.

26 **Sec. 10. 30-A MRSA §4347-A** is enacted to read:

28 **§4347-A. Review of programs by office**

30 **1. Comprehensive plans.** A municipality that chooses to  
32 prepare a growth management program and receives a planning grant  
34 under this article shall submit its comprehensive plan to the  
36 office for review. The office shall review plans for consistency  
38 with the goals and guidelines established in this subchapter. Any  
contract for a planning assistance grant must include specific  
timetables governing the review of the comprehensive plan by the  
office. Any comprehensive plan submitted for review more than 12  
months following a contract end date may be required to update  
data, projections and other time-sensitive portions of the plan  
or program to the office's most current review standards.

40 **2. Growth management programs.** A municipality may at any  
42 time request a certificate of consistency for its growth  
management program.

44 **A.** Upon a request for review under this section, the office  
46 shall review the program and determine whether the program  
48 is consistent with the procedures, goals and guidelines  
established in this subchapter.

2 B. Except as provided in subsection 1, certification by the  
3 office of a municipality's growth management program under  
4 this article is valid for 10 years. To maintain  
5 certification, a municipality shall periodically review its  
6 growth management program and submit to the office in a  
7 timely manner any revisions necessary to account for  
8 changes, including changes caused by growth and development.  
9 Certification does not lapse in any year in which the  
10 Legislature does not appropriate funds to the office for the  
11 purposes of reviewing programs for recertification.

12 3. Review of comprehensive plan or growth management  
13 program. In reviewing a comprehensive plan or growth management  
14 program, the office shall:

16 A. Solicit written comments on any proposed comprehensive  
17 plan or growth management program from regional councils,  
18 state agencies, all municipalities contiguous to the  
19 municipality submitting a comprehensive plan or growth  
20 management program and any interested residents of the  
21 municipality or of contiguous municipalities. The comment  
22 period extends for 45 days after the office receives the  
23 comprehensive plan or growth management program.

24  
25 (1) Each state agency reviewing the proposal shall  
26 designate a person or persons responsible for  
27 coordinating the agency's review of the comprehensive  
28 plan or growth management program.

30 (2) Any regional council commenting on a program shall  
31 determine whether the program is compatible with the  
32 programs of other municipalities that may be affected  
33 by the program and with regional policies or needs  
34 identified by the regional council;

36 B. Prepare all written comments from all sources in a form  
37 to be forwarded to the municipality;

38  
39 C. Within 60 days after receiving the comprehensive plan or  
40 90 days after receiving the growth management program, send  
41 all written comments on the comprehensive plan or growth  
42 management program to the municipality and any applicable  
43 regional council. If warranted, the office shall issue  
44 findings specifically describing how the submitted plan or  
45 growth management program is not consistent with this  
46 subchapter and the recommended measures for remedying the  
47 deficiencies.

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49 (1) In its findings, the office shall clearly indicate  
50 its position on any point on which there are



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significant conflicts among the written comments submitted to the office.

(2) If the office finds that the comprehensive plan or growth management program was adopted under this subchapter, the office shall issue a finding of consistency for the comprehensive plan or a certificate of consistency for the growth management program.

(3) Notwithstanding paragraph D, if a municipality requests a certificate of consistency for its growth management program, any unmodified component of that program that has previously been reviewed by the office and has received a finding of consistency will retain that finding during program certification review by the office as long as the finding of consistency is current as defined in rules adopted by the office;

D. Provide ample opportunity for the municipality submitting a comprehensive plan or growth management program to respond to and correct any identified deficiencies in the plan or program. A finding of inconsistency for a comprehensive plan or growth management program may be addressed within 24 months of the date of the finding without jeopardizing partial findings of consistency attained during that review. After 24 months, the plan or program must be resubmitted in its entirety for state review under the office's most current review standards; and

E. Provide an expedited review and certification procedure for those submissions that represent minor amendments to certified growth management programs.

The office's decision on consistency of a comprehensive plan or growth management program constitutes final agency action.

4. Updates and amendments. A municipality may submit proposed amendments to a comprehensive plan or growth management program to the office for review in the same manner as provided for the review of new plans and programs. Subsequent to voluntary certification under this subsection, the municipality shall file a copy of an amendment to a growth management program with the office within 30 days after adopting the amendment and at least 60 days prior to applying for any state grant program that offers a preference for consistency or certification.

5. Regional councils. Subject to the availability of funding and pursuant to the conditions of a contract, each regional council shall review and submit written comments on the comprehensive plan or growth management program of any municipality within its planning region. The comments must be submitted to the office and contain an analysis of:

2           A. Whether the comprehensive plan or growth management  
4           program is compatible with identified regional policies and  
          needs; and

6           B. Whether the comprehensive plan or growth management  
8           program is compatible with plans or programs of other  
          municipalities that may be affected by the proposal.

10           **Sec. 11. 30-A MRSA §4348**, as amended by PL 1993, c. 166, §11,  
12           is repealed.

14           **Sec. 12. 30-A MRSA §4349-A, sub-§1, ¶A**, as enacted by PL 1999,  
          c. 776, §10, is amended to read:

16           A. A locally designated growth area, as identified in a  
18           comprehensive plan adopted pursuant to and consistent with  
          the goals and guidelines of this subchapter or as identified  
20           in a growth management program certified under section  
          4347-A;

22           **Sec. 13. 30-A MRSA §4349-A, sub-§2**, as enacted by PL 1999, c.  
24           776, §10, is amended to read:

26           **2. State facilities.** The Department of Administrative and  
28           Financial Services, Bureau of General Services shall develop site  
30           selection criteria for state office buildings, state courts and  
32           other state civic buildings that serve public clients and  
34           customers, whether owned or leased by the State, that give  
36           preference to the priority locations identified in this  
38           subsection while ensuring safe, healthy, appropriate work space  
40           for employees and clients and accounting for agency  
42           requirements. Preference must be given to priority locations in  
          the following order: service center downtowns, service center  
44           growth areas and downtowns and growth areas in other than service  
          center communities. If no suitable priority location exists or  
46           if the priority location would impose an undue financial hardship  
48           on the occupant or is not within a reasonable distance of the  
          clients and customers served, the facility must be located in  
50           accordance with subsection 1. The following state facilities are  
          exempt from this subsection: a state liquor store; a lease of  
          less than 500 square feet; and a lease with a tenure of less than  
          one year, including renewals.

~~For the purposes of this subsection, "service center" means a~~  
~~community that serves the surrounding region, drawing workers,~~  
~~shoppers and others into the community for jobs and services.~~

50           **Sec. 14. 30-A MRSA §4349-A, sub-§2-A** is enacted to read:

2 2-A. State's role in implementation of growth management  
3 programs. All state agencies, as partners in local and regional  
4 growth management efforts, shall contribute to the successful  
5 implementation of comprehensive plans and growth management  
6 programs adopted under this subchapter by making investments,  
7 delivering programs and awarding grants in a manner that  
8 reinforces the policies and strategies within the plans or  
9 programs. Assistance must be provided within the confines of  
10 agency policies, available resources and considerations related  
11 to overriding state interest.

12 Sec. 15. 30-A MRSA §4349-A, sub-§3, as enacted by PL 1999, c.  
13 776, §10, is amended to read:

14 3. Preference for other state grants and investments. When  
15 awarding grants or assistance-~~for capital investments~~ making a  
16 discretionary investment under any of the programs under  
17 paragraphs A and B or undertaking its own capital investment  
18 programs other than for projects identified in section 4301,  
19 subsection 5-B, a state agency shall respect the primary purpose  
20 of its grant or investment program and, to the extent feasible,  
21 give preference first to a municipality that receives a  
22 certificate of consistency under section 4348-~~or~~ 4347-A and 2nd  
23 to a municipality that has adopted a comprehensive plan and  
24 implementation---strategies consistent with the goals and  
25 guidelines of this subchapter over a municipality that does not  
26 obtain the certificate or finding of consistency within 4 years  
27 after receipt of the first installment of a financial assistance  
28 grant or rejection of an offer of financial assistance. This  
29 subsection applies to:

30 A. Programs that assist in the acquisition of land for  
31 conservation, natural resource protection, open space or  
32 recreational facilities under Title 5, chapter 353; and

33 B. Programs intended to:

34 (1) Accommodate or encourage additional growth and  
35 development;

36 (2) Improve, expand or construct public facilities; or

37 (3) Acquire land for conservation or management of  
38 specific economic and natural resource concerns.

39 This subsection does not apply to state grants or other  
40 assistance for sewage treatment facilities, public health  
41 programs or education.

42 The office shall work with state agencies to prepare mechanisms

for establishing preferences in specific investment and grant programs as described in paragraphs A and B.

**Sec. 16. 30-A MRSA §5953-D, sub-§3, ¶D**, as amended by PL 1999, c. 776, §13, is further amended to read:

D. In the case of a public service infrastructure grant or loan, the Department of Economic and Community Development affirms that the applicant has met the conditions of this paragraph.

(1) A municipality is eligible to receive a grant or a loan, or a combination of both, if that municipality has adopted a local growth management program certified under section 4348 4347-A that includes a capital improvement program composed of the following elements:

(a) An assessment of all public facilities and services, such as, but not limited to, roads and other transportation facilities, sewers, schools, parks and open space, fire and police;

(b) An annually reviewed 5-year plan for the replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet expected growth and economic development. The plan must include projections of when and where those facilities will be required; and

(c) An assessment of the anticipated costs for replacement, expansion or construction of public facilities, an identification of revenue sources available to meet these costs and recommendations for meeting costs required to implement the plan.

(2) A municipality is eligible to receive a loan if that municipality:

(a) Has adopted a comprehensive plan that is determined by the Executive Department, State Planning Office to be consistent with section 4326, subsections 1 to 4.

Subject to the limitations of this subsection, 2 or more municipalities that each meet the requirements of subparagraphs (1) or (2) may jointly apply for assistance under this section; and



2 The Department of Human Services will incur some minor  
3 additional costs to work with municipalities and other state  
4 agencies in the development of growth management plans.

6 All state departments and agencies may incur some minor  
7 additional costs to assist municipalities in the implementation  
8 of growth management programs. These costs can be absorbed  
9 within the agencies' existing budgeted resources.'

10  
11 **SUMMARY**

12 This amendment amends the comprehensive planning and land  
13 use regulation laws in the following ways.

16 1. It authorizes the State Planning Office within the  
17 Executive Department to adopt rules.

18 2. It clarifies that if a town wants to have a shoreland  
19 zone larger than Department of Environmental Protection  
20 guidelines, then the shoreland zone ordinance must be based on a  
21 comprehensive plan. If the ordinance is not consistent with a  
22 comprehensive plan within 24 months after adoption of the plan,  
23 the ordinance will no longer be in effect.

26 3. It provides that after January 1, 2003, rate of growth,  
27 zoning and impact fee ordinances must be consistent with a  
28 comprehensive plan.

30 4. It provides that only those portions of a rate of  
31 growth, zoning or impact fee ordinance that are not consistent  
32 with a comprehensive plan are subject to being deemed no longer  
33 in effect.

34 5. It temporarily exempts from the consistency requirement  
35 ordinances of a town that is in the process of preparing a  
36 comprehensive plan or implementation program and ordinances that  
37 conflict with a newly adopted comprehensive plan or plan  
38 amendment.

40 6. It temporarily exempts from the consistency requirement  
41 ordinances of a town that previously requested planning or  
42 implementation grants but were denied due to lack of state funds.

44 7. It exempts slow growing areas from having to establish  
45 any growth areas; current law only exempts residential growth  
46 areas.

48 8. It exempts certain financial assistance programs from  
50 rules adopted by the Department of Administrative and Financial

Services for use in the purchase of services and the awarding of grants and contracts.

9. It allows the State Planning Office to require a higher matching requirement for grants to update comprehensive plans.

10. It requires a recipient of a financial assistance grant to cooperate with the State Planning Office in performing program evaluations.

11. It requires coordination among state agencies.

12. It amends the comprehensive plan and growth management program review process undertaken by the State Planning Office.

13. It provides that the State Planning Office's decision on consistency of a comprehensive plan or growth management program constitutes final agency action.

14. It authorizes the State to make growth-related capital investments in a designated growth area if it is identified in a certified growth management program.

15. It deletes the definition of "service center" from the growth management laws.

16. It requires state agencies to contribute to the implementation of comprehensive plans and growth management programs by making investments, delivering programs and awarding grants in a manner that reinforces the policies and strategies within the comprehensive plans or growth management programs.

17. It corrects cross-references.

18. It also adds a fiscal note to the bill.