

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND SPECIAL SESSION-2004

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Legislative Document

No. 1900

S.P. 744

In Senate, March 2, 2004

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**An Act To Implement the Recommendations of the Community  
Preservation Advisory Committee Regarding the State Planning  
Office's Review of Growth Management Programs**

(EMERGENCY)

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Reported by Senator MARTIN of Aroostook for the Joint Standing Committee on Natural Resources pursuant to Resolve 2003, chapter 34 and chapter 101, section 3.

Reference to the Committee on Natural Resources suggested and ordered printed under Joint Rule 218.

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

JOY J. O'BRIEN  
Secretary of the Senate

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4           **Whereas,** several municipalities may lose financial  
6 assistance and regional planning grants if the law is not  
clarified to allow those grants to be carried forward twice; and

8           **Whereas,** in the judgment of the Legislature, these facts  
10 create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
12 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

16           **Sec. 1. 5 MRSA §1589, first ¶,** as amended by PL 1995, c. 464,  
18 §5, is further amended to read:

20           At the end of each fiscal year, unencumbered appropriation  
and allocation balances lapse into the appropriate fund and are  
22 not available unless authorized by law. Encumbered balances may  
not be carried forward more than once at the end of a fiscal  
24 year, except that all encumbered balances and accounts for  
financial assistance and regional planning grants in accordance  
26 with Title 30-A, chapter 187 may be carried forward for 2 years  
beyond the year in which those balances are encumbered.

28           **Sec. 2. 30-A MRSA §4314, sub-§1,** as amended by PL 2001, c.  
30 406, §3, is further amended to read:

32           **1. Comprehensive plan.** A municipal comprehensive plan  
adopted or amended by a municipality under former Title 30,  
34 chapter 239, subchapter V 5 or VI 6 remains in effect until  
amended or repealed in accordance with the procedures, goals and  
36 guidelines established in this subchapter.

38           **Sec. 3. 30-A MRSA §4314, sub-§2,** as amended by PL 2001, c.  
40 406, §3, is repealed and the following enacted in its place:

42           **2. Shoreland and floodplain zoning ordinances.**  
Notwithstanding section 4352, subsection 2, any portion of a  
44 zoning ordinance that is not consistent with a comprehensive plan  
adopted in accordance with the procedures, goals and guidelines  
46 established in this subchapter is no longer in effect 24 months  
after adoption of the plan unless the ordinance:

48           **A. Does not regulate land use beyond the area required by  
Title 38, chapter 3, subchapter 1, article 2-B; or**

2           B. Is adopted pursuant to and complies with the provisions  
3           of Title 38, section 440 and complies with the requirements  
4           of the Federal Flood Insurance Program.

6           **Sec. 4. 30-A MRSA §4314, sub-§3,** as amended by PL 2001, c.  
7           578, §10, is further amended to read:

8  
9           **3. Rate of growth, zoning and impact fee ordinances.** After  
10          January 1, 2003, any portion of a municipality's or  
11          multimunicipal region's rate of growth, zoning or impact fee  
12          ordinance must be consistent with a comprehensive plan adopted  
13          under in accordance with the procedures, goals and guidelines  
14          established in this subchapter. The portion of a rate of growth,  
15          zoning or impact fee ordinance that is not consistent with a  
16          comprehensive plan is no longer in effect unless:

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

19  
20          D. The municipality or multimunicipal region is under  
21          contract with the office to prepare a comprehensive plan or  
22          implementation program, in which case the ordinance or  
23          portion of the ordinance remains valid for up to 4 years  
24          after receipt of the first installment of its first planning  
25          assistance grant or for up to 2 years after receipt of the  
26          first installment of its first implementation assistance  
27          grant, whichever is earlier;

28  
29          E. The ordinance or portion of the ordinance conflicts with  
30          a newly adopted comprehensive plan or plan amendment adopted  
31          under in accordance with the procedures, goals and  
32          guidelines established in this subchapter, in which case the  
33          ordinance or portion of the ordinance remains in effect for  
34          a period of up to 24 months immediately following adoption  
35          of the comprehensive plan or plan amendment; or

36  
37          F. The municipality or multimunicipal region applied for  
38          and was denied financial assistance for its first planning  
39          assistance or implementation assistance grant under this  
40          subchapter due to lack of state funds on or before January  
41          1, 2003. If the office subsequently offers the municipality  
42          or multimunicipal region its first planning assistance or  
43          implementation assistance grant, the municipality or  
44          multimunicipal region has up to one year to contract with  
45          the office to prepare a comprehensive plan or implementation  
46          program, in which case the municipality's or multimunicipal  
47          region's ordinances will be subject to paragraph D.  
48

2           **Sec. 5. 30-A MRSA §4314, sub-§4**, as enacted by PL 1991, c.  
722, §6 and affected by §11, is repealed.

4           **Sec. 6. 30-A MRSA §4323, sub-§2**, as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

6           **2. Growth management program.** Adopt and amend local growth  
8 management programs, including comprehensive plans and  
implementation programs, consistent with the procedures, goals  
10 and guidelines established in this subchapter; and

12           **Sec. 7. 30-A MRSA §4324, sub-§§1 and 2**, as amended by PL 2001,  
c. 578, §13, are further amended to read:

14           **1. Growth management program.** Each municipality or  
16 multimunicipal region may prepare a growth management program in  
accordance with this section or may amend its existing  
18 comprehensive plan and existing land use ordinances to comply  
with the procedures, goals and guidelines established in this  
20 subchapter.

22           **2. Planning committee.** If a municipality or multimunicipal  
region chooses to prepare a growth management program, the  
24 municipal officers of a municipality or combination of  
municipalities shall designate and establish a planning  
26 committee, which may include one or more municipal officials.

28           A. The municipal officers may designate any existing  
planning board or district established under subchapter IV  
30 4, or a former similar provision, as the planning  
committee. Planning boards established under former Title  
32 30, section 4952, subsection 1 continue to be governed by  
those provisions until they are superseded by municipal  
34 charter or ordinance.

36           B. The planning committee may develop and maintain a  
comprehensive plan and may develop any portion of an  
38 implementation program to which it is assigned in an adopted  
comprehensive plan or otherwise directed by the municipal  
40 officers or municipal legislative body or bodies. In  
performing these duties, the planning committee shall:

42                   (1) Hold public hearings and use other methods to  
44 solicit and strongly encourage citizen input; and

46                   (2) Prepare the comprehensive plan or any portion of  
the implementation program to which it is assigned in  
48 an adopted comprehensive plan and make recommendations  
to the municipal legislative body regarding the

2 adoption and implementation of the program or amended  
program.

4 **Sec. 8. 30-A MRS §4324, sub-§8,** as amended by PL 2001, c.  
578, §13, is further amended to read:

6 **8. Public hearing required.** The planning committee shall  
8 hold at least one public hearing on its proposed comprehensive  
plan.

10 A. Notice of ~~any a~~ public hearing must be posted in each  
12 municipality at least 30 days before the hearing, except  
14 that, if a follow-up hearing is held pursuant to comments  
made at a public hearing, the follow-up hearing may be  
16 conducted if notice is posted at least 14 days prior to the  
hearing.

18 B. A copy of the proposed comprehensive plan must be made  
20 available for public inspection at each municipal office or  
other convenient location with regular public hours at least  
22 30 days before the hearing. If modification of the plan is  
proposed pursuant to comments made at a public hearing, and  
24 if a follow-up public hearing is to be held, the proposed  
changes must be made available for public inspection at each  
26 municipal office or other convenient location with regular  
public hours at least 7 days before any follow-up hearing.

28 **Sec. 9. 30-A MRS §4345, first ¶,** as amended by PL 2001, c.  
578, §18, is further amended to read:

30 Under the provisions of this article, a municipality or  
32 multimunicipal region may request financial or technical  
assistance from the office for the purpose of planning and  
34 implementing a growth management program. A municipality or  
multimunicipal region that requests and receives a financial  
36 assistance grant shall develop and implement its growth  
management program in cooperation with the office and in a manner  
38 consistent with the ~~provisions of this article~~ procedures, goals  
and guidelines established in this subchapter.

40 **Sec. 10. 30-A MRS §4346, 2nd ¶,** as amended by PL 2001, c.  
42 578, §19, is further amended to read:

44 The office may enter into financial assistance grants only  
to the extent that funds are available. In making grants, the  
46 office shall consider the need for planning in a municipality or  
multimunicipal region, the proximity of the municipality or  
48 multimunicipal region to other areas that are conducting or have  
completed the planning process and the economic and geographic  
50 role of the municipality or multimunicipal region within a

2 regional context. The office may consider other criteria in  
3 making grants, as long as the criteria support the goal of  
4 encouraging and facilitating the adoption and implementation of  
5 local and multimunicipal growth management programs consistent  
6 with the ~~provisions--of--this--article~~ procedures, goals and  
7 guidelines established in this subchapter. In order to maximize  
8 the availability of the technical and financial assistance  
9 program to all municipalities, multimunicipal regions and  
10 regional councils, financial assistance programs administered  
11 competitively under this article are exempt from rules adopted by  
12 the Department of Administrative and Financial Services pursuant  
13 to Title 5, section 1825-C for use in the purchase of services  
14 and the awarding of grants and contracts. The office shall  
15 publish a program statement describing its grant program and  
16 advertising its availability to eligible applicants.

17 **Sec. 11. 30-A MRSA §4346, sub-§2-B, ¶H,** as amended by PL 2001,  
18 c. 578, §19, is further amended to read:

19 H. Any other purpose agreed to by the office and the  
20 municipality or multimunicipal region that is directly  
21 related to the preparation of a comprehensive plan or the  
22 implementation of a comprehensive plan adopted under in  
23 accordance with the procedures, goals and guidelines  
24 established in this subchapter.

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

26 **2-D. Encumbered balances at year-end.** Notwithstanding  
27 Title 5, section 1589, at the end of each fiscal year, all  
28 encumbered balances accounts for financial assistance and  
29 regional planning grants may be carried forward for 2 years  
30 beyond the year in which those balances are encumbered.

31 **Sec. 13. 30-A MRSA §4347-A, sub-§1,** as amended by PL 2001, c.  
32 578, §20, is repealed and the following enacted in its place:

33 **1. Comprehensive plans.** A municipality or multimunicipal  
34 region that chooses to prepare a growth management program and  
35 that receives a planning grant under this article shall submit  
36 its comprehensive plan to the office for review. A municipality  
37 or multimunicipal region that chooses to prepare a growth  
38 management program without receiving a planning grant under this  
39 article may submit its comprehensive plan to the office for  
40 review.

41 **A.** The office shall review plans for consistency with the  
42 procedures, goals and guidelines established in this  
43 subchapter. A contract for a planning assistance grant must  
44 include specific timetables governing the review of the  
45 review.

2 comprehensive plan by the office. A comprehensive plan  
3 submitted for review more than 12 months following a  
4 contract end date may be required to contain data,  
5 projections and other time-sensitive portions of the plan or  
6 program that are in compliance with the office's most  
7 current review standards.

8 B. Except as provided in paragraph C, a finding of  
9 consistency of a municipality's or multimunicipal region's  
10 comprehensive plan under this article is valid for 15 years  
11 from the date of adoption or finding of consistency by the  
12 office, whichever is earlier, unless otherwise stated in the  
13 finding. The office may adopt rules to require that a  
14 municipality's or multimunicipal region's comprehensive plan  
15 under this article provide a schedule for future update of  
16 the plan to begin no later than 12 years after adoption or  
17 finding of consistency by the office, whichever is earlier.  
18 In no case is a finding of consistency valid for more than  
19 15 years from the original adoption or finding date,  
20 whichever is earlier. Rules adopted pursuant to this  
21 paragraph are routine technical rules as defined in Title 5,  
22 chapter 375, subchapter 2-A.

23 C. A finding of consistency dated prior to January 1, 1996  
24 is valid until January 1, 2006 or for 15 years from the  
25 finding date, whichever is later.

26 **Sec. 14. 30-A MRSA §4347-A, sub-§2, ¶C** is enacted to read:

27 C. Upon a request for review under this section, the office  
28 may review rate of growth, impact fee and zoning ordinances  
29 to determine whether the ordinances are consistent with a  
30 comprehensive plan that has been found consistent under this  
31 section without requiring submission of all elements of a  
32 growth management program. An affirmative finding of  
33 consistency by the office is required for a municipality or  
34 multimunicipal region to assert jurisdiction as provided in  
35 section 4349-A and section 4352, subsection 6.

36 **Sec. 15. 30-A MRSA §4347, sub-§3, ¶¶C and D,** as amended by PL  
37 2001, c. 578, §20, are further amended to read:

38 C. Within 60 days after receiving the comprehensive plan or  
39 90 days after receiving the growth management program, send  
40 all written comments on the comprehensive plan or growth  
41 management program to the municipality or multimunicipal  
42 region and any applicable regional council. If warranted,  
43 the office shall issue findings specifically describing how  
44 the submitted plan or growth management program is not  
45 consistent with the procedures, goals and guidelines

2 established in this subchapter and the recommended measures  
for remedying the deficiencies.

4 (1) In its findings, the office shall clearly indicate  
its position on any point on which there are  
6 significant conflicts among the written comments  
submitted to the office.

8 (2) If the office finds that the comprehensive plan or  
10 growth management program was adopted ~~under~~ in  
accordance with the procedures, goals and guidelines  
12 established in this subchapter, the office shall issue  
a finding of consistency for the comprehensive plan or  
14 a certificate of consistency for the growth management  
program.

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

26 D. Provide ample opportunity for the municipality or  
28 multimunicipal region submitting a comprehensive plan or  
growth management program to respond to and correct any  
30 identified deficiencies in the plan or program. A finding  
of inconsistency for a comprehensive plan or growth  
32 management program may be addressed within 24 months of the  
date of the finding without ~~jeopardizing partial findings of~~  
34 ~~consistency attained during that review~~ addressing any new  
review standards that are created during that time interval.  
36 After 24 months, the plan or program must be resubmitted in  
its entirety for state review under the office's most  
38 current review standards; and

40 **Sec. 16. 30-A MRSA §4349-A, sub-§1, ¶A**, as amended by PL 2001,  
c. 406, §12, is further amended to read:

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

48 **Sec. 17. 30-A MRSA §4349-A, sub-§3**, as amended by PL 2001, c.  
50 406, §15, is further amended to read:

2           **3. Preference for other state grants and investments.** When  
3           awarding grants or making a discretionary investment under any of  
4           the programs under paragraphs A and B or undertaking its own  
5           capital investment programs other than for projects identified in  
6           section 4301, subsection 5-B, a state agency shall respect the  
7           primary purpose of its grant or investment program and, to the  
8           extent feasible, give preference first to a municipality that  
9           receives a certificate of consistency under section 4347-A and  
10          2nd to a municipality that has adopted a comprehensive plan  
11          consistent with the procedures, goals and guidelines of this  
12          subchapter over a municipality that does not obtain the  
13          certificate or finding of consistency within 4 years after  
14          receipt of the first installment of a financial assistance grant  
15          or rejection of an offer of financial assistance. This  
16          subsection applies to:

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

20           B. Programs intended to:

21           (1) Accommodate or encourage additional growth and  
22           development;

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

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

26           This subsection does not apply to state grants or other  
27           assistance for sewage treatment facilities, public health  
28           programs or education.

29           The office shall work with state agencies to prepare mechanisms  
30           for establishing preferences in specific investment and grant  
31           programs as described in paragraphs A and B.

32           **Sec. 18. 30-A MRSA §4352, sub-§6**, as amended by PL 1993, c.  
33           721, Pt. A, §11 and affected by Pt. H, §1, is further amended to  
34           read:

35           **6. Effect on State.** ~~A zoning ordinance that is not~~  
36           ~~consistent with a comprehensive plan that is consistent with the~~  
37           ~~provisions of section 4326 is advisory with respect to the~~  
38           ~~State. Except as provided in this section, a state agency shall~~  
39           ~~emply with a zoning ordinance consistent with a comprehensive~~  
40           ~~plan that is consistent with the provisions of section 4326 in~~  
41           ~~seeking to develop any building, parking facility or other~~

2 ~~publicly-owned-structure.~~ Zoning and other land use ordinances  
3 are advisory with respect to the State, except that, when  
4 developing any buildings, parking facilities or other publicly  
5 owned structures, a state agency shall comply with zoning and  
6 other land use ordinances that the office determines are  
7 consistent with a comprehensive plan that the office has found  
8 consistent under section 4347-A. The Governor or the Governor's  
9 designee may, after public notice and opportunity for public  
10 comment, including written notice to the municipal officers,  
11 waive any use restrictions in those ordinances upon finding that:

12 A. The proposed use is not allowed anywhere in the  
13 municipality;

14 B. There are no reasonable alternative sites for or  
15 configurations of the project within the municipality that  
16 would achieve the necessary public purposes;

17 C. There are no reasonable alternatives to the project,  
18 including sites in other municipalities, that would achieve  
19 the necessary public purposes;

20 D. The project will result in public benefits beyond the  
21 limits of the municipality, including without limitation,  
22 access to public waters or publicly owned lands; and or

23 E. The project is necessary to protect the public health,  
24 welfare or environment.

25 A decision to waive a restriction under this section may be  
26 appealed by the municipality or any aggrieved party to Superior  
27 Court.

28 **Sec. 19. 38 MRSA §440, 2nd ¶,** as reallocated by PL 1985, c.  
29 481, Pt. A, §28, is amended to read:

30 ~~Zoning--ordinances~~ A zoning ordinance adopted or extended  
31 pursuant to this section shall must be pursuant to and consistent  
32 with a comprehensive plan unless the ordinance complies with the  
33 requirements of the Federal Flood Insurance Program or other  
34 provisions of this section.

35 **Emergency clause.** In view of the emergency cited in the  
36 preamble, this Act takes effect when approved.

## 47 SUMMARY

48 This bill clarifies that financial aid contracts are allowed

2 to extend beyond a single fiscal year. It clarifies that  
3 floodplain ordinances that comply with the Federal Flood  
4 Insurance Program are exempt from the requirement that ordinances  
5 must be consistent with a comprehensive plan. It clarifies that  
6 the term "under this subchapter" means consistency with the  
7 procedures, goals and guidelines established in the growth  
8 management law. It provides that a comprehensive plan is valid  
9 for 15 years. It amends notice requirements for follow-up public  
10 hearings that are held as a result of comments made at an initial  
11 public hearing. It provides that the Executive Department, State  
12 Planning Office, if requested, may review certain ordinances to  
13 determine whether they are consistent with a comprehensive plan  
14 without requiring submission of all elements of a growth  
15 management program. It also provides that an affirmative finding  
16 of consistency by the State Planning Office is required for a  
municipality to assert jurisdiction regarding state investments.