

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1535

H.P. 1080

House of Representatives, April 4, 2005

An Act Making Improvements to the Laws Regarding Local Land Use Ordinances

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor.
Cosponsored by Senator BROMLEY of Cumberland and
Representatives: BARSTOW of Gorham, CRAVEN of Lewiston, DAVIS of Falmouth,
DUCHESNE of Hudson, EBERLE of South Portland, MAKAS of Lewiston, RECTOR of
Thomaston, SAMPSON of Auburn.

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

4 **Sec. 1. 30-A MRSA §4301, sub-§6-A,** as enacted by PL 1991, c.
18, §1, is amended to read:

6 **6-A. Impact fee.** "Impact fee" means a charge or assessment
8 imposed by a municipality against a new development to fund or
10 recoup a portion of the cost of new, expanded or replacement
infrastructure facilities necessitated by and attributable at
least in part to the new development.

12 **Sec. 2. 30-A MRSA §4301, sub-§§7 and 11,** as enacted by PL 1989,
14 c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

16 **7. Implementation program.** "Implementation program" means
18 that component of a local growth management program which that
begins after the adoption of a comprehensive plan and that
includes the policies-and full range of municipal policy-making
powers, including spending and borrowing powers, as well as the
powers to adopt or implement ordinances, codes, rules or other
land use regulations which, tools or mechanisms that carry out
the purposes and general policy statements and strategies of the
comprehensive plan in a manner consistent with the goals and
guidelines of subchapter II 2.

26 **11. Moratorium.** "Moratorium" means a land use ordinance or
28 other regulation approved by a municipal legislative body which
that, if necessary, may be adopted on an emergency basis and
given immediate effect and that temporarily defers all
development, or a type of development, by withholding any permit,
authorization or approval necessary for the specified type or
types of development.

34 **Sec. 3. 30-A MRSA §4301, sub-§13-A,** as enacted by PL 2001, c.
36 406, §1, is amended to read:

38 **13-A. Rate of growth ordinance.** "Rate of growth ordinance"
40 means a land use ordinance adopted pursuant to section 4360-A or
other rule that, upon a showing of need, temporarily limits the
number of building or development permits issued by a
municipality or other jurisdiction over a designated time frame.

42 **Sec. 4. 30-A MRSA §4312, sub-§5** is enacted to read:

44 **5. Additional purposes and goals.** Beyond the purposes and
46 goals outlined in subsections 2 and 3, the Legislature finds that
land use planning and regulation is a shared responsibility of
48 State Government and municipal governments. The shared
responsibility occurs in part because of increasing population in
50 many regions of the State, environmental considerations that

2 often reach across municipal boundaries, the complexity and
3 regional effect of many modern developments, the need to combat
4 sprawl both within and beyond individual municipalities and the
5 need to foster fair and evenhanded statewide approaches to land
6 use planning and regulation. Under this chapter:

7 A. Municipalities may be required to take actions relative
8 to planning and land use control;

10 B. Certain municipal land use regulations are permitted
11 only if the regulations are in compliance with state
12 guidelines and limitations designed to achieve overall
13 fairness and equal treatment under the law; and

14 C. Certain municipal decisions and actions are subject to
15 state-level appeals.

18 **Sec. 5. 30-A MRSA §4360, sub-§3** is enacted to read:

20 3. Application. This section applies only to rate of
21 growth ordinances enacted before the effective date of section
22 4360-A.

24 **Sec. 6. 30-A MRSA §§4360-A and 4360-B** are enacted to read:

26 **§4360-A. Municipalitywide rate of growth ordinances**

28 A municipalitywide rate of growth ordinance is a temporary
29 measure allowing a municipality to slow the rate of growth for a
30 reasonable period of time in order to plan for services or
31 provide needed infrastructure to better absorb growth. A
32 municipality pursuant to its home-rule authority may limit the
33 number of residential building permits issued in any calendar
34 year when the rate of growth ordinance meets all of the
35 requirements in this section.

36 1. Need; municipalitywide. Before a municipalitywide rate
37 of growth ordinance may be enacted that either affects both
38 growth and rural areas of a municipality, as defined in this
39 chapter, or affects an entire municipality that, pursuant to
40 exemptions in section 4326, subsection 3-A, paragraph A,
41 subparagraph (4) or (5), has not designated a growth area, the
42 municipality must document in a comprehensive plan adopted or
43 amended under this chapter that a need for the ordinance exists.
44 Need must be based on the rate of population growth and the rate
45 of issuance of building permits compared with past experience and
46 regional averages, the increase in full value mill rates and debt
47 levels required to serve growth in population and housing and the
48 shortage of municipal infrastructure needed to absorb the
49 growth. The office shall establish by rule a rating system by
50

2 which a municipality may determine need. Rules adopted pursuant
3 to this subsection are major substantive rules in accordance with
4 Title 5, chapter 375, subchapter 2-A and must be submitted to the
5 Legislature by February 1, 2006.

6 2. Number of building permits under ordinance. The
7 municipality may set the annual number of residential building
8 permits that are issued in a calendar year to a level no lower
9 than 50% the average number of residential building permits
10 issued during the preceding 2 calendar years or the average
11 number of residential building permits issued during the
12 preceding 7 calendar years, whichever is lower. The municipality
13 may assign a higher proportion of the allowable permits to area
14 designated as growth areas in its comprehensive plan and a lower
15 proportion to areas designated as rural areas.

16 3. Duration of ordinance. A municipalitywide rate of
17 growth ordinance may be put in place for up to 5 years. If
18 predicated on infrastructure needs that are being remedied by new
19 construction that is in progress but not yet complete, the rate
20 of growth ordinance may be phased out over a period of up to an
21 additional 3 years, with the allowable number of building permits
22 increasing by 1/3 per year. A rate of growth ordinance may not
23 be in place for a period longer than 8 consecutive years. A
24 municipality may not have a rate of growth ordinance in place for
25 more than 8 years in any 15-year period.

26 4. Exemptions. Notwithstanding subsection 3, the following
27 categories of housing may not be included in any numerical
28 building permit limitation under a rate of growth ordinance:

29 A. The construction of a house by the original grantee of a
30 parcel created under the exemption to the definition of a
31 subdivision in section 4401, subsection 4, paragraph D-4 for
32 a gift to a person related to the donor; and

33 B. Affordable housing, as defined in this chapter, when the
34 affordable housing is proposed for growth areas as
35 designated in the municipality's comprehensive plan.

36 5. Allocation of building permits under ordinance. In any
37 municipality adopting a rate of growth ordinance, the number of
38 building permits to be issued in any calendar year must be
39 divided in half and issued commencing January 1st and July 1st of
40 that year. Unused permits from the first half of the year must
41 be carried over to the 2nd half of the year. Unused permits from
42 the year must be carried over to the next year if a rate of
43 growth ordinance is in place the next year. All permits must be
44 issued on a first-come, first-served basis, and there may be no
45 preference for local residents or local builders. If the number
46 of permits issued in any calendar year exceeds the number of
47 permits available under the rate of growth ordinance, the
48 excess permits shall be allocated to the next calendar year.
49 Unused permits from the first half of the year must be
50 carried over to the second half of the year. Unused permits from
51 the year must be carried over to the next year if a rate of
52 growth ordinance is in place the next year. All permits must be
53 issued on a first-come, first-served basis, and there may be no
54 preference for local residents or local builders. If the number
55 of permits issued in any calendar year exceeds the number of
56 permits available under the rate of growth ordinance, the
57 excess permits shall be allocated to the next calendar year.

2 of building permit applications exceeds the number of permits
3 available in any given period, preference must be given to those
4 applicants who seek permits in areas designated as growth areas
5 in the municipality's comprehensive plan. A municipality may
6 establish other priorities for those who seek single building
7 permits over those who seek multiple permits in order to
8 construct an approved subdivision or for those who seek multiple
9 permits in older approved subdivisions over those who seek
10 multiple permits in newer approved subdivisions.

11 6. Enforcement. A landowner or developer operating within
12 a municipality or the Attorney General may seek appropriate
13 remedial relief if a municipal rate of growth ordinance is not in
14 compliance with this section.

15 7. Transition. A rate of growth ordinance in effect as of
16 January 1, 2005 may continue in effect until January 1, 2008, by
17 which time it must conform to the terms of this section or no
18 longer have effect.

19 **§4360-B. Rate of growth ordinances in designated rural areas**

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21 1. Need. In areas of a municipality specifically
22 designated in an adopted, consistent comprehensive plan as rural
23 areas, as defined in this chapter, that designation is deemed to
24 presumptively demonstrate a need to limit the rate of growth in
25 such areas. If an adopted, consistent comprehensive plan has
26 been prepared as part of a multimunicipal region under section
27 4325 and the entirety of a municipality has been designated as a
28 rural area by that plan, the need may be presumed to exist
29 municipalitywide.

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31 2. Number of building permits under rate of growth
32 ordinance. If a rate of growth ordinance affects only areas of a
33 municipality or multimunicipal region designated as rural areas,
34 as defined in this chapter, in an adopted, consistent
35 comprehensive plan, and the plan also specifically designates
36 growth areas, the rate of growth ordinance may limit the number
37 of building permits issued in the designated rural areas at a
38 level consistent with the comprehensive plan, except that the
39 same categories exempted under section 4360-A, subsection 4 are
40 also exempt.

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42 3. Duration of ordinance. A rate of growth ordinance
43 affecting only areas of a municipality designated as rural areas
44 in an adopted, consistent comprehensive plan may remain in effect
45 for the period of time the municipality considers consistent with
46 its comprehensive plan.

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SUMMARY

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This bill broadens and updates the findings and purposes sections of planning and land use control law to explicitly recognize that planning and land use regulation is a shared responsibility of State Government and local government.

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The bill makes changes in definitions of relevant terms.

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The bill rewrites the laws on rate of growth ordinances and clarifies when rate of growth ordinances are allowed.