

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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No. 1803

H.P. 1258

House of Representatives, March 30, 2007

An Act To Clarify Comprehensive Planning and Land Use Ordinances

Submitted by the State Planning Office pursuant to Joint Rule 204.
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 DOW of Lincoln and
Representatives: DUCHESNE of Hudson, RECTOR of Thomaston.

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

2 **Sec. 1. 30-A MRSA §4314, sub-§3**, as amended by PL 2005, c. 397, Pt. A, §31,
3 is further amended to read:

4 **3. Rate of growth, zoning and impact fee ordinances.** After January 1, 2003, any
5 portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee
6 ordinance must be consistent with a comprehensive plan adopted in accordance with the
7 procedures, goals and guidelines established in this subchapter. The portion of a rate of
8 growth, zoning or impact fee ordinance not directly related to an inconsistency identified
9 during a comprehensive plan review by the office in accordance with section 4347-A,
10 subsection 3-A remains in effect. For purposes of this subsection, "zoning ordinance"
11 does not include a cluster development ordinance or a design ordinance prescribing the
12 color, shape, height, landscaping, amount of open space or other comparable physical
13 characteristics of development. The portion of a rate of growth, zoning or impact fee
14 ordinance that is not consistent with a comprehensive plan is no longer in effect unless:

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

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

22 E. The ordinance or portion of the ordinance conflicts with a newly adopted
23 comprehensive plan or plan amendment adopted in accordance with the procedures,
24 goals and guidelines established in this subchapter, in which case the ordinance or
25 portion of the ordinance remains in effect for a period of up to 24 months
26 immediately following adoption of the comprehensive plan or plan amendment;

27 F. The municipality or multimunicipal region applied for and was denied financial
28 assistance for its first planning assistance or implementation assistance grant under
29 this subchapter due to lack of state funds on or before January 1, 2003. If the office
30 subsequently offers the municipality or multimunicipal region its first planning
31 assistance or implementation assistance grant, the municipality or multimunicipal
32 region has up to one year to contract with the office to prepare a comprehensive plan
33 or implementation program, in which case the municipality's or multimunicipal
34 region's ordinances will be subject to paragraph D; or

35 G. The ordinance or portion of an ordinance is an adult entertainment establishment
36 ordinance, as defined in section 4352, subsection 2, that has been adopted by a
37 municipality that has not adopted a comprehensive plan.

38 **Sec. 2. 30-A MRSA §4326, sub-§3**, as amended by PL 2001, c. 578, §15 and c.
39 667, Pt. H, §1 and affected by §3, is further amended to read:

40 **3. Implementation strategy.** A comprehensive plan must include an
41 implementation strategy section that contains a timetable for the implementation

1 program, including land use ordinances, ensuring that the goals established under this
2 subchapter are met. These implementation strategies must be consistent with state law
3 and must actively promote policies developed during the planning process. The timetable
4 must identify significant ordinances to be included in the implementation program. The
5 strategies and timetable must guide the subsequent adoption of policies, programs and
6 land use ordinances and periodic review and revision of the comprehensive plan.

7 **Sec. 3. 30-A MRSA §4326, sub-§3-A, ¶A**, as amended by PL 2001, c. 667, Pt.
8 H, §2 and affected by §3, is further amended to read:

9 A. ~~Identify~~ Except as otherwise provided in this paragraph, identify and designate
10 geographic areas in the municipality or multimunicipal region as growth areas and
11 rural areas, as defined in this chapter.

12 (1) Within growth areas, each municipality or multimunicipal region shall:

- 13 (a) Establish development standards;
- 14 (b) Establish timely permitting procedures;
- 15 (c) Ensure that needed public services are available; and
- 16 (d) Prevent inappropriate development in natural hazard areas, including
17 flood plains and areas of high erosion.

18 (2) Within rural areas, each municipality or multimunicipal region shall adopt
19 land use policies and ordinances to discourage incompatible development. These
20 policies and ordinances may include, without limitation, density limits, cluster or
21 special zoning, acquisition of land or development rights, transfer of development
22 rights pursuant to section 4328 and performance standards. The municipality or
23 multimunicipal region should also identify which rural areas qualify as critical
24 rural areas as defined in this chapter. Critical rural areas must receive priority
25 consideration for proactive strategies designed to enhance rural industries,
26 manage wildlife and fisheries habitat and preserve sensitive natural areas.

27 (3) A municipality or multimunicipal region may also designate as a transitional
28 area any portion of land area that does not meet the definition of either a growth
29 area or a rural area. Such an area may be appropriate for medium-density
30 development that does not require expansion of municipal facilities and does not
31 include significant rural resources.

32 (4) A municipality or multimunicipal region is not required to identify growth
33 areas ~~for residential, commercial or industrial growth if it demonstrates that it is~~
34 ~~not possible to accommodate future residential, commercial or industrial growth~~
35 ~~in these areas because of severe physical limitations, including, without~~
36 ~~limitation, the lack of adequate water supply and sewage disposal services, very~~
37 ~~shallow soils or limitations imposed by protected natural resources. within the~~
38 municipality or multimunicipal region for residential, commercial or industrial
39 growth if it demonstrates, in accordance with rules adopted by the office pursuant
40 to this article, that:

- 41 (a) It is not possible to accommodate future residential, commercial or
42 industrial growth within the municipality or multimunicipal region because

1 of severe physical limitations, including, without limitation, the lack of
2 adequate water supply and sewage disposal services, very shallow soils or
3 limitations imposed by protected natural resources;

4 (b) The municipality or multimunicipal region has experienced minimal or no
5 residential, commercial or industrial development over the past decade and
6 this condition is expected to continue over the 10-year planning period;

7 (c) The municipality or multimunicipal region has identified as its growth
8 areas one or more growth areas identified in a comprehensive plan adopted or
9 to be adopted by one or more other municipalities or multimunicipal regions
10 in accordance with an interlocal agreement adopted in accordance with
11 chapter 115 with one or more municipalities or multimunicipal regions; or

12 (d) The municipality or multimunicipal region has no village or densely
13 developed area.

14 ~~(5) A municipality or multimunicipal region is not required to identify growth~~
15 ~~areas for residential, commercial or industrial growth if it demonstrates that the~~
16 ~~municipality or multimunicipal region has experienced minimal or no residential,~~
17 ~~commercial or industrial development over the past decade and this condition is~~
18 ~~expected to continue over the 10-year planning period.~~

19 (6) A municipality or multimunicipal region exercising the discretion afforded
20 by subparagraph 4 ~~or 5~~ shall review the basis for its demonstration during the
21 periodic revisions undertaken pursuant to section 4347-A;

22 **Sec. 4. 30-A MRSA §4347-A, sub-§3**, as amended by PL 2003, c. 641, §15, is
23 further amended to read:

24 **3. Review of growth management program.** In reviewing a ~~comprehensive plan or~~
25 growth management program, the office shall:

26 A. Solicit written comments on any proposed ~~comprehensive plan or~~ growth
27 management program from regional councils, state agencies, all municipalities
28 contiguous to the municipality or multimunicipal region submitting a ~~comprehensive~~
29 ~~plan or~~ growth management program and any interested residents of the municipality
30 or multimunicipal region or of contiguous municipalities. The comment period
31 extends for 45 days after the office receives the ~~comprehensive plan or~~ growth
32 management program.

33 (1) Each state agency reviewing the proposal shall designate a person or persons
34 responsible for coordinating the agency's review of the ~~comprehensive plan or~~
35 growth management program.

36 (2) Any regional council commenting on a growth management program shall
37 determine whether the program is compatible with the programs of other
38 municipalities that may be affected by the program and with regional policies or
39 needs identified by the regional council;

40 B. Prepare all written comments from all sources in a form to be forwarded to the
41 municipality or multimunicipal region;

1 C. ~~Within 60 days after receiving the comprehensive plan or~~ 90 days after receiving
2 the growth management program, send all written comments on the ~~comprehensive~~
3 ~~plan or~~ growth management program to the municipality or multimunicipal region
4 and any applicable regional council. If warranted, the office shall issue findings
5 specifically describing how the submitted ~~plan or~~ growth management program is not
6 consistent with the procedures, goals and guidelines established in this subchapter
7 and the recommended measures for remedying the deficiencies.

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

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

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

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

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

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

34 **Sec. 5. 30-A MRSA §4347-A, sub-§3-A** is enacted to read:

35 **3-A. Review of comprehensive plan.** In reviewing a comprehensive plan, the office
36 shall:

37 A. Solicit written comments on any proposed comprehensive plan from regional
38 councils, state agencies, all municipalities contiguous to the municipality or
39 multimunicipal region submitting a comprehensive plan and any interested residents
40 of the municipality or multimunicipal region or of contiguous municipalities. The
41 comment period extends for 25 business days after the office receives the
42 comprehensive plan. Each state agency reviewing the proposal shall designate a

1 person or persons responsible for coordinating the agency's review of the
2 comprehensive plan;

3 B. Prepare all written comments from all sources in a form to be forwarded to the
4 municipality or multimunicipal region;

5 C. Within 35 business days after receiving the comprehensive plan, notify the
6 municipality or multimunicipal region if the plan is complete for purposes of review.
7 If the office notifies the municipality or multimunicipal region that the plan is not
8 complete for purposes of review, the office shall indicate in its notice necessary
9 additional data or information;

10 D. Within 10 business days of issuing notification that a comprehensive plan is
11 complete for purposes of review, issue findings specifically describing whether the
12 submitted plan is consistent with the procedures, goals and guidelines established in
13 this subchapter and identify which inconsistencies, if any, are directly related to rate
14 of growth, zoning or impact fee ordinances.

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

18 (2) If the office finds that the comprehensive plan was developed in accordance
19 with the procedures, goals and guidelines established in this subchapter, the
20 office shall issue a finding of consistency for the comprehensive plan;

21 E. Send all written findings and comments on the comprehensive plan to the
22 municipality or multimunicipal region and any applicable regional council; and

23 F. Provide ample opportunity for the municipality or multimunicipal region
24 submitting a comprehensive plan to respond to and correct any identified deficiencies
25 in the plan. A finding of inconsistency for a comprehensive plan may be addressed
26 within 24 months of the date of the finding without addressing any new review
27 standards that are created during that time interval. After 24 months, the plan must be
28 resubmitted in its entirety for state review under the office's most current review
29 standards.

30 If the office finds that a plan is not consistent with the procedures, goals and guidelines
31 established in this subchapter, the municipality or multimunicipal district that submitted
32 the plan may appeal that finding to the office within 20 business days of receipt of the
33 finding in accordance with rules adopted by the office, which are routine technical rules
34 pursuant to Title 5, chapter 375, subchapter 2-A.

35 The office's decision on consistency of a comprehensive plan constitutes final agency
36 action.

37 A finding by the office pursuant to paragraph D that a comprehensive plan is consistent
38 with the procedures, goals and guidelines established in this subchapter is valid for 12
39 years from the date of its issuance. A finding by the office issued pursuant to this
40 subchapter prior to December 31, 2000 that a comprehensive plan is consistent with the
41 procedures, goals and guidelines established in this subchapter is valid until December
42 31, 2012. For purposes of section 4314, subsection 3 and section 4352, subsection 2,
43 expiration of a finding of consistency pursuant to this subsection does not itself make a

1 comprehensive plan inconsistent with the procedures, goals and guidelines established in
2 this subchapter.

3 **Sec. 6. 30-A MRSA §4352, sub-§2**, as amended by PL 2003, c. 688, Pt. C, §19,
4 is further amended to read:

5 **2. Relation to comprehensive plan.** A zoning ordinance must be pursuant to and
6 consistent with a comprehensive plan adopted by the municipal legislative body, except
7 that adoption of an adult entertainment establishment ordinance does not necessitate
8 adoption of a comprehensive plan by a municipality that has no such comprehensive plan.
9 As used in this section, "adult entertainment establishment ordinance" means an
10 ordinance that regulates the operation of adult amusement stores, adult video stores, adult
11 bookstores, adult novelty stores, adult motion picture theaters, on-site video screening
12 establishments, adult arcades, adult entertainment nightclubs or bars, adult spas,
13 establishments featuring strippers or erotic dancers, escort agencies or other sexually
14 oriented businesses. For purposes of this subsection, "zoning ordinance" does not include
15 a cluster development ordinance or a design ordinance prescribing the color, shape,
16 height, landscaping, amount of open space or other comparable physical characteristics of
17 development.

18 **SUMMARY**

19 This bill makes the following changes to the laws governing growth management. It:

- 20 1. Sets a date when a finding of consistency for a comprehensive plan expires;
- 21 2. Authorizes the Executive Department, State Planning Office to define an appeal
22 process that a town may use to appeal a finding of inconsistency;
- 23 3. Shortens the timeline for state reviews of comprehensive plans to a 35-business-
24 day deadline for a notification of completeness and 10 additional business days for a
25 finding of consistency;
- 26 4. Exempts towns with no village or densely settled area from having to designate a
27 growth area;
- 28 5. Clarifies that certain land use ordinances may be adopted without a consistent
29 comprehensive plan; and
- 30 6. Clarifies that the portion of a rate of growth, zoning or impact fee ordinance not
31 directly related to an inconsistency identified during a comprehensive plan review by the
32 State Planning Office remains in effect after the inconsistency is identified.