

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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B. The impact of current leasing policies on public access to the waters of the State, including access by commercial and recreational users;

C. The impact of current leasing policies on the commercial fishing industry, including the shore-based services and facilities on which this industry depends; and

D. The desirability of the current trend towards what is commonly known as a dockominium, which is long-term subleasing of leases to multiple leaseholders.

2. Advisory committee. The director shall convene and consult with an advisory panel of persons with interests and expertise in the topics under study. Membership shall include representatives of the Legislature; the commercial fishing industry; the marine trades industry; recreational boating interests; municipal officials, including harbor masters; leaseholders; and other groups as the director finds useful.

3. Report. The director shall report to the Joint Standing Committee on Energy and Natural Resources on the results of the study on or before January 1, 1989.

Effective August 4, 1988.

## CHAPTER 766

H.P. 1688 — L.D. 2317

### AN ACT to Promote Orderly Economic Growth and Natural Resource Conservation.

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

Sec. 1. 1 MRSA §302, as repealed and replaced by PL 1973, c. 146, is amended to read:

§302. Construction and effect of repealing and amending Acts

The repeal of an Act, resolve or municipal ordinance passed after the 4th day of March, 1870 does not revive any statute or ordinance in force before the Act, resolve or ordinance took effect. The repeal or amendment of an Act or ordinance does not affect any punishment, penalty or forfeiture incurred before the repeal or amendment takes effect, or any action or proceeding pending at the time of the repeal or amendment, for an offense committed or for recovery of a penalty or forfeiture incurred under the Act or ordinance repealed or amended. Actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby. For the purposes of this section, a proceeding shall include but not be limited to petitions or applications for licenses or permits required by law at the time of their filing. For the purposes of this section and regardless of any other action taken by the

reviewing authority, an application for a license or permit required by law at the time of its filing shall be considered to be a pending proceeding when the reviewing authority has conducted at least one substantive review of the application and not before. For the purposes of this section, a substantive review of an application for a license or permit required by law at the time of application shall consist of a review of that application to determine whether it complies with the review criteria and other applicable requirements of law.

Sec. 2. 5 MRSA §12004, sub-§10, ¶A, sub-¶(23-C) is enacted to read:

(23-C)	<u>Environment:</u>	<u>Planning</u>	<u>Expenses</u>	30 MRSA
	<u>Natural</u>	<u>Advisory</u>	<u>Only</u>	<u>§4960-D</u>
	<u>Resources</u>	<u>Council</u>		

Sec. 3. 30 MRSA, c. 239, sub-c. VI, first 2 lines are repealed and the following enacted in their place:

### SUBCHAPTER VI

#### PLANNING AND LAND USE REGULATION

Sec. 4. 30 MRSA §§4960 to 4960-F are enacted to read:

§4960. Short title

This subchapter shall be known and may be cited as the "Comprehensive Planning and Land Use Regulation Act."

§4960-A. Statement of findings, purpose and goals

1. Legislative findings. The Legislature finds that:

A. The natural resources of the State, including its forests, agricultural lands, wetlands, waters, fisheries, wildlife, minerals and other related resources, are the underpinnings of the State's economy;

B. These same natural resources and traditional patterns of development have defined the quality of life which the citizens of the State treasure and seek to protect;

C. The pace of land speculation and development has accelerated and outstripped the capacity of the State and municipalities to manage this growth under existing state and local laws;

D. This unplanned growth threatens the integrity of the State's natural resource base, the ability of local and State Government to provide necessary public services, the affordability of decent housing, the long-term economic viability of the State's economy and the quality of life presently enjoyed by Maine's citizens;

E. The most effective land use planning can only occur at the local level of government and comprehen-

sive plans and land use ordinances developed and implemented at the local level are the key in planning for Maine's future;

F. Continued application of the current reactive, case-by-case system of land use regulation is detrimental to the public health, safety and welfare;

G. The State must take appropriate measures to protect and manage certain areas and natural resources which are of statewide significance and concern; and

H. The State has a vital interest in ensuring that a comprehensive system of land use planning and growth management is established as quickly as possible which, while building on the strong foundation of local land use planning, also protects unique aspects of the State's heritage and environment, encourages appropriate uses of the State's natural resources, guides sound economic development and ensures prosperity for Maine citizens in all regions of the State.

2. Legislative purpose. The Legislature declares that it is the purpose of this Act to:

A. Establish, in each municipality of the State, local comprehensive planning and land use management according to the schedule contained in this subchapter and consistent with the goals and policies of the State;

B. Provide municipalities with the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

C. Encourage, through state and regional technical and financial assistance and review, local land use ordinances, tools and policies that are based on local comprehensive plans that are prospective and inclusive of all matters determined by the Legislature to be in the best interests of the State;

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development;

E. Create a strong partnership between State Government and local government, while clarifying the respective roles of each, to improve land use planning and management;

F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests;

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities and

reviewed by the State have had the benefit of citizen input; and

H. Assure predictable, timely and cost-effective land use decision making that is coordinated and consistent between State Government and local governments and that minimizes unnecessary duplication.

3. State goals. The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

A. To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

C. To promote an economic climate which increases job opportunities and overall economic well-being;

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens;

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;

F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;

G. To protect the State's marine resources industry, ports and harbors, from incompatible development and to promote access to the shore for commercial fishermen and the public;

H. To safeguard the State's agricultural and forest resources from development which threatens those resources;

I. To preserve the State's historic and archeological resources; and

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

4. Limitation on state rule-making authority. The provisions of this section shall not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

§4960-B. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affordable housing. “Affordable housing” means decent, safe and sanitary dwellings, apartments or other living accommodations for households making the full range of incomes at or below 80% of the median household income as determined by the Department of Economic and Community Development. Affordable housing includes, but is not limited to, government assisted housing, housing for low-income and moderate-income families, manufactured housing, multi-family housing and group and foster care facilities.

2. Coastal areas. “Coastal areas” means all municipalities and unorganized townships contiguous with tidal waters and all coastal islands. The inland boundary of the coastal area is the inland line of any coastal town line.

3. Comprehensive plan. “Comprehensive plan” means a document or interrelated documents containing the elements established under section 4960-C subsection 4, paragraphs A to D, including the strategies for an implementation program which are consistent with the goals and guidelines established under this subchapter.

4. Development. “Development” means a change in land use involving alteration of the land, water, vegetation or the addition or alteration of structures or other construction not naturally occurring.

5. Implementation program. “Implementation program” means that component of a local growth management program which includes the policies and ordinances or other land use regulations which carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of this subchapter.

6. Land use ordinance. “Land use ordinance” means a rule or law of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for such uses.

7. Local growth management program. “Local growth management program” means a document containing the components described in section 4960-C subsection 4, including the implementation program, which is consistent with the goals and guidelines established by this subchapter.

8. Local planning committee. “Local planning committee” means the committee established by the municipal officers of a municipality or combination of municipalities which has the general responsibility established under section 4906-C.

9. Moratorium. “Moratorium” means a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers or delays development by withholding any authorization or approval necessary for development.

10. Municipal reviewing authority. “Municipal reviewing authority” means the municipal planning board, agency or office, or if none, the municipal officers.

11. Office. “Office” means the Office of Comprehensive Land Use Planning in the Department of Economic and Community Development.

12. Person. “Person” means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, 2 or more persons having a joint or common interest or any other legal entity.

13. Regional council. “Regional council” means a regional planning commission or a council of governments established under chapter 204-A.

14. Zoning. “Zoning” means the division of a municipality into districts and the prescription and reasonable application of different regulations in each district.

§4960-C. Local comprehensive planning

There is established a program of local growth management to accomplish the goals of this subchapter.

1. Local authority for growth management. Through exercise of power and responsibility under its home rule authority and subject to the express limitations and requirements of this subchapter, each municipality shall:

A. Plan for its future development and growth;

B. Adopt and amend local growth management programs, including comprehensive plans and implementation programs consistent with the provisions of this subchapter; and

C. Do all other things necessary to carry out the purposes of this subchapter.

2. Local responsibility for growth management. A municipality’s responsibility for the preparation or amendment of its local growth management program is governed by the provisions of this subsection. Where procedures for local adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality may modify the procedural requirements of this subsection as long as a broad range of opportunity for public comment and review is preserved.

A. Pursuant to the schedule established under this subchapter, each municipality shall prepare a local growth management program which is consistent with the goals, guidelines and other provisions of this sub-

chapter, or shall amend its existing comprehensive plan and existing land use ordinances to conform with the requirements of this subchapter.

B. Each municipality shall submit its proposed comprehensive plan and zoning ordinance or its amended, existing comprehensive plan and existing zoning ordinance, to the office according to the schedule established by this subchapter for review.

C. Each municipality shall submit any comprehensive plan and zoning ordinance amended pursuant to subsection 5 to the office for review.

D. The municipal officers of a municipality or combination of municipalities shall designate and establish a local planning committee which shall have the general responsibility for the development and maintenance of a comprehensive plan and for the initial development of a proposed zoning ordinance or initial revision of an existing zoning ordinance, including:

(1) Conduct of public hearings and any other methods to solicit and strongly encourage citizen input; and

(2) Preparation of the comprehensive plan, proposed zoning ordinance and recommendations to the municipal reviewing authority and municipal legislative body regarding the adoption and implementation of the program or amended program.

The municipal officers may designate any planning board or district as the local planning committee, which board or district was established under section 4956 or a former similar provision. Planning boards established under former section 4952, subsection 1, shall continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

E. In order to encourage citizen participation in the development of a local growth management program, municipalities are directed to adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this paragraph is to provide for broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments.

F. The local planning committee shall conduct all of its meetings in open, public session with prior notice posted in one or more conspicuous places designed to provide public notice. The local planning committee shall hold at least one public hearing on its proposed comprehensive plan. Notice of any public hearing shall be published in a newspaper of general circulation in the municipality at least twice with the date of the first publication to be at least 30 days prior to the hearing. A copy of the proposed comprehensive plan shall be made available for public inspection at

the municipal office or other convenient location with regular public hours at least 30 days prior to the hearing.

G. At least 60 days prior to any public hearing required in paragraph F, the local planning committee shall forward its proposed comprehensive plan, to the office and to the applicable regional council for review and comment.

H. At least 60 days prior to the initial adoption of any zoning ordinance or revision pursuant to subsection 5, the local planning committee or municipal reviewing authority, as appropriate, shall forward its proposed ordinance to the office and to the applicable regional council for review and comment. Notice, hearing and other procedural requirements for adoption shall be governed by applicable provisions of this Title, municipal ordinance or charter.

I. Any comments and suggested revisions received from the office within the time limits established by this subchapter shall be considered by the local planning committee or municipal reviewing authority, as appropriate, and may be adopted. The comments and suggested revisions received from the office shall be made available for public inspection with the proposed comprehensive plan or land use ordinance as required in this subsection. The notices required in this subsection shall also contain a statement to the effect that the comments have been received from the office and will be available for distribution prior to and for discussion at the public hearing.

J. The office shall submit its comments and suggested revisions within 60 days of the municipality's submission of the proposed comprehensive plan or land use ordinance.

K. A comprehensive plan or land use ordinance shall be considered to have been adopted as part of a local growth management program when it has been accepted by the municipal legislative body of the municipality.

L. Municipalities within the jurisdiction of the Maine Land Use Regulation Commission are not subject to the requirements of this section and section 4960-E, subsection 3.

3. Coordination of municipal growth management activities. Cooperative local growth management efforts conducted by 2 or more municipalities shall comply with the provisions of this subsection.

A. A municipality shall exercise its land use planning and management authority over the total land area within its jurisdiction.

B. Any combination of contiguous municipalities may conduct joint planning and regulatory programs to fulfill the responsibilities established under this subchap-

ter upon adoption of a written comprehensive planning and enforcement agreement by the municipal legislative bodies involved. The municipalities shall agree:

- (1) On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;
- (2) On the manner of representation on any such joint land use body; and
- (3) On the amount of contribution from each municipality for any costs incurred in the development, implementation and enforcement of the plan and land use ordinances.

C. The agreement shall be in writing, approved by the municipal legislative bodies and forwarded to the office.

4. Local growth management program. A local growth management program shall include, without limitation, a comprehensive plan, as described in paragraphs A to D, and an implementation program as described in paragraph E. A municipality shall develop and adopt a comprehensive plan which shall be consistent with the goals established under this subchapter and subsequently implement the plan.

A. A comprehensive plan shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance that the municipality considers important. The inventory shall be based on information provided by the State, regional councils and other relevant local sources. The analysis shall include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section shall include, but not be limited to:

- (1) Economic and demographic data describing the municipality and the region within which it is located;
- (2) Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and where applicable their vulnerability to degradation;
- (3) Significant or critical natural resources, such as wetlands, wildlife and fisheries habitat, significant plant habitat, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;
- (4) Marine-related resources and facilities such as ports, harbors, commercial mooring, commercial docking facilities and related parking, and shellfishing and worming areas;

- (5) Commercial forestry and agricultural land;
- (6) Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;
- (7) Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;
- (8) Residential housing stock, including affordable housing;
- (9) Historical and archeological resources;
- (10) Land use information which describes current and projected development patterns; and
- (11) An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

B. A comprehensive plan shall include a policy development section which relates the findings contained in the inventory and analysis section to the state goals. The policies shall:

- (1) Promote the state goals under this subchapter;
- (2) Address any conflicts between state goals under this subchapter;
- (3) Address any conflicts between regional and local issues; and
- (4) Address the State's coastal policies.

C. A comprehensive plan shall include an implementation strategy section which contains a timetable for the implementation program, including land use ordinances, that ensures that the goals established under this subchapter are met. These implementation strategies shall be consistent with state laws and shall actively promote policies developed during the planning process. The timetable shall identify significant ordinances to be included in the implementation program. Those ordinances shall be adopted within one year of the plan. The strategies shall guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this subchapter:

- (1) Identify and designate at least 2 basic types of geographic areas: Growth areas and rural areas.
  - (a) Growth areas are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:



- (i) Establish standards for such developments;
- (ii) Establish timely permitting procedures;
- (iii) Ensure that needed public services are available within the growth area; and
- (iv) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

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

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

(2) Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

(3) Protect, maintain and, where warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A;

(4) Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;

(5) Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry;

(6) Ensure the protection of agricultural and forest resources. Each municipality shall discourage new development that is incompatible with uses related to the agricultural and forest industry;

(7) Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. The municipality is encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes and increasing densities;

(8) Ensure that the value of historic and archeological resources is recognized and that protection is afforded to those resources that merit it; and

(9) Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking. Each municipality shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting such protection.

D. A regional coordination program shall be developed with other municipalities to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program shall provide for consistency with the comprehensive plans of other municipalities for these resources and facilities.

E. An implementation program shall be adopted that is consistent with the strategies in paragraph C. Significant components of the implementation strategy as identified under paragraph C shall be adopted within one year of the plan with the remainder of the strategies adopted according to the timetable set in the plan.

5. Monitoring and revision. A municipality shall periodically review and revise its local growth management program in a timely manner to account for changes caused by growth and development. At a minimum, a municipality shall update the program at least once every 5 years in accordance with the provisions of this section.

#### §4960-D. State role in growth management

There is established a program of local growth management assistance and review to promote the preparation and implementation of local growth management programs and to provide technical and financial assistance to accomplish this purpose. The program shall also promote the objective that all local growth management programs and state agency activities be consistent with the State's goals and guidelines established by this subchapter.

1. Review agency designated. The Office of Comprehensive Land Use Planning in the Department of Economic and Community Development is responsible for carrying out the provisions of this section and ensuring that the objectives of this subchapter are achieved.

2. Biennial progress report. The office shall prepare a biennial progress report on local and state growth management efforts. The report shall be submitted to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over natural resources for their review. The first report shall be submitted on or before January 1, 1990; the 2nd report on January 1, 1991; and biennially thereafter on or before January 1st.

In preparing the report, the office shall survey the state agencies and municipalities for growth management activities conducted pursuant to this subchapter. The office shall provide data describing the level of comprehensive planning activity at the state, regional and local level, the implementation of local growth management programs, including both regulatory and nonregulatory approaches, and the costs incurred by the State and municipalities in the conduct of these efforts.

The office shall include in the report a summary of experience to date in the technical and financial assistance program, the review and comment program and the voluntary certification program. This summary shall include a quantitative and qualitative analysis of these programs.

The office shall also include in the report any recommendations it may have for statutory changes in this subchapter or other relevant areas of law. The office shall also include in its recommendations a proposal for the appropriations needed over the following one-year, 2-year and 5-year periods to accomplish the objectives of this subchapter.

3. Planning Advisory Council; established. There is established a Planning Advisory Council composed of 7 members. The office shall consult with the council on the development of all rules, guidelines and reports for the implementation of this subchapter.

A. Members of the council shall be appointed by the Governor.

B. Members shall be selected on the basis of their knowledge of planning, local government, land conservation and land development.

C. Members shall serve for staggered 4-year terms. Initial members shall have terms as follows: Three members for 2-year terms; 3 members for 3-year terms; and one member for a 4-year term. A member may serve no more than 2 consecutive 4-year terms.

D. Members shall not be compensated but shall be reimbursed for all expenses directly related to their participation in council business.

E. Four members shall constitute a quorum for the conduct of business by the council.

F. The council shall elect a chairman from among its members.

G. The council shall report by January 1, 1989, and every 2 years thereafter to the Governor and the Legislature on any changes that may be required to accomplish the purposes of this subchapter.

\$4960-E. State planning review program

1. Coordination; state agencies. Each state agency with regulatory or other authority affecting the goals established in this subchapter shall submit to the office prior to January 1, 1990, a written report which addresses how each agency has incorporated the goals of this subchapter into its planned activities. This report shall be revised as necessary but in no case less than once every 2 years. After January 1, 1990, these agencies shall conduct their respective activities in a manner consistent with the goals established under this subchapter. Without limiting the application of this subsection to other state agencies, the following agencies shall comply with the provisions of this section:

A. Department of Conservation;

B. Department of Economic and Community Development;

C. Department of Environmental Protection;

D. Department of Agriculture, Food and Rural Resources;

E. Department of Inland Fisheries and Wildlife;

F. Department of Marine Resources;

G. Department of Transportation;

H. Finance Authority of Maine; and

I. Maine State Housing Authority.

2. Provision of natural resource and other planning information. The office shall develop and supply to all municipalities available natural resource and other planning information for use in the preparation of local growth management programs. The office shall make maximum use of existing information available from other state agencies including, without limitation, the Department of Conservation, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Environmental Protection, the State Planning Office and the Department of Economic and Community Development. The office may contract with regional councils to develop the necessary planning information at a regional level and with other state agencies as necessary to provide support for local planning efforts. By July 1, 1990, the office shall complete an inventory of the State's natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance.

3. Review of local growth management programs; schedule. Subject to the provisions of this subsection and the availability of state assistance as established pursuant to section 4960-F, municipalities shall submit their comprehensive plans to the office according to the following schedule:

A. By January 1, 1991, those municipalities which have experienced population growth of 10% or more

between 1980 and 1987 and which have total populations in excess of 500 persons, based on population estimates provided by the State Planning Office;

B. By January 1, 1993, those municipalities which have experienced population growth of 5% or more between 1980 and 1987, based on population estimates provided by the State Planning Office; and

C. All other municipalities by January 1, 1996.

The office shall revise the schedule deadlines under this subsection for a municipality based on the availability of state assistance and the municipality's rank in the priorities set forth in section 4960-F, subsection 1. Nothing in this subsection may bar a municipality from submitting its plan or other program component in advance of this schedule.

Each municipality shall submit for review a zoning ordinance proposed as part of its implementation program within one year of its submission of its comprehensive plan under this subsection. Other components of the municipality's implementation program not submitted for review shall be adopted in accordance with the timetable provided in the municipality's comprehensive plan.

4. Review of local growth management program. The office shall review any comprehensive plan and zoning ordinance submitted to it for consistency with the goals and guidelines established in this subchapter.

A. The office shall solicit written comments on any proposed comprehensive plan or zoning ordinance from regional councils, state agencies, all municipalities contiguous to the municipality submitting a comprehensive plan or zoning ordinance and any interested residents of the municipality or of contiguous municipalities. The comment period shall extend for 45 days after the office's receipt of the proposal. Each state agency reviewing the proposal shall designate a person or persons responsible for coordinating the agency's review of the proposal.

B. Each regional council shall review and submit written comments on the proposal of any municipality within its defined planning region. The comments shall be submitted to the office and shall contain an analysis of how the proposal addresses identified regional needs and whether the proposal is consistent with those of other municipalities which may be affected.

C. The office shall prepare all written comments from all sources in a form to be forwarded to the municipality.

D. The office shall submit the comments on the proposal to the municipality within 60 days of receipt of the proposal. The office shall also forward its comments and suggested revisions to the applicable regional council.

E. If warranted, the office shall issue findings specifically describing the deficiencies in the submitted plan or ordinance and the recommended measures for remedying the deficiencies.

5. Updates; amendment of comprehensive plans and zoning ordinances. Each municipality shall submit any amended comprehensive plans and zoning ordinances, revised pursuant to section 4960-C, subsection 5 to the office for review in the same manner as provided for review of new programs. The office shall provide an expedited review procedure for those submissions which represent amendments to local growth management programs reviewed by it after January 1, 1989. After the initial review, municipalities shall file copies of any amendment to a zoning ordinance with the office within 30 days of adoption.

6. Voluntary certification of local growth management programs. Any municipality may at any time request a certificate of consistency for its local growth management program. The office, upon request, shall review the program and base its certification decision on the program's consistency with the goals and guidelines established in this subchapter.

A. The office shall solicit written comments on any proposed local growth management program from regional and state agencies, all municipalities contiguous to the municipality submitting the proposed program and any interested residents of the municipality or contiguous municipalities.

B. Any regional council commenting on a proposed program or program component shall determine whether the proposed program or program component is compatible with those of other municipalities which may be affected and with regional needs identified by the regional council.

C. Within 90 days of the municipal request, the office shall issue a certificate of consistency or request revisions to the proposed program. In the event that the same local growth management program or program component has been previously reviewed by the office pursuant to subsection 4, denial of certification or requested revisions must be based on written comments received or prepared by the office at that time.

D. In the event of a request for revisions, the office shall provide the municipality with findings specifically describing the deficiencies in the submitted program or portion of the program and the recommended measures for remedying the deficiencies.

E. The office shall provide ample opportunity for the municipality submitting a local growth management program to respond to and correct any identified deficiencies in the program.

F. Upon issuance of a certificate of consistency, the municipality shall be eligible for all benefits and incen-

tives conditioned on the certification of a local growth management program.

G. The office shall provide an expedited review and certification procedure for those submissions which represent minor amendments to local growth management programs certified by it after January 1, 1989.

7. Rule-making authority. The office is authorized to adopt rules, with the advice of the Planning Advisory Council, necessary to carry out the purposes of this subchapter subject to the provisions of Title 5, chapter 375, subchapter II.

8. Final agency action. The office's decision on certification constitutes final agency action.

9. Transition; savings. Except as otherwise provided in this subsection, any comprehensive plan or land use regulation or ordinance adopted or amended by a municipality before the applicable date established under subsection 3 shall remain in effect until amended or repealed subject to this subchapter.

Any zoning, subdivision, site review or impact fee regulation or ordinance adopted or amended before the applicable date established under subsection 3 and not consistent with a comprehensive plan adopted according to this subchapter shall be without force one year after the applicable date established under subsection 3.

Any other land use regulation or ordinance adopted or amended before the applicable date established under subsection 3 and not consistent with a local growth management program adopted according to this subchapter shall be without force after January 1, 1998.

Any property or use existing in violation of a land use ordinance or regulation is a nuisance.

#### §4960-F. State technical and financial assistance

There is established a program of technical and financial assistance and incentives to regional councils and municipalities to encourage and facilitate the adoption and implementation of local growth management programs throughout the State. The program shall be administered by the office.

1. Municipal assistance priorities. With assistance from regional councils and municipalities, the office shall develop a priority list and establish funding levels for planning and technical assistance grants to municipalities. Priority for assistance shall be based on a municipality's:

A. Scheduled comprehensive plan development under section 4960-E, subsection 3; and

B. Population growth rates, seasonal population estimates, commercial and industrial development rates, the existence and quality of a comprehensive plan and other relevant factors.

The office shall submit biennial budget requests for this section sufficient to meet the statutory schedule established under section 4960-E, subsection 3.

2. Municipal planning assistance. The office shall develop and administer a grants program to provide direct financial assistance to municipalities in the preparation of comprehensive plans pursuant to this subchapter. The office shall establish provisions for municipal matching funds, not to exceed 25%, to conduct activities under this section. Grants may be expended for any purpose directly related to the preparation of a municipal comprehensive plan as the municipality and the office may agree, including, without limitation, the conduct of surveys, inventories and other data gathering activities, the hiring of planning and other technical staff, the retention of planning consultants, contracts with regional councils for planning and related services and other related purposes.

3. Municipal technical assistance. The office shall establish a program of technical assistance utilizing its own staff, the staff of other state agencies and the resources of regional councils to help municipalities in the development of local growth management programs. No later than January 1, 1990, the office shall develop a set of model land use ordinances and other mechanisms consistent with the goals and guidelines of this subchapter.

4. Municipal implementation assistance. The office shall develop and administer a matching grants program to provide direct financial and technical assistance to municipalities for the implementation and administration of those local growth management programs that have been certified under this subchapter. The maximum municipal cost share may not exceed 25%. The grants may be expended for any purpose directly related to the implementation of a local growth management program and the administration and enforcement of related land use ordinances adopted as part of a certified growth management program. Eligible activities include, without limitation, assistance in the development of ordinances, retention of technical and legal expertise for permitting activities and the updating of local growth management programs or components of the program.

5. Regional council assistance. The office shall develop and administer a program to develop regional education and training programs, regional policies to address state goals and regional assessments. These assessments may include, but not be limited to, public infrastructure, inventories of agricultural and commercial forest lands, housing needs, recreation and open space needs, and projections of regional growth and economic development. The office shall establish guidelines to ensure methodological consistency among the State's regional councils. The office shall also develop and administer a series of contracts with regional councils to support the involvement of the regional councils in the review of local growth management programs by the office.

6. Enforcement assistance program. The office shall administer a program of training and financial assistance for municipal code enforcement officers. For a period not to exceed 12 months for any municipal code enforcement officer, the program shall provide funding for educational expenses leading to certification under section 4967 and salary reimbursement while in training.

7. Municipal legal defense fund. The office shall develop and administer a municipal legal defense fund to assist municipalities with legal expenses related to the enforcement and defense of land use ordinances adopted as part of a certified local growth management program in accordance with this subchapter. Grants shall be targeted to cases of statewide significance.

8. Eligibility for other state aid. After the applicable deadline date established in section 4960-E, subsection 3, a state agency responsible for administering any grant and assistance program described in subsection 9 shall award funds to a municipality only when the municipality has adopted and implemented a certified local growth management program or has, at a minimum, adopted a certified comprehensive plan and implemented certified components of the implementation program that are directly related to the purposes for which the grant or assistance is provided.

9. State grants and assistance; certification. State grants and assistance in the following areas are subject to the provisions of subsection 8:

A. Assistance in the enforcement of local growth management programs including the municipal legal defense fund and technical and financial assistance in the administration and enforcement of local land use ordinances;

B. Assistance in the acquisition of land by the municipality for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353; and

C. Multi-purpose community development block grants.

10. Other state grants and assistance. Except for the programs specified in subsection 9, state agencies responsible for administering grant and direct or indirect financial assistance programs to municipalities designed to accommodate or encourage additional growth and development; to improve, expand or construct public facilities; to acquire land for conservation, recreation or resource protection; or to assist in planning or managing for specific economic and natural resource concerns shall allocate funds only to a municipality with an adopted comprehensive plan and implementation program which includes statements of policy or program guidelines directly related to the purposes for which the grant or financial assistance is provided. The content of the plan, policies and guidelines shall be considered by state agencies in awarding financial assistance to a municipality.

Sec. 5. 30 MRSA §4961, as amended by PL 1985, c. 794, Pt. A, §3, is repealed.

Sec. 6. 30 MRSA §4961-A is enacted to read:

§4961-A. Land use regulation

The provisions of this section constitute express limitations on the home rule powers granted to all municipalities under home rule authority.

1. Zoning ordinances. The following requirements apply to all zoning ordinances and amendments to zoning ordinances adopted by municipalities pursuant to home rule powers.

A. In the preparation of a zoning ordinance, the public shall be given an adequate opportunity to be heard.

B. The ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipality's legislative body.

C. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated therein. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

D. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only when on petition, notice and public hearing the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience.

E. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

F. Any zoning ordinance shall be advisory with respect to the State.

G. Any property or use existing in violation of any zoning ordinance is a nuisance.

H. Any zoning ordinance may provide that, when a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

I. Any zoning ordinance may include provisions for conditional or contract zoning or any other form of zoning consistent with this subchapter. For the purposes of this subchapter, "conditional zoning" means the

process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of the owner's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties. All rezoning under this paragraph shall:

- (1) Be consistent with the local growth management program adopted according to this subchapter;
- (2) Establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and
- (3) Only include conditions and restrictions which relate to the physical development or operation of the property.

The municipal reviewing authority, as defined in section 4956, subsection 2, shall conduct a public hearing prior to any property being rezoned under this paragraph. Notice of this hearing shall be posted in the municipal office at least 14 days prior to the public hearing and shall be published in a newspaper of general circulation within the municipality at least 2 times, the date of the first publication to be at least 7 days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known addresses. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

2. Zoning adjustment. The municipality shall establish a board of appeals which is subject to the provisions of this subsection.

A. A board of appeals shall be established in any municipality which adopts a zoning ordinance. The board of appeals shall hear appeals from actions or failure to act of the official or board charged with the enforcement of the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. That board of appeals shall be governed by section 2411, except that section 2411, subsection 2 shall not apply to boards existing on September 23, 1971.

B. In deciding any appeal:

- (1) The board may interpret the provisions of the ordinance which are called into question;
- (2) The board may approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance; and provided that, if the municipality has authorized the planning board, agency or office to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and

(3) The board may grant a variance in strict compliance with paragraph C.

C. A variance may be granted by the board only when strict application of the ordinance, or a provision of the ordinance, to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this paragraph means:

- (1) The land in question cannot yield a reasonable return unless a variance is granted;
- (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (3) The granting of a variance will not alter the essential character of the locality; and
- (4) The hardship is not the result of action taken by the applicant or a prior owner.

A municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may only be granted for a use permitted in a particular zone. In addition, whenever the board grants a variance under this subsection, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form and shall be recorded in the local registry of deeds within 30 days of final approval of the variance or the variance shall be invalid. No rights may accrue to the variance recipient or the recipient's heirs, successors or assigns unless and until the recording is made within 30 days.

D. The board shall reasonably notify of any hearing the petitioner, the planning board, agency or office and the municipal officers and such persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

3. Impact fees. A municipality may require, by ordinance, the construction of off-site capital improvements or may require payment of impact fees in lieu of construction. After the applicable deadlines established under section 4960-E, subsection 3, any impact fee ordinance must have been adopted as part of a certified local growth management program.

A. Such requirements may include construction of or impact fees in lieu of capital improvements, including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities.

- (1) Infrastructure facilities include, but are not

limited to, waste water collection and treatment facilities, municipal water facilities, solid waste facilities, fire protection facilities, roads and traffic control devices, parks and other open space or recreational areas.

B. Any ordinance which imposes or provides for the imposition of impact fees must meet the following requirements.

(1) The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements necessitated by the development.

(2) Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.

(3) The ordinance must establish a reasonable schedule under which the municipality is obliged to use the funds in a manner consistent with the capital investment component of the comprehensive plan.

(4) The ordinance must establish a mechanism by which the municipality may refund impact fees, or a portion of impact fees, actually paid which exceed the municipality's actual costs or which were not expended according to the schedule under this paragraph.

(5) The ordinance must be adopted as part of and consistent with a local growth management program, including the component regarding capital investment, meeting the requirements of this subchapter.

4. Application fees. Any application fee charged by a municipality for an application for any land use permit issued by the municipality may not exceed the reasonable cost of processing and review of the application by the municipality and its consultants and the administration of any requirement for a certificate of compliance with any permit conditions.

5. Moratorium. Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements.

A. The moratorium must be needed:

(1) To prevent a shortage or overburdening of public facilities which would otherwise occur during the effective period of the moratorium or which is reasonably foreseeable as a result of any proposed or anticipated development; or

(2) Because the application of existing comprehensive plans, land use ordinances or regulations or

other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.

B. The moratorium must be of a definite term, not to exceed 180 days, except that the moratorium may be extended for additional 180-day periods provided that the municipality adopting the moratorium:

(1) Finds that the problem giving rise to the need for the moratorium still exists; and

(2) Finds that reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium.

C. In municipalities where the municipal legislative body is the town meeting, the municipal officers are authorized to extend the moratorium as provided for and in compliance with paragraph B after notice and hearing.

Sec. 7. 30 MRSA §4962, as amended by PL 1983, c. 170, is repealed.

Sec. 8. 30 MRSA §4963, as amended by PL 1987, c. 182, §2, is repealed.

Sec. 9. 30 MRSA §4964, as amended by PL 1979, c. 218, §4, is repealed.

Sec. 10. 30 MRSA §§4967 and 4968 are enacted to read:

§4967. Training and certification for code enforcement officers

1. Certification required. Beginning January 1, 1993, it shall be unlawful for a municipality to employ any person to perform the duties of a code enforcement officer who is not certified by the office, except that the person shall have 12 months from the date of employment to be trained and certified in accordance with this section.

2. Waiver. The office may grant a waiver from the requirements of subsection 1 for a period not exceeding one year in the event that the certification requirements cannot be met without imposing a hardship on the municipality employing the person.

3. Penalty. Any municipality that violates this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day in violation constitutes a separate offense.

4. Certification; terms. The office shall certify persons as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations. Such certification shall be valid for a period of 5 years.

5. Training and certification of code enforcement officers. In cooperation with the Vocational-Technical Institute System and the Department of Human Services, the office shall establish a continuing education program for people engaged in code enforcement. This program shall provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification, including, but not limited to, plumbing inspection, soils and site evaluation, electrical inspection, state and federal environmental requirements, zoning ordinances, court techniques and other enforcement information.

6. Examination. The office shall hold at least one examination each year for the purpose of examining candidates for certification or recertification at a time and place designated by it. Additional examination dates may be held by the office to carry out the purposes of this subchapter.

7. Certification standards. The office shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification and recertification of individuals to act as code enforcement officers. A code enforcement officer need only be certified in the areas of actual job responsibilities. The rules established by the office under this subsection shall identify standards for each of the areas of training under subsection 5, in addition to general standards that apply to all code enforcement officers.

8. Certificates. The office shall issue certificates attesting to the competency of individuals to act as code enforcement officers. Certificates are valid for a period of 5 years unless revoked by the Administrative Court.

A. The Administrative Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 25, when it finds that the code enforcement officer has practiced fraud or deception; that reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement officer's ability was not used in the performance of the duties of the office; or that the code enforcement officer is incompetent or unable to perform properly the duties of the office.

B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided that they are newly certified as provided in this section.

C. This subchapter shall not be construed to affect or prevent the practice of any other legally recognized profession.

**Sec. 11. Application.** The provisions of section 1 shall apply to all applications before any municipal or state reviewing authority at the time of the effective date of this Act.

Effective August 4, 1988.

## CHAPTER 767

H.P. 1575 — L.D. 2150

### AN ACT to Provide for Child Care and Child Development Training for Student Parents.

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

**Sec. 1.** 20-A MRSA c. 223, sub-c. VIII is enacted to read:

#### SUBCHAPTER VIII

#### CHILD CARE SERVICES AND PARENTING EDUCATION

##### §6651. Child care services

School administrative units may develop school-based child care services.

1. Purpose. The purpose of the school-based child care services is to:

A. Make it possible for student parents to continue attending or return to school;

B. Provide parenting education and training in child development for teenage parents; and

C. Aid teacher recruitment.

2. Program. School-based child care services shall:

A. Be developmentally based;

B. Be available on a priority basis first to children of students in the school administrative unit and 2nd to children of teachers or other employees in the unit; and

C. Include training in parenting and child development for the student parents of the children in the program.

3. Subsidizable costs under the School Finance Act of 1985. The cost of salaries and educational materials attributable to the child care service shall be calculated on a per-child basis. One hundred percent of the cost per child times the number of children whose parents attend school in the school unit shall be subsidizable as program costs under the School Finance Act of 1985.

4. Cost to teachers and other employees. A school administrative unit may offer school-based child care services to teachers and other employees of the unit in accordance with a policy established by the local school board which establishes the basis for participation. The school administrative unit shall charge a fee for provision of such services which is at least equal to the per-child cost defined in subsection 3.