

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

with any other person or entity and are certified by the secretary by January 31, ~~1991~~ 2001, as held for the Penobscot Nation:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; any land acquired in Williamsburg T.6, R.8, N.W.P.; and any 300 acres in Old Town mutually agreed upon by the City of Old Town and the Penobscot Nation Tribal Government, provided that the mutual agreement must be finalized prior to August 31, 1991; and any lands in Lakeville acquired by the Penobscot Nation before January 1, 1991.

Sec. 2. Effective date. This Act does not take effect unless, within 60 days of the adjournment of the Second Regular Session of the 115th Legislature, the Secretary of State receives written notification by the Tribal Council of the Penobscot Nation that the Tribe has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives.

See title page for effective date, unless otherwise indicated.

CHAPTER 722

S.P. 836 - L.D. 2140

An Act Regarding Growth Management

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

Whereas, Public Law 1991, chapter 622, Part F abolished the Office of Comprehensive Land Use Planning in the Department of Economic and Community Development and removed the State from participation in local growth management planning; and

Whereas, the repeal of numerous statutory references to the former Office of Comprehensive Land Use Planning were inadvertently omitted from Public Law 1991, chapter 622, Part F; and

Whereas, enactment of Public Law 1991, chapter 622, Part F inadvertently voided rules governing the training and certification of municipal code enforcement officers that were adopted by the former Office of Comprehensive Land Use Planning; and

Whereas, enactment of Public Law 1991, chapter 622, Part F created statutory ambiguities pertaining to the status of local growth management plans and certain zoning ordinances adopted prior to the effective date of that Public Law; and

Whereas, enactment of Public Law 1991, chapter 622, Part F created statutory ambiguities pertaining to municipal authority to adopt impact fee ordinances; and

Whereas, Public Law 1991, chapter 622 was effective on December 23, 1991 and this Act must take effect immediately and be retroactive to December 23, 1991; and

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

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

Sec. 1. 12 MRSA §8003, sub-§3, ¶P, as enacted by PL 1989, c. 555, §6, is amended to read:

P. The director shall act as a liaison with the Department of Environmental Protection, the Maine Land Use Regulation Commission, the Department of Inland Fisheries and Wildlife, ~~the Office of Comprehensive Land Use Planning~~ and the Cooperative Extension Service on forestry issues.

Sec. 2. 12 MRSA §8867, sub-§1, ¶A, as amended by PL 1991, c. 591, Pt. G, §8, is further amended to read:

A. Seek advice from ad hoc advisory boards formed pursuant to Title 5, section 12008, and technical working groups on forest management issues that vary from region to region, including regeneration and clear-cutting rules; and

Sec. 3. 12 MRSA §8867, sub-§1, ¶B, as enacted by PL 1989, c. 555, §10, is amended to read:

B. Consult with the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife to ensure consistency between the departments' rules and the consideration of wildlife habitat and environmental protection; and.

Sec. 4. 12 MRSA §8867, sub-§1, ¶C, as enacted by PL 1989, c. 555, §10, is repealed.

Sec. 5. 30-A MRSA §4301, sub-§13, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

13. Office. "Office" means the Office of ~~Comprehensive Land Use Planning~~ Community Development in the Department of Economic and Community Development.

Sec. 6. 30-A MRSA §4314 is enacted to read:

§4314. Transition; savings clause

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

2. Zoning ordinances. Notwithstanding section 4352, subsection 2, a zoning ordinance not consistent with a comprehensive plan adopted under this subchapter is void 24 months after adoption of the plan.

3. Land use ordinances. Any land use ordinance not consistent with a comprehensive plan adopted according to this subchapter is void:

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

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

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

Sec. 7. 30-A MRSA §4326, as amended by PL 1991, c. 622, Pt. F, §29, is further amended to read:

§4326. Local growth management program

A local growth management program ~~may~~ shall include at least a comprehensive plan, as described in

subsections 1 to 4, and an implementation program as described in subsection 5.

1. Inventory and analysis. A comprehensive plan ~~may~~ shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance the municipality considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must 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 ~~may~~ must include, but is not limited to:

A. Economic and demographic data describing the municipality and the region in which it is located;

B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation;

C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;

D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;

E. Commercial forestry and agricultural land;

F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;

G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;

H. Residential housing stock, including affordable housing;

I. Historical and archeological resources including, at the discretion of the municipality, stone walls, stone impoundments and timber bridges of historical significance;

J. Land use information describing current and projected development patterns; and

K. 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.

2. Policy development. A comprehensive plan ~~may~~ **must** include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must:

- A. Promote the state goals under this subchapter;
- B. Address any conflicts between state goals under this subchapter;
- C. Address any conflicts between regional and local issues; and
- D. Address the State's coastal policies.

3. Implementation strategy. A comprehensive plan ~~may~~ **must** include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must 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 ~~may~~ **shall** employ the following guidelines consistent with the goals of this subchapter:

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

(1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality ~~should~~ **shall**:

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

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

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

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

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

D. 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;

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

F. Ensure the protection of agricultural and forest resources. Each municipality ~~should~~ **shall** discourage new development that is incompatible with uses related to the agricultural and forest industry;

G. Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality ~~is encouraged~~ **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. Municipalities are 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, increasing densities and use of municipally owned land;

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it; and

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking; and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality ~~should~~ shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting such protection.

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

5. Implementation program. An implementation program ~~may~~ must be adopted that is consistent with the strategies in subsection 3.

Sec. 8. 30-A MRS §4354, first ¶, as amended by PL 1991, c. 18, §2 and c. 236, §2, is repealed and the following enacted in its place:

A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement.

Sec. 9. Transition provisions.

1. Chapter 300 of the rules adopted by the former Office of Comprehensive Land Use Planning pertaining to qualification and certification standards for municipal code enforcement officers remain in effect and are administered by the Office of Community Development in the Department of Economic and Community Development until amended or repealed by that office pursuant to the Maine Administrative Procedure Act. All other rules adopted by the former Office of Comprehensive Land Use Planning are void.

2. All contracts issued by the former Office of Comprehensive Land Use Planning in effect on December 23, 1991 remain in effect and are deemed to be contracts issued by the Department of Economic and Community Development.

Sec. 10. Costs not funded. Notwithstanding the Maine Revised Statutes, Title 30-A, section 5684, any requirements of this Act that result in additional costs to local or county government are not state man-

dates subject to that section and the State is not required to fund those costs.

Sec. 11. Retroactivity clause. This Act takes effect retroactively to December 23, 1991.

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

Effective March 23, 1992.

CHAPTER 723

H.P. 1597 - L.D. 2259

An Act to Modify the Medical Examiner Act to Limit Liability of Medical Record Providers

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

22 MRS §3022, sub-§7, as repealed and replaced by PL 1987, c. 329, §2, is amended to read:

7. Medical records provided. In any medical examiner case, upon oral or written request of the medical examiner, any individual, partnership, association, corporation, institution or governmental entity which that has rendered treatment pertaining to the medical examiner case shall as soon as practicable provide the medical examiner with all medical records pertaining to the person and the treatment provided. No individual, partnership, association, corporation, institution, governmental entity or employee or agent of a governmental entity may be criminally or civilly responsible for furnishing any medical records in compliance with this subsection.

See title page for effective date.

CHAPTER 724

H.P. 1054 - L.D. 1543

An Act to Facilitate Prompt Child Support Payments from the Department of Human Services

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

Whereas, late child support payments inflict undue hardship on families throughout the State; and

Whereas, action should be taken immediately to ensure that payments are forwarded from the Department of Human Services in a more timely manner; and