MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST REGULAR SESSION
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J.S. McCarthy Company
Augusta, Maine
2001

CHAPTER 404

H.P. 708 - L.D. 923

An Act to Require That the Principles for Reimbursement for Private Nonmedical Institutions and Board and Care Institutions be Major Substantive Rules

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

Sec. 1. 22 MRSA §3174-Z is enacted to read:

§3174-Z. Private, nonmedical and board and care institutions

Rules concerning the principles for reimbursement for private, nonmedical and board and care institutions must be major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 405

S.P. 560 - L.D. 1722

An Act to Recognize Exemplary Efforts to Lower the Cost of Prescription Drugs

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

Sec. 1. 22 MRSA §254, sub-§8-B is enacted to read:

8-B. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to subsection 8 are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public.

Sec. 2. 22 MRSA §2681, sub-§7, as enacted by PL 1999, c. 786, Pt. A, §3, is amended to read:

7. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to this subchapter are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public. The department shall impose prior authorization requirements in the Medicaid program under this Title, as permitted by law, for the dispensing of prescription drugs provided by those manufacturers and labelers.

Sec. 3. Effective date. This Act takes effect on the date that the Department of Human Services begins offering prescription drug benefits under the Maine Rx Program as defined in the Maine Revised Statutes, Title 22, section 2681.

See title page for effective date, unless otherwise indicated.

CHAPTER 406

S.P. 547 - L.D. 1693

An Act to Amend the Comprehensive Planning and Land Use Regulation Laws

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

Sec. 1. 30-A MRSA §4301, sub-§§6-B and 13-A are enacted to read:

6-B. Impact fee ordinance. "Impact fee ordinance" means an ordinance that establishes the applicability, formula and means by which impact fees are assessed.

13-A. Rate of growth ordinance. "Rate of growth ordinance" means a land use ordinance or other rule that limits the number of building or development permits issued by a municipality or other jurisdiction over a designated time frame.

Sec. 2. 30-A MRSA §4312, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Limitation on state rule-making authority. The office is authorized to adopt rules necessary to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. This section ~~shall~~ may not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

Sec. 3. 30-A MRSA §4314, as amended by PL 1993, c. 721, Pt. A, §1 and affected by Pt. H, §1, is further amended 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. Shoreland zoning ordinances. Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that regulates land use beyond ~~that~~ the area required by Title 38, chapter 3, subchapter I, article 2-B and that is not consistent with a comprehensive plan adopted under this subchapter is ~~void~~ no longer in effect 24 months after adoption of the plan ~~or by July 1, 1994, whichever date is later~~.

3. Rate of growth, zoning and impact fee ordinances. ~~Any land use ordinance not consistent with a comprehensive plan adopted according to this subchapter is void~~ After January 1, 2003, any portion of a municipality's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted under this subchapter. The portion of a rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan is no longer in effect unless:

~~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.~~

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

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

E. The ordinance or portion of the ordinance conflicts with a newly adopted comprehensive plan or plan amendment adopted under this subchapter, in which case the ordinance or portion of the ordinance remains in effect for a period of up to 24 months immediately following adoption of the comprehensive plan or plan amendment; or

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

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

Sec. 4. 30-A MRSA §4326, sub-§3, ¶A, as amended by PL 1999, c. 776, §8, is further amended to read:

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 or any combination of those types of development, forecast over the next 10 years. Each municipality 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 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.

A municipality is not required to identify growth areas for residential, commercial or industrial growth if it demonstrates that it is not possible to accommodate future residential, commercial or industrial growth in these areas because of severe

physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources; or it demonstrates that the municipality has experienced minimal or no residential, commercial or industrial development over the past decade and this condition is expected to continue over the 10-year planning period. A municipality exercising the discretion afforded by this paragraph shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4327;

Sec. 5. 30-A MRSA §4346, 2nd ¶, as amended by PL 1993, c. 721, Pt. A, §7 and affected by Pt. H, §1, is further amended to read:

The office may enter into financial assistance grants only to the extent that funds are available. In making grants, the office shall consider the need for planning in a municipality, the proximity of the municipality to other towns that are conducting or have completed the planning process and the economic and geographic role of the municipality within a regional context. The office may consider other criteria in making grants, as long as the criteria support the goal of encouraging and facilitating the adoption and implementation of a local growth management program consistent with the provisions of this article. In order to maximize the availability of the technical and financial assistance program to all municipalities and regional councils, financial assistance programs administered competitively under this article are exempt from rules adopted by the Department of Administrative and Financial Services pursuant to Title 5, section 1825-C for use in the purchase of services and the awarding of grants and contracts. The office shall publish a program statement describing its grant program and advertising its availability to eligible applicants.

Sec. 6. 30-A MRSA §4346, sub-§2-A, as enacted by PL 1993, c. 721, Pt. A, §10 and affected by Pt. H, §1, is amended to read:

2-A. Financial assistance grants. A contract for a financial assistance grant must:

A. Provide for the payment of a specific amount for the purposes of planning and preparing a comprehensive plan;

B. Provide for the payment of a specific amount for the purposes of implementing that plan; and

C. Include specific timetables governing the preparation and submission of products by the municipality.

The office may not require a municipality to provide matching funds in excess of 25% of the value of that municipality's financial assistance contract for its first planning assistance grant and implementation assistance grant. The office may require a higher match for other grants, including, but not limited to, grants for the purpose of updating comprehensive plans. This match limitation does not apply to distribution of federal funds that the office may administer.

Sec. 7. 30-A MRSA §4346, sub-§2-C is enacted to read:

2-C. Program evaluation. Any recipient of a financial assistance grant shall cooperate with the office in performing program evaluations required under section 4331.

Sec. 8. 30-A MRSA §4346, sub-§5, as enacted by PL 1991, c. 780, Pt. E, §2, is amended to read:

5. Coordination. State agencies with regulatory or other authority affecting the goals established in this subchapter shall conduct their respective activities in a manner consistent with the goals established under this subchapter, including, but not limited to, coordinating with municipalities, regional councils and other state agencies in meeting the state goals; providing available information to regions and municipalities as described in section 4326, subsection 1; cooperating with efforts to integrate and provide access to geographic information system data; making state investments and awarding grant money as described in section 4349-A; and conducting reviews of growth management programs as provided in section 4347-A, subsection 3, paragraph A. Without limiting the application of this section to other state agencies, the following agencies shall comply with this ~~section~~ subchapter. The Land and Water Resources Council shall periodically, but in no event less than biannually, review the effectiveness of agency coordination efforts, including, but not limited to, those in section 4349-A:

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;

G-1. Department of Human Services;

G-2. Executive Department, State Planning Office;

H. Finance Authority of Maine; and

I. Maine State Housing Authority.

Sec. 9. 30-A MRSA §4347, as amended by PL 1993, c. 166, §§9 and 10, is repealed.

Sec. 10. 30-A MRSA §4347-A is enacted to read:

§4347-A. Review of programs by office

1. Comprehensive plans. A municipality that chooses to prepare a growth management program and receives a planning grant under this article shall submit its comprehensive plan to the office for review. The office shall review plans for consistency with the goals and guidelines established in this subchapter. Any contract for a planning assistance grant must include specific timetables governing the review of the comprehensive plan by the office. Any comprehensive plan submitted for review more than 12 months following a contract end date may be required to update data, projections and other time-sensitive portions of the plan or program to the office's most current review standards.

2. Growth management programs. A municipality may at any time request a certificate of consistency for its growth management program.

A. Upon a request for review under this section, the office shall review the program and determine whether the program is consistent with the procedures, goals and guidelines established in this subchapter.

B. Except as provided in subsection 1, certification by the office of a municipality's growth management program under this article is valid for 10 years. To maintain certification, a municipality shall periodically review its growth management program and submit to the office in a timely manner any revisions necessary to account for changes, including changes caused by growth and development.

Certification does not lapse in any year in which the Legislature does not appropriate funds to the office for the purposes of reviewing programs for recertification.

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

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

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

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

B. Prepare all written comments from all sources in a form to be forwarded to the municipality;

C. Within 60 days after receiving the comprehensive plan or 90 days after receiving the growth management program, send all written comments on the comprehensive plan or growth management program to the municipality and any applicable regional council. If warranted, the office shall issue findings specifically describing how the submitted plan or growth management program is not consistent with this subchapter and the recommended measures for remedying the deficiencies.

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

(2) If the office finds that the comprehensive plan or growth management program was adopted under this subchapter, the office shall issue a finding of consistency for the comprehensive plan or a certificate of consistency for the growth management program.

(3) Notwithstanding paragraph D, if a municipality requests a certificate of consistency for its growth management program, any unmodified component of that program that has previously been reviewed by the office and has received a finding of consistency will retain that finding during program certification review by the office as long as

the finding of consistency is current as defined in rules adopted by the office;

D. Provide ample opportunity for the municipality submitting a comprehensive plan or growth management program to respond to and correct any identified deficiencies in the plan or program. A finding of inconsistency for a comprehensive plan or growth management program may be addressed within 24 months of the date of the finding without jeopardizing partial findings of consistency attained during that review. After 24 months, the plan or program must be resubmitted in its entirety for state review under the office's most current review standards; and

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

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

4. Updates and amendments. A municipality may submit proposed amendments to a comprehensive plan or growth management program to the office for review in the same manner as provided for the review of new plans and programs. Subsequent to voluntary certification under this subsection, the municipality shall file a copy of an amendment to a growth management program with the office within 30 days after adopting the amendment and at least 60 days prior to applying for any state grant program that offers a preference for consistency or certification.

5. Regional councils. Subject to the availability of funding and pursuant to the conditions of a contract, each regional council shall review and submit written comments on the comprehensive plan or growth management program of any municipality within its planning region. The comments must be submitted to the office and contain an analysis of:

A. Whether the comprehensive plan or growth management program is compatible with identified regional policies and needs; and

B. Whether the comprehensive plan or growth management program is compatible with plans or programs of other municipalities that may be affected by the proposal.

Sec. 11. 30-A MRSA §4348, as amended by PL 1993, c. 166, §11, is repealed.

Sec. 12. 30-A MRSA §4349-A, sub-§1, ¶A, as enacted by PL 1999, c. 776, §10, is amended to read:

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

Sec. 13. 30-A MRSA §4349-A, sub-§2, as enacted by PL 1999, c. 776, §10, is amended to read:

2. State facilities. The Department of Administrative and Financial Services, Bureau of General Services shall develop site selection criteria for state office buildings, state courts and other state civic buildings that serve public clients and customers, whether owned or leased by the State, that give preference to the priority locations identified in this subsection while ensuring safe, healthy, appropriate work space for employees and clients and accounting for agency requirements. Preference must be given to priority locations in the following order: service center downtowns, service center growth areas and downtowns and growth areas in other than service center communities. If no suitable priority location exists or if the priority location would impose an undue financial hardship on the occupant or is not within a reasonable distance of the clients and customers served, the facility must be located in accordance with subsection 1. The following state facilities are exempt from this subsection: a state liquor store; a lease of less than 500 square feet; and a lease with a tenure of less than one year, including renewals.

~~For the purposes of this subsection, "service center" means a community that serves the surrounding region, drawing workers, shoppers and others into the community for jobs and services.~~

Sec. 14. 30-A MRSA §4349-A, sub-§2-A is enacted to read:

2-A. State's role in implementation of growth management programs. All state agencies, as partners in local and regional growth management efforts, shall contribute to the successful implementation of comprehensive plans and growth management programs adopted under this subchapter by making investments, delivering programs and awarding grants in a manner that reinforces the policies and strategies within the plans or programs. Assistance must be provided within the confines of agency policies, available resources and considerations related to overriding state interest.

Sec. 15. 30-A MRSA §4349-A, sub-§3, as enacted by PL 1999, c. 776, §10, is amended to read:

3. Preference for other state grants and investments. When awarding grants or ~~assistance for capital investments~~ making a discretionary investment under any of the programs under paragraphs A and B

or undertaking its own capital investment programs other than for projects identified in section 4301, subsection 5-B, a state agency shall respect the primary purpose of its grant or investment program and, to the extent feasible, give preference first to a municipality that receives a certificate of consistency under section ~~4348 or~~ 4347-A and 2nd to a municipality that has adopted a comprehensive plan ~~and implementation strategies~~ consistent with the goals and guidelines of this subchapter over a municipality that does not obtain the certificate or finding of consistency within 4 years after receipt of the first installment of a financial assistance grant or rejection of an offer of financial assistance. This subsection applies to:

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

B. Programs intended to:

(1) Accommodate or encourage additional growth and development;

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

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

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

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

Sec. 16. 30-A MRSA §5953-D, sub-§3, ¶D, as amended by PL 1999, c. 776, §13, is further amended to read:

D. In the case of a public service infrastructure grant or loan, the Department of Economic and Community Development affirms that the applicant has met the conditions of this paragraph.

(1) A municipality is eligible to receive a grant or a loan, or a combination of both, if that municipality has adopted a local growth management program certified under section ~~4348~~ 4347-A that includes a capital improvement program composed of the following elements:

(a) An assessment of all public facilities and services, such as, but not limited to, roads and other transportation facilities, sewers, schools, parks and open space, fire and police;

(b) An annually reviewed 5-year plan for the replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet expected growth and economic development. The plan must include projections of when and where those facilities will be required; and

(c) An assessment of the anticipated costs for replacement, expansion or construction of public facilities, an identification of revenue sources available to meet these costs and recommendations for meeting costs required to implement the plan.

(2) A municipality is eligible to receive a loan if that municipality:

(a) Has adopted a comprehensive plan that is determined by the Executive Department, State Planning Office to be consistent with section 4326, subsections 1 to 4.

Subject to the limitations of this subsection, 2 or more municipalities that each meet the requirements of subparagraphs (1) or (2) may jointly apply for assistance under this section; and

Sec. 17. 38 MRSA §488, sub-§14, ¶A, as amended by PL 1999, c. 468, §12, is further amended to read:

A. A development is exempt from review under flood plain, noise and infrastructure standards under section 484 if that development is located entirely within:

(1) A municipality that has adopted a local growth management program that the State Planning Office has certified under Title 30-A, section ~~4348~~ 4347-A; and

(2) An area designated in that municipality's local growth management program as a growth area.

An applicant claiming an exemption under this paragraph shall include with the application a statement from the State Planning Office affirming that the location of the proposed development meets the provisions of subparagraphs (1) and (2).

An applicant claiming an exemption under this paragraph shall publish a notice of that application in a newspaper of general circulation in the region that includes the municipality in which the development is proposed to occur. That notice must include a statement indicating the standard or standards for which the applicant is claiming an exemption.

See title page for effective date.

CHAPTER 407

H.P. 1027 - L.D. 1384

An Act to Make Active Public Health Investigation Records Confidential

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

Sec. 1. 22 MRSA §42, sub-§5, as enacted by PL 1993, c. 295, §1, is amended to read:

5. Confidentiality of records containing certain medical information. Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information.

The department's confidential records may not be open to public inspection, are not public records for purposes of Title 1, chapter 13, subchapter I and may not be examined in any judicial, executive, legislative or other proceeding as to the existence or content of any individual's records obtained by the department.

Exceptions to this subsection include release of medical and epidemiologic information in such a manner that an individual can not be identified; disclosures that are necessary to carry out the provisions of chapter 250; disclosures made upon written authorization by the subject of the record, except as otherwise provided in this section; and disclosures that are specifically provided for by statute or by departmental rule.

Nothing in this subsection precludes the department, during the data collection phase of an epidemiologic investigation, from refusing to allow the inspection or copying of any record or survey instrument, including any redacted record or survey instrument, containing information pertaining to an identifiable individual that has been collected in the course of that investigation. The department's refusal is not reviewable.

See title page for effective date.

CHAPTER 408

S.P. 97 - L.D. 323

An Act Concerning Patient Access to Eye Care Providers

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

Sec. 1. 24-A MRSA §4314 is enacted to read:

§4314. Access to eye care providers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eye care provider" means a participating provider who is an optometrist licensed to practice optometry pursuant to Title 32, chapter 34-A, or an ophthalmologist licensed to practice medicine pursuant to Title 32, chapter 48.

B. "Eye care services" means those urgent health care services related to the examination, diagnosis, treatment and management of conditions, illnesses and diseases of the eye and related structures that are provided to treat conditions, illnesses or diseases of the eye that if not treated within 24 hours present a serious risk of harm.

2. Coverage of eye care services. A carrier that provides coverage for eye care services as part of a health plan shall provide coverage for eye care services in accordance with the following.

A. An enrollee may receive eye care services from an eye care provider participating in the enrollee's health plan without the prior approval or authorization of the enrollee's primary care provider for a maximum of 2 visits, one initial visit and one follow-up visit, for each occurrence requiring urgent care as described in subsection 1, paragraph B. A carrier may not retrospectively deny coverage under this section on the basis that the eye care services received by the enrollee did not meet the requirements of subsection 1, paragraph B. In order to receive continuing benefits for treatment related to the initial visit, an enrollee must receive the approval of the enrollee's primary care provider for any visit after the 2nd visit. Within 3 working days of the initial visit, the eye care provider shall send to the enrollee's primary care provider a report containing the en-