LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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

Penmor Lithographers
Lewiston, Maine
2007

1. Mediated agreement. An agreement reached by the parties through mediation must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

2. No agreement; good faith effort required. When agreement through mediation is not reached on an issue, the court shall determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or a part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances.

3. Mediation not ordered; consent. The court may not order mediation in cases in which no mediator is available or mediation would delay any hearing in the matter, unless the parties consent to a delay in the proceedings to allow mediation to take place.

4. Mediators provided. The Court Alternative Dispute Resolution Service, established in Title 4, section 18-B, shall provide mediators for mediations under this section.

5. Rules; fees. The Supreme Judicial Court may adopt rules of procedure for actions under this chapter.

Sec. 3. Fees. The Supreme Judicial Court may assess a fee pursuant to the Maine Revised Statutes, Title 4, section 18-B as a part of the filing fee for actions under Title 14, chapter 709 to pay for mediation under this Act.

Sec. 4. Report. The Court Alternative Dispute Resolution Service, established in the Maine Revised Statutes, Title 4, section 18-B, shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 15, 2009 about the efficiency and use of the residential tenancy mediation program established by this Act.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative 0063

Initiative: Allocates funds to cover the cost of providing mediation in landlord-tenant disputes.

OTHER SPECIAL REVENUE FUNDS	**2007-08**	**2008-09**
All Other	$11,250	$22,500
OTHER SPECIAL REVENUE FUNDS TOTAL	$11,250	$22,500

Sec. 6. Effective date. This Act takes effect January 1, 2008.

Effective January 1, 2008.

CHAPTER 247

H.P. 1258 - L.D. 1803

An Act To Clarify Comprehensive Planning and Land Use Ordinances

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

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

3. Rate of growth, zoning and impact fee ordinances. After January 1, 2003, any portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter. The portion of a rate of growth, zoning or impact fee ordinance not directly related to an inconsistency identified by a court or during a comprehensive plan review by the office in accordance with section 4347-A, subsection 3-A remains in effect. For purposes of this subsection, "zoning ordinance" does not include an ordinance that applies townwide that is a cluster development ordinance or a design ordinance prescribing the color, shape, height, landscaping, amount of open space or other comparable physical characteristics of development. 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:

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

D. The municipality or multimunicipal region 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 in accordance with the

procedures, goals and guidelines established in 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;

F. The municipality or multimunicipal region 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 or multimunicipal region its first planning assistance or implementation assistance grant, the municipality or multimunicipal region has up to one year to contract with the office to prepare a comprehensive plan or implementation program, in which case the municipality's or multimunicipal region's ordinances will be subject to paragraph D; or

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

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

3. Implementation strategy. A comprehensive plan 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 and periodic review of the comprehensive plan.

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

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

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

(a) Establish development standards;

(b) Establish timely permitting procedures;

(c) Ensure that needed public services are available; and

(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

(2) Within rural areas, each municipality or multimunicipal region 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, transfer of development rights pursuant to section 4328 and performance standards. The municipality or multimunicipal region should also identify which rural areas qualify as critical rural areas as defined in this chapter. Critical rural areas must receive priority consideration for proactive strategies designed to enhance rural industries, manage wildlife and fisheries habitat and preserve sensitive natural areas.

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

(4) A municipality or multimunicipal region 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.~~ within the municipality or multimunicipal region for residential, commercial or industrial growth if it demonstrates, in accordance with rules adopted by the office pursuant to this article, that:

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

(b) The municipality or multimunicipal region 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;

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

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

~~(5) A municipality or multimunicipal region is not required to identify growth areas for residential, commercial or industrial growth if it demonstrates that the municipality or multimunicipal region 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.~~

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

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

3. Review of 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 or multimunicipal region submitting a ~~comprehensive plan or~~ growth management program and any interested residents of the municipality or multimunicipal region 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 growth management 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 or multimunicipal region;

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 or multimunicipal region 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 the procedures, goals and guidelines established in 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 in accordance with the procedures, goals and guidelines established in 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 or multimunicipal region 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 or multimunicipal region 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 addressing any new review standards that are created during that time interval. After 24 months, the ~~plan or~~ program must be resubmitted in its en-

tirety 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.

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

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

A. Solicit written comments on any proposed comprehensive plan from regional councils, state agencies, all municipalities contiguous to the municipality or multimunicipal region submitting a comprehensive plan and any interested residents of the municipality or multimunicipal region or of contiguous municipalities. The comment period extends for 25 business days after the office receives the comprehensive plan. Each state agency reviewing the proposal shall designate a person or persons responsible for coordinating the agency's review of the comprehensive plan;

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

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

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

(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 was developed in accordance with the procedures, goals and guidelines established in this subchapter, the office shall issue a finding of consistency for the comprehensive plan.

(3) A finding of inconsistency must identify the goals under this subchapter not adequately addressed, specific sections of the rules relating to comprehensive plan review adopted by the office not adequately addressed and recommendations for resolving the inconsistency;

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

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

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

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

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

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

2. Relation to comprehensive plan. A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertain-

ment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has no such comprehensive plan. As used in this section, "adult entertainment establishment ordinance" means an ordinance that regulates the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses. For purposes of this subsection, "zoning ordinance" does not include a cluster development ordinance or a design ordinance prescribing the color, shape, height, landscaping, amount of open space or other comparable physical characteristics of development.

See title page for effective date.

CHAPTER 248

H.P. 1265 - L.D. 1813

An Act To Facilitate Collection of Money Owed to the State

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

Sec. 1. 4 MRSA §807-A, 3rd ¶, as enacted by PL 2003, c. 278, §4, is amended to read:

Upon the promulgation of and in accordance with rules adopted by the Supreme Judicial Court, employees of the Department of the Attorney General may serve civil process and represent the State in District Court in disclosure proceedings pursuant to Title 14, ~~chapter~~ chapters 502 and 502-A.

Sec. 2. 5 MRSA §202, as amended by PL 1973, c. 567, §2, is further amended to read:

§202. Employment of detectives

The Attorney General may, ~~by himself~~ for the Department of the Attorney General or through the several district attorneys or other officers of the State, employ such detectives or other persons, offer rewards or use other means that ~~he may deem~~ the Attorney General considers advisable for the detection, arrest and apprehension of persons who commit crime in this State. Detectives with the department may exercise all the powers necessary to levy and enforce writs of execution on judgments owed to the State. Any property seized as payment towards a judgment owed to the State may be sold by the State at a surplus auction or in any other commercially reasonable manner.

See title page for effective date.

CHAPTER 249

H.P. 1221 - L.D. 1738

An Act To Amend the Laws Relating to the Maine State Retirement System

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

Sec. 1. 3 MRSA §752, as enacted by PL 1985, c. 507, §1, is repealed.

Sec. 2. 3 MRSA §801, sub-§1, as amended by PL 2005, c. 516, §1, is further amended to read:

1. Membership mandatory. Every Legislator serving in the Legislature on or after December 3, 1986 is a member of the Maine Legislative Retirement System, except that any Legislator who is a member of the Maine State Retirement System on December 2, 1986 may continue to be a member of that system instead of becoming a member of the Maine Legislative Retirement System, and any Legislator who is a public school teacher or an employee of the Maine Community College System on leave of absence for the purpose of serving in the Legislature continues to be a member of the Maine State Retirement System and to have contributions deducted from the member's legislative earnable compensation as provided by Title 5, section 17701. A Legislator who terminates employment from a position requiring membership in the Maine State Retirement System no longer contributes to the Maine State Retirement System and, if qualified, is eligible to become a benefit recipient under Title 5, section 17804. Upon such termination, the Legislator becomes a member of the Maine Legislative Retirement System. ~~No~~ Except as provided in section 802, subsection 4, paragraph A, creditable service granted under the Maine State Retirement System may not be transferred to the Maine Legislative Retirement System. A member ceases to be a member when the member withdraws the member's contributions, becomes a beneficiary as a result of the member's own retirement or dies.

Sec. 3. 3 MRSA §802, sub-§4, ¶A, as enacted by PL 1985, c. 507, §1, is amended to read:

A. Any member who has not withdrawn ~~his~~ the member's accumulated contributions with the Maine State Retirement System and is not a benefit recipient under Title 5, section 17804 may, upon becoming a Legislator, have ~~his~~ the member's Maine State Retirement System contributions and membership service transferred to ~~his~~ the member's account with the Maine Legislative Retirement System and all creditable service resulting from ~~his~~ membership in the Maine State Retirement System ~~shall be~~ is creditable service in the Maine Legislative Retirement System.