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# Analysis of State Planning Office Purpose and Duties

Pursuant to Resolve 2009, Chapter 89

February 1, 2010



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# Analysis of State Planning Office Purpose and Duties

## Introduction

Resolve 2009, chapter 89 asks the Maine State Planning Office (SPO) to “prepare a reorganization plan for the State Planning Office in which the Office is nonregulatory in nature, performs planning services for agencies and is the agency responsible for the state-owned landfill.” Chapter 89 further assigns SPO the task of preparing legislation to transfer to other agencies the Office’s powers and duties related to the reorganization described above. Chapter 89 directs SPO to report this plan to the Joint Standing Committee on State and Local Government. (See Appendix A for the full text of Resolve 2009, chapter 89).

## Summary Recommendation

After a review of legislative history, relevant statutes and rules, and the relationship among the branches of government, the State Planning Office makes no recommendation for changes to its organization under the terms of chapter 89. This is not because the Office disagrees with the Legislature that SPO should be nonregulatory in nature and provide planning services to other agencies. It is because we agree with this description of our powers and duties and are already a nonregulatory, interagency planning office. In addition, we are concerned about the appropriateness of recommending any reorganization of an office in the Executive Department in the last year of an Administration’s tenure. The following discussion expands on our recommendation that SPO not be reorganized as described in chapter 89.

## Discussion

### *Background*

The State Planning Office was created in 1968 by Public Law 1967, chapter 533 of the 103<sup>rd</sup> Legislature. The legislation passed under the hammer in the Senate and by a 97 to 32 vote in the House of Representatives. The House debate of 1968 would be familiar to members of the 124<sup>th</sup> Legislature in 2010. Proponents of the bill to establish the State Planning Office included Representative Levesque of Madawaska and Representative Rideout of Manchester. Excerpts from their floor speeches of January 19, 1968 follow:

Rep. Rideout:

This bill does provide for the establishment of a State Planning Office which would put all phases of planning, state, local and regional under one roof.... This bill provides for a correlation of planning on all levels. I feel this is desirable for planning as a team effort for all departments and should be directed by one office answerable to the Governor....

Rep. Levesque:

I think the State of Maine being a state of less than a million population that it would be wise for this Legislature and for the people of this State that we would retain somewhat of a system of being able to coordinate more than one office rather than to create an entire new department. I think the trend has been over the last ten years that they consolidate and group and regroup these departments so that they have a better coordination within the department rather than to separate and to create new and additional departments.

Opponents to the legislation that passed establishing the State Planning Office supported a different bill creating SPO. The difference between the two bills was this: The enacted legislation gave SPO two duties—coordination of state agencies’ planning involving environmental and economic policy issues and assistance to local and regional planning groups. The legislation that did not pass involved SPO in state interagency coordination but not community assistance.

### ***Statutory Duties***

From its inception in 1968 up to today, the State Planning Office has carried out its responsibility to coordinate policy planning among state agencies and provide community assistance.

The State’s economy and resources — its land, water, and energy — cross political boundaries. Policies regarding them also cross bureaucratic boundaries; they are not the domain of any single state agency or level of government.



Departments and agencies are focused (rightly so) on their statutorily-defined, often single-purpose duties. At times their interests conflict. At times the interests of one agency are not fully known to or appreciated by the other. Agencies tend to be program-driven and, in their commitment to fulfill their day-to-day responsibilities, they can be short-range in view, especially in periods of extreme budgetary limitations.

Similarly, local governments focus on the needs and interests of their residents. At times the impact of local decisions on regional residents or state policy may not be known or may need mediation.

The law directs SPO to assist the Governor, the Legislature, and other state agencies with:

- identifying issues and problems of long-term significance to the State;
- balancing the conservation and development of natural resources; and
- proposing economic, natural resource, energy, land use, and fiscal and regulatory policy.

State law assigns four core duties to SPO that include:

1. Assisting the Governor and Legislature by undertaking studies and plans and preparing policy alternatives;
2. Coordinating state policy and its implementation on issues of interagency concern;
3. Conducting continuing economic analysis, including economic forecasting; and
4. Providing technical assistance to towns and regions.

We provide SPO's enabling statute in Appendix B and an overview of core responsibilities in Appendix C.

### ***Non-regulatory Functions***

Part of the purpose of Resolve 2009, chapter 89 is to relieve the State Planning Office of its regulatory functions. While SPO develops certain statewide planning, policy and rules, SPO does not perform regulatory functions or enforcement actions.

State regulatory agencies, such as environmental protection, professional licensing, or parts of health and human services, typically govern how individuals and businesses may operate in carrying out their activities. They often exact monetary penalties for noncompliance and may fine or prosecute persons for failure to abide by rules. In contrast, SPO is not an enforcement agency.

Thus, SPO rules differ from regulatory agencies in two ways. They:

1. *do not* impose limitations on individual, municipal, or business activity;
2. *do not* exact penalties; and
3. *do not* permit enforcement actions.

They *do* lay out standards or procedures by which affected or interested parties may participate in certain legislatively created initiatives.

For example:



#### ***Comprehensive Planning***

If a municipality wishes to enact zoning ordinances or receive certain points on an application for some state grants, the Growth Management Act requires municipal comprehensive plans to be consistent with the Act. An SPO rule describes the process and standards for consistency. Much of the rule is a self-assessment checklist for municipalities. Approximately 270 out of 495 towns have chosen to have a comprehensive plan and sought a consistency review

from SPO. SPO has no enforcement function with regard to the implementation of comprehensive plans. In fact, and SPO finding is advisory only and the ultimate arbiter of consistency between a comprehensive plan and the Growth Management law is the courts.



### ***Code Officer Certification***

State law requires SPO to provide basic training and certification for local code enforcement officers. The Legislature has given SPO rule-making authority to determine certification processes and standards. The rule does not determine consequences for failure of an individual to become certified, it only describes how an officer can become certified.



### ***Qualified Preparers for Comprehensive Economic Impact Studies***

Under the Informed Growth Act, municipalities must use a consultant to prepare requisite economic impact studies from SPO's list of qualified preparers. SPO does not impose the requirement to use a qualified preparer. The Legislature directed SPO to develop criteria for qualifying consultants that may prepare these studies. SPO's rule does not determine consequences for failure of a municipality to use a qualified consultant, it only describes how a consultant may get on the list of qualified consultants from which a municipality chooses.<sup>1</sup>

## ***Interagency Planning and Coordination***

The State Planning Office is Maine's interagency and intergovernmental coordination planning arm. Planning involves the establishment of goals, policies, and procedures for any social or economic enterprise. SPO's responsibilities include planning involving agencies of state government and between state and local governments.

Typically governors' offices have one or more positions devoted to working with state agencies on issues of policy, planning, and coordination that concern the Governor.<sup>2</sup> Unlike other states, where the director of this effort is a member of the governor's office senior staff, in Maine these functions are housed in SPO.

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<sup>1</sup> All SPO rules may be found at <http://www.maine.gov/spo/rightcolumn/sporules.htm>. All of these rules were reviewed for this report.

<sup>2</sup> National Governor's Association. Web Site. "Information about Governors." <http://www.nga.org/portal/site/nga/menuitem.5dbb9333fc52447ae8ebb856a11010a0/>



SPO differs from the approach to interagency planning and coordination in other states in another way: SPO also does this work for the Legislature. See the Maine Revised Statutes Annotated, Title 5, section 3305. For example, the first regular session of the 124<sup>th</sup> Legislature enacted legislation assigning 17 interim tasks to SPO involving, in the words of Title 5, section 3305, “technical assistance...by undertaking special studies and plans, preparing or analyzing policy alternatives and identifying the immediate and long-range needs and resources....”

Unlike other states, Maine also does not have a department or bureau to assist municipalities such as Colorado’s Department of Local Affairs, Florida’s Department of Community Affairs, Texas’s Department of Rural Affairs, or the Local Affairs Agency in the Alaska Governor’s Office. Instead, Maine’s community assistance efforts are consolidated at SPO.

SPO’s function of coordinating policy and planning across state departments and levels of government is efficient. State policies and programs implemented in constituent departments may conflict with one another. For example, Maine desires to foster hydropower energy generation while preserving fisheries habitat; conserve the ecological value of forest lands and secure forest products jobs; protect productive farmland and develop new homes for Maine families; develop the recreational potential of coastal harbors and support commercial fishermen; and develop wind energy resources and preserve rural scenic vistas. These initiatives require the capacity to stand back and research, analyze, design, and facilitate. SPO provides the formal, legal structure to carry out many of the State’s interagency and intergovernmental efforts.

For example:



***Land for Maine's Future Program (LMF)***

SPO staffs the board that administers the LMF program. On the LMF board sit five Cabinet members along with six public members. SPO staff works with state natural resource departments, local land trusts, municipalities, statewide conservation groups, and statewide recreational, farming, forestry, and fishing enterprises to preserve natural areas, recreational access, and working landscapes and waterfronts.



***Maine Coastal Zone Management Program (CZM)***

SPO administers this federally-funded, multi-agency partnership grant that supports efforts to protect and manage Maine’s coast and coastal resources, including initiatives such as restoring coastal habitats, protecting working waterfronts, and training volunteer shore stewards. CZM’s planning and coordination work involves five state agencies and many local partners.





### ***State's Response to FERC on Liquefied Natural Gas Proposals***

SPO is the central point of contact between the Federal Energy Regulatory Commission, the developer, state agencies, affected municipalities, and the public in liquefied natural gas projects in Maine and coordinates mitigation and remediation planning among five state agencies. SPO staff coordinates state agency safety analyses and relations with county, municipal, and citizen interests.

These planning and coordination efforts are three of close to twenty ongoing similar undertakings SPO currently conducts. These are in addition to the interim studies assigned to SPO.

Furthermore, SPO General Fund policy, planning, and coordination positions support the Office's community assistance work in some manner, either with management oversight or as match required by federal grants. Ninety percent of the community assistance work is funded with federal or other special revenue funds.

In addition, since 2007 SPO has cut twenty percent of its General Fund policy, planning, and coordination staff. We have also lost federal funds for two other positions. Disassembling this remaining staff to disperse it to other state agencies would dilute, not enhance, the Governor's and Legislature's ability to seek planning and coordination among state agencies and levels of government.

### ***Executive Department***

In 2010, in the last year of an eight-year gubernatorial term, the State Planning Office believes caution is wise in seeking to change the Executive Department. The State Planning Office not only performs intergovernmental coordination and planning services. We serve the Governor within his office. We are not a separate department, as are other state agencies within the Governor's Cabinet. Next year at this time, Maine will have a new governor. We believe he or she should have the opportunity to consider the role of the State Planning Office.



### **Conclusion and Recommendation**

We see the State Planning Office as offering the services of the planning and intergovernmental relations contemplated by Resolve 2009, chapter 89. We are unable to prepare a reorganization plan to make the Office, in the words of chapter 89, nonregulatory in nature and a performer of

planning services for other agencies. We are unable to do this because SPO is already a nonregulatory, interagency planning office. The valued role of SPO in coordinating policy planning among state agencies and providing community assistance seems reflected in the number of special studies and other broad-ranging requests for assistance given to the Office by the Governor and the Legislature. We also believe any change in SPO's role needs to be addressed by the new Governor and Legislature who will be at the helm of Maine state government in a year's time.

The interagency planning and coordination role of the State Planning Office is also reflected in the fact that four legislative committees, including the Joint Standing Committee on State and Local Government, have jurisdiction over various SPO responsibilities. In addition we are the lead agency at times for bills heard by three other legislative committees.

The Legislature, with the Governor's concurrence, may choose to eliminate responsibilities of the State Planning Office. In fact, as part of budget balancing, SPO proposed during the first regular session of the 124<sup>th</sup> Legislature to replace our training and certification of code enforcement officers with a registration system similar to our qualification of informed growth consultants. The Legislature determined it valued SPO's code enforcement officer training and certification—so we kept the responsibility while still eliminating a General Fund trainer position. We now conduct this work with one planner funded by previously existing other special revenues.

We too continue to value that work—and all that we do—and strive to meet our responsibilities well with fewer resources. SPO has found new ways to perform our statutory duties using technology, closely managing staff time, creating ad hoc project teams, and adding more responsibilities to remaining staff.

The State Planning Office is not a regulatory agency as that is commonly understood. The rules we adopt guide affected or interested parties who choose to participate in certain legislatively created initiatives. We are not an enforcement agency.

We believe SPO as currently organized performs the nonregulatory functions and the planning, policy, and coordination among agencies sought by chapter 89. If the Legislature and Governor wish to explore elimination of any of SPO's responsibilities we would, of course, participate with the appropriate oversight groups in that effort. We believe, though, that if the goal is to ensure that Maine state government has, as described on the floor of the Legislature at SPO's establishment in 1968, an agency with “all phases of planning, state, local and regional under one roof” and that “provides for a correlation of planning on all levels” Maine has that in the current organization of the State Planning Office.

*Appendix A – Text of PL 2009, Resolves 89*

RESOLVE Chapter 89

First Regular Session - 124th Maine Legislature

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**Resolve, Directing the State Planning Office To Prepare a Reorganization Plan**

**Sec. 1. State Planning Office to prepare plan. Resolved:** That the Executive Department, State Planning Office shall prepare a reorganization plan for the State Planning Office in which the office is nonregulatory in nature, performs planning services for agencies and is the agency responsible for the state-owned landfill; and be it further

**Sec. 2. State Planning Office to conduct review. Resolved:** That the Executive Department, State Planning Office shall review the powers and duties of the State Planning Office and the statutory provisions relating to the State Planning Office and prepare proposed legislation to transfer certain powers and duties of the State Planning Office to other agencies in anticipation of the reorganization of the State Planning Office in section 1 of this resolve; and be it further

**Sec. 3. Report. Resolved:** That the Executive Department, State Planning Office shall submit its plan under section 1 and report under section 2 to the Joint Standing Committee on State and Local Government by February 1, 2010. The joint standing committee may submit legislation related to this plan and report to the Second Regular Session of the 124th Legislature.

## **Appendix B – State Planning Office Enabling Statute**

### **§3303. State Planning Office**

There is established to carry out the purpose of this chapter a State Planning Office in the Executive Department, which is concerned with research, analysis and the formulation, coordination and management of policy. The State Planning Office is directly responsible to the Governor and serves as an advisory, consultative, coordinating, administrative, and research agency as specified in section 3305. The State Planning Office assists the Governor and other state agencies in the development of economic, energy, fiscal and regulatory policy; planning and policy development for the State's natural and physical resources; the identification of issues and problems of long-term significance to the State; and the coordination of state policy and its implementation on issues of interagency concern.

### **§3305. State Planning Office**

- 1. Powers and duties.** The State Planning Office shall:
  - A. Coordinate the preparation of policies to guide and carry forward the wise and coordinated development of the State's economy and its energy resources and the conservation of the State's natural resources. These policies and recommendations for implementation shall be submitted to the Governor and Legislature for their approval. They shall be developed in such areas as: Land use, natural resource development and conservation, public investment and taxation, energy resources and state regulatory policy. The State Planning Office shall give the public full opportunity to participate in the formulation of these policies and these policies shall not be in direct conflict with adopted local and regional plans;
  - B. Provide technical assistance to the Governor and Legislature by undertaking special studies and plans, preparing or analyzing policy alternatives and identifying the immediate and long-range needs and resources to meet these needs in the areas of energy and natural resources and socioeconomics. The office shall prepare the plans and studies at the request of the Governor, the Legislature or interdepartmental committees, councils and task forces;
  - C. Conduct, in conjunction with the Department of Economic and Community Development, continuing economic analysis of the economy and resources of the State, including economic forecasting, and collect and collate all pertinent data and statistics relating thereto and assist the Governor, the Legislature and the various state departments in formulating economic goals and programs and policies to achieve such goals. These data and statistics, including census information, shall be made available to the Legislature upon request.
    - (1) All state agencies shall cooperate with the State Planning Office with respect to the provisions of this paragraph.
    - (2) In implementing this paragraph, the State Planning Office may use secondary data made available to the office by other state agencies or other organizations;

- D. Upon request provide technical assistance to local and regional planning groups in the fields of planning, public housing and urban renewal. The office shall make available to municipalities and regional planning agencies existing information from state agencies to be used in the development of comprehensive plans and land use ordinances. The director shall oversee delivery of technical assistance and resources to municipalities for the purpose of flood plain management activities and enhancing and expanding parks, open spaces and recreational opportunities as a part of comprehensive community development. Within available resources, the director shall provide technical assistance to municipalities and regional planning organizations in the development and implementation of local comprehensive land use plans and local building codes and those local building rehabilitation codes that are consistent with any model building codes adopted by the State;
- E. Participate with other states or subdivisions thereof in interstate planning, and assist cities, towns, municipal corporations, counties and regional councils to participate with other states or their subdivisions in planning;
- F. At its discretion, assist in planning and executing any public or private project involving grants or loans; advise, confer and otherwise cooperate with municipal planning boards, agencies, officials, civic and other groups and citizens in matters relating to urban renewal, zoning and planning relating to schools, housing, health, land use controls and other objectives;
- G. As coordinating agency:
- (1) Act as the coordinating agency between the several officers, authorities, boards, commissions, departments and divisions of the State in matters relative to the physical development of the State and review the proposals of those agencies in the light of their relationship to the adopted policies and incorporate such reviews in the reports of the office. Nothing in this section may be construed as limiting the powers and duties of any officer, authority, board, commission, department or political subdivision of the State; and
  - (2) Provide general coordination and review of plans in functional areas of State Government as may be necessary for receipt of federal funds;
- H. Compile, analyze and maintain information useful to the development of industry in the State concerning resources, sites, space, equipment, adequate housing, contracts, materials, transportation, markets, labor supply, population trends and other economic considerations and shall measure and monitor economic distress and poverty in the State on an ongoing basis. The State Planning Office, in conjunction with the Department of Economic and Community Development, shall study problems peculiar to the industry and economy of this State with a view toward the broader utilization of our natural resources, which studies must be advanced by coordination of research with existing private and governmental agencies and educational institutions, and may be advanced by contractual relations with persons or organizations equipped to conduct the needed research. The State Planning Office shall, upon request from the Governor or any state department, assist in the preparation of reports regarding the responsibilities and duties provided by this subsection, including regular analysis of poverty and economic distress. The State Planning Office shall coordinate its

activities pursuant to this paragraph with the Bureau of Child and Family Services to meet the annual reporting needs of the bureau;

- M. Administer a program of training and certification for municipal code enforcement officers;
- N. Coordinate the development of solid waste management policy including:
  - (1) Collecting and analyzing solid waste management and recycling data from all available sources including commercial and municipal entities;
  - (2) Preparing a solid waste management and recycling plan to be submitted to the Governor and the Legislature by January 1, 1998 and every 5 years thereafter; and
  - (3) Providing technical and financial assistance to municipalities in waste reduction and recycling activities; and
- O. Own, design, develop or operate, or contract with private parties to operate, a solid waste disposal facility, as provided in Title 38, chapter 24, subchapter IV.

## **2. Administrative responsibilities.**

- A. The State Planning Director is authorized to employ staff as described in section 3304, subsection 3.
- B. The State Planning Office, with the consent of the Governor, may employ such expert and professional consultants, and contract for such research projects, as it deems necessary within the limits of the funds provided and consistent with the powers and duties of the office.
- C. The State Planning Office is authorized and empowered to enter into such agreements with the Federal Government and other agencies and organizations as will promote the objectives of this chapter.
- D. Funds from the Federal Government or from any individual, foundation or corporation may be accepted by the State Planning Office and expended for purposes consistent with this chapter. The office may prepare and distribute printed and audio-visual materials on matters within its statutory jurisdiction. The director shall fix the prices at which publication of the office shall be sold or delivered. The office shall decide which publications shall be included and shall retain, without charge, an appropriate number of each publication for complimentary distribution. Income from the sale of publications shall be credited to the General Fund.

## Appendix C – State Planning Office Core Duties

