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Legislative Document

No. 1534

H.P. 1126

House of Representatives, May 2, 2011

An Act To Reform the Land Use and Planning Authority in the Unorganized Territories

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative GIFFORD of Lincoln.
Cosponsored by Senator THOMAS of Somerset and
Representatives: AYOTTE of Caswell, BURNS of Alfred, CRAFTS of Lisbon, CRAY of
Palmyra, LIBBY of Waterboro, TURNER of Burlington, WILLETTE of Mapleton, Senator:
MASON of Androscoggin.

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

2 **Sec. 1. 12 MRSA c. 206-A, sub-c. 2,** as amended, is repealed.

3 **Sec. 2. 30-A MRSA §2691, sub-§1,** as enacted by PL 1987, c. 737, Pt. A, §2 and
4 Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
5 further amended to read:

6 **1. Establishment.** A municipality may establish a board of appeals under its home
7 rule authority. A county may establish a board of appeals with respect to matters
8 pertaining to the unorganized territory. Unless provided otherwise by charter or
9 ordinance, the municipal officers or county commissioners shall appoint the members of
10 the board and determine their compensation.

11 **Sec. 3. 30-A MRSA §2691, sub-§2, ¶B,** as enacted by PL 1987, c. 737, Pt. A, §2
12 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
13 further amended to read:

14 B. ~~Neither a~~ A municipal officer ~~nor~~ or a county officer as defined in section 1,
15 subsection 2 or a spouse of a municipal officer or a county officer may not be a
16 member or associate member of the board.

17 **Sec. 4. 30-A MRSA §2691, sub-§2, ¶D,** as enacted by PL 1987, c. 737, Pt. A, §2
18 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
19 further amended to read:

20 D. The municipal officers or county commissioners may dismiss a member of the
21 board for cause before the member's term expires.

22 **Sec. 5. 30-A MRSA §2691, sub-§3, ¶E,** as amended by PL 1991, c. 234, is
23 further amended to read:

24 E. The transcript or tape recording of testimony, if such a transcript or tape recording
25 has been prepared by the board, and the exhibits, together with all papers and
26 requests filed in the proceeding, constitute the public record. All decisions become a
27 part of the record and must include a statement of findings and conclusions, as well
28 as the reasons or basis for the findings and conclusions, upon all the material issues
29 of fact, law or discretion presented and the appropriate order, relief or denial of relief.
30 Notice of any decision must be mailed or hand delivered to the petitioner, the
31 petitioner's representative or agent, the planning board, agency or office and the
32 municipal officers or county commissioners within 7 days of the board's decision.

33 **Sec. 6. 30-A MRSA §2691, sub-§4,** as enacted by PL 1987, c. 737, Pt. A, §2 and
34 Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
35 further amended to read:

36 **4. Jurisdiction.** Any municipality or county establishing a board of appeals may
37 give the board the power to hear any appeal by any person, affected directly or indirectly,
38 from any decision, order, regulation or failure to act of any officer, board, agency or other
39 body when an appeal is necessary, proper or required. No board may assert jurisdiction

1 over any matter unless the municipality or county has by charter or ordinance specified
2 the precise subject matter that may be appealed to the board and the official or officials
3 whose action or nonaction may be appealed to the board. Any board of appeals shall hear
4 any appeal submitted to the board in accordance with Title 28-A, section 1054.

5 **Sec. 7. 30-A MRSA §4324**, as amended by PL 2003, c. 641, §§7 and 8, is further
6 amended to read:

7 **§4324. Responsibility for growth management**

8 This section governs a municipality's ~~or~~, multimunicipal region's or county's
9 responsibility for the preparation or amendment of its growth management program.
10 When procedures for the adoption of comprehensive plans and ordinances are governed
11 by other provisions of this Title or municipal or county charter or ordinance, the
12 municipality ~~or~~, multimunicipal region or county may modify the procedural
13 requirements of this section as long as a broad range of opportunity for public comment
14 and review is preserved.

15 **1. Growth management program.** Each municipality ~~or~~, multimunicipal region or
16 county may prepare a growth management program in accordance with this section or
17 may amend its existing comprehensive plan and existing land use ordinances to comply
18 with the procedures, goals and guidelines established in this subchapter.

19 **2. Planning committee.** If a municipality ~~or~~, multimunicipal region or county
20 chooses to prepare a growth management program, the municipal officers of a
21 municipality or combination of municipalities or the county commissioners shall
22 designate and establish a planning committee, which may include one or more municipal
23 officials or county officials as defined in section 1, subsection 4.

24 A. The municipal officers may designate any existing planning board or district
25 established under subchapter 4, or a former similar provision, as the planning
26 committee. Planning boards established under former Title 30, section 4952,
27 subsection 1 continue to be governed by those provisions until they are superseded by
28 municipal charter or ordinance.

29 B. The planning committee may develop and maintain a comprehensive plan and
30 may develop any portion of an implementation program to which it is assigned in an
31 adopted comprehensive plan or otherwise directed by the municipal officers ~~or~~,
32 municipal legislative body or bodies or county commissioners. In performing these
33 duties, the planning committee shall:

34 (1) Hold public hearings and use other methods to solicit and strongly encourage
35 citizen input; and

36 (2) Prepare the comprehensive plan or any portion of the implementation
37 program to which it is assigned in an adopted comprehensive plan and make
38 recommendations to the municipal legislative body or county commissioners
39 regarding the adoption and implementation of the program or amended program.

40 **3. Citizen participation.** In order to encourage citizen participation in the
41 development of a growth management program, municipalities ~~or~~, multimunicipal

1 regions or counties may adopt growth management programs only after soliciting and
2 considering a broad range of public review and comment. The intent of this subsection is
3 to provide for the broad dissemination of proposals and alternatives, opportunity for
4 written comments, open discussions, information dissemination and consideration of and
5 response to public comments.

6 **4. Meetings to be public.** The planning committee shall conduct all of its meetings
7 in open, public session. Prior public notice must be given for all meetings of the planning
8 committee pursuant to Title 1, section 406.

9 **8. Public hearing required.** The planning committee shall hold at least one public
10 hearing on its proposed comprehensive plan.

11 A. Notice of a public hearing must be posted in each municipality or county at least
12 30 days before the hearing, except that, if a follow-up hearing is held pursuant to
13 comments made at a public hearing, the follow-up hearing may be conducted if
14 public notice is given pursuant to Title 1, section 406.

15 B. A copy of the proposed comprehensive plan must be made available for public
16 inspection at each municipal or county office or other convenient location with
17 regular public hours at least 30 days before the hearing. If modification of the plan is
18 proposed pursuant to comments made at a public hearing, and if a follow-up public
19 hearing is to be held, the proposed changes must be made available for public
20 inspection at each municipal or county office or other convenient location with
21 regular public hours before any follow-up hearing.

22 **9. Adoption.** A comprehensive plan or land use ordinance is considered adopted as
23 part of a growth management program when it has been adopted by the municipality's
24 legislative body or the county commissioners. A multimunicipal comprehensive plan or
25 land use ordinance must be adopted by the municipal legislative body of each
26 participating municipality unless another form of legislative authority has been
27 established for this purpose within the municipality or multimunicipal region.

28 **10. Amendments to an adopted plan.** When amending an adopted comprehensive
29 plan, a municipality ~~or~~ multimunicipal region or county shall follow the same procedures
30 for citizen participation, public notice and public hearing that are required for adoption of
31 a comprehensive plan.

32 **Sec. 8. 30-A MRSA §4352, first ¶,** as enacted by PL 1989, c. 104, Pt. A, §45 and
33 Pt. C, §10, is amended to read:

34 A municipal or county zoning ordinance may provide for any form of zoning
35 consistent with this chapter, subject to the following provisions.

36 **Sec. 9. 30-A MRSA §4352, sub-§2,** as amended by PL 2007, c. 247, §6, is
37 further amended to read:

38 **2. Relation to comprehensive plan.** A zoning ordinance must be pursuant to and
39 consistent with a comprehensive plan adopted by the municipal legislative body or county
40 commissioners, except that adoption of an adult entertainment establishment ordinance

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

11 **Sec. 10. 30-A MRSA §4352, sub-§6**, as amended by PL 2003, c. 688, Pt. C, §20,
12 is further amended to read:

13 **6. Effect on State.** A zoning ordinance that is not consistent with a comprehensive
14 plan that is consistent with the provisions of section 4326 is advisory with respect to the
15 State. Except as provided in this section, a state agency shall comply with a zoning
16 ordinance consistent with a comprehensive plan that is consistent with the provisions of
17 section 4326 in seeking to develop any building, parking facility or other publicly owned
18 structure. The Governor or the Governor's designee may, after public notice and
19 opportunity for public comment, including written notice to the municipal officers or
20 county commissioners, waive any use restrictions in those ordinances upon finding that:

- 21 A. The proposed use is not allowed anywhere in the municipality or county;
- 22 B. There are no reasonable alternative sites for or configurations of the project within
23 the municipality or county that would achieve the necessary public purposes;
- 24 C. There are no reasonable alternatives to the project, including sites in other
25 municipalities or counties, that would achieve the necessary public purposes;
- 26 D. The project will result in public benefits beyond the limits of the municipality or
27 county, including without limitation, access to public waters or publicly owned lands;
28 and
- 29 E. The project is necessary to protect the public health, welfare or environment.

30 A decision to waive a restriction under this section may be appealed by the municipality
31 or county or any aggrieved party to Superior Court.

32 **Sec. 11. 30-A MRSA §4352, sub-§8**, as amended by PL 2001, c. 578, §21, is
33 further amended to read:

34 **8. Conditional and contract rezoning.** A zoning ordinance may include provisions
35 for conditional or contract zoning. All rezoning under this subsection must:

- 36 A. Be consistent with the growth management program adopted under this chapter;
- 37 B. Establish rezoned areas that are consistent with the existing and permitted uses
38 within the original zones; and
- 39 C. Only include conditions and restrictions that relate to the physical development or
40 operation of the property.

1 The municipal or county reviewing authority shall conduct a public hearing before any
2 property is rezoned under this subsection. Notice of this hearing must be posted in the
3 municipal or county office at least 13 days before the public hearing. Notice must also be
4 published at least 2 times in a newspaper having general circulation in the municipality or
5 county. The date of the first publication must be at least 7 days before the hearing.
6 Notice must also be sent to the owner or owners of the property to be rezoned and to the
7 owners of all property abutting the property to be rezoned at the owners' last known
8 addresses. Notice also must be sent to a public drinking water supplier if the area to be
9 rezoned is within its source water protection area. This notice must contain a copy of the
10 proposed conditions and restrictions with a map indicating the property to be rezoned.

11 **Sec. 12. 30-A MRSA §4352, sub-§9**, as amended by PL 1999, c. 761, §8, is
12 further amended to read:

13 **9. Notice; general requirements.** Before adopting a new zoning ordinance or map
14 or amending an existing zoning ordinance or map, including ordinances or amendments
15 adopted under the laws governing growth management contained in chapter 187,
16 subchapter H 2 or the laws governing shoreland zoning contained in Title 38, chapter 3,
17 subchapter I 1, article 2-B, the municipal or county reviewing authority must post and
18 publish notice of the public hearing required under subsection 1 in accordance with the
19 following provisions.

20 A. The notice must be posted in the municipal or county office at least 13 days
21 before the public hearing.

22 B. The notice must be published at least 2 times in a newspaper that complies with
23 Title 1, section 601 and that has a general circulation in the municipality or county.
24 The date of the first publication must be at least 12 days before the hearing and the
25 date of the 2nd publication must be at least 7 days before the hearing. That notice
26 must be written in plain English, understandable by the average citizen.

27 E. Notice must be sent by regular mail to a public drinking water supplier if the area
28 to be rezoned contains its source water protection area.

29 **Sec. 13. 30-A MRSA §4352, sub-§10**, as amended by PL 1999, c. 761, §9, is
30 further amended to read:

31 **10. Additional notice; limited areas.** Notice must be given in accordance with this
32 subsection and subsection 9 when a municipality or county has proposed an amendment
33 to an existing zoning ordinance or map that, within a geographically specific portion of
34 the municipality or county, has the effect of either prohibiting all industrial, commercial
35 or retail uses where any of these uses is permitted or permitting any industrial,
36 commercial or retail uses where any of these uses is prohibited.

37 A. The notice must contain a copy of a map indicating the portion of the
38 municipality or county affected by the proposed amendment.

39 B. For each parcel within the municipality or county that is in or abutting the portion
40 of the municipality or county affected by the proposed amendment, the notice must
41 be mailed by first class mail at least 13 days before the public hearing to the last
42 known address of the person to whom property tax on each parcel is assessed. Notice

1 also must be sent to a public drinking water supplier if the area to be rezoned is
2 within its source water protection area. The municipal officers or county
3 commissioners shall prepare and file with the municipal clerk or county administrator
4 a written certificate indicating those persons to whom the notice was mailed and at
5 what addresses, when it was mailed, by whom it was mailed and from what location
6 it was mailed. This certificate constitutes prima facie evidence that notice was sent to
7 those persons named in the certificate. Notice is not required under this paragraph for
8 any type of zoning ordinance adopted under the laws governing growth management
9 contained in chapter 187, subchapter H 2 or the laws governing shoreland zoning
10 contained in Title 38, chapter 3, subchapter I 1, article 2-B.

11 Any action challenging the validity of an amendment to a zoning ordinance or map based
12 on a municipality's or county's failure to comply with paragraph B must be brought in
13 Superior Court within 30 days after the adoption of the amended ordinance or map. The
14 Superior Court may invalidate an amended ordinance or map if the appellant
15 demonstrates that the appellant was entitled to receive a notice under paragraph B, that
16 the municipality or county failed to send the notice as required, that the appellant had no
17 knowledge of the proposed amendment to the ordinance or map and that the appellant
18 was materially prejudiced by that lack of knowledge. Nothing in this subsection alters
19 the right of a person to challenge the validity of any ordinance based on the failure of the
20 municipality or county to provide notice as required in paragraph A and subsection 9.

21 **Sec. 14. 38 MRSA §435, 3rd ¶**, as amended by PL 1989, c. 403, §3, is further
22 amended to read:

23 Zoning ordinances adopted pursuant to this article need not depend upon the
24 existence of a zoning ordinance for all of the land and water areas within a municipality
25 or county, notwithstanding Title 30-A, section 4503, as it is the intention of the
26 Legislature to recognize that it is reasonable for municipalities and counties to treat
27 shoreland areas specially and immediately to zone around water bodies rather than to wait
28 until such time as zoning ordinances may be enacted for all of the land within municipal
29 and county boundaries.

30 **Sec. 15. 38 MRSA §438-A**, as amended by PL 2005, c. 440, §1, is further
31 amended to read:

32 **§438-A. Municipal and county authority; state oversight**

33 With respect to all shoreland areas described in section 435, municipalities and
34 counties with respect to shoreland areas in the unorganized territory shall adopt zoning
35 and land use control ordinances pursuant to existing enabling legislation, under home rule
36 authority for municipalities and in accordance with the following requirements. The
37 deadline for municipalities to adopt a shoreland zoning ordinance meeting the minimum
38 guidelines adopted by the Board of Environmental Protection is extended to July 1, 1992.

39 Notwithstanding other provisions of this article, the regulation of timber harvesting
40 and timber harvesting activities in shoreland areas must be in accordance with section
41 438-B and rules adopted by the Commissioner of Conservation pursuant to Title 12,
42 section 8867-B.

1 **1. Land use guidelines.** In accordance with Title 5, chapter 375, subchapter ~~H~~ 2, the
2 Board of Environmental Protection shall adopt, and from time to time shall update and
3 amend, minimum guidelines for municipal and county zoning and land use controls that
4 are designed to carry out the legislative purposes described in section 435 and the
5 provisions of this article. These minimum guidelines must include provisions governing
6 building and structure size, setback and location and establishment of resource protection,
7 general development, limited residential, commercial fisheries and maritime activity
8 zones and other zones. Within each zone, the board shall prescribe uses that may be
9 allowed with or without conditions and shall establish criteria for the issuance of permits
10 and nonconforming uses, land use standards and administrative and enforcement
11 procedures. These guidelines must also include a requirement for a person issued a
12 permit pursuant to this article in a great pond watershed to have a copy of the permit on
13 site while work authorized by the permit is being conducted. The board shall
14 comprehensively review and update its guidelines and shall reevaluate and update the
15 guidelines at least once every 4 years.

16 A. Minimum guidelines adopted by the board under this subsection may not require
17 the issuance of a municipal or county permit for the repair and maintenance of an
18 existing road culvert or for the replacement of an existing road culvert, as long as the
19 replacement culvert is:

- 20 (2) Not more than 25% longer than the culvert being replaced; and
21 (3) Not longer than 75 feet.

22 Ancillary culverting activities, including excavation and filling, are included in this
23 exemption. A person repairing, replacing or maintaining an existing culvert under
24 this paragraph shall ensure that erosion control measures are taken to prevent
25 sedimentation of the water and that the crossing does not block fish passage in the
26 water course.

27 **1-A. Minimum guidelines; limitations.** The minimum guidelines adopted under
28 subsection 1 may not require a municipality or county, in adopting an ordinance, to:

29 A. Treat an increase in hours or days of operation of a nonconforming use as an
30 expansion of a nonconforming use; or

31 B. Treat as a single lot, 2 or more contiguous lots, at least one of which is
32 nonconforming, owned by the same person or persons on the effective date of the
33 municipal or county ordinance and recorded in the registry of deeds if the lot is
34 served by a public sewer or can accommodate a subsurface sewage disposal system in
35 conformance with state subsurface wastewater disposal rules, and:

- 36 (1) Each lot contains at least 100 feet of shore frontage and at least 20,000
37 square feet of lot area; or
38 (2) Any lots that do not meet the frontage and lot size requirements of
39 subparagraph (1) are reconfigured or combined so that each new lot contains at
40 least 100 feet of shore frontage and 20,000 square feet of lot area.

1 For purposes of this paragraph the term "nonconforming" means that a lot does not
2 meet the minimum standards for lot area and shore frontage required by municipal or
3 county ordinances adopted pursuant to this article.

4 **1-B. Notification to landowners.** This subsection governs notice to landowners
5 whose property is being considered for placement in a resource protection zone.

6 A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a
7 municipality or county shall provide written notification to landowners whose
8 property is being considered by the municipality or county for placement in a
9 resource protection zone. Notification to landowners must be made by first-class
10 mail to the last known addresses of the persons against whom property tax on each
11 parcel is assessed. The municipal officers or county commissioners shall prepare and
12 file with the municipal clerk or county administrator a sworn, notarized certificate
13 indicating those persons to whom notice was mailed and at what addresses, and
14 when, by whom and from what location notice was mailed. This certificate
15 constitutes prima facie evidence that notice was sent to those persons named in the
16 certificate. The municipality or county must send notice not later than 14 days before
17 its planning board votes to establish a public hearing on adoption or amendment of a
18 zoning ordinance or map that places the landowners' property in the resource
19 protection zone. Once a landowner's property has been placed in a resource
20 protection zone, individual notice is not required to be sent to the landowner when the
21 zoning ordinance or map is later amended in a way that does not affect the inclusion
22 of the landowner's property in the resource protection zone.

23 B. In addition to the notice required by this Title or by rules adopted pursuant to this
24 Title, the board shall provide written notification to landowners whose property is
25 being considered by the board for placement in a resource protection zone.
26 Notification to landowners must be made by first-class mail to the last known
27 addresses of the persons against whom property tax on each parcel is assessed. The
28 board shall prepare and file with the commissioner a sworn, notarized certificate
29 indicating those persons to whom notice was mailed and at what addresses, and
30 when, by whom and from what location notice was mailed. This certificate
31 constitutes prima facie evidence that notice was sent to those persons named in the
32 certificate. The board must send notice not later than 30 days before the close of the
33 public comment period prior to formal consideration of placement of the property in a
34 resource protection zone by the board. Upon request of the board, the municipality or
35 county for which the ordinance is being adopted shall provide the board with the
36 names and addresses of persons entitled to notice under this subsection. Notification
37 and filing of a certificate by the department are deemed to be notification and filing
38 by the board for purposes of this section.

39 C. Any action challenging the validity of an ordinance based on failure by the board
40 ~~or~~ municipality or county to comply with this subsection must be brought in Superior
41 Court within 30 days after adoption or amendment of the ordinance or map. The
42 Superior Court may invalidate an amended ordinance or map if the appellant
43 demonstrates that the appellant was entitled to receive notice under this subsection,
44 that the municipality ~~or~~ board or county failed to send notice as required, that the
45 appellant had no knowledge of the proposed adoption or amendment of the ordinance

1 or map and that the appellant was materially prejudiced by that lack of knowledge.
2 This paragraph does not alter the right of a person to challenge the validity of any
3 ordinance or map based on the failure of a municipality or county to provide notice as
4 required by Title 30-A, section 4352, subsection 9 or the failure of the board to
5 provide notice as required by this Title.

6 **2. Municipal and county ordinances.** In accordance with a schedule adopted by
7 the board and acting in accordance with a local comprehensive plan, municipalities and
8 counties shall prepare and submit to the commissioner zoning and land use ordinances
9 that are consistent with or are no less stringent than the minimum guidelines adopted by
10 the board and, for coastal communities, that address the coastal management policies
11 cited in section 1801. When a municipality or county determines that special local
12 conditions within portions of the shoreland zone require a different set of standards from
13 those in the minimum guidelines, the municipality or county shall document the special
14 conditions and submit them, together with its proposed ordinance provisions, to the
15 commissioner for review and approval.

16 Notwithstanding section 435, a municipality or county may limit to 75 feet the shoreland
17 zone around a freshwater wetland that has not been rated by the Department of Inland
18 Fisheries and Wildlife as having moderate or high value ~~provided that~~ as long as the
19 municipality or county applies the requirements of this article regarding streams as
20 defined under section 436-A to any outlet stream from any freshwater wetland.

21 **3. Commissioner approval.** Municipal or county ordinances, amendments and any
22 repeals of ordinances are not effective unless approved by the commissioner. In
23 determining whether to approve municipal or county ordinances or amendments, the
24 commissioner shall consider the legislative purposes described in section 435, the
25 minimum guidelines and any special local conditions ~~which that~~, in the judgment of the
26 commissioner, justify a departure from the requirements of the minimum guidelines in a
27 manner not inconsistent with the legislative purposes described in section 435.
28 Recognizing that the guidelines are intended as minimum standards, the commissioner
29 shall approve a municipal or county ordinance that imposes more restrictive standards
30 than those in the guidelines. If an ordinance or an amendment adopted by a municipality
31 or county contains standards inconsistent with or less stringent than the minimum
32 guidelines, the commissioner, after notice to the municipality or county, may approve the
33 proposed ~~ordinances~~ ordinance or amendment with conditions imposing the minimum
34 guidelines in place of the inconsistent or less stringent standard or standards. Those
35 conditions are effective and binding within the municipality or county and must be
36 administered and enforced by the municipality or county. If the commissioner fails to act
37 on any proposed municipal or county ordinance or amendment within 45 days of the
38 commissioner's receipt of the proposed ordinance or amendment, the ordinance or
39 amendment is automatically approved. Any application for a shoreland zoning permit
40 submitted to a municipality or county within the 45-day period is governed by the terms
41 of the proposed ordinance or amendment if the ordinance or amendment is approved
42 under this subsection. A municipality or county may appeal to the board a decision of the
43 commissioner under this subsection.

44 **4. Failure to adopt ordinances.** If the commissioner determines, after notice to a
45 municipality or county, that the municipality or county has failed to adopt ordinances as

1 required under this article or that an ordinance that the municipality or county has
2 adopted does not satisfy the requirements and purposes under this article, and that the
3 commissioner is unable to make the ordinance consistent with the minimum guidelines by
4 the imposition of conditions, as set forth in subsection 3, then the commissioner shall
5 request and the board may adopt, acting in accordance with Title 5, chapter 375,
6 subchapter ~~H~~ 2, suitable ordinances, or suitable provisions of ordinances, on behalf of the
7 municipality or county. Notwithstanding subsections 2 and 3, if the board determines
8 that special water quality considerations on a great pond warrant more restrictive
9 standards than those contained in the minimum guidelines, the board may adopt the
10 additional standards for all municipalities ~~outside the jurisdiction of the Maine Land Use~~
11 ~~Regulation Commission, which~~ and unorganized territories that about those waters.
12 Following adoption by the board, these ordinances or provisions are effective and binding
13 within the municipality or county and must be administered and enforced by that
14 municipality or county. The board may adopt modifications to ordinances adopted
15 pursuant to this subsection. Preparation and notice of proposed modifications, prior to
16 consideration by the board, may be initiated by the commissioner.

17 **5. Exemptions.** Any areas within a municipality or county that are subject to
18 nonmunicipal or noncounty zoning and land use controls may be exempted from the
19 operation of this section upon a finding by the commissioner that the purposes of this
20 chapter have been accomplished by nonmunicipal or noncounty measures.

21 **6-A. Variances.** A copy of a request for a variance under an ordinance approved or
22 imposed by the commissioner or board under this article must be forwarded by the
23 municipality or county to the commissioner at least 20 days prior to action by the
24 municipality or county. The material submitted must include the application and all
25 supporting information provided by the applicant. The commissioner may comment
26 when the commissioner determines that the municipal or county issuance of the variance
27 would not be in compliance with the requirements of state law for a zoning variance or
28 that the variance would undermine the purposes stated in section 435. These comments,
29 if submitted by the commissioner prior to the action by the municipality or county, must
30 be made part of the record and must be considered by the municipality or county prior to
31 taking action on the variance request.

32 **7. Exclusion of recreational boat storage buildings.** Notwithstanding subsection
33 3, the exclusion of recreational boat storage buildings from the definition of "functionally
34 water-dependent uses" is deemed to be incorporated into each municipal or county
35 shoreland zoning ordinance on the effective date of this subsection, regardless of any
36 prior approval of the ordinance by the commissioner.

37 **Sec. 16. Transfer authority over land use planning; implementing**
38 **legislation.** The Land Use Planning in the Unorganized Territory Transition Advisory
39 Board, referred to in this section as "the board," is established to advise the Joint Standing
40 Committee on Agriculture, Conservation and Forestry on matters relating to the transfer
41 of authority over land use planning in the unorganized territory from the Maine Land Use
42 Regulation Commission, referred to in this section as "the commission," to the county in
43 which the land is located. The board has 5 members appointed by the Governor, one of
44 whom must have experience in land conservation and all of whom must be residents of

1 the unorganized territory. Members of the board are not entitled to compensation of any
2 kind, including the reimbursement of expenses. In rendering its advice, the board shall
3 consider all the large-scale special projects being conducted by the commission on the
4 effective date of this Act, and shall identify, with input from the affected counties, which
5 of those projects can be completed prior to July 15, 2012. The advice rendered by the
6 board must take into account:

7 1. The assumption by the counties in which the land is located of the duty to
8 maintain uniformity of land use and planning throughout the unorganized territory;

9 2. The completion by the commission of all large-scale special projects under
10 commission jurisdiction that are identified for completion pursuant to this section;

11 3. The transfer to the appropriate county entity or designee of all projects, permits or
12 related activities under commission jurisdiction that are not identified for completion
13 pursuant to this section;

14 4. The transfer by the commission of all pertinent information necessary for the
15 counties to assume the duties pursuant to this section;

16 5. The assumption by the State of all costs incurred by the counties in which the land
17 is located in completing the projects, permits or related activities under commission
18 jurisdiction that are not identified for completion pursuant to this section;

19 6. For a municipality that, on the effective date of this Act, has the option to use the
20 commission for land use and planning purposes, the option to either use the
21 municipality's own land use and planning resources or to adopt the appropriate county's
22 unorganized territory plan or service;

23 7. A county entering into an agreement with another county to share in land use
24 planning activities or a county contracting with other local government agencies for land
25 use planning services;

26 8. The assessment against the unorganized territory county services component of
27 the unorganized territory budget for the county cost of unorganized territory land use and
28 zoning activities, which assessment may not be greater than the assessments for
29 commission operations on the effective date of this Act; and

30 9. A special assessment that may be imposed by counties on municipalities that
31 adopt the appropriate county unorganized territory land use planning or services, which
32 amount may not be greater than the assessments for commission operations on the
33 effective date of this Act.

34 **Sec. 17. Submission of report.** The Land Use Planning in the Unorganized
35 Territory Transition Advisory Board shall render its advice, including suggested changes
36 and implementing legislation necessary to effectuate the repeal of the Maine Land Use
37 Regulation Commission and the transfer of its duties in accordance with section 16, to the
38 Joint Standing Committee on Agriculture, Conservation and Forestry no later than
39 December 2, 2011. After receipt and review of the advice provided by the board, the joint

1 standing committee may submit legislation to the Second Regular Session of the 125th
2 Legislature. The board is dissolved July 15, 2012.

3 **Sec. 18. Effective date.** That section of this Act that repeals the Maine Revised
4 Statutes, Title 12, chapter 206-A, subchapter 2 and those sections that amend Title 30-A,
5 sections 2691, 4324 and 4352 and Title 38, sections 435 and 438-A take effect July 15,
6 2012.

7 **SUMMARY**

8 This bill eliminates the Maine Land Use Regulation Commission, effective July 15,
9 2012, and establishes the Land Use Planning in the Unorganized Territory Transition
10 Advisory Board to advise the Joint Standing Committee on Agriculture, Conservation and
11 Forestry on matters relating to the transfer of authority over land use planning in the
12 unorganized territory to the counties in which the land is located. The board is required to
13 render its advice to the Joint Standing Committee on Agriculture, Conservation and
14 Forestry by December 2, 2011. The board is dissolved July 15, 2012.