

MAJORITY REPORT
For ACF Committee Review

LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory
ACF Summary of Committee Amendment
Majority Report

3/7/2012

Summary of changes to LD 1798

1. Membership of Land Use Planning Commission (LUPC)

- 8 instead of 6 county representatives
- All members subject to review by the legislative committee of jurisdiction and confirmation by the Senate
- County commissioners to give preference to residents of the unorganized territory
- If the county commissioners fail to appoint a member within 90 days of a vacancy to be filled by that county, the Governor shall appoint a person to fill the vacancy. *Question: Is the intent that the Governor appoint a member meeting the same qualifications as the Governor's appointment under sub-§1? Is the Governor required to appoint a resident of the county with the vacancy?*
- 7 member commission continues until December 15, 2012. New county appointments will go before the 126th Legislature for confirmation.

2. County Opt-Out Provision

- Counties cannot begin the process to Opt-Out until September 1, 2017
- The legislative committee of jurisdiction must review a county's proposal requesting authority for land use planning, zoning and regulation and the proposal must be approved by the Legislature.
- A county's proposal must provide examples of planning, zoning or permitting decisions by LUPC that have prompted the county to request withdrawing from LUPC's jurisdiction.
- LUPC is authorized to review administration and enforcement of a county's land use plans and regulation and re-establish its authority for those functions in a manner similar to its authority to re-establish its jurisdiction over a municipality or plantation.
- DEP will be responsible for review and permitting of subdivisions within the county that meet DEP's definition of "subdivision" in site law (38 MRSA §483, sub-§5)

3. Activities taking place in planned subdistricts

- Amend the definition of "planned subdistrict" to read: "Planned subdistrict" means a delineated area for which a specific land use plan and standards have been *agreed to by the landowner and* approved by the commission. Include additional clarification in unallocated law at the end of the amendment
- Insert language stating that a planned subdistrict will remain under the jurisdiction of LURP if the county, plantation or municipality in which it is located assumes authority for land use planning and regulation unless the owner of the land in the planned subdistrict agrees to a transfer in jurisdiction.
- Wind energy development proposed for location in a planned subdistrict is reviewed and permitted by DEP using the standards for development under Title 38, §484, sub-§10.

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4. Timber harvesting and timber harvesting activities.

- Sec. 15 is being removed from LD 1798. Changes to the regulation of timber harvesting and timber harvesting activities are in LD 1739 as amended.

5. Natural Resources Protection Act

- Amends 38 MRSA § 480-E-1 to specify that DEP issues NRPA permits within the unorganized and deorganized areas when a project within that area triggers review and permitting by DEP under site law. Corresponds to changes in site law in Sec. 33 and Sec. 34 of LD 1798.

6. Site Law

- Revises and adds sections to the bill pertaining to DEP's review and permitting of projects that trigger site law.
- Adds a requirement to DEP's approval criteria that LUPC certify that the proposed project meets LUPC's land use standards.
- States that LUPC is authorized to enforce the land use standards that it certifies to DEP.
- Specifies that DEP will review revisions to development permitted by LURC prior to enactment of LD 1798 only if the proposed revisions are of a magnitude or character that the revisions alone would trigger site law.

7. Wind energy development

- Distinguishes between wind energy development projects that trigger DEP review under site law (grid-scale) and projects that do not. LUPC will review and permit:
 - wind energy projects with a generating capacity of 100 kilowatts or greater that do not trigger site law; and
 - community-based wind energy projects.
- Specifies that LUPC use the standards established in Title 35-A, Chapter 34-A for determining the project's effect on scenic character and related existing uses for both types of projects reviewed by LUPC. Under current law LURC applies these standards to projects proposed for location within an expedited permitting area.
- Requires a certification from DEP before LUPC can make a determination on a proposal for certain non-grid scale wind energy project. The certification is similar to the DEP certification required for non-grid scale projects in municipalities. DEP would certify that the proposed project meets DEP's standards for noise control, is designed to avoid undue adverse shadow flicker effects and setbacks are adequate for public safety.
- Requires DEP review of grid-scale wind energy projects when in a planned subdistrict.

8. Pre-application discussions

- Adds a section of unallocated law that directs LUPC to provide opportunities for landowners to discuss potential projects with the commission prior to filing an application.

9. Prospective zoning

- Adds a section of unallocated law directing LUPC to initiate prospective zoning in high growth areas and to provide information on the initiatives in their January 2013 report.

MINORITY REPORT
For ACF Review

LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory
ACF Summary of Committee Amendment
Minority Report
3/7/2012

Shaded language indicates differences from the Majority Report

Summary of changes to LD 1798

1. Membership of Land Use Planning Commission (LUPC)

- 8 instead of 6 county representatives
- Governor appoints all 9 members; Governor to consider persons recommended by the counties for appointment
- All 9 members subject to review by the legislative committee of jurisdiction and confirmation by the Senate
- All appointees must meet the qualifications in current law
- A county commissioner may not serve concurrently as a LUPC commissioner

2. County Opt-Out Provision is removed from LD 1798

3. Activities taking place in planned subdistricts

- Amend the definition of “planned subdistrict” to read: “Planned subdistrict” means a delineated area for which a specific land use plan and standards have been *agreed to by the landowner and* approved by the commission. Include additional clarification in unallocated law at the end of the amendment
- Insert language stating that a planned subdistrict will remain under the jurisdiction of LURP if the plantation or municipality in which it is located assumes authority for land use planning and regulation unless the owner of the land in the planned subdistrict agrees to a transfer in jurisdiction.
- Beginning January 1, 2013 wind energy development proposed for location in a planned subdistrict is reviewed and permitted by DEP using the standards for development under Title 38, §484, sub-§10.

4. Timber harvesting and timber harvesting activities.

- Sec. 15 is being removed from LD 1798. Changes to the regulation of timber harvesting and timber harvesting activities are in LD 1739 as amended.

5. Natural Resources Protection Act

- Amends 38 MRSA § 480-E-1 to specify that beginning January 1, 2014 DEP issues NRPA permits within the unorganized and deorganized areas when a project within that area triggers review and permitting by DEP under site law. Corresponds to changes in site law in Sec. 33 and Sec. 34 of LD 1798.

6. Site Law – *delayed effective date*

- Direct DEP and LUPC to report back to the legislative committee of jurisdiction by January 1, 2014 with provisionally adopted rules needed to implement the transfer of projects triggering site law (other than grid-scale wind projects) to DEP .

MINORITY REPORT
For ACF Review

- Rules will come to the Legislature for approval to finally adopt with an effective date of July 1, 2014
- Revises and adds sections to the bill pertaining to DEP's review and permitting of projects that trigger site law.
- Adds a requirement to DEP's approval criteria that LUPC certify that the proposed project meets LUPC's land use standards.
- States that LUPC is authorized to enforce the land use standards that it certifies to DEP.
- Specifies that DEP will review revisions to development permitted by LURC prior to enactment of LD 1798 only if the proposed revisions are of a magnitude or character that the revisions alone would trigger site law.

7. Wind energy development

- Transfers review of grid-scale wind energy development projects to DEP effective July 1, 2013
- Requires LUPC and DEP to adopt major substantive rules establishing a process for the review of grid-scale wind energy development projects. These rules must be provisionally adopted by January 1, 2013.
- Distinguishes between wind energy development projects that trigger DEP review under site law (grid-scale) and projects that do not. LUPC will review and permit:
 - wind energy projects with a generating capacity of 100 kilowatts or greater that do not trigger site law; and
 - community-based wind energy projects.
- Requires a certification from DEP before LUPC can make a determination on a proposal for certain non-grid scale wind energy project. The certification is similar to the DEP certification required for non-grid scale projects in municipalities. DEP would certify that the proposed project meets DEP's standards for noise control, is designed to avoid undue adverse shadow flicker effects and setbacks are adequate for public safety.
- Requires DEP review of grid-scale wind energy projects when in a planned subdistrict.

11. Pre-application discussions

- Adds a section of unallocated law that directs LUPC to provide opportunities for landowners to discuss potential projects with the commission prior to filing an application.

12. Prospective zoning

- Adds a section of unallocated law directing LUPC to initiate prospective zoning in high growth areas and to provide information on the initiatives in their January 2013 report.