

Joint Standing Committee on Agriculture, Conservation and Forestry
Work Session #2
LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory
Tuesday, February 28, 2012

1. Summary of work session #1 on 2/23/2012

- Points of agreement
- Amendment proposed by Rep. Foster

2. Responses to information requests

- A. Projects triggering site law: An example of how an application for a **project triggering site law** is reviewed now under LURC and how it would be reviewed by DEP under LD 1798. The intent is that a project proposed for the UT would be processed in a similar manner and using the same standards as a project in a municipality that triggers review by DEP under site law. Please review relevant provisions in LD 1798 and recommend additional provisions or clarifications needed to implement a smooth transition. – *Commissioner Aho, DEP, and Samantha Horn-Olson, Acting Director, LURC*
- B. Wind generation projects: What statutory changes are needed to transfer all **wind generation projects** to DEP? LD 1798 was drafted to transfer projects proposed in expedited areas. Please review relevant provisions in LD 1798 and recommend additional provisions or clarifications needed to implement a smooth transition.
- C. LURC permitting activities: A breakdown of types of permits issued by LURC. This breakdown would be helpful in ACF's consideration of activities to potentially be delegated to a county for permitting under Sec. 19 of the bill.
- D. LURC rulemaking authority: Please characterize the various types of rules that LURC adopts, including rules that are submitted to the Legislature now under 12 MRSA§685-A sub-§7-A, ¶B, sub-¶(6).
- E. Timber harvesting activities: Review additional language needed to transfer regulation of timber harvesting activities to the Bureau of Forestry without jeopardizing flood insurance program under FEMA or compliance with the Natural Resources Protection Act. Language to address these concerns has been developed for the amendment to LD 1739, An Act to Change Regulation of Forestry Activities.
- F. Funding implications: Request to Maine Revenue Services and LURC staff to provide the loss of revenue to the General Fund if a county chooses to "Opt-Out" of LURC and assume land use planning and regulation responsibilities. Sec. 26 of LD 1798 would result in the .014% assessment for the UT and the .018% assessment for towns and plantations to go to the counties withdrawing from LURC. Application fees and fines going into the General Fund would be reduced. *Robert Dorion, Maine Revenue Services*

- G. A request has been forwarded through the Maine County Commissioners Association, for information on anticipated costs associated with the county "Opt-Out" and the impact on property taxes in the UT.

Unallocated law to be added to LD 1798 amendment:

OPLA draft

Sec. A. Directive to facilitate pre-application discussions. The Land Use Planning Commission shall provide opportunities for landowners to discuss potential projects with the commission prior to filing an application. The commission shall provide guidance on how to initiate a meeting for this purpose and the types and detail of information to bring before the commission at such a meeting.

Sec. B. Directive to initiate prospective zoning. The Land Use Planning Commission shall initiate prospective zoning in high growth areas in the unorganized and deorganized areas of the state. The commission shall allocate staff resources to prospective zoning in areas prioritized by the commission and shall coordinate prospective zoning in cooperation with efforts of local planning organizations and regional planning and development districts. In the 2013 annual report submitted under Title 12, section 685-H the commission shall identify an area or areas for which prospective zoning has begun and provide a time line for completion of these initiatives.

Joint Standing Committee on Agriculture, Conservation and Forestry

Work Session #3 - March 1, 2012

LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory

Issues to be revisited at Work Session # 3:

1. Transfer permitting of projects triggering law to DEP :

- Commissioner Aho distributed an amendment proposing various statutory changes recommended for a smooth transition of permitting from LURC to DEP. ACF members asked for time to read the amendment.
- ACF members asked to be provided with a comparison of a hypothetical applicant's experience under LURC's current permitting process and the process proposed in LD 1798 as amended by DEP's recommended language. ACF members asked about opportunities for public input during the process.

2. Rulemaking authority:

- LURC staff provided information on the various categories of LURC rulemaking authority
- Sen. Schneider asked for the status of LD 543, An Act To Protect Legislative Intent in Rulemaking. Enactment of LD 543 might affect ACF's decision as to whether to designate certain rules as major substantive. LD 543 has been passed to be enacted in both the House and Senate. *Copies will be provided at WS*

3. Review language for the amendment proposed by Rep. Foster on 2/23/2012 (purple)

4. Review and discuss:

- a. Purpose and Scope
- b. Discuss inclusion of Sec. 19 in the final committee report – Sec. 19 authorizes the LUPC to delegate permitting authority to a county.
- c. Language directing LUPC to encourage pre-application discussions with landowners
- d. Language directing LUPC to initiate prospective zoning efforts

5. Effective dates for various components of LD 1798 and timeline for implementation

DRAFT AMENDMENT
LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory
Proposed by Rep. Foster and Discussed by ACF
February 23, 2012

Amend the bill in Sec. 7 (page 2, lines 30-38; page 3, lines 1-40). Changes are indicated in bold and strike-out.

Sec. 7. 12 MRSA §683-A is enacted to read:

§ 683-A. Creation of Maine Land Use Planning Commission

The Maine Land Use Planning Commission, as established by Title 5, section 12004-D, subsection 1-A to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called "the commission." The commission is charged with implementing this chapter. The commission consists of 9 members, appointed or designated in accordance with subsections 1 and 2. All appointments are subject to review by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Legislature

1. Appointments by the Governor. The Except as provided in subsection 2, the Governor shall appoint 3 members 1 member to the commission. Gubernatorial appointments are subject to review by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Legislature. In selecting appointees, the Governor shall actively seek and give consideration to persons residing in or near the unorganized and deorganized areas of the State and to persons residing on unorganized coastal islands. Appointees to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. All appointees An appointee must:

- A. Reside in the commission's jurisdiction;
- B. Work in the commission's jurisdiction;
- C. Be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; or
- D. Have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as these activities affect the commission's jurisdiction.

2. Members representing a county. Except as provided in subsection 5, one member must be appointed by each of the 6 8 counties with the most acreage in the unorganized or deorganized areas subject to the jurisdiction of the commission. The county commissioners of each of the counties shall select appoint one among them or appoint another resident of that county to serve as a member of the commission.

If a county fails to appoint a member to the commission within 90 business days of a vacancy on the commission to be filled by that country, the Governor shall appoint a member meeting the criteria in subsection 1 to fill the vacancy.

Further amend the bill in Sec. 13 (page 7, lines 9-34) to read:

Sec. 13. 12 MRSA §685-A, sub-§4-B is enacted to read:

4-B. Transition from commission jurisdiction to county. Subject to the same conditions that apply to municipalities under Title 30-A, chapter 187, subchapter 2, beginning September 1, ~~2015~~ **2017**, a county may ~~assume~~ **request** authority for land use planning, zoning and subdivision regulation in the unorganized and deorganized areas within its borders. **A county seeking such authority shall submit to the joint standing committee of the Legislature having jurisdiction over the commission if the materials demonstrating that the following conditions have been met:**

A. The county has adopted a county charter consistent with Title 30-A, chapter 11, and the charter authorizes the county commissioners to exercise authority for land use planning, zoning and subdivision regulation in the unorganized and deorganized areas within its borders;

B. The county has submitted to the State Planning Office or its successor a comprehensive plan for the unorganized and deorganized areas within its borders, and the plan has been reviewed and approved by the office or its successor in the same manner and subject to the same requirements that apply to a comprehensive plan submitted by a municipality for approval under Title 30-A, chapter 187, subchapter 2;

C. The county has plans and budgetary resources to provide the necessary planning, permitting and enforcement staff and to cover related costs;

D. The county has established a planning committee in the same manner as a municipality under Title 30-A, section 4324 and a board of appeals in the same manner as a municipality under Title 30-A, section 2691; and

E. The county has prepared planning and zoning maps, regulations and standards.

~~Upon assuming~~ **The legislative committee shall review the materials submitted and, upon determining that all requirements have been met, shall request a joint order authorizing the committee to report out legislation authorizing the county to assume jurisdiction for land use planning, zoning and subdivision regulation in unorganized and deorganized areas within its borders. under this subsection, Upon passage of the resolve by the Legislature, a county has the same authority to adopt, amend, administer and enforce an approved land use plan, maps, regulations and standards as a municipality under Title 30-A, chapter 187, subchapter 2.**

Further amend the bill in Sec. 36, section 1 (page 17, lines 38-40; page 18, lines 1-9) as follows:

1. **Notwithstanding Title 36, section 683-A**, the members of the Maine Land Use Regulation Commission serving on the effective date of this Act continue as members of the Maine Land Use Planning Commission until the expiration of their terms under the Maine Revised Statutes, former Title 12, section 683 **except that the terms of members of the commission due**

to expire prior to December 15, 2012 are extended to December 15, 2012 and expire on that date. Beginning on December 15, 2012, to implement the difference in the number of members of the Maine Land Use Regulation Commission and the Maine Land Use Planning Commission, 2 additional members must be appointed under Title 12, section 683-A from the 2 counties with the highest acreage of unorganized and deorganized areas. When the term of a member serving on the commission under former Title 12, section 683 expires, a member must be appointed from the county with the next highest acreage of unorganized and deorganized areas until all ~~6~~ **8** county appointments have been completed. When all county positions have been appointed, the next 3 vacancies vacancy must be filled by ~~the appointment of the 3 public members appointed by the~~ Governor.

SUMMARY

This amendment revises the composition of the Land Use Planning Commission to include 8 county representatives and 1 appointment by the Governor. It provides for the Governor to make additional appointments if a county fails to appoint a member within 90 business days of a vacancy to be filled by that county. It requires all appointments to be reviewed by the legislative committee of jurisdiction and confirmed by the Senate.

It requires a county to submit materials demonstrating that all requirements for assuming responsibility for land use planning and regulation have been met and establishes a process for review and action by the Legislature prior to assuming such authority. It establishes September 1, 2012 as the earliest day for a county to request authority.

It provides for current members to continue to serve on the commission until December 15, 2012.

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DRAFT AMENDMENT
LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory

*Proposed by Rep. McCabe
March 1, 2012*

Amend LD 1798 as follows:

1. Delete all provisions that allow a county to assume land use planning and regulation authority; to “Opt Out” of LURC jurisdiction

2. Revise the membership of LUPC to include 8 county representatives – 1 from each county with the largest acreage in the UT and 1 member from the rest of the State
 - The Governor appoints all 9 members after considering recommendation submitted from the 8 counties and others.
 - All 9 are subject to the legislative confirmation process
 - A county commissioner would be prohibited from serving simultaneously as a County Commissioner and a member of the LUPC
 - All appointees would be subject to qualifications in current law; that is
“Appointees to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. All appointees must:
 - A. Reside in the commission's jurisdiction;
 - B. Work in the commission's jurisdiction;
 - C. Be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; **or**
 - D. Have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as these activities affect the commission's jurisdiction.”

SUMMARY

This amendment requires all 9 appointments to the Land Use Planning Commission to be reviewed by the legislative committee of jurisdiction and confirmed by the Senate. All appointments are made by the Governor. Eight members must represent the counties with largest acreage in UT. All members must meet qualifications established in statute.

It removes sections of the bill that provide a county the option of assuming responsibility for land use planning and regulation in the unorganized and deorganized areas of that county.

Rep. Black

LD 1798 – Areas of Improvement to Move into LD 1798

Composition of the Commission Change:

- County Designee Provision: The county commissioners of each county may nominate a designee to serve on the Land Use Planning Commission. Preference must be given to candidates residing in the Unorganized Territory. The language should only specify that the person will be a designee of the county commissioners as selected by them. The nominee is to be reviewed by the ACF committee and confirmed by the Senate

Opt out provisions:

- Take Back Provision: The Land Use Planning Commission must have the authority to review the administration and enforcement of local land use plans of a county and if certain findings are made, it may re-establish its jurisdiction.
 - o Repeat Section 12, 685-A, sub-section 4(B) to Section 13, 685-A, sub-section 4-B. Language is as follows:
- Proof of LUPC Failure Provision: Included as a requirement to be considered by the legislature upon review and prior to withdrawal from LUPC jurisdiction, a County must describe how LUPC has failed to meet its needs.
- This is in addition to the new requirements offered by Foster including
 - o A county may not begin the process for 5 years from date of final adoption of LD 1798.
 - o The ACF Committee of Jurisdiction and the full legislature must review the withdrawal plan and confirm that all of the steps were followed properly and that financial capacity has been demonstrated.

This requirement must be added to the list of requirements below, in Sec. 13, 685-A, sub-section 4-B.

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