

Growth Management and Sprawl Legislation 119th and 120th Legislatures Summary of Activity

The following is a brief summary of the efforts of three state task forces¹, the Governor's Sub-Cabinet Committee on Smart Growth, and the 119th and 120th Legislatures in areas related to sprawl, growth management, and community preservation. For each of the last three years, a separate legislative task force or study committee was convened in the fall to explore smart growth issues and prepare a package of recommendations for legislative consideration and action the following spring. In addition to legislative efforts, the Governor convened a Sub-Cabinet Committee, which prepared and adopted a three-year strategic plan called Smart Growth: The Competitive Advantage. The statutory outcome of these efforts is summarized below by topic and is arranged alphabetically under the broader headings of Land Use, Transportation, and Taxation issues. As the Community Preservation Advisory Committee moves forward, it is useful to note what has been accomplished in the past.

Land Use Issues

Affordable Housing: LD 2099² amends the definition of affordable housing in the growth management laws. The amended bill does not include the Joint Study Committee to Study Growth Management's more extensive recommendation to create an Affordable Neighborhood Development Review Board and direction for direct affordable housing development in municipalities where affordable housing is a particular challenge.

Building Rehabilitation: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's recommendation that the State Fire Marshal convene a stakeholders' group review state codes and federal regulations that restrict the reuse of existing structures to recommend revisions to encourage their renovation was not adopted.

LD 1331³ directed the State Planning Office and the Maine Building Rehabilitation Code Advisory Council to develop a model building rehabilitation code for Maine, incentives for municipalities to adopt the model code, and, to the extent funding is available, technical assistance and training in the use of it. The Council discontinued its efforts when two things became clear. First, that a single statewide building code is a necessary precursor to development of a overlapping rehabilitation code. And second, that both of the national code organizations were in the process of creating rehabilitation codes to integrate with their model codes. The Council recommended that the Legislature reexamine the desirability of developing a model statewide building code for Maine and create incentives for municipalities to adopt it.

Downtowns: LD 2600⁴ established the Maine Downtown Center to encourage downtown revitalization in Maine communities through advocacy, information, training and technical assistance to communities. It directed the State Planning Office, Department of Economic and

¹ Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development in 1999; Task Force to Study Growth Management in 2000, Joint Study Committee to Study Growth Management in 2001.

² Enacted as PL 2001, chapter 673, in second session of 120th Legislature in 2001.

³ Enacted as Resolve 2001, chapter 29 in first session of 120th Legislature in 2001.

⁴ Enacted as PL 1999, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

Community Development, Maine Development Foundation, and other state agencies to work collaboratively to coordinate the programs of the Center and appropriated \$100,000 for grants to revitalize downtowns. Several state agencies also committed to raising three years of operating funds for the Center. LD 2600 also directed DECD to develop an investment policy to improve the condition of downtown properties and infrastructure to meet the multiple use needs of downtowns, review state codes and federal regulations that restrict the reuse of existing structures and recommend revisions to encourage renovation of existing buildings, and report its recommendations to the Legislature. The Legislature did not adopt the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's recommendation to create a Downtown Leasehold Improvement Fund to help state agencies secure space in downtowns by providing for capital improvements to leased properties.

Geographic Information System: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that funds be appropriated for the position of Statewide Geographic Information System Coordinator in the Office of Geographic Information Systems. This recommendation was not adopted by the 119th Legislature.

LD 578⁵ directed the State Planning Office to convene a steering committee to study and design a statewide geographic information system that can be utilized for a variety of planning purposes. The steering committee made recommendations that resulted in LD 2116, which was adopted in the second session of the 120th Legislature as described below.

LD 2116⁶ creates the Maine Library of Geographic Information and the Maine Library of Geographic Information Board. LD 2120⁷ also resulted in inclusion of \$2.3 million in the November 2002 environmental bond issue. It was hoped that the bond would include \$4 million to assist municipalities with digitizing parcel maps.

Growth Management: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that additional funds be appropriated for financial and technical assistance to municipalities, regional councils, and alternative growth management initiatives. This recommendation was not adopted by the 119th Legislature.

The Task Force to Study Growth Management was charged with studying the state's growth management laws with the goal of making them more responsive to the issues of sprawl. It investigated a significant shift in approach to growth management, known as the "outcome-based approach," that would establish measurable performance measures. Municipalities would be expected to plan for and manage their growth in accordance with those measures. Failure to meet those measures, without good cause, would result in assessment of penalties to that community. Under the proposal, two different levels of planning were explored – multimunicipal and single community planning regions. The Task Force concluded that continued discussion of the outcome-based approach was needed and warranted, but that certain changes to the Planning & Implementation Act were required without delay and made a recommendation for an intermediate proposal to amend the Act. Among other recommendations, the Task Force proposed that the goals of the Act should be modified to

⁵ Enacted as Resolve 2001, chapter 23, in first session of 120th Legislature in 2001.

⁶ Enacted as PL 2001, chapter 649, in second session of 120th Legislature in 2002.

⁷ Enacted as Private and Special Law, chapter 71, in second session of the 120th Legislature in 2002.

include the three performance measures it had developed⁸; current deadlines for towns to adopt a comprehensive plan and consistent ordinances should be staggered for high, moderate, and slow growing communities; and towns that enter into regionally based comprehensive plans should be exempt from established deadlines for enacting consistent comprehensive plans. The Task Force also recommended increased funding for financial and technical assistance for municipalities and regional councils.

LD 1693⁹ amended the comprehensive planning and land use regulation laws in a number of ways, including adjustment in administration of the Community Planning & Investment Program, clarification and increased flexibility in the timing of the requirement for consistency between local land use regulations and comprehensive plans, reducing the requirement for consistency between local plans and land use ordinances to include only zoning, rate of growth ordinances, and impact fees; increased flexibility in the designation of growth areas for slow growing communities, and increased coordination among state agencies and support for local planning efforts.

LD 2510¹⁰ appropriated \$1.6 million for financial and technical assistance to municipalities and regional councils and for pilot programs to support alternative growth management initiatives and updates of older comprehensive plans.

LD 2094¹¹ amended the comprehensive planning and land use laws to adjust administration of the Program; and increase the flexibility in designating growth and rural areas by including a provision for critical rural areas, critical waterfront areas, and transitional areas, and by placing multimunicipal planning projects on an even footing with single town planning efforts. See Regionalism in Growth Management.

Growth-related Capital Investments: LD 2600¹² defines state growth-related capital investments¹³ and directs them to locally designated growth areas as identified in comprehensive plans, or if there is no comprehensive plan, to areas with public sewers capable of handling the development, in areas identified as census-designated places or in compact areas of urban compact municipalities. There are exceptions to this requirement.¹⁴

⁸ Three performance outcomes were proposed: a. At least 70% of new residential growth must occur in areas designated for growth; b. At least 10% of new housing must be affordable; c. Commercial development should be located in such a way that the capacity of arterial and major collector roadways is not exceeded.

⁹ Enacted as PL 2001, chapter 406, in first session of 120th Legislature in 2001.

¹⁰ Enacted as PL 2001, chapter 578, in first session of 120th Legislature in 2001.

¹¹ Enacted as PL 2001, chapter 578, in second session of 120th Legislature in 2002.

¹² Enacted as PL 1999, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

¹³ Construction or extension of utility lines, development of industrial or business parks, public service infrastructure and public facilities, state office buildings, state courts and other state civic buildings, newly constructed multifamily rental housing.

¹⁴ For state investment required to remedy threats to public health and safety; mitigate nonpoint source pollution; purchase land for parks, open space, and conservation; assist natural resource-based industries; expand highways; support historic and cultural resources; and school construction or renovation.

LD 2071¹⁵ is intended to ensure that hospitals and other quasi-public facilities that use state or passed-through federal dollars are treated like other public entities regarding growth-related capital investments.

Impact Fees: LD 2600¹⁶ clarified that school facilities are among the types of infrastructure facilities for which communities may establish impact fees and recommended further study by the Task Force to Study Growth Management in the first session of the 120th Legislature.

LD 346¹⁷ clarified that communities that are part of a single or multi-community school district may deposit the proceeds of school impact fees in a trust fund to be used to pay their proportionate share of anticipated school capital costs.

Model Codes for Municipalities: LD 2600¹⁸ called for the State Planning Office to develop model codes that accommodate smart growth design standards to allow for traditional, compact development in locally designated growth areas and to preserve and revitalize existing neighborhoods.

Municipal Investments: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that the Legislature appropriate \$5 million for the Maine Municipal Bond Bank to capitalize the Municipal Investment Trust Fund for downtown improvement loans to municipalities.¹⁹ This proposal was not funded.

LD 669²⁰ amended the text of the Municipal Investment Trust Fund, a fund that was established in 1993 but never funded, to establish priorities for award of the fund²¹ and clarify eligible improvements. The Task Force to Study Growth Management's recommendation to capitalize the Municipal Investment Trust Fund in the amount of \$20 million was only partially successful, resulting in a first-time appropriation of \$300,000.

LD 2061²² further amended the priorities for preferences for loans and grants from the Municipal Investment Trust fund to share highest priority for these funds with municipal projects undertaken by two or more municipalities.

LD 2130²³ authorized inclusion of \$4 million dollars in the Economic Development bond issue, which was approved by Maine voters in June 2002. The Joint Study Committee to Study Growth Management had recommended capitalization in the amount of \$8 million.

¹⁵ Enacted as PL 2001, chapter 613, in second session of 120th Legislature in 2002.

¹⁶ Enacted as PL 2000, chapter 776 in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

¹⁷ Enacted as PL 2001, chapter 38, in first session of the 120th Legislature in 2001.

¹⁸ Enacted as PL 2000, chapter 776, in second session of the 119th Legislature in 2000.

¹⁹ Downtown improvements, historic preservation improvements, parking and road improvements, park and open space amenities, purchase of development rights, and streetscape improvements.

²⁰ Enacted as PL 2001, chapter __, in first session of 120th Legislature in 2001.

²¹ Service centers, communities with certified growth management programs and consistent comprehensive plans, and multicommunity projects with regional benefit.

²² Enacted as PL 2001, chapter 621, in second session of the 120th Legislature in 2002.

²³ Enacted as Private and Special Law, chapter 73, in second session of the 120th Legislature in 2002 and approved by voters in June 2002.

Rate of Growth Ordinances: LD 1643²⁴, which was an attempt to establish a framework for locally defined rate of growth or building caps, was carried over from the first to the second session of the 120th Legislature. The LD defined three types of caps – temporary, ongoing, and caps that apply only outside of locally designated growth areas – and parameters within which each could be adopted. The Joint Study Committee to Study Growth Management recommended that the LD ought not to pass and recommended instead LD 2062, a variation on the original bill.

LD 2062²⁵ requires any municipality that enacts a rate of growth ordinance to review that ordinance at least every 3 years. The final version of the bill did not include the recommendations of the Joint Study Committee to Study Growth Management.

Regionalism in Growth Management: LD 2094²⁶ amends the Comprehensive Planning and Land Use Regulation Act to reinforce regional and municipal roles in growth management and encourage multimunicipal planning efforts by placing them on even footing with single town planning efforts.

See also Municipal Investments for description of modified priorities for award of Municipal Investment Trust Funds to place multitown projects on an even footing with service center projects as the highest priority for the Fund.

Reports to the Legislature and Task Forces: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development was established to review and make recommendations on legislation carried over from the first session of the 119th Legislature, which focused on stimulating the health and well-being of service center communities and rural areas, including proposals to direct state investments to locally designated growth areas and downtowns, value farmland at current use, and support farms and agricultural activities.

LD 2600²⁷ required the Land & Water Resources' Council to submit a report to the 120th Legislature evaluating the use of incentives to keep rural land undeveloped.

LD 2600 also directed the State Planning Office and Department of Environmental Protection to promote the Maine Municipal Brownfields Revolving Loan Fund and the Voluntary Response Action Program and to submit a joint report to the 120th Legislature evaluating the initiative for expansion.

LD 2600 also established the Task Force to Study Growth Management and directed it to review Planning & Land Use Regulation Act, with the goal of making it more responsive to the issue of sprawl, as well as the state's enabling legislation for impact fees and the municipal subdivision law.

LD 2600 also directed the Maine State Housing Authority to submit a report to both the Natural Resources and Business and Economic Development Committees to describe efforts to design

²⁴ Carried over from first to second session of the 120th Legislature in 2001-2002.

²⁵ Enacted as PL 2001, chapter 591, in second session of the 120th Legislature in 2002.

²⁶ Enacted as PL 2001, chapter 578, in second session of 120th Legislature in 2002.

²⁷ Enacted as PL 2000, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

and implement a home ownership program for service centers that was modeled after the New Neighbors program.

Joint Order HP 1330 and Senate Amendment A (S-371)²⁸ established the Joint Study Committee to Study Growth Management to study the issues related to sprawl and growth management in Maine.

LD 2070²⁹ established the Community Preservation Advisory Committee as an ongoing entity to advise the Governor, the Legislature and the State Planning Office on matters relating to community preservation.

School Siting: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that municipalities using state dollars to construct new schools site be required to site them in a community's locally designated growth area or, if it does not have a comprehensive plan that designates a growth area, in an area that is either served by public sewer, is a census designated place or is an urban compact area. If a municipality doesn't select one of these locations, state funds were recommended to be used for the project only if the municipality's land use regulations do not prohibit denser residential development within ½ mile of the school property. LD 2600³⁰ took a somewhat different approach, requiring the State Board of Education to adopt rules regarding the siting of new state-funded schools and include consideration of priority locations, as detailed in the Task Force's recommendations.

This rule was subsequently adopted³¹ and applies to the siting of all new school construction projects that receive state funding. Under the rule, the Board of Education must consider school administrative units' requests for site approval with consideration for preferred locations, essentially defined as recommended by the Task Force. When a school administrative unit selects a site that is not within a preferred area, it must provide a written explanation of its site selection for State Board of Education consideration.

LD 2600 also directed the State Planning Office and the Department of Education to submit a joint report to the Natural Resources Committee on recommendations regarding land use and zoning ordinances near newly constructed schools.

Service Center Communities: LD 2510³² provided for additional state-municipal revenue sharing for municipalities with a higher-than-average property tax burden. It appropriated \$3.6 million in one-time funds to be distributed in June 2001 to municipalities with disproportionate tax burdens.

The Legislature approved major substantive rules defining service centers in LD 2144.³³

State Facilities: LD 2600³⁴ directed the Bureau of General Services to develop site selection criteria for state office buildings and community facilities that give preference to priority locations

²⁸ Enacted as PL 2001, chapter __, in first session of the 120th Legislature in 2001.

²⁹ Enacted as PL 2001, chapter 648, in second session of the 120th Legislature in 2002.

³⁰ Enacted as PL 2000, chapter 776, in second session of 119th Legislature in 2000.

³¹ Enacted as Resolve 2001, chapter 47, chapter 60, New School Siting Approval, in first session of 120th Legislature in 2001.

³² Enacted as PL 1999, chapter 731, in second session of 119th Legislature in 2000.

³³ Enacted as PL 2001, chapter __, in second session of 120th Legislature in 2002.

in service centers, downtowns, and locally designated growth areas. See Downtowns discussion above for description of Leasehold Improvement Fund, which was not authorized or funded.

LD 2059³⁵ clarified that site selection criteria for state facilities may require on-site parking only if it is necessary to meet critical program needs and to ensure reasonable access for agency clients and persons with disabilities. It also clarified that employee parking that is within reasonable walking distance may be located off site. Finally, it required the Department of Administrative and Financial Services to consult with the authorized bargaining agent of the employees if there is a change in employee parking at a state facility from on-site parking to off-site parking.

Subdivision Law: LD 1278³⁶ amended the definition of subdivision and provided that a municipality may not enact an ordinance that expands the definition of subdivision except as provided in the law.³⁷ LD 1278 also required the State Planning Office to study the status of municipal subdivision ordinances and report to the Joint Standing Committee on Natural Resources.

LD 2119³⁸ placed limits on the ability of municipalities to modify the definition of “subdivision” to modify and remove certain exemptions. It also provided that a municipality may not enact an ordinance that expands the definition of “subdivision” except as provide in state law. It also provided that if, at the time chapter 651 took effect, a municipality had a definition of “subdivision” that conflicts with the statutory definition of “subdivision,” that municipality must file its conflicting definition at the registry of deeds. LD 2119 also removed the 40-acre lot exemption from the definition of “subdivision,” except that a municipality may affirmatively elect not to count 40-acre lots as lots for purposes of subdivision review.

LD 2037³⁹ removed the retroactivity provision established in LD 1278.

LD 2082⁴⁰ amended the subdivision review criteria for traffic to require a determination that a proposed subdivision will not reduce the speed of a mobility arterial.

Transfer of Development Rights: LD 2049⁴¹ clarified that a single municipality may enact a transfer of development rights program for the transfer of development rights within the municipality’s boundaries. Two or more municipalities may only provide for the transfer of development rights between municipalities if the municipalities have entered into an interlocal agreement.

³⁴ Enacted as PL 2000, chapter 776, in second session of 119th Legislature in 2000.

³⁵ Enacted as PL 2001, chapter 593, in second session of the 120th Legislature in 2002.

³⁶ Enacted as PL 2001, chapter 359, in first session of 120th Legislature in 2001.

³⁷ The provisions that would have repealed this provision as of October 2002 and apply them retroactively were eliminated in the second session of the 120th Legislature in 2002.

³⁸ Enacted as PL 2001, chapter 651, in second session of 120th Legislature in 2002.

³⁹ Enacted as PL 2000, chapter __, in second session of 120th Legislature in 2002.

⁴⁰ Enacted as PL 2001, chapter __, in second session of 120th Legislature in 2002.

⁴¹ Enacted as PL 2001, chapter 592, in second session of 120th Legislature in 2002..

Transportation Issues

Access Management: LD 2550⁴² expanded the purposes of the access management law and established a process for permitting new driveways, entrances and approaches on Maine's major highways.

LD 1774⁴³ authorized final adoption of Chapter 299: Highway Driveway and Entrance Rules, Parts A and B, a major substantive rule of the Department of Transportation.

See also Subdivision above for discussion of amendment of subdivision review criteria regarding access management.

Planning Assistance to Municipalities: LD 2550⁴⁴ required the Department of Transportation to work cooperatively with the State Planning Office and regional councils to provide training, technical assistance, and information to municipalities on road planning, maintenance, sidewalks and neighborhood involvement to assist them in addressing smart growth issues by preserving traditional downtowns, walkable communities and compact neighborhoods.

Transit Projects: LD 2550⁴⁵ required the Department of Transportation to begin a strategic planning process relating to transit, including marketing of transit, innovative financing of transit projects, connectivity to airports and rail and other issues. LD 2550 also requires MDOT to work with other agencies to identify funding sources for innovative transit and transportation projects that address sprawl and air quality issues.

Taxation Issues

Current Use Taxation: LD 2510⁴⁶ amended provisions of the Farmland Tax Law to reduce the penalty for withdrawal to the minimum required by the State Constitution. The law also required the Department of Agriculture, Food and Rural Resources and the bureau of Revenue Services to update the guidelines for the valuation of farmland by December 31, 2000 and biennially thereafter with suggested values by region, as appropriate. A critical component of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's recommendation was not funded. It would have offered 90% municipal reimbursement for enrolled farmland as is done for land enrolled in the tree growth tax program. LD 2669⁴⁷ provided a refund of sales tax paid on electricity purchased for use in commercial agricultural production, commercial fishing and commercial aquaculture production.

LD 765, designed to increase the reimbursement to communities for lost revenue under the tree growth tax law, was not adopted by the legislature in the first session of the 120th Legislature. LD 1007⁴⁸, which prevented the use of current use tax programs (tree growth, farmland, and open space) was adopted by the Legislature.

⁴² Enacted as PL 1999, chapter 676, in second session of the 119th Legislature in 2000.

⁴³ Enacted as Resolve 2001, chapter 46, in first session of 120th Legislature in 2001.

⁴⁴ Enacted as PL 2000, chapter __, in second session of the 119th Legislature in 2000.

⁴⁵ Enacted as PL 2000, chapter __, in second session of 119th Legislature in 2000.

⁴⁶ Enacted as PL 1999, chapter 676, in second session of the 119th Legislature in 2000.

⁴⁷ Enacted as PL 1999, chapter 757, in second session of the 119th Legislature in 2000.

⁴⁸ Enacted as PL 2001, chapter 305, in the first session of the 120th Legislature in 2001.

A constitutional amendment to extend current use tax designation to the fishing industry was defeated in 2000.

Service Centers: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that a Service Center Relief Fund be established to provide relief to regional service center communities, which provide regional services which are generally not financially supported by area communities and many state funding formulas. LD 2510 established a second-tier of revenue sharing that transferred additional funds to service center and other communities with high tax burdens. A one-time appropriation of \$3.6 million was made in FY01 to seed the fund⁴⁹.

Sprawl Offset Tax: In the first session of the 120th Legislature, Representative Lamoine sponsored LD 1398, the sprawl offset tax. This bill, though unsuccessful, was the Legislature's first attempt to address the fact that development in locally designated rural areas is often less expensive, or at least is perceived to be less expensive in the short term, than in locally designated growth areas.

⁴⁹ Enacted as PL 2000, chapter ___, by second session of 119th Legislature in 2000.