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Model State Land Use Legislation for New England

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Model State Land Use Legislation for New England



prepared by the

New England Environmental Finance Center

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1. Overview and Context

Sprawl is neither the ordained nor the inevitable outcome upon the New England landscape. A coordinated response to sprawl by the public and private sectors is possible, and could dramatically improve land use patterns and reduce the cost of local government. For the New England states, such a response would include, among other elements, legislation to eliminate existing gaps in the land use laws of each state – gaps that presently encourage or sanction sprawling development. It would also include incentives for municipalities to think beyond their borders and to act with greater efficiency and effect. It is the purpose of this omnibus package to respond to both needs.

Sprawl has been well described as dispersed, auto-dependent development outside compact urban and village centers, along highways and in rural countryside. Its impacts are well documented and include, among others, the loss of wildlife habitat and productive farmland and forestland, the draining of traditional town and city centers, a loss of sense of place and community, and an increase in health problems in children and adults due to sedentary life styles.

The economic impacts of sprawl are great. They include excessive public costs for roads and utility extensions; decline in economic opportunity in traditional town and city centers; disinvestment in existing buildings, facilities, and services in urban and village centers; relocation of jobs to peripheral areas at some distance from population centers; decline in number of jobs in some sectors, such as retail; isolation of employees from civic centers, homes, daycare and schools; and reduced ability to finance public services in urban centers.¹

In the face of such growing costs, it is incumbent upon all levels of government to respond in a comprehensive, forceful, and effective manner. Specifically, state governments have a responsibility to be exceptionally clear about their relationships with municipalities regarding land use planning and control. Considerable attention has been paid to the question of what is the appropriate balance today between state and local authority regarding land use planning and control in the six New England states; still, the answer to the question is far from clear^{2,3,4,5,6}.

To answer it more directly and thereby address problems of sprawl requires acknowledgement by the state and municipalities that: 1) land use authority is a responsibility *shared* by municipalities and the state; 2) when certain of states' responsibilities are jeopardized, including its financial, social, and environmental responsibilities, the state can and will assert authority to meet them; 3) primary land use

¹ Vermont Forum on Sprawl. << <http://www.vtsprawl.org> >>

² Bosselman, Fred, and David Callies, *The Quiet Revolution in Land Use Control*, 1971

³ Healy, Robert, *Land Use and the States*, 1976

⁴ Pelham, Thomas, *State Land-Use Planning and Regulation*, 1979

⁵ Degrove, John, *Land Growth and Politics*, 1984

⁶ Burby, Raymond, and Peter May, *Making Governments Plan*, 1997

decision making authority can and should reside at the local level, while state review is necessary and appropriate where state interests and responsibilities are at stake; and 4) when the state asserts authority over municipalities, it must be done equally and fairly across the state.

Subsequently, a legal framework must be established that allows these principles to be reflected in land use decision making and in other, related municipal activities, including property taxation and assessment, administration of K-12 education, and wastewater and solid waste management. Conversely, the legal framework must assure that individual state actions, particularly investments in major infrastructure, do not compromise either statewide goals or local land use plans, and that state financial assistance is available to help local governments build carrying capacity for patterns of development other than sprawl. This legal framework is provided here, in a manner that will allow any state that so wishes to enact all or a portion of the components.

The framework is organized in three parts, moving from the comprehensive to the specific. They are:

1) A mechanism to create a form of regional governance tailored to New England.

This mechanism (Section 2 of this document) would use incentives for towns and related school administrative units to voluntarily assemble themselves into new units of general purpose local government, which we call “Municipal Service Districts,” based on certain threshold criteria. The purpose of this comprehensive approach is two-fold: to reduce the costs of local government, and to provide the geographic basis for sound land use policy in small regions.

2) A far-reaching set of amendments to the state-level, comprehensive land-use planning statutes of Maine, Rhode Island, and Vermont (note that New Hampshire, Massachusetts, and Connecticut do not have such statutes). These amendments (Section 3) would (a) shift the focus of these statutes to measurable outcomes; (b) provide substantial financial assistance to meet those outcomes, and penalties where outcomes are not met; and (c) create an incentive to move to regional land use plans with regionally designated growth and rural areas, implemented in part through binding interlocal agreements to participate in a regional transfer of development rights program.

3) A set of 10 individual provisions which, taken together, represent omnibus land use legislation. These provisions (Section 4) address gaps in existing state law that currently allow unfair and inequitable land use planning processes; allow or sanction barriers to affordable housing; and create obstacles to fiscally and environmentally responsible development, including clustered, planned unit, high density, and in-fill development. More specifically, they:

1. broaden and update the “findings and purposes” sections of planning and land use control legislation to explicitly recognize that planning and land use regulation is a shared responsibility of state and local government;

2. systematically define relevant terms used by professional planners, those administering land use laws, and the courts;
3. clarify when “rate of growth” ordinances (or “caps”) are allowable;
4. specify when adoption of land use regulations is allowable, in relation to completion and approval of a comprehensive plan;
5. direct municipalities to identify parcels and provide areas that allow clustered and planned unit development, in-fill and higher density development, particularly in more built up areas of a municipality;
6. direct municipalities to identify parcels and provide areas that allow low-and moderate-income housing;
7. revise zoning ordinances to allow a wide range of often unwanted land use activities (LULUs); allow permit applicants to argue that their proposal is “uniquely suited to a particular land area or zone”, and ensure that denials of permit applications are predicated on objective data, planning, and/or technical criteria and borne out by substantial evidence;
8. provide direct financial incentives to municipalities that undertake and complete the preparation of comprehensive plans and plan-implementing regulatory controls, and that engage in anti-sprawl strategies;
9. create a state level administrative board to review local government ordinances that do not comply with state law, block development, or give rise to unreasonable denials of planning approval for anti-sprawl development, low- and moderate-income housing, the location of LULUs, etc.; and
10. bring the Attorney General's enforcement powers to bear to enforce state and local land use statutes regulations and ordinances; limit the powers of those who would litigate or use initiative processes to unreasonably delay achievement of purposes and goals embodied in state statutes, municipal ordinances, and administrative actions taken pursuant thereto.

This document is a product of the EPA-sponsored New England Environmental Finance Center (NE/EFC) at the Muskie School of Public Service, University of Southern Maine. Interest in creating it emerged from a series of roundtable discussions held in each New England state by the NE/EFC in 2002, in which obstacles to smart growth developments in New England were identified by a diversity of stakeholders in land use decision making. Among the conclusions of the roundtable series was that:

“The absence to date of strong state mandates such as Oregon’s urban growth boundaries, or of sufficiently rapid urbanization to support partial market solutions, has frustrated efforts to find a ‘magic bullet’ solution to the slower but

inexorable form of sprawl seen throughout New England. Repeatedly identified themes about what is preventing smarter residential development included the following: 1) land trusts are not strategic enough in choosing which parcels to protect, or proactive enough in working with towns and developers to identify which parcels to develop; 2) there are unwanted land-use effects of some EPA and state regulation; 3) there is not enough *good* regional planning; 4) there is a lack of imagination and thoughtfulness about the benefits of creating *much* higher human density; 5) there is a lack of progressive urban policies to support the products of such imagination and thought; and 6) permitting processes are in dire need of dramatic revision, to reduce the influence of individuals and focus their energy into planning and zoning processes instead.”⁷

All but the first two themes are addressed in this document to some degree. The text additionally suggests several mechanisms for enforcement and review of state and local land use laws, ordinances, and development decisions that are not found in this form in the recently published “Growing Smart Legislative Guidebook of Model Statutes for Planning and the Management of change.”⁸ For example, a state-level administrative review body is fashioned, such that aggrieved property owners/developers may seek review of local ordinances and/or actions that directly or indirectly frustrate state land use planning statutes or guidelines, particularly with respect to “cap” ordinances, clustered, planned unit, high density, and in-fill development, the provision of low and moderate income housing, and the citing of LULU/NIMBY types of development. Project approvals may be fashioned by this reviewing body, and actions of the reviewing body may be judicially challenged by developers, property owners, and the State Attorney General. There are also provisions that would compel the Attorney General’s office to enforce state planning laws and guidelines, and provisions that would limit the use of initiative mechanisms and/or suits challenging development approvals; initiatives may only be used to challenge broad legislative policy, not individual project approvals. Finally, the use of suits to challenge development approvals is limited by slightly narrowing traditional concepts of standing.

The text emerged largely from regular discussions at the NE/EFC; Evan Richert was primary author of Sections II and III, Orlando Delogu was primary author on Section IV, and Sam Merrill and Richard Barringer served as overall editors and contributors. As any reader will recognize, many steps we propose represent significant change. While portions may be too venturesome for some states under current administrations, we present the document as our view of the type of state action necessary to address the root causes of sprawl. Our observations suggest that enough New Englanders are fed up with sprawl, and deeply concerned about losing the parts of New England they love, that dramatic governmental changes are in fact politically feasible. More specifically, we

⁷ NE/EFC, *Roundtable Series on Innovative Approaches to Land Conservation and Smart Growth*, 2002. << <http://efc.muskie.usm.maine.edu/Final%20Roundtable%20Report.doc>>>

⁸ This seminal work was published by the American Planning Association in January, 2002; it was several years in preparation, is comprehensive in character, and offers any number of useful approaches to state, regional, and local land use planning and development regulation, including tools that allow for the enforcement and review of land use plans, ordinances, and development decisions.

believe there is a growing consensus that the degree of local land use authority currently allowed by our legal systems is among the central causes of sprawl. This consensus has the potential to enable municipalities to choose the best future for themselves, “pursuant to their home rule authority,” and to do it through supporting the intentions of this model legislation.

Maine law is used as the template for this legislation largely (but not solely) because the NE/EFC is located here, and the authors are more conversant with Maine law than with laws of other New England states. It is recognized that for several specific elements proposed, some states already have legislation addressing the targeted problem. An example is the provisions in Connecticut, Rhode Island, and Massachusetts statutes for appealing denials of building permit requests when denials are based on presence of affordable housing in the proposals. In such cases, portions of this model legislation that address low- and moderate-income housing (e.g., Section 4, Provision VI) may or may not be relevant. Similarly, in Section 4, Provision I, one aim is to consolidate into a single location the tools and mechanisms in Maine land use law that do address sprawl, thus rectifying their currently scattered and less useful condition; this may or may not be necessary in other states.

2. A Proposal for the Creation of Municipal Service Districts

REGIONAL GOVERNMENT,
NEW ENGLAND STYLE:

The Proposal in Brief

This proposal would establish a **new form of general purpose local government in New England, the Municipal Service District**. The Municipal Service District would be a voluntary assembly of a minimum number of contiguous towns and cities with at least 2 coterminous school administrative units, meeting certain thresholds of population or land area and school enrollment. Once chartered, with a popularly elected council, **it would have final budget and bonding authority within the Service District and exclusive authority over property taxation, K-12 education, land use planning and development, and wastewater and solid waste management**. Municipalities would continue to perform all other functions of local government, but would be free to decide to consolidate some or all of them through the Municipal Service District. **A package of state financial assistance would be available to chartered Municipal Service Districts**, including relief of 50% of existing general obligation debt; a 10% bonus in school aid financed in a shift from nonparticipating municipalities; and, in states where operating county governments exist, payment of a portion of participating municipalities' county obligations.

Anticipated property tax relief in Maine after Year 5 (2002 dollars):

- From shift to statewide taxes: \$70- \$75 million
- From efficiencies in local government: \$125-\$150 million

The New England Town

The New England town is a model of self-assembly: individuals organizing themselves into a community, not by executive order, but by following simple rules of self interest, civility, and democracy. As Geoff Herman, chief lobbyist of the Maine Municipal Association (MMA), would say, it is a beautiful thing. For three centuries the New England town has adapted to changing times – slowly and conservatively, but enough to maintain its preeminence in New England’s governance.

An important adaptation was the evolution of “home rule”. The tradition of self-government stems from colonial days, and New Englanders are bred as townspeople. Yet for most of their histories, the towns have been entirely creatures of the state. Only in the last 50 years have voters fortified towns with constitutional home rule in a majority of New England’s states (Vermont remains the exception). The extent of home rule ranges from very limited to liberal⁹ and, in truth, it still is one part law and two parts motto¹⁰. But it has helped the New England town resist top-down efforts to impose regionalism, despite calls for efficiency, the protection of large environmental systems, and the management of sprawl.

New England towns do cooperate with each other, but on their own terms. When the disposal of trash, the distribution of drinking water, or the inspection of buildings is beyond the means of any one town, it gathers itself together with other towns to create a single-purpose solution: a regional waste disposal district, a mutual aid agreement, or a water district, for example.

Herman and his colleagues at MMA, under pressure from the business community to create efficiencies in local government¹¹, have documented the cooperation among Maine towns¹². For example, 222 of Maine’s 489 units of local governments share a code enforcement officer or plumbing inspector with at least one other town. One hundred sixty-nine towns share animal control officers with at least one other town. Virtually every municipality has a mutual aid agreement for fire protection, and most are bound by agreement to shared regional waste handling facilities. Many towns, often through a regional planning agency, have joint purchasing alliances for road salt, public works equipment, computers and other necessities. A half-century ago, given financial incentives by the state, Maine’s school districts began a process of consolidation that reduced the number of districts by well over half, resulting in the 283 school administrative units that exist today. These examples, MMA suggests, are only part of the story: “...municipal cooperation is widespread but collaboration is achieved today in many different forms, so it is not as visible to the naked eye as it might be.”

⁹ Krane et al, *Home Rule in America: A Fifty-State Handbook (2001)*

¹⁰ Richardson, Jesse J., et al, *Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management*, Brookings Institution, January 2003

¹¹ Institute for a Strong Economy, *No Place to Hide*, 2002

¹² *Maine Townsman*, November 2002

Yet, the New England town may not be able to preserve itself far into the 21st Century. External forces that have long been gathering may simply overwhelm it, even if it continues to exist in name. Joint purchasing and mutual aid agreements are no match for the forces of land use, technology, and regional economics that live by rules on a larger scale. The New England town cannot adapt its boundaries to match the flow of people, energy, water, cars, wildlife, dollars, or just about anything else that moves; and so, to a greater or lesser extent, are at their mercy.

Unlike other regions of the United States, where gradual expansion of boundaries by annexation of unincorporated territory is possible¹³, New England's town boundaries are fixed; and save for northern Maine, little if any unincorporated land remains. New England towns are mostly quite small. They range from an average area of 22 square miles in Massachusetts to an average of 35 to 40 square miles in northern New England. The largest encompasses about 80 square miles. New England, with a total land area of 63,000 square miles, is divided into nearly 1,600 cities and towns, an average of less than 40 square miles.

Until World War II, 35 or 40 square miles were ample for relative self-sufficiency. Most people lived in the communities in which they worked, in hub communities or distinct villages inside of towns, surrounded by rural territory. Lewis Mumford said that the New England town had a feature "that has never been sufficiently appreciated nor as widely copied as it deserved."¹⁴ It is the way in which the New England town encloses multiple centers – town, village, hamlet – within its boundaries, along with the open country that surrounds them, "sometimes covering an area of a dozen or more miles in each direction." Each town was, in effect, a mini-region encompassing both town and countryside.

Over the last 50 years, however, the highway and automobile have transformed "a dozen miles in each direction." Sprawl and strip development have obliterated many town boundaries. In urbanizing areas throughout New England, the end of one town has become indistinguishable from the beginning of the next. What Mumford thought was sufficient land to buffer villages and centers and preserve an urban-rural edge has melted away.

Much more is melting away, too. Authority over budgets is now split between town councils and state legislatures. In Massachusetts, where a tax uprising 22 years ago imposed limits on the property tax, about 44% of all local general revenue comes from other levels of government, mostly the state.¹⁵ In Vermont, which in 1997 was forced by the courts to equalize funding for education among poor and rich towns, a statewide property tax yields more than the local property tax, and local governments get 57% of their general revenues from the state.¹⁶ Municipalities that serve as the hubs of their regions are watching control over their tax bases slip away for other reasons. Large

¹³ And advocated as an antidote to sprawl and urban inequities in Rusk, *Cities without Suburbs*, 199_

¹⁴ Mumford, *The City in History*, p. 332

¹⁵ U.S. Census, 2000 data

¹⁶ *Ibid.*

shares of the property taxes generated inside must be used to support demands from the population living outside – to support a daytime population that declares its address in the suburbs but depends on the hubs for jobs and services.

As with land use and budgets, control over environmental and educational policies is marginal in towns with jurisdiction over small areas. The environmental quality of lakes, coastlines, and rivers has improved largely because higher levels of government have stepped in and required compliance with water pollution control laws, shoreland zoning, and the like, and often with regulations that fall upon the town at its expense. The standards for competing in a worldwide economy long ago superceded local educational curricula, and local schools are living by budgets shaped by rules and expectations set elsewhere.

The New England town is still relevant. Anyone who plows your street, collects your trash, puts out your fires, teaches your children, patrols your neighborhood, and taxes your home is relevant. But this is not the same thing as being in control. The New England town has become more a victim than an organism with the resources to adapt to the sea changes of the past generation.

Unable to adapt – to change its skin, as it were – it is left to respond within the skin that it has. It has done so with a combination of determination, anger, and obliviousness.

On the one hand, the elected volunteers who debate what budget to send to town meeting are frugality itself and usually find ways to deliver. On the other hand, they rail against “unfunded mandates” (which has led to constitutional protections against them in New Hampshire and Maine), and for large additional shifts in funds to the local level. And their belief that home rule is not merely a principle of governance but armor to keep the external forces of change at bay is unshaken by the realities around them. Home rule in today’s small political jurisdictions, even when liberally construed, is the emperor without clothes.

The very frugality of New England town government makes its inefficiency a paradox. In fact, the number of people (full-time equivalents) needed to deliver local governmental and K-12 services in the geographically smallest, densest New England states – Rhode Island (1,045 sq. miles, 1003 persons per sq. mi.), Connecticut (4,845 sq. miles, 703 persons per sq. mi.), and Massachusetts (7,840 sq. miles, 810 persons per sq. mi.) -- is competitive with the nation. However, as the geography gets larger and density falls among the northern three New England states, the number of local and school employees per 10,000 population increases to well above the national median.

Geographic size and density appear not to be the determining factors, however.

Idaho, West Virginia, South Dakota, North Dakota, and Oregon each is geographically larger, with lower densities of population than the northern New England

states. Each is also a reasonably good peer state: similar in population and demographics, and located in whole or part north of the 40 degree parallel. On average, they employ 350 full-time equivalents per 10,000 population to deliver local services.¹⁷ The three northern New England states average 389, or 11% more, including 378 in New Hampshire, 379 in Vermont, and fully 410 in Maine. If Maine delivered local services with the same efficiency as Idaho, the state most similar to Maine, it would reduce its municipal costs by \$141 million per year. If the three states performed at the average of the peer states, they would collectively reduce their municipal costs by \$397 million per year.

The southern New England states are more competitive with the national median of 367 full-time equivalents per 10,000 population. Connecticut is the eleventh most efficient in the U.S. at 340, Rhode Island is eighteenth at 352, and Massachusetts is twenty-seventh at 371. While these are around the national median, there is room for improvement when put head-to-head with peer states. For example, Maryland is comparable to Massachusetts in size, population, demographics, and density. It needs 4% fewer FTEs to deliver local services, even after excluding differences that might be explained by the effects of a northern climate on maintenance of streets and highways. Delaware, like Rhode Island a postage stamp-sized, densely settled state, requires just 272 local FTEs per 10,000 population, as opposed to Rhode Island's 352.

The *number* of general purpose governments and school districts delivering local services appears to be more important to efficiency than geographic size and density.

The peer states depend on *counties* to deliver services such as public works, public safety, and planning to large shares of their population; New England's states depend almost exclusively on towns and cities. The counties are more numerous in the peer states, creating jurisdictions with comparatively small populations. For example, Idaho and Maine have nearly identical populations. But Idaho's 44 counties average 29,000 people per county, while Maine's 16 average nearly 80,000. With its 44 counties delivering a variety of services, Idaho manages with only 200 municipalities, versus Maine's 489. At an average of 230,000 people each, Maryland's 23 counties are half the size of Massachusetts' average of 453,500 in its 14 counties. Maryland has just 156 municipalities, versus Massachusetts' 351.¹⁸

It might be said that New England states have small town government, while many of its peers have small county government.

Although efficiency in local government is harder to quantify than efficiency in a widget factory, economies of scale do come into play. Economists in Maine have noted the U-shaped pattern produced by scale in local government, yielding the highest costs when density is very low or very high and lower costs over the middle range of

¹⁷ Excluding hospital and electrical utility employees, which are common local services in some states but not others. Source: U.S. Census, 2001 Public Employment Data

¹⁸ Statistical Abstract of the United States: 2001, Table No. 414; excludes special districts

densities¹⁹. The U-shape has been tracked among Maine’s 285 school districts. Their weighted average size of teaching districts is just over 1,000 students, or one-third the modeled optimum size of about 3,400, imposing a cost penalty of as high as 13.5%.²⁰ In contrast, Idaho contains 114 school districts and has 1,800 fewer non-instructional FTEs than Maine.

Beyond the question of fiscal inefficiency, the New England town everywhere has been unable to cope with another kind of inefficiency: the kind that comes with the pattern of development called “sprawl.” As commentators since at least the mid-1970s have observed, the costs of sprawl are environmental and social, as well as fiscal²¹, and no part of any state in New England has conquered them. It doesn’t matter if the state is urban or rural, whether its home rule is constitutional or legislative, or whether it has state-level planning law (as Vermont, Rhode Island, and Maine do). The New England town has been powerless to rein in sprawl or shape a less costly or damaging pattern. It is simply *too small* to be able to do so.

The few places that have meaningfully tackled sprawl are organized on a regional scale.

A large geography under a single political jurisdiction does not assure a better outcome, but it is a prerequisite; it is a necessary, if not sufficient condition. Even if small jurisdictions favor alternatives to sprawl, they “may not be able to implement effective policies simply because they do not have the geographic or population size to contend with region-scale forces.”²² The metropolitan area of Portland, Oregon, encourages and contains urbanization within urban growth boundaries. Its governing body, Portland Metro, has jurisdiction over 24 cities in three counties with 1.1 million people. In Maryland, where a package of fiscal and market-oriented tools is in force, the average jurisdiction is upwards of 500 square miles. The Pinelands of New Jersey covers 1,700 square miles; it uses the trading of development rights to preserve fragile lands and manage growth.

The Challenge

In his book *Emergence*, Steven Johnson says that the most important principle that allows individual agents – whether they are ants in a colony, neurons in a brain, or neighborhoods in a city – to assemble themselves into a larger working organization is “local information.” Local information, or signals sent back and forth by many single entities among each other, creates the “global wisdom” that allows the coordinated whole.²³

¹⁹ LaPlante, Maine Policy Review, Vol. 6, no. 1

²⁰ Allen, Bell, Trostel, *Regional Cooperation in the Greater Bangor Region: Education, Housing, and Capital Planning*, Margaret Chase Smith Center, Oct. 2002

²¹ See, e.g., Burchell; ULI; Frank; Laplante; Maine State Planning Office; Miriam Wasserman

²² Richardson, et. al., *Op. cit.*

²³ Johnson, Steven, *Emergence*, p. 78

Johnson would recognize the New England town as an example of “emergence,” the bottom-up assembly of individuals into a more complex level of organization. But in New England, artificial boundaries fortified by cultural and legal home rule create a barrier to adaptation and assembly into an organization large enough to respond to today’s regional forces.

There is, in the New England town, plenty of local information being generated. But the barriers often prevent them from being picked up by their neighbors. The signal in one town might be “more young children moving in,” and in the next town over it might be “surplus school capacity;” but there isn’t a mechanism to quickly and easily engender a coordinated response. In fact, the structure of the New England town tends to assure that there won’t be one. Self-assembly ends at the town (or school district) border.

One solution is to force a breaching of the borders by an imposed regional structure. But an imposed solution will lack the features that have had the benefit of 300 years of evolution and made the New England town an icon. Nor will the politics of New England allow it. If anything, the sentiments of reform run in the opposite direction. For example, in the late 1980s a proposal surfaced to convert Vermont into shires: groups of towns averaging 10,000 people each.²⁴ The shires would have complete authority over local matters. State government would be a federation of shires, with its powers derived from local government, not the other way around. It failed.

The challenge is to find a form of regional governance that resembles the New England town in its accessibility, frugality, and volunteerism, and to allow that form to take shape through the same principles of self-organization that allowed the original town form to evolve.

The approach must be distinctly New England, that is, bottom-up, participatory, and producing voluntary regions just large enough to accomplish their express purposes. This means reaching agreement on a few rules of engagement, and then letting a higher order pattern evolve as it will, from the town level upward.

Summary of the Proposal

This, then, is a proposal for the rules of engagement, or a framework for action. One may envision the outcome, the pattern of small regions or assemblages of towns that might result, but it is not possible to predict it with certainty. Better to let things evolve. The sum of many local decisions will lead to its own recognizable pattern. What is important is that the rules be set and that the forces of self-assembly – and adaptation – be put into motion.

In proposing the rules of engagement, it is helpful to know the reasons for putting them into play – the results that a new era of adaptation will achieve. We propose three:

²⁴ McClaughry, John, “Bringing Power Back Home: Recreating Democracy on a Human Scale,” Ninth Annual E.F. Schumacher Lectures, Oct. 1989

1. To maintain the services, participatory democracy, and ultimately the preeminence of local government.
2. To reduce the cost of delivering municipal and school services. The benchmark will differ by state. For the northern New England states, it would be logical to set it at no more than 350 full-time equivalent local employees per 10,000 population, statewide.
3. To enable New England towns and cities to remain highly livable, civic places – which inevitably means coping with development sprawl and its fiscal, social, and environmental costs.

The rules of engagement themselves need be few and relatively simple. Following is a summary, divided under two headings: a new form of general purpose local government, and financial assistance. A sample fiscal note and model constitutional and statutory language follow.

First: Authorize a new form of general purpose local government, the Municipal Service District.

- Amend State Constitutions²⁵ to authorize the creation of Municipal Service Districts and provide them with structural home rule (i.e., the ability to establish a governmental structure by adopting a charter) and exclusive authority over:
 - property assessment and taxation
 - borrowing and financing of public facilities
 - K-12 public education
 - Land use planning and development, including:
 - comprehensive planning, consistent with state growth management law²⁶
 - zoning and subdivision regulation
 - buildings and plumbing
 - mobile home parks and affordable housing
 - waste water collection and treatment, including entering into arrangements with regional waste water collection and treatment organizations
 - solid waste collection and disposal, including entering into arrangements with regional waste disposal organizations
 - tax-financed development districts

²⁵ Article 10 of the Constitution of the State of Connecticut; Article VIII of the Constitution of the State of Maine; Article LXXXIX of the Massachusetts Constitution; Article 39 of the New Hampshire State Constitution; Article XIII of the Rhode Island Constitution; new article in the Vermont State Constitution

²⁶ The statewide growth management laws of Rhode Island and Maine serve as models that should be adopted concurrently with the authorization of Municipal Service Districts, setting forth statewide goals, requiring the designation of growth and rural areas, and requiring consistent implementing ordinances.

- In addition, the Municipal Service District will be empowered to assume, as its legislative body deems appropriate in order to gain efficiencies, any other functions and powers of municipal government that member municipalities voluntarily wish to cede.
- A Municipal Service District is the voluntary joining together of at least five contiguous²⁷ municipalities containing a certain minimum population (this may vary by state) and two or more school districts coincident with those municipalities having a certain minimum number of students (also varying by state)²⁸; OR, in rural areas where population is especially sparse, at least five contiguous municipalities with an area of at least 250 square miles and including two or more school districts coincident with those municipalities having a lower threshold of students. By way of example, in Maine reasonable thresholds would be a population of 20,000 and 3,000 students (1,500 in the most rural parts of the state).
- Municipalities join together into a Municipal Service District by adopting a charter that provides for:
 - a popularly elected governing council with representation as determined through the charter, with due consideration to the needs of both the smaller and the larger municipalities in the Service District;
 - a single popularly elected school board to replace the school boards of the previous school districts, again in a manner determined through the charter;
 - a budgetary process in which a single budget for the Municipal Service District is adopted, based on
 - component budgets recommended by each member municipality to carry out its functions,
 - a budget recommended by the Municipal Service District’s school board, and
 - the requirements of the Service District itself to carry out its functions;
 - appointment by the governing council of a planning board or commission and a board of zoning appeals;
 - creation of such other departments, boards, and committees as the governing council deems necessary to carry out its duties.

If any municipality is isolated by the formation of surrounding Municipal Service Districts and cannot find one to join but wishes to do so, the State Legislature may direct its inclusion in an adjacent Municipal Service District. It would be subject to the terms of that Municipal Service District’s adopted charter, and subject to paying a fair share of any capital improvements undertaken by the Municipal Service District since its conception.

²⁷ “Contiguous” includes municipalities that may be separated solely by unorganized territory or by water.

²⁸ It may be advisable to allow the largest cities in a state the option to join with one or more adjacent municipalities, or to be considered a “Municipal Service District” on its own.

- Existing city and town boundaries and governing bodies will continue and retain powers and responsibilities other than those delegated to the Municipal Service Districts, until and unless the municipality cedes to and the Service District accepts any of those authorities. Leaving this decision to the municipalities, which will be living with the new reality of a Service District-wide budget and tax rate and new opportunities for economy of scale, is an important part of emergent, rather than imposed, regionalism.
- Each municipality will annually prepare and submit to the Municipal Service District its financial requirements to execute its services and responsibilities. The Municipal Service District's Council will combine the requests, modifying them as it deems necessary, into a single proposed Municipal Service District budget for consideration and adoption. The Council will set the Service District-wide tax rate required to fund the budget.

Second: Provide a package of financial assistance for the formation of Municipal Service Districts.

The state government will assume 50% of outstanding general obligation debt of municipalities and school districts joined together in a Municipal Service District (excluding debt designed to be repaid by revenues other than taxes and debt of special districts).²⁹

For municipalities that form Service Districts by a given date, the state government will add 10% to the payments made under the state's school aid formula for a set period. In appropriating these additional funds to the Municipal Service Districts, the state will identify the total sum to be appropriated for K-12 education statewide and subtract the sum to be earmarked for the Municipal Service Districts; the remainder then will be distributed to municipalities not in Municipal Service Districts according to statewide aid formulas.

In states where operating county governments exist, the state government will pay, on behalf of municipalities that have joined together in a Municipal Service District, certain

²⁹ The purpose of assuming a portion of G.O. debt is two-fold: (1) to ease the joining together of municipalities with varying debt obligations, and (2) to provide some immediate property tax relief (in addition to relief from certain county-related expenses).

Maine example: As of Jan. 31, 2003, Maine Municipal Bond Bank reported total outstanding principal, excluding revenue generating facilities such as sewer, water, and other utilities, of \$726.2 million. Of this, about \$391 million was for SADs and CSDs, a portion of which (est. 60%) already is subsidized by the state. We estimate that there is about \$491 million of outstanding principal held by MMBB to be repaid from property taxes. Since MMBB accounts for perhaps 80% of all local outstanding debt, we estimate the total statewide at around \$614 million. Half of this would be \$307 million.

net costs charged to them for support of county government.³⁰ These costs (less revenues generated) are for services generally required by the state, namely district attorney, registry of probate, jails (including payments on bonded indebtedness), court rents and services, and registry of deeds.

The state government will provide technical assistance grants of \$100,000 to \$200,000 for the formation of each proposed Municipal Service District to help with the preparation of a charter and mergers of property maps, school records, policies and procedures, and land use plans and ordinances.

³⁰ County government has been phased out in Connecticut and Rhode Island and in a large part of Massachusetts. It continues to perform certain administrative functions in New Hampshire and Vermont and a variety of administrative and public safety functions in Maine. This proposal does not address the future of county government in these states. It is possible that Municipal Service Districts in rural areas could contract with counties for certain services, such as police protection; or it is possible that in time the counties could be phased out and their functions absorbed by state government and the Municipal Service Districts.

Sample fiscal note to State

Example: Maine – rough estimates only; not adjusted for inflation

	Year 1	Year 2	Year 3	Year 4	Year 5
TA grants to prospective Municipal Service Districts, est. 50 @ \$150,000 av.	\$2 million	\$3 million	\$3 million		
10% bonus in school aid	---	---	No net inc.	No net inc.	No net inc.
Absorption of county government	---	---	\$15 million	\$25 million	\$35 million
Assumption of portion of local GO debt (assume 20-yr financing)	---	---	\$15 million	\$25 million	\$35 million
Total	\$2 million	\$3 million	\$33 million	\$50 million	\$70 million

Assumes that Maine would be divided potentially into 60 to 80 Municipal Service Districts, and that 70% would choose to participate by Year 5. Absorbing the costs of county government and assuming GO debt are not new costs, but rather shifts from the local property tax to statewide taxes. Property taxes should be relieved by a like amount. The 10% additional payment for school aid to participating municipalities will be balanced by a like reduction to nonparticipating municipalities.

Estimated Savings to Local Property Tax in Participating Municipalities

Example: Maine – rough estimates only; not adjusted for inflation

As a result of:	Year 1	Year 2	Year 3	Year 4	Year 5
10% bonus in school aid	---	---	\$20 million	\$40 million	\$50 million
Absorption of county government	---	---	\$15 million	\$25 million	\$35 million
Assumption of portion of local GO debt (assume 20-yr financing)	---	---	\$15 million	\$25 million	\$35 million
Efficiencies (illustrating ramp-up)	---	---	\$10 million	\$30 million	\$60 million
Total	---	---	\$60 million	\$120 million	\$180 million

Assumes that the first two years will be reorganizing years, that approximately one-third of municipalities and associated school administrative units have joined into Municipal Service Districts by Year 3, and that 70% have done so by Year 5 (including most or all with outstanding G.O. debt). The bonus in school aid would expire after a set period, such as five years after Municipal Service Districts are authorized. Efficiencies would evolve. An appropriate expectation for Maine ultimately would be savings of \$125 to \$150 million. (2002 dollars).

Examples of two possible Municipal Service Districts in Maine (to illustrate statistics)

Example no. 1:

16 Towns west of Sebago Lake

SADs 55, 61, and 72

Vital statistics:

Population	27,242
Public School Enrollment	4,802
Land Area	618.79 sq. mi.
Tax Base	\$2.0 billion
Current Merged Tax Rate	\$16.15 per \$1,000
Commitment	\$32.5 million
Range of Tax Rates	\$13.10 to \$20.00

	Land Area (sq mi)	2000 Population	2001 Assessed Valuation (not equalized)	2001 Commitment	2001 Tax Rate	2002 School Enrollment
BALDWIN	35.30	1,290	\$66,943,326	\$1,144,730	0.0171	210
BRIDGTON	57.29	4,883	\$404,745,937	\$6,941,392	0.01715	703
BROWNFIELD	44.86	1,251	\$76,869,921	\$1,364,441	0.01775	260
CASCO	31.27	3,469	\$252,871,800	\$3,666,641	0.0145	557
CORNISH	22.10	1,269	\$55,199,168	\$957,441	0.017	239
DENMARK	45.04	1,004	\$105,610,500	\$1,457,424	0.0138	172
FRYEBURG	58.34	3,083	\$180,030,105	\$3,285,549	0.01825	657
HIRAM	37.53	1,423	\$67,319,580	\$1,016,525	0.0151	242
LOVELL	43.17	974	\$174,095,758	\$2,385,111	0.0137	175
NAPLES	31.80	3,274	\$254,995,017	\$4,054,421	0.0159	603
PARSONSFIELD	58.96	1,584	\$101,724,003	\$1,546,204	0.0152	269
PORTER	31.49	1,438	\$59,842,788	\$897,641	0.015	278
SEBAGO	32.78	1,433	\$127,967,494	\$2,559,350	0.02	289
STONEHAM	35.71	255	\$28,742,281	\$376,813	0.0131	31
STOW	24.40	288	\$24,066,861	\$347,177	0.0159	65
SWEDEN	28.75	324	\$32,957,608	\$515,787	0.01565	52
	618.79	27,242	\$2,013,982,147	\$32,516,647	0.01615	4,802

Example no. 2:

11 towns in Oxford Hills region

SADs 17 and 39

Vital statistics:

Population	25,009
Public School Enrollment	4,321
Land Area	420.44 sq mi
Tax Base	\$1.2 billion
Current Merged Tax Rate	\$17.33 per \$1,000
Commitment	\$20.9 million
Range of Tax Rates	\$12.00 to \$19.65

	Land Area (sq mi)	2000 Population	2001 Assessed Valuation (not equalized)	2001 Commitment	2001 Tax Rate	2002 School Enrollment
BUCKFIELD	37.69	1,723	\$57,817,450	\$1,136,112	0.01965	349
HARTFORD	43.89	963	\$49,151,178	\$845,400	0.0172	202
HEBRON	22.42	1,053	\$34,255,407	\$578,916	0.0169	165
NORWAY	45.09	4,611	\$199,233,400	\$3,885,051	0.0195	727
OTISFIELD	39.96	1,560	\$117,555,704	\$1,863,257	0.01585	301
OXFORD	38.71	3,960	\$205,044,172	\$3,465,246	0.0169	737
PARIS	40.76	4,793	\$142,331,150	\$2,978,824	0.02195	762
SUMNER	44.21	854	\$29,180,935	\$545,683	0.0187	118
WATERFORD	50.48	1,455	\$122,444,869	\$1,489,690	0.012	258
WEST PARIS	24.25	1,722	\$60,042,079	\$972,681	0.0162	282
HARRISON	33.03	2,315	\$188,702,800	\$3,132,466	0.0166	420
	420.44	25,009	\$1,205,759,144	\$20,893,326	0.01733	4,321

Model language to create Municipal Service Districts

NOTE: The model language that follows illustrates how towns and cities may be enabled to form municipal service districts as a general purpose units of government. The Constitutional provisions are generic for the New England states. The statutory language was developed at the request of Maine's governor for submission to the Maine Legislature. While this language is customized to Maine law, it is transferable to other states in New England.

Model Constitutional Provisions

Article []. Municipal Service Districts

Section 1. General legislation. A Municipal Service District is a body politic and corporate. The legislature may act in relation to Municipal Service Districts only by laws that are general in terms and effect.

Section 2. Boundaries, consolidation, and dissolution. The legislature shall provide by law for the methods by which the boundaries of Municipal Service Districts may be established, altered, merged, or consolidated, and by which Municipal Service Districts may be expanded or dissolved.

Section 3. Home rule charter. No Municipal Service District shall be established until the qualified voters within the proposed boundaries of the Municipal Service District have adopted by majority vote a charter providing for the organization of the government of the Municipal Service District. The charter shall provide for an elected council, a school department and elected school board, and such other personnel, departments and procedures, not inconsistent with the Constitution or general law, as are necessary to carry out the powers and responsibilities of the Municipal Service District.

The inhabitants of any Municipal Service District shall have the power to alter and amend their charters in any manner not inconsistent with the Constitution or general law.

The legislature shall prescribe the procedure by which a new charter may be adopted establishing a Municipal Service District and the procedure by which the Municipal Service District may alter or amend its charter.

Section 4. Powers of Municipal Service Districts.

The legislature shall delegate by law to Municipal Service Districts such legislative authority as it deems appropriate.

Model statutory provisions

PART A

Sec. A-1. 30-A MRSA c. 112 is enacted to read:

CHAPTER 112

MUNICIPAL SERVICE DISTRICTS

§2110. Purpose

The purpose of this chapter is to enhance the ability of municipalities to cooperate on a basis of mutual advantage in the efficient and effective exercise of municipal obligations and home-rule authority pursuant to this Part through voluntary creation of and delegation to municipal service districts.

§2111. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Municipality. "Municipality" means a municipality, as defined in section 2001, subsection 8, or a plantation.

2. Municipal service district. "Municipal service district" means an entity that has been or may be formed to exercise authority delegated by participating municipalities in accordance with this chapter that consists of:

A. Five or more contiguous municipalities with a total population of at least 20,000 according to the Federal Decennial Census conducted in 2000 and within which are contained 2 or more school administrative units with a total public school enrollment of at least 3,000 students as recorded by the Department of Education in 2002; or

B. Five or more contiguous municipalities with a total land area of 250 or more square miles and within which are contained 2 or more school administrative units with a total public school enrollment of at least 1,000 students as recorded by the Department of Education in 2002. For the purpose of this subsection, "contiguous municipalities" includes municipalities that are separated solely by water or by unorganized territory.

3. Municipal service district officers. "Municipal service district officers" means the legislative body of the government of a municipal service

district provided for in its charter in accordance with section 2112, subsection 2 to which participating municipalities have delegated their municipal authority.

4. Participating municipality. "Participating municipality" means a municipality that has joined, has agreed to join or has entered into a process for the purpose of joining a municipal service district.

5. School board of directors. "School board of directors" means the board of directors of a school management unit formed and elected pursuant to a municipal service district charter as provided for in section 2112, subsection 2.

6. School management unit. "School management unit" means the school management unit established by a municipal service district in accordance with its charter as provided for in section 2112, subsection 2.

7. State board. "State board" means the State Board of Education.

§2112. Adoption of municipal service district charter

1. Charter commission. Any 5 or more municipalities that together meet the definition of a municipal service district may enter into an interlocal agreement to establish a joint charter commission for the purpose of proposing a charter for a proposed municipal service district. The agreement must provide that the charter commission consist of one representative from each participating municipality, appointed by the legislative body of the municipality, plus 3 representatives at-large who reside within the proposed municipal service district and who are elected by the qualified voters within the proposed municipal service district. A person seeking election as an at-large member of the charter commission shall file with the clerk of that person's participating municipality a petition bearing the signatures of 25 qualified voters within the proposed municipal service district 90 days prior to the election date. The clerks of each participating municipality shall cooperate in the validation of signatures. Election of at-large members must be held within 90 days of the effective date of the interlocal agreement. The election must be held by all participating municipalities on the same day. The names of the candidates must appear on a common ballot in each participating municipality and must be arranged alphabetically by last name.

2. Terms of proposed charter. The proposed municipal service district charter under this section must include:

A. The names of the participating municipalities;

B. The name of the proposed municipal service district, which must be distinguishable from the name of any municipality in the State other than one or more of the participating municipalities, and the proposed location of the municipal service district office;

C. The property, real and personal, belonging to each participating municipality and its fair value and whether any such property will be provided to the municipal service district for its use, and the terms of that use;

D. The indebtedness, bonded and otherwise, of each participating municipality;

E. Provision for assumption of 50% of the general obligation debt of each participating municipality in the municipal service district by the State as provided by section 5686;

F. Provision for application or expenditure of cost savings realized through formation of the municipal service district and funds received from the Municipal Service District Fund established in chapter 112-A, as follows:

(1) Fifty percent to fund public education needs, as identified in the budget prepared for the municipal service district's school management unit; and

(2) Fifty percent to reduce the property tax burden, as defined in section 5681, subsection 2, paragraph B in the municipal service district's participating municipalities.

The municipal service district shall allocate funds or cost savings under this paragraph proportionally among its participating municipalities, based on their populations as determined by the latest Federal Decennial Census or as determined and certified by the Department of Human Services, whichever is later. For purposes of this paragraph, cost savings must be calculated in accordance with a methodology established by rule by the Department of Administrative and Financial Services pursuant to Title 5, chapter 375. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

G. The organization of the government of the municipal service district, including but not limited to the form and method of representation of an elected legislative body; a school department and the form and method of representation of the school management unit, including an elected school board of directors, which replaces the

school administrative units within the municipal service district; a clerk of the municipal service district having the same duties as a municipal clerk; and such other personnel, departments and procedures, not inconsistent with state law, as are necessary to carry out the powers and responsibilities of the municipal service district;

H. Assignment and delegation to the municipal service district of all rights and obligations of the municipalities within the municipal service district pursuant to the Constitution of Maine, Article IV, Part Third, Section 23 and Title 36, section 661; and

I. Any other facts and terms considered necessary by the charter commission.

3. Submission of proposed charter to voters; adoption. After notice and hearing as provided in paragraphs A and B, the municipal officers of each municipality within the proposed municipal service district shall submit the proposed municipal service district charter to the voters of their respective municipalities.

A. A public hearing must be held in each of the participating municipalities. The public hearing may be held on more than one day, provided that it adjourns permanently at least 10 days before the election.

B. At least 30 days before the election and at least 10 days before the hearing under paragraph A, the municipal officers shall notify the voters of each participating municipality of the proposed charter and of the time and place of the public hearing in the same manner that the voters of each municipality are notified of ordinances to be enacted.

4. Ballot question. The municipal officers of each participating municipality shall submit the question of adoption of the proposed municipal service district charter to the voters in substantially the following form:

"Shall the (name of municipality) adopt the proposed municipal service district charter and thereby form jointly with the (names of municipalities) a municipal service district that will exercise and assume, in accordance with the Maine Revised Statutes, Title 30-A, chapter 112, home-rule powers and duties regarding public education, taxation, land use regulation and other matters delegated to it under the charter?"

5. Adoption by majority vote in each participating municipality. Upon approval of a majority of those voting in each of the participating

municipalities, the charter becomes effective and the municipal service district is established.

§2113. Charter revision; procedure

1. Initiation by municipal service district officers. The municipal service district officers may determine that revision of the charter for the municipal service district should be considered and by order may provide for the establishment of a charter commission to carry out that purpose as provided in this chapter. The membership of a charter commission established pursuant to this subsection must be determined in accordance with section 2112, subsection 1.

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number of votes cast in the participating municipalities as a whole at the last gubernatorial election, but in no case less than 200, the municipal service district officers, in accordance with the procedure set forth in subsection 3, shall provide for the establishment of a charter commission for the revision of the municipal service district charter as provided in this chapter. The membership of a charter commission established pursuant to this subsection must be determined in accordance with section 2112, subsection 1.

3. Petition procedure; petitioner's committee. The procedures for a petition by the voters set forth in subsection 2 to establish a charter commission for the revision of the municipal service district charter is as set out in this subsection.

A. Any 5 registered voters from the municipal service district may file an affidavit with the clerk of the municipal service district stating:

- (1) That these voters will constitute the petitioners' committee;
- (2) The names and addresses of these voters;
- (3) The address to which all notices to the committee are to be sent; and
- (4) That these voters will circulate the petition and file it in proper form.

The petitioners' committee may designate additional registered voters of the participating municipalities, who are not members of the committee, to circulate the petition. Promptly after the affidavit is filed, the clerk of each participating municipality shall issue petition blanks to the committee.

B. The clerk of the municipal service district shall prepare the petition forms under paragraph A at the municipal service district's expense. The petition forms must be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary.

(1) Petition forms must carry the following legend in bold lettering at the top of the face of each form:

"(Name of Municipal Service District)"

"Each of the undersigned voters respectfully requests the officers of the municipal service district to establish a charter commission for the purpose of revising the charter of (name of municipal service district)."

(2) Each signature to a petition must be in ink or other indelible instrument and must be followed by the residence of the voter with street and number, if any. A petition may not contain a party or political designation.

(3) The clerk of the municipal service district shall note the date of each petition form issued. A petition must be filed within 120 days of the date of its issue or it is void.

(4) Each petition form must have printed on its back an affidavit to be executed by the circulator, stating:

- (a) That the circulator personally circulated the form;
- (b) The number of signatures on the form;
- (c) That all the signatures were signed in the circulator's presence;
- (d) That the circulator believes them to be genuine signatures of the persons whose names they purport to be;
- (e) That each signer has signed no more than one petition; and
- (f) That each signer had an opportunity to read the petition before signing.

C. Petition forms under this subsection must be assembled as one instrument and filed at one time with the clerk of the municipal service district. The clerk shall note the date of filing on the forms.

D. Within 20 days after the petition is filed pursuant to paragraph C, the clerk of the municipal service district shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars that render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by mail and shall file a copy with the municipal service district officers. The clerk of each participating municipality shall cooperate as necessary to assist the clerk of the municipal service district in completing the certificate required under this subsection.

E. A petition certified insufficient under paragraph D for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend the petition with the clerk of the municipal service district within 2 days after receiving the copy of the clerk's certificate. The procedure regarding submission and review of a supplementary petition is as follows.

(1) Within 10 days after the notice of intention is filed, the committee may file a supplementary petition to correct the deficiencies in the original. This supplementary petition, in form and content, must comply with the requirements for an original petition under paragraphs A to C.

(2) Within 5 days after a supplementary petition is filed, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition under paragraph D.

(3) When an original or supplementary petition has been certified insufficient under paragraph D, the committee, within 2 days after receiving the copy of the clerk's certificate, may file a request with the municipal service district officers for review. The municipal service district officers shall inspect the petitions in substantially the same form, manner and time as a recount hearing under section 2531-A and shall make due certificate of that inspection. The municipal service district officers shall file a copy of that certificate with the clerk and mail a copy to the committee. The certificate of the municipal service district officers is a final determination of the sufficiency of the petitions.

(4) Any petition finally determined to be insufficient is void. The clerk shall stamp the petition void and seal and retain it in the manner required for secret ballots.

4. Election procedure. Within 30 days after the adoption of an order under subsection 1 or the receipt of a certificate or final determination of sufficiency under subsection 3, the clerk of the municipal service district shall promptly notify the municipal officers of each participating municipality, who shall by order submit the question for the establishment of a charter commission pursuant to this section to the voters at the next regular or special municipal election held at least 90 days after the order.

5. Ballot question. The question for the establishment of a charter commission pursuant to this section to be submitted to the voters in each participating municipality must be in substance as follows:

"Shall a charter commission be established for the purpose of revising the municipal service district charter of (name of municipal service district), in which (name of municipality) is a participating municipality?"

6. Adoption by majority vote. Upon approval of a majority of those voting in the municipal service district, the charter revision commission is established.

7. Charter commission operation. The charter commission shall conduct itself in accordance with section 2103, subsections 2, 3, 5 and 8.

§2114. Charter amendment; procedure

1. Municipal service district officers. The municipal service district officers may determine that amendments to the municipal service district charter should be considered and, by order, provide for notice and hearing on them in the same manner as provided in subsection 5, paragraph A. Within 7 days after the hearing, the municipal service district officers may order the proposed amendment to be placed on the ballot at the next regular municipal election in each participating municipality held at least 30 days after the order is passed; or they may order a special election to be held at least 30 days from the date of the order for the purpose of voting on the proposed amendments.

A. Each amendment must be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number of votes cast in the participating municipalities as a whole at the last gubernatorial election, but in no case less than 200, the municipal service district officers, by order, shall provide that proposed amendments to the municipal service district charter be placed on a ballot in accordance with paragraphs A and B.

A. Each amendment must be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

3. Petition procedure. The petition forms must carry the following legend in bold lettering at the top of the face of each form.

"(Name of municipal service district)"

"Each of the undersigned voters respectfully requests the municipal service district officers to provide for the amendment of the municipal service district charter as set out below."

No more than one subject may be included in a petition. In all other respects, the form, content and procedures governing amendment petitions must be the same as provided for charter revision petitions under section 2113, including procedures relating to filing, sufficiency and amendments.

4. Amendment constituting revision. At the request of the petitioners' committee, the petition form must also contain the following language:

"Each of the undersigned voters further requests that if the municipal service district officers determine that the amendment set out below would, if adopted, constitute a revision of the charter, then this petition must be treated as a request for a charter commission."

Upon receipt of a petition containing this language, the municipal service district officers, if they determine with the advice of an attorney that the proposed amendment would constitute a revision of the charter, shall treat the petition as a request for a charter commission and follow the procedures applicable to such a request.

5. Action on petition. The following procedures must be followed upon receipt of a petition certified to be sufficient.

A. Within 10 days after a petition is determined to be sufficient, the municipal service district officers, by order, shall provide for a public hearing on the proposed amendment. At least 7 days before the hearing, they shall publish a notice of the hearing in a newspaper having general circulation in each participating municipality. The notice must contain the text of the proposed amendment and a brief explanation. The hearing must be conducted by the municipal service district officers or a committee appointed by them.

B. Within 7 days after the public hearing, the municipal service district officers or the committee appointed by them shall file with the municipal service district clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment does not contain any provision prohibited by the general laws, the United States Constitution or the Constitution of Maine. In the case of a committee report, a copy must also be filed with the municipal service district officers.

C. On all petitions filed more than 120 days before the end of the current municipal year, the municipal service district officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election in each participating municipality held within that year after the final report is filed. If no such election will be held in a participating municipality before the end of the current municipal year, the municipal service district officers shall order a special election to be held before the end of the current and pertinent municipal year for the purpose of voting on the proposed amendment. Unrelated charter amendments must be submitted to the voters as separate questions.

6. Summary of amendment. When the municipal service district officers determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal service district officers shall include in their order a summary of the proposed amendment, prepared subject to the requirements of section 2115, subsection 3, and instruction to the municipal service district clerk to include the summary on the ballot instead of the text of the proposed amendment.

§2115. Submission to voters

The method of voting at municipal elections, when a question relating to a municipal service district charter revision, charter modification or charter amendment is involved, must be in the manner prescribed for municipal

elections under sections 2528 to 2532, even if the municipality has not accepted the provisions of section 2528.

1. Charter revision. Except as provided in paragraph A, in the case of a charter revision or a charter adoption, the question to be submitted to the voters must be in substance as follows:

"Shall the municipality approve the charter revision recommended by the charter commission?"

A. If the charter commission recommends that the present charter continue in force with only minor modifications, those modifications may be submitted to the voters in as many separate questions as the commission finds practicable. The determination to submit the charter revision in separate questions under this paragraph and the number and content of these questions must be made by a majority of the charter commission. If the charter commission decides to submit the charter revision in separate questions under this paragraph, each question to be submitted to the voters must be in substance as follows:

"Shall the municipality approve the charter modification recommended by the charter commission and reprinted (summarized) below?"

2. Charter amendment. In the case of a charter amendment the question to be submitted to the voters must be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

3. Voter information. Reports must be made available and summaries prepared and made available in substantially the same form, manner and time as provided in section 2105, subsection 3.

4. Effective date. If a majority of the ballots cast in the municipal service district on any question under subsection 1 or 2 favors acceptance, the charter revision, charter modification or charter amendment becomes effective as provided in this subsection, provided the total number of votes cast for and against the question equals or exceeds 30% of the total votes cast in the participating municipalities as a whole at the last gubernatorial election.

A. Except as provided in subparagraph (1), charter revisions or charter modifications adopted by the voters take effect on the first day of the next succeeding municipal year.

(1) Charter revisions or charter modifications take effect immediately for the purpose of conducting any elections required by the new provisions.

B. Charter amendments adopted by the voters take effect on the date determined by the municipal service district officers, but not later than the first day of the next municipal year.

§2116. Recording

Within 3 days after the results of an election under section 2115 have been declared, the municipal service district clerk shall prepare and sign identical certificates setting forth any charter that has been revised and any charter modification or amendment approved. The clerk shall send one certificate to each of the following:

- 1. Secretary of State.** The office of the Secretary of State, to be recorded;
- 2. Law library.** The Law and Legislative Reference Library; and
- 3. Clerks' offices.** The offices of the municipal service district and the clerk of each participating municipality in the municipal service district.

§2117. Scope of powers and duties

Except as otherwise provided by this chapter, the scope of the powers and duties of a municipal service district established pursuant to this chapter are no greater than those of a municipality.

§2118. Powers

In addition to any powers expressly conferred by its charter, a municipal service district created pursuant to this chapter has the powers set forth in this section.

- 1. Corporate powers.** A municipal service district may:
 - A. Contract and be contracted with, sue and be sued and institute, prosecute, maintain and defend any action or proceeding in any court of competent jurisdiction; and
 - B. Provide for the authentication, execution and delivery of deeds, contracts, grants and releases of municipal service district property and for the issuance of evidences of indebtedness of the municipal service district.

2. Finances. A municipal service district may:

- A. Regulate the method of borrowing money for any purpose for which taxes may be levied and borrow on the faith and credit of the municipal service district for such general or special purposes and to such extent as is authorized by general statute;
- B. Provide for the temporary borrowing of money;
- C. Create a sinking fund or funds or a trust fund or funds or other special funds, including funds that do not lapse at the end of the municipal service district's fiscal year;
- D. Provide for the assignment of municipal tax liens on real property to the extent authorized by general statute;
- E. When not specifically prescribed by general statute or by charter, prescribe the form of proceedings and mode of assessing benefits and appraising damages in taking land for public use or in making public improvements to be paid for, in whole or in part, by special assessments and prescribe the manner in which all benefits assessed are collected; and
- F. Provide for the bonding of municipal service district officials or employees by requiring the furnishing of such bond, conditioned upon honesty or faithful performance of duty and determine the amount, form and sufficiency of the sureties thereof.

3. Property. A municipal service district may:

- A. Take or acquire by gift, purchase, grant, including any grant from the United States or the State, bequest or devise and hold, condemn, lease, sell, manage, transfer, release and convey such real and personal property or interest therein absolutely or in trust as the purposes of the municipal service district or any public use or purpose require. Any lease of real or personal property or any interest in a lease of real or personal property, either as lessee or lessor, may be for such term or any extensions thereof and upon such other terms and conditions as have been approved by the municipal service district, including without limitation the power to obligate itself to appropriate funds as necessary to meet rent and other obligations as provided in any such lease; and
- B. Provide for the proper administration of gifts, grants, bequests and devises and meet such terms or conditions as are prescribed by the grantor or donor and accepted by the municipal service district.

4. Development districts. A municipal service district may establish development districts, including but not limited to state tax increment financing districts in accordance with chapter 206, subchapter 2.

5. Other. A municipal service district may:

A. Adopt rules, regulations and procedures not inconsistent with state law necessary to carry out its powers and duties under this chapter and its charter, including but not limited to rules, regulations and procedures necessary to resolve conflicts in ordinances or other rules or enactments of one or more participating municipalities; and

B. Assume such other powers and duties of municipalities that, by agreement and revision of the charter as necessary, participating municipalities may from time to time delegate to it.

§2119. Duties

In addition to any duties expressly conferred by its charter, a municipal service district created pursuant to this chapter has the duties set forth in this section.

1. Establishment of budget. A municipal service district shall establish and maintain a budget system and has the duty and sole authority to adopt a single budget for the municipal service district, its school department and the participating municipalities. The municipal officers of each participating municipality shall provide to the municipal service district officers, at least 90 days prior to the beginning of the fiscal year, its proposed budget requirements. The school board of directors shall also provide to the municipal service district officers, at least 90 days prior to the beginning of the fiscal year, the proposed budget requirements of the municipal service district's school department.

2. Taxation; standardization and uniform rate required. Notwithstanding Title 36, Part 2, a municipal service district constitutes a multi-municipal primary assessing district as though established by the State Tax Assessor pursuant to Title 36, chapter 102, subchapter 1 and must otherwise be treated for property tax purposes as though it is a single municipality. Notwithstanding Title 36, Part 2, the municipal service district officers have the authority and responsibility provided in Title 36, Part 2 to municipal officers, assessors or tax collectors relative to the administration of the property tax within the jurisdictional limits of the municipal service district. Within 3 years from the creation of a municipal service district, the property tax and fiscal years of the participating municipalities must be standardized and the municipal service district officers shall perform a

revaluation of all taxable property located in the municipal service district consistent with the requirements of Title 36, Part 2. After the revaluation, a uniform tax rate must then apply against all taxable property located in the municipal service district. Until such standard valuation basis applies, the municipal service district officers shall assess against each participating municipality's local assessment rolls that municipality's share of expenses to be raised through the local property tax, determined by adjusting the total municipal taxable property valuations to 100% of just value using each municipality's certified assessment ratio.

3. Education. A municipal service district, through its school board of directors, has all the powers conferred and shall perform all the duties imposed by law upon superintending school boards in regard to the care, operation and management of the public schools within the municipal school district. Schools operated by the municipal service district are the official schools of the participating municipalities, in accordance with section 2120.

4. Sewers and drains. Within the participating municipalities of the municipal service district, the municipal service district has all the powers conferred and shall perform all the duties imposed by law on municipalities with respect to:

A. Laying out, constructing, reconstructing, repairing, maintaining, operating, altering, extending and discontinuing sewer and drainage systems and wastewater treatment plants; and

B. Prohibiting and regulating the discharge of drains from roofs of buildings over or upon the sidewalks, streets or other public places or into sanitary sewers.

The municipal service district officers may, by agreement, delegate the authority over sewers and drains to a participating municipality.

5. Planning and regulation of development. Within the participating municipalities of the municipal service district, the municipal service district has all the powers conferred and shall perform all the duties imposed by law on municipalities with respect to preparing comprehensive plans and preparing and enforcing zoning, subdivision and other ordinances and capital improvement plans to implement the comprehensive plan, as prescribed by and consistent with chapter 187.

6. Buildings. Within the participating municipalities of the municipal service district, the municipal service district has all the powers conferred and shall perform all the duties imposed by law on municipalities with respect to:

A. Making rules relating to the maintenance of safe and sanitary housing and adopting building and fire protection codes, consistent with state law;

B. Regulating the mode of using any buildings when such regulations seem expedient for the purpose of promoting the safety, health, morals and general welfare of the inhabitants of the municipality;

C. Regulating and providing for the permitting or licensing of manufactured housing, trailer parks, and mobile home parks, consistent with state law; and

D. Regulating plumbing, sewage disposal systems and drainage systems, consistent with state law.

7. Solid waste management. Within the participating municipalities of the municipal service district, the municipal service district has all the powers conferred and shall perform all the duties imposed by law on municipalities with respect to providing for or regulating the collection and disposal of garbage, trash, rubbish, waste material and ashes by contract or otherwise.

§2120. Merger and transfer of authority to school management units

1. Certification; issuance, filing and recording. Within 14 days following establishment of a municipal service district pursuant to section 2112, the clerk of each participating municipality that has voted to establish the municipal service district shall certify that, in accordance with section 2112, the participating municipality has agreed to delegate its rights and duties for the management and control of its public schools, including those within any former school administrative unit, including any school administrative district, to the municipal service district, to be exercised in accordance with a municipal service district charter consistent with section 2112, subsection 2 and otherwise in accordance with this chapter. Within 14 days of receipt of this certification from each participating municipality, the state board shall issue to the municipal service district officers a certificate of organization and assign a number to the school management unit in the order of its formation. The official title of each such school management unit is "School Management Unit No. ___ ." The municipal service district officers shall deliver the original certificate to the school board of directors on the day that the school management unit organizes and shall file a copy, attested by the secretary of the state board, for recording in the office of the Secretary of State. The issuance of the certificate is conclusive evidence of the lawful organization of the school management unit.

2. Transfer of assets. The transfer of school property and assets of a participating municipality and school administrative unit is as follows. The school board of directors shall determine what school property of the participating municipalities and pertinent school administrative unit or units is necessary to carry out the functions of the school management unit and:

A. Request in writing that the school board of each school administrative unit or the municipal officers transfer title of their school property and buildings to the school management unit; or

B. Assume all the duties and liabilities under any outstanding lease agreements.

The school board or municipal officers of a participating municipality shall make the transfer notwithstanding any other provision in the charter of the school administrative district or participating municipality or other provision of law.

3. Financing assumed debts. If a school management unit has assumed the outstanding indebtedness of a former school administrative unit:

A. The school board of directors may, notwithstanding any other statute or any provision of any trust agreement, use any sinking fund or other money set aside by the school administrative unit to pay off the indebtedness for which the money was dedicated; and

B. A municipality within a proposed school management unit may, by a majority vote of its voters, transfer money raised and appropriated for school construction purposes to a proposed school management unit if and when the unit takes over the operation of the public schools within its jurisdiction. The municipality may withdraw this appropriation only if:

(1) The municipal service district is not established pursuant to section 2112; or

(2) Nine months or more after the original vote, and prior to establishment of the school management unit, the electorate of the municipality by a majority vote of its voters votes to withdraw the appropriation.

4. Transfer of authority. The operational date and transfer of authority of a school management unit is as follows.

A. A school management unit becomes operative on the later of:

(1) The date that the state board issues certification under subsection 1; and

(2) The date that the state board receives from the clerk of the municipal service district the names of the members of the school board of directors.

B. On the date a school management unit becomes operative under paragraph A, the school board of directors shall assume responsibility for the management and control of the public schools within the former school administrative units within the school management unit and these former school administrative units on that date have no further responsibility for the operation or control of the public schools within the district.

C. Notwithstanding Title 20-A, section 15004 or any charter of a community school district or coterminous district, the balances remaining in the school accounts of the school administrative districts, municipalities, community school districts, coterminous school districts or other school administrative units within the school management unit must be paid to the treasurer of the school management unit in equal monthly installments over the remainder of the fiscal year in which the district is formed.

D. The contracts between the municipalities within the school management unit and all teachers automatically are assigned to the district as of the date the district becomes operative under paragraph A. The district shall assign teachers to their duties and make payments upon their contracts.

E. The contracts between the superintendents and municipalities within the school management unit must be transferred to the school management unit. The school board of directors of the school management unit shall determine the superintendents' duties within the district and pay that proportion of the salaries paid for by the former school administrative units in the district.

5. Application of general law. Schools operated by a legally established school management unit are the official schools of the participating municipalities. The provisions of general law relating to public education apply to these schools. State funds for public schools must be paid directly to the municipal service district for the benefit of the school management unit.

§2121. Addition of municipality to municipal service district

1. Addition of participating municipality. In the manner provided for by section 2113, either the municipal officers of or voters in a participating municipality may petition for and, by majority vote in the affirmative in each participating municipality, the voters within the municipal service district may approve a revision of the charter of a municipal service district to include that municipality.

2. Rights and obligations of new participating municipality; charter revision. A participating municipality that, as provided in subsection 1, is added to an existing municipal service district has and assumes in common with other participating municipalities all rights and obligations of those municipalities under and related to the municipal service district charter, including but not limited to its pro rata share of any debt obligations.

3. Cost of petition process. The costs and expenses of the petition process to add a participating municipality in accordance with subsection 1, as determined by the municipal service district officers, must be borne by the participating municipality that initiated the petition if the voters within the municipal service district do not approve its inclusion within the municipal service district. If those voters do approve the municipality's inclusion, the municipal service district shall bear these costs and expenses.

4. Regional service centers. If a municipality or municipalities that constitute a regional service center are unable to join a municipal service district as a result of a vote conducted pursuant to subsection 1 or the unwillingness of other municipalities to enter into a municipal service district with that regional service center, as determined and qualified by the Executive Department, State Planning Office in accordance with a rule adopted pursuant to Title 5, chapter 375, a regional service center may by itself form a municipal service district. A regional service center that establishes a municipal service district pursuant to this subsection has the rights and obligations of a municipal service district provided by law, including but not limited to those provided by this chapter and chapter 112-A. Rules adopted by the State Planning Office pursuant to this subsection must identify information that a regional service center must provide to demonstrate eligibility to form a municipal service district and any additional and related criteria or procedures related to formation of a municipal service district under the circumstances provided for by this subsection. For purposes of this subsection, "regional service center" means a service center community as defined by section 4301. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§2122. Withdrawal of municipality from municipal service district

1. Withdrawal of single participating municipality. The municipal officers of or voters in a participating municipality may petition for

withdrawal from the municipal service district in the manner provided for petition for the dissolution of a municipal service district pursuant to section 2123, except that:

A. The petition required under section 2123, subsection 1 must be signed by 20% of the number of voters in the municipality seeking to withdraw who voted at the last gubernatorial election;

B. The dissolution agreement must effect division of property, assets and liabilities and allocation of responsibilities between the municipality petitioning for withdrawal and the municipal service district; and

C. Only a simple majority vote of those casting valid ballots in the municipality seeking to withdraw is required to effectuate withdrawal of that municipality from the municipal service district.

2. Repayment to State. A participating municipality that withdraws from a municipal service district as provided in subsection 1 shall repay to the Municipal Service District Fund established in chapter 112-A an amount equal to that municipality's pro rata share of funds provided to the pertinent municipal service district from the Municipal Service District Fund during the time that the municipality was within that municipal service district.

§2123. Dissolution of municipal service district

1. Twenty percent petition. Upon receipt by municipal service district officers of a written petition that seeks to dissolve a municipal service district and establishes a maximum figure for the cost of preparing a dissolution agreement signed by 20% of the number of voters in a municipal service district as a whole who voted at the last gubernatorial election, with no more than half the required number registered in any one participating municipality, the municipal officers of each participating municipality shall call and hold a special election, in the manner provided for the calling and holding of town meetings or city elections in each respective municipality, to vote on the dissolution of the municipal service district.

A. At least 10 days before the election, a posted or otherwise advertised public hearing on the petition must be held by the municipal officers of each participating municipality.

B. Voting in municipalities must be conducted in accordance with the governing ordinance and laws in each municipality.

2. Form. The question for the dissolution of a municipal service district pursuant to this section to be voted upon must be in substantially the following form:

"Is it resolved by the residents of (name of municipality) that a petition for dissolution be filed with the directors of the municipal service district in which (name of municipality) is a participating municipality and with the State Board of Education, that the dissolution committee be authorized to expend \$____ and that the municipal officers be authorized to issue notes in the name of (name of municipality) or otherwise pledge the credit of (name of municipality) in an amount not to exceed \$____ for this purpose?"

3. Notice of vote; finding by Secretary of State. If a majority of the voters present and voting in each participating municipality votes to approve a petition for dissolution, the clerk of each participating municipality shall immediately give written notices, by registered mail, to the municipal service district officers, the Secretary of State and the Commissioner of Education. The notices required by this subsection must include the petition adopted by the voters, including the positive and negative votes cast.

4. Agreement for dissolution; notice; changes in agreement; final agreement. The agreement for dissolution must comply with the following.

A. The municipal service district officers, after consultation with the municipal officers of the participating municipalities and representatives of the group that filed the petition under subsection 1 with the municipality, shall direct the municipal officers of each participating municipality to select as representatives to a committee: one member from the municipal officers of each participating municipality, one member from the general public and one member from the group filing the petition. Public officials may serve on the committee only as long as they hold their respective offices. Vacancies must be filled by the municipal officers and municipal service district officers. The chair of the municipal service district officers shall call a meeting of the committee within 30 days of the filing of the notice of the vote in subsection 3. The chair shall open the meeting by presiding over the election of a chair of the committee. The responsibility for the preparation of the agreement rests with the committee. The committee may draw upon the resources of the municipal service district for information not readily available at the local level and may employ competent advisors within the fiscal limit authorized by the voters. The agreement must be submitted to the municipal service district officers within 90 days after the committee is formed. Extensions of time may be granted by the municipal service district officers at the request of the committee.

B. The agreement must address the provision of educational services for all students in the school management unit and other related matters in accordance with Title 20-A, section 1403, subsection 4. The agreement must provide that during the first year following the dissolution, students may attend the school they would have attended if the unit had not dissolved. The allowable tuition rate for students sent from one municipality to another in the former school management unit must be determined under Title 20-A, section 5805, subsection 1, except that it is not subject to the state per pupil average limitation in Title 20-A, section 5805, subsection 2.

C. The agreement must contain any terms necessary to effectuate an equitable division of the property, including but not limited to that of the school management unit, among the participating municipalities represented by the committee and transfer title of the property to one or more municipalities following dissolution, except that the school management unit's educational program may not be disrupted solely because of the transfer of any given property before it may complete the transfer.

D. The agreement must contain any terms necessary to allocate equitably among the participating municipalities all contractual obligations and other liabilities, as appropriate.

E. The agreement must provide that the municipal service district remain intact for the purpose of securing and retiring any outstanding indebtedness, except that the dissolution agreement may provide for alternate means for retiring outstanding indebtedness. For purposes of this paragraph, the term "outstanding indebtedness" means bonds or notes issued by the municipal service district officers, including but not limited to those for school construction projects and obligations to the successor in interest to the former Maine School Building Authority pursuant to any contract, lease or agreement made by the school board of directors pursuant to approval thereof in a district meeting of the school management unit, as well as any general obligation indebtedness of any participating municipality assumed by the municipal service district. For purposes of this paragraph, the term "outstanding indebtedness" does not include any indebtedness of any municipality assumed by the school management unit at the time of its formation or any contract, lease or agreement of the successor in interest to the former Maine School Building Authority to which by operation of law the school management unit has become the assignee.

F. The agreement must contain any additional terms necessary to effectuate dissolution of the municipal service district without undue

disruption of services provided by the municipal service district to the public.

G. Within 60 days of the receipt of the agreement, the municipal service district officers shall review the agreement and may recommend changes. Changes recommended pursuant to this paragraph must be based upon the standards set forth in paragraphs B to F and the officers' findings on whether the agreement will provide for appropriate educational and other services to the public and for the orderly transition of assets, liabilities and governance and other matters related to the municipal service district.

H. If the municipal service district officers recommend changes in the agreement, they shall notify the committee established pursuant to paragraph A by registered mail and schedule a meeting to discuss the recommended changes within 14 days of the close of the 60-day period provided for by paragraph G. By majority vote, the committee may accept or reject the officers' recommendations.

I. The municipal service district officers shall schedule a public hearing to discuss the merits of the proposed agreement of dissolution and shall provide notice to the clerk of each participating municipality at least 20 days prior to the date set for the hearing. The chair of the municipal service district officers shall conduct the hearing.

(1) The municipal service district officers shall post a public notice in each participating municipality of the time and location of the hearing at least 10 days before the hearing.

(2) Within 30 days following the hearing, the committee shall consider and may revise the agreement based on testimony provided at the hearing.

5. Voting on dissolution agreement. Except as otherwise provided by this chapter, the timing, manner, procedures and other matters regarding voting on the dissolution of a municipal service district are those provided for by Title 20-A, section 1403, except that the question submitted to the voters in each participating municipality must be in substantially the following form:

"Shall the (municipal service district name), of which (name of municipality) is a participating municipality, be dissolved subject to the terms and conditions of the dissolution agreement dated 20_____?"

6. Determination of vote. The clerk of each participating municipality, within 24 hours of determination of the result of the vote pursuant to

subsection 5 in the clerk's respective municipality, shall certify to the municipal service district officers the total number of votes cast in the affirmative and the total number of votes cast in the negative on the question. If the certified results presented to the municipal service district officers indicate that a majority of the voters voting on the question voted in the affirmative, the municipal service district officers shall immediately take steps to dissolve the municipal service district in accordance with the terms of the agreement for dissolution and notify the Secretary of State and the state board of the dissolution.

7. Execution of agreement; certified record; certificate of withdrawal.

When the municipal service district officers have put the agreement for dissolution in effect, the officers shall notify the Secretary of State and the state board by certified mail that the agreement of dissolution has been executed.

A. The municipal service district officers shall file a complete certified record of all transactions involved in the dissolution with the Secretary of State.

B. On receipt of the record provided for by paragraph A, the Secretary of State shall immediately issue a certificate of dissolution to be sent by certified mail for filing with the municipal service district officers, the municipal officers of each participating municipality and the state board. The Secretary of State shall also file a copy in the office of the Secretary of State.

8. Dissolution of school management unit; general purpose aid.

Dissolution of a municipal service district constitutes dissolution of its school management unit. When a school management unit dissolves, the general purpose aid for each participating municipality must be computed in accordance with Title 20-A, Part 7.

9. Repayment to State. Upon dissolution as provided for by this section, a municipal service district shall repay to the Municipal Service District Fund established in chapter 112-A an amount equal to that received by that municipal service district from the Municipal Service District Fund prior to its dissolution. The municipal service district remains intact as provided in subsection 4, paragraph E for the purpose of repayment to the Municipal Service District Fund.

§2124. Public hearings

A participating municipality shall conduct any public hearing or meeting provided for by this chapter in accordance with the rules and ordinances of

that participating municipality regarding conduct of public hearings or meetings.

§2125. Judicial review

The Superior Court may enforce this chapter in the manner provided for by section 2108, except voters' rights and duties regarding petition for declaratory judgment and judicial review provided for by section 2108 may be exercised upon petition of either:

1. Ten voters from each participating municipality. Ten voters from each participating municipality in the municipal service district; or

2. One hundred voters of district. One hundred voters that reside in any one or more municipalities in the municipal service district.

§2126. Construction

This chapter must be liberally construed to accomplish its purposes.

PART B

Sec. B-1. 20-A MRSA c. 613 is enacted to read:

CHAPTER 613

STATE EDUCATION COST CONTROL ASSISTANCE

§17201. Legislative findings

The Legislature finds that municipalities that form municipal service districts and school management units in accordance with Title 30-A, chapter 112 may capture savings through the creation of efficiencies in delivering public-school-related services and reduce local property taxes correspondingly. The Legislature further finds that provision of bonus funding to municipal service districts in accordance with this chapter as general purpose aid for local schools may serve as an additional incentive to encourage municipalities to form municipal service districts and is in the general public interest.

§17202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Municipal service district. "Municipal service district" has the same meaning as in Title 30-A, section 2111.

2. Municipality. "Municipality" has the same meaning as in Title 30-A, section 2001, subsection 8 or means a plantation.

§17203. Municipal service district bonus

In addition to any other funding to which a municipal service district is entitled, a municipal service district is entitled to an annual 10% bonus in general purpose aid for local schools.

1. Funding source; calculation. The 10% bonus provided under this section must be paid from and transferred to municipal service districts from the Municipal Service District Fund established in Title 30-A, chapter 112-A. The annual bonus for municipal service districts provided under this section must be calculated as 10% of the total general purpose aid for local schools to which each participating municipality in a municipal service district is entitled.

2. Duration. A municipal service district is entitled to the annual 10% bonus in general purpose aid for local schools provided under this section for 5 consecutive years beginning in the year following the year in which the municipal service district is formed.

Sec. B-2. 30-A MRSA §709 is enacted to read:

§709. State assumption of participating municipalities' county tax obligation

1. Annual reimbursement. The State shall annually reimburse a municipal service district formed under chapter 112 for that share of any tax apportioned pursuant to section 706 to participating municipalities that comprise the municipal service district for the net cost of supporting district attorneys' services, court rents and services, jails, and registries of probate and deeds that have been paid by the municipal service district on their behalf.

2. Duration. The obligation to make annual reimbursements to a municipal service district begins in the year following the year in which a municipality forms a municipal service district. The reimbursement provided under this section must be paid from and transferred to municipal service districts from the Municipal Service District Fund established in chapter 112-A.

Sec. B-3. 30-A MRSA c. 112-A is enacted to read:

CHAPTER 112-A

MUNICIPAL SERVICE DISTRICT FUND

§2141. Municipal Service District Fund

1. Establishment. The Municipal Service District Fund, referred to in this chapter as "the fund," is established as a dedicated, special revenue account to provide a financial incentive for municipalities to voluntarily form municipal service districts in accordance with chapter 112 to capture cost savings attributable to operations of local government and school systems that are assumed by municipal service districts as defined in section 2111. The Treasurer of State shall administer the fund.

2. Transfers to the fund. For 5 consecutive years, beginning in or after fiscal year 2004-05, the Treasurer of State shall transfer to the fund from the General Fund an amount equal to, and in addition to, the sum of that due to each participating municipality in each municipal service district created pursuant to chapter 112 notified of eligibility in accordance with subsection 3, pursuant to Title 36, section 661, subsection 4, as a consequence of Title 36, section 662. The Treasurer of State shall make this transfer concurrently with the transfers under Title 36, section 661, subsection 4. The fund must be held separate and apart from all other money, funds and accounts. Eligible investment earnings credited to the assets of the fund become part of the assets of that fund. Any balance remaining in the fund at the end of any fiscal year must be carried forward to the next fiscal year.

3. Fund availability and eligibility. The fund is available solely to municipal service districts, as defined in section 2111, subsection 2, that are established in accordance with chapter 112 on or before January 1, 2009. To be eligible for disbursements from the fund, a municipal service district must certify to the Treasurer of State, in a manner acceptable to the Treasurer of State, its lawful formation and existence under chapter 112 in the year for which funds are sought. On receipt of this certification, the Treasurer of State shall notify the municipal service district of its eligibility for disbursement from the fund for the purposes identified in subsection 4.

4. Uses of fund. The fund may only be used to address state financial obligations under sections 709 and 5686 and Title 20-A, section 17203.

Sec. B-4. 30-A MRSA §5686 is enacted to read:

§5686. Municipal debt assumption

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Municipal service district" has the same meaning as in section 2111.

B. "Consolidating municipality" means a participating municipality that is within a municipal service district formed in accordance with chapter 112 on or before January 1, 2009.

2. State assumption of certain general obligation debts. In accordance with this section, the State shall assume 50% of the qualifying general obligation debts of a consolidating municipality. The State shall pay its obligations incurred under this section from the Municipal Service District Fund established in chapter 112-A.

3. Qualifying general obligation debts. The qualifying general obligation debts that the State assumes in accordance with subsection 2 are all general obligation debts of a consolidating municipality, including but not limited to general obligation debts of any school administrative unit that served the consolidating municipality prior to its formation of a municipal service district, that:

A. Were incurred prior to June 30, 2003; and

B. Must be paid using property tax revenue, as opposed to user fees, state grants, loans or revenues other than those provided pursuant to this section, or other federal, state or local revenue sources other than property tax.

Sec. B-5. Legislative implementation. No later than March 1, 2004, the Joint Standing Committee on Taxation and the Joint Standing Committee on Appropriations and Financial Affairs shall review and may report out legislation in accordance with the intentions of and not inconsistent with this Resolution to further clarify and govern the design, implementation, management and oversight of the financial incentives for the formation of municipal service districts provided by education cost control assistance under the Maine Revised Statutes, Title 20-A, chapter 613, state assumption of county tax obligations under Title 30-A, section 709, the municipal debt assumption under Title 30-A, section 5686 and the Municipal Service District Fund established in Title 30-A, chapter 112-A, including but not limited to provisions regarding transfers to and from the Municipal Service District Fund from the General Fund to effectuate the purposes and intent of this Resolution. No later than March 1, 2004, the Joint Standing Committee on State and Local Government shall review the State's statutes regarding the rights, duties and obligations of municipalities, including those laws in Title

30-A, and develop and report out legislation to amend those laws, as necessary, in accordance with the intentions of and not inconsistent with the purposes and intents of this Resolution.

PART C

Sec. C-1. 36 MRSA §661, sub-§4-A is enacted to read:

4-A. Payment to municipal service district municipalities. A municipality that receives payment pursuant to subsection 4 that is a member of a municipal service district, as established by Title 30-A, chapter 112, shall pay that same amount to the Treasurer of State.

Sec. C-2. 36 MRSA §661, sub-§6 is enacted to read:

6. Municipal service districts. Notwithstanding any other provision of law, a municipal service district established in accordance with Title 30-A, chapter 112 has all the rights and obligations of the municipalities within the municipal service district under the Constitution of Maine, Article IV, Part Third, Section 23 and this section. The Treasurer of State shall pay to each municipal service district 50% of the property tax revenue loss in each of the municipalities within the municipal service district, as determined in accordance with this section, by December 15th of the year following the year in which property tax revenue was lost.

3. A Proposal for Outcome-Based Comprehensive Planning Law

AN APPROACH TO REGIONAL MANAGEMENT OF GROWTH IN NEW ENGLAND

The Proposal in Brief

This proposal would add **an outcome-based approach** to state-level comprehensive planning law such as exists in Rhode Island, Vermont, and Maine. The outcomes are aimed at stemming sprawl into critical rural lands, preserving the efficiency of existing transportation arterials, and providing affordable housing.

The outcomes are recognized as a **joint local-state responsibility**: The state is expected to provide municipalities with approved comprehensive plans financial assistance for capital improvements in designated growth areas; the municipalities are expected to direct growth in a way that achieves the outcomes.

Municipalities are given flexibility in how to achieve the outcomes. They may try to do it on their own, but if they fail without good cause over 5-year cycles of time, they lose certain state aid and regulatory authority until corrective measures are taken (“good cause” for municipalities with approved comprehensive plans includes not receiving the state financial assistance for capital improvements identified in those plans). **Alternatively, they may form land use planning regions to implement a regional transfer of development rights program.** Regional planning agencies are required to prepare and adopt a regional comprehensive plan that is the basis for the TDR program. A fund is established for this purpose. Participation in a land use planning region absolves a municipality from individually needing to meet the measurable outcomes and from any penalties should outcomes not be met.

Background

Three of New England's six states have state-level laws to manage growth comprehensively. They are:

Maine: Growth Management Program, Title 30-A of Maine Revised Statutes, Sections 4301 through 4349-A, first enacted in 1989;

Rhode Island: Comprehensive Planning and Land Use Act, Title 45 of Rhode Island General Laws, Ch. 45-22.2, first enacted in 1988; and

Vermont: Vermont Growth Management Act (Act 200, amending the Vermont Planning and Development Act), Title 24 of Vermont Statutes, Ch. 117, enacted in 1988.

All three statutes set forth general statewide goals for managing growth. It is intended that local and regional plans, as well as the initiatives of state agencies, will be consistent with these goals.

The statutes in Maine and Rhode Island create programs for *local* comprehensive planning. In Maine, municipalities are not required to have zoning or similar land use ordinances (other than shoreland zoning)³¹, but if they do, such ordinances must be consistent with a comprehensive plan that, in turn, must be found by the State Planning Office to be consistent with the statewide statutory goals. One of the explicit statewide goals is “orderly growth and development... while preventing development sprawl.” One of the core elements of a comprehensive plan meant to rein in sprawl is the designation by the municipality of “growth” and “rural” areas. While Maine’s growth management program encourages cooperation among municipalities, it has no meaningful regional element. It does require certain state “growth-related capital investments,” such as state offices, courthouses, and state-financed industrial parks, to be located in downtowns or other locally-designated growth areas.

In Rhode Island, each municipality is required to have a comprehensive plan found by the state to be consistent with the statewide statutory goals, and all land use decisions must conform to the adopted plan. The goals include “orderly growth and development” and preservation of open space. They implicitly, but not explicitly, address the issue of sprawl. A local comprehensive plan is required to have a land use plan element that “designates the proposed general distribution and general location and interrelationship” of different uses of the land. However, there is not a requirement to designate growth area boundaries. Rhode Island’s program does not have a meaningful regional element.

³¹ The original growth management law in Maine made municipal zoning or similar land use regulation mandatory. However, in 1991, in the face of a budget crisis, the State withdrew the funding of grants to municipalities for comprehensive planning and zoning and at the same time removed most of the mandatory elements of the law.

Vermont's Act 200 creates a program of *regional* comprehensive planning. Among the goals are that economic growth "be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both"; and that "strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density." Municipal comprehensive planning is optional and not required to be consistent with the statewide goals. However, each of the state's 12 regional planning commissions, which comprise member municipalities in their regions, "shall" prepare and adopt a regional plan consistent with the statewide goals. A council of regional commissions, which includes representatives of the regional planning commissions, state agencies, and the public, is the reviewing authority. The statute establishes a planning fund by allocating a percentage of the state's property transfer tax for comprehensive planning.

Act 200 has been much less effective than its better-known and older cousin, Act 250 (which gives district environmental commissions under a state-level Environmental Board permitting authority for developments larger than 10 acres or 10 lots, but does not regulate much of the scattered development characteristic of sprawl). While a planning fund exists in law, it has not been routinely funded. Nor has Act 200 been consistently administered or enforced by the state. Even if it were, most land use decisions in Vermont, as throughout New England, are made at the town level, and the regional plans have no teeth. Indeed, the state statute requires regional plans to be consistent with local land use plans rather than the other way around. As stated in the plan of the Central Vermont Regional Planning Commission, for example: "There was a conscious effort in the writing of this Plan not to usurp the authority or planning functions of Central Vermont's municipalities."

The growth management legislation in each of the three states is fatally flawed, because sprawl is a regional phenomenon, and none provides an effective regional mechanism to deal with it.

This year, Massachusetts is considering adoption of a statewide "Livable Communities Act." As with the three existing state-level programs, the Massachusetts law would create statewide goals that implicitly address sprawl. It would require each of the state's regional planning commissions to develop "a regional sustainable development plan" consistent with the statewide goals. Among other things, the regional plans would have to include an "urban initiative program." As part of the program, they would identify, in cooperation with municipalities, "concentrated development centers" and "targeted investment areas." Once adopted, a regional plan would help guide capital investment decisions by the state. Each state agency would also have to develop a 5-year "agency sustainable development plan" that is consistent with the statewide goals.

Municipalities would not be required to prepare "local sustainable development plans" but would be given financial incentives to do so. The incentives would include preferences in the awarding of discretionary grants by the state and lower match requirements when receiving state funds.

In addition to statewide growth management laws, two state-chartered regional commissions with land use regulatory authority exist in New England. The Cape Cod Commission, which covers Barnstable County in Massachusetts, has authority over developments defined as having regional impacts and over certain fragile or environmentally important natural resources. The Saco River Corridor Commission in Maine has the authority for review and permitting of development within 500 feet either side of the Saco River, an important source of public water supplies and for recreation in southern Maine. In each case, the commission's authority tends to be for site-specific developments or specific types of natural resources. Neither commission controls overall patterns of development.

Finally, the Maine Land Use Regulation Commission (LURC) is perhaps the only truly regional land use authority in New England in terms of potential to guide overall patterns of development. Established by state law in 1971, LURC serves as the planning commission, code enforcement authority, and development permitting agency for the vast unorganized territory in northern and eastern Maine. Most of this 11 million-acre region is industrial forestland, but it includes a spectacular complex of mountains, rivers, lakes, and coastline. LURC's rules (Chapter 10) establish a zoning scheme that is tied to natural resource boundaries, with the goals of accommodating limited development while protecting the forests and other natural resources as sources of fiber, recreation, and wildlife. Most of the jurisdiction is off limits to subdivisions and development. However, the shorelines of lakes and the regions around mill towns and resort communities have experienced persistent development pressures and requests for rezoning to allow development. LURC explicitly protects the shorelines of certain remote or environmentally sensitive lakes, but otherwise has handled rezoning requests on a case-by-case basis with mixed results in terms of the leapfrogging of development. In the Rangeley area, it recently has adopted a plan for a more comprehensive, prospective designation of areas for growth and preservation.

Using LURC as an institutional model for regional planning elsewhere in New England is of limited use, simply because it did not have to overlay itself on a system of local government. However, some of its techniques, such as resource-based zoning boundaries and fact-based designation of areas for resource use only may be helpful in maintaining an unbroken rural landscape in the face of development pressures.

An outcome-based approach

The model approach to regional management of growth presented here is an adaptation of a recommendation of a State of Maine legislative Task Force to Study Growth Management (December 2000). While far-reaching in order to meet the goal of preventing regional sprawl, it also recognizes the political realities of local control in New England. It recognizes:

the primacy of towns in most land use decisions;

the necessity of a regional approach if there is to be an alternative to sprawl;

the distaste for micromanaging local planning from above, but still the need for accountability for local decisions, since the cumulative effect of those decisions affects the state's natural and fiscal resources and infrastructure; and

the need for state financial assistance for facilities to accommodate growth in those parts of a region that are designated for growth and redevelopment.

The framework does not replace the state level (or, in Cape Cod's case, the county level) site-by-site review of developments of regional impact (including consideration of their secondary impacts, as required under Vermont's Act 250), or state-required protection of specific natural resources. Rather, it provides a context for these reviews by guiding the overall pattern of development.

The model language below presents a generic approach that should be able to be integrated into any of the three state-level growth management programs presently in place and the one proposed in Massachusetts. However, each of those programs is drafted differently, both in format and in substance, and with different ancillary statutes surrounding them. Therefore, interested parties in those states would need to do the integrating. The language does assume, though, that there is a statewide program in statute. For a state without such a program, it could look to any of the three existing state programs as a starting point. Alternatively, chapters 6 and 7 of the *Legislative Guidebook* of the American Planning Association (January 2002) offer basic models onto which the approach proposed below could be grafted. Chapter 6 provides an approach based on largely advisory regional plans (not unlike Vermont), and Chapter 7 focuses on local planning, with certification by a state agency (not unlike Maine and Rhode Island).

The model language expands on the statewide goals of a state's growth management program by *adding three specific outcomes*: one relating to the location of new development, one to the performance of rural arterial roads, and one to affordable housing. *These are the core of the proposed model.* Municipalities are given flexibility in how to meet the outcomes, and, if they have approved comprehensive plans, funds to assist with building capacity to accept growth in designated areas. If they fail to meet the outcomes over 5-year cycles of time and have received state assistance for capital improvements that had been identified as necessary to accommodate growth, they lose portions of state aid until they demonstrate that they are now meeting the outcomes. Nor may they adopt or administer certain ordinances that, in the absence of a balanced land use program, may have the effect of being exclusionary.

Any three or more municipalities may avoid reviews of the outcomes within their borders and, consequently, any potential loss of state aid *if they, by binding interlocal agreement, form a land use planning region and participate in a regional transfer of development rights program* prescribed by a regional comprehensive plan. By this incentive, the model encourages a regional approach to the twin goals of growth and conservation.

Model language for regional land use planning using an outcome-based approach

[NOTE: The following proposed amendments would amend existing state-level comprehensive land use planning legislation, such as exists in Rhode Island, Maine, and Vermont. The language is borrowed from or designed to be incorporated into the legislation from these states. In particular, the outcome-based standards and incentives are adapted from the December 2000 recommendations of the Maine Legislature's Task Force to Study Growth Management (*Final Report*, Appendix F). The purposes and procedural elements of the regional planning section are adapted from Vermont law (Title 24, Ch. 117). The required elements of local comprehensive plans are adapted from Maine's Growth Management Act (Title 30-A, Sec. 4326).]

Section 1. Definitions

Amend current law by adding the following definitions:

[1] Affordable housing. "Affordable housing" means decent, safe and sanitary dwellings, apartments or other living accommodations for persons or families whose incomes are less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less.

[2] Critical rural area. "Critical rural area" means a large, contiguous rural area specifically identified and designated by a local or regional comprehensive plan as deserving maximum regulatory protection from development incompatible with preserving prime farmland, forested land of exceptional quality, the continued use of such lands for farming and forestry, scenic values of significant state or local importance, wildlife habitat identified by the [Department of Inland Fisheries and Wildlife] as high value, lands that perform essential environmental functions, or open lands necessary to support a resource-based economy.

[3] Growth Area. "Growth area" means a priority growth area or a secondary growth area.

[4] Growth-related capital investments. "Growth-related capital investments" means investment by the state, whether using state, federal or other public funds and whether in the form of a purchase, lease, grant, loan, loan guarantee, credit, tax credit or other financial assistance, in:

public service infrastructure, including but not limited to construction or extension of sewer, water, and other utility lines and treatment facilities;

public facilities, including but not limited to school buildings, parks, and community buildings;

development or expansion of industrial or business parks; or

construction or expansion of roadways and intersections for the purpose of increasing their capacity, unless the [State] Department of Transportation has classified the roadway as an arterial or major collector and the improvement is required for the movement of traffic across municipal boundaries.

“Growth-related capital investments” do not include investments in the operation or maintenance of a governmental or quasi-governmental facility or program; the renovation of a governmental facility that does not significantly expand the facility’s capacity; general purpose aid for education; bridge projects; community revenue sharing; or public health programs.

[5] Land use planning region. “Land use planning region” means a group of three or more municipalities located within commuting proximity of each other, at least one of which is a service center community, that enters into an interlocal agreement for the purposes of implementing a regional comprehensive plan for that region as adopted by a regional planning agency.

[6] Priority growth area. “Priority growth area” means a compact area designated in a local or regional comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combinations of such development, and into which a significant amount of such development forecast over 10 years is directed.

[7] Rural area. “Rural area” means a geographic area identified and designated in a local or regional comprehensive plan as an area deserving of some level of regulatory protection from unrestricted development for the purpose of preserving farmland, forest land, open space, wildlife habitat, outdoor recreational space and access thereto, or scenic lands.

[8] Secondary growth area. “Secondary growth area” means an area designated in a local or regional comprehensive plan as suitable for a share of forecasted residential, commercial or industrial development, but which is not intended to accept the amount or density of development appropriate for a priority growth area.

[9] Service center community. “Service center community” means a central city as identified by the United States Office of Management and Budget and any other municipality or group of municipalities identified by [the Office] by rule that includes at least the following considerations: (1) having more jobs within its boundaries than resident workers, (2) having higher per capita retail sales than required to serve the needs of the local population, and/or (3) having a disproportionate share of federally assisted housing.

[1]. Slow growth region. “Slow growth region” means a labor market area, as defined by the Department of Labor, that experienced residential housing growth rates of less than [5%] during the most recent 5-year period as measured in years ending in ‘5’ or ‘0’. A municipality within a slow growth region is entitled to the exemptions of a slow growth

region if during the same period the municipality has had a net increase of housing units of [25] or less.

Section 2. Goal

Amend the existing statement of purpose and goals by adding the following goal, if it does not presently exist:

[1] To encourage orderly growth and development in appropriate areas of each community or land use planning region, while protecting the character of the state's rural areas, making efficient use of public services, and preventing development sprawl.

Section 3. Purpose and measurable outcomes

Amend the existing statement of purpose and goals by adding the following measurable outcomes:

In addition to the broad goals identified in [cite section of statute on statewide goals], the Legislature declares that in order to manage the patterns of land development in [State] for the purposes of conserving important resources, building and maintaining an efficient public infrastructure and preventing development sprawl, it is in the best interests of the state to achieve the following measurable outcomes:

[1] Beginning on [January 1, 2005], at least 70% of all residential development occurring in a municipality each 5-year period measured in years ending in '5' or '0' must be located in designated priority or secondary growth areas, including at least 50% in designated priority growth areas. In calculating these percentages, housing units built on lots in subdivisions approved and filed with a county registry of deeds prior to [January 1, 2003], will be excluded. The number of housing units built will be based on municipal assessment records.

[2] Beginning on [January 1, 2005], highway access must be managed so there will be no decrease from the posted speed that existed on January 1, 2003 on rural portions of arterial roads that run between urban compact boundaries or on major collectors that have a posted speed of 45 miles per hour and above. "Major collectors" means such roads as defined by the [State] Department of Transportation.

[3] Beginning on [January 1, 2005], 10% of new residential development constructed and existing housing stock rehabilitated in a municipality over each 5-year period measured in years ending in '5' or '0' must be affordable housing.

Section 4. Joint planning

Amend the section of planning statute that provides for joint planning by multiple municipalities by adding the following:

[1] Land use planning regions. Municipalities may form land use planning regions as defined in section [1], the benefits and responsibilities of which are governed by this subsection. The primary purpose of forming a land use planning region is to implement the regional comprehensive plan as adopted by a regional council pursuant to section [4], subsection [2].

No municipal requirements established by this chapter related to the state goal identified in section [2], subsection [1], no municipal requirements to meet or exceed the measurable outcomes established in section [3] and no penalties established in section [6] do not apply to any municipality that is part of a land use planning region.

All municipalities that are members of land use planning regions must enter into an interlocal agreement pursuant to the procedures established in [cite state law governing interlocal agreements]. The interlocal agreement governing a land use planning region must provide a governance structure sufficient to ensure the effective implementation and maintenance of a cooperative land use regulatory system among the participating municipalities. The regional councils may assist the participating municipalities in the development of the interlocal agreement, and all interlocal agreements shall be submitted to [the Office] for review and approval.

All critical rural areas identified in a regional comprehensive plan that are located within a land use planning region shall be regulated by that region to allow for an increased residential density of no more than 1 dwelling unit per every 25 acres of critical rural area.

All priority growth areas identified in a regional comprehensive plan that are located within a land use planning region shall be regulated by the region to allow for a residential density of at least [1.5] dwelling units per residential acre in growth areas served by on-site waste water disposal systems and at least [4] dwelling units per residential acre in growth areas that are served by public wastewater disposal systems or other off-site wastewater disposal systems.

All land use planning regions must develop, adopt, implement, and maintain a system of transferable development rights designed to provide the owners of property within the region's critical rural areas just compensation for the market impacts of establishing increased density limits of no more than 1 dwelling unit per 25 acres. In general, the system of transferable development rights shall condition the permission to develop property in the identified growth areas within the land use planning region on the purchase of units of development capacity, at market prices, within the region's critical rural areas. [The Office] shall promulgate rules pursuant to [cite Administrative Procedures Act] that shall govern any system of transferable development rights adopted by a land use planning region.

Municipalities within a land use planning region are entitled to receive and shall have first access to non-property tax resources that have been identified in the regional comprehensive plan as necessary for the purpose of building, acquiring, providing,

rehabilitating, renovating and maintaining the necessary infrastructure to support the region's growth areas and implement the regional comprehensive plan. These non-property tax revenues may be made available through [cite possible state infrastructure grant and loan programs] and the state's General Fund. Providing access to an adequate level of non-property tax revenues to land use planning regions for the purpose of implementing regional comprehensive plans is a responsibility of the Legislature, and the degree to which the Legislature meets that responsibility shall be part of the report submitted by the office pursuant to section [5], subsection [2], paragraph [B].

[2] Regional comprehensive plans required. Each [regional planning agency][regional council][council of government] established under [cite applicable statute] shall adopt a regional comprehensive plan that is consistent with [cite section containing statewide goals] and that may be adopted by a land use planning region as the basis for a transferable development rights program as described in subsection 1.

Purpose

The purpose of the regional plan is to recommend a distribution of population and the uses of the land for urbanization, trade, industry, habitation, recreation, agriculture, forestry and other uses as will tend to:

create conditions favorable to transportation, economic development, health, safety, civic activities and educational and cultural opportunities;

reduce the wastes of financial, energy and human resources that result from either excessive congestion or excessive scattering of population;

promote an efficient and economic use of drainage, energy, sanitary and other facilities and resources;

promote the conservation of the supply of food, water, energy and minerals;
promote the production of food and fiber and the reasonable use of mineral, water, and renewable energy; and

promote the development of housing suitable to the needs of the region and its communities.

Adoption and amendment of regional plan

a. Early in and throughout the process of preparing a regional plan, regional planning agencies shall solicit the participation of local citizens and organizations by holding informal working sessions that suit the needs of local people.

b. A final draft of the proposed plan that the regional planning agency intends to send to public hearings shall be submitted to [the Office] for review. [The Office] shall review the draft for consistency with the goals of [cite section containing statewide

goals] and for satisfactory identification of growth and rural areas such that a land use planning region adopting the plan will contribute to the economic, orderly development of the region and to the conservation of its important natural resources. [The Office] shall make its finding within 60 days of receipt of a complete draft of the plan.

c. The regional planning agency shall hold two or more public hearings within the region after public notice on any proposed plan or amendment. At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, with a request for comments, shall be delivered with proof of receipt, or sent by certified mail, return receipt requested, to the chairperson of the legislative body of each municipality within the region, and to [the director of the Office].

d. The regional planning agency may revise the proposed plan or amendment at any time not less than 30 days prior to the final public hearing held under this section. If the proposal is changed, a copy of the proposed change shall be delivered with proof of receipt, or sent by certified mail, return receipt requested, to the chairperson of the legislative body of each municipality within the region, and to [the director of the Office].

e. A regional plan shall be adopted by not less than a sixty percent vote of the governing board of the regional planning agency, in accordance with the bylaws of the regional planning agency, and immediately submitted to the legislative bodies of the municipalities that make up the region. The plan or amendment shall be considered duly adopted and shall take effect 30 days after the date of adoption unless, within 30 days of adoption, the regional planning agency receives certification from the legislative bodies of at least sixty percent of the municipalities in the region vetoing the proposed plan or amendment. In case of such a veto, the plan or amendment shall be deemed rejected. A plan or amendment that has become effective or has been rejected shall be transmitted promptly to [the director of the Office].

Elements of a regional plan

A regional plan shall include but need not be limited to the following:

a. A 10-year projection of population and residential, commercial, industrial, and resource-based development in the region;

b. A land use element, which shall consist of a map and statement of present and prospective land uses:

(1) indicating priority growth areas where most of the development forecasted for the next 10 years will be directed. A plan may also designate secondary growth areas;

(2) critical rural areas and other rural areas where large blocks of contiguous open space are required to support farming, forestry, resource-based industry, wildlife habitat and other environmental functions, and outdoor recreation; and

(3) the framework for a transfer of development rights program consistent with rules adopted by [the Office], intended to preserve critical and other rural areas and promote orderly growth in priority and other growth areas;

c. A transportation element that is integrated with the land use element;

d. An economic development element addressing facilities required for regional economic growth, including resource-based economic activity;

e. A regional housing element that projects the need for affordable housing, includes in the identification of priority growth areas sufficient land area to accommodate housing of a range of prices, and offers mechanisms to fairly meet the need throughout the region;

f. A utility and facility element addressing regional needs for water supply, wastewater disposal, storm water drainage, solid waste disposal, telecommunications, state and federal offices and facilities, and regional facilities such as hospitals, high schools, and cultural uses; and

g. A regional open space element.

Funding of a regional plan

There is established within [the Office] a regional planning fund for the purpose of assisting regional planning agencies to carry out the intent of this section. The fund shall comprise appropriations for this purpose from the General Fund, grants from federal or other agencies and organizations, and a \$250 fee on any septic or other on-site wastewater disposal system in the State permitted after January 1, 200[5], less \$25, which shall be retained by the municipality or agency issuing the permit to cover the costs of processing the fee. The fees collected shall be transmitted quarterly to [the Office] for deposit into the fund. [The Office] may retain up to \$25 of each fee collected for administrative purposes related to this section. Disbursements of the remainder to regional planning agencies shall be according to a formula to be adopted by rule [under the Administrative Procedures Act], with due consideration given to the region's progress in adopting and implementing a regional plan.

Section 5. Policy development and implementation

Amend the required elements of a municipal comprehensive plan by adding the following, immediately after the section of statute that specifies such required elements:

[NOTE: A required element of a municipal comprehensive plan should be a documented projection of population and the amount of residential and other development over the next 10 years. For the purposes of this model, it is assumed such an element already is required, along with other typical inventories and analyses.]

[1] Policy development. A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals and the measurable outcomes established in section [3] subsection [1]. The policies must:

- A. Promote the state goals under this subchapter;
- B. Address any conflicts with state goals under this subchapter; and
- C. Address any conflicts between regional and local issues.

The comprehensive plan of any municipality satisfies this section with regard to the state goal established in section [2], subsection [1] if the municipality meets or exceeds the measurable outcomes established in section [3], subsection [1]. The comprehensive plan of any municipality will not be reviewed by [the Office] for consistency with the measurable outcomes established in section [3], subsection [1] if the municipality is entirely located in a slow growth region.

[2] Implementation strategy. A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, designed to address the goals and meet or exceed the measurable outcomes established under this subchapter. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances. The implementation strategies of any municipality satisfy this section as it applies to the state goal identified at section [2], subsection [1] if the municipality meets or exceeds the measurable performance outcomes established in section [3], subsection [1].

In developing its strategies and subsequent policies, programs and land use ordinances, each municipality or land use planning region shall employ the following guidelines consistent with the goals of this subchapter:

- A. *Identify and designate at least 2 basic types of geographic areas:*
 - a. Priority growth areas where most of the development forecasted for the next 10 years will be directed. A plan may also designate secondary growth areas. Unless limited by natural conditions, a priority growth area designated for residential development must permit development at densities of at least [4] dwelling units per acre where a public wastewater disposal system or other off-site wastewater disposal system is available, or at least [1.5] dwelling unit per acre where on-site, individual wastewater disposal is used.

- b. Rural areas. Where residential development is allowed in a rural area, it must be at a sufficiently low density and contain other measures to allow for contiguous, undeveloped blocks of land large enough to accommodate economically viable farming and forestry and habitat for a diversity of wildlife, including wildlife that needs interior space to thrive. A comprehensive plan should distinguish between critical rural areas and other rural areas.

In order to meet or exceed the measurable outcomes established in section [3], subsection [1] and to effect the goals established by this chapter, each municipality may adopt land use policies and ordinances to discourage incompatible development, establish standards to govern all development, establish timely permitting procedures, ensure that the needed public services are available within the growth area, and prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

Once the growth areas and rural areas in the municipality or land use planning region have been identified and designated pursuant to an adopted comprehensive plan or plans, and [the Office] has found that the relative size and configuration of those designated areas are consistent with this chapter, the municipality shall ensure that the measurable performance outcome identified in section [3], subsection [1], paragraph [A] is met or exceeded.

Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development and to help meet or exceed the measurable outcomes established in section [3].

The capital investment plan must include an estimate of costs and a calculation of the resources needed from sources other than the property tax, including resources from state-level financial assistance programs, in order to provide the necessary infrastructure so that the designated growth areas will reasonably be able to accommodate and support the anticipated growth, recognizing that contributions for that infrastructure are a shared state and local responsibility.

As part of its review of a comprehensive plan for consistency with the statewide goals, [the Office] shall determine whether the calculation of the non-property tax resources necessary to implement a growth area is realistic and to assure that the share of such resources identified as required of state-level financial assistance programs is necessary and reasonable.

- c. If [the Office] concludes that the capital investment plan either is unrealistic or that it overstates the requirements for state assistance, it shall notify the municipality in writing of its findings and request an amendment of the plan. Once [the Office] is satisfied that the capital investment plan reasonably estimates the requirements for state assistance, it shall notify the municipality and the directors of relevant state programs of the capital improvements and their estimated costs.

d. [The Office] shall assist municipalities and land use planning regions in securing the non-property tax resources identified in capital improvement plans that are part of approved comprehensive plans and that are determined reasonably necessary for the municipality to meet or exceed the measurable outcomes established in section [3]. [The Office] shall report annually to the [Legislative Committee of jurisdiction] on the progress of the State in providing its share of the identified costs.

B. Ensure the efficient use and functional integrity of state and state aid highways.

The municipality shall ensure that the measurable outcome identified in section [3], subsection [1], paragraph B is met or exceeded.

Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes, increasing densities, accessory apartments, and use of municipally owned land. The municipality shall ensure that the measurable outcome identified in section [3], subsection [1], paragraph C is met or exceeded.

Section 6. Amend the statute by adding a penalties section, as follows:

[1] Penalties. Municipalities that fail without good cause to meet or exceed the measurable outcomes established in this chapter shall bear their share of the financial consequences of inefficient development patterns and unmanaged development growth.

A. Duration of penalty period.

The penalties described in this section apply to any municipality that has failed without good cause to meet or exceed the measurable performance outcomes established in section [3], subsection [1] during a defined 5-year period. The period of the penalty shall run during the 5-year period immediately following the 5-year period in which the failure to meet or exceed the measurable standards occurred. For the purposes of this section, the first 5-year period runs from January 1, 2005 to January 1, 2010, and all subsequent 5-year periods run consecutively, beginning and ending in a year that ends in '5' or '0'.

B. Financial penalties.

A municipality subject to penalties pursuant to this section:

- a. Is not eligible for grants or other financial assistance from or through the State for growth-related capital investments;
- b. Is not eligible for assistance from the [state land acquisition program] for local recreation and conservation projects;

- c. Shall contribute a match for road and bridge construction projects within its boundaries that are not included within the definition of growth-related capital improvements equal to an additional 10 percentage points over the match otherwise required; and
- d. Is not eligible for federal community development block grant funds administered by the State.

C. Regulatory penalties.

A municipality subject to penalties pursuant to this section may not:

adopt or administer uniform minimum lot size ordinances more stringent than the state's [minimum lot size law for development using on-site waste water disposal] or [the state's requirements within shoreland areas], unless the municipality provides to [the Office], and the office approves, clear documentation that the regulations are required to protect the public health or a critical natural resource;

adopt regulations or ordinances that cap or set quotas for the amount of development or growth in the municipality except outside of priority growth areas as identified in a consistent comprehensive plan; or

adopt regulations or ordinances that establish impact fees for development except outside of priority growth areas as identified in a consistent comprehensive plan.

D. Appeal.

The office shall inform in writing the municipal officers of any municipality as soon as the office determines that the municipality has become subject to the penalties imposed by this section. Within 60 days of receiving this notice, the municipality may appeal the decision by filing a notice of appeal to [the Office]. Upon receiving notice of the appeal, [the Office] shall schedule an appeal hearing over which [the Director] shall preside. The burden of proof that the municipality is subject to the penalties provided by this section shall rest with [the Office]. At the appeal hearing, [the Director] shall allow into evidence any credible data or information provided by the municipality that pertains to a finding that the municipality is subject to the penalties provided by this section. Upon conclusion of the appeal hearing, and no later than 30 days thereafter, [the Director] shall issue to the municipal officers a final determination, in writing, with respect to whether the municipality is subject to the penalties provided by this subsection. That determination shall be a final agency action.

E. Corrective plan.

Any municipality that is found to be subject to the penalties imposed by this section may, at any time during the penalty periods imposed by subsection A, submit a corrective plan to the office that identifies the actions that have been taken by the municipality to adopt,

amend, or further implement its growth management program in such a way as to substantially achieve the goals of this chapter and meet the measurable outcomes identified in section [3], subsection [1]. [The Director] is authorized upon review and approval of such a plan to lift the penalties provided by this section.

[2] Redistribution of restricted funds. All funds that are not distributed to municipalities due to the application of this section must be retained in the fund from which they would otherwise be distributed and made available to other participating municipalities during the appropriate fiscal year and in accordance with the systems of distribution applicable to those programs.

[3] Penalties not applicable.

The penalties listed in this section do not apply to any municipality that is located in a slow growth region.

F. Rules

[The Office] shall adopt rules that will govern the determination of good-cause failure of a municipality to meet or exceed the measurable performance outcomes established in [section 3, subsection 1]. At a minimum, municipalities shall have good cause not to meet or exceed the measurable performance outcomes if assistance with the required capital improvements identified in section [5], subsection [2], paragraph [B] has not been made available to the municipality.

4. Omnibus Model State-Level Land Use Control Legislation

Background

This model legislation is intended specifically to clarify existing statutory provisions of Maine law dealing with Planning and Land Use Regulation, MRSA tit. 30-A, §§ 4301 et seq. It also expands these statutory provisions by addressing a number of issues not covered by statute at present. The more general, overarching purpose of the legislation is provided in the Introductory Note and Commentary to Provision I.

While comprehensive planning is not mandated by these provisions, each assume that comprehensive plans will eventually exist in all municipalities. That they currently do not is a problem with grave implications, suggesting that it may be additionally necessary to require, on perhaps a six-year timetable, that each municipality prepare one.

This legislation may and should be viewed as an inter-related whole. The entire package may be adopted, but the component provisions may be addressed separately in the enactment process. Accordingly, each provision is numbered, titled, and its location within MRSA tit. 30-A appropriately noted.

There is an Introductory Note to each provision which briefly summarizes (with appropriate citations) the statutory language of each of the other New England states with respect to the issues raised in the provision. Each provision, though tailored to mesh with and meet the specific needs of Maine's planning and land use regulatory law, provides useful clarification, modernization, and model language which may be considered, adapted, and utilized by other New England states and states beyond New England.

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

Provision I. Findings, Purpose, and Goals

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter II, Growth Management Program, specifically the Legislature's Statement of Findings, Purpose, and Goals with respect to Planning and Land Use Regulation.

*[Introductory Note: All New England states have statutory provisions which facilitate planning and land use regulation at state, regional, and/or local levels of government; most of these provisions contain a statement that presents findings, purposes and goals of their respective enactments. None of these statutory provisions, however, explicitly recognizes that **planning and land use regulation is a shared responsibility of state and local government**; and none explicitly requires that local land use controls be exercised*

within the framework of state guidelines and limitations, to assure that local regulatory powers will be exercised in a manner that achieves statewide consistency, fairness, and equal treatment of property owners and developers subject to these controls. Appropriately adapted, the provision below would broaden and update the “findings and purposes” sections of planning and land use control legislation in each New England state. The provision also assumes that other provisions in this omnibus legislation will be put in place.

See generally, Conn. GSA tit. 8-23 dealing with municipal planning, and tit. 8-35a dealing with regional planning; Mass. GLA Chap. 40B dealing with regional planning, and Chap. 41, §81A et seq. dealing with municipal planning; New Hampshire RSA tit. 1, Chap. 4-C dealing with state planning, and tit. 64, Chap. 674:2 and 674:6 dealing with municipal planning; Rhode Island GL §45-22.2-3 dealing with both state and municipal planning, §45-23-29 laying out legislative findings and intent with respect to subdivision control, and §45-24-29 and 30 laying out legislative findings, intent, and purposes of zoning ordinances; Vermont SA tit. 24, Chap. 117, §4302 dealing with municipal and regional planning, and tit. 10, Chap. 151, §6042 dealing with state planning.]

[amending tit. 30-A, §4312 by adding a new paragraph 5.]

Beyond the purposes and goals outlined in paragraphs 2. and 3. of this section, the Legislature finds and declares that land use planning and regulation is a shared responsibility of both the state and municipal governments. While initial and primary responsibility for land use decision making (including enforcement) remains at the municipal level of government, increasing population in many regions of the state, environmental considerations that often reach across municipal boundaries, the complexity and regional impact of many modern developments, the need to combat sprawl both within and beyond individual municipalities, and the need to foster fair and even-handed statewide approaches to land use planning and regulation require that the state’s role in land use planning and regulation be more fully defined by statute.

Specifically, these statutory provisions will in some instances require certain municipal actions relative to planning and land use control, e.g., that a comprehensive plan be adopted prior to the enactment of any land use control ordinance or code; that need be demonstrated before a growth control ordinance may be adopted; that sites be found for cluster, planned unit, high density, and in-fill development, low- and moderate-income housing, and locally unwanted (but necessary) land uses. In some instances municipal land use regulations are only permitted (as is presently the case with the use of moratoria and impact fees) when they are in compliance with state guidelines and limitations designed to achieve overall fairness and equal treatment under the law. Finally, by providing mechanisms for state-level appeal, these statutory provisions are intended to ensure that land use control powers will not be abused on the one hand or ignored on the other. Modern planning and land use control tools are intended to be utilized. In all municipalities, sites for all of the development types noted above must be identified and actually made available to potential developers.

[Commentary – the intent of this expanded “findings, purpose, and goals” provision within, and at the very beginning of the state’s statutory framework regarding planning and land use control law, is to make clear that the state’s role in this area of law is necessary, of long standing, and increasing, and cannot be abdicated in the name of “home rule” or “local control” to the near- exclusive province of local (municipal) governmental entities. As explicitly stated, these areas of law are “shared responsibilities” of both the state and local governments. One might argue that this represents a significant shift of power from local governments to the state level of government; in truth, planning and land use control law has never been the exclusive province of local governments. To be sure, a leading role in these areas of law has historically been played by local governments, and both the Legislature and the Courts have been appropriately deferential to the views, inputs, decisions, and aspirations of local governments in these areas of law. Nevertheless, the state’s role in authorizing the use of police powers and in defining the scope of police power controls has always been paramount. Municipal governments have no inherent powers to plan and control land uses. It was the state Legislature that initially provided planning and land use control enabling legislation, authorizing municipalities to act in these areas of law. The Legislature’s subsequent passage of such provisions as the Site Law, the Mandatory Shoreland Zoning Act, the LURC law, and enactments requiring that sites be found in all Maine towns for group homes and manufactured housing, all evidence the historic existence, as well as the growing need for a more vigorous state role (and statutes) addressing various aspects of planning and land use control law. Today, as our population increases and our society becomes more diverse and complex, this state role must expand still further – not to the exclusion of municipal involvement in these areas of law, but in a way that recognizes that the General Laws of the state speak to the needs of all our citizens. They alone are capable of transcending municipal boundaries and creating approaches to planning and land use law that are at once fair and comprehensive. This is the overarching purpose of this omnibus legislation, and this purpose is sought to be stated clearly in this expanded “findings, purpose, and goals” provision.]

Provision II. Definitions

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter I, General Provisions, Clarifying and Expanding the Definitions of Terms of Art, Tools, and Mechanisms Widely Utilized in the Fields of Planning and Land Use Regulation.

[Introductory Note: All of the New England states have as part of their statutory provisions dealing with planning and land use regulation more or less extensive definitions sections. Most of these sections, like Maine’s, are scattered throughout the state’s larger framework of planning and land use regulation law; but it is all quite random—many modern planning tools, mechanisms, and terms of art are defined by one state, but not defined by others. A more systematic approach to defining critical terms used by professional planners, those administering these laws, and the courts appears useful

See generally, Conn. GSA tit. 8-1aa, 8-18, 8-30g for a sampling of this state’s scattered approach to defining critical terms; Mass. GLA Chap. 40A §1A. defining zoning terms, and Chap. 41, §81L defining terms used in subdivision control; New Hampshire RSA tit. 64, Chap. 672. 2 et seq, 674:24, and 674:31, for a sampling of this state’s scattered approach to defining critical terms; Rhode Island GL §45-22.2-4 contains a set of planning definitions, §45-23-32 defines a range of subdivision terms, §45-24-31 contains zoning definitions; and Vermont SA tit. 24, Chap. 117, §4303 and tit. 10, Chap. 151, §6001 contain separated but rather thorough definition sections).]

[amending tit. 30-A, §4301 by clarifying existing definitions, defining new terms, and appropriately renumbering all terms in the section.]

§4301. Definitions

[1] Impact fee [clarification]. “Impact fee” means a charge or assessment imposed by a municipality against a new development to fund or recoup a portion of the cost of new, expanded, or replacement infrastructure facilities necessitated by and attributable at least in part to the new development.

[2] Implementation program [clarification]. “Implementation program” means that component of a local growth management program that begins after the adoption of a comprehensive plan and that includes the full range of municipal policy making powers, including its spending and borrowing powers, as well as its powers to adopt or implement ordinances, codes, rules, or other land use regulations, tools and/or mechanisms, and that carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of sub-chapter II.

[3] Moratorium [clarification]. “Moratorium” means a land use ordinance or other regulation approved by a municipal legislative body that, if necessary, may be adopted at a first reading and/or on an emergency basis and given immediate effect, and that temporarily defers all development, or a type of development, by withholding any authorization or approval necessary for the specified type(s) of development.

[4] Rate of growth (or “cap”) ordinance [clarification]. “Rate of growth (or “cap”) ordinance” means a land use ordinance or other rule that, upon a showing of need, temporarily limits the number of building or development permits a municipality or other jurisdiction may issue over a designated time frame (usually one year). Such ordinances and/or rules must comply with §4360 of the statutes.

[5] Capital budgeting [new]. “Capital budgeting” means the establishment of priorities among, and budgeting for, needed capital improvements within a municipality; it will usually be presented in a “capital improvements” or “capital budgeting” plan that identifies anticipated improvements for each fiscal year over an ensuing 5, 10, or 15 year period. Whether prepared by those charged with fiscal management in the municipality or the municipal planning authority, a capital budgeting plan should grow out of, and be

consistent with, an adopted comprehensive plan and should be reviewed by the planning authority prior to presentation to the governing body of the municipality for adoption. Once in place, the capital budgeting plan should be updated no less frequently than at five year intervals, and should show clearly the impact each improvement will have on the municipality's current (fiscal year) operating budget.

[6] Cluster development [new]. "Cluster development" means the grouping of a type of development (usually housing, but possibly including commercial or office uses) in one area of a parcel of land, at density levels higher than those normally permitted in the zone, in order to permanently preserve another portion of the parcel as park and/or open space, and to achieve the infrastructure cost savings that higher density development permits. Departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose are permissible.

[7] Floating or unmapped zones [new]. "Floating or unmapped zones" means a zone (zoning district) that fully describes a range of uses (activities) and the conditions that attach to the exercise of those uses, but does not relegate the zone at the time the "floating" or "unmapped" zone is adopted to a precise geographical area within the municipality. Unmapped zones are appropriate in municipalities where the future shape of development is uncertain and the traditional fixing of zoning district boundary lines is premature. They may also be appropriate where the location of a large-scale development activity such as, but not limited to, an airport, a shopping center, an apartment house complex, etc. is presently undecided but capable of being positioned in any of several suitable locations within the municipality. The unmapped zone may be geographically fixed by appropriate action of the planning authority and/or the governing body of the municipality when an actual development proposal which conforms to the requirements of the zone is presented.

[8] High density development [new]. "High density development" means development that departs from more recent 1/2, 1, or 2 acre per unit minimum lot size requirements, and instead, in core areas of a municipality (and/or in other adjacent or nearby areas) authorizes density levels that approximate historic density patterns in these more built-up areas of the community. Such development may be for sale or lease; it may consist of individual units on individual (much smaller) parcels, or may utilize multi-story, townhouse, or condominium types of development; it may consist exclusively of new housing and/or may involve a range of mixed (residential, commercial, office, and/or industrial) uses. Departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose are permissible.

[9] In-fill development [new]. "In-fill development" means development placed on unused, passed over, remnant, irregularly sized, often small parcels of land and/or lots of record in (or proximate to) core areas of a municipality. Such development may be for sale or lease; may consist of housing or other permitted uses, or a combination thereof; may involve a single unit or be multi-unit, and be multi-story, townhouse, or

condominium in character; and should be in scale with the surrounding neighborhood. Departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose are permissible.

[10] Locally unwanted land use (“LULU”) [new]. “Locally unwanted land use” (LULU) means or makes reference to an otherwise legal activity or use of land that is often necessary and/or economically beneficial, but is usually not permitted in any geographical area of the municipality; or, if permitted, is usually denied application approval (often on irrational grounds) rather than being granted approval with necessary (even stringent) conditions.

[11] Not in my back yard (“NIMBY”) [new]. “Not in my back yard” means or reflects a public attitude that would deny locational opportunity and/or application approval to a legal undertaking or use of land on grounds that do not include planning or technical criteria. The basis for these denials is often some combination of anecdotal negative testimony, misinformation, fears, prejudice, and/or biases.

[12] Overlay zoning [new]. “Overlay zoning” means a zone (zoning district) that represents departures from otherwise applicable density, spatial standards, and/or development requirements that the underlying (or more traditional) zoning would impose. These overlays may impose more rigorous regulations as is often the case in fragile land areas, waterfront, and historic districts. They may also relax an existing regulatory framework, in order to encourage small parcel development, in-fill housing, cluster or planned unit development, high density development, the transfer of development rights, or redevelopment in older neighborhoods.

[13] Planned unit (mixed use) development [new]. “Planned unit (mixed use) development” means the grouping of several types of development (residential, commercial, office, or industrial) in an integrated scheme that is aesthetically pleasing, is in compliance with the comprehensive plan, and meets all health, safety, and general welfare standards of the municipality, but is not generally permitted by the underlying zoning. Departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose are permissible (e.g., it may be permitted by the use of contract zoning or the use of floating or “unmapped” zones, and it may involve clustering of development activities).

[14] Transfer of development rights [new]. “Transfer of development rights” means (contemplates) a pattern of development that steers development, in whole or in part, away from one area (often referred to as a “no-build” zone) within the municipality and towards other areas (so-called “build” zones) within the municipality that presumably can safely absorb an increased level of development beyond that which would be allowed by the underlying zoning. Assuming permits to build in “build” zone(s) are actually and readily available, landowners or developers in a “no-build” zone suffer no economic loss from such a transfer, because the economic benefits of development are simply realized at the transferred location(s) rather than by developing land in a “no-build” zone; contract zoning or overlay zoning may be used to effectuate a transfer of development rights.

[Commentary – It appears useful to consolidate all planning-related statutory definitions scattered in various sections of chapter 187 of MRSA tit. 30-A, including more recently enacted pocket-part definitions (see, for example, §4301, §4358, §4357-A (Supp. 2002), §4401), and these newly proposed clarifications and additions, into a single comprehensive, alphabetized, and renumbered definitions section, which should probably appear at the beginning of chapter 187 as a reconfigured §4301. These clarified definitions, and the addition of new definitions of terms of art and widely used tools and mechanisms of the planning profession facilitate not only a better understanding of these concepts by elected officials and courts, but will also serve to encourage professional planners and those charged with administering comprehensive planning and land use regulations to use the widest array of these modern, useful, and judicially sustainable techniques. It is worth noting that “Growing Smart” the recently published (American Planning Association, 2002,) two-volume legislative guidebook containing model statutes for planning and growth management, defines a similar array of terms to facilitate these processes at state, regional, and local levels of government.

Provision III. Rate of Growth Ordinances

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter III, Land Use Regulation, dealing with Rate of Growth (“Cap”) Ordinances.

[Introductory Note: No other New England state expressly authorizes a “rate of growth” ordinance. This land use control tool, sometimes referred to as a “cap”, limits the number of building permits that a municipality will issue in a given period, usually a year. Whether other states might adopt such an ordinance, if they deemed it necessary as an emergency measure (in the same manner that moratoriums are adopted), is problematic. At least one New England state, New Hampshire, has judicially limited the use of “caps” in much the same way that this legislative provision would limit them (see Beck v. Town of Raymond, 394 A2d 84, N.H. 1978). The provision presented below recognizes and builds on a strategy that Maine has used for some time in its approach to planning and land use control, i.e., that some steps are so important they must be taken, and that some land use control tools (though useful) have a sufficient potential for abuse that their use should only be authorized within the framework of state imposed parameters and limitations that ensure fairness and equal treatment. Maine requires, for example, that all municipalities make space available for group homes (MRSA tit. 30-A §4357-A, Supp. 2002); that all municipalities are required to make space available for manufactured housing (MRSA tit. 30-A §4358); and finally, that all municipalities zone shoreland areas (MRSA tit. 38 §§435-449). At the same time, limitations are imposed on the use of moratorium (MRSA tit. 30-A §4356), impact fees (MRSA tit. 30-A §4354), and contract zoning (MRSA tit. 30-A §4352(8)). Each statutory provision cited above, and the proposed legislation (relative to “caps”) presented below, have few (in some cases ‘no’) counterparts in other New England states. They could be examined and tailored appropriately to the legislative format and style of the respective state. If adopted, they would serve the same ends being served in Maine; i.e., important planning steps would

be required, important land uses would have space provided for them, and important protections and safeguards would be in place. A higher statewide level of consistency, fairness, and uniformity might then be obtained in each New England state.]

[amending tit. 30-A, §4360 by substituting the following more comprehensive provision for the present one sentence section.]

§4360. Rate of Growth Ordinances (or “caps”)

[1] Legislative intent.

A “rate of growth” ordinance is intended to be a temporary measure allowing municipalities to slow the rate of growth in order to provide necessary infrastructure and better absorb that growth. It is not intended to allow municipalities to avoid growth or their duty to provide those municipal services needed to meet normal population growth and/or population movement in a safe and orderly manner. It is the intent of the Legislature to allow municipalities pursuant to their home rule authority to limit the number of building and/or development permits issued in any calendar year in settings where the need for such a limitation has been shown, and where the “rate of growth” ordinance (sometimes referred to as a “cap”) meets all of the following requirements.

[2] Need.

Before a rate of growth ordinance may be enacted, the municipality must hold a public hearing to address the question of need. The burden shall be on the municipality to demonstrate that it has experienced an increase for at least a two year period in its rate of growth, as measured by the annual number of building permits issued over historic levels of growth in the municipality. Specifically, the municipality must show that the average rate of growth for the two preceding calendar years exceeds by more than 50% the average rate of growth for the five calendar years preceding these two years. Alternatively, the municipality may show that some element public service (e.g., roads, water supply, waste water treatment plant capacity, school space, etc.) is in such short supply that continued growth at the rate of the average of the two preceding calendar years poses a health or safety risk. If either of the above showings are made, the municipality will be deemed to presumptively demonstrate a “need” sufficient to justify imposition of a rate of growth control ordinance.

[3] The number of building permits that must issue annually under a rate of growth ordinance.

Once the “need” requirements for the enactment of a rate of growth ordinance have been met, the municipality may set the rate of growth, i.e., the annual number of building permits that issue in a calendar year, at a level no lower than either: 50% of the average number of building permits issued during the preceding two calendar years; or at the average number of building permits issued during the preceding seven calendar years, whichever is lower. Municipalities meeting the “need” requirements may establish a

higher annual rate of growth than the above calculation would allow, balancing their need to slow down the rate of growth they are experiencing with a willingness to absorb as large a portion of that growth as seems reasonable.

[4] Duration of a rate of growth ordinance.

A rate of growth ordinance, at a level determined pursuant to paragraph 3, may be put in place for a one or two year period. If predicated on infrastructure needs that are being remedied by new construction that is in progress but not yet complete, the rate of growth ordinance may be extended until the construction is complete or up to three years, whichever is less. Under no circumstances may a rate of growth ordinance be in place for a period longer than three years. A municipality may not have a rate of growth ordinance in place for more than three years in any seven year period.

[5] Exemptions.

Notwithstanding the provisions of paragraph 3, in any municipality adopting a rate of growth ordinance, three categories of housing shall not be included in any numerical building permit limitation: 1.) intra-family transfers of land (not to exceed one per family in any three year period) for the purpose of allowing a family member (the grantee) to build a single family house; 2.) camps, cottages, or any other type of seasonal housing that by its location, design, or type of construction cannot be used on a year-round basis; and 3.) publicly or privately sponsored low-income and/or elderly housing as defined by federal or state law, and/or regulations of the State Planning Office or the Maine Housing Authority.

[6] The allocation of building permits under a rate of growth ordinance.

In any municipality adopting a rate of growth ordinance, the number of building permits to be issued in any calendar year may be divided in half and issued commencing January 1, and July 1, of that year. Unused permits from the first half of the year shall be carried over to the second half of the year. Unused permits from the second half of the year may be carried over to the next year if a rate of growth ordinance is in place the next year. All permits may be issued on a first come, first served basis; preference for local residents or builders is not permissible. However, when the number of building permit applications exceeds the number of permits available in any given period, preference shall be given to those applicants who seek a single building permit over those who (in order to construct an approved subdivision) seek multiple permits. Multiple-permit applicants shall be dealt with on a strict time sequence basis – the oldest approved subdivision shall receive all of the building permits needed to complete that subdivision before later approved subdivisions may obtain their needed permits.

[7] Enforcement.

A municipal rate of growth ordinance that is not in compliance with these statutory provisions and which thus (directly or indirectly) inappropriately limits development

within the community is a violation of Legislative intent, entitling landowners or developers operating within the municipality and/or the Attorney General’s office to seek appropriate remedial relief.

[Commentary – Rate of growth ordinances (“caps”) are a temporary, emergency measure, which must be available when needed. The intent of this provision is to make certain that they may be enacted by Maine municipalities, but only in settings where sharp increases in growth (as measured by the number of building permits issued annually) threaten the health and safety of the community. Maine’s highest court has noted that rate of growth ordinances are different from moratoria. This is certainly correct, but there are more similarities between these two land use control tools than there are dissimilarities. Both are extreme measures; both impinge significantly on property owners who would use their property in ways that are economically valuable, certainly legal, and usually undertaken as a matter of right; and both are susceptible to being used merely to exclude people and/or development activities a community does not like. The latter is not a constitutionally permissible justification for a moratorium, a “cap”, or any other police power ordinance. It follows then that rate of growth ordinances, like moratorium ordinances, must be justified by a showing of need, and must be circumscribed in many of the same ways that moratorium ordinances are already circumscribed by existing provisions of Maine law. The above legislation accomplishes this end – it states the Legislature’s intent, delineates two ways by which the “need” requirement may be met, and establishes a mechanism for setting the level (the number of building permits that must issue) in each setting where a cap is imposed. Further, it clarifies the allowable duration of an enacted cap, fashions an exemption for certain types of housing, and establishes a mechanism for allocating caps in a nondiscriminatory manner. Maine’s present land use control statutes do none of this; nor were any of these essential limitations fashioned by Maine’s highest court in addressing the only case involving caps that has to date come before it (Home Builders Association of Maine Inc. v. Town of Eliot, 750 A2d 566 (2000)). This is why the proposed legislation is necessary: it will provide for the prudent use of caps and prevent (or at least make more difficult) misuse of the tool. Legislatures and courts in other states have not hesitated to carefully hedge the use of caps (see Beck v. Town of Raymond, 394 A2d 847, (N. H. 1978)); Maine would do well to follow suit.]

Provision IV. Local Authority for Growth Management

An Amendment to MRSA tit. 30-A, Chapter 187 Sub-chapter II, Growth Management Program, specifically the Legislature’s Statement with respect to Local Authority for Growth Management, including the Preparation of Municipal Comprehensive Plans.

*[Introductory Note: As stated in the Introductory Note to Provision I, all New England states have statutory provisions that facilitate planning and land use regulation at state, regional and/or local levels of government. **None of these states, however, explicitly or implicitly requires that the planning process and completion and state approval of a comprehensive plan must precede adoption of land use regulations.** The following*

provision, while facilitating the widest range of comprehensive planning activities, including the preparation of specialized, more focused subsidiary planning documents, makes clear that land use controls follow, grow out of, and implement comprehensive plans; they do not come first. The proposed legislation also makes clear that the programmatic goals of an approved comprehensive plan or any subsidiary planning document may be achieved by exercising powers other than the police power (e.g., the spending and borrowing powers of government). At least one other New England state besides Maine provides for state review of local comprehensive plans, presumably to assure consistency between local and state planning goals (see Rhode Island GL §45-22.2-9 and Maine RSA tit. 30-A §4347-A (Supp. 2002)). See also Rhode Island GL §45-22.2-6 dealing with “required elements” of a comprehensive plan; this legislation makes clear (perhaps even more strongly than the provision below) that subsidiary elements (or plans) should be an integral part of an adopted comprehensive plan and the planning process.]

[amending tit. 30-A, §4323 by deleting the present language in its entirety and substituting the following more precise and carefully delineated provision.]

§ 4323. Local Authority for Growth Management

1. Legislative intent.

Comprehensive planning, including preparation and adoption of a comprehensive plan, followed by adoption of appropriate plan enforcement ordinances, codes, regulations, and policies is essential to ensure the economical, safe, and orderly growth of Maine municipalities. It is the intent of the Legislature to allow municipalities pursuant to their home rule authority to undertake the widest possible range of these planning and land use control activities subject only to the general limitations contained in Chapter 187, and the specific limitations of this section.

2. Planning.

A municipality that would undertake any aspect of growth management and/or exercise any control over individual developments or the development process in the community must first establish a “local planning committee” in accordance with §4324 (2.) and adopt a “comprehensive plan ” in accordance with §4324 (9.). The comprehensive plan adopted must meet the requirements of §4312 (3) and §4326. To adjust to changing conditions, an adopted comprehensive plan must be revisited, revised, updated, and re-adopted no less frequently than at 10 year intervals.

3. Plan implementation.

After, but not before, an adopted comprehensive plan is in place, a municipality may control growth and/or development activities taking place in the community by adopting plan implementing ordinances, codes, or regulations including, but not limited to, zoning

ordinances, subdivision control ordinances, site approval ordinances, and historic district ordinances. As needed to implement an adopted comprehensive plan, a municipality may additionally utilize any land use control tools and mechanisms outlined in Chapter 187, or that constitute a reasonable exercise of the municipality's police powers (e.g., contract zoning, impact fees, clustered and/or planned unit development, floating (unmapped) and/or overlay zones, and the transfer of development rights). All such plan implementing actions of a municipality must be in accordance with its comprehensive plan; they must comply with the state's planning goals outlined in §4312 (3); and they must be in accordance with §4326, particularly sub-section (3-A).

4. Other plan implementing actions.

In addition to the powers outlined in paragraph 3, and after, but not before, an adopted comprehensive plan is in place, a municipality may control growth and/or development activities taking place in the community by:

- a) expanding or preparing subsidiary plans (or elements) of its Comprehensive Plan, such as but not limited to a transportation plan, a park and open space plan, a financial or capital budgeting plan, a housing plan, etc.;
- b) exercising its borrowing and/or spending powers to achieve any of the programmatic goals outlined in the comprehensive plan or any subsidiary plans; and
- c) creating on a permanent or ad hoc basis commissions, task forces, committees, auxiliary and/or advisory bodies, such as but not limited to: conservation commissions, housing authorities, task forces, or committees, historic district commissions or committees, park and/or open space committees, etc.

5. Enforcement.

Municipal ordinances or actions not in compliance with the provisions of this section (revised §4323) and/or with the substantive requirements relative to comprehensive planning found in §4312 (3) and §4326, particularly sub-section (3-A), are a violation of Legislative intent, entitling landowners or developers operating within the municipality and/or the Attorney General's office to seek appropriate remedial relief.

*[Commentary – This section makes several points. First, the planning and plan-implementing powers of local governments are extensive, and need to be more fully delineated by statute than they are at present. Second, there is an appropriate sequencing of these undertakings: planning comes first, followed by adoption of a comprehensive plan. This is the overarching document, the grand design. Once this statement is in place, it is appropriate to discuss plan implementation, but not before. The planning literature and statutes or case law in most states suggest that this approach is widely followed. Prior to 2001, it also appeared to be the approach implicitly if not expressly followed in Maine; but the Law Court's recent holding in *Bragdon v. Town of Vassalboro*, 780 A2d 299 (Me. 2001) overturned this assumption. The court characterized a "site approval*

ordinance” as a permissible building code and allowed this land use control device to be put in place in a setting where the town had no plan, no zoning ordinance, and no subdivision controls, and where the development approval granted by the town in the case was not only in violation of state planning guidelines, but would over time (when other developments were approved pursuant to this enactment) act as a defacto zoning ordinance. This would give rise to a pattern of development that would be totally random and incapable of being undone. The above statutory provision, which clarifies and expands existing legislation, is intended to overturn the Law Court’s holding in Bragdon by making clear that developments may not be approved by any ordinance, code, or regulation prior to the adoption of a comprehensive plan].

Provision V. Clustered, Planned Unit, High Density, and In-fill Development

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter III, Land Use Regulation, dealing with Clustered, Planned Unit, High Density, and In-fill Development.

[Introductory Note: All New England states have statutory provisions that define, and to a greater or lesser degree authorize some types of development addressed here. None of these provisions, however, is as broad or explicit as the legislation outlined below. For any New England state committed to limiting sprawl and its effects, the legislation proposed here may be examined and tailored to meet particular needs (see generally, Conn. GSA tit. 8-2d dealing with planned unit developments, tit. 8-2g dealing with density limits for affordable housing, tit. 8-2i dealing with inclusionary zoning, and tit. 8-2j dealing with village districts; Mass. GLA Chap. 40A §9 dealing with clustered, planned unit, and other higher density developments; New Hampshire RSA tit. 64, Chap. 674:16 II dealing with innovative land use controls as further defined in Chap. 674:21 and 674:21 (Supp. 2002); Rhode Island GL §45-24-46 and 47 dealing with developments subject to “special provisions”, including clustered and planned unit developments; and Vermont SA tit. 24, Chap. 117, §4406 (1) dealing with existing small lots and §4407 dealing with planned unit and other types of unique development.]

[amending tit. 30-A, by adding a new §4361.]

§4361. Clustered, Planned Unit, High Density, and In-fill Development

1. Legislative intent.

The Legislature finds that clustered development, planned unit development, high density development (that is, development that exceeds or in some cases approximates historic density patterns in the core areas of any municipality), and in-fill development are all mechanisms that prevent sprawl, reduce municipal expenses, conserve open space, enhance the amenity characteristics of new development, and reduce the public and private economic costs of new development. These advantages are achieved by channeling development onto a portion of larger parcels or onto existing unused parcels within or immediately adjacent to more built up areas of a municipality. Developments in

these settings are most often able to take advantage of existing infrastructure (water, sewer, public utility lines); as a result, new infra-structure costs are eliminated or kept to a minimum; because they are often in close proximity to existing churches, schools, shops, and related municipal services, increasing the degree to which the developments function as part of a neighborhood. It is the intent of the Legislature that municipalities pursuant to their home rule authority shall authorize and facilitate these types of development.

2. Municipal actions.

In accordance with Legislative intent, all municipalities shall, first, identify individual parcels and provide suitable areas (zoned appropriately) that allow clustered, planned unit, high density, and in-fill development. Second, in order to facilitate such development, when permit applications that can reasonably be described as clustered, planned unit, high density, and in-fill are presented, municipalities shall, either within the framework of conventional zoning or by using overlay zoning techniques, allow reasonable departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose.

3. Other municipal actions.

Beyond the requirements outlined in paragraph 2, municipalities, in order to encourage and facilitate these types of development, may utilize their planning powers, other police power controls, their spending and borrowing powers, and/or may appoint such boards, task forces or study groups as they deem appropriate.

4. Enforcement.

Municipal ordinances or actions that have the effect of prohibiting , directly or indirectly, these types of development within the community are a violation of Legislative intent, entitling landowners or developers operating within the municipality and/or the Attorney General's office to seek appropriate remedial relief.

5. Limitations.

Nothing in this provision requires municipalities to allow any development in any setting that does not adequately protect the public's health and safety.

[Commentary – This new statutory provision is patterned after existing State of Maine statutory provisions in which the state requires municipalities to make space available for group homes (tit. 30-A §4357-A (Supp. 2002)), and manufactured housing (tit. 30-A §4358), and to zone shoreland areas (tit. 38 §§435-449). Municipalities traditionally had the power to address any or all of these issues, but fears, biases, and failure to appreciate the significance of the underlying resources and the growing threats to them had long stayed their hand. Once the state, taking the larger and long-run view, put the required

provisions in place, municipalities by and large complied. The benefits that followed were real, there were almost no adverse consequences, and municipal anxieties largely melted away. Similarly, regarding steps required by this provision, municipalities currently have the power to take them, but for a variety of reasons have not. This is so in spite of the fact that most municipalities have come to understand that sprawl is an economically costly and environmentally unsound pattern of development. Moreover, many citizens and municipal leaders have expressed appreciation for the densities, mixed uses, and quality of life found in core areas of cities and villages throughout the state (e.g., Portland's Old Port, West-End, and Munjoy Hill areas; Bangor's downtown; Yarmouth's village; Wiscasset's village; and the revived waterfront in Belfast, among many others). However, in most of these municipalities present zoning ordinances would not allow these desirable areas to be replicated or even enlarged – a perverse irony. Instead, we remain committed to development patterns that require one house on one lot; ½, 1, 2, and 5 acre minimum lot sizes; and height limits, setbacks and sideyard requirements, among many other design specifications, that foster the very sprawl we would avoid. This proposed legislation strikes a different balance. It fully endorses anti-sprawl development patterns that are absolutely necessary at this point in time. At the same time, it neither abandons nor bars the use of conventional zoning mechanisms that have long been used. Indeed, these latter may still be used by municipalities in those areas where these tools remain appropriate. It does, however, direct municipalities to take a more aggressive anti-sprawl approach, including to allow higher density development in some areas in exchange for protected open space, and to find and use existing spaces to undertake the type of mixed and higher density development in core areas of the municipality that is both economically efficient and environmentally prudent. It appears very likely that, once this is done, we will again find (as we did with groups homes, manufactured housing, and shoreland zoning) that benefits of accommodation far outweigh any real or imagined adverse effects.]

Provision VI. Low- and Moderate-Income Housing

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter III, Land Use Regulation, dealing with the Placement of Low- and Moderate-Income Housing.

[Introductory Note: All New England states have, as part of their suite of planning and land use control legislation, provisions intended to facilitate development of low- and moderate-income or “affordable” housing; none, however, requires that all municipalities provide suitably zoned land for such housing. This is not the only stumbling block to its creation; but according to housing experts, it is a major factor. Legislation presented below addresses this problem; it requires municipalities to designate appropriate land areas in which low and moderate income housing (whether publicly or privately sponsored) is a permitted use. The legislation also requires municipalities to allow reasonable departures from otherwise applicable standards and requirements in order to facilitate the actual construction of this sorely needed housing. This legislation, though tailored to fit into Maine's statutory framework, contains language and approaches that could be adapted by states (in or out of New England)

seriously concerned with meeting low- and moderate-income housing needs (see generally, Conn. GSA tit. 8-2d dealing with planned unit developments, tit. 8-2g dealing with density limits for affordable housing, tit. 8-30g. and h., dealing with affordable housing and land use appeals; Mass. GLA Chap. 40A §9 dealing with special permit developments which include low- and moderate-income and elderly housing projects, Chap. 40B §§20 and 21 dealing with planning for, applications for, and appeals from denials of permission to build low- and moderate-income housing; New Hampshire RSA tit. 64, Chap. 674:21 (Supp. 2002) dealing with “inclusionary zoning” designed to facilitate affordable housing for low- and moderate-income families; Rhode Island GL §45-24-46 and 47 dealing with, and allowing adjustments for, developments providing low- and moderate-income housing; and Vermont SA tit. 24, Chap. 113 dealing with Housing Authorities generally, Chap. 117§4302(c)(11) dealing with state goals with respect to affordable housing, and §4348a(a)(9) requiring that comprehensive plans contain a housing element.]

[amending tit. 30-A, by adding a new §4362]

§4362. Low- and Moderate-Income Housing

1. Legislative intent.

The Legislature recognizes that low- and moderate-income housing is and has been in short supply in many, if not almost all, areas of the state. Notwithstanding the considerable efforts of Federal, state, and local instrumentalities, as well as private and not-for-profit organizations, the economics of the current housing market, coupled with difficulty in finding sites on which such housing may be placed, have perpetuated this shortage. It is the intent of the Legislature to address this latter problem by directing municipalities pursuant to their home rule authority to identify and authorize by appropriate zoning enactments individual parcels and larger land areas within the municipality on which low- and moderate-income housing may be placed.

2. Municipal actions.

To accomplish this Legislative intent, all municipalities shall, first, identify individual parcels and provide a range of larger suitable land areas, zoned appropriately, on which low- and moderate-income housing (whether publicly or privately sponsored) may be placed as a matter of right. Low- and moderate-income housing may not be put in a zone in which they represent the only permitted use. Second, in order to facilitate construction of such housing, municipalities shall, either within the framework of conventional zoning or by using overlay zoning techniques, allow reasonable departures from otherwise applicable spatial standards and development requirements that the underlying (or more traditional) zoning would impose.

3. Other municipal actions.

Beyond requirements outlined in paragraph 2, municipalities in order to encourage the actual construction of low- and moderate-income housing may utilize other police power tools, their spending and borrowing powers, and/or may appoint such boards, task forces, or authorities as they deem appropriate.

4. Enforcement.

Municipal ordinances or actions that have the effect of prohibiting, directly or indirectly, the construction of low- or moderate-income housing within the community are a violation of Legislative intent, entitling landowners, developers, sponsors, or the potential occupants of such housing living or operating within the municipality, and/or the Attorney General's office to seek appropriate remedial relief.

5. Limitations.

Nothing in this provision requires municipalities to allow any low- or moderate-income housing development in any setting that does not adequately protect the public's health and safety, including that of the occupants of such housing.

[Commentary – This new statutory provision is not a cure-all for the unavailability of low- and moderate-income housing; it is intended to address only one aspect of the problem: the difficulty of finding sites. Creation of low- and moderate-income housing in many municipalities has become a “classic” LULU. When an application to build such housing is on the table, the tone and rhetoric of opposition may have a certain civility to it, but the end result is the same: this type of housing, for one reason or another, cannot be placed here, there, or anywhere. The above provision recognizes that this problem is of statewide significance and requires municipalities to inventory their land, identify and find sites suitable for such housing, and make a policy judgment that allocates that land, via zoning, for low- and moderate-income housing. Any ensuing debate must then focus on the merits of a particular application; i.e., is the project well designed and does it meet the development standards for such housing? If the answer to these questions is yes, the project must be approved; if the answer is no, the project is must be reconfigured. Availability and suitability of the site for this use will no longer be debatable (the legislative judgment that found the land “suitable” for this use will no longer be at issue). Those who would provide such housing will be able to consider more objective factors, and will need to consider fewer inappropriate NIMBY responses to development that is in the best interests of the state. Most housing experts believe that this one step is critically important, and that it will make low- and moderate-income housing more readily available. The provision additionally leaves municipalities completely free to exercise their wider bonding and spending powers to provide low- and moderate-income housing.]

Provision VII. Locally Unwanted Land Uses

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter III, Land Use Regulation, dealing with the placement of “Locally Unwanted Land Uses” (LULUs) and developments subject to so-called “Not In My Back Yard” (NIMBY) attitudes.

[Introductory Note: No other New England state has fashioned legislation that attempts to deal with LULU/NIMBY issues as broadly as this proposed provision and the two following provisions would. They should be seen as an integrated package. Together, they recognize that LULU/NIMBY problems are real; that many LULUs are necessary to society’s purposes; that requiring objective decision making with respect to LULUs is critical; that “conditioned” approval of LULUs is often possible; and that an objective state-level review mechanism often has a prophylactic effect (because municipalities, like all governmental instrumentalities, behave more responsibly than they otherwise would when their decisions must be fully explained, are fully aired, and are subject to administrative and judicial review). Most New England states, like Maine, have sought to address one or two types of development that often fall into the LULU/NIMBY category. For example, see the Introductory note to Provision VI above, dealing with affordable and low-income housing, MRSA tit. 30-A §4357-A (Supp. 2002) dealing with group homes, and §4358 dealing with manufactured housing.

See also Conn. GSA tit. 8-119t. dealing with independent living arrangements for handicapped and developmentally disabled persons; Mass. GLA Chap. 40A §3 limiting regulation of religious facilities, manufactured housing, group homes, and child care facilities; New Hampshire RSA tit. 64, Chap. 674:31 and 674:32) dealing with manufactured housing; Rhode Island GL §45-24-37 dealing with permitted uses and specifically recognizing group homes and day care facilities; and Vermont SA tit. 24, Chap. 117 §4406 (4) dealing with providing space for, and treating equally all forms of housing. It is important to reiterate, however, that no New England state presently deals as comprehensively with LULU/NIMBY issues as do the provisions that follow.]

[amending tit. 30-A, by adding a new §4363]

§4363. The Placement of Locally Unwanted Land Uses (LULUs) and Developments Subject to NIMBY Attitudes

1. Legislative intent.

The Legislature finds that the number of locally unwanted land uses (LULUs) subject to NIMBY attitudes is large and increasing. Yet many of these uses and developments are economically valuable and/or essential to the needs of society-at-large. Moreover, these land uses are invariably legal and capable of being suitably positioned somewhere in the municipality. Further, if allowed in suitable locations, these land uses are most often capable of being approved, with appropriate conditions to guard against whatever risks or potential harms they might pose. Instead, these uses and developments are often denied access and/or planning approval for reasons that are obscure at best, and exclusionary and impermissible at worst. This being the case, it is the intent of the Legislature to require municipalities pursuant to their home rule authority to find suitable space for the widest

possible range of land use activities; and to require that denials of access to a municipality and/or of planning approval be predicated on objective factors and substantial evidence in the whole record fashioned at the time a LULU applicant seeks access to, or planning approval from a municipality.

2. Required municipal actions.

Three types of action are specifically required: First, though each municipality may not be required within its zoning ordinance to provide space for every conceivable land use, each municipality shall provide through zoning (either as a permitted or conditional use) a locational alternative for the widest possible range of land use activities. Second, applicants for uses not specifically enumerated in a zoning ordinance must be permitted to argue that their proposed use is “uniquely suited to a particular land area or zone”; or is “similar to” a permitted or conditional use allowed in a particular zone; or “poses no greater risks” than a permitted or conditional use allowed in a particular zone. Third, any municipality that denies a LULU all access to the community, and/or allows access but denies planning approval to a proposed LULU development, must demonstrate that its decision is reasonable, i.e., predicated on objective data, planning, and/or technical criteria, and borne out by substantial evidence on the whole record compiled in the course of processing the applicant’s development proposal. A denied applicant shall be provided with a final planning board or municipal order stating the reasons for denial.

3. Other municipal actions.

Beyond the requirements outlined in paragraph 2, municipalities shall whenever possible approach LULU developments by fashioning necessary and appropriate conditions to address any risks and/or potential health and safety problems the proposed developments may create, rather than simply denying the application on the basis of these factors. Municipalities may also utilize the provisions of §4325 to fashion shared regional approaches to the siting of LULUs.

4. Enforcement.

Municipal ordinances or actions that have the effect of directly or indirectly prohibiting these types of development within the community are a violation of Legislative intent, entitling landowners or developers operating within the municipality and/or the Attorney General’s office to seek appropriate remedial relief.

5. Limitations.

Nothing in this provision requires municipalities to allow any LULU in any setting that does not adequately protect the public’s health and safety.

[Commentary – This new statutory provision will not cure LULU/NIMBY problems overnight, but coupled with the provisions that follow, regarding financial incentives and providing an appeals mechanism when development applications for LULUs are denied

on what appear to be impermissible grounds, we will have turned an important corner. The point with which no one seems to disagree is that LULU/NIMBY problems are real and growing worse. Moreover, there is widespread recognition that many activities subject to these problems are absolutely essential, are economically valuable, and contribute to the larger society's well being. Nevertheless, we have reached the point in some municipalities (indeed, in whole regions of the state) that we cannot put these land uses anywhere (see Delogu, NIMBY is a National Environmental Problem, 35 So. Dak. L. Rev. 198 (1990)). This provision focuses on two critical problems: first, space for the widest possible range of LULUs must be provided in each municipality; second, denials of planning approval for these activities must be predicated on objective criteria. All other features of this provision (i.e., that developers may demonstrate the similarity of their activity to already permitted uses, that a complete record must be kept, that this record must bear out any municipal denial of development approval, and that "conditioned approval" rather than summary denial is the way to deal with these difficult-to-locate activities) reinforce the two central thrusts of this proposed legislation. Finally, passage of the proposed legislation has important policy implications. Most notably, it asserts or reasserts several fundamental propositions: that the state is and must be concerned with the larger public good; that NIMBY attitudes are, when viewed closely, mean-spirited, parochial, and unworthy of us. For example, when a home for unwed mothers, a battered woman's shelter, or an AIDS hospice is barred from a community on NIMBY grounds, these client groups do not go away. The problems these facilities address do not end; and the people who would benefit from these facilities are simply presented with fewer or no alternatives to meet their needs. This should be universally viewed as unacceptable. Passage of this proposed legislation will enable us to more effectively address these and many similar societal problems arising from NIMBY attitudes.]

Provision VIII. Fiscal Obligations of the State

An Amendment to MRSA tit. 30-A, Chapter 223, Sub-chapter II, §5681, State-municipal revenue sharing, to provide economic incentives to carry out Provisions IV through VII of this omnibus legislation, specifically tit. 30-A §4323 [new] dealing with comprehensive planning, §4361 [new] dealing with clustered, planned unit, high density, and in-fill development, §4362 [new] dealing with low-income housing, and §4363 [new] dealing with LULUs.

[Introductory Note: No New England state offers any significant level of direct financial incentive to municipalities that undertake and complete the preparation of comprehensive plans and plan-implementing regulatory controls. Nor are there financial incentives to municipalities to engage in largely state-sponsored anti-sprawl strategies that today are widely recognized as efficient and beneficial. Moreover, municipal planning and land use control actions suggested by existing state statutes (in Maine and elsewhere) and in this omnibus legislation obviously imposes a variety of direct and indirect costs on municipalities. Failure to provide state financial support for any of these activities leaves municipal governments alone to pay for what is a shared state and local governmental

responsibility — to yet another unfunded state mandate. If municipal governments are to engage in comprehensive planning and put in place modern anti-sprawl land use control measures that meet the long term needs of both levels of government in a manner that is consistent, fair, and assures developers and property owners throughout the state of equal treatment under the law, this oversight must be corrected. The legislation proposed below does precisely this. It provides meaningful financial incentives to municipalities to engage in a course of conduct that will serve both their and the state’s best interests. Obviously, individual states can scale their financial contribution up or down to reflect their individual fiscal circumstances and the sense of priority they would give to these undertakings. A brief experiment along these lines was undertaken in Maine in the late 1980’s but was sharply limited for budgetary reasons in 1991 (see 1991 Laws of Maine, Chap. 622, also MRSA tit. 30-A §§4341-4344. What little remains of these financial assistance mechanisms is found in tit. 30-A §§4345 and 4346).]

[amending tit. 30-A §5681, State-municipal revenue sharing, by adding a new subsection 5-A.]

§5681(5-A). Economic Incentives to Carry Out Planning and Land Use Control Objectives

A. Legislative intent.

The Legislature finds and reiterates here that the preparation of municipal comprehensive plans, coupled with the enactment of land use regulatory controls that meet the general needs of the community and at the same time limit sprawl, is of utmost importance to, and in the long-term best interests of, the entire state. Specifically, the Legislature intends to facilitate clustered, planned unit, high density, and in-fill developments; developments that meet low- and moderate-income housing needs; and developments subject to LULU/NIMBY pressures. The Legislature also recognizes that there are many direct and indirect costs imposed on municipalities that pursue these undertakings. This being the case, it is the intent of the Legislature to ease the fiscal burdens on those municipalities that participate in meeting these planning and land use control objectives by increasing the state’s municipal revenue sharing contribution, beyond the amounts allocated in §5681 (4) and (5) in the manner outlined below.

B. Revenue sharing fund increases.

In addition to the level of revenue sharing funds provided annually under §5681(4) and (5), an additional 1.0% of taxes imposed under Title 36, Parts 3 and 8, shall be transferred by the State Treasurer from the General Fund to the Local Government Fund and set aside for distribution to municipalities in accordance with the following schedule. Set aside funds that remain undistributed at the end of each month will be returned by the State Treasurer to the General Fund.

- 1) Municipalities that have completed and adopted a comprehensive plan (including required updates of that plan as specified in amended §4323(2)), which plan and

updates are reviewed and certified by the State Planning Office, pursuant to tit. 30-A §4347-A, shall have their basic monthly revenue sharing fund allocation increased by 10%. The 1% set aside in the Local Government Fund shall be utilized for this purpose.

2) After a certified comprehensive plan is in place, municipalities that have adopted land use control ordinances that incorporate provisions allowing clustered, planned unit, high density, and in-fill development (as specified in the new §4361(2)), and that have approved a minimum of ten new development applications after the date of enactment of this legislation, shall have their basic monthly revenue sharing fund allocation increased by a further 10%. The 1% set aside in the Local Government Fund shall be utilized for this purpose.

3) After a certified comprehensive plan is in place, municipalities that further undertake to prepare a housing plan and/or a housing component to their comprehensive plan, and that have adopted land use control ordinances that provide a range of areas in which low- and moderate-income housing may be placed as a matter of right (as specified in the new §4362(2)), and that after the date of enactment of this legislation have approved a minimum of five new low- or moderate-income housing development applications (creating not less than 50 new units of such housing), and/or that have increased the total number of low- and moderate-income housing units in the municipality to the state required minimum of 10% of the total municipal housing stock, shall have their basic monthly revenue sharing fund allocation increased by yet another 10%. The 1% set aside in the Local Government Fund shall be utilized for this purpose.

4) After a certified comprehensive plan is in place, municipalities that have adopted land use control ordinances that facilitate the siting of LULU/NIMBY developments (as specified in the new §4363(2) and (3)), and that after the date of enactment of this legislation have approved a minimum of ten new development applications (at least five of which are in core or near-core areas of the municipality) meeting the LULU/NIMBY definition, such as but not limited to, group homes, public housing, waste disposal facilities, communication towers, transmission lines, prison facilities, recycling facilities, gravel pits or other mining activities, manufactured housing subdivisions, power generating facilities, waste water treatment facilities, etc., shall have their basic monthly revenue sharing fund allocation increased by a final 10% amount. The 1% set aside in the Local Government Fund shall be utilized for this purpose.

5) Municipalities that have completed all of the steps (1) through (4), and that maintain in their land use control ordinances those provisions and approaches to application review that facilitated this compliance, so that approval of these types of development (clustered, planned unit, high density, and in-fill, low- and moderate-income housing, and LULU/NIMBYs) remain continuously possible, will have qualified to have their basic monthly revenue sharing fund allocation increased by an aggregate 40%. All of

these incentive distributions shall be drawn from the 1% set aside in the Local Government Fund.

C. State Planning Office responsibilities.

1) It shall be the responsibility of the State Planning Office to determine whether the specific requirements of §5681(5-A) B (1) through (5) have been and continue to be met by any municipality seeking one or more of the incentive (revenue sharing fund increases) outlined; and to certify this compliance to the State Treasurer. The Treasurer shall not pay out to any municipality set aside planning and land use control incentive monies (from the Local Government Fund) without Planning Office certification, and shall immediately cease such payments when the Planning Office withdraws a municipality's certification for one or more of the delineated incentives.

2) The Planning Office is authorized, pursuant to the provisions of MRSA tit. 5 §8051 *et seq.*, to promulgate such regulations, including municipal reporting requirements, as it deems necessary to carry out any of the certification requirements outlined in C(1).

[Commentary – The intent of this proposed legislation is to commit the state to meet its fair share of what are now municipal fiscal obligations arising from the comprehensive planning process, and the implementation of modern land use measures. It also induces municipalities to act in a responsible manner to meet their own and a wide range of state objectives. The set aside incentive funds (given Maine's sales and income tax statutes as of this date) will produce roughly \$20 million annually. An amount significantly lower than this, particularly in the first few years after this legislation is adopted, is more likely to be distributed. A reasonable estimate of this figure over years 1-3 is \$3-5 million, growing over a 3-5 year period to \$5-10 million. When the time frame for compliance and certification extends 5-10 years and beyond, annual payout could reach \$10-15 million; ideally the full \$20 million will be distributed when and if a large majority of Maine towns qualify for two, three, or all four incentives. That the fund might exceed annual distributions for some period is not a concern, because of the provision channeling undistributed fund revenue back to the state's General Fund. If all Maine municipalities eventually qualify for all four distributions, the set aside fund would need to generate \$40 million annually. The 1% set-aside rate would then need to be increased to 2%, but this scenario is highly unlikely. A more likely scenario would raise the set-aside rate over time to 1.5% and then 2% and correspondingly raise the incentives created beyond the levels proposed here. Though these figures may seem large to some, every study to date suggests that the costs of unplanned growth are substantially larger, on economic and other grounds. One analogy is to pollution costs, which experience has shown are immeasurably higher than the costs of reasonable pollution control. Incentives created by the proposed legislation, and the expenditures they entail, appear to be the minimum required to achieve the ends we seek. Of course the amounts could be adjusted by any other state commensurate with its budgetary resources and commitment to these planning and land use control revisions. However, it must not be forgotten that the objectives we would achieve cannot be obtained on the cheap. If we wish to seriously

address planning and land use control on a statewide basis and in a manner that shares the costs involved, significant and meaningful financial incentives must be established.]

Provision IX. State Review of Local Land Use Regulations and Appeals

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-Chapter III, Land Use regulation, creating a new State-level “Board of Review” to review municipal rate of growth, “cap” ordinances enacted pursuant to MRSA tit. 30-A §4360, and/or denials of development approval, and/or the imposition of unreasonable conditions to development approvals arising out of rights and duties imposed by MRSA tit. 30-A §§ 4361-4363.

[Introductory Note: Several New England states presently have mechanisms that provide a level of state administrative review of local government denials of planning approval for low- and moderate-income housing. These mechanisms are clearly aimed at facilitating creation of such housing. They provide a developer of this type of housing with a means of recourse beyond local officials who may be unsympathetic to the need for such housing, and/or who would otherwise impose such stringent limitations or conditions on development approval that this type of housing would be all but impossible to build in that community. Experience of these states suggests that state level administrative reviews are not often triggered. Rather, their very existence gives rise to a desired prophylactic effect. As a result, local governments, aware that state review is possible and wishing to avoid the more uncertain outcomes it may produce, examine low- and moderate-income housing development proposals in a more balanced and reasonable manner. They wish to control locally the number, density, location, and conditions attached to housing of this type. This is acceptable, as long as it is done reasonably, so that neither the state nor the developer has any basis for complaint. The legislation proposed here fully accepts the underlying rationale of these existing state review mechanisms and extends it to a wider range of desired state land use control and development objectives. Beyond developers who face unreasonable constraints on the building of low- or moderate-income housing, developers facing unreasonable “cap” ordinances, irrational limitations on clustered, planned unit, high density, and in-fill development, and/or irrational LULU/NIMBY attitudes will have recourse to corrective state level administrative review. The review proposed here gives municipalities full opportunity to justify their actions, denials of development approval, and/or conditions of approval attached to a particular development. If there is a reasonable basis for a municipal decision, it must be sustained. State level review is not intended as a vehicle for substituting state judgment for reasonable local decision making. But if no reasonable basis for a local determination can be provided, state review can and should overturn it, allowing the developer to proceed free of the unreasonable constraint. Finally, it is anticipated that the review mechanism created here, though broader in scope than those presently existing in other New England states, will not (after a period of initial testing) be triggered with unacceptable frequency. The same prophylactic effect that these other states have experienced with respect to low- and moderate-income housing will almost certainly be experienced here with respect to the broader range of issues proposed for review. Local governments will and certainly should want to remain in control of their

land use regulation destinies; acting reasonably is a small price to pay for retaining such control.

See generally, Conn. GSA tit. 8-30g creating a mechanism for state level review of adverse local affordable housing decisions; and Mass. GLA Chap. 40B §§20-23 creating a similar mechanism; Rhode Island GL §45-53-1 through 45-53-7 creating a state level low- and moderate-income housing appeals board designed to review adverse local decisions with respect to such housing).]

[amending tit. 30-A, by adding a new §4364]

§4364. State Level Administrative Review of a Limited Range of Local Land Use Control Regulations and Denials of Development Approval

1. Legislative intent.

Reiterating the purposes and goals outlined in §4312, particularly paragraph 5, the Legislature finds that a state level administrative review body charged with reviewing a limited range of local land use control ordinances, regulations and/or denials of development approval pursuant to these measures is an essential mechanism to promote an even handed, fair, and comprehensive state wide approach to land use planning and development regulation . Accordingly, it is the intent of the Legislature by this enactment to create such a body within the State Planning Office, and to clothe this body with the powers and duties outlined below.

2. Creation of a State Land Use Regulation Review Board.

a) There is hereby created a three member State Land Use Review Board. For the purpose of taking any authorized action, the presence of two members of the Board shall constitute a quorum. The Governor shall designate one of the three members to be the chair.

b) The three members shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over local government matters, and to confirmation by the Senate. One member of the Board shall be a full-time employee of the State Planning Office recommended by the State Planning Director who must have experience with, and complete familiarity with State planning goals and the implementation of local growth management programs as outlined in tit. 30-A §§4312-4347-A. One member of the Board shall be a full time planner with a degree in public administration or planning. One member of the Board shall be an attorney with practical experience in land use planning law and/or administrative law.

c) The initial appointment of one of the three Board members shall be for one year; the initial appointment of the second of the three Board members shall be for two years; the initial appointment of the third Board member shall be for three years; all subsequent appointments of Board members shall be for three years; Board members

may not be appointed to serve more than two three-year terms. In cases where an appointed Board member is unable to fill his/her term, the Governor shall appoint a replacement to fill the unexpired portion of that member's term.

d) The non-full time State employee members of the Board are entitled to compensation according to the provisions of tit. 5 §12004-D.

e) Board members are governed by the conflict of interest provisions of tit. 5 §18.

f) The Board shall be housed within, and shall be provided with administrative and technical staff support services by the State Planning Office. The Attorney General's office shall provide the Board with such legal counsel as is necessary for the Board to carry out its duties.

3. Issues appealable to the Board.

The only issues subject to review by Board are the following:

a) Assertions by property owners within a municipality or by developers operating within that municipality that a rate of growth ordinance enacted by the municipality is not in compliance with the provisions of tit. 30-A §4360 of Maine's statutes (*see Provision III of this omnibus legislation*).

b) Assertions by property owners within a municipality, or by developers operating within that municipality that the requirements of tit.30-A §4361, §4362, and §4363 of Maine's statutes (*see Provisions V, VI, and VII of this omnibus legislation*) relating respectively to clustered, planned unit, high density, and in-fill development, the development of low- and moderate-income housing, and LULU/NIMBY developments have not been complied with; or, if complied with, that the municipal development application process has resulted in the unreasonable denial of, or the attachment of unreasonable conditions to, an application made pursuant to the municipal ordinance for one of these types of development.

c) In settings where property owners and/or developers operating within a municipality assert that the municipal development application process has resulted in the unreasonable denial of, or the attachment of unreasonable conditions to, an application for one of the types of development subject to Board review, the complainant, shall, before seeking Board review, first seek relief before the Municipal Zoning Board of Appeals if such a body exists in the municipality. If relief is not obtained, the statutory period within which judicial review of Board of Appeals decisions must be filed shall be extended to allow the complainant to obtain review by this Board.

4. Parties that may appear before the Board.

The only parties that may appear before the Board are property owners residing in, or developers operating within, a municipality who raise an issue subject to Board review pursuant to paragraph 3 above, and designated representatives of the municipality charged with defending the municipal ordinance and/or the actions taken pursuant thereto that are under review.

5. The powers and duties of the Board are as follows.

a) Pursuant to, and in compliance with the Maine Administrative Procedure Act, the Board may adopt such practice, administrative, procedural, interpretive, and substantive rules as it deems necessary to carry out the review functions assigned to it.

b) Upon receipt of an application for review, the Board shall make an initial determination of reviewability. If it finds the matter reviewable under paragraph 3 above, it shall notify all directly involved parties of its determination and promptly schedule such further proceedings as its rules require. With respect to all issues deemed reviewable, the review shall be predicated solely on a reasonable interpretation of the language of the municipal ordinance in question and/or on the record fashioned by the municipality in the course of its development review processes. If the Board finds that the ordinance in question is in compliance with the relevant state statute, the municipal ordinance is entitled to be sustained. If the Board finds that the record fashioned by the municipality in the course of its development review processes sustains the denial of development approval and/or sustains conditions attached to a development approval, the municipal action is entitled to be sustained. The Board is not free to hear additional witnesses, take additional testimony, or to augment the record that produced the municipal decision. The Board is free to receive briefs and/or to hear oral arguments outlining opposing interpretations of the ordinance language, and opposing views with respect to whether the body of evidence in the record either sustains, or does not sustain the municipal action under review.

c) The Board shall issue its decision within 120 calendar days of receiving an application for review; Board decisions must be in writing, dated, and must fully set forth the Board's findings of fact and the reasoning that underlies its ultimate conclusion. The Board may schedule such meetings as it deems necessary to discharge its work load within the time frames outlined. All proceedings of the Board shall be recorded.

6. The standard of review to be used by the Board.

The Board shall apply a "substantial evidence on the record as a whole" standard of review in determining whether a municipal development application record is sufficient to sustain a denial of approval, and/or conditions attached to a development approval. In reviewing a municipal record the Board shall not give weight to anecdotal testimony predicated on unfounded fears or apprehensions; it may give weight only to objective data, planning and/or technical (engineering) criteria.

7. The scope of relief that may be granted by the Board.

a) When review by the Board determines that defects in a municipal ordinance and/or in a development application record are minor, and the municipality evinces a willingness to correct these deficiencies and bring the ordinance into compliance with state statutes, and/or the record into a more complete posture so that it reasonably sustains either the denial of the proposed development, or the approval of the development with reasonable conditions, the Board, with appropriate instructions, may remand the issue being reviewed to the municipality for further action at that governmental level.

b) When review by the Board determines that defects in a municipal ordinance and/or in a development application record are major, i.e., when the ordinance in significant ways violates state statutes, or the record falls far short of sustaining a denial of, or conditions attached to, the particular development proposal; and/or if the municipality evinces no willingness to correct these deficiencies, the Board shall so indicate these facts in its decision, and may grant approval to the developer to proceed with the project. In cases where development approval is granted by the Board, and not by municipal authority, the Board shall accept any conditions on the approval tendered by the municipality that the Board determines to be reasonable.

8. Judicial review.

Final Board decisions may be challenged only by the non-prevailing party or by the Attorney General by appeal to the Superior Court. Such appeals shall be taken in accordance with MRSA tit. 5, Chapter 375, Subchapter VII. The appeal shall be limited to review of the whole record before the Board. The Board's decision is entitled to be sustained if, when viewed in light of the whole record, it is supported by substantial evidence, and therefore is neither arbitrary or capricious.

[Commentary – The intent of this proposed legislation is to create a mechanism that gives real meaning to the fundamental concepts of uniformity, fairness, and equal treatment under the law of property owners and developers subject to municipal land use controls. At the same time it breathes life into statewide planning guidelines and limitations, and supports the shared responsibility of state and local governments to accommodate low- and moderate-income housing anti-sprawl strategies, and the locating of LULU developments. In the same way that judicial review of agency decision making causes agencies (at state and local government levels in Maine and in the rest of the nation) to act more responsibly than they otherwise might, the existence of a State Land Use Review Board will cause municipal governments to act more responsibly and in a demonstrably reasonable manner when they confront those important planning and land use control issues that are made subject to review. The Board usurps no prerogative of local government except the prerogative to ignore state statutes and/or to act unreasonably. Given our form of government and the concepts of “due process” that inhere in our constitution, it cannot be seriously maintained that any such irresponsible

prerogative exists. The powers and duties of the Board have been carefully crafted with an eye to limiting their scope, limiting the issues that may be brought to the Board, limiting those who may trigger Board review, and affording municipalities broad latitude to sustain their ordinances and the actions they have taken pursuant to these ordinances. Only when the Board finds an inordinate level of municipal recalcitrance is it empowered to fashion a remedy approving a particular development proposal that is being blocked by unwarranted and unsustainable municipal conduct; and even here the Board must fashion conditions of approval that fully protect the reasonable health and safety concerns of local residents. Finally, to assure that the Board itself does not act unreasonably, it is subject to judicial review, and of course the long-term workings of the Board may be fine-tuned by Legislative amendment as experience and need dictate. In short, this is a necessary review mechanism, new in its slightly expanded form, but a mechanism that as noted has worked in a more limited form in other New England states; the analogy to judicial review of agency decision making is apt. If our rhetoric about statewide planning goals, fairness, and uniform treatment under the law has meaning, it deserves adoption.]

Provision X. Limitations on Powers of Initiative and Judicial Review

An Amendment to MRSA tit. 30-A, Chapter 187, Sub-chapter V dealing with Attorney General enforcement duties and limiting judicial review and initiative powers in planning and land use regulation settings.

[Introductory Note: All New England states, indeed all states, have a diversity of administrative and judicial review mechanisms by which planning and land use regulatory decisions may be challenged by a wide range of aggrieved and/or disaffected parties. From Zoning Board's of Appeal to citizen initiative mechanisms; from Attorney General enforcement to municipal code enforcement officers; from developers to abutters to citizen interest groups, small substantive decisions and larger policy issues may be reviewed and affirmed or overturned as facts and circumstances dictate. Nothing proposed here will significantly alter these essential review mechanisms, which are an integral part of our democratic system, and which provide important "checks and balances" and legitimacy to our regulatory system. But there are settings where enforcement and review powers are not brought to bear when perhaps they should be, and other settings where there is too much review. The latter include instances where review has been inappropriately used as a tool of delay by those who wish to impose costs upon the developer, and/or by those who simply do not agree with decisions made by elected or administrative bodies. The legislation proposed here will modestly address these two latter realities. It includes mechanisms requiring the Attorney General to protect and defend state planning goals and guidelines and to challenge municipal and developer actions inconsistent with these and related state statutes. At the same time, the legislation would render use of review mechanisms for purposes of delay more difficult. Both steps are essential if we are serious about achieving the state's planning goals and the types and variety of development (some quite unpopular, but nonetheless necessary) addressed in this omnibus legislative package.

*See generally, Conn. GSA tit. 8-6 to 8-9 dealing with zoning boards of appeal, judicial review of board decisions, and judicial review of planning and zoning commission decisions; Mass. GLA Chap. 40A §§12-17 dealing with zoning boards of appeal, appeals to zoning administrators, appeals to permit granting authorities, and finally judicial review of planning and regulatory decisions; also Mass. GLA Chap. 41 §§81Z, 81AA, and 81BB dealing with boards of appeal and judicial review of subdivision control laws; New Hampshire RSA tit. 64, Chap. 677 outlining an extensive of array rehearing, administrative and judicial review mechanisms; Rhode Island GL §§45-23-66 to 45-23-73 dealing subdivision law appeals and judicial review, and §§45-24-63 to 45-24-71 dealing with zoning boards of appeal, judicial review of board decisions, and appeals of zoning enactments and amendments thereto; and Vermont SA tit. 24, Chap. 117, §§4461-4476 outlining administrative and judicial review mechanisms applicable to planning and land use regulatory decisions. Maine has similar statutory provisions, see MRSA tit. 30-A §4353 establishing zoning boards of appeal, which includes a general right to judicial review of final administrative action; MRSA tit. 30-A §§4451-4453 creating mechanisms for municipal enforcement of land use laws and ordinances. See also *Buck v. Town of Yarmouth*, 402 A2d 860 (ME 1979), which makes clear that public interests and general laws of the state must in most instances be enforced by the Attorney General of the State; and, finally, see Maine's Constitution Article 4, Part 3 §18 creating direct state level initiative powers, and §21 authorizing the initiative at municipal governmental levels. The latter mechanism has been utilized creatively (and sometimes less so) to fashion and amend local zoning policy.]*

[amending tit. 30-A, by adding a new §4452-A]

§4452-A. Attorney General Enforcement Duties and Limits on Judicial Review and the Exercise of Initiative Powers in Planning and Land Use Regulation Cases.

1. Legislative intent.

Reiterating the purposes and goals outlined in §4312, particularly paragraph 5, and the Legislative goals expressed in Provisions III-VII, and IX of this proposed omnibus legislation, the Legislature finds that to achieve these purposes and goals it is necessary to bring the Attorney General's enforcement powers more directly to bear. At the same time tactics, whether through litigation or the use of initiative powers, that seek little more than to delay achievement of objectives laid out in the state's planning and land use regulatory statutes must be deterred. It is the intent of the Legislature by this enactment to address these issues. A mechanism is fashioned that more fully directs enforcement of state land use planning purposes, goals, objectives, and statutes by the Attorney General; and limitations are placed on the power of those who would litigate and/or use initiative processes to unreasonably delay achievement of purposes and goals embodied in state statutes, municipal ordinances, and administrative actions taken pursuant thereto.

2. Enforcement duties of the Attorney General's Office.

To achieve compliance with state planning and land use regulatory statutes such as, but not limited to, §4323 as amended (dealing with comprehensive plans), §4360 as amended (dealing with “cap” ordinances), §4361 new (dealing with clustered, planned unit, high density, and in-fill development), §4362 new (dealing with low- and moderate-income housing), §4363 new (dealing with the placement of LULU developments), and §4364 new (creating a state level Board of Review), the State Planning Office, through the State Planning Director, may formally request the Attorney General to bring appropriate enforcement proceedings against municipalities and/or developers arguably not in compliance with these or related statutes, local ordinances, and/or administrative actions growing out of planning and land use regulatory statutes or ordinances. Upon such requests the Attorney General’s Office working with the technical assistance of the State Planning Office shall bring such proceedings as it deems necessary to effectuate the desired compliance.

3. Limitations on suits challenging land use ordinances and/or administrative actions taken pursuant to such ordinances.

Besides the usual “case or controversy”, standing, and “prudential” requirements imposed on parties who would challenge land use control ordinances and/or administrative actions taken pursuant to such ordinances, the party initiating such a suit must have participated (orally or in writing) in the proceedings that gave rise to the final action being challenged, and must have raised to the decision making body, prior to the final action being complained of, all relevant objections thereto. In addition, an aggrieved party challenging a land use control ordinance and/or administrative actions taken pursuant to such an ordinance must demonstrate some unique or particularized actual injury, or the imminent and likely threat of such injury; the injury may be economic or may be the infringement of some other protected interest; the injury must be other (more specific) than a generalized harm to the municipality or to the public at large.

4. Limitations on the use of Initiative mechanisms to challenge municipal land use ordinances and/or administrative actions taken pursuant to such ordinances.

Citizen groups may not use Initiative mechanisms to overturn or revoke presumptively valid municipal ordinance(s) (or parts thereof) required to be adopted by, or predicated upon state planning and land use regulatory statutes; nor may such groups use Initiative mechanisms to overturn or revoke municipal actions (whether legislative, e.g., a contract rezoning, or administrative, e.g., a planning board approval) that grant, or authorize the granting of, development permission, and required building permits, to an individual project developer or applicant. Initiative mechanisms may continue to be used affirmatively at the local government level to put statutorily permitted alternative land use ordinance option(s) before a local electorate.

[Commentary – The intent of these provisions is to first put a powerful tool in the hands of the State Planning Office to gain compliance with state planning and land use regulatory statutes by enabling the Office to invoke the enforcement assistance of the Attorney General (an assistance that has not always been readily available in the past);

*second, to put relatively minor, and not difficult, participatory and harm demonstration burdens on those who would litigate the invalidity of land use ordinances and administrative actions taken pursuant thereto. These threshold requirements will make nuisance suits (that seek little more than to delay ordinances and actions taken pursuant thereto, which ordinances and actions are presumably in compliance with state planning and land use regulatory statutes) more difficult. Finally, the use of local Initiative mechanisms simply to overturn ordinances that may be unpopular but that comply with state planning and land use regulatory statutes is barred, as is the use of a local Initiative to overturn legislative or planning permission granted to particular developers and projects. This provision recognizes a dichotomy between policy making by Initiative (usually permitted) and intrusions into administrative quasi-judicial decision making by Initiative (never permitted); this dichotomy has been overwhelmingly sustained by the courts (see *Glover v. Concerned Citizens for Fuji Park*, 50 P3d 546 (Nev. 2002)). The proposed statute expressly preserves the right to use the Initiative affirmatively, i.e., to put in place statutorily permitted policy options and alternatives. Again, this limitation on the use of Initiative mechanisms appears modest and appropriate; it will only bar misuse of the tool, not its creative possibilities.]*