

MAINE STATE LEGISLATURE

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L.D. 128

Date: 1/27/24

(Filing No. S-494)

HOUSING AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

132ND LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 57, L.D. 128, "An Act to Support Permitting of Certain Multifamily Housing Developments Under the Site Location of Development Laws"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 38 MRSA §482, sub-§5, as amended by PL 1997, c. 603, §2, is further amended to read:

5. **Subdivision.** ~~A "subdivision" is~~ "Subdivision" means the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; except that when all lots are for ~~single-family, single detached, residential housing, structures containing up to 4 dwelling units, with or without one accessory dwelling unit as defined in Title 30-A, section 4301, subsection 1-C,~~ common areas or open space ~~a,~~ "subdivision" ~~is~~ means the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

C. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland zone;

C-1. Lots of more than 500 acres in size may not be counted as lots;

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot;

COMMITTEE AMENDMENT

1 E. Unless intended to circumvent this article, the following transactions may not be
2 considered lots offered for sale or lease to the general public:

3 (1) Sale or lease of lots to an abutting owner or to a spouse, child, parent,
4 grandparent or sibling of the developer if those lots are not further divided or
5 transferred to a person not so related to the developer within a 5-year period, except
6 as provided in this subsection;

7 (2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots
8 are not further divided or transferred within a 5-year period, or the transfer of lots
9 by devise or inheritance; or

10 (3) Grant of a bona fide security interest in the whole lot or subsequent transfer of
11 the whole lot by the original holder of the bona fide security interest or that person's
12 successor in interest;

13 F. In those subdivisions that would otherwise not require site location approval, unless
14 intended to circumvent this article, the following transactions may not, except as
15 provided, be considered lots offered for sale or lease to the general public:

16 (1) Sale or lease of common lots created with a conservation easement as defined
17 in Title 33, section 476, ~~provided that~~ as long as the department is made a party;
18 and

19 H. The transfer of contiguous land by a permit holder to the owner of a lot within a
20 permitted subdivision is exempt from review under this article, ~~provided that~~ as long
21 as the land was not owned by the permit holder at the time the department approved
22 the subdivision. Further division of the transferred land must be reviewed under this
23 article.

24 The exception described in paragraph F does not apply, and the subdivision requires site
25 location approval, whenever the use of a lot described in paragraph F changes or the lot is
26 offered for sale or lease to the general public without the limitations set forth in paragraph
27 F. For the purposes of this subsection only, ~~a parcel of land is defined as~~ "parcel of land"
28 means all contiguous land in the same ownership ~~provided except~~ that lands located on
29 opposite sides of a public or private road are considered each a separate parcel of land
30 unless that road was established by the owner of land on both sides of the road subsequent
31 to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for
32 purposes of determining jurisdiction, from the time a municipal subdivision plan showing
33 that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that
34 recording, sale or lease.

35 **Sec. 2. 38 MRSA §488, sub-§17**, as amended by PL 1997, c. 393, Pt. A, §45, is
36 further amended to read:

37 **17. Structure area within residential lots.** Buildings, roads, paved areas or areas to
38 be stripped or graded and not revegetated that are located within lots used solely for ~~single-~~
39 ~~family~~ single detached residential housing structures containing up to 4 dwelling units, with
40 or without one accessory dwelling unit as defined in Title 30-A, section 4301, subsection
41 1-C, are not counted toward the 3-acre threshold described in section 482, subsection 6,
42 paragraph B for purposes of determining jurisdiction. A road associated only with such
43 lots is also not counted toward the 3-acre threshold. ~~For purposes of this subsection,~~

1 ~~"single family residential housing" does not include multi unit housing such as~~
2 ~~condominiums and apartment buildings.~~

3 **Sec. 3. 38 MRSA §488, sub-§17-A** is enacted to read:

4 **17-A. Land or water area within residential lots.** Land or water areas that are
5 located within lots used solely for single detached residential housing structures containing
6 up to 4 dwelling units, with or without one accessory dwelling unit as defined in Title 30-A,
7 section 4301, subsection 1-C, are not counted toward the 20-acre threshold described in
8 section 482, subsection 2, paragraph A for purposes of determining jurisdiction. A road
9 associated only with such lots is also not counted toward the 20-acre threshold.

10 **Sec. 4. 38 MRSA §488, sub-§19,** as amended by PL 2021, c. 51, §1, is further
11 amended to read:

12 **19. Municipal capacity.** A structure, as defined in section 482, subsection 6, that is
13 from 3 acres up to and including 10 acres or a subdivision, as defined in section 482,
14 subsection 5, that is made up of 15 or more lots for ~~single family,~~ single detached,
15 residential housing structures containing up to 4 dwelling units, with or without one
16 accessory dwelling unit as defined in Title 30-A, section 4301, subsection 1-C, common
17 areas or open space with an aggregate area of from 30 acres up to and including 100 acres
18 is exempt from review under this article if it is located wholly within a municipality or
19 municipalities meeting the criteria in paragraphs A to D as determined by the department
20 and it is located wholly within a designated growth area as identified in a comprehensive
21 plan adopted pursuant to Title 30-A, chapter 187, subchapter 2. The planning board of the
22 municipality in which the development is located or an adjacent municipality may petition
23 the commissioner to review such a structure or subdivision if it has regional environmental
24 impacts. This petition must be filed within 20 days of the receipt of the application by the
25 municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the
26 completed project application by the commissioner from the municipality or within 30 days
27 of receipt of any modification to that application from the municipality. Review by the
28 department is limited to the identified regional environmental impacts. The criteria are as
29 follows:

30 A. A municipal planning board or reviewing authority is established and the
31 municipality has adequate resources to administer and enforce the provisions of its
32 ordinances. In determining whether this criterion is met, the commissioner may
33 consider any specific and adequate technical assistance that is provided by a regional
34 council;

35 B. The municipality has adopted a site plan review ordinance. In determining the
36 adequacy of the ordinance, the commissioner may consider model site plan review
37 ordinances commonly used by municipalities in this State that address the issues
38 reviewed under applicable provisions of this article prior to July 1, 1997;

39 C. The municipality has adopted subdivision regulations. In determining the adequacy
40 of these regulations, the commissioner may consider model subdivision regulations
41 commonly used by municipalities in this State; and

42 D. The former State Planning Office or the Department of Agriculture, Conservation
43 and Forestry has determined that the municipality has a comprehensive land use plan
44 and land use ordinances or zoning ordinances that are consistent with Title 30-A,

1 chapter 187 in providing for the protection of wildlife habitat, fisheries, unusual natural
2 areas and archaeological and historic sites.

3 The department, in consultation with the Department of Agriculture, Conservation and
4 Forestry, shall publish a list of those municipalities determined to have capacity pursuant
5 to this subsection. This list need not be established by rule and must be published by
6 January 1st of each year. The list must specify whether a municipality has capacity to
7 review structures or subdivisions of lots for ~~single-family~~, single detached, residential
8 housing structures containing up to 4 dwelling units, with or without one accessory
9 dwelling unit as defined in Title 30-A, section 4301, subsection 1-C, common areas or open
10 space or both types of development. The department may recognize joint arrangements
11 among municipalities and regional organizations in determining whether the requirements
12 of this subsection are met. The department may review municipalities that are determined
13 to have capacity pursuant to this subsection for compliance with the criteria in paragraphs
14 A to D, and if the department determines that a municipality does not meet the criteria, the
15 department may modify or remove the determination of capacity.

16 A modification to a development that was reviewed by a municipality and exempted
17 pursuant to this subsection or was reviewed by the department prior to a determination that
18 a municipality has capacity pursuant to this subsection is exempt as long as the modification
19 will not cause the total area of the development to exceed the maximum acreage specified
20 in this subsection for that type of development or, based upon information submitted by the
21 municipality concerning the development and modification, the department determines that
22 the modification may be adequately reviewed by the municipality.

23 **Sec. 5. 38 MRSA §489-E, first ¶**, as repealed and replaced by PL 2011, c. 359, §4,
24 is amended to read:

25 Rules adopted by the department pursuant to this article are routine technical rules, as
26 defined in Title 5, chapter 375, subchapter 2-A, including rules to establish a permit by rule
27 option in accordance with section 344, subsection 7, except that rules adopted by the
28 department after January 1, 2010 pursuant to section 484, subsections 1, 3, 4, 4-A, 5, 6 and
29 7 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.'

30 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
31 number to read consecutively.

32 **SUMMARY**

33 This amendment strikes and replaces the bill and amends the definition of
34 "subdivision" in the portion of the site location of development laws in the Maine Revised
35 Statutes, Title 38 that applies to the division of a parcel of land into 15 or more lots. It
36 allows for lots with single detached residential housing structures containing up to 4
37 dwelling units, with or without one accessory dwelling unit. It also excludes land or water
38 areas that are located within lots used solely for single detached residential housing
39 structures containing up to 4 dwelling units, with or without one accessory dwelling unit,
40 from the 20-acre threshold calculation in the site location of development laws.

41 **FISCAL NOTE REQUIRED**

42 (See attached)



132nd MAINE LEGISLATURE

LD 128

LR 167(02)

An Act to Support Permitting of Certain Multifamily Housing Developments Under the Site Location of Development Laws

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-494)
Committee: Housing and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection to adopt the changes in this bill are expected to be minor and can be absorbed within existing budgeted resources.