

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1790

H. P. 1373

House of Representatives, May 28, 1971

Reported by Mrs. Cummings from Committee on Natural Resources and
printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Revise the Site Location of Development Law.

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

Sec. 1. R. S., T. 38, § 481, amended. Section 481 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 481. Findings and purpose

The Legislature finds that the economic and social wellbeing of the citizens of the State of Maine ~~depend~~ **depends** upon the location of commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this ~~subchapter~~ **Article** is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting ~~local~~ environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

Sec. 2. R. S., T. 38, § 482, sub-§§ 2 and 4, amended. Subsections 2 and 4 of section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, are amended to read as follows:

2. Development which may substantially affect environment. "Development which may substantially affect environment", hereafter in this Article called "development", means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, but excluding public ways, which development requires a license from the ~~Environmental Improvement Commission~~ commission, or which occupies a land area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under the sea, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area or a floor space of 60,000 square feet. Any 2 or more separate parcels shall be considered a single parcel if they comprise more than 20 acres and are separated by less than 1000 feet. An extension of an already existing development is encompassed within the meaning of "development which may substantially affect environment, when the extension itself otherwise falls within the meaning of "development which may substantially affect environment."

4. Person. "Person" means any person, firm, corporation, association, partnership, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

Sec. 3. R. S., T. 38, § 482, sub-§ 5, additional. Section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended by adding a new subsection 5 to read as follows:

5. Subdivision. "Subdivision" means the division of a parcel or tract or land into 2 or more parcels within any 5-year period, whether this division is accomplished by platting the land or by a sale of the land by metes and bounds or by leasing the land.

Sec. 4. R. S., T. 38, § 483, amended. Section 483 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 483. Notification required

Any person intending to construct or operate a development ~~which may substantially affect local environment~~ shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, on a form prescribed by the commission together with such documents as the commission deems necessary. The commission shall within ~~14~~ 30 days of receipt of such notification, either approve the proposed ~~location~~ development, upon such terms and conditions as it may deem appropriate, or schedule a hearing thereon in the manner hereinafter provided.

Sec. 5. R. S., T. 38, § 484, sub-§ 2, repealed and replaced. Subsection 2 of section 484 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is repealed and the following enacted in place thereof:

2. **Traffic movement.** The proposed development has made adequate provision, or adequate provision exists or will exist, for loading, parking and movement of all types of traffic in the area surrounding the development, resulting from or directly connected with the development.

Sec. 6. R. S., T. 38, § 484, amended. The last paragraph of section 484 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

Any person who has notified the commission, pursuant to section 483, of his intent to ~~create~~ **construct or operate** a development ~~substantially affecting local environment~~ shall, upon receipt of notice that the commission has determined to hold a hearing under this section, immediately defer or suspend construction or operation with respect to such development until the commission has issued its order after such hearing.

Sec. 7. R. S., T. 38, § 484-A, additional. Title 38 of the Revised Statutes is amended by adding a new section 484-A to read as follows:

§ 484-A. Certificate of compliance

No person, whose development has received the approval with conditions of the commission shall sell, lease, rent or otherwise operate the development until the commission or its director has ascertained that the conditions imposed by it upon the development have been complied with or that there is reasonable assurance that said conditions will be complied with. Upon ascertaining that the conditions have been complied with or will be complied with, the commission or its director shall issue to the developer a "certificate of compliance". The commission or its director may issue a "certificate of compliance" for portions of a development for which the terms and conditions imposed by the commission have been complied with. The commission or its director shall either issue such certificate or deny its issuance within 14 days of the receipt of the request for the certificate.

Sec. 8. R. S., T. 38, § 487, repealed and replaced. Section 487 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 487. Right to a hearing; and judicial review

Any person whose development the commission has approved with conditions without a hearing or has been denied a "certificate of compliance" may request a hearing by the commission, in writing within 30 days after notice of such action, for the purpose of reviewing said action and modifying or reversing it as appropriate. Upon receipt of such request, the commission shall schedule a hearing in accordance with section 484.

Any person, with respect to whose development the commission has issued an order after hearing pursuant to this section or section 484 may within 30 days after receiving notice of such order, appeal therefrom to the Supreme Judicial Court sitting as the law court, by filing a notice of appeal setting forth the points of appeal, with the clerk of the law court and a copy to the commission. The proceedings shall not be de novo. The court shall receive

into evidence a true copy of the transcript of the hearing, the exhibits thereto, and the order or decision of the commission. The court's review shall be limited to questions of law and whether the commission acted regularly and within the scope of its authority, and the commission's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commission's decision for further proceedings.

Sec. 9. R. S., T. 38, § 488, amended. Section 488 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 488. Applicability

This ~~subchapter~~ **Article** shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970 or to any development the construction and operation of which has been specifically authorized by the Legislature prior to the effective date hereof, or to public service corporation transmission lines. **This exemption section does not apply to any development which is the result of putting a previously existing development to a substantially different use.**

STATEMENT OF FACT

It is the purpose of this amendment to: (1) include state, municipal, quasi-municipal, educational and charitable developments, excluding public ways, within the coverage of the Site Location of Development Law; (2) to include structures covering a floor space of more than 60,000 square feet of floor space within the Site Law; (3) to define a single parcel for the purposes of the Site Law; (4) to make it clear that extensions of developments, which extensions themselves fall within the Site Law are not exempt by reason of being an extension of a previously existing development; (5) to more clearly define "person"; (6) to make it clear that subdivisions are covered by the Site Law and to define "subdivisions"; (7) to make it clear that a developer must make application to the E.I.C. for approval and not merely notify the E.I.C. in a one-page letter; (8) to change from 14 to 30 days the amount of time the E.I.C. will have to approve a development without having to call a public hearing; (9) to make it clear that the E.I.C. consider all types of traffic rather than just automobile traffic when reviewing a proposed development and to make it clear that the E.I.C. may consider traffic surrounding the development as well as traffic within the development; (10) to require developers to get a "Certificate of Compliance" to insure they have complied with all conditions of approval; (11) to grant developers receiving conditional approval without a hearing the right to a hearing; (12) to make it clear that substantial changes in the use of a previously existing development are not exempt from the law; and (13) to make certain language changes in the law to make it more consistent.