

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 214

7 S.P. 83

In Senate, January 18, 1983

8 Received by the Secretary of the Senate on January 18, 1983. Referred to
9 the Committee on Energy and Natural Resources, and ordered printed
10 pursuant to Joint Rule 14.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Twitchell of Oxford.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Placing the Burden of Justifi-
18 cation for any Land Use Control Measure
19 on Municipalities once a Prima Facie
20 Showing of Exclusion has been Demonstrated.
21

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

24 30 MRSA §4965 is enacted to read:

25 §4965. Burden of justification for land use control
26 measures

27 In any judicial proceeding brought by the Attor-
28 ney General or a private party testing the validity
29 of a municipal plan, ordinance or procedure alleged
30 to be exclusionary in effect, particularly of essen-
31 tial and legally permissible housing alternatives,
32 the burden of going forward once a prima facie show-
33 ing of exclusion has been made, shall be shifted to

1 the town to justify the control, restriction or regu-
2 lation being attacked. The burden shall not be
3 deemed to have been met by the presentation of
4 hypothetical, speculative or a slight quantum of
5 credible evidence, but only by substantial evidence
6 in the record when viewed as a whole; evidence suffi-
7 cient to persuade reasonable individuals that the
8 challenged regulations or controls are necessary to
9 protect important aspects of the public's health,
10 safety and general welfare. If the town cannot or
11 does not meet its burden, or if the full evidence of
12 the plaintiff showing exclusion is more persuasive
13 than that of the town seeking to justify its actions,
14 the exclusionary control, regulation or restriction
15 shall be stricken and such permits and approvals as
16 are required to enable the developer to proceed with
17 the project that gave rise to the challenge shall
18 issue forthwith, by order of the court, if necessary.

19 STATEMENT OF FACT

20 At the present time, the burden of proving in a
21 court of law that a municipal plan, ordinance or
22 procedure is exclusionary in effect falls upon the
23 plaintiff. Partially as a consequence of this rule,
24 Maine courts have been reluctant to grant relief to
25 plaintiffs who have suffered from exclusionary hous-
26 ing provisions. This bill provides that if the
27 plaintiff makes a prima facie showing of exclusion
28 the burden shifts to the municipality to show justi-
29 fication for its control, restriction or regulation.

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