

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1647

S.P. 545

In Senate, May 21, 1987

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator LUDWIG of Aroostook.

Cosponsored by Senator BRANNIGAN of Cumberland,
Representative MURPHY of Kennebunk, Representative MICHAUD of
East Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Strengthen the Site Location of
Development Law in the Shoreland Zone.

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

Sec. 1. 38 MRSA c. 3, sub-c. I, art. 6, as
amended, is repealed.

Sec. 2. 38 MRSA c. 3, sub-c. I, art. 6-A is en-
acted to read:

ARTICLE 6-A. SITE LOCATION OF DEVELOPMENT

§490-A. Findings and purpose

1 The Legislature finds that the economic and so-
2 cial well-being of the citizens of the State of Maine
3 depend upon the location of state, municipal, quasi-
4 municipal, educational, charitable, commercial and
5 industrial developments with respect to the natural
6 environment of the State; that many developments be-
7 cause of their size and nature are capable of causing
8 irreparable damage to the people and the environment
9 on the development sites and in their surroundings;
10 that the location of such developments is too impor-
11 tant to be left only to the determination of the own-
12 ers of such developments; and that discretion must be
13 vested in state authority to regulate the location of
14 developments which may substantially affect the envi-
15 ronment.

16 The Legislature further finds that the incremen-
17 tal cumulative effects of numerous small developments
18 are having an adverse impact on the natural resources
19 and infrastructure of the State and that, because of
20 the threat to the economy of the State and its quali-
21 ty of life posed by the cumulative impacts of devel-
22 opment, these impacts must be considered in the re-
23 view of all developments subject to this subchapter.

24 The Legislature further finds that certain geo-
25 logical formations, particularly sand and gravel de-
26 posits, contain large amounts of high quality ground
27 water. The ground water in these formations is an im-
28 portant public and private resource, for drinking wa-
29 ter supplies and other industrial, commercial and ag-
30 ricultural uses. The ground water in these forma-
31 tions is particularly susceptible to injury from
32 pollutants and, once polluted, may not recover for
33 hundreds of years. It is the intent of the Legisla-
34 ture that activities that discharge or may discharge
35 pollutants to ground water may not be located on
36 these formations.

37 The purpose of this subchapter is to provide a
38 flexible and practical means by which the State, act-
39 ing through the Board of Environmental Protection, in
40 consultation with appropriate state agencies, may ex-
41 ercise the police power of the State to control the
42 location of those developments substantially affect-
43 ing the local environment in order to ensure that
44 such developments will be located in a manner which

1 will have a minimal adverse impact on the natural en-
2 vironment within the development sites and on their
3 surroundings and protect the health, safety and gen-
4 eral welfare of the people.

5 §490-B. Definitions

6 As used in this article, unless the context oth-
7 erwise indicates, the following terms have the fol-
8 lowing meanings.

9 1. Board. "Board" means the Board of Environmen-
10 tal Protection.

11 2. Cumulative impact. The "cumulative impact"
12 of a project is the change in the environment which
13 results from that project when added to other past,
14 present and currently pending applications under this
15 subchapter, except that the impact of any such pend-
16 ing application, if subsequently rejected, may not
17 form the basis, in whole or in part, for rejection of
18 any application or for the imposition of any condi-
19 tions in any permit to be issued under this subchap-
20 ter. Pending applications shall be limited to those
21 applications which have been filed with the depart-
22 ment as of the date of the filing of the application
23 under review.

24 3. Development which may substantially affect
25 the environment. "Development which may substantially
26 affect the environment," in this article called "de-
27 velopment," means:

28 A. Any state, municipal, quasi-municipal, educa-
29 tional, charitable, commercial or industrial de-
30 velopment, including subdivisions, which:

31 (1) Occupies a land or water area in excess
32 of 20 acres;

33 (2) Contemplates drilling for or excavating
34 natural resources, on land or under water,
35 where the area affected is in excess of
36 60,000 square feet;

37 (3) Is a mining activity, as defined in
38 this section;

1 (4) Is a hazardous activity, as defined in
2 this section; or

3 (5) Is a structure, as defined in this sec-
4 tion;

5 B. Either:

6 (1) A subdivision; or

7 (2) A multiunit housing development of 10
8 units or more located wholly or in part
9 within a shoreland zone.

10 This term does not include state highways, state aid
11 highways, borrow pits for sand, fill or gravel, en-
12 tirely within the jurisdiction of the Maine Land Use
13 Regulation Commission under chapter 206-A, and those
14 activities regulated by the Department of Marine Re-
15 sources under Title 12, section 6072.

16 4. Exploration. "Exploration" means an activity
17 solely intended to determine the existence, quality
18 and quantity of product, provided that less than
19 1,000 cubic yards of product is extracted or removed
20 within 12 successive months.

21 5. Hazardous activity. "Hazardous activity"
22 means any activity that consumes, generates or han-
23 dles any of the following:

24 A. Hazardous wastes, as defined in section 1303;

25 B. Hazardous matter, as defined in section 1317;
26 or

27 C. Oil, as defined in section 542.

28 Hazardous activity includes any low-level radioactive
29 waste storage or disposal facility, as defined in
30 section 1451.

31 This definition shall not include an expansion of an
32 existing development, unless that expansion by itself
33 would be a hazardous activity.

1 The board shall identify by regulation activities
2 that are exempt from this definition, including do-
3 mestic and other uses of substances in quantities too
4 small to present a significant risk of ground water
5 contamination.

6 6. Mining activity. "Mining activity" means the
7 breaking of the surface soil in order to facilitate
8 or accomplish the extraction or removal of more than
9 1,000 cubic yards of product or overburden from the
10 earth within 12 successive calendar months; any ac-
11 tivity or process for the extraction or removal of
12 the product or overburden; and the preparation, wash-
13 ing, cleaning or other treatment of that product to
14 make it suitable for commercial, industrial or con-
15 struction use, but does not include excavation or
16 grading preliminary to a construction project.

17 7. Multiunit housing. "Multiunit housing" means
18 any housing where 2 or more dwelling units of a
19 project, located on a single parcel of land, are con-
20 tained in a single building.

21 8. Natural environment of a locality. "Natural
22 environment of a locality" includes the character,
23 quality and uses of land, air and waters in the de-
24 velopment site, or the area likely to be affected by
25 such development, and the degree to which such land,
26 air and waters are free from nonnaturally occurring
27 contamination.

28 9. Normal high water line. "Normal high water
29 line" means that line along the shore of a great
30 pond, river or other nontidal body of water which is
31 apparent from visible markings, changes in the char-
32 acter of soils due to prolonged action of the water
33 or changes in vegetation, and which distinguishes be-
34 tween predominantly aquatic and predominantly terres-
35 trial land. In the case of great ponds, all land be-
36 low the normal high water line shall be considered
37 the bottom of the great pond for the purposes of this
38 subchapter.

39 10. Overburden. "Overburden" means earth and
40 other materials naturally lying over the product to
41 be mined.

1 11. Person. "Person" means any person, firm, as-
2 sociation, partnership, corporation, municipal or
3 other local governmental entity, quasi-municipal en-
4 tity, state agency, educational or charitable organi-
5 zation or institution or other legal entity.

6 12. Primary sand and gravel recharge area. "Pri-
7 mary sand and gravel recharge area" means the surface
8 area directly overlying sand and gravel formations
9 that provide direct replenishment of ground water in
10 sand and gravel and fractured bedrock aquifers. The
11 term does not include areas overlying formations that
12 have been identified as unsaturated and are not con-
13 tiguous with saturated formations.

14 13. Product. "Product" means clay, peat, stone
15 minerals, ores, topsoils, sand and gravel, fill or
16 other solid matter.

17 14. Reclamation. "Reclamation" means the reha-
18 ilitation of the area of land affected by mining un-
19 der a plan approved by the board, including, but not
20 limited to, the creation of lakes or ponds, where
21 practicable, the planting of forests, the seeding of
22 grasses and legumes for grazing purposes, the plant-
23 ing of crops for harvest and the enhancement of wild-
24 life and aquatic resources, but not including the
25 filling in of pits, shafts and underground workings
26 with solid materials.

27 15. River. "River" means a free flowing body of
28 water from that point at which it provides drainage
29 for a watershed of 25 square miles to its mouth.

30 16. Shoreland zone. "Shoreland zone" means all
31 area within 250 feet of the normal high water line of
32 any great pond or river, or within 250 feet of a
33 freshwater or coastal wetland as defined in section
34 436.

35 17. Significant ground water aquifer. "Signifi-
36 cant ground water aquifer" means a porous formation
37 of ice-contact and glacial outwash sand and gravel or
38 fractured bedrock that contains significant recover-
39 able quantities of water which is likely to provide
40 drinking water supplies.

1. 18. Structure. A "structure" means:
- 2 A. A building or buildings on a single parcel of
3 land constructed or erected with a fixed location
4 on or in the ground or attached to something on
5 or in the ground, which occupies a ground area in
6 excess of 60,000 square feet; or
- 7 B. Parking lots, roads, paved areas, wharves or
8 areas to be stripped or graded and not to be
9 revegetated which causes a total project, includ-
10 ing any buildings, to occupy a ground area in ex-
11 cess of 3 acres.
- 12 19. Subdivision. A "subdivision" is the division
13 of a parcel of land into 5 or more lots to be offered
14 for sale or lease to the general public during any
15 5-year period, if such lots make up an aggregate land
16 area of more than 20 acres, except for the following.
- 17 A. All the lots are at least 10 acres in size.
- 18 B. All the lots are at least 5 acres, and the
19 municipality has adopted additional regulations
20 governing subdivisions pursuant to Title 30, sec-
21 tion 4956, and the lots less than 10 acres are of
22 such dimensions as to accommodate within the
23 boundaries of each a rectangle measuring 200 feet
24 and 300 feet, which abuts at one point the prin-
25 cipal access way or the lots have at least 75
26 feet of frontage on a cul-de-sac which provides
27 access.
- 28 C. All the lots are at least 5 acres, but do not
29 make up a total of more than 100 acres, and the
30 lots less than 10 acres are of such dimensions as
31 to accommodate within the boundaries of each a
32 rectangle measuring 200 feet and 300 feet, which
33 abuts at one point the principal access way or
34 the lots have at least 75 feet of frontage on a
35 cul-de-sac which provides access.
- 36 D. Unless intended to circumvent this article,
37 the following transactions shall not be consid-
38 ered lots offered for sale or lease to the gener-
39 al public:

1 (1) Sale or lease of lots to an abutting
2 owner or to a spouse, child, parent, grand-
3 parent or sibling of the developer; or

4 (2) Personal, nonprofit transactions, such
5 as the transfer of lots by gift or devise.

6 E. In those subdivisions which would otherwise
7 not require site location approval, unless in-
8 tended to circumvent this article, the following
9 transactions shall not be considered lots offered
10 for sale or lease to the general public, except
11 as hereinafter provided:

12 (1) Sale or lease of mainland lots of 1/2
13 acre or less in size which serve as parking
14 lots and points of access to the water by
15 boats for island property owners; and

16 (2) Sale or lease of common lots created
17 with a conservation easement, as defined in
18 Title 33, section 464, provided that the De-
19 partment of Environmental Protection is made
20 a party to the sale or lease.

21 These exceptions shall not apply, and the subdivi-
22 vision will require site location approval, when-
23 ever the use of a lot described in subparagraph
24 (1) or (2) changes or the lot is offered for sale
25 or lease to the general public without the limi-
26 tations set forth in subparagraph (1) or (2).

27 F. For the purposes of this subsection, a parcel
28 of land is defined as all contiguous land in the
29 same ownership, provided that lands located on
30 opposite sides of a public or private road shall
31 be considered separate parcels of land, unless
32 that road was established by the owner of the
33 land on both sides of the road subsequent to Jan-
34 uary 1, 1970.

35 G. Lots of 40 or more acres shall not be counted
36 as lots.

37 H. Five years after a subdivider establishes a
38 single-family residence for his own use on a lot
39 and actually uses the lot for that purpose during

1 that period, that lot shall not be counted as a
2 lot.

3 Exemptions in paragraphs A, B, C and G do not apply
4 for subdivisions located wholly or in part in a
5 shoreland zone.

6 §490-C. Prohibition

7 No person may construct or cause to be con-
8 structed, operate or cause to be operated or, in the
9 case of a subdivision, sell, offer for sale or cause
10 to be sold any development requiring approval under
11 this article, without first obtaining approval for
12 such construction, operation or sale from the board.

13 §490-D. Notification required; board action; admin-
14 istrative appeals

15 1. Preliminary notice. Preliminary notice con-
16 cerning the construction or operation of a develop-
17 ment which is a hazardous activity shall be given as
18 follows.

19 A. Any person intending to construct or operate
20 a development which is a hazardous activity shall
21 file a preliminary notice of intent with the de-
22 partment and the municipal officers of any munic-
23 ipality affected. The preliminary notice shall
24 contain a brief description of:

25 (1) The nature of the proposed development;
26 and

27 (2) The location of the proposed develop-
28 ment.

29 Any person intending to construct or operate any
30 other development may file this preliminary no-
31 tice.

32 B. The department shall determine whether the
33 proposed development is likely to discharge
34 pollutants to a significant ground water aquifer
35 and whether the proposed location of the develop-
36 ment is on a primary sand and gravel recharge ar-
37 ea. The department shall make this determination

1 and notify the applicant within 15 days of the
2 receipt of the preliminary notification. If both
3 of these determinations are affirmative, or if
4 requested by the municipal officers of any af-
5 fected municipality, the applicant must then pro-
6 vide, as part of the notice under subsection 2,
7 detailed information on:

8 (1) The nature and extent of the signifi-
9 cant ground water aquifer, including
10 recharge areas and flow paths;

11 (2) The quality and quantity of the signif-
12 icant ground water aquifer;

13 (3) Existing and potential uses of the
14 aquifer;

15 (4) The nature and quantity of potentially
16 hazardous materials to be handled; and

17 (5) The nature and quantity of pollutants
18 to be discharged.

19 C. An applicant who proposes a development which
20 is a hazardous activity shall not be required to
21 file the notice under subsection 2 if both deter-
22 minations in paragraph B are negative and the ap-
23 plicant is not otherwise required to proceed by
24 this subchapter.

25 2. Application. Any person intending to con-
26 struct or operate a development, before commencing
27 construction or operation, shall notify the depart-
28 ment in writing of his intent and of the nature and
29 location of the development, together with such other
30 information as the board may by regulation require.
31 The board or the commissioner shall either approve
32 the proposed development, upon such terms and condi-
33 tions as are appropriate and reasonable, or disap-
34 prove the proposed development, setting forth the
35 reasons for the disapproval or schedule a hearing in
36 the manner described in subsection 3.

37 3. Hearing request. Any person as to whose de-
38 velopment the board has issued an order without a
39 hearing may request, in writing, within 30 days after

1 notice of the board's decision, a hearing before the
2 board. This request shall set forth, in detail, the
3 findings and conclusions of the board to which that
4 person objects, the basis of the objections and the
5 nature of the relief requested. Upon receipt of the
6 request, the board shall schedule and hold a hearing
7 limited to the matters set forth in the request.
8 Hearings shall be scheduled in accordance with section
9 490-E.

10 §490-E. Hearings; orders; construction suspended

11 If the board determines to hold a hearing on a
12 notification submitted to it pursuant to section
13 490-D, it shall hold the hearing in accordance with
14 the Maine Administrative Procedure Act, Title 5,
15 chapter 375.

16 At such hearing, the board shall solicit and re-
17 ceive testimony to determine whether such development
18 will substantially affect the environment or pose a
19 threat to the public's health, safety or general wel-
20 fare. The board shall permit the applicant to pro-
21 vide evidence on the economic benefits of the propos-
22 al, as well as the impact of the proposal on energy
23 resources. The board shall not approve a project un-
24 less it has considered the cumulative impacts of de-
25 velopment on those standards set forth in section
26 490-F.

27 §490-F. Standards

28 1. Standards for development approval. The
29 board shall approve a development proposal whenever
30 it finds the following.

31 A. The developer has the financial capacity and
32 technical ability to meet state air and water
33 pollution control standards; has made adequate
34 provision for solid waste disposal, the control
35 of offensive odors, the securing and maintenance
36 of sufficient, and healthful water supplies and
37 sewerage facilities; and has complied with the
38 provisions of this article.

39 B. The developer has made adequate provision for
40 traffic movement of all types into, out of or
41 within the development area.

1 C. The developer has made adequate provision for
2 fitting the development harmoniously into the ex-
3 isting natural environment and the development
4 will not adversely affect existing uses, scenic
5 character, air quality, water quality or other
6 natural resources in the municipality or in
7 neighboring municipalities.

8 D. The proposed development will be built on
9 soil types which are suitable to the nature of
10 the undertaking.

11 E. The proposed development will not pose an un-
12 reasonable risk that a discharge to a significant
13 ground water aquifer will occur.

14 F. Where the development is located on a parcel
15 of land that abuts a great pond, river or
16 saltwater shoreline, the development will not un-
17 reasonably affect customary public access or oth-
18 er access rights to those waters.

19 G. The developer has made adequate provision of
20 utilities, roadways and open space required for
21 the development and the development will not have
22 an unreasonable adverse effect on the existing or
23 proposed utilities, roadways and open space in
24 the municipality or area served by those services
25 or open space. In assessing the impact on open
26 space, the board will use a standard which is set
27 forth in the municipality's land use ordinances,
28 where such ordinances exist.

29 2. Additional standards; multiunit housing. In
30 the case of multiunit housing developments and subdivi-
31 sions, identified in section 490-B, the proposed
32 development, in addition to meeting the requirements
33 of subsections 1 to 7, shall also meet the following
34 standards.

35 A. The activity will not cause unreasonable ero-
36 sion of soil or sediment nor inhibit the natural
37 transfer of soil from the terrestrial to the ma-
38 rine or freshwater environment.

39 B. The activity will not unreasonably harm any
40 plant, aquatic or wildlife habitat or travel cor-

1 ridor or any freshwater, estuarine or marine
2 fisheries or other aquatic life.

3 C. The activity will not unreasonably interfere
4 with the natural flow of any surface or subsur-
5 face waters.

6 D. The activity will not unreasonably lower the
7 quality of any surface or subsurface waters.

8 E. The activity will not unreasonably cause or
9 increase the flooding of the alteration area or
10 adjacent properties.

11 F. If the activity is on or adjacent to a sand
12 dune, it will not unreasonably interfere with the
13 natural supply or movement of sand within or to
14 the sand dune system.

15 3. Standards; power generating facilities. In
16 case of a permanently installed power generating fa-
17 ility of more than 1,000 kilowatts or a transmission
18 line carrying 100 kilovolts or more proposed to be
19 erected within this State by an electrical company or
20 companies, the proposed development, in addition to
21 meeting the requirements of subsection 1, paragraphs
22 A to G, shall have been approved by the Public Utili-
23 ties Commission under Title 35, section 13-A.

24 In the event that an electric company or companies
25 file a notification pursuant to section 490-D before
26 they are issued a certificate of public convenience
27 and necessity by the Public Utilities Commission,
28 they shall file a bond or, in lieu of that bond, sat-
29 isfactory evidence of financial capacity to make that
30 reimbursement with the department, payable to the de-
31 partment, in a sum satisfactory to the Commissioner
32 of Environmental Protection and in an amount deter-
33 mined by him not to exceed \$50,000. The bond or evi-
34 dence of financial capacity shall be conditioned to
35 require the applicant to reimburse the department for
36 its cost incurred in processing any application in
37 the event that the applicant does not receive a cer-
38 tificate of public convenience and necessity.

39 4. Developer; burden of proof. At hearings held
40 under this section, the burden is upon the person

1 proposing the development to affirmatively demon-
2 strate to the board that each of the criteria for ap-
3 proval listed in this section have been met and that
4 the public's health, safety and general welfare will
5 be adequately protected.

6 5. Findings of fact; order. Within 30 days af-
7 ter the board adjourns any hearing held under this
8 section, it shall make findings of fact and issue an
9 order granting or denying permission to the person
10 proposing such development to construct or operate
11 the development as proposed, or granting such permis-
12 sion upon such terms and conditions as the board con-
13 siders advisable to protect and preserve the environ-
14 ment and the public's health, safety and general wel-
15 fare, except in the case of any low-level radioactive
16 waste storage or disposal facility, in which case the
17 board shall act in accordance with section 1478.

18 6. Easement required; transmission line. In the
19 case of a transmission line carrying 100 kilovolts or
20 more or a gas pipeline, a permit under this article
21 may be obtained prior to any acquisition of lands or
22 easements for land to be acquired by purchase and
23 such permit shall be obtained prior to any acquisi-
24 tion of land by eminent domain.

25 7. Notice to landowners; transmission line or
26 gas pipeline. Any person making application for site
27 location of development approval pursuant to this ar-
28 ticle for approval for a transmission line or gas
29 pipeline, prior to filing a notification pursuant to
30 section 490-D, shall provide notice to each owner of
31 real property upon whose land the applicant proposes
32 to locate a gas pipeline or transmission line by reg-
33 istered mail, postage prepaid at the land owner's
34 last-known address contained in the applicable tax
35 assessor's records, and shall file with the town
36 clerk of each municipality through which the pipeline
37 or transmission line is proposed to be located a map
38 demonstrating the intended approximate location of
39 the pipeline or transmission line within the municip-
40 ality. The applicant shall not be required to provide
41 notice of his intent to construct a gas pipeline
42 or transmission line other than as set forth in this
43 subsection. The board shall receive evidence regard-
44 ing the location, character and impact on the envi-

1 ronment of the proposed transmission line or pipe-
2 line. In addition to finding that the requirements of
3 subsections 1 to 4 have been met, the board, in the
4 case of such transmission line or pipeline, shall
5 consider whether any proposed alternatives to the
6 proposed location and character of such transmission
7 line or pipeline may lessen its impact on the envi-
8 ronment or the risks it would engender to the public
9 health or safety, without unreasonably increasing its
10 cost. The board may approve or disapprove all or por-
11 tions of such proposed transmission line or pipeline
12 and shall make such orders regarding its location,
13 character, width and appearance as will lessen its
14 impact on the environment, having regard for any in-
15 creased costs thereby caused.

16 8. No construction pending order. Any person
17 who has notified the board, pursuant to section
18 490-D, of his intent to construct or operate a devel-
19 opment shall immediately defer or suspend construc-
20 tion or operation with respect to such development
21 until the board has issued its order.

22 9. Continuing compliance; air and water pollu-
23 tion. Any person securing approval of the board,
24 pursuant to this article, shall maintain the finan-
25 cial capacity and technical ability to meet the state
26 air and water pollution control standards until he
27 has complied with those standards.

28 §490-G. Failure to notify board; hearing; injunc-
29 tion; orders

30 The board at any time, with respect to any person
31 who has commenced construction or operation of any
32 development without having first notified the board
33 pursuant to section 490-D, may schedule and conduct a
34 public hearing with respect to such development.

35 §490-H. Applicability

36 This article does not apply to any development in
37 existence or in possession of applicable state or lo-
38 cal licenses to operate or under construction on Jan-
39 uary 1, 1970, nor to any development the construction
40 and operation of which has been specifically autho-
41 rized by the Legislature prior to May 9, 1970, nor to

1 public service corporation transmission lines, except
2 transmission lines carrying 100 kilovolts or more,
3 nor does it apply to the renewal or revision of
4 leases of parcels of land upon which a structure or
5 structures have been located as of March 15, 1972,
6 nor to the rebuilding or reconstruction of natural
7 gas pipelines or transmission lines within the same
8 right-of-way.

9 Developments which consist only of a municipal or
10 private road or way are exempt from the requirements
11 of this article as follows, except that the adminis-
12 tering agency may require a person constructing a
13 road to notify the agency of the location of the road
14 within 21 days.

15 1. Unorganized areas. Within those areas of the
16 State which are subject to the jurisdiction of the
17 Maine Land Use Regulation Commission under Title 12,
18 chapter 206-A, such roads and ways are exempt from
19 this article.

20 2. Organized areas. Within all areas of the
21 State not subject to the jurisdiction of the Maine
22 Land Use Regulation Commission, such roads and ways
23 are exempt if they are located, constructed and main-
24 tained in accordance with standards adopted by the
25 board in accordance with this section. The board
26 shall consider road construction standards adopted by
27 the Maine Land Use Regulation Commission in promul-
28 gating these standards.

29 3. Exemption. Development which consists only
30 of a subdivision or subdivisions located entirely
31 within the area of the State subject to the jurisdic-
32 tion of the Maine Land Use Regulation Commission un-
33 der Title 12, chapter 206-A, is exempt from the re-
34 quirements of this article.

35 §490-I. Municipal review of subdivisions

36 1. Municipal application for review power. A mu-
37 nicipality may apply to the Board of Environmental
38 Protection, on forms provided by the board, for au-
39 thority to substitute permits issued pursuant to Ti-
40 tle 30, section 4956, for permits required by section
41 490-C for subdivisions more than 10 acres but less

1 than 100 acres. The board shall grant such authority
2 if it finds that the municipality has:

- 3 A. Established a planning board;
4 B. Adopted a comprehensive plan and subdivision
5 ordinance that is consistent with criteria set
6 forth in section 490-F;
7 C. Developed a suitable application; and
8 D. Made provisions by ordinance or regulation
9 for prompt notice to the board upon receipt of
10 the application, written notification to the ap-
11 plicant and the board of the issuance of or deni-
12 al of a permit, stating the reason therefor, pub-
13 lic notice and satisfactory hearing procedures.

14 In the event that the board finds that a municipality
15 has failed to satisfy one or more of the criteria
16 listed in this subsection, it shall notify the munic-
17 ipality accordingly and make recommendations through
18 which it may establish compliance. The municipality
19 may then submit a modified application for approval.

20 If at any time the board determines that a municipal-
21 ity has failed to exercise its permit granting au-
22 thority in accordance with its approved procedures or
23 the purposes of this article as embodied in the stan-
24 dards set forth in section 490-F and Title 30, sec-
25 tion 4956, it shall notify the municipality of the
26 specific alleged deficiencies and shall order a pub-
27 lic hearing, of which adequate public notice shall be
28 given, to be held in the municipality, to solicit
29 public or official comment thereon. Following such
30 hearing, if it finds that such deficiencies will per-
31 sist, it shall revoke the municipality's permit
32 granting authority.

33 If a municipality has the authority granted by this
34 article revoked by the board, it may reapply to the
35 board for such authority at any time.

36 2. Time limit for municipal action on permit.
37 Within 30 days after receipt of a completed applica-
38 tion for a permit for a subdivision, the municipality
39 shall either issue the permit or deny the permit set-

1 ting forth the reasons therefor or order a hearing
2 thereon within 30 days of the order, for which hear-
3 ing adequate public notice shall be given. Within 30
4 days after the adjournment of such hearings, the mu-
5 nicipality shall either issue the permit or deny the
6 permit setting forth the reasons therefor.

7 3. Effective date of permit; board review. No
8 permit issued by a municipality shall become effec-
9 tive until 30 days subsequent to its issuance. A copy
10 of the application for the permit, the permit issued
11 by the municipality and its findings on review of the
12 application shall be sent to the board immediately
13 upon its issuance by certified mail. The board shall
14 review such permit and either approve, deny or modify
15 it as it deems necessary. Failure of the board to act
16 within 30 days of the issuance of the permit by the
17 municipality shall constitute its approval and the
18 permit shall be effective as issued.

19 4. Hearing upon denial. In the event that a per-
20 mit applied for is denied either by a municipality or
21 the Board of Environmental Protection, the applicant
22 may request a hearing before either the municipality
23 or the Bureau of Environmental Protection with rea-
24 sonable public notice given.

25 5. Exception. If a proposed subdivision is lo-
26 cated in more than one municipality, the authority
27 provided in subsection 1 shall not apply.

28 §490-J. Reclamation

29 1. Requirement. All mining activities shall in-
30 clude provisions for safety and reclamation of the
31 land area affected or otherwise comply with an ap-
32 proval issued pursuant to this article. For a metal-
33 lic ore mine, these provisions shall include a plan
34 for the maintenance of the mine site during mining
35 and for a period after termination of mining, includ-
36 ing the methods and annual estimated costs for gas
37 monitoring; leachate pumping, transportation, moni-
38 toring and treatment; ground water monitoring, col-
39 lection and analysis; such revegetation as the board
40 deems necessary; and activities necessary for preven-
41 tion of soil erosion and for protection of ground and
42 surface waters.

1 2. Bonds. The board may require a bond payable
2 to the State with sureties satisfactory to the board
3 or such other security as the board may determine
4 will adequately secure compliance with this article,
5 conditioned upon the faithful performance of the re-
6 quirements set forth in this article and of the rules
7 of the board. Other security may include a security
8 deposit with the State, an escrow account and agree-
9 ment, insurance or an irrevocable trust. In determin-
10 ing the amount of the bond or the security, the board
11 shall take into consideration the character and na-
12 ture of the overburden, the future suitable use of
13 the land involved and the cost of grading and reclama-
14 tion to be required. All proceeds of forfeited
15 bonds or other security shall be expended by the
16 board for the reclamation of the area for which the
17 bond was posted, and any remainder shall be returned
18 to the operator.

19 3. Metallic ore mines. Security shall be re-
20 quired of a person engaged in the mining of metallic
21 ores. If the board finds that the person's net worth
22 or that of any affiliated person who guarantees per-
23 formance, as shown on audited financial statements,
24 exceeds 5 times the estimated costs of reclamation,
25 it may waive this requirement. If security is not
26 required, that person or the affiliated person guar-
27 anteeing performance shall submit to the board, annu-
28 ally, copies of his audited financial statements.
29 The board shall review these statements annually and,
30 if it finds at any time that that person's or affilia-
31 ted person's financial capacity is insufficient to
32 secure adequate compliance with this article, it
33 shall require a bond or other security.

34 4. Time schedules. It is the duty of a person
35 engaged in a mining activity to commence the reclama-
36 tion of the area of land affected by the mining ac-
37 tivity as soon as possible after the beginning of the
38 mining activity of that area in accordance with plans
39 previously approved by the board. If it appears that
40 planting to provide vegetative cover of an affected
41 area may not be successful, the board may authorize
42 the deferring of the planting until the soil has be-
43 come suitable for those purposes and a yearly report
44 shall be filed with the board indicating the soil
45 conditions until a successful planting or seeding has
46 been completed.

1 5. Gifts and funds for reclamation. The board
2 may acquire, in the name of the State, land by gift
3 or purchase which has been affected by a mining ac-
4 tivity for the purpose of carrying out reclamation
5 work. Upon completion of reclamation, the land may be
6 sold at public auction, conveyed to the municipality
7 or remain property of the State. The board may accept
8 funds from private or other sources, which shall be
9 used for reclamation purposes, whether in conjunction
10 with appropriated funds of the State or otherwise.

11 6. Cooperation with others. The board shall co-
12 operate with the federal, state and local govern-
13 ments, with natural resource and conservation organi-
14 zations and with any public or private entities hav-
15 ing interests in any subject within the purview of
16 this article.

17 The board is designated the public agency of the
18 State for the purpose of cooperating with appropriate
19 departments and agencies of the Federal Government
20 concerning reclamation of lands in connection with
21 development and mining of minerals in the State, and
22 for the purpose of cooperating and consulting with
23 federal agencies in carrying out this chapter. For
24 these purposes, the board may accept federal funds
25 which may be made available pursuant to federal law,
26 and may accept such technical and financial assist-
27 ance from the Federal Government as the board deems
28 advisable and proper for purposes of this article.

29 The board is further designated the public agency of
30 the State for the purposes of meeting requirements of
31 the Federal Government with respect to the adminis-
32 tration of these federal funds, not inconsistent with
33 this article.

34 7. Fees. All fees collected by and other funds
35 received by the board pursuant to this section shall
36 be placed in a reclamation fund to carry out the pur-
37 poses of this article. This fund shall not lapse.

38 8. Definition. For the purpose of this section,
39 "reclamation," when applied to a metallic ore mine,
40 shall include continued maintenance of land affected
41 by mining for a period after termination of mining
42 activity.

1 9. Rules. The board may adopt or amend rules to
2 carry out this section, including rules relating to
3 operational or maintenance plans; standards for de-
4 termining the reclamation period; annual revisions of
5 those plans; limits, terms and conditions on bonds or
6 other security; proof of financial responsibility of
7 a person engaged in mining activity or the affiliated
8 person who guarantees performance; estimation of rec-
9 lamation costs; reports on reclamation activities; or
10 the manner of determining when the bond or other se-
11 curity may be discharged.

12 10. Enforcement. If, after an opportunity for a
13 hearing, the board determines that the owner of a
14 mine site or the person who was engaged in mining at
15 the mine site has violated this section, the board
16 shall direct the department to enter on the property
17 and carry out the necessary reclamation. The person
18 engaged in mining or any affiliated person who guar-
19 antees performance at the mine site shall be liable
20 for the reasonable expenses of this necessary recla-
21 mation. The department may use the bond or other se-
22 curity to meet the reasonable expenses of reclama-
23 tion.

24 STATEMENT OF FACT

25 This bill revises the Site Location of Develop-
26 ment law primarily to achieve the following purposes:

27 1. To address the issue of cumulative impacts
28 and provide a definition in the law, a change that
29 has been recommended by numerous studies of the law
30 and the cumulative impact problem since the
31 mid-1970's;

32 2. To strengthen project review in shoreland ar-
33 eas; and

34 3. To improve the language for clarity or to re-
35 flect current understanding and practice.

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