

MAINE STATE LEGISLATURE

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L.D. 2202

(Filing No. S-477)

STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 846, L.D. 2202,
Bill, "AN ACT to Strengthen the Site Location of
Development Law."

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

'Sec. 1. 38 MRSA §481, first ¶, as amended by
PL 1983, c. 513, §1, is further amended to read:

The Legislature finds that the economic and social
well-being of the citizens of the State of Maine
~~depend~~ depends upon the location of state, municipal,
quasi-municipal, educational, charitable, 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 on the development sites and 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 the environment and quality of
life in Maine.

Sec. 2. 38 MRSA §482, sub-§2, as repealed and

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1 replaced by PL 1987, c. 130, is repealed and the
2 following enacted in its place:

3 2. Development which may substantially affect the
4 environment. "Development which may substantially
5 affect the environment," in this article called
6 "development," means any state, municipal,
7 quasi-municipal, educational, charitable, residential,
8 commercial or industrial development which:

9 A. Occupies a land or water area in excess of 20
10 acres;

11 B. Contemplates drilling for or excavating
12 natural resources on land or under water where the
13 area affected is in excess of 60,000 square feet;

14 C. Is a mining activity as defined in this
15 section;

16 D. Is a hazardous activity as defined in this
17 section;

18 E. Is a structure as defined in this section;

19 F. Is a conversion of an existing structure that
20 meets the definition of structure in this section;

21 G. Is a subdivision as defined in this section; or

22 H. Is a multi-unit housing development as defined
23 in this section located wholly or in part within
24 the shoreland zone.

25 This term does not include state highways, state aid
26 highways and borrow pits for sand, fill or gravel of
27 less than 5 acres or when regulated by the Department
28 of Transportation, and such borrow pits entirely
29 within the jurisdiction of the Maine Land Use
30 Regulation Commission under Title 12, chapter 206-A,
31 and those activities regulated by the Department of
32 Marine Resources under Title 12, section 6072.

33 Sec. 3. 38 MRSA §482, sub-§§2-D, 2-E and 2-F
34 are enacted to read:

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1 2-D. Multi-unit housing. "Multi-unit housing"
2 means any building or buildings built for the purposes
3 of providing 10 or more housing units located on a
4 single parcel of land.

5 2-E. Coastal wetlands. "Coastal wetlands" means
6 all tidal and subtidal lands; all lands below any
7 identifiable debris line left by tidal action; all
8 lands with vegetation present that is tolerant of salt
9 water and occurs primarily in a salt water or
10 estuarine habitat; and any swamp, marsh, bog, beach,
11 flat or other contiguous lowland which is subject to
12 tidal action or normal storm flowage at any time
13 except during periods of maximum storm activity.
14 Coastal wetlands may include portions of coastal sand
15 dunes.

16 2-F. Freshwater wetlands. "Freshwater wetlands"
17 means freshwater swamps, marshes, bogs and similar
18 areas which are:

19 A. Of 10 or more contiguous acres;

20 B. Characterized predominately by wetland
21 vegetation; and

22 C. Not considered part of a great pond, coastal
23 wetland, river, stream or brook.

24 These areas may contain small inclusions of land that
25 do not conform to the criteria of this subsection.

26 Sec. 4. 38 MRSA §482, sub-§3-B is enacted to
27 read:

28 3-B. Normal high-water line. "Normal high-water
29 line" means that line which is apparent from visible
30 markings, changes in the character of soils due to
31 prolonged action of the water or changes in
32 vegetation, and which distinguishes between
33 predominantly aquatic and predominantly terrestrial
34 land.

35 Sec. 5. 38 MRSA §482, sub-§4-D, as enacted by
36 PL 1981, c. 449, §§6 and 9, is amended to read:

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1 4-D. Significant ground water aquifer.
2 "Significant ground water aquifer" means a porous
3 formation of ice-contact and glacial outwash sand and
4 gravel or fractured bedrock that contains significant
5 recoverable quantities of water which is likely to
6 provide drinking water supplies.

7 Sec. 6. 38 MRSA §482, sub-§§4-E and 4-F are
8 enacted to read:

9 4-E. River. "River" means a free-flowing body of
10 water from that point at which it provides drainage
11 for a watershed of 25 square miles to its mouth.

12 4-F. Shoreland zone. "Shoreland zone" means all
13 area within 250 feet of the normal high-water line of
14 any great pond, river or salt water body, or within
15 250 feet of the upland edge of a freshwater or coastal
16 wetland.

17 Sec. 7. 38 MRSA §482, sub-§5, as amended by PL
18 1985, c. 654, is repealed and the following enacted in
19 its place:

20 5. Subdivision. A "subdivision" is the division
21 of a parcel of land of 20 or more acres into 5 or more
22 lots to be offered for sale or lease to the general
23 public during any 5-year period except for the
24 following:

25 A. All the lots are at least 10 acres in size and
26 the aggregate land area of all the lots make up a
27 total of 100 acres or less, unless the subdivision
28 is located wholly or in part in the shoreland
29 zone, in which case the exemption does not apply;

30 B. When:

31 (1) All lots are at least 5 acres in size;

32 (2) All lots less than 10 acres in size are
33 of such dimensions as to accommodate within
34 the boundaries of each a rectangle measuring
35 200 feet and 300 feet which abuts at one
36 point the principal access way or the lots
37 have at least 75 feet of frontage of a

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- 1 cul-de-sac which provides access;
- 2 (3) The aggregate land area of all the lots
3 makes up a total of 100 acres or less;
- 4 (4) The subdivision is not located wholly or
5 in part in the shoreland zone; and
- 6 (5) The municipality in which the
7 subdivision is located has adopted a
8 subdivision ordinance, or its municipal
9 reviewing authority has adopted subdivision
10 regulations, pursuant to Title 30, section
11 4956;
- 12 C. Lots of 40 or more acres shall not be counted
13 as lots;
- 14 D. Five years after a subdivider establishes a
15 single-family residence for that subdivider's own
16 use on a lot and actually uses the lot for that
17 purpose during that period, that lot shall not be
18 counted as a lot;
- 19 E. Unless intended to circumvent this article,
20 the following transactions shall not be considered
21 lots offered for sale or lease to the general
22 public:
- 23 (1) Sale or lease of abutting lots to an
24 owner or to a spouse, child, parent,
25 grandparent or sibling of the developer; or
- 26 (2) Personal, nonprofit transactions, such
27 as the transfer of lots by gift or devise; and
- 28 F. In those subdivisions which would otherwise
29 not require site location approval, unless
30 intended to circumvent this article, the following
31 transactions shall not, except as provided, be
32 considered lots offered for sale or lease to the
33 general public:
- 34 (1) Sale or lease of common lots created
35 with a conservation easement as defined in
36 Title 33, section 476, provided that the

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1 Department of Environmental Protection is
2 made a party.

3 The exception described in paragraph F does not apply,
4 and the subdivision requires site location approval
5 whenever the use of a lot described in paragraph F
6 changes or the lot is offered for sale or lease to the
7 general public without the limitations set forth in
8 paragraph F. For the purposes of this subsection
9 only, a parcel of land is defined as all contiguous
10 land in the same ownership provided that lands located
11 on opposite sides of a public or private road shall be
12 considered each a separate parcel of land unless that
13 road was established by the owner of land on both
14 sides of the road subsequent to January 1, 1970.

15 Sec. 8. 38 MRSA §482, sub-§6, ¶A, as enacted by
16 PL 1975, c. 214, is amended to read:

17 A. A building or buildings on a single parcel
18 constructed or erected with a fixed location on or
19 in the ground or attached to something on or in
20 the ground which occupies a ground area in excess
21 of 60,000 square feet or contains a total floor
22 area of 100,000 square feet or more; or

23 Sec. 9. 38 MRSA §483-A is enacted to read:

24 §483-A. Prohibition

25 No person may construct or cause to be constructed
26 or operate or cause to be operated or, in the case of
27 a subdivision, sell or lease, offer for sale or lease
28 or cause to be sold or leased, any development
29 requiring approval under this article without first
30 having obtained approval for such construction,
31 operation, lease or sale from the Board of
32 Environmental Protection.

33 Sec. 10. 38 MRSA §484, as amended by PL 1987,
34 c. 141, Pt. B, §36, is repealed and the following
35 enacted in its place:

36 §484. Standards for development

37 The board shall approve a development proposal

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1 whenever it finds that:

2 1. Financial capacity. The developer has the
3 financial capacity and technical ability to develop
4 the project in a manner consistent with state
5 environmental standards and with the provisions of
6 this article.

7 2. Traffic movement. The developer has made
8 adequate provision for traffic movement of all types
9 into, out of or within the development area. The
10 board shall consider traffic movement both on-site and
11 off-site. Before issuing a permit, the board shall
12 find that any traffic increase attributable to the
13 proposed development will not result in unreasonable
14 congestion or unsafe conditions on a road in the
15 vicinity of the proposed development.

16 3. No adverse effect on the natural environment.
17 The developer has made adequate provision for fitting
18 the development harmoniously into the existing natural
19 environment and that the development will not
20 adversely affect existing uses, scenic character, air
21 quality, water quality or other natural resources in
22 the municipality or in neighboring municipalities.

23 4. Soil types and erosion. The proposed
24 development will be built on soil types which are
25 suitable to the nature of the undertaking and will not
26 cause unreasonable erosion of soil or sediment nor
27 inhibit the natural transfer of soil.

28 5. Ground water. The proposed development will
29 not pose an unreasonable risk that a discharge to a
30 significant ground water aquifer will occur.

31 6. Infrastructure. The developer has made
32 adequate provision of utilities, including water
33 supplies, sewerage facilities and solid waste
34 disposal, roadways and open space required for the
35 development and the development will not have an
36 unreasonable adverse effect on the existing or
37 proposed utilities, roadways and open space in the
38 municipality or area served by those services or open
39 space. In assessing the impact on open space, the
40 board shall use as a standard that which is set forth

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1 in the municipality's comprehensive land use plan,
2 when such a plan exists.

3 7. Flooding. The activity will not unreasonably
4 cause or increase the flooding of the alteration area
5 or adjacent properties nor create an unreasonable
6 flood hazard to any structure.

7 8. Sand supply. If the activity is on or
8 adjacent to a sand dune, it will not unreasonably
9 interfere with the natural supply or movement of sand
10 within or to the sand dune system.

11 Sec. 11. 38 MRSA §485-A is enacted to read:

12 §485-A. Notification required; board action;
13 administrative appeals

14 1. Application. Any person intending to
15 construct or operate a development shall, before
16 commencing construction or operation, notify the
17 department in writing of the intent, nature and
18 location of the development, together with such other
19 information as the board may by rule require. The
20 board or the commissioner shall either approve the
21 proposed development, setting forth such terms and
22 conditions as are appropriate and reasonable, or
23 disapprove the proposed development, setting forth the
24 reasons for the disapproval or scheduling a hearing in
25 the manner described in subsection 2.

26 2. Hearing request. If the board has issued an
27 order without a hearing regarding any person's
28 development, that person may request, in writing, a
29 hearing before the board within 30 days after notice
30 of the board's decision. This request shall set
31 forth, in detail, the findings and conclusions of the
32 board to which that person objects, the basis of the
33 objections and the nature of the relief requested.
34 Upon receipt of the request, the board shall schedule
35 and hold a hearing limited to the matters set forth in
36 the request. Hearings shall be scheduled in
37 accordance with section 486-A.

38 3. Failure to notify board. The board may, at
39 any time with respect to any person who has commenced

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1 construction or operation of any development without
2 having first notified the board pursuant to this
3 section, schedule and conduct a public hearing with
4 respect to that development.

5 Sec. 12. 38 MRSa §486-A is enacted to read:

6 §486-A. Hearings; orders; construction suspended

7 1. Hearings. If the board determines to hold a
8 hearing on a notification submitted to it pursuant to
9 section 485-A, it shall hold the hearing in accordance
10 with the Maine Administrative Procedure Act, Title 5,
11 chapter 375.

12 At that hearing, the board shall solicit and receive
13 testimony to determine whether that development will
14 in fact substantially affect the environment or pose a
15 threat to the public's health, safety or general
16 welfare. The board shall permit the applicant to
17 provide evidence on the economic benefits of the
18 proposal as well as the impact of the proposal on
19 energy resources.

20 2. Developer; burden of proof. At the hearings
21 held under this section, the burden is upon the person
22 proposing the development to demonstrate affirmatively
23 to the board that each of the criteria for approval
24 listed in this article has been met, and that the
25 public's health, safety and general welfare will be
26 adequately protected.

27 3. Findings of fact; order. Within 30 days after
28 the board adjourns any hearing held under this
29 section, it shall make findings of fact and issue an
30 order granting or denying permission to the person
31 proposing the development to construct or operate the
32 development, as proposed, or granting that permission
33 upon such terms and conditions as the board deems
34 advisable to protect and preserve the environment and
35 the public's health, safety and general welfare,
36 except in the case of any low-level radioactive waste
37 storage or disposal facility, in which case the board
38 shall act in accordance with section 1478.

39 4. No construction pending order. Any person who

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1 has notified the board, pursuant to section 485-A, of
2 intent to construct or operate a development shall
3 immediately defer or suspend construction or operation
4 of that development until the board has issued its
5 order.

6 5. Continuing compliance; air and water
7 pollution. Any person securing approval of the board,
8 pursuant to this article, shall maintain the financial
9 capacity and technical ability to meet the state air
10 and water pollution control standards until that
11 person has complied with those standards.

12 6. Transcripts. A complete verbatim transcript
13 shall be made of all hearings held pursuant to this
14 section.

15 **Sec. 13. 38 MRSA §487-A is enacted to read:**

16 §487-A. Hazardous activities; transmission lines

17 1. Preliminary notice required for hazardous
18 activities. Preliminary notice concerning the
19 construction or operation of a development which is a
20 hazardous activity shall be given as follows.

21 A. Any person intending to construct or operate a
22 development which is a hazardous activity shall
23 file a preliminary notice of intent with the
24 department and the municipal officers of any
25 municipality affected. The preliminary notice
26 shall contain a brief description of:

27 (1) The nature of the proposed development;
28 and

29 (2) The location of the proposed development.

30 Any person intending to construct or operate any
31 other development may file this preliminary notice.

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
36 development is on a primary sand and gravel

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1 recharge area. The department shall make this
2 determination and notify the applicant within 15
3 days of the receipt of the preliminary
4 notification. If both of these determinations are
5 affirmative, or if requested by the municipal
6 officers of any affected municipality, the
7 applicant must then provide, as part of the notice
8 under section 485-A, detailed information on:

9 (1) The nature and extent of the significant
10 ground water aquifer, including recharge
11 areas and flow paths;

12 (2) The quality and quantity of the
13 significant ground water aquifer;

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

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

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

20 C. An applicant who proposes a development which
21 is a hazardous activity shall not be required to
22 file the notice under section 485-A if both
23 determinations in paragraph B are negative and the
24 applicant is not otherwise required to proceed by
25 this subchapter.

26 2. Power generating facilities. In case of a
27 permanently installed power generating facility of
28 more than 1,000 kilowatts or a transmission line
29 carrying 100 kilovolts, or more, proposed to be
30 erected within this State by an electric utility or
31 utilities, the proposed development, in addition to
32 meeting the requirements of section 484, subsections 1
33 to 9, shall also have been approved by the Public
34 Utilities Commission under Title 35-A, section 3132.

35 In the event that an electric utility or utilities
36 file a notification pursuant to section 485-A before
37 they are issued a certificate of public convenience
38 and necessity by the Public Utilities Commission, they

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1 shall file a bond or, in lieu of that bond,
2 satisfactory evidence of financial capacity to make
3 that reimbursement with the department, payable to the
4 department, in a sum satisfactory to the Commissioner
5 of Environmental Protection and in an amount not to
6 exceed \$50,000. This bond or evidence of financial
7 capacity shall be conditioned to require the applicant
8 to reimburse the department for its cost incurred in
9 processing any application in the event that the
10 applicant does not receive a certificate of public
11 convenience and necessity.

12 3. Easement required; transmission line or gas
13 pipeline. In the case of a gas pipeline or a
14 transmission line carrying 100 kilovolts or more, a
15 permit under this chapter may be obtained prior to any
16 acquisition of lands or easements to be acquired by
17 purchase. The permit shall be obtained prior to any
18 acquisition of land by eminent domain.

19 4. Notice to landowners; transmission line or gas
20 pipeline. Any person making application for site
21 location of development approval pursuant to sections
22 481 to 483, for approval for a transmission line or
23 gas pipeline shall, prior to filing a notification
24 pursuant to this article, provide notice to each owner
25 of real property upon whose land the applicant
26 proposes to locate a gas pipeline or transmission
27 line. Notice shall be sent by registered mail, postage
28 prepaid, to the landowner's last known address
29 contained in the applicable tax assessor's records.
30 The applicant shall file a map with the town clerk of
31 each municipality through which the pipeline or
32 transmission line is proposed to be located,
33 indicating the intended approximate location of the
34 pipeline or transmission line within the
35 municipality. The applicant is not required to
36 provide notice of intent to construct a gas pipeline
37 or transmission line other than as set forth in this
38 subsection. The board shall receive evidence
39 regarding the location, character and impact on the
40 environment of the proposed transmission line or
41 pipeline. In addition to finding that the
42 requirements of section 484, subsections 1 to 9 have
43 been met, the board, in the case of the transmission
44 line or pipeline, shall consider whether any proposed

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1 alternatives to the proposed location and character of
2 the transmission line or pipeline may lessen its
3 impact on the environment or the risks it would
4 engender to the public health or safety, without
5 unreasonably increasing its cost. The board may
6 approve or disapprove all or portions of the proposed
7 transmission line or pipeline and shall make such
8 orders regarding its location, character, width and
9 appearance as will lessen its impact on the
10 environment, having regard for any increased costs to
11 the applicant.

12 Sec. 14. 38 MRSA §488, sub-§4 is enacted to
13 read:

14 4. Exemption. Development which consists only of
15 a subdivision or subdivisions located entirely within
16 the area of the State subject to the jurisdiction of
17 the Maine Land Use Regulation Commission under Title
18 12, chapter 206-A, is exempt from the requirements of
19 this article. New construction which is not a
20 development which may substantially affect the
21 environment at an existing manufacturing facility is
22 exempt from review under this article provided that
23 the additional disturbed area not to be revegetated
24 does not exceed 30,000 square feet in any calendar
25 year. When review under this article is required for
26 development at an existing manufacturing facility, the
27 applicant shall provide plans for the new development,
28 as well as for those activities which have been
29 undertaken pursuant to this subsection.

30 Sec. 15. 38 MRSA §489, sub-§1, ¶A-1 is enacted
31 to read:

32 A-1. Adopted a comprehensive plan and related
33 land use ordinances, consistent with Title 30,
34 chapter 239, subchapter VI, and subdivision
35 ordinance, consistent with Title 30, chapter 239,
36 subchapter V, all of which are consistent with
37 criteria set forth in section 484;

38 Sec. 16. 38 MRSA §489, sub-§3, as enacted by PL
39 1975, c. 447, is amended to read:

40 3. Effective date of permit. No permit issued by

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1 a municipality ~~shall~~ may become effective until 30
2 days subsequent to its issuance receipt by the
3 board. A copy of the application for the permit, the
4 permit issued by the municipality and its findings on
5 review of the application shall be sent to the board
6 immediately upon its issuance by certified mail. The
7 board shall review such permit and either approve,
8 deny or modify it as it deems necessary. ~~Failure~~
9 ~~of~~ If the board ~~to~~ does not act within 30 days of
10 the issuance receipt of the permit by from the
11 municipality this shall constitute its approval and
12 the permit shall be effective as issued.

13 Sec. 17. 38 MRSA §489, sub-§6 is enacted to
14 read:

15 6. Joint enforcement. Any person who violates
16 any permit issued under this section is subject to the
17 provisions of section 349 in addition to any penalties
18 which the municipality may impose. The provisions of
19 this section may be enforced by the department and the
20 municipality which issued the permit.

21 Sec. 18. Application. Applications pending on
22 the effective date of this Act which were determined
23 by the department to be complete on or before March
24 31, 1988, shall be governed by the law in effect on
25 March 31, 1988. Notwithstanding Title 1, section 302,
26 this Act applies to any application pending on the
27 effective date of this Act which was not determined by
28 the department to be complete by March 31, 1988, and
29 to any application filed after the effective date of
30 this Act.'

31 STATEMENT OF FACT

32 The purpose of this amendment is to correct a
33 series of minor and technical errors in the printed
34 bill and to clarify the intent of the printed bill.

35 The amendment also retains certain exemptions from
36 site location review which were deleted in the
37 original bill.

38 The amendment makes changes to the definition of

1. of 2.

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1 some terms to ensure consistency with concurrent
2 changes in other environmental laws during this
3 session.

4 It is the intent of the Legislature that site
5 location review of the conversion of an existing
6 structure is unnecessary when the conversion is
7 limited to the form of ownership of the existing
8 structure and does not affect its basic use.

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Reported by Senator Usher for the Committee on Energy
and Natural Resources. Reproduced and Distributed Pursuant
to Senate Rule 12.
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