

MAINE STATE LEGISLATURE

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R. of S

1

L.D. 2265

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(Filing No. S-480)

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STATE OF MAINE

4

SENATE

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113TH LEGISLATURE

6

SECOND REGULAR SESSION

7

COMMITTEE AMENDMENT " A " to S.P. 870, L.D. 2265,

8

Bill, "AN ACT to Establish a Resource Protection Law."

9

Amend the bill by striking out everything after

10

the title and inserting in its place the following:

11

'Be it enacted by the People of the State of Maine as

12

follows:

13

Sec. 1. 12 MRSA §682, sub-§2, as amended by PL

14

1987, c. 514, §1, is repealed and the following

15

enacted in its place:

16

2. Subdivision. A subdivision is a division of an

17

existing parcel of land into 3 or more parcels or lots

18

within any 5-year period, whether this division is

19

accomplished by platting of the land for immediate or

20

future sale, or by sale of the land by metes and

21

bounds or by leasing.

22

The creation of a lot or parcel more than 500 acres in

23

size shall not be counted as a lot for the purpose of

24

this subsection.

25

The creation of a lot or parcel of at least 40 but not

26

more than 500 acres in size shall not be counted as a

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lot for the purpose of this subsection except when the

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lot or the parcel from which it was divided is located

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wholly or partly within the shoreland area as defined

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1 in Title 38, section 435 and except as provided in
2 paragraph A.

3 A. When 3 or more lots containing at least 40 but
4 not more than 500 acres are created within a
5 5-year period from a parcel which is located
6 wholly outside the shoreland area as defined in
7 Title 38, section 435, a plan showing the division
8 of the original parcel must be filed by the person
9 creating the 3rd lot with the registry of deeds,
10 the commission and the State Tax Assessor within
11 60 days of the creation of that lot. Any
12 subsequent division of a lot created from the
13 original parcel within 10 years of the filing of
14 the plan in the registry of deeds shall be
15 considered a subdivision. Failure to file the
16 plan required by this paragraph is a violation of
17 this chapter subject to the penalties provided in
18 section 685-C, subsection 8.

19 Sec. 2. 30 MRSA §4956, sub-§1, as amended by PL
20 1987, c. 514, §2, is further amended to read:

21 1. Defined. A subdivision is the division of a
22 tract or parcel of land into 3 or more lots within any
23 5-year period, which period begins after September 22,
24 1971, whether accomplished by sale, lease,
25 development, buildings or otherwise, provided that a
26 division accomplished by devise, condemnation, order
27 of court, gift to a person related to the donor by
28 blood, marriage or adoption or a gift to a
29 municipality, unless the intent of such that gift
30 is to avoid the objectives of this section, or by
31 transfer of any interest in land to the owner of land
32 abutting thereon, shall not be considered to create a
33 lot or lots for the purposes of this section.

34 In determining whether a tract or parcel of land is
35 divided into 3 or more lots, the first dividing of
36 such tract or parcel, unless otherwise exempted
37 herein, shall be considered to create the first 2 lots
38 and the next dividing of either of said the first 2
39 lots, by whomever accomplished, unless otherwise
40 exempted herein, shall be considered to create a 3rd
41 lot, unless both such those dividings are
42 accomplished by a subdivider who shall have retained

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1 one of such the lots for his own use as a single
2 family residence or for open space land as defined in
3 Title 36, section 1102 for a period of at least 5
4 years prior to such that 2nd dividing. Lots of
5 40 or more acres shall not be counted as lots, except
6 where such lots are located wholly or partly within
7 any shoreland zone, in which case municipal review may
8 be required by the municipality, provided that the
9 average lot depth to shore frontage ratio is greater
10 than 5 to one. Where 3 or more lots of 40 or more
11 acres are developed, a plan must be filed with the
12 registry of deeds and the municipal authority
13 responsible-for-reviewing-subdivisions.

14 A lot of at least 40 acres shall not be counted as a
15 lot, except:

16 A. Where the lot or parcel from which it was
17 divided is located wholly or partly within any
18 shoreland area as defined in Title 38, section
19 435; or

20 B. When a municipality has, by ordinance, or the
21 municipal reviewing authority has, by regulation,
22 elected to count lots of 40 acres or more in size
23 as lots for the purposes of this subsection where
24 the parcel of land being divided is located wholly
25 outside any shoreland area as defined in Title 38,
26 section 435.

27 For the purposes of this section, a tract or parcel of
28 land is defined as all contiguous land in the same
29 ownership, provided that lands located on opposite
30 sides of a public or private road shall be considered
31 each a separate tract or parcel of land unless such
32 road was established by the owner of land on both
33 sides thereof.

34 A "densely developed area" is defined as any
35 commercial, industrial or compact residential area of
36 10 or more acres with an existing density of at least
37 one principal structure per 2 acres. A principal
38 structure is defined as any building other than one
39 which is used for purposes wholly incidental or
40 accessory to the use of another building on the same
41 premises.

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1 **Sec. 3. 30 MRSA §4956, sub-§2, ¶B,** as repealed
2 and replaced by PL 1973, c. 465, §1, is amended to
3 read:

4 B. The municipal reviewing authority may, after a
5 public hearing, adopt, amend or repeal additional
6 reasonable regulations governing subdivisions
7 which shall control until amended, repealed or
8 replaced by regulations adopted by the municipal
9 legislative body. The municipal reviewing
10 authority shall give at least 7 days' notice of
11 such hearing.

12 (1) The regulations may provide for a
13 multi-stage application or review procedure
14 consisting of no more than 3 stages:
15 Preapplication sketch plan; preliminary plan;
16 and final plan. Each stage shall meet the
17 time requirements of paragraph D.

18 **Sec. 4. 30 MRSA §4956, sub-§2, ¶C-1,** as enacted
19 by PL 1975, c. 468, §2, is amended to read:

20 C-1. Upon receiving an application, the municipal
21 reviewing authority shall issue to the applicant a
22 dated receipt. Upon receiving an application, the
23 municipal reviewing authority shall notify by mail
24 all abutting property owners of the proposed
25 subdivision, specifying the location of the
26 proposed subdivision and a general description of
27 the project. Within 30 days from receipt of an
28 application, the municipal reviewing authority
29 shall notify the applicant in writing either that
30 the application is a complete application or, if
31 the application is incomplete, the specific
32 additional material needed to make a complete
33 application. After the municipal reviewing
34 authority has determined that a complete
35 application has been filed, it shall notify the
36 applicant and begin its full evaluation of the
37 proposed subdivision.

38 **Sec. 5. 30 MRSA §4956, sub-§3, ¶J,** as amended
39 by PL 1985, c. 794, Pt. A, §2, is further amended to
40 read:

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1 J. Is in conformance with a duly adopted
2 subdivision regulation or ordinance, comprehensive
3 plan, development plan, or land use plan, if any.
4 In making this determination, the municipal
5 reviewing authority is authorized to interpret
6 these ordinances and plans;

7 Sec. 6. 37-B MRSA §742, sub-§1, ¶C, as enacted
8 by PL 1983, c. 594, §33, is amended to read:

9 C. After the filing of the emergency proclamation
10 and in addition to any other powers conferred by
11 law, the Governor may:

12 (1) Suspend the enforcement of any statute
13 prescribing the procedures for conduct of
14 state business, or the orders or rules of any
15 state agency, if strict compliance with the
16 provisions of the statute, order or rule
17 would in any way prevent, hinder or delay
18 necessary action in coping with the emergency;

19 (2) Utilize all available resources of the
20 State Government and of each political
21 subdivision of the State as reasonably
22 necessary to cope with the disaster emergency;

23 (3) Transfer the direction, personnel or
24 functions of state departments and agencies,
25 or units thereof, for the purposes of
26 performing or facilitating emergency services;

27 (4) Authorize the obtaining and acquisition
28 of property, supplies and materials pursuant
29 to section 821;

30 (5) Enlist the aid of any person to assist
31 in the effort to control, put out or end the
32 emergency or aid in the caring for the safety
33 of persons;

34 (6) Direct and compel the evacuation of all
35 or part of the population from any stricken
36 or threatened area within the State, if he
37 deems this action necessary for the

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- 1 preservation of life or other disaster
2 mitigation, response or recovery;
- 3 (7) Prescribe routes, modes of
4 transportation and destinations in connection
5 with evacuations;
- 6 (8) Control ingress and egress to and from a
7 disaster area, the movement of persons within
8 the area and the occupancy of premises
9 therein;
- 10 (9) Suspend or limit the sale, dispensing or
11 transportation of alcoholic beverages,
12 firearms, explosives and combustibles; and
- 13 (10) Make provision for the availability and
14 use of temporary emergency housing; i
- 15 (11) Order the termination, temporary or
16 permanent, of any process, operation, machine
17 or device which may be causing or is
18 understood to be the cause of the state of
19 emergency for which this proclamation was
20 made; and
- 21 (12) Take whatever action is necessary to
22 abate, clean up or mitigate whatever danger
23 may exist within the affected area.

24 **Sec. 7. 38 MRSA §347, sub-§2, as enacted by PL**
25 **1977, c. 300, §9, is amended to read:**

26 2. Emergency procedures. Whenever it appears to
27 the board commissioner, after investigation, that
28 there is a violation of any provision of the laws or
29 regulations which it the department administers or
30 of the terms or conditions of any of its the
31 department's orders, which is creating or is likely to
32 create a substantial and immediate danger to public
33 health or safety, it the commissioner may order the
34 person or persons causing or contributing to such a
35 hazard to immediately take such actions as are
36 necessary to reduce or alleviate the danger. Service
37 of a copy of the board's commissioner's findings
38 and order issued under this emergency procedure shall

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1 be made by the sheriff or a deputy sheriff within the
2 county where the person, to whom the order is
3 directed, operates or resides. In the event such
4 persons are so numerous that the specified method of
5 service is a practical impossibility or the board
6 commissioner is unable to identify the person or
7 persons causing or contributing to such a hazard,
8 the board commissioner shall make its the order
9 known through prominent publication or announcement in
10 news media serving the affected area.

11 The person to whom such the order is directed shall
12 comply therewith immediately. Such The order may
13 not be appealed to the Superior Court in the manner
14 provided in section 346, but such the person may
15 apply to the board for a hearing on such the order,
16 which hearing shall be held by the board within 48
17 hours after receipt of application therefor. Within 7
18 days after such the hearing, the board shall make
19 findings of fact and continue, revoke or modify the
20 order. The decision of the board may be appealed to
21 the Superior Court in the manner provided by section
22 346.

23 **Sec. 8. 38 MRSA §347, sub-§6, as enacted by PL**
24 **1983, c. 300, §9, is amended to read:**

25 6. Enforcement orders. All orders of the board
26 and the commissioner shall be enforced by the Attorney
27 General. If any order of the board or the commissioner
28 is not complied with within the time period specified,
29 the board or the commissioner, respectively, shall
30 immediately notify the Attorney General of this fact.

31 **Sec. 9. 38 MRSA §482, sub-§5, ¶G, as enacted by**
32 **PL 1985, c. 654, is amended to read:**

33 G. Lots of 40 or more acres but not more than 500
34 acres shall not be counted as lots, or except
35 where:

36 (1) The proposed subdivision is located
37 wholly or partly within the shoreland area as
38 defined in Title 38, section 435;

39 **Sec. 10. 38 MRSA §482, sub-§5, ¶G-1 is enacted**

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1 to read:

2 G-1. Lots of more than 500 acres in size shall
 3 not be counted as lots; or

4 **Sec. 11. Transition.** This Act applies to any
 5 division of land occurring after April 13, 1988. Not-
 6 withstanding Title 1, section 302, this Act applies to
 7 any application for subdivision approval submitted
 8 after April 13, 1988.

9 FISCAL NOTE

10 It is anticipated that any costs related to this
 11 legislation will be absorbed by the Department of
 12 Environmental Protection and the Maine Land Use
 13 Regulation Commission utilizing existing resources.'

14 STATEMENT OF FACT

15 This amendment strengthens the powers of the
 16 Commissioner of Environmental Protection to deal with
 17 emergency situations that threaten public health,
 18 safety and environment.

19 The amendment provides that, for purposes of
 20 review under the Site Location of Development Law and
 21 the Maine Land Use Regulation Commission (LURC), a
 22 parcel of land larger than 500 acres will not be
 23 counted as a lot for purposes of determining when a
 24 division of land results in a reviewable subdivision.

25 The amendment provides that, for purposes of
 26 review by LURC and under the Site Location of
 27 Development Law, a lot from 40 to 500 acres outside of
 28 the shoreland area will not be counted as a lot;
 29 however, in LURC's jurisdiction, if 3 or more lots of
 30 that size are created in a 5-year period, any
 31 subsequent division of any of those parcels during the
 32 next 10 years shall be considered a reviewable
 33 subdivision.

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1 Municipalities are given authority to choose to
2 count lots of 40 or more acres outside the shoreland
3 area under their subdivision ordinances.

4 The amendment also adds minor procedural changes
5 to improve the municipal subdivision review process.

6 This amendment applies to divisions of land or
7 applications for subdivision approval filed after
8 April 13, 1988, the date of the Joint Standing
9 Committee on Energy and Natural Resources decision on
10 this amendment.

11

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Reported by the Majority for the Committee on Energy
and Natural Resources. Reproduced and Distributed
Pursuant to Senate Rule 12.
(4/18/88) (Filing No. S-480)