

MAINE STATE LEGISLATURE

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(Emergency)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2265

S.P. 870 In Senate, February 12, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural Resources
suggested and ordered printed.
JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator PEARSON of Penobscot.
Cosponsored by Representative OLIVER of Portland,
Representative DEXTER of Kingfield, Representative LORD of
Waterboro.

STATE OF MAINE

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

1 **AN ACT to Establish a Resource Protection Law.**
2

3 **Emergency** preamble. Whereas, Acts of the
4 Legislature do not become effective until 90 days
5 after adjournment unless enacted as emergencies; and

6 Whereas, emergencies arise from time to time which
7 pose an immediate threat to public health and safety
8 and to the environment; and

1 Whereas, the authority of the Commissioner of
2 Environmental Protection to act with dispatch to
3 mitigate these emergencies is not clear; and

4 Whereas, prompt action is necessary to remedy this
5 situation; and

6 Whereas, increasingly large areas of the State are
7 subject to speculative land development; and

8 Whereas, provisions of state law have
9 inadvertently allowed such speculative land
10 developments to escape state and local review in a
11 manner inconsistent with the intent of the
12 Legislature; and

13 Whereas, these types of development erode the
14 productive forest and agricultural land base of the
15 State and thus undermine important sectors of the
16 state's economy; and

17 Whereas, the lack of appropriate state and local
18 review frustrates the ability of State Government and
19 local governments to fulfill their responsibilities to
20 ensure the public health, safety and welfare; and

21 Whereas, in the judgment of the Legislature, these
22 facts create an emergency within the meaning of the
23 Constitution of Maine and require the following
24 legislation as immediately necessary for the
25 preservation of the public peace, health and safety;
26 now, therefore,

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

29 Sec. 1. 12 MRSA §682, sub-§2, as amended by PL
30 1987, c. 514, §1, is further amended to read:

31 2. Subdivision. A subdivision is a division of an
32 existing parcel of land into 3 or more parcels or lots
33 within any 5-year period, whether this division is
34 accomplished by platting of the land for immediate or
35 future sale, or by sale of the land by metes and
36 bounds or by leasing.

1 No sale or leasing of any lot or parcel may be
2 considered a subdivision if such lot or parcel is not
3 less than 40 acres in size, except when the intent of
4 such conveyance is to avoid the objectives of this
5 statute or if such lots are located wholly or partly
6 within any area within 250 feet of a lake or pond
7 greater than 10 acres in area or any body of water
8 with a drainage area greater than 50 square miles and
9 when such lots have a lot depth to shore frontage
10 ratio greater than 5 to 1 in which case the commission
11 shall review the subdivision. When 3 or more lots of
12 40 or more acres are created a plan must be filed with
13 the-registry-of-deeds-and-the-State-Tax-Assessor.

14 Sec. 2. 12 MRSA §685-B, sub-§1-A is enacted to
15 read:

16 1-A. Subdivision of commercial forest land. The
17 commission shall establish, by rule, expedited
18 procedures for the review of subdivisions under this
19 article that consist exclusively of commercial forest
20 land in parcels of 500 acres or more.

21 Sec. 3. 30 MRSA §4956, sub-§1, as amended by PL
22 1987, c. 514, §2, is further amended to read:

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

36 In determining whether a tract or parcel of land is
37 divided into 3 or more lots, the first dividing of
38 such tract or parcel, unless otherwise exempted
39 herein, shall be considered to create the first 2 lots

1 and the next dividing of either of said the first 2
2 lots, by whomever accomplished, unless otherwise
3 exempted herein, shall be considered to create a 3rd
4 lot, unless both such those dividings are
5 accomplished by a subdivider who shall have retained
6 one of such the lots for his own use as a single
7 family residence for a period of at least 5 years
8 prior to such that 2nd dividing. Lots of 40 or
9 more acres shall not be counted as lots, except where
10 such lots are located wholly or partly within any
11 shoreland zone in which case municipal review may be
12 required by the municipality, provided that the
13 average lot depth to shore frontage ratio is greater
14 than 5 to one. Where 3 or more lots of 40 or more
15 acres are developed, a plan must be filed with the
16 registry of deeds and the municipal authority
17 responsible for reviewing subdivisions.

18 Sec. 4. 30 MRSA §4956, sub-§2, ¶E is enacted to
19 read:

20 E. The municipality shall establish expedited
21 procedures for the review of subdivisions under
22 this section that consist exclusively of
23 commercial forest land in parcels of 500 acres or
24 more.

25 Sec. 5. 38 MRSA §347, sub-§2, as enacted by PL
26 1977, c. 300, §9, is repealed and the following
27 enacted in its place:

28 2. Emergency procedures. The following
29 procedures apply in the event of an emergency.

30 A. When the commissioner finds, after
31 investigation, that there is a violation of any
32 provision of the laws or rules administered by the
33 department or of the terms or conditions of any
34 orders issued by the department, which violation
35 is creating or is likely to create a substantial
36 or immediate danger to the public health or safety
37 or to the environment, the commissioner may order
38 the person or persons causing or contributing to
39 the violation to immediately cease any activity
40 causing, or contributing to, the danger and to

1 immediately take actions necessary to reduce or
2 alleviate the danger or likelihood of danger.

3 B. Any order issued under this subsection shall
4 contain findings of fact describing, whenever
5 possible, the area affected by the violation or
6 activity and the danger to the public health,
7 safety or the environment.

8 C. Service of the commissioner's findings and
9 order shall be made pursuant to the Maine Rules of
10 Civil Procedure, except that if the persons to
11 whom the order is directed are so numerous that
12 the specified method of service is a practical
13 impossibility or if the commissioner is unable to
14 identify the person or persons causing, or
15 contributing to, the danger, the commissioner
16 shall make the order known through prominent
17 publication in news media serving the affected
18 area.

19 D. The person or persons to whom the order is
20 directed shall comply with the commissioner's
21 order immediately.

22 E. The order may not be appealed to the Superior
23 Court, but a person to whom the order is directed
24 may apply to the board for a hearing on the order
25 if the application is made within 5 days after
26 issuance of the order. The board shall hold the
27 hearing within 5 days after receipt of the
28 application. The nature of the hearing before the
29 board shall be an appeal. At the hearing, all
30 witnesses shall be sworn and the department shall
31 first establish the basis for the order and for
32 naming the person to whom the order is directed.
33 The burden of going forward shall then shift to
34 the person appealing to demonstrate, based upon a
35 preponderance of evidence, that the order should
36 be modified or rescinded. Within 7 days of the
37 hearing, the board shall make findings of fact and
38 shall continue, revoke or modify the order. Any
39 person aggrieved by the decision of the board
40 shall be entitled to judicial review in the
41 Superior Court in accordance with the provisions
42 of Title 5, chapter 375, subchapter VII.

1 F. The Attorney General may file suit in Superior
2 Court to compel any person or persons causing, or
3 contributing to, the danger to immediately cease
4 any activity creating the danger and to
5 immediately take actions as are necessary to
6 reduce or alleviate the danger or likelihood of
7 danger.

8 G. Whenever the commissioner finds that an
9 emergency exists as the result of the danger cited
10 in the order, the commissioner may, with the
11 approval of the Governor, take the following
12 actions:

13 (1) Take control of the affected area;

14 (2) Secure the affected area;

15 (3) Eject all persons from the affected area;

16 (4) Dispose, treat, store or otherwise
17 handle all pollutants, discharges, hazardous
18 substances or other materials which are
19 causing, or contributing to, the danger; and

20 (5) Take whatever other action is necessary
21 to abate, clean up or mitigate the danger at
22 the affected area.

23 Sec. 6. 38 MRSA §482, sub-§5, as amended by PL
24 1985, c. 654, is further amended to read:

25 5. Subdivision. A "subdivision" is the division
26 of a parcel of land into 5 or more lots to be offered
27 for sale or lease to the general public during any
28 5-year period if such lots make up an aggregate land
29 area of more than 20 acres except for the following:

30 A. All the lots are at least 10 acres in size;

31 B. All the lots are at least 5 acres, and the
32 municipality has adopted additional regulations
33 governing subdivisions pursuant to Title 30,
34 section 4956, and the lots less than 10 acres of
35 such dimensions as to accommodate within the

1 boundaries of each a rectangle measuring 200 feet
2 and 300 feet, which abuts at one point the
3 principal access way or the lots have at least 75
4 feet of frontage on a cul-de-sac which provides
5 access;

6 C. All the lots are at least 5 acres, but do not
7 make up a total of more than 100 acres and the
8 lots less than 10 acres are of such dimensions as
9 to accommodate within the boundaries of each a
10 rectangle measuring 200 feet and 300 feet, which
11 abuts at one point the principal access way or the
12 lots have at least 75 feet of frontage on a
13 cul-de-sac which provides access;

14 D. Unless intended to circumvent this Article,
15 the following transactions shall not be considered
16 lots offered for sale or lease to the general
17 public:

18 (1) Sale or lease of lots to an abutting
19 owner or to a spouse, child, parent,
20 grandparent or sibling of the developer; or

21 (2) Personal, nonprofit transactions, such
22 as the transfer of lots by gift or devise;

23 E. In those subdivisions which would otherwise
24 not require site location approval, unless
25 intended to circumvent this Article, the following
26 transactions shall not, except as hereinafter
27 provided in this paragraph, be considered lots
28 offered for sale or lease to the general public:

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

33 (2) Sale or lease of common lots created
34 with a conservation restriction as defined in
35 Title 33, section 667.

36 These exceptions shall not apply, and the
37 subdivision will require site location approval,

1 whenever the use of a lot described in
2 subparagraph (1) or (2) changes or the lot is
3 offered for sale or lease to the general public
4 without the limitations set forth in subparagraph
5 (1) or (2);

6 F. For the purposes of this subsection, a parcel
7 of land is defined as all contiguous land in the
8 same ownership, provided that lands located on
9 opposite sides of a public or private road shall
10 be considered each a separate parcel of land
11 unless that road was established by the owner of
12 land on both sides of the road subsequent to
13 January 1, 1970; or

14 ~~G. Lots of 40 or more acres shall not be~~
15 ~~counted-as-lots;-or~~

16 H. Five years after a subdivider establishes a
17 single-family residence for his own use on a lot
18 and actually uses the lot for that purpose during
19 that period, that lot shall not be counted as a
20 lot.

21 The department shall establish, by rule, expedited
22 procedures for the review of subdivisions under this
23 article that consist exclusively of commercial forest
24 land in parcels of 500 acres or more.

25 **Emergency clause.** In view of the emergency
26 cited in the preamble, this Act shall take effect when
27 approved.

28 STATEMENT OF FACT

29 The purpose of this bill is to repeal the 40-acre
30 lot exemption from the laws controlling subdivisions
31 at the state and local level. This bill preserves the
32 original intent of the exemption which was to minimize
33 the impact of the subdivision laws on land sales
34 between owners of commercial forest land for forestry
35 purposes.

1 The 2nd purpose of the bill is to establish
2 clearly the Commissioner of Environmental Protection's
3 emergency authority to control environmental disasters
4 or situations that pose immediate dangers to the
5 public and the environment.

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