

# MAINE STATE LEGISLATURE

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L.D. 2684

(Filing No. H-814 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
THIRD SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1981, L.D. 2684,  
Bill, "AN ACT to Enhance Land Use Regulation."

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

'Sec. 1. 12 MRSA §682, sub-§2, as repealed and  
replaced by PL 1987, c. 810, §1, is amended to read:

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

The term "subdivision" shall also include the division  
of a new structure or structures on a tract or parcel  
of land into 3 or more dwelling units within a 5-year  
period and the division of an existing structure or  
structures previously used for commercial or  
industrial use into 3 or more dwelling units within a  
5-year period. The area included in the expansion of  
an existing structure is deemed to be a new structure  
for the purposes of this paragraph.

The creation of a lot or parcel more than 500 acres in  
size shall not be counted as a lot for the purpose of

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1 this subsection.

2 The creation of a lot or parcel of at least 40 but not  
3 more than 500 acres in size shall not be counted as a  
4 lot for the purpose of this subsection except when the  
5 lot or the parcel from which it was divided is located  
6 wholly or partly within the shoreland area as defined  
7 in Title 38, section 435 and except as provided in  
8 paragraph A.

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

25 B. The commission shall submit a report by March  
26 15th, annually, to the joint standing committee of  
27 the Legislature having jurisdiction over energy  
28 and natural resources. The report shall indicate  
29 the number and location of lots for which a plan  
30 was filed under paragraph A and the number and  
31 location of subsequent divisions requiring review  
32 by the commission.

33 Sec. 2. 12 MRSA §682, sub-§§11 and 12 are  
34 enacted to read:

35 11. Dwelling unit. "Dwelling unit" means any  
36 part of a structure which, through sale or lease, is  
37 intended for human habitation, including single-family  
38 and multifamily housing, condominiums, time-share  
39 units, and apartments.

40 12. Real estate. "Real estate" means land and

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1 structures attached to it.

2 Sec. 3. 12 MRSA §685-B, sub-§1, ¶B, as amended  
3 by PL 1973, c. 569, §11, is further amended to read:

4 B. No person ~~shall~~ may commence development of  
5 or construction on any lot ~~or~~ , parcel ~~or~~  
6 dwelling unit within any subdivision or sell ~~or~~  
7 offer for sale any interest in any lot ~~or~~ ,  
8 parcel or dwelling unit within any subdivision  
9 without a permit issued by the commission.

10 Sec. 4. 12 MRSA §685-B, sub-§2, ¶A, as amended  
11 by PL 1973, c. 569, §11, is further amended to read:

12 A. A plan of the proposed structure, subdivision  
13 or development showing the intended use of the  
14 ~~land~~ real estate, the proposed change, the  
15 details of the project and such other information  
16 as may be required by the commission to determine  
17 conformance with applicable land use standards; and

18 Sec. 5. 12 MRSA §685-B, sub-§6, as amended by  
19 PL 1973 c. 569, §11, is further amended to read:

20 6. Recording of approved proposals. A copy of  
21 each application, marked approved or disapproved,  
22 shall be retained in the commission files and shall be  
23 available to the public during normal business hours.

24 In the event the commission approves an application  
25 for subdivision approval, a copy of an approved plat  
26 or plan and a copy of the conditions required by the  
27 commission to be set forth in any instrument conveying  
28 an interest within the subdivision attested to by an  
29 authorized commission signature shall be filed with  
30 the appropriate registry of deeds in the county in  
31 which the ~~land~~ real estate lies.

32 A registrar of deeds shall not record a copy of  
33 conditions or any plat or plan purporting to  
34 subdivide ~~land~~ real estate located within the  
35 unorganized and deorganized lands of the State, unless  
36 the commission's approval is evidenced thereon.

37 The grantee of any conveyance of unrecorded subdivided

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1 land real estate or subdivided land real estate  
2 recorded in violation of this section may recover the  
3 purchase price, at interest, together with damages and  
4 costs in addition to any other remedy provided by law.

5       **Sec. 6. 30 MRSA §4956, sub-§1, as amended by PL**  
6 **1987, c. 810, §2, is further amended to read:**

7       1. Defined. A subdivision is the division of a  
8 tract or parcel of land into 3 or more lots within any  
9 5-year period, which period begins after September 22,  
10 1971, whether accomplished by sale, lease,  
11 development, buildings or otherwise, provided that a  
12 division accomplished by devise, condemnation, order  
13 of court, gift to a person related to the donor by  
14 blood, marriage or adoption or a gift to a  
15 municipality, unless the intent of that gift is to  
16 avoid the objectives of this section, or by transfer  
17 of any interest in land to the owner of land abutting  
18 thereon, shall not be considered to create a lot or  
19 lots for the purposes of this section.

20 The term "subdivision" shall also include the division  
21 of a new structure or structures on a tract or parcel  
22 of land into 3 or more dwelling units within a 5-year  
23 period and the division of an existing structure or  
24 structures previously used for commercial or  
25 industrial use into 3 or more dwelling units within a  
26 5-year period. The area included in the expansion of  
27 an existing structure is deemed to be a new structure  
28 for the purposes of this paragraph.

29 Nothing in this section may be construed to prevent a  
30 municipality from enacting an ordinance under its home  
31 rule authority which expands the definition of  
32 subdivision to include the division of a structure for  
33 commercial or industrial use or which otherwise  
34 regulates land use activities.

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

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1 subdivider who shall have retained one of the lots for  
2 his own use as a ~~single family~~ single-family  
3 residence or for open space land as defined in Title  
4 36, section 1102 for a period of at least 5 years  
5 prior to that 2nd dividing.

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

8 A. Where the lot or parcel from which it was  
9 divided is located wholly or partly within any  
10 shoreland area as defined in Title 38, section  
11 435; or

12 B. When a municipality has, by ordinance, or the  
13 municipal reviewing authority has, by regulation,  
14 elected to count lots of 40 acres or more in size  
15 as lots for the purposes of this subsection where  
16 the parcel of land being divided is located wholly  
17 outside any shoreland area as defined in Title 38,  
18 section 435.

19 In determining the number of dwelling units in a  
20 structure, the provisions regarding the determination  
21 of the number of lots shall apply, including  
22 exemptions from the definition of a subdivision of  
23 land.

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

31 A "densely developed area" is defined as any  
32 commercial, industrial or compact residential area of  
33 10 or more acres with an existing density of at least  
34 one principal structure per 2 acres. A principal  
35 structure is defined as any building other than one  
36 which is used for purposes wholly incidental or  
37 accessory to the use of another building on the same  
38 premises.

39 A "dwelling unit" means any part of a structure which,  
40 through sale or lease, is intended for human  
41 habitation, including single-family and multifamily

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1 housing, condominiums, time-share units, and  
2 apartments. Notwithstanding the provisions of this  
3 paragraph, leased dwelling units are not subject to  
4 subdivision review if the units are otherwise subject  
5 to municipal review at least as stringent as that  
6 required under this section.

7       **Sec. 7. 30 MRSA §4956, sub§3, ¶N,** as enacted by  
8 PL 1985, c. 794, Pt. A, §2, is amended to read:

9       N. The subdivider will determine, based on the  
10 Federal Emergency Management Agency's Flood  
11 Boundary and Floodway Maps and Flood Insurance  
12 Rate Maps, whether the subdivision is in a  
13 flood-prone area. If the subdivision, or any part  
14 of it, is in such an area the subdivider will  
15 determine the 100-year flood elevation and flood  
16 hazard boundaries within the subdivision. The  
17 proposed subdivision plan shall include a  
18 condition of plat approval requiring that  
19 principal structures ~~on lots~~ in the subdivision  
20 shall be constructed with their lowest floor,  
21 including the basement, at least one foot above  
22 the 100-year flood elevation.

23       **Sec. 8. 30 MRSA §4956, sub-§4,** as amended by PL  
24 1985, c. 206, §2, is further amended to read:

25       4. Enforcement. No person, firm, corporation or  
26 other legal entity may sell, lease, develop, build  
27 upon or convey for consideration, offer or agree to  
28 sell, lease, develop, build upon or convey for  
29 consideration any land or dwelling unit in a  
30 subdivision which has not been approved by the  
31 municipal reviewing authority of the municipality  
32 where the subdivision is located and recorded in the  
33 proper registry of deeds, nor shall such person, firm,  
34 corporation or other legal entity sell or convey any  
35 land in such an approved subdivision unless at  
36 least one permanent marker is set at one lot corner of  
37 the lot sold or conveyed. The term "permanent marker"  
38 includes but is not limited to the following: A  
39 granite monument, a concrete monument, an iron pin or  
40 a drill hole in ledge. No subdivision plat or plan  
41 shall be recorded by any register of deeds which has  
42 not been approved as required. Approval for the

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1 purpose of recording shall appear in writing on the  
2 plat or plan. No public utility, water district,  
3 sanitary district or any utility company of any kind  
4 may install services to any lot or dwelling unit in a  
5 subdivision, unless written authorization attesting to  
6 the validity and currency of all local permits  
7 required under this chapter has been issued by the  
8 appropriate municipal officials. Following  
9 installation of service, the company or district shall  
10 forward the written authorization to the municipal  
11 officials indicating that installation has been  
12 completed.

13 Any person, firm, corporation or other legal entity  
14 who sells, leases, develops, builds upon, or conveys  
15 for consideration, offers or agrees to sell, lease,  
16 develop, build upon or convey for consideration any  
17 land or dwelling unit in a subdivision which has not  
18 been approved as required by this section shall be  
19 penalized in accordance with section 4966. The  
20 Attorney General, the municipality or the planning  
21 board of any municipality may institute proceedings to  
22 enjoin the violations of this section.

23 All subdivision plats and plans required by this  
24 section shall contain the name and address of the  
25 person under whose responsibility the subdivision plat  
26 or plan was prepared.

27 Sec. 9. Savings clause. All otherwise valid  
28 subdivision permits or approvals for developments  
29 which would require review under this Act and which  
30 were granted prior to the effective date of this Act  
31 and any conditions or requirements of those permits or  
32 approvals remain valid and enforceable.

33 Emergency clause. In view of the emergency  
34 cited in the preamble, this Act shall take effect when  
35 approved.'

36 STATEMENT OF FACT

37 This amendment is intended to restore Maine's  
38 subdivision law to the construction generally given to  
39 it before the Town of York v. Cragin decision. It



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1 rewrites the subdivision law to clarify that  
2 condominiums and multi-unit rental structures are  
3 subject to review under the same criteria applicable  
4 to conventional land subdivisions. Condominiums and  
5 multi-unit rental structures have become an  
6 increasingly frequent method of development in the  
7 State. Since the impact upon the environment and town  
8 services of a 50-unit condominium is virtually  
9 indistinguishable from the impact of a 50-unit land  
10 subdivision, logic dictates that if review of one  
11 project is necessary to prevent harmful consequences,  
12 the other project must be reviewed as well.

13 Recognizing that some municipalities have  
14 regulated these forms of development through other  
15 means, most notably site review ordinances, this  
16 legislation excludes rental units from subdivision  
17 review when the municipality has adopted other  
18 adequate land use review requirements.

19 This amendment also provides an express  
20 legislative acknowledgement of municipal home rule  
21 authority to include within the municipality's  
22 subdivision review ordinance the division of a  
23 structure for uses other than those specified in the  
24 statute. It does not require municipalities to review  
25 these other forms of division but simply acknowledges  
26 their home rule authority to require such reviews if  
27 the municipality chooses to.

28 This express acknowledgement of municipal home  
29 rule authority is made to overrule the suggestion in  
30 the Law Court's decision in Town of Arundel v. Swain,  
31 374 A.2d 317 (Me. 1977), that a town's authority to  
32 conduct subdivision reviews is limited by the  
33 statutory definition of subdivision. This amendment  
34 follows the approach exemplified in PL 1987, c. 533,  
35 to clarify municipal home rule authority in this  
36 area. The subdivision statute is not an "enabling  
37 statute" as suggested by the Court in the Town of  
38 Arundel opinion, but is a mandate imposed upon  
39 municipalities to conduct a review of certain  
40 developments. As a statutory mandate, it describes  
41 those developments for which municipal review is  
42 required but does not restrict the type of  
43 developments which municipalities are permitted to

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1 review. Interpreted under the standard of review  
2 found in the Maine Revised Statutes, Title 30, section  
3 2151-A, the statute does not restrict a municipality's  
4 home rule authority to require the review of other  
5 developments by including them within the definition  
6 of "subdivision," except where the municipal  
7 definition would frustrate the purpose of the state  
8 statute.

9 The use of the term "unit" in the definition of  
10 "dwelling unit" does not necessarily require the  
11 delineation of precise boundaries. It is expected  
12 that the Law Court will continue to construe the law  
13 as it did in Planning Board of the Town of Naples v.  
14 Michaud, 444 A.2d 40 (Me. 1982), to apply to any  
15 reasonable identifiable area of the real estate for  
16 which a possessory interest is created.

17 The amendment also makes parallel changes to the  
18 subdivision laws administered by the Maine Land Use  
19 Regulation Commission.

20 The amendment also provides a savings clause to  
21 ensure that subdivision permits issued to "non-land  
22 subdivisions" before the Town of York v. Cragin  
23 decision remain valid and enforceable. These  
24 provisions ensure that, to the extent possible, the  
25 correct interpretation of the subdivision law will  
26 apply to all subdivision developments in the State.

27 It is the intent of the Legislature that existing  
28 exemptions for certain lots, such as transfers to  
29 abutters and gifts to family members, also apply to  
30 dwelling units.

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