

MAINE STATE LEGISLATURE

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(EMERGENCY)
THIRD SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2684

H.P. 1981 House of Representatives, September 12, 1988

Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on September 9, 1988.
Referred to the Committee on Energy and Natural Resources and
ordered printed pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representative MICHAUD of East
Millinocket, Senators PERKINS of Hancock and CLARK of
Cumberland.

STATE OF MAINE

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

1. AN ACT to Enhance Land Use Regulation.
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, a recent decision of the Maine Supreme
7. Judicial Court has construed the state law requiring
8. the review of subdivisions not to require reviews of
9. condominium, motel or multi-unit rental developments;

1 and
2 Whereas, this decision permits such developments
3 to proceed in many cases without any review as to
4 their potential harmful effects on the environment and
5 municipal services; and

6 Whereas, in the judgment of the Legislature, these
7 facts create an emergency within the meaning of the
8 Constitution of Maine and require the following
9 legislation as immediately necessary for the
10 preservation of the public peace, health and safety;
11 now, therefore,

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

14 Sec. 1. 12 MRSA §682, sub-§2, as repealed and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

16 2. Subdivision. A subdivision is "Subdivision"
17 means a division of an existing parcel of land any
18 piece of real estate, whether land, buildings or other
19 structures, into 3 or more parcels or lots
20 possessory units within any 5-year period, whether
21 this division is accomplished by platting of the land
22 for immediate or future sale, or by sale of the
23 land by metes and bounds or, by leasing,
24 development, buildings or otherwise.

25 The creation of a lot or parcel of land more than
26 500 acres in size shall not be counted as a lot
27 possessory unit for the purpose of this subsection.

28 The creation of a lot or parcel of land of at least
29 40 but not more than 500 acres in size shall not be
30 counted as a lot possessory unit for the purpose of
31 this subsection except when the lot or the parcel
32 piece of real estate from which it was divided is
33 located wholly or partly within the shoreland area as
34 defined in Title 38, section 435 and except as
35 provided in paragraph A.

36 A. When 3 or more lots parcels of land
37 containing at least 40 but not more than 500 acres
38 are created within a 5-year period from a

1 ~~parcel~~ piece of real estate which is located
2 wholly outside the shoreland area as defined in
3 Title 38, section 435, a plan showing the division
4 of the original ~~parcel~~ piece of real estate
5 must be filed by the person creating the 3rd
6 ~~lot~~ parcel of land with the registry of deeds,
7 the commission and the State Tax Assessor within
8 60 days of the creation of that ~~lot~~ parcel of
9 land. Any subsequent division of a ~~lot~~ parcel
10 of land created from the original ~~parcel~~ piece
11 of real estate within 10 years of the filing of
12 the plan in the registry of deeds shall be
13 considered a subdivision. Failure to file the
14 plan required by this paragraph is a violation of
15 this chapter subject to the penalties provided in
16 section 685-C, subsection 8.

17 B. The commission shall submit a report by March
18 15th, annually, to the joint standing committee of
19 the Legislature having jurisdiction over energy
20 and natural resources. The report shall indicate
21 the number and location of ~~lots~~ parcels of land
22 for which a plan was filed under paragraph A and
23 the number and location of subsequent divisions
24 requiring review by the commission.

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

27 11. Possessory unit. "Possessory unit" means any
28 separate unit of real estate for which a possessory
29 interest will be created, and also includes any
30 separate unit of real estate for which licenses for
31 temporary human occupancy will be regularly granted
32 for residential, camping or lodging purposes in return
33 for compensation.

34 12. Real estate. "Real estate" means land and
35 structures attached to it.

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

38 B. No person ~~shall~~ may commence development of
39 or construction on any ~~lot-or-parcel~~ possessory

1 unit within any subdivision or sell or offer for
2 sale any interest in any ~~lot~~ or ~~parcel~~
3 possessory unit within any subdivision without a
4 permit issued by the commission.

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

7 A. A plan of the proposed structure, subdivision
8 or development showing the intended use of the
9 land real estate, the proposed change, the
10 details of the project and such other information
11 as may be required by the commission to determine
12 conformance with applicable land use standards; and

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

15 6. Recording of approved proposals. A copy of
16 each application, marked approved or disapproved,
17 shall be retained in the commission files and shall be
18 available to the public during normal business hours.

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

27 A registrar of deeds shall not record a copy of
28 conditions or any plat or plan purporting to
29 subdivide land real estate located within the
30 unorganized and deorganized lands of the State, unless
31 the commission's approval is evidenced thereon.

32 The grantee of any conveyance of unrecorded
33 subdivided land real estate or subdivided land
34 real estate recorded in violation of this section may
35 recover the purchase price, at interest, together with
36 damages and costs in addition to any other remedy
37 provided by law.

1 Sec. 6. 30 MRSA §4956, sub-§1, as amended by PL
2 1987, c. 810, §2, is repealed and the following
3 enacted in its place:

4 1. Definitions. As used in this subchapter
5 unless the context otherwise indicates the following
6 terms have the following meanings.

7 A. "Subdivision" means the division of any piece
8 of real estate, whether land, buildings or other
9 structures, into 3 or more possessory units within
10 any 5-year period, which period begins after
11 September 22, 1971, whether accomplished by sale,
12 contract, platting, lease, development, buildings
13 or otherwise, provided that a division
14 accomplished by devise, condemnation, order of
15 court, gift to a person related to the donor by
16 blood, marriage or adoption or a gift to a
17 municipality, unless the intent of that gift is to
18 avoid the objectives of this section, or by
19 transfer of any interest in land to the owner of
20 land abutting thereon, shall not be considered to
21 create a possessory unit for the purposes of this
22 section.

23 In determining whether a piece of real estate is
24 divided into 3 or more possessory units, the first
25 dividing of the piece, unless otherwise exempted
26 herein, shall be considered to create the first 2
27 possessory units and the next dividing of either
28 of the first 2 possessory units, by whomever
29 accomplished, unless otherwise exempted herein,
30 shall be considered to create a 3rd possessory
31 unit, unless both those dividings are accomplished
32 by a subdivider who shall have retained one of the
33 possessory units for his own use as a single
34 family residence or for open space land as defined
35 in Title 36, section 1102 for a period of at least
36 5 years prior to that 2nd dividing.

37 A parcel of land of at least 40 acres shall not be
38 counted as a possessory unit, except:

39 (1) Where the piece of real estate from
40 which it was divided is located wholly or

1 partly within any shoreland area as defined
2 in Title 38, section 435; or

3 (2) When a municipality has, by ordinance,
4 or the municipal reviewing authority has, by
5 regulation, elected to count parcels of land
6 of 40 acres or more in size as possessory
7 units for the purposes of this subsection
8 where the piece of real estate being divided
9 is located wholly outside any shoreland area
10 as defined in Title 38, section 435.

11 For the purposes of this section, a piece of real
12 estate is defined as all contiguous land or
13 contiguous or adjacent structures in the same
14 ownership, provided that pieces of real estate
15 located on opposite sides of a public or private
16 road shall be considered each a separate piece of
17 real estate unless the road was established by the
18 owner of real estate on both sides thereof.

19 B. "Densely developed area" means as any
20 commercial, industrial or compact residential area
21 of 10 or more acres with an existing density of at
22 least one principal structure per 2 acres. A
23 principal structure is defined as any building
24 other than one which is used for purposes wholly
25 incidental or accessory to the use of another
26 building on the same premises.

27 C. "Possessory unit" means as any separate unit
28 of real estate for which a possessory interest
29 will be created, and also includes any separate
30 unit of real estate for which licenses for
31 temporary human occupancy will be regularly
32 granted for residential, camping or lodging
33 purposes in return for compensation. A
34 municipality may enact ordinances under its home
35 rule authority which expand, but not limit, this
36 definition.

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

39 N. The subdivider will determine, based on the

1 Federal Emergency Management Agency's Flood
2 Boundary and Floodway Maps and Flood Insurance
3 Rate Maps, whether the subdivision is in a
4 flood-prone area. If the subdivision, or any part
5 of it, is in such an area the subdivider will
6 determine the 100-year flood elevation and flood
7 hazard boundaries within the subdivision. The
8 proposed subdivision plan shall include a
9 condition of plat approval requiring that
10 principal structures on lots in the subdivision
11 shall be constructed with their lowest floor,
12 including the basement, at least one foot above
13 the 100-year flood elevation.

14 Sec. 8. 30 MRSA §4956, sub-§4, as amended by PL
15 1985, c. 206, §2, is further amended to read:

16 4. Enforcement. No person, firm, corporation or
17 other legal entity may sell, lease, develop, build
18 upon or convey for consideration, offer or agree to
19 sell, lease, develop, build upon or convey for
20 consideration any ~~land~~ real estate in a subdivision
21 which has not been approved by the municipal reviewing
22 authority of the municipality where the subdivision is
23 located and, if the interest is recordable, recorded
24 in the proper registry of deeds, nor shall such
25 person, firm, corporation or other legal entity sell
26 or convey any land in such an approved subdivision
27 unless at least one permanent marker is set at one
28 ~~lot~~ corner of the ~~lot~~ any parcel of land sold or
29 conveyed. The term "permanent marker" includes but is
30 not limited to the following: A granite monument, a
31 concrete monument, an iron pin or a drill hole in
32 ledge. No subdivision plat or plan shall be recorded
33 by any register of deeds which has not been approved
34 as required. Approval for the purpose of recording
35 shall appear in writing on the plat or plan. No public
36 utility, water district, sanitary district or any
37 utility company of any kind may install services to
38 any ~~lot~~ possessory unit in a subdivision, unless
39 written authorization attesting to the validity and
40 currency of all local permits required under this
41 chapter has been issued by the appropriate municipal
42 officials. Following installation of service, the
43 company or district shall forward the written

1 authorization to the municipal officials indicating
2 that installation has been completed.

3 Any person, firm, corporation or other legal entity
4 who sells, leases, develops, builds upon, or conveys
5 for consideration, offers or agrees to sell, lease,
6 develop, build upon or convey for consideration any
7 land possessory unit in a subdivision which has not
8 been approved as required by this section shall be
9 penalized in accordance with section 4966. The
10 Attorney General, the municipality or the planning
11 board of any municipality may institute proceedings to
12 enjoin the violations of this section.

13 All subdivision plats and plans required by this
14 section shall contain the name and address of the
15 person under whose responsibility the subdivision plat
16 or plan was prepared.

17 **Sec. 9. Application.** This Act shall apply to
18 any subdivision which had not received subdivision
19 approval, excepting only those subdivisions for which
20 substantial construction has begun or for which
21 possessory units were sold in reasonable reliance upon
22 the law in existence before the effective date of this
23 Act.

24 **Sec. 10. Savings clause.** All otherwise valid
25 subdivision permits or approvals for developments
26 which would require review under this Act and which
27 were granted prior to the effective date of this Act
28 and any conditions or requirements of those permits or
29 approvals remain valid and enforceable.

30 **Emergency clause.** In view of the emergency
31 cited in the preamble, this Act shall take effect when
32 approved.

33 **STATEMENT OF FACT**

34 This bill is in response to the recent Law Court
35 decision of Town of York v. Cragin, 541 A.2d 932 (Me.
36 1988). In that decision, a majority of the Law Court

1 ruled that condominiums, multi-unit rental housing and
2 motels were not subject to municipal review as
3 subdivisions. The court narrowly construed the
4 existing subdivision law as applying only to the
5 division of land, in its physical sense, and not to
6 the division of a structure into separate areas of
7 possession. This ruling is an erroneous reading of
8 legislative intent regarding the subdivision law and
9 creates a gap in the State's comprehensive land-use
10 regulatory scheme.

11 This bill is intended to restore Maine's
12 subdivision law to the construction generally given to
13 it before the Town of York v. Cragin decision. It
14 rewrites the subdivision law to clarify that
15 condominiums, multi-unit rental structures and motels,
16 hotels and other temporary lodging facilities are
17 subject to review under the same criteria applicable
18 to conventional land subdivisions. Condominiums and
19 multi-unit rental structures have become an
20 increasingly frequent method of development in the
21 State. Since the impact upon the environment and town
22 services of a 50-unit condominium is virtually
23 indistinguishable from the impact of a 50-unit land
24 subdivision, logic dictates that if review of one
25 project is necessary to prevent harmful consequences,
26 the other project must be reviewed as well.

27 The bill requires subdivision review for any
28 development that creates 3 or more "possessory units"
29 from a single piece of real estate, whether that real
30 estate takes the form of land or structures. It is
31 intended that the definition of "real estate" found in
32 the Maine Revised Statutes, Title 30, section 1901,
33 subsection 9, apply to the use of that term in the
34 subdivision law. A "possessory unit" is defined in
35 the bill as any separate unit of the original real
36 estate for which a possessory interest is created;
37 this includes any separate area of a parcel of land or
38 a structure for which a possessory fee or leasehold
39 interest is created. Only one "possessory unit" is
40 created for each separate area even if more than one
41 possessory interest is created for the same physical
42 area. For example, if a single condominium unit is
43 sold in several "timeshares," it will still be counted

1 as only one "possessory unit." The use of the term
2 "unit" in the definition of "possessory unit" does not
3 necessarily require the delineation of precise
4 boundaries. It is expected that the Law Court will
5 continue to construe the law as it did in Planning
6 Board of the Town of Naples v. Michaud, 444 A.2d 40
7 (Me. 1982), to apply to any reasonable identifiable
8 area of the real estate for which a possessory
9 interest is created. This definition also excludes
10 nonpossessory real estate interests like easements,
11 but explicitly includes any separate areas of the real
12 estate for which licenses for temporary residential
13 occupancy are regularly granted in return for
14 compensation. This provision ensures that motels,
15 hotels, campgrounds, bed and breakfast operations and
16 similar multi-unit lodging establishments are subject
17 to subdivision review. Finally, the definition
18 explicitly recognizes a municipality's home rule
19 authority to include other uses within this
20 definition, but preempts their ability to restrict the
21 definition.

22 The bill also makes parallel changes to the
23 subdivision laws administered by the Land Use
24 Regulation Commission.

25 The bill also provides a savings clause to ensure
26 that subdivision permits issued to "nonland
27 subdivisions" before the Town of York v. Cragin
28 decision remain valid and enforceable. These
29 provisions ensure that, to the extent possible, the
30 correct interpretation of the subdivision law will
31 apply to all subdivision developments in the State.

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