

# MAINE STATE LEGISLATURE

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L.D. 1628  
(Filing No. H-521 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1174, L.D. 1628, Bill, "An  
Act to Clarify the Subdivision Laws"

Amend the bill by inserting before the enacting clause the  
following:

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

**Whereas,** this bill proposes a variety of changes to clarify  
the requirements of the subdivision laws for municipalities and  
these changes should be incorporated without delay; and

**Whereas,** this bill also proposes to change the acreage  
requirements for review required under the site location of  
development laws and to make that change retroactive; and

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

Further amend the bill by striking out everything after the  
enacting clause and before the statement of fact and inserting in  
its place the following:

**'Sec. 1. 30-A MRSA §4401, sub-§3,** as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is repealed and the following  
enacted in its place.

1        3. Principal structure. "Principal structure" means any  
3        building or structure in which the main use of the premises takes  
      place.

5        Sec. 2. 30-A MRSA §4401, sub-§4, as enacted by PL 1989, c.  
7        104, Pt. A, §45 and Pt. C, §10, is amended to read:

9        4. Subdivision. "Subdivision" means the division of a  
11       tract or parcel of land into 3 or more lots within any 5-year  
13       period that begins on or after September 23, 1971. This  
15       definition applies whether the division is accomplished by sale,  
17       lease, development, buildings or otherwise. The term  
19       "subdivision" also includes 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, the construction of 3 or more  
      dwelling units on a single tract or parcel of land 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.

21       A. In determining whether a tract or parcel of land is  
23       divided into 3 or more lots, the first dividing of the tract  
25       or parcel is considered to create the first 2 lots and the  
      next dividing of either of these first 2 lots, by whomever  
      accomplished, is considered to create a 3rd lot, unless:

27                (1) Both dividings are accomplished by a subdivider  
29                who has retained one of the lots for the subdivider's  
31                own use as a single-family residence or for open space  
      land as defined in Title 36, section 1102, for a period  
      of at least 5 years before the 2nd dividing occurs; or

33                (2) The division of the tract or parcel is otherwise  
35                exempt under this subchapter.

37        B. The dividing of a tract or parcel of land and the lot or  
39        lots so made, which dividing or lots when made are not  
41        subject to this subchapter, do not become subject to this  
43        subchapter by the subsequent dividing of that tract or  
      parcel of land or any portion of that tract or parcel. The  
      municipal reviewing authority shall consider the existence  
      of the previously created lot or lots in reviewing a  
      proposed subdivision created by a subsequent dividing.

45        C. A lot of 40 or more acres shall not be counted as a lot,  
47        except:

49                (1) When the lot or parcel from which it was divided  
51                is located entirely or partially within any shoreland  
      area as defined in Title 38, section 435; or

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435.

D. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality, ~~unless the intent of that gift is to avoid the objectives of this subchapter,~~ or a division accomplished by the transfer of any interest in land to the owner of abutting land abutting that land unless the intent of that transfer is to avoid the objectives of this section, does not create a lot or lots for the purposes of this definition.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

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

Sec. 3. 30-A MRSA §4401, sub-§7, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

7. Outstanding river segments. In accordance with Title 12, section 402, "outstanding river segments" include means:

A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;

B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

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- 1 C. The Crooked River from its inlet into Sebago Lake to the  
3 Waterford and Albany Township town line;
- 5 D. The Damariscotta River from the Route 1 bridge in  
7 Damariscotta to the dam at Damariscotta Mills;
- 9 E. The Dennys River from the Route 1 bridge to the outlet  
11 of Meddybemps Lake, excluding the western shore in Edmunds  
13 Township and No. 14 Plantation;
- 15 F. The East Machias River, including the Maine River, from  
17 1/4 of a mile above the Route 1 bridge to the East Machias  
19 and T.18, E.D., B.P.P. town line, from the T.19, E.D.,  
21 B.P.P. and Wesley town line to the outlet of Crawford Lake,  
23 and from the No. 21 Plantation and Alexander town line to  
25 the outlet of Pocomoonshine Lake, excluding Hadley Lake,  
27 Lower Mud Pond and Upper Mud Pond;
- 29 G. The Fish River from the bridge at Fort Kent Mills to the  
31 Fort Kent and Wallagrass Plantation town line, from the  
33 T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle  
35 Lake and Winterville Plantation town line, and from the  
37 T.14, R.6, W.E.L.S. and Portage Lake town line to the  
39 Portage Lake and T.13, R.7, W.E.L.S. town line, excluding  
41 Portage Lake;
- 43 H. The Kennebago River from its inlet into Cupsuptic Lake  
45 to the Rangeley and Lower Cupsuptic Township town line;
- 47 I. The Kennebec River from Thorns Head Narrows in North  
49 Bath to the Edwards Dam in Augusta, excluding Perkins  
51 Township, and from the Route 148 bridge in Madison to the  
Caratunk and The Forks Plantation town line, excluding the  
western shore in Concord Township, Pleasant Ridge Plantation  
and Carrying Place Township and excluding Wyman Lake;
- J. The Machias River from the Route 1 bridge to the  
Northfield and T.19, M.D., B.P.P. town line;
- K. The Mattawamkeag River from the Penobscot River to the  
Mattawamkeag and Kingman Township town line, and from the  
Reed Plantation and Bancroft town line to the East Branch in  
Haynesville;
- L. The Narraguagus River from the ice dam above the  
railroad bridge in Cherryfield to the Beddington and  
Devereaux Township town lines, excluding Beddington Lake;
- M. The Penobscot River, including the Eastern Channel, from  
Sandy Point in Stockton Springs to the Veazie Dam and its

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- 1 tributary the East Branch of the Penobscot from the  
2 Penobscot River to the East Millinocket and Grindstone  
3 Township town line;
- 5 N. The Piscataquis River from the Penobscot River to the  
6 Monson and Blanchard Plantation town line;
- 7  
8 O. The Pleasant River from the bridge in Addison to the  
9 Columbia and T.18, M.D., B.P.P. town line, and from the  
10 T.24, M.D., B.P.P. and Beddington town line to the outlet of  
11 Pleasant River Lake;
- 13 P. The Rapid River from the Magalloway Plantation and Upton  
14 town line to the outlet of Pond in the River;
- 15  
16 Q. The Saco River from the Little Ossipee River to the New  
17 Hampshire border;
- 19 R. The St. Croix River from the Route 1 bridge in Calais to  
20 the Calais and Baring Plantation town line, from the Baring  
21 Plantation and Baileyville town line to the Baileyville and  
22 Fowler Township town line, and from the Lambert Lake  
23 Township and Vanceboro town line to the outlet of Spednik  
24 Lake, excluding Woodland Lake and Grand Falls Flowage;
- 25  
26 S. The St. George River from the Route 1 bridge in  
27 Thomaston to the outlet of Lake St. George in Liberty,  
28 excluding White Oak Pond, Seven Tree Pond, Round Pond,  
29 Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;
- 31 T. The St. John River from the Van Buren and Hamlin  
32 Plantation town line to the Fort Kent and St. John  
33 Plantation town line, and from the St. John Plantation and  
34 St. Francis town line to the Allagash and St. Francis town  
35 line;
- 37 U. The Sandy River from the Kennebec River to the Madrid  
38 and Township E town line;
- 39  
40 V. The Sheepscot River from the railroad bridge in  
41 Wiscasset to the Halldale Road in Montville, excluding Long  
42 Pond and Sheepscot Pond, including its tributary the West  
43 Branch of the Sheepscot from its confluence with the  
44 Sheepscot River in Whitefield to the outlet of Branch Pond  
45 in China;
- 47 W. The West Branch of the Pleasant River from the East  
48 Branch in Brownville to the Brownville and Williamsburg  
49 Township town line; and
- 51 X. The West Branch of the Union River from the Route 181  
52 bridge in Mariaville to the outlet of Great Pond in the Town  
53 of Great Pond.

1                   Sec. 4. 30-A MRSA §4403, sub-§1-A is enacted to read:

3                   1-A. Joint meetings. If any portion of a subdivision  
5 crosses municipal boundaries, the reviewing authorities from each  
7 municipality shall meet jointly to discuss the application.

9                   Sec. 5. 30-A MRSA §4403, sub-§3, ¶A, as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

11                  A. When an application is received, the municipal reviewing  
13 authority shall give a dated receipt to the applicant and  
15 shall notify by mail all abutting property owners of the  
17 proposed subdivision, and the clerk and the reviewing  
19 authority of municipalities that abut or include any portion  
21 of the subdivision, specifying the location of the proposed  
23 subdivision and including a general description of the  
25 project.

27                  Sec. 6. 30-A MRSA §4403, sub-§4, as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

29                  4. Public hearing; notice. If the municipal reviewing  
31 authority decides to hold a public hearing on an application for  
33 subdivision approval, it shall hold the hearing within 30 days  
35 after ~~receiving~~ determining it has received a complete  
37 application. The municipal reviewing authority shall have notice  
39 of the date, time and place of the hearing:

41                  A. Given to the applicant; and

43                  B. Published, at least 2 times, in a newspaper having  
45 general circulation in the municipality in which the  
47 subdivision is proposed to be located. The date of the  
49 first publication must be at least 7 days before the hearing.

51                  Sec. 7. 30-A MRSA §4403, sub-§5, as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

                  5. Decision; time limits. The municipal reviewing  
authority shall, within 30 days of a public hearing or, if no  
hearing is held, within 60 days of ~~receiving~~ determining it has  
received a complete application or within any other time limit  
that is otherwise mutually agreed to, issue an order:

                  A. Denying approval of the proposed subdivision;

                  B. Granting approval of the proposed subdivision; or

                  C. Granting approval upon any terms and conditions that it  
considers advisable to:

(1) Satisfy the criteria listed in section 4404;

(2) Satisfy any other regulations adopted by the reviewing authority; and

(3) Protect and preserve the public's health, safety and general welfare.

**Sec. 8. 30-A MRSA §4404, sub-§§6, 7, and 11 to 13.** as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

**6. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

**7. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste and-sewage, if municipal services are to be used utilized;

**11. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any pond,--lake,--river--or--tidal waters wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

**A.** When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;



12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water; and

13. Flood areas. ~~The subdivider will determine, based~~ Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plat plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation; and

Sec. 10. 30-A MRSA §4404, sub-§14 is enacted to read:

14. Storm water. The proposed subdivision will provide for adequate storm water management.

Sec. 11. 30-A MRSA §4406, sub-§1, ¶E is enacted to read:

E. Any person who, after receiving approval from the municipal reviewing authority and recording the plan at the registry of deeds, constructs or develops the subdivision, or transfers any lot, in a manner other than depicted on the approved plans or amendments shall be penalized in accordance with section 4552.

Sec. 12. 30-A MRSA §4407, first ¶, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.

Sec. 13. 38 MRSA §482, sub-§5, as amended by PL 1987, c. 737, Pt. C, §§90 and 106; and c. 810, §§9 and 10; as repealed and replaced by c. 812, §7; and as amended by c. 864, §§1 and 2; and as amended by PL 1989, c. 6 and c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

1        5. Subdivision. A "subdivision" is the division of a  
2 parcel of land ~~of 20 or more acres~~ into 5 or more lots to be  
3 offered for sale or lease to the general public during any 5-year  
4 period if the lots to be offered, together with the roads, common  
5 areas, easement areas and all portions of the parcel of land in  
6 which rights or interests, whether express or implied, are to be  
7 so offered make up an aggregate land area of more than 20 acres  
8 except for the following:

9  
10        A. All the lots are at least 10 acres in size and the  
11 aggregate land area of all the lots make up a total of 100  
12 acres or less, unless the subdivision is located wholly or  
13 in part in the shoreland zone, in which case the exemption  
14 does not apply;

15        B. When:

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

17  
18            (2) All lots less than 10 acres in size are of such  
19 dimensions as to accommodate within the boundaries of  
20 each a rectangle measuring 200 feet and 300 feet which  
21 abuts at one point the principal access way or the lots  
22 have at least 75 feet of frontage of a cul-de-sac which  
23 provides access;

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25            (3) The aggregate land area of all the lots makes up a  
26 total of 100 acres or less;

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28            (4) The subdivision is not located wholly or in part  
29 in the shoreland zone;

30  
31            (5) The municipality in which the subdivision is  
32 located has adopted a subdivision ordinance, or its  
33 municipal reviewing authority has adopted subdivision  
34 regulations, pursuant to Title 30, section 4956;

35  
36        C. Lots of 40 or more acres but not more than 500 acres  
37 shall not be counted as lots except where:

38            (1) The proposed subdivision is located wholly or  
39 partly within the shoreland area as defined in Title  
40 38, section 435;

41  
42        C-1. Lots of more than 500 acres in size shall not be  
43 counted as lots;

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45        D. Five years after a subdivider establishes a  
46 single-family residence for that subdivider's own use on a  
47 lot and actually uses the lot for that purpose during that  
48 period, that lot shall not be counted as a lot;

1  
3 E. Unless intended to circumvent this article, the  
following transactions shall not be considered lots offered  
for sale or lease to the general public:

5  
7 (1) Sale or lease of lots to an abutting owner or to a  
spouse, child, parent, grandparent or sibling of the  
developer; or

9  
11 (2) Personal, nonprofit transactions, such as the  
transfer of lots by gift or devise; and

13 F. In those subdivisions which would otherwise not require  
15 site location approval, unless intended to circumvent this  
article, the following transactions shall not, except as  
17 provided, be considered lots offered for sale or lease to  
the general public:

19 (1) Sale or lease of common lots created with a  
21 conservation easement as defined in Title 33, section  
476, provided that the Department of Environmental  
Protection is made a party.

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

35 **Sec. 14. 38 MRSA §489-A, first ¶, as enacted by PL 1989, c.**  
37 **207, §2, is amended to read:**

39 The Department of Environmental Protection may register  
municipalities ~~to--grant~~ for authority to substitute permits  
41 issued pursuant to Title 30-A, chapter 187, subchapter IV, for  
permits required by section 483 under the following conditions.

43 **Sec. 15. 38 MRSA §489-A, sub-§8, ¶C, as enacted by PL 1989, c.**  
45 **207, §2, is amended to read:**

47 C. If the department does not act within the 45-day period,  
this inaction constitutes ~~its waiver of state jurisdiction~~  
49 approval by the department and the municipal permits shall  
be effective as issued as the municipal permit and board  
51 permit.

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1 development laws, subdivisions of less than 20 acres that were  
2 part of a larger parcel. This change was enacted last year as  
3 part of the comprehensive growth management package.

5 Sections 14 and 15 clarify that permits issued by a  
6 municipality registered to grant certain site location of  
7 development permits are considered state permits if the  
8 department does not exert jurisdiction within 45 days.

9  
10 Section 16 makes section 13 retroactive.

11  
12 This amendment also adds an emergency preamble and emergency  
13 clause.

Reported by the Committee on Energy and Natural Resources  
Reproduced and distributed under the direction of the Clerk of the  
House  
6/14/89 (Filing No. H-521)