

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1628

H.P. 1174

House of Representatives, May 10, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative COLES of Harpswell.

Cosponsored by Representative HOGLUND of Portland, Representative MITCHELL of Freeport and Senator ERWIN of Oxford.

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STATE OF MAINE

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

---

An Act to Clarify the Subdivision Laws.

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(AFTER DEADLINE)



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 30-A MRSA §4401, sub-§2,** as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

5 2. **Dwelling unit.** "Dwelling unit" means any part of a  
7 structure which, through sale or lease, is intended for human  
habitation, including single-family and multifamily housing,  
9 ~~condominiums, and apartments and time-share units.~~

11 **Sec. 2. 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 C, §10, is repealed and the following  
13 enacted in its place:

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

19 **Sec. 3. 30-A MRSA §4401, sub-§4,** as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

21 4. **Subdivision.** "Subdivision" means the division of a  
23 tract or parcel of land into 3 or more lots within any 5-year  
period that begins on or after September 23, 1971. This  
25 definition applies whether the division is accomplished by sale,  
lease, development, buildings or otherwise. The term  
27 "subdivision" also includes the division of a new structure or  
structures on a tract or parcel of land into 3 or more dwelling  
29 units within a 5-year period, the construction of 3 or more  
dwelling units on a single tract or parcel of land and the  
31 division of an existing structure or structures previously used  
for commercial or industrial use into 3 or more dwelling units  
33 within a 5-year period.

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

41 (1) Both dividings are accomplished by a subdivider  
who has retained one of the lots for the subdivider's  
43 own use as a single-family residence or for open space  
land ~~as defined in~~ classified by the municipal  
45 assessors in accordance with Title 36, section 1102,  
for a period of at least 5 years before the 2nd  
47 dividing occurs; or

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

51 B. The dividing of a tract or parcel of land and the lot or  
53 lots so made, which dividing or lots when made are not

1 subject to this subchapter, do not become subject to this  
3 subchapter by the subsequent dividing of that tract or  
5 parcel of land or any portion of that tract or parcel. The  
7 municipal reviewing authority shall consider the existence  
9 of the previously created lot or lots in reviewing a  
11 proposed subdivision created by a subsequent dividing.

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

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

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

35 D. A division accomplished by devise, condemnation, order  
37 of court, gift to a person related to the donor by blood,  
39 marriage or adoption or a gift to a municipality, ~~unless the  
41 intent of that gift is to avoid the objectives of this  
43 subchapter,~~ or a division accomplished by the transfer of  
45 any interest in land to the owner of abutting land, unless  
47 the intent of that transfer is to avoid the objectives of  
49 this section, does not create a lot or lots for the purposes  
51 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

1 industrial use or which otherwise regulates land use  
2 activities.

3  
4 **Sec. 4. 30-A MRSA §4401, sub-§7**, as enacted by PL 1989, c.  
5 104, Pt. A, §45 and Pt. C, §10, is amended to read:

7 **7. Outstanding river segments.** In accordance with Title  
8 12, section 402, "outstanding river segments" ~~include~~ shall mean:

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

13  
14 B. The Carrabassett River from the Kennebec River to the  
15 Carrabassett Valley and Mt. Abram Township town line;

16  
17 C. The Crooked River from its inlet into Sebago Lake to the  
18 Waterford and Albany Township town line;

19  
20 D. The Damariscotta River from the Route 1 bridge in  
21 Damariscotta to the dam at Damariscotta Mills;

22  
23 E. The Dennys River from the Route 1 bridge to the outlet  
24 of Meddybemps Lake, excluding the western shore in Edmunds  
25 Township and No. 14 Plantation;

26  
27 F. The East Machias River, including the Maine River, from  
28 1/4 of a mile above the Route 1 bridge to the East Machias  
29 and T.18, E.D., B.P.P. town line, from the T.19, E.D.,  
30 B.P.P. and Wesley town line to the outlet of Crawford Lake,  
31 and from the No. 21 Plantation and Alexander town line to  
32 the outlet of Pocomoonshine Lake, excluding Hadley Lake,  
33 Lower Mud Pond and Upper Mud Pond;

34  
35 G. The Fish River from the bridge at Fort Kent Mills to the  
36 Fort Kent and Wallagrass Plantation town line, from the  
37 T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle  
38 Lake and Winterville Plantation town line, and from the  
39 T.14, R.6, W.E.L.S. and Portage Lake town line to the  
40 Portage Lake and T.13, R.7, W.E.L.S. town line, excluding  
41 Portage Lake;

42  
43 H. The Kennebago River from its inlet into Cupsuptic Lake  
44 to the Rangeley and Lower Cupsuptic Township town line;

45  
46 I. The Kennebec River from Thorns Head Narrows in North  
47 Bath to the Edwards Dam in Augusta, excluding Perkins  
48 Township, and from the Route 148 bridge in Madison to the  
49 Caratunk and The Forks Plantation town line, excluding the  
50 western shore in Concord Township, Pleasant Ridge Plantation  
51 and Carrying Place Township and excluding Wyman Lake;

- 1 J. The Machias River from the Route 1 bridge to the  
Northfield and T.19, M.D., B.P.P. town line;
- 3
- 5 K. The Mattawamkeag River from the Penobscot River to the  
Mattawamkeag and Kingman Township town line, and from the  
7 Reed Plantation and Bancroft town line to the East Branch in  
Haynesville;
- 9 L. The Narraguagus River from the ice dam above the  
11 railroad bridge in Cherryfield to the Beddington and  
Devereaux Township town lines, excluding Beddington Lake;
- 13 M. The Penobscot River, including the Eastern Channel, from  
Sandy Point in Stockton Springs to the Veazie Dam and its  
15 tributary the East Branch of the Penobscot from the  
Penobscot River to the East Millinocket and Grindstone  
17 Township town line;
- 19 N. The Piscataquis River from the Penobscot River to the  
Monson and Blanchard Plantation town line;
- 21
- 23 O. The Pleasant River from the bridge in Addison to the  
Columbia and T.18, M.D., B.P.P. town line, and from the  
25 T.24, M.D., B.P.P. and Beddington town line to the outlet of  
Pleasant River Lake;
- 27 P. The Rapid River from the Magalloway Plantation and Upton  
town line to the outlet of Pond in the River;
- 29
- 31 Q. The Saco River from the Little Ossipee River to the New  
Hampshire border;
- 33 R. The St. Croix River from the Route 1 bridge in Calais to  
the Calais and Baring Plantation town line, from the Baring  
35 Plantation and Baileyville town line to the Baileyville and  
Fowler Township town line, and from the Lambert Lake  
37 Township and Vanceboro town line to the outlet of Spednik  
Lake, excluding Woodland Lake and Grand Falls Flowage;
- 39
- 41 S. The St. George River from the Route 1 bridge in  
Thomaston to the outlet of Lake St. George in Liberty,  
43 excluding White Oak Pond, Seven Tree Pond, Round Pond,  
Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;
- 45 T. The St. John River from the Van Buren and Hamlin  
Plantation town line to the Fort Kent and St. John  
47 Plantation town line, and from the St. John Plantation and  
St. Francis town line to the Allagash and St. Francis town  
49 line;
- 51 U. The Sandy River from the Kennebec River to the Madrid  
and Township E town line;

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V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and

X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

**Sec. 5. 30-A MRSA §4403, sub-§1, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:**

1. **Municipal reviewing authority.** The municipal reviewing authority shall review all requests for subdivision approval. If any portion of a subdivision crosses municipal boundaries, the reviewing authorities from each municipality shall meet jointly to discuss the application. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

**Sec. 6. 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:**

A. When an application is received, the municipal reviewing authority shall give a dated receipt to the applicant and shall notify by mail all abutting property owners of the proposed subdivision, and the clerk and the reviewing authority of municipalities that abut the municipality in which the subdivision is located specifying the location of the proposed subdivision and including a general description of the project.

**Sec. 7. 30-A MRSA §4403, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:**

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

A. Given to the applicant; and

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

7 **Sec. 8. 30-A MRSA §4403, sub-§5,** as enacted by PL 1989, c.  
104, Pt. A, §45 and Pt. C, §10, is amended to read:

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

15 A. Denying approval of the proposed subdivision;

17 B. Granting approval of the proposed subdivision; or

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

23 (1) Satisfy the criteria listed in section 4404;

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

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

31 **Sec. 9. 30-A MRSA §4404, sub-§§1, 3, 4, 6, 7, 8, 9, 11, 12 and 13,** as  
enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, are  
33 amended to read:

35 1. **Pollution.** The proposed subdivision will not result in  
undue water or air pollution. ~~In making this determination, it~~  
37 ~~shall at least consider:~~

39 ~~A. The elevation of the land above sea level and its~~  
~~relation to the flood plains;~~

41 ~~B. The nature of soils and subsoils and their ability to~~  
43 ~~adequately support waste disposal;~~

45 ~~C. The slope of the land and its effect on effluents;~~

47 ~~D. The availability of streams for disposal of effluents;~~  
and

49 ~~E. The applicable state and local health and water resource~~  
51 ~~rules and regulations;~~

53 3. **Municipal water supply.** The proposed subdivision will  
not ~~cause an unreasonable burden on~~ place a demand beyond the



1 current capacity of or planned improvements to an existing water  
supply, if one is to be used utilized;

3  
4. Erosion. The proposed subdivision will not cause  
5 unreasonable soil erosion ~~or a reduction in the land's capacity~~  
~~to hold water so that a dangerous or unhealthy condition results~~;

7  
6. Sewage disposal. The proposed subdivision will provide  
9 for adequate sewage waste disposal and will not cause an  
unreasonable burden on municipal services if they are utilized;

11  
7. Municipal solid waste disposal. The proposed  
13 subdivision will provide for adequate solid waste disposal and  
will not cause an unreasonable burden on the municipality's  
15 ability to dispose of solid waste and sewage, if municipal  
services if they are to be used utilized;

17  
8. Aesthetic, cultural and natural values. The proposed  
19 subdivision will not have an undue adverse effect on the scenic  
or natural beauty of the area, aesthetics, historic sites,  
21 previously identified wildlife habitat or rare and irreplaceable  
natural areas or any public rights for physical or visual access  
23 to the shoreline;

25  
9. Conformity with local ordinances and plans. The  
proposed subdivision conforms with a duly adopted subdivision  
27 regulation or ordinance, comprehensive plan, development plan,  
capital improvement plan or land use plan, if any. In making  
29 this determination, the municipal reviewing authority may  
interpret these ordinances and plans;

31  
11. Surface waters; outstanding river segments. Whenever  
33 situated entirely or partially within the watershed of any pond  
or lake or within 250 feet of any pond, lake, river or tidal  
35 waters wetland or body of water defined in Title 38, chapter 3,  
subchapter I, article 2-B, the proposed subdivision will not  
37 adversely affect the quality of that body of water or  
unreasonably affect the shoreline of that body of water.

39  
A. When lots in a subdivision have frontage on an  
41 outstanding river segment, the proposed subdivision plan  
must require principal structures to have a combined lot  
43 shore frontage and setback from the normal high-water mark  
of 500 feet.

45  
47 (1) To avoid circumventing the intent of this  
provision, whenever a proposed subdivision adjoins a  
shoreland strip narrower than 250 feet which is not  
49 lotted, the proposed subdivision shall be reviewed as  
if lot lines extended to the shore.

1 (2) The frontage and set-back provisions of this  
3 paragraph do not apply either within areas zoned as  
5 general development or its equivalent under shoreland  
7 zoning, Title 38, chapter 3, subchapter I, article 2-B,  
9 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;

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

15 13. Flood areas. The subdivider will--determine has  
17 determined, based on the Federal Emergency Management Agency's  
19 Flood Boundary and Floodway Maps and Flood Insurance Rate Maps,  
21 whether the subdivision is in a flood-prone area. If the  
23 subdivision, or any part of it, is in such an area, the  
25 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; ;

27 **Sec. 10. 30-A MRSAs 4404, sub-§§14 and 15** are enacted to read:

29 14. Storm water. The proposed subdivision will provide for  
31 adequate storm water management; and

33 15. Services. The proposed subdivision will not place an  
35 unreasonable burden on the ability of the municipality or  
37 quasi-municipal districts to provide services or create a demand  
39 for services which exceeds the ability of existing facilities,  
41 such as, but not limited to, education, recreation and public  
43 safety, provided the municipality has adopted and is following a  
45 capital improvements plan. In making this determination, the  
47 reviewing authority shall at least consider the adequacy of  
49 existing capital facilities to serve the proposed subdivision;  
51 the expected demand for services from the proposed subdivision;  
and adopted plans for improvements to capital facilities. In  
making this determination, the reviewing authority shall not  
consider the impacts of the proposed subdivision on the municipal  
operating budget or the relative value of the projected tax  
revenue from the proposed subdivision to the costs of providing  
services to the proposed subdivision. This determination shall  
not be used as a criterion for denial of an application for  
subdivision approval, but only for the placing of conditions of  
approval on the timing of its development.

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

E. Any person, firm, corporation or other legal entity 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 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 facts establishing that the proposed revisions do or do not meet the criteria of section 4404.

STATEMENT OF FACT

This bill proposes a series of technical changes to clarify the meaning of various requirements of the subdivision law and to facilitate administration of the law by towns and local planning boards.