

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 1874

H.P. 1357

House of Representatives, December 11, 1989

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

Received by the Clerk of the House on December 11, 1989. Referred to the Committee on Energy and Natural Resources and 1600 ordered printed pursuant to Joint Rule 14.

*Ed Pert*

EDWIN H. PERT, Clerk

Presented by Representative MICHAUD of East Millinocket.

Cosponsored by Representative DEXTER of Kingfield and Representative HOGLUND of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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An Act to Correct the Subdivision Laws.

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

Sec. 1. 12 MRSA §682, sub-§2, as amended by PL 1989, c. 584, §1, is further amended to read:

2. **Subdivision.** "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. A division accomplished by gift to a person related to the donor by blood, marriage or adoption, unless the intent of that gift is to avoid the objectives of this chapter, does not create a lot or lots for purposes of this definition.

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 of at least 40 acres in size shall not be counted as a lot for the purpose of this subsection except when the lot or the parcel from which it was divided is located wholly or partly within the shoreland area as defined in Title 38, section 435 and except as provided in paragraph A, or when the lot or parcel from which it was divided has been subdivided into more than 10 lots in 5 years.

A. When 3 to 10 lots containing at least 40 acres are created within a 5-year period from a parcel which is located wholly outside the shoreland area as defined in Title 38, section 435, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the registry of deeds, the commission and the State Tax Assessor within 60 days of the creation of that lot. Any subsequent division of a lot created from the original parcel within 10 years of the filing of the plan in the registry of deeds shall be considered a subdivision. Failure to file the plan required by this paragraph is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.

B. The commission shall submit a report by March 15th, annually, to the joint standing committee of the Legislature having jurisdiction over energy and natural resources. The report shall indicate the number and location of lots for which a plan was filed under paragraph A and the number and

location of subsequent divisions requiring review by the commission.

The creation of a lot or parcel more than 500 acres in size shall not be counted as a lot for the purpose of this subsection, except when the width-to-length ratio of the lot or parcel exceeds 5 to one.

**Sec. 2. 30-A MRSA §4401, sub-§4,** as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, and as amended by PL 1989, c. 326, §1 and c. 497, §2, is further amended to read:

**4. Subdivision.** "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "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 or placement 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.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract 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:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's 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

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

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this 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.

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

2 (1) When the lot or parcel from which it was divided  
3 is located entirely or partially within any shoreland  
4 area as defined in Title 38, section 435, or a  
5 municipality's shoreland zoning ordinance; or

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

14 D. A division accomplished by devise, condemnation, order  
15 of court, gift to a person related to the donor by blood,  
16 marriage or adoption or a gift to a municipality or by the  
17 transfer of any interest in land to the owner of land  
18 abutting that land ~~unless the intent of that transfer is to~~  
19 ~~avoid the objectives of this section,~~ does not create a lot  
20 or lots for the purposes of this definition, unless the  
21 intent of the transferor in any transfer or gift within this  
22 paragraph is to avoid the objectives of this section.

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

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

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

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

46  
47 **Sec. 3. 30-A MRSA §4404, sub-§14, as enacted by PL 1989, c.**  
48 **404, §2, is amended to read:**

50 **14. Freshwater wetlands.** All potential freshwater wetlands  
51 within the proposed subdivision have been identified on any maps  
52 submitted as part of the application, regardless of the size of

these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Sec. 4. 30-A MRSA §4406, sub-§1, ¶E, as enacted by PL 1989, c. 497, §10, is amended 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 4452.

#### STATEMENT OF FACT

This bill reinserts an exemption from the Maine Land Use Regulation Commission subdivision review for lots of 500 acres or more as long as the width-to-length ratio of the lot does not exceed 5 to one. The bill also makes it clear that placing 3 or more dwelling units such as manufactured homes and mobile homes on a parcel of land constitutes a subdivision just as constructing 3 or more dwelling units would constitute a subdivision under current law. It also clarifies that no exemptions under the Maine Revised Statutes, Title 30-A, section 4401, subsection 4, paragraph D, are available to a transferor whose primary purpose is to avoid subdivision review and it corrects a reference to a section of law that no longer exists.