

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

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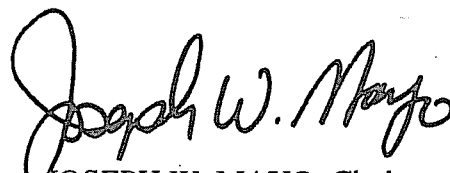
H.P. 640

House of Representatives, March 12, 1993

**An Act to Confirm when Site Location of Development Approval Is
Unnecessary.**

(EMERGENCY)

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


JOSEPH W. MAYO, Clerk

Presented by Representative LORD of Waterboro.

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

Whereas, state law currently provides that transfers, by sale or lease, of lots to an abutting owner are exempt from review as a subdivision under the site location of development laws; and

Whereas, the Legislature's intent in creating this exemption from review as a subdivision is also to exempt those transfers to abutters from site location of development law review; and

Whereas, the Department of Environmental Protection has promulgated rules that are contrary to this legislative intent or are being interpreted in a manner contrary to this legislative intent; and

Whereas, it is necessary for the Legislature to confirm its legislative intent in this regard; 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,

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

Sec. 1. 38 MRSA §482, sub-§5, ¶D-1 is enacted to read:

D-1. When a lot or lots are sold or leased pursuant to paragraph E, subparagraph (1) to the abutting owner of land located in a subdivision previously approved under this article and the lot or lots to be sold or leased to the abutter were not included in that or any other subdivision previously approved under this article, such a transfer to the abutter is exempt from the definition of subdivision in this subsection subject to the requirements of paragraph E and is also exempt from review under this article. This paragraph does not prevent the review under this article of any development as defined in paragraph E, subparagraph (2) that may thereafter occur on the abutter's land or on the transferred lot or lots; however, the actual transfer to the abutter itself does not require review under this article;

Sec. 2. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all lots in all subdivisions that have received approval under the site location of development laws as well as all pending proceedings.

2 **Emergency clause.** In view of the emergency cited in the
4 preamble, this Act takes effect when approved.

6 **STATEMENT OF FACT**

8 The Maine Revised Statutes, Title 38, section 483-A
10 prohibits all persons from constructing, operating or from
12 causing to be constructed or operated any development requiring
14 approval under the site location of development laws without
16 first having obtained such approval from the Department of
18 Environmental Protection. Title 38, section 482, subsection 5,
20 paragraph E, exempts from the definition of subdivision the sale
22 or lease of lots to an abutting owner, unless the sale or lease
24 is intended to circumvent the site location of development laws.
26 The Department of Environmental Protection has promulgated rules
to administer this law and has interpreted those rules to require
the owner of land in an already approved development to seek new
or revised approval under the site location of development laws
for the sale or lease of abutting land that was not part of the
already approved development. In this way, the Department of
Environmental Protection's rules or interpretation of its rules
requires the department review and approval of transfers that the
Legislature has determined generally are exempt from the
department review and approval.

28 This bill confirms the Legislature's intent in creating this
30 exemption. This bill intends to have effect not only
32 prospectively, but retroactively as well so that it is clear that
34 previous and pending transfers to abutters who own lots in
subdivisions already approved by the Department of Environmental
Protection under the site location of development laws are not in
violation of that law for failure to have obtained approval of
these transfers.