

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 886

S.P. 300

In Senate, March 15, 1993

**An Act to Amend the Municipal Subdivision Laws.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CLEVELAND of Androscoggin.

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

2  
4           **Sec. 1. 30-A MRSA §4401, sub-§2-B** is enacted to read:

6           **2-B. Minor division.** "Minor division" means the division  
8 of a tract or parcel of land into 2 or 3 lots within any 5-year  
10 period that begins on or after the effective date of this  
12 subsection. This definition applies whether the division is  
14 accomplished by sale, lease, development or the construction,  
16 placement or dividing of buildings. The term "minor division"  
18 includes the division of a structure or structures on a tract or  
parcel of land into 2 or 3 dwelling, commercial or industrial  
units within a 5-year period and the construction or placement of  
2 or 3 dwelling, commercial or industrial units on a single tract  
or parcel of land. Subsection 4, paragraphs A to I apply to this  
subsection in determining whether a division is to be counted as  
a minor division, how many minor divisions have occurred and if  
any minor divisions are exempt from review.

20           **Sec. 2. 30-A MRSA §4401, sub-§4,** as amended by PL 1991, c.  
22 500, §§1 and 2, is further amended to read:

24           **4. Subdivision.** "Subdivision" means the division of a  
26 tract or parcel of land into 3 4 or more lots within any 5-year  
28 period that begins on or after September 23, 1971. This  
30 definition applies whether the division is accomplished by sale,  
32 lease, development, buildings or otherwise. The term  
34 "subdivision" also includes the division of a new structure or  
36 structures on a tract or parcel of land into 3 4 or more  
dwelling, commercial or industrial units within a 5-year period,  
and the construction or placement of 3 4 or more dwelling,  
commercial or industrial 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.~~

38           A. In determining whether a tract or parcel of land is  
40 divided into 3 4 or more lots, the first dividing of the  
42 tract or parcel is considered to create the first 2 lots  
44 and the next dividing of either of these first 2 lots, by  
whomever accomplished, is considered to create a 3rd lot and  
46 the next dividing of any of these 3 lots, by whomever  
48 accomplished, is considered to create a 4th lot, unless:

50           (1) Both The 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  
3rd dividing occurs; or

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

4 B. The dividing of a tract or parcel of land and the lot or  
6 lots so made, which dividing or lots when made are not  
8 subject to this subchapter, do not become subject to this  
10 subchapter by the subsequent dividing of that tract or  
12 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.

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

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

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

28 D. A division accomplished by devise, condemnation, order  
30 of court, gift to a person related to the donor by blood,  
marriage or adoption or a gift to a municipality or by the  
32 transfer of any interest in land to the owner of land  
abutting that land does not create a lot or lots for the  
34 purposes of this definition, unless the intent of the  
transferor in any transfer or gift within this paragraph is  
36 to avoid the objectives of this subchapter. If the real  
estate exempt under this paragraph by a gift to a person  
38 related to the donor by blood, marriage or adoption is  
transferred within 5 years to another person not related to  
40 the donor of the exempt real estate by blood, marriage or  
adoption, then the previously exempt division creates a lot  
42 or lots for the purposes of this subsection.

44 E. The division of a tract or parcel of land into ~~3~~ 4  
46 more lots and upon each of which lots permanent dwelling  
structures legally existed before September 23, 1971 is not  
a subdivision.

48 F. In determining the number of dwelling, commercial and  
50 industrial units in a structure, the provisions of this  
subsection regarding the determination of the number of lots

2 apply, including exemptions from the definition of a  
subdivision of land.

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

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

18 I. The grant of a bona fide security interest in an entire  
lot that has been exempted from the definition of  
20 subdivision under paragraph D, or subsequent transfer of  
that entire lot by the original holder of the security  
22 interest or that person's ~~sweesseser~~ successors in interest,  
does not create a lot for the purposes of this definition,  
24 unless the intent of the transferor is to avoid the  
objectives of this subchapter.

26 Sec. 3. 30-A MRSA §4403-A is enacted to read:

28 **§4403-A. Municipal review and regulation of minor divisions**

30 This section governs municipal review of proposed minor  
32 divisions.

34 1. Municipal reviewing authority. The municipal reviewing  
authority shall review all applications for minor division  
36 approval. On matters concerning minor division review, the  
municipal reviewing authority shall maintain a permanent record  
38 of its meetings, proceedings and correspondence.

40 2. Joint meetings. If any portion of a minor division  
crosses municipal boundaries, the reviewing authorities from each  
42 municipality shall meet jointly to discuss the application for  
minor division approval.

44 3. Regulations; review procedure. The municipal reviewing  
authority may, after a public hearing, adopt, amend or repeal  
46 additional reasonable regulations governing minor divisions,  
which control until amended, repealed or replaced by regulations  
48 adopted by the municipal legislative body. The municipal  
reviewing authority shall give at lease 7 days' notice of this  
50 hearing.

2 4. Application; notice; completed application. This  
3 subsection governs the procedure to be followed after a municipal  
4 reviewing authority receives an application for a proposed minor  
5 division.

6 A. When an application is received, the municipal reviewing  
7 authority shall give a dated receipt to the applicant,  
8 publish a notice in a newspaper of general circulation in  
9 the municipality and notify the clerk of the reviewing  
10 authority of any municipality that abuts or includes any  
11 portion of the minor division, specifying the location of  
12 the proposed minor division and including a general  
13 description of the project.

14 B. Within 7 days after receiving an application, the  
15 municipal reviewing authority shall notify the applicant in  
16 writing either that the application is complete or, if the  
17 application is incomplete, the specific additional material  
18 needed to complete the application.

19 5. Public hearing; notice. If the municipal reviewing  
20 authority decides to hold a public hearing on an application for  
21 minor division approval, it must hold the hearing within 14 days  
22 after determining it has received a complete application. The  
23 municipal reviewing authority shall give notice of the date, time  
24 and place of the hearing to the applicant and publish, at least 2  
25 times, in a newspaper having general circulation in the  
26 municipality in which the minor division is proposed to be  
27 located. The date of the first publication must be at least 7  
28 days before the hearing.

29 6. Minor division review. The municipal reviewing  
30 authority shall review all applications for minor division  
31 approval to determine whether the proposed minor division:

32 A. Conforms to municipally adopted ordinances and plans;

33 B. Conforms to the municipality's minimum lot size and any  
34 other dimensional requirements;

35 C. Provides adequate access to all divided real estate; and

36 D. Has or can support adequate sewage waste disposal and  
37 drinking water supplies.

38 If the municipal reviewing authority finds that these conditions  
39 are met, it shall make findings of fact establishing that the  
40 proposed minor division meets the criteria of this subsection.  
41 In all instances, the burden of proof is upon the person  
42 proposing the minor division.

2 7. Decision; time limits. The municipal reviewing  
3 authority, within 7 days of a public hearing or, if no hearing is  
4 held, within 14 days of determining it has received a complete  
5 application or within any other time limit that is mutually  
6 agreed to, shall issue an order:

7 A. Denying approval of the proposed minor division;

8 B. Granting approval of the proposed minor division; or

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

11 (1) Satisfy the criteria listed in subsection 6;

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

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

16 8. Conditioned on variance. If the initial approval or any  
17 subsequent amendment of a minor division is based in part on the  
18 granting of a variance, the subdivider must comply with section  
19 4406, subsection 1, paragraph B.

20 **Sec. 4. 30-A MRSA §4406, sub-§1,** as amended by PL 1991, c.  
21 548, Pt. D, §5, is further amended to read:

22 **1. Sales or other conveyances.** No A person may not sell,  
23 lease, develop, build upon or convey for consideration, or offer  
24 or agree to sell, lease, develop, build upon or convey for  
25 consideration any land or dwelling, commercial or industrial unit  
26 in a minor division or subdivision that has not been approved by  
27 the municipal reviewing authority of the municipality where the  
28 minor division or subdivision is located and approved under Title  
29 38, chapter 3, subchapter I, article 6, where applicable, and  
30 subsequently recorded in the proper registry of deeds.

31 **A.** No A register of deeds may not record any minor division  
32 or subdivision plat or plan that has not been approved under  
33 this subchapter. Approval for the purpose of recording must  
34 appear in writing on the plat or plan. All A minor division  
35 or subdivision plats-and-plans plat or plan required by this  
36 subchapter must contain the name and address of the person  
37 under whose responsibility the minor division or subdivision  
38 plat or plan was prepared.

39 **B.** Whenever the initial approval or any subsequent  
40 amendment of a minor division or subdivision is based in  
41 part on the granting of a variance from any applicable minor  
42 division or subdivision approval standard, that fact must be  
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2 expressly noted on the deed or face of the minor division or  
subdivision plan to be recorded in the registry of deeds.

4 (1) In the case of an amendment, if no amended plan is  
to be recorded, a certificate must be prepared in  
6 recordable form and recorded in the registry of deeds.  
This certificate must:

8 (a) Indicate the name of the current property  
10 owner;

12 (b) Identify the property by reference to the  
last recorded deed in its chain of title; and

14 (c) Indicate the fact that a variance, including  
16 any conditions on the variance, has been granted  
and the date of the granting.

18 (2) The variance is not valid until recorded as  
20 provided in this paragraph. Recording must occur  
within 90 days of the final minor division or  
22 subdivision approval or approval under Title 38,  
chapter 3, subchapter I, article 6, where applicable,  
24 whichever date is later, or the variance is void.

26 B-1. Whenever the subdivision is exempt from Title 38,  
chapter 3, subchapter I, article 6, because of the operation  
28 of Title 38, section 488, subsection 5, that fact must be  
expressly noted on the face of the subdivision plan to be  
30 recorded in the registry of deeds. The developable land, as  
defined in Title 38, section 488, subsection 5, must be  
32 indicated on the plan. The person submitting the plan for  
recording shall prepare a sworn certificate in recordable  
34 form and record it in the registry of deeds. This  
certificate must:

36 (1) Indicate the name of the current property owner;

38 (2) Identify the property by reference to the last  
40 recorded deed in its chain of title and by reference to  
the subdivision plan;

42 (3) Indicate that an exemption from Title 38, chapter  
44 3, subchapter I, article 6, has been exercised;

46 (4) Indicate that the requirements of Title 38, section  
488, subsection 5, have been and will be satisfied; and

48 (5) Indicate the date of notification of the Department  
50 of Environmental Protection under Title 38, section  
488, subsection 5.

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2 The exemption is not valid until recorded as provided in  
4 this paragraph. Recording must occur within 90 days of the  
final subdivision approval under this subchapter or the  
exemption is void.

6 C. A building inspector may not issue any permit for a  
8 building or use within a land minor division or subdivision  
10 unless the minor division or subdivision has been approved  
under this subchapter and under Title 38, chapter 3,  
subchapter I, article 6, where applicable.

12 D. Any person who sells, leases, develops, builds upon, or  
14 conveys for consideration, offers or agrees to sell, lease,  
develop, build upon or convey for consideration any land or  
16 dwelling, commercial or industrial unit in a minor division  
or subdivision that has not been approved under this  
subchapter and under Title 38, chapter 3, subchapter I,  
18 article 6, where applicable, shall must be penalized in  
accordance with section 4452.

20 E. Any person who, after receiving approval from the  
22 municipal reviewing authority or approval under Title 38,  
chapter 3, subchapter I, article 6 and recording the plan at  
24 the registry of deeds, constructs or develops the minor  
division or subdivision or transfers any lot in a manner  
26 other than depicted on the approved plans or amendments or  
in violation of any condition imposed by the municipal  
28 reviewing authority or the Department of Environmental  
Protection, when applicable, must be penalized in accordance  
30 with section 4452.

32 F. Any person who sells, leases or conveys for  
34 consideration any land or dwelling unit in a subdivision  
approved under this subchapter and exempt from Title 38,  
36 chapter 3, subchapter I, article 6, because of the operation  
of Title 38, section 488, subsection 5, shall include in the  
38 instrument of sale, lease or conveyance a covenant to the  
transferee that all of the requirements of Title 38, section  
488, subsection 5, have been and will be satisfied.

40 **Sec. 5. 30-A MRSA §4406, sub-§§2 and 3,** as enacted by PL 1989,  
42 c. 104, Pt. A, §45 and Pt. C, §10, are amended to read:

44 **2. Permanent marker required.** No A person may not sell or  
46 convey any land in an approved minor division or subdivision  
unless at least one permanent marker is set at one lot corner of  
48 the lot sold or conveyed. The term "permanent marker" includes,  
but is not limited to, the following:

50 A. A granite monument;

52 B. A concrete monument;

- 2 C. An iron pin; or
- 4 D. A drill hole in ledge.

6 **3. Utility installation.** No A public utility, water  
district, sanitary district or any utility company of any kind  
8 may not install services to any lot or dwelling, commercial or  
industrial unit in a minor division or subdivision, unless  
10 written authorization attesting to the validity and currency of  
all local permits required under this chapter has been issued by  
12 the appropriate municipal officials. Following installation of  
service, the company or district shall forward the written  
14 authorization to the municipal officials indicating that  
installation has been completed.

16 **Sec. 6. 30-A MRSA §4407**, as amended by PL 1989, c. 497, §11,  
18 is further amended to read:

20 **§4407. Revisions to existing plat or plan**

22 Any application for minor division or subdivision approval  
which that constitutes a revision or amendment to a minor  
24 division or subdivision plan which that has been previously  
approved shall must indicate that fact on the application and  
26 shall must identify the original minor division or subdivision  
plan being revised or amended. In reviewing such an application,  
28 the municipal reviewing authority shall make findings of fact  
establishing that the proposed revisions do or do not meet the  
30 criteria of section 4403-A, subsection 6 or section 4404.

32 **1. Recording.** If a minor division or subdivision plat or  
plan is presented for recording to a register of deeds and that  
34 plat or plan is a revision or amendment to an existing plat or  
plan, the register shall:

36 A. Indicate on the index for the original plat or plan that  
38 it has been superseded by another plat or plan;

40 B. Reference the book and page or cabinet and sheet on  
which the new plat or plan is recorded; and

42 C. Ensure that the book and page or cabinet and sheet on  
44 which the original plat or plan is recorded is referenced on  
the new plat or plan.

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**STATEMENT OF FACT**

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This bill amends the laws governing municipal subdivision  
approval to include divisions for commercial and industrial use  
52 and to create an expedited review for minor divisions. Minor

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2 divisions are defined as divisions of 2 or 3 lots or units. The  
definition of subdivision is amended to include divisions of 4 or  
4 more lots or units. The review criteria for minor divisions also  
are simplified to include conformity with local ordinances and  
6 plans, conformity with a municipality's lot dimensional  
requirements, the provision of adequate access and adequate  
sewage disposal capacity and drinking water supplies.