

# MAINE STATE LEGISLATURE

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L.D. 1492

(Filing No. H-532 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1105, L.D. 1492, Bill, "An Act Related to the Site Location of Development Laws"

Amend the bill by inserting after the enacting clause and before section 1 the following:

**Sec. 1. 38 MRSA §439-A, sub-§2,** as amended by PL 1991, c. 346, §7, is further amended to read:

**2. Jurisdiction.** Notwithstanding the scope of shoreland areas as identified in section 435, the jurisdiction of municipal shoreland zoning and land use control ordinances adopted under this article may include any structure built on, over or abutting a dock, wharf, pier or other structure extending or located below the normal high-water line of a water body or within any a wetland. Accordingly, municipalities may enact ordinances affecting structures which that extend or are located over the water or are placed on lands lying between high and low waterlines or within wetlands.

**Sec. 2. 38 MRSA §481, last ¶,** as enacted by PL 1987, c. 346, §1, is amended to read:

The Legislature further finds that noise generated at development sites has primarily a geographically restricted and frequently transient impact which that is best regulated at the municipal level pursuant to a municipality's economic development and land use plans. It is the intent of the Legislature that regulation of noise from developments is be primarily the responsibility of local municipal governments. ~~It is further the intent of the Legislature that any action by the board regulating the effects of noise taken after July 1, 1986, which is inconsistent with section 482-A, shall be reconsidered and amended only on the issue of noise upon the petition of an applicant or intervenor to the permitting action within 180 days of the effective date of rules adopted pursuant to section 482-A.~~

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2 Further amend the bill in section 1 in subsection 2 in the  
first paragraph in the last line (page 1, line 11 in L.D.) by  
striking out the following: "on a parcel"

4  
6 Further amend the bill in section 1, in subsection 2 by  
striking out all of paragraph B (page 1, lines 15 to 17 in L.D.)  
and inserting in its place the following:

8  
10 B. Contemplates drilling for or excavating natural  
resources on land or under water where the area affected is  
in excess of 60,000 square feet;

12  
14 Further amend the bill in section 3 in subsection 2-B by  
striking out all of the last blocked paragraph (page 2, lines 21  
to 27 in L.D.) and inserting in its place the following:

16  
18 "Mining activity or advanced exploration" does not include  
either excavation or grading preliminary to a construction  
project, unless intended to circumvent this article, or any other  
mining activity specifically exempted in this Title. An  
excavation of 5 or fewer acres of land for topsoil, clay or silt  
must be conducted and reclaimed in accordance with the erosion  
and sedimentation control standards contained in board rules.'

24  
26 Further amend the bill in section 15 in subsection 5 in  
paragraph E in subparagraph (1) in the last line (page 5, line 10  
in L.D.) by inserting after the following: "period" the  
following: ', except as provided in this subsection'

30  
32 Further amend the bill in section 16 in subsection 6 by  
striking out all of paragraph B (page 6, lines 10 to 14 in L.D.)  
and inserting in its place the following:

34  
36 'B. ~~Parking Buildings, parking~~ lots, roads, paved areas,  
wharves or areas to be stripped or graded and not to be  
revegetated which--causes that cause a total project,  
~~including any buildings~~ to occupy a ground area in excess of  
3 acres. Stripped or graded areas that are not revegetated  
within a calendar year are included in calculating the  
3-acre threshold.'

42  
44 Further amend the bill by striking out all of section 17  
(page 6, lines 16 and 17 in L.D.) and inserting in its place the  
following:

46  
48 'Sec. 17. 38 MRSA §482-A, as amended by PL 1991, c. 66, Pt.  
A, §17, is repealed.'

50 Further amend the bill by inserting after section 18 the  
following:

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'Sec. 19. 38 MRSA §484, sub-§3, ¶¶A to C are enacted to read:

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection.

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise.

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board.'

Further amend the bill by striking out all of section 22 (page 7, lines 9 and 10 in L.D.) and inserting in its place the following:

'Sec. 22. 38 MRSA §487-A, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §95, is repealed.'

Further amend the bill in section 23 in that part designated "~~§488.~~" in the first paragraph in the 6th and 7th lines (page 7, lines 22 and 23 in L.D.) by striking out the stricken language "~~or to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more,~~" and inserting in its place the following: 'or, to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more,' and in the last 3 lines (page 7, lines 26 to 28 in L.D.) by striking out the stricken language "~~, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way~~" and inserting in its place the following: ', nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way'

Further amend the bill in section 23 in that part designated "~~§488.~~" in subsection 5 in paragraph B in the last line (page 9, line 43 in L.D.) by striking out the following: "~~and~~"

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Further amend the bill in section 23 in that part designated "§488." in subsection 5 by striking out all of paragraph C (page 9, lines 45 to 48 and page 10, lines 1 to 20 in L.D.) and inserting in its place the following:

C. A development consisting only of a residential subdivision of fewer than 30 lots if:

(1) The lots are served by a municipal sewer system;

(2) The parcel is located within a municipality having a comprehensive plan and land use ordinances that the Department of Economic and Community Development has determined are consistent with Title 30-A, sections 4312 to 4349; and

(3) All lots are restricted to residential or open space use, except that 10 years after a residence is established on a lot, that lot may be converted to a nonresidential use by a lot buyer if allowed under municipal ordinances; and

D. Effective November 1, 1993, a development consisting only of a residential subdivision of 15 or fewer lots if:

(1) The parcel is located within a municipality having a comprehensive plan and land use ordinances that the Department of Economic and Community Development has determined are consistent with Title 30-A, sections 4312 to 4349;

(2) The department has determined that the municipal land use ordinances referred to in subparagraph (1) provide standards for groundwater protection that are at least as stringent as groundwater protection standards contained in rules adopted under this article and the municipality has provided evidence of technical capability as specified in the rule; and

(3) All lots are restricted to residential or open space use, except that 10 years after a residence is established on a lot, that lot may be converted to a nonresidential use by a lot buyer if allowed under municipal ordinances.

A lot in a residential subdivision exempted pursuant to paragraph C or D is no longer counted toward the 30-lot threshold in paragraph C or the 15-lot threshold in paragraph D for purposes of determining jurisdiction more than 5 years after the time a municipal subdivision plan showing the lot is recorded or the lot is sold or leased, whichever occurs first. A residential

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subdivision is a division of a parcel in which all lots are used for single-family housing or open space.'

Further amend the bill in section 23 in that part designated "~~§488.~~" in subsection 7 by striking out all of the first underlined sentence (page 8, lines 39 to 40 in L.D.) and inserting in its place the following: 'The permittee shall annually notify the department of new construction conducted during the previous 12 months pursuant to this exemption.'

Further amend the bill in section 23 in that part designated "~~§488.~~" by striking out all of subsection 11 (page 13, lines 6 to 19 in L.D.) and renumbering the subsections to read consecutively.

Further amend the bill in section 24 in that part designated "~~§489-A.~~" in subsection 2 in paragraph D-1 by striking out all of the last underlined sentence (page 15, lines 25 to 29 in L.D.) and inserting in its place the following: 'An excavation of 5 or fewer acres of land for topsoil, clay or silt must be conducted and reclaimed in accordance with the erosion and sedimentation control standards contained in board rules'

Further amend the bill in section 24 in that part designated "~~§489-A.~~" in subsection 3-A in the 2nd line (page 16, line 27 in L.D.) by striking out the following: "or" and inserting in its place the following: 'of'

Further amend the bill in section 24 in that part designated "~~§489-A.~~" in subsection 10-A by striking out all of the last blocked paragraph (page 18, lines 51 and 52 in L.D.)

Further amend the bill in section 33 in that part designated "~~§1310-N.~~" in subsection 2-F by inserting at the end the following:

'G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.'

Further amend the bill in section 34 in subsection 7 by inserting at the end the following:

'G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure.'

Further amend the bill in section 35 in that part designated "~~§1319-X.~~" by inserting after subsection 6 the following:

'7. Flooding. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent

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properties nor create an unreasonable flood hazard to a structure.'

Further amend the bill by striking out all of section 36 and inserting in its place the following:

**Sec. 36. 38 MRSA §1478, sub-§§1 and 2,** as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §272, are further amended to read:

**1. Notice.** Any A person intending to construct or operate a low-level radioactive waste storage or disposal facility shall ~~file a preliminary notice with~~ notify the commissioner and the municipality in accordance with ~~section 485-A, subsection 1 and section 487-A, subsection 1~~ writing of the nature and location of the proposed facility, together with other information the board may by rule require.

**2. Hearings.** The board shall hold hearings on the proposed facility in accordance with section 486-A 1478-A. Subject to the requirements of Title 5, section 9057, any a person who resides within the State is entitled to be heard. The hearings must, at a minimum, address the following issues:

A. The technical feasibility of the proposed waste disposal or storage facility;

B. The environmental impact of the proposed waste disposal or storage facility on the surrounding area;

C. The social impact of the proposed waste disposal or storage facility on the surrounding area;

D. The economic impact of the proposed waste disposal or storage facility on the surrounding area; and

E. Whether the proposed facility will satisfy requirements under section 413, waste discharge licenses; section 590, air emission licensing; section 1304, licenses for waste facilities, and rules adopted pursuant that section; and any other applicable laws administered by the department.

**Sec. 37. 38 MRSA §1478, sub-§4,** as enacted by PL 1983, c. 500, §5, is amended to read:

**4. Findings; recommendations.** Notwithstanding any requirement of chapter 3, subchapter I, Article 6, within 90 days after adjournment of the hearings, the board shall make findings of fact and conclusions derived from those findings. Based upon those findings and conclusions, the board shall issue an order denying permission for construction and operation of the facility on grounds stated in section 484 1304 or rules adopted by the

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2 board pursuant to that section, or shall recommend to the  
Legislature granting that permission, subject to any terms and  
4 conditions deemed determined appropriate. Any A favorable  
recommendation shall must be transmitted to the Legislature,  
6 together with the supporting findings and conclusions, for action  
under section 1479.

8 **Sec. 38. 38 MRSA §1478-A is enacted to read:**

10 **§1478-A. Hearings; orders; construction suspended**

12 The following provisions govern hearings held by the board  
pursuant to section 1478, subsection 2.

14  
16 1. Hearings. The board shall solicit and receive testimony  
to determine whether the proposed facility will meet the  
standards established in section 1304 and rules adopted pursuant  
18 to that section.

20 2. Developer; burden of proof. At the hearings held  
pursuant to section 1478, the burden is upon the person proposing  
22 the facility to demonstrate affirmatively to the board that each  
of the standards for approval established in section 1304 or  
24 rules adopted pursuant to that section has been met and that the  
public's health, safety and general welfare will be adequately  
26 protected.

28 3. Findings of fact; order. After the board adjourns any  
hearings held under this section, the board shall make findings  
30 of fact and issue its order in accordance with section 1478.

32 4. No construction pending order. A person may not  
undertake construction of a low-level radioactive waste facility  
34 until the facility is approved pursuant to section 1478.

36 5. Continuing compliance; air and water pollution. A  
person securing approval for a facility in accordance with  
38 section 1478 shall maintain the financial capacity and technical  
ability to meet the State's air and water pollution control  
40 standards until that person has complied with those standards.

42 6. Transcripts. A complete verbatim transcript must be  
made of all hearings held pursuant to this section.'

44  
46 Further amend the bill in section 37 by striking out all of  
the first paragraph and subsection 1 (page 28, lines 36 to 41 in  
L.D.) and inserting in its place the following:

48 'Sec. 37. Transition. This transition provision applies to  
50 sections 1 to 28 of this Act.



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1. For purposes of determining jurisdiction, this Act does not apply to a development for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this Act, except that a development permitted as a conversion prior to the effective date does not require a permit modification for any activity unless the activity itself constitutes a development that may substantially affect the environment, as defined in Title 38, section 482, subsection 2.'

Further amend the bill in section 37 by striking out all of subsection 4 (page 29, lines 20 to 23 in L.D.) and inserting in its place the following:

'4. Municipalities registered under the Maine Revised Statutes, Title 38, section 489-A are considered registered under Title 38, chapter, 3, subchapter I, article 6 as amended by that Act but must meet the requirements of this article as amended by this Act.

Further amend the bill by striking out all of section 38 (page 29, lines 25 to 31 in L.D.)

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

**FISCAL NOTE**

	<b>1993-94</b>	<b>1994-95</b>
<b>REVENUES</b>		
Other Funds	(\$9,375)	(\$12,500)

The exemption of certain developments from site location requirements will reduce the permit fee collections. The estimated reductions of dedicated revenues to the Department of Environmental Protection are \$9,375 and \$12,500 in fiscal years 1993-94 and 1994-95, respectively.

The Department of Environmental Protection will incur some minor additional costs to conduct a certain study on land use regulation of gas pipelines and transmission lines and submit a report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.'

**STATEMENT OF FACT**

This amendment makes the following changes in the bill:

2  
4 1. Amends the mandatory shoreland zoning laws to include regulation of buildings built over the water, such as wharves;

6 2. Reinstates language requiring a permit under the site law for the following activities: drilling or excavating for natural resources when the affected area exceeds 60,000 square feet and construction of gas pipelines and transmission lines carrying more than 100 kilovolts. Laws requiring notice of these activities are also reinstated;

12 3. Clarifies that areas stripped or graded and revegetated within a calendar year are not counted in determining whether a development exceeds 3 acres;

14 4. Moves the language regarding consideration of noise effects from a development into the section of law dealing with standards for development;

16 5. Expands the exemption for residential subdivisions to include an exemption for residential subdivisions of 15 or fewer lots without municipal sewer, provided certain conditions are met;

18 6. Amends the notice requirement for expansions at existing manufacturing facilities to require an annual notice of construction undertaken during the year instead of advance notice of construction to be undertaken;

20 7. Removes reference to reconsideration of a board decision to grant, withhold or suspend municipal registration to make this law consistent with legislation approved earlier this session;

22 8. Reinstates consideration of flood hazards as a standard for reviewing solid and hazardous waste facilities under the site laws;

24 9. Clarifies the process the department must follow to review low-level radioactive waste facility sites; and

26 10. Provides that persons holding permits for conversions are not required to obtain department review of modifications to those projects.

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Reported by the Committee on Energy and Natural Resources  
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