

MAINE STATE LEGISLATURE

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L.D. 1853

DATE: 3/28/96

(Filing No. H- 876)

NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1352, L.D. 1853, Bill, "An Act to Reorganize and Redirect Aspects of the Site Location of Development Laws"

Amend the bill by striking out all of Part A.

Further amend the bill in Part B in section 5 in subsection 5 in the 9th line (page 7, line 36 in L.D.) by inserting after the following: "aggregate" the following: 'land'

Further amend the bill in Part B in section 9 in subsection 2 in the 10th and 11th lines (page 8, lines 33 and 34 in L.D.) by striking out the following: "The department may require alternative or multimodal measures."

Further amend the bill in Part B in section 11 by striking out all of subsection 4-A (page 10, lines 1 to 6 in L.D.) and inserting in its place the following:

'4-A. Storm water management and erosion and sedimentation control. The proposed development meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. For purposes of review of metallic mineral mining or advanced exploration, these standards apply in all areas of the State. If a permit is issued pursuant to this article, a permit is not required pursuant to section 420-D. If exempt from section 420-D, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality rules adopted pursuant to section 420-D.'

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Further amend the bill in Part B in section 12 by striking out all of the first line (page 10, line 8 in L.D.) and inserting in its place the following:

'Sec. B-12. 38 MRSA §485-A, sub-§§1-B and 1-C are enacted to read:'

Further amend the bill in Part B in section 12 by inserting at the end the following:

'1-C. Approval of future development sites. The department shall adopt rules allowing the option of, and identifying requirements for, a planning permit that allows approval of development within a specified area and within specified parameters such as maximum area, groundwater usage and traffic generation, although the specific nature and extent of the development or timing of construction may not be known at the time the permit is issued. The location and parameters of the development must meet the standards of this article. This alternative is not available for metallic mineral mining or advanced exploration activities. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.'

Further amend the bill in Part B by striking out all of sections 15 and 20.

Further amend the bill in Part B by striking out all of section 22 and inserting in its place the following:

'Sec. B-22. 38 MRSA §488, sub-§§19 and 20 are enacted to read:

19. Municipal capacity. A structure, as defined in section 482, subsection 6, that is from 3 acres up to and including 7 acres or a subdivision, as defined in section 482, subsection 5, that is made up of 15 or more lots for single-family, detached, residential housing, common areas or open space with an aggregate area of from 30 acres up to and including 100 acres is exempt from review under this article if located wholly within a municipality or municipalities having delegated review pursuant to section 489-A or meeting the criteria in paragraphs A to C as determined by the department. The planning board of the municipality in which the development is located or an adjacent municipality may petition the commissioner to review such a structure or subdivision if it has regional environmental impacts. This petition must be filed within 20 days of the receipt of the application by the municipality. State jurisdiction must be exerted, if at all, within 30 days of receipt of the completed project application by the commissioner

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1 from the municipality or within 30 days of receipt of any
2 modification to that application from the municipality. Review
3 by the department is limited to the identified regional
4 environmental impacts. The criteria are as follows:

6 A. A municipal planning board or reviewing authority is
7 established and the municipality has adequate resources to
8 administer and enforce the provisions of its ordinances. In
9 determining whether this criterion is met, the commissioner
10 may consider any specific and adequate technical assistance
11 that is provided by a regional council;

12 B. The municipality has adopted a site plan review
13 ordinance. In determining the adequacy of the ordinance,
14 the commissioner may consider model site plan review
15 ordinances commonly used by municipalities in this State
16 that address the issues reviewed under applicable provisions
17 of this article prior to July 1, 1997; and

18 C. The municipality has adopted subdivision regulations.
19 In determining the adequacy of these regulations, the
20 commissioner may consider model subdivision regulations
21 commonly used by municipalities in this State.

22 The department, in consultation with the State Planning Office,
23 shall publish a list of those municipalities determined to have
24 capacity pursuant to this subsection. This list need not be
25 established by rule and must be published by January 1, 1997. If
26 the department fails to publish the list by January 1, 1997,
27 municipalities with a site plan or subdivision ordinances or
28 regulations are deemed to have capacity for corresponding
29 projects until January 1, 1998, or until the list is published,
30 whichever period is longer. The list must specify whether a
31 municipality has capacity to review structures or subdivisions of
32 lots for single-family, detached, residential housing, common
33 areas or open space or both types of development. The department
34 may recognize joint arrangements among municipalities and
35 regional organizations in determining whether the requirements of
36 this subsection are met. On and after January 1, 2003, the
37 department shall irrebuttably presume and publish that each
38 municipality with a population of 2,500 or more, as measured by
39 the United States Census of the year 2000, has capacity as
40 provided in this subsection.

41 20. Modifications in permitted subdivisions. Review is not
42 required under this article in the following instances:

43 A. When the owner of a single lot in a subdivision with a
44 permit under this article conveys a right of access to
45 adjacent land that was not part of the permitted
46 subdivision.

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2 subdivision, if the right-of-way is not contrary to the
3 terms of the subdivision permit and the right-of-way is not
4 more than 50 feet long;

6 B. When 2 lot owners in a subdivision with a permit under
7 this article convey reciprocal easements for the purpose of
8 constructing a common driveway in place of 2 separate
9 driveways, if the single driveway reduces the total amount
10 of impervious area in the affected subwatershed; or

12 C. When a lot owner in a permitted subdivision seeks to
13 relocate the proposed septic field that had been designated
14 by the permit holder, if the septic field is no closer to
15 the down-gradient property boundary and the relocation is
16 approved by the required local and state agencies, such as
17 the plumbing inspector and the Department of Human Services,
18 Division of Health Engineering.'

20 Further amend the bill in Part B in section 26 in the first
21 paragraph in the 9th line (page 19, line 34 in L.D.) by inserting
22 after the following: "legislation" the following: 'that will
23 provide for the transfer of permit-granting authority to the
24 Department of Transportation no later than June 30, 1999'

26 Further amend the bill in Part B in section 27 in the first
27 paragraph in the 4th line from the end (page 20, line 20 in L.D.)
28 by striking out the following: "1997" and inserting in its place
the following: '1998'

30 Further amend the bill in Part B in section 27 in the first
31 paragraph in the last line (page 20, line 23 in L.D.) by striking
32 out the following: "1997" and inserting in its place the
33 following: '1998'

36 Further amend the bill in Part B in section 27 in the 2nd
37 indented paragraph in the 4th line from the end (page 20, line 37
38 in L.D.) by striking out the following: "1997" and inserting in
its place the following: '1998'

40 Further amend the bill in Part B in section 27 in the 2nd
41 indented paragraph in the last line (page 20, line 40 in L.D.) by
42 striking out the following: "1997" and inserting in its place the
43 following: '1998'

46 Further amend the bill in Part C by striking out all of
section 2 and inserting in its place the following:

48 'Sec. C-2. 38 MRSA §§420-C and 420-D are enacted to read:

50 §420-C. Erosion and sedimentation control

2 A person who conducts, or causes to be conducted, an
4 activity that involves filling, displacing or exposing soil or
6 other earthen materials shall take measures to prevent
8 unreasonable erosion of soil or sediment beyond the project site
10 or into a protected natural resource as defined in section
12 480-B. Erosion control measures must be in place before the
14 activity begins. Measures must remain in place and functional
16 until the site is permanently stabilized. Adequate and timely
18 temporary and permanent stabilization measures must be taken.

20 This section applies to a project or any portion of a
22 project located within an organized area of this State. This
24 section does not apply to agricultural fields. Forest management
26 activities, including associated road construction or
28 maintenance, conducted in accordance with applicable standards of
30 the Maine Land Use Regulation Commission, are deemed to comply
32 with this section. This section may not be construed to limit a
34 municipality's authority under home rule to adopt ordinances
36 containing stricter standards than those contained in this
38 section.

40 §420-D. Storm water management

42 A person may not construct, or cause to be constructed, a
44 project that includes 20,000 square feet or more of impervious
46 area or 5 acres or more of disturbed area in the direct watershed
48 of a body of water most at risk from new development or one acre
50 or more of impervious area or 5 acres or more of disturbed area
52 in any other area without prior approval from the department. A
54 person proposing a project shall apply to the department for a
56 permit using an application provided by the department. This
58 section applies to a project or any portion of a project that is
60 located within an organized area of this State.

62 1. Standards. The department shall adopt rules specifying
64 quantity and quality standards for storm water. Storm water
66 quality standards for projects with 3 acres or less of impervious
68 surface may address phosphorus, nitrates and suspended solids but
70 may not directly address other dissolved or hazardous materials
72 unless infiltration is proposed. Storm water quality standards
74 apply only in the direct watersheds of waterbodies most at risk
76 from development and in sensitive or threatened geographic
78 regions or watersheds defined by the department under subsection
80 4. Until such regions are defined, storm water quality standards
82 are not required to be met by a permit applicant.

84 2. Review. If the applicant is able to meet the standards
86 for storm water using solely vegetative means, the department
88 shall review the application within 30 calendar days. If
90 the applicant is unable to meet the standards, the department

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2 structural means are used to meet those standards, the department
3 shall review the application within 60 calendar days. The review
4 period begins upon receipt of a complete application and may be
5 extended pursuant to section 344-B. The department may request
6 additional information necessary to determine whether the
7 standards of this section are met. The application is deemed
8 approved if the department does not notify the applicant within
9 the applicable review period.

10 The department may allow a municipality or a quasi-municipal
11 organization, such as a watershed management district, to
12 substitute a management system for storm water approved by the
13 department for the permit requirement applicable to projects in a
14 designated area of the municipality.

16 3. Watersheds of bodies of water most at risk. The
17 department shall establish by rule a list of watersheds of bodies
18 of water most at risk from new development. In regard to lakes,
19 the list must include, but is not limited to, public water supply
20 lakes and lakes identified by the department as in violation of
21 class GPA water quality standards or as particularly sensitive to
22 eutrophication based on current water quality, potential for
23 internal recycling of phosphorus, potential as a cold water
24 fishery, volume and flushing rate or projected growth rate in a
25 watershed. The department shall review and update the list as
26 necessary. A municipality within the watershed of a body of
27 water most at risk may petition the department to have the body
28 of water added to or dropped from the list.

30 4. Sensitive or threatened regions or watersheds. The
31 department shall establish by rule a list of sensitive or
32 threatened regions or watersheds. These areas include the
33 watersheds of surface waters that:

34 A. Are susceptible to degradation of water quality or
35 fisheries because of the cumulative effect of reasonably
36 foreseeable levels of development activity within the
37 watershed of the affected surface waters; and

38 B. Are not classified as "watersheds of bodies most at
39 risk" under subsection 3.

40 5. Relationship to other laws. A permit pursuant to this
41 section is not required for a project requiring review by the
42 department pursuant to any of the following provisions but the
43 project may be required to meet standards for management of storm
44 water adopted pursuant to this section: article 5-A, protection
45 of natural resources; article 6, site location of development;
46 article 7, performance standards for excavations for borrow,
47 and article 8, performance standards for excavations for borrow.

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2 clay, topsoil or silt; article 8-A, performance standards for
3 quarries; and sections 631 to 636, permits for hydropower
4 projects.

6 6. Urbanizing areas. The department shall work with the
7 State Planning Office to identify urban bodies of water most at
8 risk and incorporate model ordinances protective of these bodies
9 of water into assistance provided to local governments.

10 7. Exemptions. The following exemptions apply.

12 A. Forest management activities, including associated road
13 construction or maintenance, do not require review pursuant
14 to this section if any road construction is used primarily
15 for forest management activities and is not used primarily
16 to access development.

18 B. Disturbing areas for the purpose of normal farming
19 activities, such as clearing of vegetation, plowing,
20 seeding, cultivating, minor drainage and harvesting, does
21 not require review pursuant to this section.

22 C. If the commissioner determines that a municipality's
23 ordinance meets or exceeds the provisions of this section
24 and that the municipality has the resources to enforce that
25 ordinance, the commissioner shall exempt any project within
26 that municipality. The department shall maintain a list of
27 municipalities meeting these criteria and update this list
28 at least every 2 years. If a municipality on the list no
29 longer meets these criteria, it must be removed from the
30 list. A project constructed after a municipality is removed
31 from the list must obtain approval pursuant to this section.

34 D. Construction projects at industrial facilities for which
35 a federal storm water permit application has been made or
36 construction projects at facilities for which storm water is
37 regulated under an existing federal discharge permit do not
38 require review pursuant to this section.

40 E. Impervious and disturbed areas associated with
41 construction or expansion of a single-family, detached
42 residence on a parcel do not require review pursuant to this
43 section.

44 F. Waste facilities regulated by the department under
45 section 1310-N, 1319-R or 1319-X do not require review under
46 this section. This exemption applies to new facilities,
47 modifications of facilities, transfers of facilities and
48 relicensing of facilities.

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2 G. Projects involving roads, railroads and associated
3 facilities conducted by or under the supervision of the
4 Department of Transportation or the Maine Turnpike
5 Authority, do not require review under this section as long
6 as the projects are constructed pursuant to storm water
7 quality and quantity standards set forth in a memorandum of
8 agreement between the department and the conducting or
9 supervising agency and the project does not require review
10 under article 6. A memorandum of agreement described in
11 this paragraph must be updated whenever the rules concerning
12 storm water management adopted by the department are
13 finalized or updated.

14 8. Enforcement. Any activity that takes place contrary to
15 the provisions of a valid permit issued under this article or
16 without a permit having been issued for that activity is a
17 violation of this article. Each day of a violation is a separate
18 offense. A finding that any such violation has occurred is prima
19 facie evidence that the activity was performed or caused to be
20 performed by the owner of the property where the violation
21 occurred. Prior to July 1, 1998, the department may not seek to
22 impose civil or criminal penalties for a violation of this
23 section against any person who has made a good faith effort to
24 comply.

25 9. Rules. Rules adopted pursuant to this section are major
26 substantive rules as defined in Title 5, chapter 375, subchapter
27 II-A.

28 10. Fees. An applicant for a permit under this section
29 shall pay a fee to the department as follows.

30 A. When a permit is required because of the size of the
31 proposed impervious area, the following fees apply.

32 (1) If structural means of erosion control are used,
33 the fee is \$500 for from 20,000 square feet up to one
34 acre of impervious area, plus \$250 for each additional
35 whole acre of impervious area.

36 (2) If solely vegetative means of erosion control are
37 used, the fee is \$250 for from 20,000 square feet up to
38 one acre of impervious area, plus \$125 for each
39 additional whole acre of impervious area.

40 B. When a permit is required because of the size of the
41 proposed disturbed area, the following fees apply.

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2 (1) If structural means of erosion control are used,
3 the fee is \$500 for 5 acres, plus \$250 for each
4 additional whole acre of impervious area.

6 (2) If solely vegetative means of erosion control are
7 used, the fee is \$250 for 5 acres, plus \$250 for each
8 additional whole acre of impervious area.

10 C. When a permit by rule is required as provided by rules
11 adopted by the department, the fee is \$35.

12 If a project described in paragraph A or B is reviewed and
13 approved by a professional engineer at a soil and water
14 conservation district office that has a memorandum of
15 understanding with the department concerning review of projects
16 pursuant to this section, the fee is reduced to \$100 for from
17 20,000 square feet up to one acre of impervious area or 5 acres
18 of disturbed area, plus \$50 for each additional whole acre.

20 This section may not be construed to limit a municipality's
21 authority under home rule to adopt ordinances containing stricter
22 standards than those contained in this section.'

24 Further amend the bill in Part C by striking out all of
25 section 3 and inserting in its place the following:

26
27 **'C-3. Memorandum of agreement.** The Department of
28 Environmental Protection shall conclude a memorandum of agreement
29 with the Department of Transportation by July 1, 1997 specifying
30 the storm water quality and quantity standards to be applied to
31 projects exempt pursuant to Maine Revised Statutes, Title 38,
32 section 420-D, subsection 7, paragraph G.'

34 Further amend the bill in Part D by striking out all of
35 section 1 and inserting in its place the following:

36
37 **'Sec. D-1. Rule-making authority.** The Department of
38 Environmental Protection has authority to adopt rules in
39 accordance with the Maine Revised Statutes, Title 5, chapter 375
40 to implement Title 38, section 420-D; section 484, subsection 2,
41 paragraph B; and section 485-A, subsection 1-C, as enacted by
42 this Act and in accordance with the terms of those sections.
43 Such rules must be provisionally adopted and submitted to the
44 Legislature for review as major substantive rules pursuant to
45 Title 5, chapter 375, subchapter II-A no later than January 1,
46 1997.

48 **Sec. D-2. Effective date.** This Act takes effect July 1, 1997,
49 except section 1 of this Part takes effect 90 days after
50 adjournment of the Second Regular Session of

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the 117th Legislature.'

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Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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

FISCAL NOTE

1996-97

REVENUES

Other Funds (\$3,000)

The net impact of certain changes in the site location of development laws will reduce permit fee collections. The estimated annual reductions of dedicated revenues to the Department of Environmental Protection is \$3,000 beginning in fiscal year 1996-97. Other changes in the site location of development laws will result in dedicated revenue increases and decreases; the exact amounts can not be determined at this time.

The Department of Environmental Protection will incur some minor additional costs to administer certain changes in the site location of development laws, to adopt certain rules, to develop certain recommendations and to enter into certain memorandums of agreement. These costs can be absorbed within the department's existing budgeted resources.

The Department of Agriculture, Food and Rural Resources, the Department of Conservation, the Department of Defense and Veterans' Services, the Department of Human Services, the Department of Transportation and the Department of Public Safety will incur some minor additional costs to work with the Department of Environmental Protection to comply with certain study, reporting and memorandum of agreement requirements. These costs can be absorbed within the departments' existing budgeted resources.

The additional costs associated with establishing and distributing guidelines and costs associated with working with the Department of Environmental Protection to identify urban bodies of water can be absorbed by the State Planning Office utilizing existing budgeted resources.

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2 The additional costs associated with assuming additional
responsibilities of the site location of development laws,
4 including permit-granting authority, can be absorbed by the
Department of Transportation utilizing existing budgeted
resources.

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8 This bill may increase prosecutions for Class E crimes. If
a jail sentence is imposed, the additional costs to the counties
are estimated to be \$83.70 per day per prisoner. These costs are
10 not reimbursed by the State. The number of prosecutions that may
result in a jail sentence and the resulting costs to the county
12 jail system are expected to be insignificant.

14 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system
16 can be absorbed within the budgeted resources of the Judicial
Department. The collection of additional fines may increase
18 General Fund revenue by minor amounts.'

20 **STATEMENT OF FACT**

22 The amendment makes the following changes to the bill.

24 1. It strikes out the provisions requiring municipalities
to calculate and report the public costs of subdivision
26 development.

28 2. It amends the storm water standard under the site
location of development laws to provide that metallic mineral
30 mining activities are subject to the storm water standard in all
parts of the State, not just in the organized areas, and to
32 clarify that certain projects needing a site law permit must
comply with applicable storm water standards even if they are
34 exempt from the new storm water permitting law.

36 3. It adds a section requiring the Department of
Environmental Protection to develop by rule a process for
38 granting a planning permit under the site law to allow for
prepermitting of projects.

40 4. It strikes out the section of the bill that would have
exempted some pipelines from the law requiring analysis of
42 alternative location and character.

44 5. It strikes the provision exempting farm ponds over 10
46 acres, since that provision has been included in other
legislation.

48 6. It amends language stating when a municipality may
50 request that the Department of Environmental Protection review

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2 projects in a municipality with capacity to review those
3 projects. This amendment clarifies that the municipality or an
4 adjacent municipality may request that the Department of
5 Environmental Protection review a project when there are regional
6 environmental impacts. In such cases, the department reviews the
7 project only for the regional environmental impacts and the
8 municipality would review for all other issues under the site
9 law. Petitions to the Department of Environmental Protection
10 must be filed and responded to in a period of time specified in
11 the law.

12 7. The amendment requires the Commissioner of Environmental
13 Protection to use model local ordinances that review issues
14 addressed by the site law in determining whether a municipality
15 has adequate site plan review ordinances for purposes of
16 determining municipal capacity.

17 8. It requires the department to publish a list of
18 municipalities with capacity by January 1, 1997 and deems certain
19 municipalities to have capacity if the list is not published in
20 time.

21 9. It specifies that certain modifications of subdivisions
22 permitted under the site law are not required to obtain
23 Department of Environmental Protection approval.

24 10. It moves the reporting date for the groundwater study
25 groups to report back to the Legislature from January 10, 1997 to
26 January 10, 1998.

27 11. It changes the erosion and sedimentation control
28 standards to require that a person take measures to prevent
29 unreasonable erosion, rather than requiring a person to prevent
30 any eroded material from leaving the project site or entering a
31 protected natural resource. It also exempts from the standard
32 forest management activities regulated by Maine Land Use
33 Regulation Commission standards.

34 13. The amendment limits the content and geographic
35 applicability of storm water quality rules. Quality rules would
36 apply only in the direct watersheds of bodies of water most at
37 risk from new development and in sensitive or threatened regions
38 and watersheds. The Department of Environmental Protection is
39 required to determine which watersheds and regions fall within
40 these categories through rulemaking, which is classified as major
41 substantive rulemaking. Until the regions of applicability are
42 defined, storm water quality standards do not apply.

43 14. The amendment clarifies the forest management exemption
44 and adds exemptions for projects subject to certain federal
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2 permitting requirements, single-family residence construction or
expansion projects, permitted waste facilities, and certain
4 transportation projects subject to storm water standards to be
developed by the Department of Environmental Protection and the
Department of Transportation or the Maine Turnpike Authority.

6
15. The amendment also changes the effective date to
8 provide that the Act is effective July 1, 1997, except that
rulemaking is authorized beginning 90 days after adjournment of
10 the session.

12 16. The amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT